

Federal Court



Cour fédérale

Date: 20210902

Docket: T-1013-20

Citation: 2021 FC 915

Ottawa, Ontario, September 2, 2021

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**SHELLEY GAUTHIER, ROBIN EWASKOW
and TROY WOLF**

Applicants

and

**MERLITA DE GUZMAN (IN HER CAPACITY
AS DIRECTOR OF OPERATIONS/CHIEF
OPERATING OFFICER OF THE
BLUEBERRY RIVER FIRST NATIONS
BAND), THE BAND COUNCIL OF THE
BLUEBERRY RIVER FIRST NATIONS BAND,
MARVIN YAHEY, SHERRY DOMINIC
and WAYNE YAHEY**

Respondents

ORDER

UPON MOTION for a contempt show cause order and other ancillary relief on the grounds that Chief Yahey failed to comply with this Court's Order of May 14, 2021, requiring the convening of regular Band Council meetings;

AND UPON the Respondent Chief's submissions requesting this Court not to issue a Show Cause Order despite the clear failure of Chief Yahey to comply with the Court's May 14, 2021 Order;

AND UPON CONSIDERING THAT:

1. The Court is of the view that it is in the overriding interest of justice that its orders be complied with, particularly given the history of this file (and related files) where compliance with Court orders has been an issue.
2. The Court retains a narrow window of discretion not to issue a Show Cause Order which is to be exercised sparingly and with prudence (*Volkswagen Canada v Access International Automotive Ltd*, 2004 FC 508).
3. The Applicants are entitled to the Show Cause Order under these circumstances and potentially the ancillary relief in addition.
4. But for the Applicants' willingness to accept a cost order, and the Chief's apology for non-compliance, a Show Cause Order would issue.
5. In the unusual circumstances of this case, the Court is prepared to exercise its discretion not to issue a Show Cause Order upon the following terms.

THEREFORE, THIS COURT ORDERS that:

- a) Chief Yahey is to pay costs of \$5,000 (not the \$3,000 proposed by the Applicants as a reciprocal amount based on a previous incidence) to reflect that there has

been an escalation in the atmosphere of animosity and non-compliance. The amount is to be paid to the Applicants' counsel in trust for the Applicants within 10 days of this Order.

- b) The regular Band Council meetings are to be conducted on the dates now set.
- c) This Order is to be posted at a conspicuous place in the Band's Office and posted on the Band's website.
- d) Rather than dismiss this motion, the motion is adjourned *sine die* to be brought on, as necessary, by the Applicants or the Court on its own motion.
- e) The parties and those to whom this Order becomes known are again alerted that Court orders are to be complied with and that failure to do so exposes the offending person(s) to the most severe penalties for contempt.

"Michael L. Phelan"

Judge