

Federal Court



Cour fédérale

Date: 20250716

**Dockets: T-2536-22
T-2546-22**

Citation: 2025 FC 1259

Ottawa, Ontario, July 16, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TERRINA BELLEGARDE AND JOELLEN HAYWAHE

Applicants

and

**SCOTT EASHAPPIE, SHAWN SPENCER, TAMARA THOMSON, AND
CARRY THE KETTLE FIRST NATION**

Respondents in the Underlying Applications

and

**SCOTT EASHAPPIE, SHAWN SPENCER,
LORETTA PETE LAMBERT, BRADY O'WATCH,
MORRIS PASAP, TONI ADAMS, TAMARA THOMSON, AND
LUCY MUSQUA**

Respondents in the Motion

ORDER AND REASONS

I. Overview

[1] In *Bellegarde v Carry the Kettle First Nation*, 2024 FC 48 [Contempt Order], Chief Scott Eashappie, Councillor Shawn Spencer, Councillor Tamara Thomson and Councillor Lucy Musqua [collectively, Respondents] were found guilty of contempt of court.

[2] In *Bellegarde v Carry the Kettle First Nation*, 2024 FC 1653 [Sentencing Order], I imposed a fine of \$7,500 on Chief Scott Eashappie, a fine of \$5,000 on Councillors Scott Spencer and Tamara Thomson, and a fine of \$500 on Councillor Lucy Musqua.

[3] These reasons address an award of costs in accordance with Rule 400 of the *Federal Courts Rules*, SOR/98-106 [Rules]. For the reasons below, I make an award of solicitor-client costs against the Respondents.

II. Background

[4] The Contempt Order summarizes the background facts leading to the finding of contempt of court, and the procedural history of this matter.

[5] Briefly, Terrina Bellegarde and Joellen Haywahe [together, Applicants] were elected as Councillors of Carry the Kettle First Nation [CTKFN] on April 7, 2022, but were removed from their positions on November 5, 2022. The Applicants challenged the removal by filing

applications for leave and judicial review [Underlying Applications]. In *Bellegarde v Carry the Kettle First Nation*, 2023 FC 129 [Stay Order], Justice Grammond granted interim relief by staying the removal of the Applicants and preventing a by-election from proceeding until the Underlying Applications were determined.

[6] Despite the Stay Order, the Respondents proceeded with the by-election for the offices of the two Applicants. As a result, the Applicants commenced contempt proceedings against the Respondents. In the first part of the contempt proceedings, the Applicants established a *prima facie* case that the Respondents were in contempt of court for proceeding with the by-election and continuing the Applicants' suspensions (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 890 [Show Cause Order]).

[7] In the Contempt Order, I found the within named Respondents in contempt of court.

[8] On January 25, 2024, Councillor Musqua filed a notice of appeal concerning the Contempt Order conviction. The remaining Respondents have not appealed. Councillor Musqua also filed a motion seeking a stay of proceeding pending determination of her appeal. On May 2, 2024, the Federal Court of Appeal dismissed Councillor Musqua's motion as premature, finding that since this Court has not yet determined a sanction, the Federal Court of Appeal is unable to assess irreparable harm (*Musqua v Bellegarde*, 2024 FCA 85 at para 18).

[9] On May 7, 2024, Justice Régimbald issued an order granting the Underlying Applications. He found the CTKFN Council did not have the quorum nor the qualified majority

required by the CTKFN *Cega-Kin Nakoda Oyate Custom Election Act* [*Election Act*] to adopt the Band Council Resolutions [BCRs] and remove the Applicants (*Bellegarde v Carry the Kettle First Nation*, 2024 FC 699 at para 5 [Underlying Decision]). Also, the Tribunal that is required to be established pursuant to paragraph 12(7)(i) of the *Election Act* to provide a recommendation to a council to remove an elected official from office was improperly constituted (Underlying Decision at para 5). The Court determined the Applicants remain elected councillors entitled to all remuneration that would have been payable to them. Additionally, the election of Mr. O'Watch and Mr. Pasap were void *ab initio* (Underlying Decision at para 6).

[10] On July 26, 2024, Justice Régimbald awarded the Applicants lump sum costs of \$75,000 (inclusive of disbursements and taxes) arising from the Underlying Decision to be paid by the Respondents (*Bellegarde v Carry the Kettle First Nation*, 2024 FC 1191 [Underlying Costs Order] at paras 25-27).

[11] On October 21, 2024, I sentenced Chief Scott Eashappie to pay a fine in the amount of \$7,500, Councillors Scott Spencer and Tamara Thompson to each pay a fine in the amount of \$5,000, and Councillor Lucy Musqua to pay a fine in the amount of \$500 (Sentencing Order at para 121). The parties were ordered to provide written submissions on an appropriate costs award within 30 days of the Sentencing Order.

III. Issue

[12] The sole issue for determination is the appropriate award of costs against the Respondents.

IV. Legal Principles

[13] Pursuant to Rule 400 of the *Rules*, the application judge has full discretion when awarding costs, “including to award solicitor-clients costs or a lump sum amount” (Underlying Costs Order at para 16). As I noted in *McCarthy v Whitefish Lake First Nation #128*, 2023 FC 1492 [*McCarthy*] at paragraph 23, “[t]his discretion must be exercised judicially. The exercise of awarding costs involves an inescapable risk of arbitrariness and roughness on the part of the Court (*Eurocopter v Bell Helicopter Textron Canada Limitée*, 2012 FC 842, aff’d 2013 FCA 220 at para 9). This risk is tempered by the applicable legal principles.”

[14] It is customary practice to impose costs on a solicitor-client basis in contempt proceedings (*Lari v Canadian Copyright Licensing Agency*, 2007 FCA 127 [*Lari*] at paras 38-39). This is because “a party who assists the Court in ensuring the orderly administration of justice should not have to suffer costs” (*Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794 [*Bacon St-Onge*] at para 92). The amounts claimed by the party “must be reasonable, proportionate, and within the ability of the defendant to pay” (*Bell Canada v Red Rhino Entertainment Inc.*, 2021 FC 895 [*Red Rhino*] at para 74).

[15] However, this customary practice is not absolute (*Red Rhino* at para 74). Pursuant to Rule 400(4), “[t]he Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.”

[16] In recent years, the Court has leaned towards granting lump sum awards instead of solicitor-client costs because fixing a lump sum award “would significantly reduce the time and

expense that would be required to prepare, review and make submissions on the type of detailed bill of costs that is required for the purposes of an assessment under Tariff B” (*Bell Media Inc v Macciachera (Smoothstreams.tv)*, 2023 FC 1698 [*Macciachera*] at para 23).

[17] In determining the appropriate amount, it is important to remember that “[a] lump sum amount must not be “plucked from thin air”” (*Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119 [*Whalen*] at para 33, citing *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 [*Nova*] at para 15). Such awards usually fall within a range of 25% to 50% of the actual legal costs of the successful party (*Whalen* at para 33, citing *Nova* at para 17). Therefore, “the successful party must give evidence of its legal costs to support a request for a lump sum” (*Whalen* at para 34; *McCarthy* at para 26).

[18] Evidence of the actual legal costs is not necessary (*McCarthy* at para 32, citing *Shirt v Saddle Lake Cree Nation*, 2022 FC 321 [*Shirt*] at para 107). The Court may rely on a Bill of Costs or similar evidence of fees and expenses provided by the parties. The Court may also consider the factors set out in Rule 400(3).

V. Analysis

A. *Applicants’ Position*

[19] The Applicants seek solicitor-client costs in the all-inclusive amount of \$59,635.38 for the entire Contempt Proceedings (the Stay Order, the Show Cause Order, and the Sentencing Order). Alternatively, the Applicants request an elevated lump sum based on the invoice and

affidavit materials provided. The Applicants request that the costs award be payable within 30 days through counsel for the Respondents' trust accounts.

[20] The Applicants argue that the general rule and reasoning for ordering solicitor-client costs is especially persuasive here because the Respondents have used CTKFN's resources to fund their own defence. Further, the Applicants argue they have not engaged in any conduct that would tend to lengthen these proceedings. In contrast, the Respondents have engaged in conduct that delayed the Contempt Proceedings, including but not limited to:

- A. The Respondents refused to accept service for Mr. O'Watch and Mr. Pasap, requiring process services and motion to validate service, and then went on to represent these individuals at a cost to the First Nation and its members at the show cause hearing, where they were charged (*Knebush v Maygard*, 2014 FC 1247 [*Knebush*] at para 67; *Michel v Adams Lake Indian Band Community Panel*, 2017 FC 835 [*Michel*] at para 61). The Applicants have not received costs for the Show Cause hearing (Show Cause Order at paras 43-44);
- B. The Respondents attempted to adjourn the Show Cause hearing. The Applicants have not received costs for the Show Cause hearing despite being awarded \$2,500, plus disbursements (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 940 [Adjournment Order] at para 54); and
- C. The Respondents argued the Band Council should bear the cost and responsibility of their contempt, and when that failed, they appear to have footed CTKFN with the legal bill for the defence any way (Show Cause Order at para 40).

[21] The Applicants have not received any costs for three intensive hearings, two of which involved *viva voce* evidence. They have been blamed for the harsh consequences of the Respondents' contempt, all of whom refused to purge their contempt. For example, legal counsel footed the bill for hotel accommodations so the Applicants could attend the Sentencing Hearing.

[22] The Applicants submitted evidence to the Court that demonstrated that from May to July 2024, the Respondents paid MLT Aikins LLP \$170,883.58 from a CTKFN account. It is presumed these payments were for the Respondents' personal defence of the Contempt Proceedings, as the only matters that occurred on this file during that period was the Sentencing Hearing and Costs Submissions. The Applicants acknowledge that this evidence is not perfect, but it is the only evidence the Applicants possess. This evidence and the presumption that the Respondents had their legal fees paid for should favour a solicitor-client costs award for the relatively modest amount claimed by the Applicants for a period ranging from March 2023 to December 2024 (*Knebush* at para 67; *Michel* at para 61).

[23] The Applicants assert that Chief Scott Eashappie's post-decision conduct further justifies the cost award. He mistakenly wrote that he "won" despite being fined \$7,500; that his moral culpability was "low", and that the Applicants' evidence was improper and vexatious.

[24] The Applicants had to file a notice of garnishment for the \$75,000 ordered by Justice Régimbald (Underlying Costs Order at para 25). They argue that the Respondents' pattern of failed payments suggests the Respondents would not pay this Costs Order unless its implementation was monitored by this Court.

[25] The costs award must come from the individual Respondents. CTKFN has already paid to defend the Respondents' contemptuous conduct and should be forced to pay for their own conduct. They have provided no evidence of their inability to do so. The Applicants propose the following breakdown of the costs award, reflective of the proportionate amount of their fines being:

- A. 41.6 percent to Scott Eashappie: \$24,808.32 (Based on the percentage that \$7,500 is of \$18,000);
- B. 27.8 percent to Tamara Thomson: \$16,587.64;
- C. 27.8 percent to Shawn Spencer: \$16,587.64; and
- D. 2.8 percent to Lucy Musqua: \$1,669.79.

B. *Respondents' Position: Scott Eashappie, Shawn Spencer and Tamara Thomson*

[26] The Respondents propose the appropriate costs award is lump sum costs in the range of \$15,000 to \$20,000, to be evenly distributed between the four Respondents found guilty of contempt, including Lucy Musqua.

[27] The Applicants should not be entitled to full solicitor-client costs, or the lump sum sought. Any cost award should be significantly reduced to reflect the following:

- A. The Contempt Application was partially unsuccessful, as the Applicants failed to establish contempt against Mr. O'Watch, Mr. Pasap and Toni Adams;
- B. The vast majority of evidence tendered by the Applicants in relation to the sentencing hearing was inadmissible and inappropriate;

- C. The Applicants were already awarded a significant costs award in relation to the underlying judicial review application;
- D. The Applicants unnecessarily and improperly brought into issue numerous matters which had no relevance to this proceeding;
- E. The Respondents are already required to pay a significant fine; and
- F. The Applicants lost sight of the administration of justice in their pursuit of the Contempt Application and unreasonably sought the imprisonment of the Respondents.

[28] The Respondents provided the following cases as instructive of the costs that have been awarded in cases involving Band governance disputes. In *Tootoosis v Poundmaker Cree Nation*, 2024 FC 1577, the applicant was awarded elevated lump sum costs in the amount of \$15,098.06, inclusive of taxes, interest and disbursements, in relation to a judicial review application challenging the suspension and removal of the applicant from council. In *Shirt*, the applicant was awarded elevated lump sum costs of \$20,000, in relation to a judicial review of two decisions to remove the applicant from his elected position as Chief. In *McCarthy*, the applicant was awarded \$25,000 following a successful judicial review application relating to council's decision to exclude certain women and descendants from voting and running as a candidate in their elections.

[29] While the above cases are not contempt proceedings, the Respondents stated they involve more complex matters than present here. The Respondents also relied upon *Red Rhino*, where the

Court awarded the applicant costs in the all-inclusive amount of \$35,000 in relation to a contempt application and sentencing hearing; and *Bacon St-Onge*, where the Court declined to award costs in relation to a contempt application because the applicant failed to act in the interest of the administration of justice.

[30] The Respondents acknowledged that the Applicants are likely entitled to *some* reasonable costs associated with the Show Cause Order. Any costs must be reasonable and should be reduced to account for the dropped charges against Mr. O'Watch, Mr. Pasap, and Toni Adams. Similarly, the fact that the Applicants were unsuccessful in establishing contempt against Mr. O'Watch, Mr. Pasap, and Toni Adams must be considered in a costs award. The Respondents argued the inclusion of these three individuals demonstrates the Applicants' failure to act in the interests of the administration of justice.

[31] Additionally, the Respondents have already received a significant costs order in relation to the underlying applications and duplicate costs must be avoided.

[32] The Respondents argued that any costs for the Sentencing Order should be significantly reduced to account for the Applicants' voluminous materials. They pointed to the Court's findings that the filed affidavits "are highly prejudicial, irrelevant, slanderous, and contain opinion commentary" (at paras 14-15), and that it would not consider any portions that do not focus on "the harm or loss suffered by the victim as a result of the commission of the offence and the impact of the offence on the victim" (at para 30).

[33] The Respondents also stated that the Court must be cautious to ensure duplicative legal fees are not awarded in relation to the affidavit evidence, relying on the Court's finding that Councillor Bellegarde's evidence mirrored that in the Contempt Order, and that Councillor Haywahe's evidence mirrored Councillor Bellegarde's (at para 37).

C. *Respondent's Position: Lucy Musqua*

[34] The Applicants have lost sight of the administration of justice and no costs should be awarded against the Respondent. Alternatively, if costs are awarded against her, they should be proportional to the culpability and degree of moral blameworthiness of the Respondents.

[35] The Respondent was found to have the least moral culpability (Contempt Order at paras 113-116) and *Red Rhino* stands for the position that she is within her rights to defend herself against contempt charges. Further, the Applicants' claim of \$60,000 is so far beyond the demonstrated ability of the Respondent to pay.

[36] The Respondent referenced two cases of this Court that ordered lump sum awards of \$35,000 in contempt proceedings, despite requests for solicitor-client costs or elevated amounts of \$400,000 and \$165,000, respectively (*Red Rhino* at paras 73, 79; *Bell Canada v Vincent Wesley dba MtlFreeTV.com*, 2018 FC 861 at para 78). The Respondent argued an award more aligned with \$35,000 is more appropriate here, especially when no breakdown of solicitor-client costs has been provided.

[37] The fine awarded against the Respondent is significantly less than those awarded against the other Respondents (Sentencing Order at para 121). The Court's comments in *Bacon St-Onge* are applicable to the Respondent because the Applicants have lost sight of the purpose of a contempt application, namely the administration of justice and self-interest (at paras 60-61). The Applicants thwarted the Respondent's ability to comply and their request for punishment is excessive and demonstrates they have disregarded the objectivities of a prosecutor.

D. *Conclusion*

[38] I am exercising my discretion to award lump-sum costs in favour of the Applicants in the all-inclusive amount of \$35,000. I accept the rationale of the Applicants to apportion the amount of costs among the Respondents in a manner reflecting the Respondents' respective percentages of the total contempt fine of \$18,000. I will discuss the factors leading to the exercise of my discretion.

[39] At the outset, I will re-state that I am guided by the award of costs principles set out in paragraphs 13-18, above. There is no dispute between the parties as to the applicable legal principles this Court must apply.

[40] I disagree with the Respondents' suggestion that a costs range of \$15,000 - \$20,000 is appropriate. The cases relied upon by the Respondents do not assist the Respondents nor this Court as they did not involve contempt proceedings. On the other hand, the costs submissions of the Respondent, Ms. Musqua, are more in line with the jurisprudence concerning contempt proceedings, as the cases referenced awarded costs in the amount of \$35,000.

[41] I also note that the Applicants were only partially successful in the Contempt Proceedings, as the charges against Mr. O'Watch and Mr. Pasap were dismissed (*Wanderingspirit v Marie*, 2006 FC 1420 [*Wanderingspirit*] at para 13; *Macciachera* at para 28). To correct the Respondents, the charges against Toni Adams were withdrawn at the Contempt Hearing, not dismissed (Contempt Order at para 9).

[42] While the Respondents assert this was not a complicated matter, they continuously had at least two lawyers from MLT Aikins LLP associated with the Contempt Proceedings (*Wanderingspirit* at para 15).

[43] The legal fees for counsel for the Applicants were not challenged. It is reasonable to expect inherent duplicities in matters that have multiple related proceedings.

[44] The imbalance between the financial resources of the Applicants and the Respondents is another relevant factor. Though not perfect evidence, the Applicants submitted that from May to July 2024, the Respondents paid MLT Aikins \$170,883.58 for these Contempt Proceedings. Though not certain, it appears that the Respondents' defence to the Contempt Proceedings has been entirely paid for by CTKFN (*Whelan* at para 27).

[45] The Respondents have also not submitted that they are unable to pay their fines and cost awards.

[46] The Contempt Proceedings have raised important and complex, much of which arose due to Applicants and Respondents' legal counsels' approach to the proceedings.

[47] There is also a public interest "in fostering compliance with court orders provides a strong rationale for the customary practice in contempt cases to impose costs on a solicitor-client basis" (*Macciachera* at para 47). As I stated in the Sentencing Order, "[t]he people of CTKFN need to know their elected officials are not above the law. Current and future leaders need to know they are not above the law" (at para 100).

[48] The Respondents acknowledged the public interest of the Contempt Proceedings in previous submissions, asserting that they are "a matter of great important to the membership of the [CTKFN]" and that a virtual hearing would compromise the "observation of the hearing by members of the First Nation, the public and the media" (Adjournment Order at paras 8, 11). In any event, the matter proceeded by way of a Zoom hearing.

[49] Overall, in light of the various factors set forth in Rule 400 and the jurisprudence, I am exercising my discretion to order lump sum costs in the all-inclusive amount of \$35,000.

VI. Conclusion

[50] Accordingly, I order that the Respondents pay lump-sum costs to the Applicants in the all-inclusive sum of \$35,000 apportioned as follows: 41.6 percent or \$14,560 to Chief Scott Eashappie; 27.8 percent or \$9,730 to Tamara Thomson and Shawn Spencer each; and 2.8 percent or \$980 to Lucy Musqua.

[51] For greater clarity, each Respondent must personally pay the ordered costs. The Respondents are prohibited from using CTKFN monies to pay this Costs Order. As noted above, there is no evidence to suggest the Respondents cannot pay these amounts.

ORDER in T-2536-22 and T-2546-22

THIS COURT ORDERS that:

1. The Applicants are entitled to receive an all-inclusive lump sum costs award of \$35,000 apportioned as follows:
 - a. \$14,560 to Chief Scott Eashappie;
 - b. \$9,730 to Tamara Thomson and Shawn Spencer each; and
 - c. \$980 to Lucy Musqua.
2. The Respondents will pay these sums to their respective legal counsel, for deposit into a solicitor's trust account, within 60 days of this Order. Thereafter, the Respondents' solicitors will pay the apportioned costs to the Applicants' solicitors within 5 days of receipt of same from the Respondents.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: T-2536-22 AND T-2546-22

STYLE OF CAUSE: TERRINA BELLEGARDE AND JOELLEN
HAYWAHE v SCOTT EASHAPPIE, SHAWN
SPENCER, TAMARA THOMSON, AND CARRY THE
KETTLE FIRST NATION AND SCOTT EASHAPPIE,
SHAWN SPENCER, LORETTA PETE LAMBERT,
BRADY O'WATCH, MORRIS PASAP, TONI ADAMS,
TAMARA THOMSON, AND LUCY MUSQUA

PLACE OF HEARING: WRITTEN SUBMISSIONS

ORDER AND REASONS: FAVEL J.

DATED: JULY 16, 2025

WRITTEN SUBMISSIONS BY:

ORLAGH O'KELLY	FOR THE APPLICANTS TERRINA BELLEGARDE AND JOELLEN HAYWAHE
SONIA EGGERMAN	FOR THE RESPONDENTS SCOTT EASHAPPIE, SHAWN SPENCER, TAMARA THOMSON
MOIRA KEIJZER-KOOPS	LUCY MUSQUA

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