

Federal Court



Cour fédérale

**Date: 20230426**

**Docket: T-485-23**

**Citation: 2023 FC 612**

**Vancouver, British Columbia, April 26, 2023**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**LILIANE SQUINAS**

**Applicant**

**and**

**LHOOSK'UZ DENÉ NATION, VIOLET BOYD,  
ELLA STILLAS, and JUNE BAPTISTE**

**Respondents**

**ORDER AND REASONS**

I. Overview

[1] This is a motion dated April 19, 2023 on behalf of the Applicant, pursuant to Rule 373(1) of the *Federal Courts Rules* SOR/98-106, for:

- (a) an interlocutory injunction staying Lhoosk'uz Dené Nation (“LDN”) Band Council Resolutions (“BCRs”), dated February 8, 2023 and February 16, 2023, until the final determination of this application on its merits; and
- (b) costs.

[2] The underlying application, filed on March 10, 2023, is for judicial review of the two BCRs, for orders in the nature of *certiorari*, and for declaratory and injunctive relief.

[3] The application is being case managed and an Order setting out a time-table for completion of the remaining steps in the proceedings was issued by the Case Management Judge on April 19, 2023. An Amended Notice of Motion, returnable at the General Sittings of the Court on April 25, 2023, was served and filed immediately thereafter. The Applicant’s Motion Record had been served and filed on April 18, 2023. On consent, the Respondents’ Motion Record was served and filed on April 24, 2023.

[4] At the outset of the hearing at the General Sittings on April 25, 2023, counsel for the Respondents sought an adjournment of the motion to a special sitting of a day’s duration on the grounds that the hearing was set down for a date on which their counsel of choice was not available and without giving them a fair opportunity to prepare their evidence. The Applicant vigorously opposed an adjournment. After hearing from counsel for the parties, the Court declined to adjourn the motion.

[5] For the reasons that follow, the motion is dismissed.

II. Background

[6] The LDN Band Council consists of four councillors and a Chief. The three named Respondents are Councillors elected at various times to represent family groups within the LDN according to Band Custom. The Chief is elected at large from the band. The Applicant, Liliane Squinas, has held that position since May 2002. There has not been an election for that position since that time.

[7] According to the affidavit of the Respondent Junie Baptiste, elected to Council in August 2017, an LDN BCR requires a quorum of 3 Council Members. On February 8, 2023, Councillor Baptiste avers, Council convened an emergency meeting in the parking lot of a store in Quesnel, BC. Three members of Council were present; the three named Respondents. The reason for the meeting was that an individual with knowledge of LDN finances (the “Whistleblower”) had made serious allegations of financial impropriety against Chief Squinas and an LDN employee.

[8] As a result of the disclosures, according to Councillor Baptiste, the three members of Council present voted to revoke Chief Squinas’ and the employee’s roles as corporate directors of the LDN, and all related corporate entities, as well as their roles as authorized signatories of all bank accounts, investment accounts and credit cards owned by the LDN.

[9] On February 16, 2023, further to information received about the possible removal of documents from the Band Council office, the three members of Council passed a second BCR which authorized the engagement of an independent investigator to review the allegations,

placed Chief Squinas and the employee on paid administrative leave pending the outcome of the investigation and restricted their access to the Band office and any records of the LDN. Chief Squinas was informed of this by letter of the same date.

[10] The Applicant's motion is supported by two affidavits from Chief Squinas. In the first affidavit affirmed on April 4, 2023, among other things, Chief Squinas describes LDN band custom for elections and meetings including the requirement for notice. She identifies the minutes of the two BCRs at issue and states that since receiving the letter of February 16, 2023 she had not been informed of the status of the investigation.

[11] In her second affidavit, dated April 18, 2023, Chief Squinas avers that she had been made aware of the nature of the allegations against her but had yet to be interviewed by the investigator or asked to provide any information. Chief Squinas states that it is crucial for her to travel to Victoria, BC on April 27, 2023 in her capacity as Chief to receive an offer from Crown Indigenous Relations and Northern Affairs Canada ("CIRNAC") and to meet with three Ministers of the Provincial Cabinet to discuss reconciliation negotiations. She asserts that both meetings result from over five years of intensive work.

[12] The Respondents rely on the Affidavits of Junie Baptiste and the independent investigator James Blatchford. Councillor Baptiste describes the events which led to the two BCRs and the administration of LDN's affairs since February 2023. She disputes Chief Squinas' evidence regarding LDN customs for calling Chief and Council meetings and for suspending or removing their elected officials. She avers that she is capable of conducting LDN business including

meetings with government officials. No member of Council, she states, was aware of the meetings described in Chief Squinas' second affidavit. Since learning of them, she had instructed the LDN Communications and Strategic Initiatives Negotiator to reschedule both meetings to a later date. If neither meeting can be rescheduled, she states, a member of Council will attend on behalf of the LDN.

[13] Councillor Baptiste also describes a petition being circulated within the Band to demand that Chief Squinas resign her position or be removed pending a new election. A copy of the petition purporting to show the signatures of a majority of band electors is attached as an exhibit to her affidavit.

[14] James Blatchford's affidavit describes his background as a fraud investigator and forensic accountant since 1981 and the investigation he was engaged to undertake in February 2023 into the allegations of financial misconduct with LDN funds. He states that he has conducted a detailed interview with the Whistleblower and has collected and analyzed various documents. He identifies the preliminary report he provided to Council, redacted to protect the identity of the Whistleblower. Among the work remaining to be undertaken are potential interviews with Chief Squinas and the Band employee which, he states, would be premature until he has a full collection of other evidence. In his opinion, the exclusion of the subject of an investigation from the business and financial records at issue is common and is best practice when there are allegations of financial impropriety.

[15] The affidavit of a legal assistant in the Respondents' counsel's office identifies a series of exhibits including correspondence between counsel pertaining to the time-table for hearing the merits of the application for judicial review.

### III. Issue

[16] The sole issue is whether the Court should grant interlocutory injunctions staying the two BCRs.

### IV. Analysis

[17] The parties and the Court agree that the three part test in *RJR-MacDonald Inc. v Canada (Attorney General)* [1994] 1 S.C.R. 311 [*RJR-MacDonald*] applies, namely that there is a serious issue to be tried, that the Applicant would suffer irreparable harm if an injunction is not granted and that as between the parties, the balance of convenience lies in the Applicant's favour.

[18] The Respondents argue that the elevated standard for finding a serious issue applies as the motion, if granted, would effectively provide the relief sought in the underlying judicial review application. Accordingly, the Respondents argue, it is necessary to go further than simply applying the serious issue test and to closely examine the merits of the application. The Applicant disputes that the elevated standard applies but argues that, in any event, it is met on the strength of the evidence submitted.

[19] In my view, it is not necessary to determine whether the elevated standard applies and, in any event, given the time pressures under which this motion has been heard and the events which may or may not occur depending on the outcome, the Court does not have the ability or the evidence before it to conduct a prolonged examination of the merits: *RJR-MacDonald* at para 50. In this matter, the Applicant may have a case to present that she was denied procedural fairness by not being given notice of the emergency council meeting on February 8, 2023 and subsequent proceedings. However, the level of procedural fairness required depends on all of the circumstances. On the face of the evidence presented in this matter, the Respondents had cause to take action when confronted with the information from the Whistleblower. As Mr. Blatchford states in his evidence, imposing restrictions on the Applicant's access to and control over the LDN's financial records and accounts is in accord with best forensic practices where financial misconduct is alleged.

[20] The Applicant has not adduced sufficient evidence to demonstrate that Council acted without authority or otherwise in breach of the LDN's customs when it passed the BCRs. She offers only her own personal views on the LDN's customs unsupported by corroborating evidence from Elders or other community members and her views are contested by Councillor Baptiste.

[21] In my view, this is not a case similar to that of *Prince v Sucker Creek First Nation* 2008 FC 479 [*Prince*] relied upon by the Applicant. In *Prince*, the applicants were Band Councillors confronted with allegations of mis-management of contracts relating to rates of pay. There is

nothing in the facts of the case to suggest that the applicants were in a position of control over Band finances and records as in this instance.

[22] On the second branch of the test for an injunction, I am not persuaded that the Applicant has established that she, or by extension, the LDN Band, would suffer irreparable harm if this motion is not granted. As stated in *Solomon v Garden River First Nation*, 2018 FC 1284 at para 35, the Applicant must adduce clear and non-speculative evidence that irreparable harm will follow if the injunctive relief is not granted. In my view, the evidence of the Applicant with respect to the potential harm resulting from her suspension is entirely speculative. I include in that assessment her evidence about the two “crucial” meetings with government officials in Victoria on the 27<sup>th</sup> of this week. There is no evidence that the affairs of the LDN have not been effectively managed since February 16, 2023 and the Applicant’s assertions that no one else could represent the Band at these meetings is self-serving and unconvincing.

[23] As the Applicant submits, the Court has recognized that the reputational damage to a Band elected official, or the disruption caused to the Band’s governance, from allegations of impropriety can amount to a form of irreparable harm: *Lower Nicola First Nation v The Council*, 2012 FC 103 at para 35. However, there is no presumption to this effect. Broad expressive terms that essentially assert – not demonstrate to the Court’s satisfaction – that the harm is irreparable will not suffice. The moving party must demonstrate that harm will actually be suffered and that it will not be able to be repaired later: *Stoney First Nation v Shotclose*, 2011 FCA 232, at paras 48- 51. That, the Applicant has failed to do.



[24] I note that as of April 6, 2023 the Applicant was prepared to agree to a schedule pursuant to which her application for judicial review would be heard, without any interim stay of the BCRs, during the week of May 24-26, 2023. That proposed schedule was ultimately not accepted by the Respondents as they say it gave them insufficient time to prepare, including for cross-examination of the Applicant. The schedule was then revised by the April 20, 2023 Order of the Case Management Judge. However, the Applicant's willingness to accept the early date is indicative of the weakness of her argument about the harm that would result from her inability to represent the Band at the meetings in Victoria as the BCRs would have remained in place until disposition of the application. And there is no concrete evidence that postponement of the meetings would harm LDN's negotiating position with respect to matters before the two levels of government.

[25] While my conclusion with respect to irreparable harm is sufficient to dispose of this motion, I am also not persuaded that the balance of convenience rests in the Applicant's favour. That balance must take into account the interests of the LDN Band. There is no evidence beyond the Applicant's vague and general assertions that the governance of the Band will suffer while she is suspended from office. Indeed there is evidence to the contrary. In all of the circumstances of this matter, it seems to me that the investigation must be allowed to proceed to completion and for the results to be provided to Council and LDN members.

V. Conclusion

[26] For the reasons set out above the motion is dismissed. The Applicant has failed to persuade me that interim injunctive relief should be granted pending the hearing of the

application for judicial review on the merits. Whether there is a serious issue to be tried on the normal or elevated standard, the Applicant has failed to demonstrate that she would suffer irreparable harm should the BCRs remain in place until the application is determined. And in the circumstances, the balance of convenience favours continuance of the *status quo* pending that determination.

[27] As the Respondents have been wholly successful and have requested costs they shall have them. While the parties have not made representations as to the amount of costs, a fixed amount of \$1500.00 inclusive of all disbursements would be appropriate.

**ORDER IN T-485-23**

**THIS COURT ORDERS that:**

1. The motion is dismissed.
2. Costs are payable to the Respondents in the fixed amount of \$1500.00 inclusive of all disbursements and taxes.

"Richard G. Mosley"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-485-23

**STYLE OF CAUSE:** LILIANE SQUINAS v LHOOSK'UZ DENÉ NATION,  
VIOLET BOYD, ELLA STILLAS, and JUNE  
BAPTISTE

**PLACE OF HEARING:** HELD VIA VIDEO CONFERENCE  
**DATE OF HEARING:** APRIL 25, 2023  
**ORDER AND REASONS:** MOSLEY J.  
**DATED:** APRIL 26, 2023

**APPEARANCES:**

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Benjamin Clarke FOR THE RESPONDENTS

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