

Federal Court



Cour fédérale

**Date: 20240115**

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

**Citation: 2024 FC 48**

**Ottawa, Ontario, January 15, 2024**

**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**

**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] On December 2, 2022 and December 5, 2022, Councillor Terrina Bellegarde [Councillor Bellegarde] and Councillor Joellen Haywahe [Councillor Haywahe] filed Notices of

Applications seeking judicial review of their removals from office [Underlying Applications]. Since then, there have been several proceedings in this Court, one of which was heard and decided by the Federal Court of Appeal, which I will discuss briefly below.

[2] Councillor Bellegarde and Councillor Haywahe seek an Order pursuant to Rules 466 to 472 of the *Federal Courts Rules*, SOR/98-106 [Rules] finding Chief Scott Eashappie [Chief Eashappie], Councillor Shawn Spencer [Councillor Spencer], Electoral Officer Loretta Pete Lambert [EO], Brady O'Watch [Mr. O'Watch], Morris Pasap [Mr. Pasap], Toni Adams, Councillor Tamara Thomson, and Councillor Lucy Musqua [Councillor Musqua] [collectively, Respondents] in contempt of Court. The Applicants allege that the Respondents have acted in violation of Justice Grammond's January 27, 2023 Order staying the Applicants' removal from their positions as Councillors of Carry the Kettle First Nation [CTKFN] and the by-election scheduled for February 3, 2023 [By-Election] intended to replace the Applicants (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 129) [Stay Order]. The Respondents did not appeal the Stay Order so it is a final Order.

[3] The matters before the Court involving the parties are numerous in addition to this contempt matter and, for our purposes, it is undisputed that the Respondents did not adhere to the Stay Order.

[4] The Applicants were represented by the same counsel. All of the individual Respondents were represented by the same counsel.

[5] I find the Respondents Chief Eashappie and Councillors Spencer, Tamara Thomson, and Musqua guilty of contempt of Court. The evidence demonstrates, beyond a reasonable doubt, that these Respondents avoided complying with the Stay Order, they were aware of the nature and scope of the Stay Order, and they intentionally chose to disobey the Stay Order. In so doing, they have defied the authority of this Court.

[6] I find that Mr. O'Watch and Mr. Pasap are not guilty of contempt of Court.

[7] As the hearing of the Underlying Applications is to be heard on January 17 and 18, 2024, I will refrain from delving into the merits and will restrict my commentary to matters related to the contempt proceeding. I will address the evidence of those who testified at the hearing and the parties' respective submissions. It is for this reason, as the validity of the By-Election is likely to be an issue in the Underlying Applications, that I am not referring to Mr. O'Watch and Mr. Pasap as Councillors and I am referring to the Applicants as Councillors. The presiding Justice will rule definitely on these issues.

[8] For the purposes of these reasons, I will refer to the contemnors as the Respondents. If there is a need to refer to the Underlying Applications, I will specify the respondents as the Respondents in the Underlying Applications.

## II. Preliminary Matter

[9] At the commencement of the hearing, Applicants' counsel confirmed that they were not satisfied that a contempt charge would succeed against the EO and withdrew the charge against

her. In closing submissions, counsel for the Applicants advised that they were not proceeding with the contempt charge against Toni Adams. Accordingly, this Order and Reasons will not refer to the evidence related to these two individuals.

### III. Background

[10] The procedural history culminating in the present contempt hearing is extensive. Below, I summarize the background and reasons of four Orders relevant to the present matter.

#### A. *Events Leading to the Stay Order*

[11] CTKFN is governed by one Chief and six Councillors pursuant to the *Cega-Kin Nakoda Oyate Custom Election Act* [*Election Act*]. Among other things, the *Election Act* provides for the conduct of Chief and Council, their suspension and removal from office, and the creation of the Cega-Kin Nakoda Oyate Tribunal [Tribunal]. As stated in the Overview, the removals will be addressed in the hearing of the Underlying Applications starting on January 17, 2024.

[12] On April 7, 2022, CTKFN held an election for Chief and Council [Election] and Councillors Bellegarde and Haywahe were elected. Chief Eashappie and Councillors Spencer, Tamara Thomson, and Musqua were also elected.

[13] Through a series of events occurring between August 2022 and November 2022, both Councillors Bellegarde and Haywahe were removed from their positions. Briefly, on August 28, 2022, the Tribunal recommended that a special meeting be held to review Councillor

Bellegarde's misconduct pursuant to section 19 of the *Election Act*, and ordered that Councillor Haywahe be suspended with pay pursuant to section 20 of the *Election Act* (Stay Order at para 8). On September 14, 2022, Chief Eashappie, Councillors Spencer and Tamara Thomson voted to remove Councillor Bellegarde from office. Subsequently, Chief and Council recommended a special meeting be held regarding Councillor Haywahe's misconduct. On November 5, 2022, the same three Respondents voted to remove Councillor Haywahe from office. Councillors Musqua and Dwayne (Cliff) Thomson [Councillor Cliff Thomson], who is not subject to a charge of contempt, declined to attend both meetings and did not sign the Band Council Resolutions [BCR] removing Councillors Bellegarde and Haywahe. Councillors Bellegarde and Haywahe received written reasons on November 1, 2022 and November 5, 2022, respectively.

[14] On December 2, 2022 and December 5, 2022, Councillors Bellegarde and Haywahe filed the Underlying Applications. Among other relief, they assert that their removals ought to be set aside as the removal decisions were made without jurisdiction, procedurally unfair, and unreasonable.

[15] On December 2, 2022, CTKFN purportedly passed a BCR to set the By-Election date for February 2, 2023. The BCR was signed by Chief Eashappie and Councillors Spencer and Tamara Thomson.

[16] On December 8, 2022, Associate Judge Coughlan was appointed as Case Management Judge of the Underlying Applications.

B. *Scheduling Order*

[17] By letters dated December 6, 2022 and December 20, 2022, Councillors Bellegarde and Haywahe requested an urgent hearing for injunctive relief to stay their removals from office and the By-Election, to prohibit Council from conducting business on behalf of CTKFN without notice to all Council and without quorum of Council, and to require the Respondents in the Underlying Applications to call a duly convened Council meeting and a Band membership meeting. In response, the Respondents in the Underlying Applications indicated their intention to challenge this Court's jurisdiction to hear the applications and, by extension, any motion for interim relief. The Respondents insisted that the motion for interim relief be postponed until the final determination of the jurisdictional issue.

[18] By Order dated January 9, 2023 [Scheduling Order], Associate Judge Coughlan granted leave to the Applicants to file a motion for interim relief and to the Respondents in the Underlying Applications to file a motion challenging the Court's jurisdiction. Associate Judge Coughlan determined that the motion for interim relief would be decided before the jurisdictional issue is resolved. The Scheduling Order also consolidated the Underlying Applications pursuant to Rule 105(a) of the *Rules*.

[19] The Respondents in the Underlying Applications appealed the Scheduling Order. On January 19, 2023, Justice Grammond dismissed the appeal because there is no legal requirement that the jurisdictional issue be determined prior to the issuance of interim relief (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 86). The Respondents in the Underlying Applications

appealed Justice Grammond's Order and the Federal Court of Appeal ultimately dismissed the appeal on December 18, 2023 (*Carry the Kettle First Nation v Bellegarde*, 2023 FCA 246).

C. *Stay Order*

[20] On January 27, 2023, Justice Grammond granted the Applicants' motion for interim relief to stay their removal from office and the By-Election intended to replace them (Stay Order). No other relief was granted (at paras 44-51). Neither party appealed the Stay Order.

D. *Show Cause Order - Contempt*

[21] Notwithstanding the Stay Order, the By-Election was held on or around February 2, 2023, purporting to elect two new Councillors and alleged contemnors, Mr. Pasap and Mr. O'Watch. The Applicants also remained barred from their positions as Councillors and were excluded from three Chief and Council meetings convened between February 1, 2023 and February 9, 2023.

[22] By Notice of Motion dated February 7, 2023 and subsequently amended February 28, 2023, Councillors Bellegarde and Haywahe sought a Show Cause Hearing Order under Rule 467 of the *Rules* relative to the Stay Order (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 890 [Show Cause Order]).

[23] During a February 9, 2023 meeting, Council, including Mr. O'Watch and Mr. Pasap, but excluding Councillor Cliff Thomson, passed a BCR purporting to condone the defiance of the

Stay Order. Although Councillor Musqua signed the BCR, the meeting minutes suggest that she initially abstained in order to seek legal advice.

[24] On June 23, 2023, Associate Judge Coughlan granted the Show Cause Order, finding that the Applicants established a *prima facie* case of contempt. First, the Stay Order clearly and unequivocally stayed the removal of the Applicants from Council and the By-Election (at para 20). Second, the Respondents were aware of the Stay Order when it was issued or became aware of it shortly thereafter (at para 21). The Respondents did not challenge these assertions (at paras 20, 22). Lastly, the Respondents either flaunted the Stay Order or were complicit in the breach of the Stay Order (at paras 23-37, citing *Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794 at para 69 [*Bacon St-Onge* 2019]).

[25] Associate Judge Coughlan ordered that the Respondents appear before a Judge on July 25 and 26, 2023 and be prepared to: (a) hear proof of the acts of contempt with which they are charged; (b) present any defence that they may have to the charges; and (c) speak to the Applicants' submissions on an appropriate sentence if they are found to be in contempt.

[26] Associate Judge Coughlan defined the acts of alleged contempt as follows:

2. The acts with which the Respondents are charged are that, by their conduct described below, they breached the Order dated January 27, 2023:

(a) By order of Justice Grammond dated January 27, 2023, the removal of Councillors Terrina Bellegarde and Joellen Haywahe from the Council of CKFN was stayed until the Applications for judicial review are finally determined; and



(b) The by-election scheduled for February 3, 2023 to replace Councillors Terrina Bellegarde and Joellen Haywahe on the Council of CKFN was stayed; and

(c) The Respondents were served with or otherwise had notice of the January 27, 2023 Order; and

(d) the Respondents have held a by-election and/or condoned the holding of a by election replacing Councillors Terrina Bellegarde and Joellen Haywahe on the Council of CKFN and have removed Terrina Bellegarde and Joellen Haywahe from the Council of CKFN or stood idly while they were removed from Council.

E. *Adjournment Order*

[27] The Respondents sought to adjourn the present contempt hearing pursuant to Rule 36 of the *Rules* and sought an Order that the hearing proceed in-person in Saskatchewan pursuant to Rule 3 of the *Rules*. Justice Heneghan dismissed the Respondents' motion on July 11, 2023 (*Bellegarde v Carry the Kettle First Nation*, 2023 FC 940). It remained open to the presiding judge to allow an in-person hearing (at para 46). On July 12, 2023, I directed the parties that the matter would proceed by Zoom.

IV. The Evidence

[28] Procedurally, evidence at a contempt hearing on the merits is oral and an alleged contemnor is not compelled to testify (Rule 470 of the *Rules*).

[29] The Applicants presented evidence from three witnesses. Councillor Cliff Thomson testified first, followed by Councillor Haywahe and Councillor Bellegarde. Respondents' counsel cross-examined the witnesses. At the conclusion of the Applicants' case, counsel for the Respondents advised the Court that they would not be calling witnesses.

[30] Overall, I find Councillors Cliff Thomson, Bellegarde and Haywahe to be credible. On both direct examination and cross-examination, the witnesses were clear in describing what took place concerning the receipt and distribution of the Stay Order and the events leading to the By-Election. They all testified in a straightforward manner and had no trouble stating whether they did not recall certain events. In fact, I find that the testimony to be uncontroverted. During cross-examination, there were some elicitations that demonstrated an imprecise recollection of certain events, but I find that these imprecise recollections of events are minor and they do not impact the witnesses' credibility. Other than these minor issues, the evidence of the witnesses substantiate the findings of contempt beyond a reasonable doubt.

[31] Much of the evidence elicited on both direct examination and in cross-examination dealt more with internal governance issues that both pre-dated and post-dated the Stay Order. This evidence may be more relevant for the purposes of the Underlying Applications. To the extent that some of this governance evidence is relevant for the purpose of this Contempt proceeding, I have included it in the summary of the various witnesses' evidence. A summary of the relevant parts of each witnesses' testimony is set out below.

[32] On September 20, 2023, the Applicants informally requested to admit new evidence by either holding a *voir dire* on the admissibility of an affidavit from Councillor Musqua dated May 12, 2023, or re-opening the hearing to respond to assertions made in the Respondents' closing arguments that contradict this affidavit. On October 11, 2023, newly retained counsel for Councillor Musqua agreed to reopen the hearing and stated that Councillor Musqua wished to give oral testimony. The remaining Respondents did not respond. On October 23, 2023, I directed that the Court would not re-open the contempt hearing.

(1) Councillor Cliff Thomson

[33] Councillor Cliff Thomson's term as a Councillor of CTKFN began on April 7, 2022.

[34] He testified that he saw the Stay Order when it was posted on the Cega'kin Facebook page and that the entire Stay Order could be viewed. He also mentioned that there were two Facebook pages providing news about CTKFN events. To his understanding, the administration controlled one Facebook page and the other was an open page. In his view, both were official as they kept the membership up to date on matters. There was no BCR setting out which one was official. In my view, it matters not as to which page is official. He became aware of the Stay Order on or about January 27, 2023, as it was posted on several Facebook pages and was being emailed. It is apparent from Councillor Cliff Thomson's testimony that some Council matters are posted on Facebook by members of Council, such as Chief Eashappie's Facebook post about duly convened Council meetings (Exhibit A-2) and the sharing of the December 2, 2022 BCR calling the By-Election (Exhibit A-3).

[35] He also testified that the Council, as elected members, should follow the Stay Order. He was copied on an email with the Stay Order attached but he did not recall who sent the email and he also saw the Stay Order on Facebook. He was not sure where he first saw the Stay Order. He understood the Stay Order to mean that the Applicants' removals as Councillors was "put on hold" or "halted". He understood the same meaning in relation to the By-Election. He also explained that he discussed the Stay Order with the Respondents outside of Council meetings but he could not recall if there were any motions passed to address the Stay Order in a Council meeting.

[36] Councillor Cliff Thomson attended the By-Election in order to provide the electoral officer with the Stay Order. He did not vote in the By-Election.

[37] On February 3, 2023, Councillor Cliff Thomson also attended a swearing-in ceremony for Mr. O'Watch and Mr. Pasap because there was a ceremonial aspect to the ceremony and not because he condoned the By-Election. He recalled seeing Chief Eashappie, Mr. Pasap and Mr. O'Watch there but not Councillors Tamara Thomson or Musqua.

[38] Councillor Cliff Thomson testified that Councillors Bellegarde and Haywahe attempted to participate in a February 3, 2023 Band Council meeting but were prevented from doing so. Mr. O'Watch and Mr. Pasap were in attendance. Councillor Cliff Thomson observed that either Councillor Bellegarde or Haywahe told Chief Eashappie that he was in contempt of the Stay Order. According to Councillor Cliff Thomson, Chief Eashappie replied, "I know". This meeting was ultimately cancelled.

[39] On February 5, 2023, Councillor Cliff Thomson emailed Chief Eashappie, copying Councillors Spencer, Tamara Thomson and Musqua, Mr. Pasap, Mr. O'Watch and some staff members stating, "You understand that you're in contempt, rite [*sic*]?" (Exhibit A-10). The email exchange further indicated that a meeting was to take place on February 6, 2023. He also testified that on or about February 6, 2023, he left a copy of the Stay Order at the office of Mr. O'Watch and Mr. Pasap.

[40] Councillor Cliff Thomson explained that Chief and Council held several meetings following the By-Election. The Court accepted correspondence surrounding these meetings into evidence as Exhibits A-7, A-8, A-11, A-13, and A-14. Councillor Cliff Thomson named the individuals invited to the meetings and described the contents of the correspondence. These meetings held on or around February 3, 2023 and onwards included most, if not all, of the Respondents. Councillors Bellegarde and Haywahe did not receive invitations and did not attend these meetings.

[41] Chief and Council held one such meeting by Zoom on February 6, 2023. Councillor Cliff Thomson recalls a BCR being discussed and read aloud but he did not see it being signed (Exhibit A-9). He subsequently saw it when the Chief Eashappie signed it. The BCR acknowledged the By-Election that took place with Mr. O'Watch and Mr. Pasap being elected. Councillor Cliff Thomson did not sign this BCR. Respondent's counsel objected to this evidence being introduced, as Councillor Thomson was not present when the BCR was signed, it was not a public record and this piece of evidence needs to be tendered by the originator.

[42] Councillor Cliff Thomson also testified that he attended a meeting on February 9, 2023 with the Respondents where a BCR was discussed and ultimately signed (Exhibit A-12), although he was not sure if Councillor Musqua was physically present. He observed that the BCR was passed around but he did not see it being signed nor did he sign it. This BCR purported to challenge this Court's jurisdiction. One of the recitals clearly references the penalty for contempt. Councillor Cliff Thomson's evidence was uncontroverted. The minutes of this meeting indicate that Councillor Musqua abstained from the vote because she had not spoken to a lawyer (Exhibit A-24).

[43] Councillor Cliff Thomson also testified that the Council members who were elected on April 7, 2022 received an email and letter from Indigenous Services Canada on February 21, 2023 about the Stay Order (Exhibit A-15). Specifically, the letter stated that Indigenous Services Canada would only action BCRs if they contained the names of those Council members elected on April 7, 2022 signed by four or more of those Council members. The letter also reiterated a previous offer to provide access to funding to access mediation services to address its leadership issues. On July 19, 2023, Indigenous Services Canada sent another email and letter to Chief Eashappie and Councillors Bellegarde, Haywahe, Musqua, Spencer, Cliff Thomson and Tamara Thomson. The letter again took issue with some of the BCRs submitted, which excluded Councillors Bellegarde and Haywahe and included Mr. O'Watch and Mr. Pasap in contravention of the Stay Order, and advised that Indigenous Services Canada was required to respect this Court's findings.

[44] On cross-examination, in spite of some initial issues raised by counsel for the Applicants, the Court accepted Councillor Cliff Thomson's affidavit, dated February 7, 2023 in support of the Show Cause motion, into evidence as Exhibit R-1. The exhibits attached to the affidavit were not entered as evidence. Councillor Cliff Thomson acknowledged that this affidavit was not accurate when he stated that he provided the EO with a copy of the Stay Order, when in fact he did not provide it to the EO. He incorrectly provided it to someone else with the last name Bear. He stated that, at the time of the affidavit, he thought that the person he gave the Stay Order to was the EO. Despite this discrepancy, I find his testimony to be credible.

[45] The Court notes that some of the questioning during cross-examination related to CTKFN's traditional or customary laws, this Court's jurisdiction and whether the removals of the Applicants was unlawful, which I understand will be issues during the hearing of the Underlying Applications. Counsel for the Applicants objected to this line of questioning and counsel exchanged their positions. In my view, these matters go to the merits of the Underlying Applications and they are not relevant to this Contempt hearing. Accordingly, this testimony will not be summarized.

(2) Councillor Haywahe

[46] Councillor Haywahe was elected as a Councillor of CTKFN on April 7, 2022. She was suspended from office on August 28, 2022 and ultimately removed in early November 2022. She, like Councillor Cliff Thomson, understood that both the Applicants' suspensions and the By-Election were "halted" or "stopped" by the Stay Order. She first saw the Stay Order on January 27, 2023 by email and that Councillor Bellegarde had called her about it. She testified

that she emailed it to Councillor Cliff Thomson and that she also received an email from Councillor Bellegarde addressed to the Council elected on April 7, 2022 but did not hear back from the Respondents. She posted the Stay Order on her personal Facebook page, which she then shared to the Cega'kin Facebook page that has the most membership. A Tribunal member and members of Council run the other Facebook page, My CTK, so she does not use this one.

[47] Councillor Haywahe testified that Chief and Council proceeded with the By-Election. She saw band members posting this on the Cega'kin Facebook page. Chief Eashappie also posted the By-Election results on his Chief's Facebook page on February 2, 2023 (Exhibit A-27). Councillor Haywahe also testified that following the By-Election, Mr. O'Watch and Mr. Pasap assumed their positions as Councillors. She did not attend the swearing-in ceremony on February 3, 2023.

[48] Councillor Haywahe testified she attempted to attend a duly convened meeting on February 6, 2023, but that Chief and Council immediately shut down the meeting. Councillors Bellegarde, Cliff Thomson and Spencer were already at the office when she arrived. She advised several people including Chief Eashappie that he was in contempt of court and that a Court order had to be followed. She provided Chief Eashappie with the Stay Order and received a document from him. She explained that Chief Eashappie answered, "I know". Councillor Haywahe also identified a couple of other band members filmed in the video. The Court entered a video of Councillor Haywahe's interaction as Exhibit A-28 though the audio was not completely clear. Councillor Haywahe was not invited to, nor did she try to attend, any meetings following this date. Councillor Haywahe attempted to confirm the date of the video by filing an additional



document but this additional document was not allowed in as an exhibit. This date conflicts with the date given by Councillor Cliff Thomson, however, regardless of the date, their testimony recount the same meeting that was ultimately cancelled and the same interaction between the Applicants and Chief Eashappie and others.

[49] She also testified that she emailed the Stay Order to Indigenous Services Canada and other third party institutions with which CTKFN had dealings. She also recounted the same circumstances as Councillor Cliff Thomson regarding the February 21, 2023 and July 19, 2023 correspondence from Indigenous Services Canada.

[50] Councillor Haywahe testified that she tried to engage the mediation process as suggested by Indigenous Services Canada. Councillor Musqua had agreed with the Applicants proceeding in this way but Chief Eashappie and Councillors Spencer and Tamara Thomson were not responsive.

[51] I find the evidence of Councillor Haywahe to be credible and uncontroverted notwithstanding her recollection of the date of the Council meeting at which she confronted Chief Eashappie.

(3) Councillor Bellegarde

[52] Councillor Bellegarde was elected as a Councillor of CTKFN on April 7, 2022. She was removed from Council in September 2022. As with Councillors Cliff Thomson and Haywahe, she understood the Stay Order to mean the Applicants' removals and the By-Election were

stayed. She also clarified that the actual date of the By-Election was February 2, 2023 despite the Stay Order's reference to February 3, 2023.

[53] She testified that she received the Stay Order from her counsel on January 27, 2023 by email and that she forwarded it to Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada and copied all of the Council members who were elected on April 7, 2022 (Exhibit A-30).

[54] Councillor Bellegarde testified that the By-Election proceeded. A January 29, 2023 post from Chief Scott Eashappie's Facebook page advising that the By-Election would move forward was entered as Exhibit A-33 and this was shared on Facebook by Mr. O'Watch and Councillor Spencer. Councillor Bellegarde also identified Facebook posts from Chief Eashappie and Councillor Spencer announcing the By-Election results. In addition to Exhibit A-27, a post from the Facebook post of Councillor Spencer congratulating Mr. O'Watch and Mr. Pasap was entered as Exhibit A-34. She also did not attend the swearing-in ceremony.

[55] Councillor Bellegarde testified that she attempted to attend the duly convened meeting on February 3, 2023, held after the swearing-in ceremony, but the meeting had already shut down. This is the same meeting that Councillor Haywahe referred to at paragraph 48. She referenced the video entered as Exhibit A-28 and she also took a video of the interaction. Chief Eashappie explained that others in the room were also in contempt. She witnessed Councillor Cliff Thomson, in the presence of police, leave copies of the Stay Order at the front desk. Councillor

Bellegarde was not invited to, nor did she attend, any meetings following this date save for an invitation that turned out to be sent to her in error.

[56] I find that the evidence of Councillor Bellegarde is consistent with the evidence of Councillors Bellegarde and Thomson, whom I have found to be credible. Accordingly, I find Councillor Bellegarde's evidence to be credible and uncontroverted.

V. Issue

[57] The sole issue is whether the Applicants have established beyond a reasonable doubt that the Respondents' acts contravene the Stay Order, giving rise to a finding of contempt against each of the Respondents.

VI. Legal Principles

[58] Contempt of Court is "a process for the punishment of citizens who disobey court orders or who undermine their authority by any other means" (*Bacon St-Onge v Conseil des Innus de Pessamit*, 2021 FC 217 at para 37 [*Bacon St-Onge 2021*]). Convictions for contempt of Court reaffirm the Court's authority and uphold the rule of law (*Bell Canada v Red Rhino Entertainment Inc*, 2021 FC 895 at para 6 [*Red Rhino*]; *Morasse v Nadeau-Dubois*, 2016 SCC 44 at para 81; *Bacon St-Onge 2019* at para 54, citing *United Nurses of Alberta v Alberta (Attorney General)*, [1992] SCR 901, 89 DLR (4th) 609).

[59] Rule 466 of the *Rules* defines contempt of Court:

<p><b>466.</b> Subject to rule 467, a person is guilty of contempt of Court who</p> <p>...</p> <p>(b) disobeys a process or order of the Court;</p> <p>(c) acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court;</p> <p>...</p>	<p><b>466.</b> Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :</p> <p>...</p> <p>(b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;</p> <p>(c) agit de façon à entraver la bonne administration de la justice ou à porter atteinte à l'autorité ou à la dignité de la Cour;</p> <p>...</p>
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[60] Rule 466(c) captures third parties who aid a party in disobeying an injunction (*Bacon St-Onge 2021* at paras 44-46, citing *Valmet Oy v Beloit Canada Ltd*, 82 NR 235, 20 CPR (3d) 1 (FCA) [*Valmet*]; *Baxter Travenol Laboratories of Canada Ltd v Cutter (Canada) Ltd*, [1983] 2 SCR 388 at 398-97, 2 DLR (4th) 621; *Apotex Inc v Merck & Co Inc*, 2003 FCA 234 at para 60).

[61] When implemented by Courts of civil jurisdiction, contempt of Court is criminal or quasi-criminal in nature (*Bacon St-Onge 2021* at para 38; *Canadian Standards Association v PS Knight Co Ltd*, 2021 FC 770 at para 23 [*Knight*]). A finding of civil contempt requires that the party alleging the breach establish three elements beyond a reasonable doubt (Rule 469, *Rules*; *Bacon St-Onge 2019* at para 58; *Bhatnager v Canada (Minister of Employment and Education)*, [1990] 2 SCR 217 at 225, 71 DLR (4th) 84). First, the Order alleged to have been breached must state clearly and unequivocally what should and should not be done. Second, the party alleged to have breached the Order must have had actual knowledge of it. Third, the party allegedly in

breach must have intentionally done the act that the Order prohibits or intentionally failed to do the act that the Order compels (*Carey v Laiken*, 2015 SCC 17 at paras 32-35 [*Carey*]; *Bell Media Inc v Macciachera (Smoothstreams.tv)*, 2023 FC 801 at paras 26-29 [*Bell*]). The third element does not create an additional requirement to establish an intention to disobey (*Carey* at para 38; *ASICS Corporation v 9153-2267 Québec Inc*, 2017 FC 5 at para 33).

[62] A reasonable doubt must be based upon reason and common sense, and must be logically connected to the evidence or the absence of evidence. It does not require proof of absolute certainty (*R v Lifchus*, [1997] 3 SCR 320, 150 DLR (4th) 733 at para 36 [*Lifchus*]).

[63] An alleged contemnor who does not appear in Court to justify their conduct may nonetheless be found in contempt of Court (*Bacon St-Onge 2021* at para 111, citing *James Fisher & Sons PLC v Pegasus Lines Ltd*, 2002 FCT 650, at para 24; *Louis Vuitton Malletier SA v Bags O'Fun Inc*, 2003 FC 1335 at para 39; *Canada (Minister of National Revenue v Wigemyr*, 2004 FC 930; *Bowdy's Tree Service Ltd v Theriault International Ltd*, 2020 FC 146 at para 15 [*Bowdy*]).

[64] Contempt of Court is a measure of last resort. It should be used cautiously and with great restraint (*Carey* at para 36). This principle of moderation takes on a specific dimension in First Nations governance matters, where this Court is tasked with striking a delicate balance between the Court's limited supervisory role and ensuring respect for the rule of law (*Bacon St-Onge 2021* at para 49). Where the three requisite elements have been established beyond a reasonable

doubt, the Court retains the discretion to decline to find an alleged contemnor in contempt (*Carey* at para 37).

## VII. Summary of the Closing Submissions

[65] The Applicants submit that the applicable case law is *Bacon St. Onge 2019* at para 69 and that the three elements of the offence of Contempt must be established beyond a reasonable doubt in accordance with the principles from *Lifchus*. They submit that while all Respondents are guilty, the degree of culpability of each Respondent is only a relevant consideration for sentencing. Here, the Stay Order is clear, as seen through the evidence of Councillors Cliff Thomson, Haywahe, and Bellegarde all testifying to the same independent understanding of its meaning. The only exception is the date of the By-Election in the Stay Order but this is not a fatal flaw as it was still clear the By-Election was stayed (as seen through Chief Eashappie's Facebook post in Exhibit A-33). The Respondents all had knowledge of the Stay Order and there was no obligation on the part of the Applicants to serve personally the Respondents with the Stay Order to prove knowledge (*Bhatnager v Canada (Minister of Employment and Immigration)*, [1990] 2 SCR 217, 71 DLR (4th) 84). Instead, the Respondents' knowledge can be shown or inferred from Councillor Bellegarde providing the Order by email (Exhibit A-30), Exhibit A-33 again, the Respondents' counsel being served with a copy of the Stay Order on February 7, 2023, the February 6, 2023 Council meeting where Chief Eashappie stated that he knew he was in contempt of Court, or the February 9, 2023 BCR (Exhibit A-12). Lastly, the By-Election did in fact proceed and the Applicants remain suspended. The Respondents either flagrantly breached the Stay Order or stood idly by while the others did so, thereby establishing the elements of the offence beyond a reasonable doubt.

[66] The Respondents submitted that the Stay Order was flawed because it is not sufficiently clear as to what the Respondents should or should not do (*Grain Workers' Union (International Longshoreman's Warehousemen's Union, Local 333) v Viterra Inc*, 2020 FC 1106 at para 47; *Carey* at para 33). The Respondents can only be held in contempt for committing a positive act that was clearly and unequivocally sanctioned by the Stay Order. The Applicants should have sought out clarifications concerning the Stay Order or appealed the Stay Order before initiating contempt proceedings since it is a measure of last resort. The Court cannot treat the individual Respondents as a collective and must look to whether the elements of the offence have been established against each Respondent. Individually, none of the Respondents could stay the removals or the By-Election as it is the responsibility of CTKFN, so the individual Respondents cannot be found in contempt. The Court cannot enforce a judgment that is purely declaratory and does not impose obligations on respondents, as was the Stay Order here (*Cardinal v Sucker Creek Indian Band No. 150a*, 1999 CanLII 9015). The Applicants have failed to establish the elements of the offence beyond a reasonable doubt.

## VIII. Analysis

### A. *First Element: The Stay Order*

[67] The Stay Order provides the following:

1. The removal of Councillors Terrina Bellegarde and Joellen Haywahe from the Council of the Carry the Kettle First Nation is stayed until the present applications for judicial review are finally determined.
2. The by-election scheduled for February 3, 2023 to replace Councillors Terrina Bellegarde and Joellen Haywahe on the Council of the Carry the Kettle First Nation is stayed.

3. The costs of this motion are awarded to the applicants.

[Emphasis added]

[68] As I have stated above, the uncontroverted evidence of the witnesses confirms that the Respondents were aware of the Stay Order through various means from January 27, 2023 and subsequently.

[69] The Applicants submit that the Stay Order, reproduced above, is clear and unambiguous.

[70] The Respondents, on the other hand, submit that the Stay Order did not order the Respondents to do or not do anything. Accordingly, the Stay Order is too vague to be enforced and, accordingly, too vague to satisfy the first part of the test. As the test is conjunctive, the contempt charges must fail as against all of the Respondents. Alternatively, the Respondents submitted that they had no ability to stop the By-Election, as it was commenced earlier and in the hands of the EO to carry out.

[71] Dealing first with the alleged vagueness of the Stay Order, I disagree with the Respondents that it is vague. The Stay Order clearly stays the Applicants' removals until the applications for judicial review are finally determined. A plain reading indicates that, at a minimum, that their removals were put at end until the Underlying Applications were determined.

[72] As for the By-Election, I disagree with the Respondents that the Stay Order is vague. Again, a plain reading indicates that the By-Election is not to take place. The evidence of



Councillors Cliff Thomson, Bellegarde and Haywahe confirms that all of the Respondents were aware of the Stay Order through different avenues such as by emails and various Facebook posts from at least January 27, 2023. While the Stay Order refers to the date of the By-Election as February 3, 2023, when it was actually held on February 2, 2023, it is apparent from reviewing the Stay Order in its entirety that the date of February 3, 2023 was based on the parties' respective submissions. This incorrect date is also insufficient to render the Stay Order vague as the fact of the matter is that it was the By-Election itself that was being stayed.

[73] In addition, the Respondents passed the February 9, 2023 BCR directly challenging the effect of the Stay Order and this Court's authority in granting the Stay Order. They did not seek to appeal the Stay Order. In doing so, they also acknowledge the nature of what could happen if they did not comply with the Stay Order as well as the potential penalty in the event they would be found in contempt. This evidence confirms that they were aware of the terms of the Stay Order and its meaning. I find it disingenuous for the Respondents to claim now that the Stay Order was vague when their actions illustrate their disregard of the Stay Order.

[74] As for the inability of the Respondents to stop the By-Election process, I disagree that the matter was out of their hands. The Stay Order clearly stated that the By-Election was stayed or stopped. The Respondents could simply have passed another BCR explaining that this Court had ordered that the By-Election not proceed. The Respondents were represented by legal counsel throughout the process leading to the Stay Order and subsequent to the Stay Order and if they required clarity, they could have sought it. There was also no evidence of any necessity in proceeding with the By-Election in these circumstances.

B. *Second Element: Actual Knowledge of the Stay Order*

[75] The uncontroverted evidence of the Applicants, as set out above, acknowledges that the Respondents had actual knowledge of the Stay Order from at least January 27, 2023 when Councillor Bellegarde emailed it to the Respondents who were elected on April 7, 2022. I also think it can be inferred that the Respondents who were elected on April 7, 2023 would have received the Stay Order from their legal counsel. The evidence related to the Facebook posts illustrate that the Stay Order was being communicated within the community. The uncontroverted evidence of Councillors Cliff Thomson, Bellegarde and Haywahe all attest to informing the Respondents who were elected on April 7, 2022 about the Stay Order. Notwithstanding the audio issues of the February 3, 2023 interaction between the Applicants and Chief Eashappie, the evidence of the Applicants and Councillor Cliff Tomson all point to Chief Eashappie acknowledging he was in contempt. The evidence also establishes that attempts were made to inform Mr. O'Watch and Mr. Pasap of the Stay Order.

C. *Third Element: Intentional Act or Omission in Breach of the Stay Order*

[76] Below, I will address the specific findings in relation to each of the Respondents.

(1) Chief Eashappie

[77] I find that Chief Eashappie not only was aware of the clear wording of the Stay Order, but he knowingly contravened its terms by continuing with the removals of the Applicants and by not preventing the By-Election from proceeding or taking any steps to prevent the By-Election from proceeding. The submissions of counsel indicate that it was the view of the

Respondents that they could not do anything about the By-Election proceeding and that the matter was entirely in the hands of the EO. As I have found above, this submission is without merit.

[78] I base my conclusion on two factual findings. First, there is the video evidence where Chief Eashappie acknowledged he was in contempt of the Stay Order. Second, Councillor Bellegarde also testified and referred to a January 29, 2023 Facebook post from Chief Eashappie confirming that the By-Election was proceeding in spite of the Stay Order, citing his belief that this Court does not have jurisdiction to intervene (Exhibit A-33). Third, the February 6 and 9, 2023 BCRs issued in defiance of the Order, signed by Chief Eashappie and the remaining Respondents, clearly acknowledged the penalty for contempt. Notwithstanding the Respondents' objection to the introduction of the February 6, 2023 BCR as an exhibit, I find that it is admissible because it refers to a decision of the CTKFN and/or the Band Council, of which Councillor Cliff Thomson is a member, regardless of whether or not he voted in favour or signed the BCR.

[79] It is worth reproducing certain portions of the February 9, 2023 BCR:

**AND WHEREAS** the Removed Councillors Joellen Haywahe and Terrina Bellegarde (the "Removed Councillors") have applied to the Federal Court to have the Removal Decisions judicially reviewed and overturned (the "Applications");

**AND WHEREAS** a quorum of a majority of CTK Councillors and the Chief have decided that it is in the best interests of the Nation that internal governance and local decisions be finally resolved within CTK and not by the colonial courts;

**AND WHEREAS** that same majority of CTK Councillors and the Chief have challenged the Federal Court's jurisdiction to hear and determine the Applications;

**AND WHEREAS** the Federal Court refused to grant CTK the time and space to challenge the Court’s jurisdiction appropriately through the Court’s processes prior to intervening upon the Nation’s internal governance decisions (the “Refusal Decision”);

**AND WHEREAS** we have been advised by our legal counsel that it is a requirement under Canadian law to follow a court order and we understand the consequences of an order of contempt of court for failing to follow a court order which includes large fines and possible jail time less than five years but have determined that such consequences do not outweigh the Nation’s interest in pursuing the recognition and respect of its rights and laws; and,

**THEREFORE, BE IT RESOLVED** that the Nation will move forward with its appeal of the Refusal Decision to the Federal Court of Appeal and, if necessary, the Supreme Court of Canada to ensure that the Nation’s inherent rights to self-determination, to self-governance, and to regulate its internal governance affairs without the oversight of the colonial courts.

**BE IT FURTHER RESOLVED** that the Chief and Council are in agreement with the steps outlined in this BCR and will continue to recognize the recommendation of our Tribunal and the Removal Decisions under our *Cega-Kin Nakoda Oyate Custom Election Act* which was voted and approved by membership.

**BE IT FURTHER RESOLVED** that Chief and Council appoint and nominate the Chief to speak on behalf of the Nation in relation to any Court proceedings resulting from the Removal Decisions, including Federal Court Files T-2536-22 and T-2546-22, should it be necessary or required in accordance with the customs and traditions of Nakoda Oyate rules and governance which recognizes the role and responsibility of the Chief in major decisions affecting the Nation such as the assertion of the right to self-government over internal matters.

[80] There are a couple of things to note about this BCR. First, the reference to an appeal would likely refer to the appeal of the Scheduling Order, which the Federal Court of Appeal ultimately dismissed on December 18, 2023. Second, the reference to the contempt proceedings must refer to the Stay Order. The Respondents clearly understood the notion of contempt of Court as well as the penalties associated therewith. I pause to note that if the Stay Order was

considered vague on first blush, it was not so by February 9, 2023 when this BCR was discussed and ultimately passed.

[81] In addition to this BCR, post-dating the By-Election, it is also important to note that Indigenous Services Canada wrote to the originally elected Council members on February 21, 2023 and July 27, 2023 to advise the Council of its concerns with the defiance of the Stay Order and the replacement of Councillors Bellegarde and Haywahe with Mr. O'Watch and Mr. Pasap. In my view, all of these events are relevant to establish that there was no evidence of any effort on the part of the Respondents to take steps to clarify the consequences of not following the Stay Order nor was there evidence of Chief Eashappie or any Council Respondents expressing disagreement or denouncing the continued removal of the Applicants or the continuation of the By-Election prior to the By-Election (*Bacon St. Onge 2019* at para 69). Such conduct may have been relevant in terms of creating doubt as to the intent of the Respondents (*Carey* at para 59). The evidence is that the Chief Eashappie did nothing in relation to the Stay Order.

[82] While questioning of the witnesses related to the BCRs signed prior to the Stay Order, I find that most of the events prior to the Stay Order are not relevant. Those Respondents in office at the time of the Stay Order, and noting that the Respondents were aware of the contents of the Stay Order, decided to do nothing to comply with the Stay Order and, in fact, facilitated the continued suspensions of the Applicants and the continuation of the By-Election. In my view, based on the evidence, there was no legal or other duty that compelled the Respondents to breach the Stay Order (*Carey* at para 60).

[83] For all of these reasons it is beyond a reasonable doubt that Chief Eashappie knowingly acted in contravention of the Stay Order.

(2) Councillor Spencer

[84] I find that Councillor Spencer not only was aware of the clear wording of the Stay Order, but he knowingly contravened its terms by continuing with the removals of the Applicants and by not preventing the By-Election from proceeding or taking any steps to stop the By-Election from proceeding. He not only acknowledged the purported election of Mr. O'Watch and Mr. Pasap on his Facebook page (Exhibit A-34), but he was also a signatory to the February 6 and 9, 2023 BCRs passed in defiance of the Stay Order. In summary, my findings at paragraphs 78 to 81 apply also to Councillor Spencer. The evidence is that the Councillor Spencer did nothing in relation to the Stay Order, thereby not complying with its terms.

(3) Councillor Tamara Thomson

[85] I find that Councillor Tamara Thomson was not only was aware of the clear wording of the Stay Order, but she knowingly contravened its terms by continuing with the removals of the Applicants and by not preventing the By-Election from proceeding or taking any steps to stop the By-Election from proceeding. Though the evidence in relation to Councillor Tamara Thomson is not as extensive as the evidence in relation to Chief Eashappie and Councillor Spencer, I nevertheless find that she declined to take any steps to comply with the Stay Order. Although it is unclear from the evidence that she attended the February 3, 2023 swearing-in ceremony, in my view the evidence establishes that, by signing the clearly worded BCRs on April 6 and 9, 2023,

Councillor Tamara Thomson was aware of the nature of not following the Stay Order and the potential consequences of failing to abide by the Stay Order. In summary, my findings at paragraphs 78 to 81 apply also to Councillor Tamara Thomson. The evidence is that the Councillor Tamara Thomson did nothing in relation to the Stay Order, thereby not complying with its terms.

(4) Mr. O'Watch and Mr. Pasap

[86] I do not find sufficient evidence to establish that either Mr. O'Watch or Mr. Pasap are in contempt of the Stay Order. First, neither Mr. O'Watch nor Mr. Pasap were on Council when the Court issued the Stay Order so they were not subject to its terms. Rather, their involvement in matters came about because of the remaining Respondents disregarding the Stay Order and continuing with the By-Election. Second, as potential third parties, there is no evidence that either Mr. O'Watch or Mr. Pasap "knowingly aided and abetted a party to disobey an injunction" (*Bacon St-Onge 2021* at para 44, citing *Valmet*). As stated, they and other CTKFN members ran for what were purportedly two vacant Councillor positions. Lastly, it is unclear from the evidence of the swearing-in ceremony held on February 3, 2023 as to the extent of their awareness of the Stay Order and the ramifications of not abiding by it. There is also no evidence that they did in fact receive the Stay Order that Councillor Cliff Thomson left for them. There is evidence that Mr. O'Watch shared a Facebook post to the effect that the By-Election was proceeding on February 2, 2024, but there is insufficient evidence to establish that he was aware of the Contempt Order. In any event, due to the vast distribution of the Stay Order, it is likely that Mr. O'Watch and Mr. Pasap were aware of it, as were other community members, but there is insufficient evidence to establish this knowledge beyond a reasonable doubt.

[87] Although they have had continued involvement in the CTKFN matters since the By-Election took place, this also is not sufficient to establish the elements of the offence of contempt against either Mr. O'Watch or Mr. Pasap.

(5) Councillor Musqua

[88] I do have some sympathy for Councillor Musqua's situation, as she did try to seek out counsel prior to signing the February 9, 2023 BCR and she was open to having the governance issue mediated, as stated by Councillors Bellegarde and Haywahe. As she did not testify, we do not know what compelled her ultimately to sign the BCRs in question. For the same reasons as with Councillor Tamara Thomson, I find that Councillor Musqua was not only was aware of the clear wording of the Stay Order, but she also knowingly contravened its terms by continuing with the removals of the Applicants and by not preventing the By-Election from proceeding or taking any steps to stop the By-Election from proceeding.

[89] It is unclear from the evidence whether she attended the February 3, 2023 swearing-in ceremony. The evidence also indicated that she did not immediately agree with the positions of Chief Eashappie and Councillors Spencer and Tamara Thomson at the February 9, 2023 Council meeting due to her abstention, however, the evidence establishes that she ultimately signed the BCR. In summary, my findings at paragraphs 78 to 81 apply also to Councillor Musqua. The evidence is that Councillor Musqua did nothing in relation to the Stay Order, thereby not complying with its terms.



IX. Conclusion

[90] For the above reasons, I find that the evidence confirms that Chief Eashappie, Councillor Spencer, Councillor Tamara Thomson and Councillor Musqua are guilty of contempt beyond a reasonable doubt. These Respondents have intentionally and knowingly continued with the acts which were stayed in the Stay Order, and they have intentionally and knowingly failed to carry out or take any steps to carry out the terms of the Stay Order. Specifically, they continued with the suspensions of the Applicants and they continued with the By-Election.

[91] For the reasons set out above, the evidence before me has not established that Mr. O'Watch and Mr. Pasap are guilty of contempt beyond a reasonable doubt.

[92] Costs for the Show Cause Order and this Order and Reasons will be addressed at the penalty hearing (see e.g. *Bacon St-Onge v Conseil des Innus de Pessamit*, 2021 FC 1093; *Bowdy; Teamsters Canada Rail Conference v Canadian Pacific Railway Company*, 2023 FC 796 at para 108; *Knight* at para 72). This is confirmed by Associate Judge Coughlan's Show Cause Order (at paras 43-44).

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

**THIS COURT'S ORDER is that**

1. Chief Scott Eashappie, Councillor Shawn Spencer, Councillor Tamara Thomson and Councillor Lucy Musqua are found guilty of contempt of Court, according to Rule 466(b) of the Federal Court Rules.
2. Mr. Brady O'Watch and Mr. Morris Pasap are found not guilty of contempt.
3. The matter is referred to the Judicial Administrator, who will set a date for the sentencing hearing.

"Paul Favel"

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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:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 25 AND 26, 2023

**ORDER AND REASONS:** FAVEL J.

**DATED:** JANUARY 15, 2024

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