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Court File No.

## FEDERAL COURT

BETWEEN:

Beverly Thomas

APPLICANT

AND:

Splatsin

RESPONDENT

### NOTICE OF APPLICATION

TO THE RESPONDENT: SPLATSIN

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Edmonton

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 7, 2023

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: Pacific Centre  
P.O. Box 10065  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1B6

TO: SPLATSIN  
5775 Old Vernon Road  
Enderby, BC V0E 1V3  
(Tel.) (250) 838-6496

AND TO: The Attorney General of Canada  
900 - 840 Howe Street  
Vancouver, British Columbia V6Z 2S9  
(Tel.) 604-666-2061  
Email: bc.fc@justice.gc.ca

## APPLICATION

This is an application for judicial review under s. 18.1 of the *Federal Courts Act* in respect of the decision of the Council of Splat sin dated March 10, 2023 and communicated to the Applicant on dated March 10, 2023 wherein the Council decided to order a new election ("the Decision"). The Decision also interrupts the terms of office for other Councillors and the Decision was done without the consent of the Splat sin membership. The Applicant seeks an emergency order to stay the Decision pending final outcome of the Splat sin internal appeal.

The Applicant makes an application for:

- (a) An Order in the nature of a stay of proceedings and setting aside the Decision;
- (b) An Order for costs; and
- (c) Such further and other relief as the Court deems appropriate.

The grounds for the Application are:

### ***The Parties:***

1. The Applicant, Beverly Thomas, is a registered member and a duly elected councillor of Splat sin.
2. The Applicant states that this application is being brought in her capacity as a Splat sin member and duly elected councillor, and with the support of numerous other Splat sin band members that are concerned about the governance of Splat sin due to the lack of consultation in respect of the Decision to hold a new election.
3. The Respondent, Splat sin, is a band as defined in the *Indian Act* R.S.C. 1985, c. I-5. Splat sin is a part of the Shuswap Nation in the interior of BC.

### ***Background:***

4. Splat sin's elections are governed by its custom election code (the "*Election Code*").
5. Under its *Election Code*, elections must be held every four (4) years.
6. A Decision to hold a new election was made by a majority of Councillors, which will now have a direct impact on the members of Splat sin.
7. A Decision to hold a new election was done without consultation with the membership and there is nothing in the *Election Code* that permits a majority of the Council to order a new election before the term of office expires.

***The Decision Should be Stayed:***

8. The Applicant only learned of the Decision after it was made and the Applicant states that the Decision was made in a procedurally unfair manner.
9. The Applicant further states that the new election date is in contravention of the *Election Code*.
10. An appeal of the Decision is underway; however, the Respondent has ordered a new election before the internal appeal can be heard. Thus, the Applicant seeks a stay of the Decision pending the outcome of the internal appeal process.
11. The law is clear: A court ordered stay is required and necessary when a First Nation internal appeal process is underway to allow the internal process to be completed.

***Conclusion:***

12. The Applicant submits that the Decision should be stayed and relies on the following reasons, in addition to the issues particularized above:
  - a. The Decision is made without authority / jurisdiction;
  - b. The Decision was made in a procedurally unfair manner – the Applicant and membership were not given any opportunity to participate in the Decision;
  - c. The Decision was made in conflict of interest;
  - d. The Decision is unreasonable and lacks justification, transparency, and intelligibly;
  - e. The Decision fails to explain why it was “necessary” to hold a new election;
  - f. The Decision was made in bad faith, and for an improper purpose; and
  - g. The Decision was otherwise unlawful, procedurally unfair, or unreasonable.
13. The Applicant is bringing this application in the public interest and on behalf of Splatsin band members to have their democratic rights vindicated from the last election. The Applicant submits that she should be entitled to costs in any event of the cause.
14. The Applicant will be requesting that this matter be expedited so that it may be heard in a timely way in order that the relief sought is capable of being effective. In the event that the application is not expedited, the Applicant may also seek interim injunctive relief. However, a motion for injunctive relief would be duplicative of the main application and the Applicants submit that it is in the interests of all parties to expedite the hearing of this matter and avoid the added costs of an injunction motion.

***This Application will be supported by the following material:***

1. Affidavit of the Applicant, to be served.
2. The Rule 317 response, requested below;
3. Such further and additional materials as the Applicants may advise and this Court may allow.

The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, that the Respondent send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondent to the Applicant and to the Registry:

All material considered by the Respondent in coming to the Decision, including, but not limited to:

- All evidence or information relied upon in coming to the Decision;
- Records regarding any meeting where the Decision was discussed, or where a new election was discussed including previous meetings where the Decision was initially raised, if applicable (the "Meetings");
- Records regarding notice of the Meetings, minutes of the Meetings, the agenda for the Meetings, notes from any participants in the Meetings and any other record of the Meetings (including audio or video recordings);
- Any internal communications amongst the Decision makers relating to the Decision, including text messages, emails, and other communications between members of Council;
- Any Splat sin Laws, Bylaws or resolutions that were relied upon in relation to the Decision;
- Any Splat sin Laws, Bylaws or resolutions that relate to the procedures for duly convened meetings; and
- Any other materials that are relevant to the decision

March 9, 2023

B. W. Thomas  
Beverly Thomas

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(C) 250-938-5703