

Federal Court



Cour fédérale

Date: 20251016

Docket: T-3143-25

Ottawa, Ontario, October 16, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

MOHAWK COUNCIL OF KANESATAKE

Applicant

and

GRAEME DREW

and

**VICTOR BONSPILLE, VALERIE BONSPILLE, SHIRLEY BONSPILLE, LYNN
CATAFORD (GABRIEL), DEREK DENIS, KAHIONHATE DENIS, CINDY
GABRIEL, MARY NICHOLAS, FRANCIS PHILLIPS, CLAIRE AMANDA
KWANENTAWI SIMON, TODD SIMON**

and

ANNIE NEASHISH

Respondents

ORDER AND JUDGMENT

[1] The Mohawk Council of Kanesatake [Applicant], seeks interlocutory relief in the form of an order instituting a caretaker band council with a limited mandate for the Mohawks of

Kanesatake composed of Denise David, John Canatonquin, Brant Etienne, Amy Beauvais, and Serge Simon [collectively, the Outgoing Council] and granting that Council the powers of simple administration while the underlying application, filed on August 26, 2025, is being adjudicated.

[2] Briefly, and without intending to minimize the extensive events that have occurred in this matter, the relevant facts of this case and underlying application for judicial review arise from a cancelled election of the Mohawk Council of Kanesatake [Council] that was originally scheduled to take place on August 2, 2025.

[3] On the eve of the scheduled election, the acting chief electoral officer [CEO], Graeme Drew, cancelled the elections. Since then, there have been ongoing issues in the community and there is no clear governance structure in place. The Court was informed that the Outgoing Council members had returned their keys to the Council facilities in advance of the election. Since the election cancellation on August 1, 2025, they have been unable to regain access to the facilities and their Council email accounts, among other things, as Council staff are reluctant to reinstate their access. The reason is clearly connected to the uncertainty that has arisen, and that the governance structure and the issue of authority are unclear.

[4] Additionally, since the election was cancelled, some community members have attempted to organize new elections or select a new Council in a way not permitted by the *Mohawks of Kanesatake Custom Electoral Code* [Code].

[5] Following these events, the Applicant filed an application for judicial review with this Court, and seeking an interlocutory order pending the final disposition of their application. The issues raised in the underlying application for judicial review include the following:

- a) whether the office of CEO is currently vacant;
- b) if so, who is responsible for hiring a new CEO and when should a new election take place;
- c) whether a special public meeting within the meaning of paragraph 8.3 of the *Code* hold the authority to make that decision; and,
- d) what is the process for the new election?

[6] The Applicant has sought injunctive relief to ensure the functioning and operation of the community and to protect the assets and legal interests of the Council pending the resolution of the underlying application.

[7] The motion for the injunction was heard on October 7, 2025. The parties attending the motion were the Applicant and one respondent, Claire Amanda Kwanentawi Simon [Respondent Simon].

[8] The respondents Victor Bonspille, Valerie Bonspille, Shirley Bonspille, Derek Denis, Kahionhate Denis, and Mary Nicholas attempted to file a responding record late, without leave of the Court or consent of the parties. Although their responding record was not accepted for filing, their counsel attended the motion hearing. On October 14, 2025, after the hearing of the injunction, counsel for these respondents sent an email to the Court. This communication was unsolicited, and included arguments challenging the injunction and stating who should be appointed as a CEO. The Court cannot consider this unsolicited communication in the context of the injunction.

[9] The respondents Graeme Drew, Lynn Cataford (Gabriel), Cindy Gabriel, Francis Phillips, Todd Simon, and Annie Neashish did not respond to the Applicant's motion.

[10] The Respondent Simon agrees that injunctive relief in the circumstances is appropriate given that there is currently no governing council and that a caretaker council with a limited mandate will avoid a governance vacuum.

A. *The Test for Injunctive Relief is Met*

[11] Having considered the record before the Court and the applicable case law in the context of injunctions such as this, I agree that the Applicant has satisfied all three parts of the tripartite test.

[12] The tripartite test for injunctive relief requires the Applicant to prove (1) that there is a serious question to be tried; (2) that the Applicant will suffer irreparable harm if the injunction is not granted and; (3) that the balance of convenience favours an injunction (*RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334 [*RJR-MacDonald*]).

[13] With respect to the first prong of the *RJR-MacDonald* test, the Applicant argues that they raise serious issues and the determination of the issues on judicial review will ensure the legitimacy of the next election process and the Council members who will be elected as a result of that new process, among other things.

[14] Inasmuch as the grounds raised in the underlying application for judicial review is neither vexatious nor frivolous, the first prong is met.

[15] I agree with the Applicant's submissions as they relate to irreparable harm, in that this Court's jurisprudence has recognized that uncertainty and confusion in governance structures can constitute irreparable harm to the members of First Nations communities, especially if this results in adverse impacts on the day-to-day delivery of services and operations of the band (*Poundmaker Cree Nation v Stonestand*, 2025 FC 991 at paras 37-39 [*Poundmaker*]).

[16] The Applicant explained the types of critical services that the Council provides to band members and Kanesatake residents, including education, daycare, social assistance, lands and estates management, environmental monitoring, housing maintenance and repairs, road repair and snow clearing, cultural and language services, and employment and training. The Applicant submits that without leadership in place, these critical services are in jeopardy, which would also constitute irreparable harm (citing *Poundmaker* at para 38). The Applicant has also described the irreparable harm that would arise if there were no governance in place until the full hearing of the underlying judicial review on its merits.

[17] I find that the Applicant has submitted sufficient, non-speculative evidence before me to demonstrate that, should the status quo that was in place prior to the cancellation of the election not be reinstated, there will be serious negative impact on the band members and residents of Kanesatake, especially those who are the most vulnerable (*Poundmaker* at para 43).

[18] In this case, the governance vacuum without a clear governance authority to ensure day-to-day simple administration constitutes irreparable harm (*Lower Nicola Indian Band v Joe*, 2011 FC 147 at para 21 [*Joe*]; *Poundmaker* at paras 37-39).

[19] With respect to the balance of convenience, I find that maintaining the status quo that was in place in the community prior to the election being cancelled, until the underlying application can be judged on the merits, weighs in favour of granting the injunctive relief sought (*Bird v Peter Ballantyne Cree Nation*, 2022 FC 994 at paras 41-43).

[20] The Federal Court of Appeal had also identified that another important factor in the balance of convenience analysis is the public interest of the First Nation's interests, and that confusion stemming from whether the Chiefs and Council legitimately held authority was contrary to the interests of the First Nation (*Assiniboine v Meeches*, 2013 FCA 114 at paras 29-30). I find that this equally applies in the present case. The balance of convenience thus favours granting the injunction (*RJR-MacDonald* at 342; *Landry v Savard*, 2011 FC 334 at paras 17-19 [*Landry*]).

[21] In sum, I am satisfied that it is just and equitable for injunctive relief to be issued on the basis of the claims, evidence, and legal arguments presented in this case (*Johnny v Dease River First Nation*, 2024 FC 1379 at para 59 [*Dease River*], citing *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25).

B. *The Relief Sought*

[22] The remaining issue is determining what the appropriate order is in the circumstances. The Applicant seeks a “caretaker council”, with a limited mandate restricted to what has been described as simple day-to-day administration (citing *Landry* at para 18; *Joe* at Orders para 1).

[23] In the Applicant’s motion, the relief sought described simple administration as “matters such as day-to-day administration, the provision of essential services to community members, ordinary payable accounts, management of administrative staff, the continuation of in-progress projects, and other measures necessary to ensure the continued functioning of Council and the protection of the community’s legal interests.”

[24] The Applicant has proposed that the caretaker council would be composed of the Outgoing Council members. The Respondent Simon does not oppose who would form the caretaker council nor does she oppose the scope of their mandate being limited to simple administration.

[25] However, the Respondent Simon also requested that the Court issue a mandatory order “compelling the caretaker council to revoke the CEO mandate and appoint a new CEO to proceed with an electoral process.”

[26] I agree with the Respondent Simon that with this type of mandatory injunction, the threshold for injunctive relief requires an elevated standard above “not vexatious or frivolous” for the first prong under the “serious question.” As such, the Respondent Simon, who is seeking this mandatory order, must show a strong *prima facie* case because granting the mandatory injunction

essentially grants the relief sought in the underlying application (*Dease River* at para 24, citing *R v Canadian Broadcasting Corp*, 2018 SCC 5 at paras 13-15; *Campeau v Muskowekwan First Nation*, 2021 FC 643 at paras 11-12).

[27] However, as expressed during the hearing, there is a limited record before the Court on this injunction, and not all parties have been able to participate at this early juncture. Under these circumstances, I am unable to assess whether the Respondent Simon meets the first threshold of a strong *prima facie* case.

[28] More importantly, I am not satisfied that the type of order requested by the Respondent Simon would fall within the limited scope of a “caretaker council” mandate which the Applicant has proposed, and that the Respondent Simon has not opposed. As such, I will not be granting this request.

[29] In any event, the Court agrees with the Respondent Simon’s request for an expedited hearing so that this dispute may be resolved as soon as possible so that the First Nation can avoid any further uncertainty. Accordingly, at the hearing, the Court asked the parties to consult with each other to discuss their availability in the next four months if this matter were to proceed as an expedited hearing. The parties provided a joint proposal to the Court on October 14, 2025, setting out a proposed timeline with steps to be undertaken from November to a requisition for hearing being filed by mid-January 2026.

[30] Finally, I note that the Applicant also seeks an order “confirming that this Court retains jurisdiction over any disputes related to the capacity of the above-named Council Chiefs to make or carry out such matters or whether a particular act constitutes ‘simple administration’.”

[31] As the parties are aware, this file is case managed, and any issues should first be the subject of discussion between the parties, to come to a mutually agreeable outcome. If that is not possible, the parties may seek a case management conference with the Case Management Judge assigned to this matter. I am also not seized of this matter.

[32] The Applicant did not seek costs in this motion. While the Respondent Simon had sought her costs, in the exercise of my discretion, there will be no order as to costs.

THIS COURT ORDERS that:

1. The motion for injunctive relief is granted.
2. The Outgoing Council shall be designated as a caretaker council who will have the limited mandate of being engaged in simple administration matters such as day-to-day administration, the provision of essential services to community members, ordinary payable accounts, management of administrative staff, the continuation of in-progress projects, and other measures necessary to ensure the continued functioning of Council and the protection of the community’s legal interests until the decision of the Court on the underlying application. The Outgoing Council shall be given access to all resources that are usually provided

to Council Chiefs in the carrying out of their duties including access to digital tools and Council buildings.

3. This application will be heard on an expedited basis. The timetable and deadlines that were proposed by the parties in their correspondence to the Court dated October 14, 2026, will be confirmed with the Case Management Judge.
4. There will be no costs awarded on this motion.

"Phuong T.V. Ngo"

Judge