Federal Court Cour fédérale

Date: 20250719

Docket: T-2523-25

Citation: 2025 FC 1291

Ottawa, Ontario, July 19, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

VALERIE BONSPILLE

Applicant

and

MOHAWK COUNCIL OF KANESATAKE

Respondent

ORDER AND REASONS

I. Overview

[1] The applicant, Valerie Bonspille, a member of the Mohawks of Kanesatake, brought an urgent motion for an injunction to stop voting happening today, Saturday, July 19, 2025, pursuant to the *Kanesatake Law-Making Process* enacted by the Mohawk Council of Kanesatake [MCK]. At the conclusion of the hearing, I dismissed the motion, with reasons to follow. These are those reasons.

[2] In summary, the evidence and arguments presented by the applicant do not establish that an urgent injunction is appropriate or justified, or that any of the three requirements necessary to obtain an injunction is met. In particular, the motion materials do not establish that there is a serious issue to be determined regarding either the lawfulness of the *Kanesatake Law-Making Process* or the conduct of online voting pursuant to that process. Even if such a serious issue had been raised, there was no evidence on which the Court could conclude that the applicant or any other member of the Mohawks of Kanesatake would suffer irreparable harm if the requested injunction is not granted, or that the balance of convenience or the interests of justice favoured granting such an injunction.

[3] The motion was therefore dismissed.

[4] The Court is satisfied that this is a motion that should not have been brought, and in particular should not have been brought with the urgency and in the manner it was brought. The Court therefore grants the respondent's request that costs be awarded on a solicitor-and-client basis fixed in the amount of $1,000, payable by the applicant to the respondent within 30 days.

II. Factual and Legislative Context

A. *The Voting Occurring Today*

[5] The main issue raised on this motion is online voting, although the underlying lawfulness of the *Kanesatake Law-Making Process* is also raised.

[6] In her Notice of Motion, the applicant asserted that today's vote was "a vote […] regarding online voting in the *Kanesatake Law-Making Process*." However, after review of responding evidence filed by Chief Brant Etienne of the MCK, counsel for the applicant conceded that today's voting does not itself relate to a law permitting online voting. Rather, it is a ratification vote in respect of four other laws being proposed pursuant to the *Kanesatake Law-Making Process*, namely the *Mohawks of Kanesatake Land Protection Law*, the *Mohawks of Kanesatake State of Emergency and Emergency Measures Law*, the *Mohawks of Kanesatake Trespass Law*, and the *Mohawk Council of Kanesatake Code of Ethics*. There is no evidence before the Court regarding the content of these laws or, in particular, that they contain provisions regarding online voting.

[7] This being so, the applicant's argument at the hearing was that the voting should not proceed because the ratification vote on these four laws was itself occurring via online voting. As set out in Chief Etienne's affidavit, today's vote is taking place both physically and virtually, *i.e.*, both through in-person voting and online. Further, it appears from the Notice of Vote attached to Chief Etienne's affidavit that electronic voting opened on July 5, 2025, to remain open until the close of the in-person voting this evening at 8:00 p.m.

[8] The applicant's argument with respect to online voting is that the very fact that online voting is being permitted is unlawful. She also argues that the *Kanesatake Law-Making Process* was itself unlawfully enacted, such that any laws enacted pursuant to it are also unlawful, and that the ratification vote with respect to such laws should be enjoined.

[9] A new concern was also raised at the hearing about an asserted change in location for the in-person vote. However, as no evidence whatsoever was put forward with respect to this concern, the Court refused to entertain this argument.

B. *Procedural Context*

[10] On June 27, 2025, Claire Amanda Kwanentawe Simon commenced an action in this Court against the MCK by way of Statement of Claim in Court File No. T-2176-25 [the Simon Action]. The Claim in the Simon Action refers to online voting for the upcoming election for Grand Chief and Chiefs of the MCK, to be held on August 2, 2025. It further refers to seeking an injunction to prevent the MCK from going forward with online voting for that election.

[11] On July 14, 2025, the MCK filed its Statement of Defence in the Simon Action. Among other things, the Defence denies that the August 2, 2025, election would allow online voting, noting that the Chief Electoral Officer had issued a notice to the community on July 3, 2025, advising that online voting would not be available for the election.

[12] On the late afternoon of Friday, July 18, 2025, counsel filed a notice of motion in the Simon Action for an urgent injunction motion to prevent today's voting, together with a letter requesting an urgent hearing. However, no supporting evidence or motion record was filed and the Court's efforts to reach counsel were unsuccessful until late in the evening on July 18, 2025.

[13] On the morning of Saturday, July 19, 2025, the present applicant filed a motion record for an injunction, similarly seeking to enjoin today's voting. At the hearing of the motion, counsel

for the applicant undertook that the applicant would be filing a proceeding. The Court therefore heard the motion pursuant to Rule 372 of the *Federal Courts Rules*, SOR/98-106. The respondent opposed the motion, filing the affidavit of Chief Etienne and making submissions. While Chief Etienne's affidavit bears the Court File Number of the Simon Action given the procedural uncertainty caused by the applicant's filings, the Court received it in response to this motion and will order that a copy of that affidavit be placed in this Court file.

C. *Relevant Legislative Context*

[14] The primary instrument at issue on this motion is the *Kanesatake Law-Making Process*. It was enacted and signed into law by a quorum of the MCK on February 19, 2025. The applicant contends that the *Kanesatake Law-Making Process* is unlawful as it was enacted contrary to the *Mohawks of Kanesatake Land Governance Code* [*Governance Code*] both procedurally and substantively. She submits that the vote occurring today in respect of laws being proposed pursuant to the *Kanesatake Law-Making Process* is therefore equally unlawful.

[15] The *Kanesatake Law-Making Process* states that it was enacted pursuant to a number of different authorities: the inherent rights and jurisdiction of the Mohawks of Kanesatake; the Aboriginal and title and treaty rights of the Mohawks of Kanesatake protected by the Royal Proclamation of 1763; the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*; the rights of the Mohawks of Kanesatake included in the *United Nations Declaration on the Rights of Indigenous Peoples* [*UNDRIP*] as ratified and implemented in the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; the *Indian Act*, RSC 1985, c I-5; and the *Kanesatake Interim Land Base Governance Act*, SC 2001, c 8 [*Governance Act*].

[16] It is worth expanding somewhat on the last of these. The *Governance Act* is a statute enacted to implement an agreement signed in December 2000 between the Mohawks of Kanesatake and His Majesty in right of Canada, namely the Agreement with respect to Kanesatake Governance of the Interim Land Base [Agreement]. Prior to the adoption of the *Governance Act*, but as contemplated in section 9 of that Act, the Mohawks of Kanesatake adopted the *Governance Code*: see *Francis v Mohawk Council of Kanesatake*, 2003 FCT 115 at para 61(e). The *Governance Code* indicates that its purpose is to provide for good governance by the MCK over Kanesatake Mohawk Lands and to set out the fundamental rules which apply to the exercise by the MCK of jurisdiction over the lands.

[17] The *Governance Code* contains provisions relating to the development, enactment, and publication of Kanesatake Mohawk Laws: *Governance Code*, ss 25–33. These include procedural provisions in respect of all laws (ss 25–26) and additional provisions regarding a "community approval process" before laws are adopted in respect of certain areas, including land use planning, residency, law and order, "or any other matter which has a substantive impact" (ss 27–30). In particular, section 29 of the *Governance Code* provides that a community approval process will be held to determine if there is support among community members for the law, and states that it must be "conducted through one of following processes": (a) a series of at least 3 community meetings; (b) workshop for interested community members; (c) a secret ballot vote. Section 30 provides that if deemed necessary by the MCK, the community approval processes outlined in section 29 may be combined.

[18] Section 3 of the *Governance Code* provides that if there is any inconsistency between any law adopted by the MCK and the *Governance Code*, then the *Governance Code* will prevail to the extent of the inconsistency.

[19] According to Chief Etienne's affidavit, the *Kanesatake Law-Making Process* was adopted to guide community decision-making around the adoption of new laws, with the MCK being "guided by the requirements" of the *Governance Code*. The process of enacting the *Kanesatake Law-Making Process* began in July 2024 with a notice to community members, followed by community engagement and information sessions in October and November 2024, modification of the draft document following community feedback, and tabling of a final version of the process in late January or early February 2025. As noted above, the *Kanesatake Law-Making Process* was adopted by a quorum of the MKC on February 19, 2025. Chief Etienne's affidavit attaches a local news report regarding the adoption, published on February 21, 2025.

[20] The *Kanesatake Law-Making Process* states that its purpose is to ensure open, transparent, and accountable law-making and enactment, and that it establishes standardized legislative enactment procedures for the development, enactment, amendment, and repeal of Kanesatake Laws. The *Kanesatake Law-Making Process* sets out a four-phase enactment process, involving (1) accepting a draft law or amendment in principle; (2) a community approval process; (3) legal and MKC review of the post-consultation draft law or amendment; and (4) enactment. For laws covered by section 27 of the *Governance Code*, section 4.4 of the *Kanesatake Law-Making Process* provides that the community approval process may include at least one of (a) community meetings; (b) workshops; and (c) a secret ballot vote. In particular,

subparagraph 4.4(c)(iii) provides that voters for the secret ballot vote "will be eligible to vote at a designated location and through any other platform deemed appropriate by the MCK."

D. *A Jurisdictional Note*

[21] Section 34 of the *Governance Code* states that the Justice of the Peace appointed pursuant to section 37 of the Agreement has exclusive original jurisdiction to determine whether there has been a violation of any provision of the *Governance Code* and to make appropriate orders to remedy any such violation. In the context of this urgent motion, neither party addressed this Court's jurisdiction to issue the injunction requested, which is grounded on an asserted violation of the *Governance Code*.

[22] Given my conclusion on the merits of the motion, I need not address the jurisdictional question. However, I should not be taken as making any conclusions as to whether this Court is a competent forum, or the appropriate forum, for the determination of the applicant's challenges to the *Kanesatake Law-Making Process* on the merits.

III. The Requested Injunction Will not be Granted

A. *Principles on a Motion for an Interlocutory Injunction*

[23] To obtain an injunction, an applicant must demonstrate each of the three elements of the long-established test for injunctive relief: (1) that there is a serious question to be tried in respect of the underlying claim or issue; (2) that they will suffer irreparable harm if the injunction is not granted; and (3) that the balance of convenience favours granting the injunction: *RJR-*

MacDonald Inc v Canada (Attorney General), 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at p 334; *Johnny v Dease River First Nation*, 2024 FC 1379 at paras 16–23.

[24] These three requirements are conjunctive, such that failure to demonstrate any of the three elements is fatal to the motion: *Johnny* at para 17. However, the three prongs are flexible and interrelated and should be considered together to address the fundamental question, namely whether the granting of an injunction is just and equitable in all of the circumstances of the case: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paras 1, 25; *Johnny* at para 18.

[25] In addition to the three-part test from *RJR-Macdonald*, and in particular when a motion is brought on short notice on an urgent basis, an applicant for an interim injunction must satisfy the Court of the urgency of the motion: *Paul v Alexander First Nation*, 2016 FC 419 at para 11, citing *Laboratoires Servier v Apotex Inc*, 2006 FC 1443 at para 17; *Federal Courts Rules*, Rule 362(2)(b).

B. *No Demonstrated Urgency*

[26] As noted above, this motion was brought on less than 24 hours' notice, with the initial notice of motion brought in a different file and addressing an issue ultimately abandoned, namely the suggestion that today's voting involved a legislative amendment that would itself permit online voting. The applicant's motion record, including her affidavit, was not filed until this morning.

[27] The applicant has provided no material or persuasive evidence regarding the urgency of this matter that explains why her motion was brought at the very last minute, effectively on the very day the voting she is trying to stop is occurring. The applicant concedes that the process currently being followed complies with the *Kanesatake Law-Making Process*. The foundation for her motion is therefore the lawfulness of the *Kanesatake Law-Making Process* itself. However, the *Kanesatake Law-Making Process* was adopted five months ago, in February 2025. The applicant has given no evidence as to when she became aware of its adoption that would justify her concerns about the lawfulness becoming a matter of last-minute urgency.

[28] Indeed, the applicant's name appears, as "Chief Valerie Bonspille," on resolutions dated in February 2025 in respect of the adoption of the *Kanesatake Law-Making Process* that she attached to her affidavit as an exhibit. While her signature does not appear above the name (other signing Chiefs apparently constituted the quorum), this context makes the absence of any evidence or explanation as to how and when she became aware of the *Kanesatake Law-Making Process* that is the basis for the present motion all the more significant.

[29] Further, as is clear from Chief Etienne's affidavit, a Notice of Vote in respect of the ratification vote on the four laws being held today was distributed on June 19, 2025. A local newspaper article on June 27, 2025, reported on the timing of the vote and the availability of online voting. Again, the applicant has given no evidence as to when she became aware of the vote, with respect to which online voting opened on July 5, 2025, or why she did not bring this motion earlier on proper notice.

[30] While counsel at the hearing contended that the applicant did not become aware of today's vote until the MCK filed its Statement of Defence in the Simon Action on July 14, 2025, this contention cannot be accepted, for two reasons. First, the assertion is unsupported by any evidence from the applicant. Second, it defies common sense to suggest that the applicant—or at least her counsel—who was clearly aware of the *Kanesatake Law-Making Process* at least by the time the Simon Action was filed in late June 2025, was unaware of a vote that has been referenced in materials distributed to the community and available on the MCK's website since April 17, 2025, with a date scheduled since June 19, 2025. Given this, and in the absence of any evidence from the applicant explaining when she knew of the vote or how she remained unaware of the pending vote despite its publication, the applicant has not satisfied the Court as to the urgency of the matter that would justify the manner in which this motion has been brought.

[31] I note that this is not simply a technical or formal matter, but a matter of fundamental fairness and the interests of justice. Adequate notice permits a respondent to a motion and their counsel the time to prepare full and proper responding materials, and conduct cross-examinations if necessary. It also allows the Court to review and prepare for a hearing. The limited evidence presented in this matter is itself proof of the importance of greater time for preparation. While the respondent was able to prepare an affidavit from Chief Etienne in short order, the affidavit is necessarily brief (7 paragraphs, with 6 exhibits), addressing relevant issues at only the highest level. While the Court and counsel are frequently called upon to respond quickly and as best as possible in the circumstances on injunction motions, a truncated and limited process is only justified where true urgency requires it.

C. *The Test for an Injunction is Not Met*

[32] Regardless of the question of urgency, I conclude that the applicant has not established that the three-part test for an injunction is met. Indeed, for the following reasons, I conclude that the applicant has not established any of the three parts.

(1) The applicant has not demonstrated a serious issue for determination

[33] The test for establishing a serious issue to be tried is low. An applicant need only show that the issues they raise are "neither frivolous nor vexatious": *Johnny* at para 19, citing *RJR-Macdonald* at paras 337–338.

[34] The applicant raises two arguments in respect of the serious issue. First, she contends that the process leading to the adoption of the *Kanesatake Law-Making Process* was not compliant with the requirements of the *Governance Law*. However, the evidence she presents of this is extremely limited and insufficient to establish a serious issue for determination. Her evidence is limited to bald statements that (a) the MKC adopted the *Kanesatake Law-Making Process* "illegally" in an attempt to replace the *Governance Code*; (b) she "contends" that no proper community consultation has ever taken place prior to its adoption; (c) the community did not "properly and legally" have the possibility to express disapproval; (d) she was "not properly informed via a reasonably published community notice" that a consultation would take place regarding the adoption; (e) there was no public posting of the draft law and not at least three community meetings in the form of public sessions or workshops or secret ballot vote regarding the adoption.

[35] The respondent does not contend that there was a secret ballot vote in respect of the *Kanesatake Law-Making Process*. Rather, it argues that, to the extent that the *Kanesatake Law-Making Process* is a law falling within the category of laws requiring a community approval process under the *Governance Code*, the other approval process options were met through the notices and community engagement sessions described in Chief Etienne's affidavit.

[36] Given the limited nature of the evidence put forward by the applicant and the responding evidence filed, I cannot conclude that the applicant has demonstrated on the record before me a serious issue in respect of the legality of the *Kanesatake Law-Making Process*, based on the process leading to its adoption. Even recognizing the low threshold for establishing a serious issue, there must be at least some adequate factual basis for the assertion being put forward regarding the procedural legality of *Kanesatake Law-Making Process*. Here, the bald statements of the applicant do not meet that threshold, particularly in the face of the affidavit evidence indicating that notices were mailed and posted online, and consultations were held.

[37] I hasten to point out that the foregoing conclusion is based on the record that is currently before the Court. On a different or more thorough record, it is possible that concerns about the legality of the process leading to the adoption of the *Kanesatake Law-Making Process* might be made out. They have not been on this motion.

[38] Second, the applicant contends that the provision in the *Kanesatake Law-Making Process* allowing for online voting is unlawful as being contrary to the *Governance Code*. Again, on the evidence before me, the applicant has raised no serious issue. The argument, as the Court

understands it, is that paragraph 29(c) of the *Governance Code* refers to a "secret ballot vote" as part of the community approval process but does not expressly permit online voting. The applicant therefore argues that online voting is contrary to the *Governance Code*. This argument is untenable, as the *Governance Code* makes no reference at all to the modalities of the secret ballot vote, whether in person, by mail, or online. It certainly does not expressly exclude online voting.

[39] Counsel submits that online voting was "implicitly and purposely excluded at the time" the *Governance Code* was adopted. Again, however, the applicant filed no evidence of this purported deliberate exclusion of online voting, either when the *Governance Code* was adopted in 2000 or subsequently.

[40] Again, it is possible that, with other legal arguments or evidence, the applicant might be able to show a serious issue that the *Governance Code* excludes online voting. I therefore do not purport to opine on the merits of any underlying claim or application that the applicant may bring. However, on the arguments and evidence presented to me, the applicant has not shown any argument rising above the low "frivolous or vexatious" standard.

[41] It is also worth noting that the applicant's arguments about the harms of online voting and why it matters that it is not included in the *Governance Code*, and thus should not be included in the *Kanesatake Law-Making Process*, are limited to concerns that not all members of the Mohawks of Kanesatake have the sophistication, ability, equipment, or computer literacy to vote online. Even if this argument were supported by evidence, which it is not, it holds no weight

in the context of a voting process such as that presently underway that *permits* online voting but does not *require* it, as it also allows in-person ballots.

[42] I also note for completeness that the applicant made no arguments regarding the substantive lawfulness of the *Kanesatake Law-Making Process* in connection with any of the other sources of law said to nourish it, other than the *Governance Code*.

(2) The applicant has not demonstrated irreparable harm

[43] In any event, even if the applicant could be said to have raised a non-frivolous issue for determination with respect to the legality of the *Kanesatake Law-Making Process*, she has not demonstrated that irreparable harm will result if an injunction is not granted. Irreparable harm must be established through evidence, and in particular clear and non-speculative evidence, at a "convincing level of particularity," that unavoidable irreparable harm will result if a stay is not granted: *Johnny* at paras 20–21; *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31. The applicant has not met this standard.

[44] Again, the applicant's submissions on irreparable harm relate both to the legality of the *Kanesatake Law-Making Process* and the concerns about online voting. The applicant contends that if an injunction is not granted, the current voting will result in the enactment of four laws that will have been enacted pursuant to an unlawful law-making process. This argument cannot be accepted for three reasons. First, it assumes the outcome of the voting process, which is designed to determine whether the community approves of the laws or not. The community can

vote against one or all of the laws, and there is no evidence before me that MKC intends to enact the laws in the event of such community opposition.

[45] Second, even if the laws are ultimately enacted, the applicant will not be foreclosed from challenging the legality of those laws in the appropriate forum. If they are determined to have been enacted unlawfully, they may be struck down. The applicant has provided no evidence whatsoever that the enactment of the laws will, in the interim, have any irreparable adverse effect at all, either on her or on any other member of the Mohawks of Kanesatake.

[46] Third, the applicant's concerns about the voting process again relate primarily to the ability to vote online. The applicant's arguments on this front relate only to whether online voting is allowed under the *Governance Code* and whether all members of the community have the wherewithal to vote online. For the reasons discussed above, these concerns are far from establishing irreparable harm. As in-person voting is also permitted, the applicant has provided no evidence that she or any other eligible member of the Mohawks of Kanesatake would be unable to vote. Nor has she provided any evidence of any concerns about the online voting process. Having reviewed the materials filed and heard the arguments of counsel, the Court remains unenlightened as to the applicant's concern about online voting or why permitting it to continue would cause irreparable harm.

(3) The balance of convenience does not favour the applicant

[47] The final part of the test for an injunction involves a determination of which party would suffer the greater harm from the granting or refusal of the interlocutory injunction until a final

decision is made on the merits: *Johnny* at para 22; *RJR-Macdonald* at pp 342, 349. At this stage, the Court considers competing interest, including the public interest, as part of its assessment of whether injunctive relief is just and equitable in all the circumstances: *Johnny* at para 22; *Google* at para 25.

[48] Even if the applicant had demonstrated some form of irreparable harm arising from the completion of the voting process currently underway, which she has not, I conclude that the balance of convenience would nonetheless favour not granting the injunction. The circumstances are that at the time of this motion, the community was already voting on the proposed laws in a process that had been put in place by its elected representatives some time ago, and in which online voting had been ongoing for two weeks. There is a public interest in permitting this process to continue, which would only be outweighed if there were much clearer arguments regarding its legality and/or much clearer evidence of irreparable harm than have been presented by the applicant on this motion.

(4) Conclusion

[49] I therefore conclude that the applicant has not demonstrated urgency or established that the three-part test for an injunction is met. I therefore dismissed the applicant’s motion at the conclusion of the hearing.

IV. Costs

[50] The respondent submits that, as the successful party on the motion, it should be entitled to its costs. Further, given the urgency of the motion, the need to respond to it, and the lack of merit of the motion, the respondent contends that costs should be awarded on a solicitor-and-client basis. Counsel estimated these costs as being $1,000 and asked that costs be fixed in this amount, payable within 30 days.

[51] The applicant argues that the urgency of the motion was caused by the respondent and the lack of notice in respect of the *Kanesatake Law-Making Process* and the vote on the four laws. She therefore argues that costs should be to the applicant despite her lack of success.

[52] I agree entirely with the respondent. The applicant's motion was not timely, and it was wholly without merit. There was simply no evidence to support the applicant's contention that the urgency of the motion was caused by the respondent and not by the applicant. I have no hesitation in concluding, with reference to Rule 401, that this was a motion that should not have been brought. It certainly should not have been brought on the timing and in the manner that it was brought. The respondent will have its costs in the amount of $1,000, payable within 30 days.

ORDER

THIS COURT ORDERS that

1. The motion is dismissed, with costs payable by the applicant to the respondent in the fixed amount of $1,000, payable within 30 days.
2. A copy of the affidavit of Brant Etienne, affirmed July 19, 2025, and bearing Court File No. T-2176-25, shall be placed in this Court File.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2523-25
STYLE OF CAUSE:	VALERIE BONSPILLE v MOHAWK COUNCIL OF KANESATAKE
PLACE OF HEARING:	OTTAWA, ONTARIO BY VIDEOCONFERENCE
DATE OF HEARING:	JULY 19, 2025
ORDER AND REASONS:	MCHAFFIE J.
DATED:	JULY 19, 2025

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