

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20231024**

**Docket: A-278-23**

**Citation: 2023 FCA 212**

**Present: LOCKE J.A.**

**BETWEEN:**

**KYRA WILSON, ALLEN DENNIS MYRAN and KEELY ASSINIBOINE**

**Appellants**

**and**

**DAVID MEECHES, MARVIN DANIELS and GARNET MEECHES**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 24, 2023.

**REASONS FOR ORDER BY:**

**LOCKE J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20231024**

**Docket: A-278-23**

**Citation: 2023 FCA 212**

**Present: LOCKE J.A.**

**BETWEEN:**

**KYRA WILSON, ALLEN DENNIS MYRAN and KEELY ASSINIBOINE**

**Appellants**

**and**

**DAVID MEECHES, MARVIN DANIELS and GARNET MEECHES**

**Respondents**

**REASONS FOR ORDER**

**LOCKE J.A.**

[1] The appellants seek a stay of the Federal Court decision (2023 FC 1289) at issue in the present appeal (the FC Decision). Due to the urgency of the motion, I put in place a tight timeline for the exchange of submissions. I have now reviewed and considered the following submissions from the parties: (i) the appellants' motion record, (ii) a motion record on behalf of the respondent David Meeches, (iii) a motion record on behalf of the respondents Marvin Daniels

and Garnet Meeches and (iv) reply submissions from the appellants. These reasons are necessarily short in view of the urgency.

[2] The parties agree that the requirements for a stay pending appeal are as set forth in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311: (i) a serious issue to be tried; (ii) irreparable harm to the moving party if no stay is ordered, and (iii) the balance of convenience favouring the moving party. All three requirements must be met, and omission of any one is fatal to the motion for the stay: *Bombardier Recreational Products Inc. v. Arctic Cat, Inc.*, 2020 FCA 116 at para. 10.

[3] As I explain below, I conclude that this motion should be dismissed on the basis that the appellants have not met their burden to establish that they will suffer irreparable harm if a stay is not ordered.

[4] To establish irreparable harm, there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted: *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 at para. 31.

[5] The FC Decision concerned issues arising from an election held on April 15, 2022 for the Chief and Councillors of the Long Plain First Nation. The respondent David Meeches appealed the election on various grounds. An election appeal committee, whose task it was to consider the appeal, initially sought a response from the electoral officer. However, the committee summarily

dismissed the appeal without considering that response. David Meeches then sought judicial review of the committee's decision.

[6] The Federal Court, on September 25, 2023, granted the judicial review application and ordered that a different election appeal committee be appointed within a month thereafter to redetermine the appeal, and that the new committee, within two weeks of its appointment, “conduct the redetermination, taking into consideration only the original appeal submitted by [David Meeches] and the Electoral Officer's Response.” The Federal Court also ordered that, “[h]aving done so, the new election appeal committee will determine, at its discretion, whether or not a hearing is required and the appropriate determination to be made under s 13.35 of the [Long Plain First Nation Custom] Election Act.”

[7] On October 17, 2023, the day after service of notice of the present appeal and notice of the present motion, the members of the new committee were named. Based on the appellants' submissions, it is not clear if the new committee members have been “appointed” (as asserted at paragraph 26 of their submissions in chief), or merely “selected” and still requiring formal appointment by the Chief and Council (as asserted at paragraph 11 of the reply submissions). In the former case, the committee must now conduct the contemplated redetermination no later than October 31, 2023. In the latter case, the appointments must be formalized by October 25, 2023, and the redetermination conducted within two weeks thereafter. Nothing turns on this difference.

[8] The appellants argue that their removal from office before this Court can rule on the present appeal (and with years left in their mandates) would cause them irreparable harm,

especially since they are not allowed to make submissions for the purposes of the redetermination. They also argue that their appeal risks becoming moot.

[9] The respondents note that the FC Decision does not remove the appellants from office, and does not necessarily lead to such a result. Rather, it orders a redetermination of the question that was considered by the original committee: whether to dismiss the election appeal without a hearing. The FC Decision makes clear that the new committee remains free to decide “whether or not a hearing is required and the appropriate determination to be made under s 13.35 of the Election Act.”

[10] The appellants argue that they have the right pursuant to s. 13.26 of the *Election Act* to be heard on the question of whether there should be a hearing on the election appeal. The FC Decision noted at paragraph 118 that no concerns were raised before the Federal Court about the lack of opportunity to make submissions in this regard. Accordingly, this would appear to be a new issue before this Court, which should not be considered as a ground of appeal or as a basis for a finding of irreparable harm.

[11] It appears that the appellants are in essentially the same position as they were in before the original committee made its decision. I agree with the respondents that it is speculative for the appellants to assert that, without a stay of the FC Decision, they will suffer irreparable harm. While such an outcome is possible, the appellants have not convinced me that it is probable. The new committee may or may not decide to have a hearing, and even if it does decide to have a hearing, it may or may not make a decision that negatively affects any of the appellants.

[12] The appellants also express concern that one of the members of the new committee is close to the respondent David Meeches, which gives rise to an apprehension of bias. Even if there is merit to this concern, it falls short of giving rise to irreparable harm for much the same reasons as discussed above. Moreover, the appellants will be able to raise this issue with the new committee. I would distinguish the decision in *Bennett v. British Columbia (Superintendent of Brokers)*, 1993 CanLII 2057 (B.C.C.A.), which was cited by the appellants, because that case relied on a conclusion that “[c]onsiderable prejudice may be visited on all of the applicants even before any decision of the Commission is made.” I am not convinced that such prejudice will result in the present case before a decision.

[13] The present motion can be dismissed on this basis alone, and therefore it is not necessary to consider the other requirements for a stay, a serious issue to be tried and the balance of convenience.

[14] There are at least two options available to the appellants if they remain concerned about continuing exposure to irreparable harm. First, they may seek to expedite the present appeal (I note that no party has raised this option to date). This Court can respond positively to such a request in appropriate circumstances. Second, the appellants may move again for a stay in the event that the circumstances change such that they do stand to suffer irreparable harm if a stay is not granted.

---

"George R. Locke"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-278-23

**STYLE OF CAUSE:** KYRA WILSON, ALLEN  
DENNIS MYRAN and KEELY  
ASSINIBOINE, v. DAVID  
MEECHES, MARVIN DANIELS  
AND GARNET MEECHES

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** LOCKE J.A.

**DATED:** OCTOBER 24, 2023

**WRITTEN REPRESENTATIONS BY:**

Harley I. Schachter  
Kaitlyn E. Lewis  
Kaisha A. Thompson

FOR THE APPELLANTS  
KYRA WILSON, ALLEN  
DENNIS MYRAN and KEELY  
ASSINIBOINE,

Joe Caligiuri

FOR THE RESPONDENTS  
DAVID MEECHES

Daniel Chornopyski  
Zara Khadim

FOR THE RESPONDENTS  
MARVIN DANIELS and GARNET  
MEECHES

**SOLICITORS OF RECORD:**

Duboff Edwards & Schachter LC  
Winnipeg, Manitoba

FOR THE APPELLANTS  
KYRA WILSON, ALLEN  
DENNIS MYRAN and KEELY  
ASSINIBOINE,

Tapper Cuddy LLP  
Winnipeg, Manitoba

FOR THE RESPONDENTS  
DAVID MEECHES

Chornopyski Law  
Winnipeg, Manitoba

FOR THE RESPONDENTS  
MARVIN DANIELS and  
GARNET MEECHES