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FEDERAL COURT		COUR FÉDÉRALE	
September 28, 2026		28 septembre 2026	
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Federal Court



Cour fédérale

Date: 20260928

Docket: T-3143-25

Citation: 2026 FC 1203

Ottawa, Ontario, September 28, 2026

PRESENT: Mr. Justice Sébastien Grammond

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**

Respondents

REASONS AND JUDGMENT

[1] The last election for the Mohawk Council of Kanesatake was cancelled on the eve of voting day. The Council is seeking guidance from this Court regarding the consequences of this unusual situation.

[2] It was unreasonable for the Chief Electoral Officer to cancel the election. Accordingly, a new election must be held without delay, according to the existing electoral code and with a new Chief Electoral Officer. The election is set for December 19, 2026. The incumbent council will remain in place on a caretaker basis until then.

I. Background

[3] Kanesatake is a Mohawk community located north-west of Montreal. The applicant, the Mohawk Council of Kanesatake, is its governing body. The elections for the Council are governed by the *Mohawks of Kanesatake Custom Electoral Code*, adopted by referendum in 2015 [the Code].

[4] An election was called for August 2, 2025. The respondents as well as several members of the incumbent Council were candidates. However, on August 1, 2025, the Chief Electoral Officer, the respondent Graeme Drew, cancelled the election. Mr. Drew published a notice in which he justified his decision mainly by alleged flaws in the Code, in particular regarding the screening of ineligible candidates, remote voting and tie-breaking. In his affidavit filed in this matter, Mr. Drew also mentioned significant concerns for his personal safety and that of his staff, as well as the lack of a properly constituted appeal board.

[5] On August 13, 2025, the incumbent Council adopted a resolution terminating Mr. Drew's contract and confirming that it remained in office to avoid a governance vacuum and to hold another election. Meanwhile, certain members of the community took steps to retain another Chief Electoral Officer and to begin the electoral process on their own.

[6] The incumbent Council then brought the present application for judicial review of the Chief Electoral Officer's cancellation of the election. By this application, the Council is seeking various declarations clarifying the situation following the cancellation of the election. In the alternative, the Council is bringing a reference pursuant to section 18.3 of the *Federal Courts Act*, RSC 1985, c F-7, seeking the Court's answers to several questions.

[7] After initiating this application, the Council brought a motion for interlocutory relief to clarify its powers during the period before a decision is made on the merits of the application. On October 16, 2025, my colleague Justice Phuong T.V. Ngo granted the motion: *Mohawk Council of Kanesatake v Drew*, 2025 CanLII 106875. She ordered that the outgoing Council remain in place with "the limited mandate of being engaged in simple administration matters" or, in other words, in a caretaker role.

II. Analysis

[8] I am allowing the Council's application. It was unreasonable to cancel the election. Given the circumstances, the only practical remedy is to order that a new election take place in accordance with the Code, without delay, and with a new Chief Electoral Officer chosen by the Council. My detailed reasons follow.

A. *Framing the Issues*

[9] The Council says that it has brought the present application because the community needs guidance as to the situation following the cancellation of the election. Broadly speaking, it is seeking declarations regarding the following issues: the reasonableness of the cancellation of the election, whether the position of Chief Electoral Officer is vacant and who has the power to appoint a new one, and whether the election should be delayed to give the community an opportunity to amend the Code first.

[10] The respondents Victor Bonspille et al. do not take a firm position on the reasonableness of the cancellation of the election but assert that a new election should be called without delay. The respondent Amanda Simon agrees that the cancellation was unreasonable and also asks for an immediate election.

[11] The respondents seek additional remedies that do not flow from the issues raised by the Council in its application. Specifically, the respondents Victor Bonspille et al. seek the annulment of the Council's August 13, 2025, resolution. They also assert that certain letters written by Indigenous Services Canada amounted to improper interference in the affairs of the community. The respondent Amanda Simon is seeking declarations regarding her eligibility as a candidate. Yet, in an application for judicial review, the issues are defined by the applicant's notice of application. If the respondents seek to raise other issues, they must bring a separate application for judicial review. As they have not done so in the present case, the Court will not consider the additional issues they seek to raise.

[12] Mr. Drew, the Chief Electoral Officer, is named as a respondent. He filed a responding record and appeared at the hearing of the application. He was not represented by a lawyer. He took the position that his actions were reasonable because the Code had become unworkable in the very difficult circumstances of this case. He said that he still is the Chief Electoral Officer and that he did not resign because he did not want to abandon the Kanesatakehró:non.

[13] The parties have alluded to the contractual relationship between Mr. Drew and the Council. The Federal Court does not have jurisdiction over contractual claims that may arise out of that relationship. Accordingly, nothing in these reasons should be interpreted as a pronouncement on the contractual rights of the parties.

B. Reasonableness of the Cancellation

[14] The main issue in this matter is the reasonableness of Mr. Drew's cancellation of the election. No one besides Mr. Drew seriously defends this decision. It is nevertheless worthwhile to explain briefly why it was unreasonable.

[15] The Code is a law adopted by the Kanesatakehró:non. As such, it is an act of self-government by the community. Section 1.4 of the Code states that the Chief Electoral Officer is "the person appointed by [the Council] who must ensure that all provisions set forth in the Custom Election Code are complied with." Specific provisions of the Code set out the duties and powers of the Chief Electoral Officer in respect of the various steps of the electoral process.

[16] Thus, the role of the Chief Electoral Officer is to apply the law, not to make the law. If it were otherwise, the self-government of the community would be thwarted. Implicit in the acceptance of this role is the commitment to apply the Code, imperfect as it may be, not to seek to amend it or improve it.

[17] Of course, a Chief Electoral Officer may be called upon to interpret ambiguous provisions of an election code or to apply it to unforeseen circumstances. This, however, is not what Mr. Drew did. There is simply no provision of the Code that allows the Chief Electoral Officer to cancel an election or to suspend the electoral process until the Code is amended. Indeed, in his cross-examination, Mr. Drew recognized that there is no provision of the Code that can be interpreted to afford him such a power (Applicant's Record, p. 674).

[18] A Chief Electoral Officer, especially one with extensive experience, may also make suggestions to a First Nation regarding potential amendments to the latter's election code. This, however, does not entitle the Chief Electoral Officer to refuse to apply the code or to suspend the electoral process unilaterally until the suggested amendments are adopted.

[19] With this in mind, we can now review the reasons Mr. Drew gave for cancelling the election. In a public notice given on August 1, 2025, he justified his decision as follows:

Key reasons include the lack of provisions in the Code for ensuring that electors are duly informed throughout the election process, unworkable timelines to ensure that nominees are properly screened before including their name on a ballot (resulting in names of several ineligible nominees and candidates whose name should not appear on a ballot), onerous requirements for electors to receive a ballot and vote remotely if required, and an unacceptable method of tie-breaking that empowers the Appeal Board members

to “vote over” all other electors and determine the Grand Chief and/or Chief.

[20] In his affidavit, Mr. Drew elaborated on the reasons for his decision. In addition to the concerns mentioned in the above notice, he also invoked threats to his personal safety and that of his staff and the fact that he was unable to find enough persons who were willing to become members of the appeal board. It is nevertheless clear that Mr. Drew was of the opinion that the Code had severe shortcomings that made it difficult, if not impossible, to run a fair election. In fact, on August 2, 2025, Mr. Drew published a further notice in which he proposed a process whereby the community would amend the Code before holding a new election.

[21] Thus, Mr. Drew’s decision to cancel the election was based on his negative opinion of the Code and his belief that it would be advantageous to amend it before holding the election. In doing so, he clearly overstepped his role as Chief Electoral Officer. He refused to apply the Code as it stands. Without any authority, he suspended the precise timelines set out in the Code to force the community to amend it. This simply cannot be a reasonable interpretation or application of the Code. Most importantly, stopping an election one day before voting day on the pretense that the rules need to be changed is bound to sow public distrust of the electoral process.

[22] I acknowledge that Mr. Drew asserts that he did not cancel the election but merely the polls. This is a distinction without a difference. If the Code were to be amended according to Mr. Drew’s wishes, the electoral process would need to start anew. Indeed, Mr. Drew’s August 2, 2025, notice contemplated a complete restart of the electoral process after the ratification of the amendments to the Code.

[23] I also emphasize that the situation at hand is fundamentally different from the delaying of the polls for a short period due to a natural catastrophe or similar event. In the present case, there is no evidence of an unforeseeable event that made it impossible to hold the election, even though Mr. Drew found it more difficult than he expected.

C. *Is Mr. Drew Still the Chief Electoral Officer?*

[24] Since he cancelled the election, Mr. Drew has asserted that he still holds the office of Chief Electoral Officer. This, I suppose, is consistent with his view that the electoral process has merely been suspended pending an amendment to the Code. However, in practice, his position has made it more difficult for the community to move forward with a new election. To clarify the situation, the Council is asking me to decide whether Mr. Drew still holds office as Chief Electoral Officer and, if he still does, to issue a writ of *quo warranto* removing him from office.

[25] In my view, Mr. Drew's tenure as Chief Electoral Officer came to an end with his cancellation of the election. The Code contemplates that the position of Chief Electoral Officer is a temporary one, which ceases with the end of the election period. A new Chief Electoral Officer must be appointed at the outset of each election period. This is reflected in Mr. Drew's contract with the Council, which expressly states that its duration is approximately 13 weeks and can only be extended with the consent of both parties. Moreover, as I explained above, Mr. Drew did not merely postpone the voting day or extend the election period. The way in which events unfolded makes it impossible to resume the electoral process. Rather, the process must be started afresh with the appointment of a new Chief Electoral Officer. Indeed, in his August 2, 2025, public notice, Mr. Drew stated that the revision of the Code and the subsequent election could "be

carried out with or without my direct involvement,” implicitly acknowledging that his role had ended.

[26] I will therefore declare that Mr. Drew’s tenure as Chief Electoral Officer has come to an end. It is thus unnecessary to address the Council’s request for a writ of *quo warranto*.

D. *Should the New Election be Postponed by Six Months?*

[27] The Council suggested that the Court should, instead of ordering an immediate election, order the holding of a community meeting that would choose between extending the Council’s mandate for six months, pursuant to section 8.3 of the Code, or holding an election immediately. Section 8.3 provides that “In exceptional circumstances, Mohawk Council may hold a special public meeting for authorization to continue its mandate for a period not exceeding six (6) additional months.” The purpose of this extension would be to allow the community to consider potential amendments to the Code before a new election is held.

[28] In effect, the applicants are asking the Court to refrain from issuing the remedy that would logically flow from the finding that the cancellation of the election was unreasonable. The remedy sought by the applicants bears a striking resemblance with the process envisioned by Mr. Drew. Fundamentally, it was unreasonable to deprive the community of an election for the purpose of improving the Code. If this was unreasonable for Mr. Drew, it is difficult to understand how the Court could mandate or authorize a similar result at the request of Council.

E. *Remedy*

[29] As a general principle, remedies must be responsive to the breach of the law found by the Court: *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at paragraph 25, [2003] 3 SCR 3. In election matters, where the result of the election is in doubt or the integrity of the process is called into question, the usual responsive remedy is to annul the election and to order a new one: *Sinclair-Desgagné v Canada (Chief Electoral Officer)*, 2026 SCC 31 at paragraph 61 [*Sinclair-Desgagné*], citing *Wuttunee v Whitford*, 2023 FCA 18. A fortiori, where the election was unreasonably cancelled by the Chief Electoral Officer, the responsive remedy would normally be to order a new election.

[30] It is accepted that in First Nation election matters, a certain degree of creativity may be warranted in crafting remedies: *Fond du Lac First Nation v Mercredi*, 2020 FCA 59 at paragraph 5. Nevertheless, this creativity should be applied in a manner that tends to uphold a First Nation's election code to the extent possible. After all, the Code is the law of the community and it must be followed. In this connection, while section 2.5 of the Code was raised in oral argument, the reference to the Kanesatakehró:non's role in ensuring good governance does not dispense from compliance with the Code.

[31] The appropriate remedy in the present case is to call an election without further delay. Given the timelines set forth in the Code and the holiday period, I will set the date of the election at the third Saturday of December, namely, December 19, 2026. The Council will issue a call for tenders provided by section 12.2 of the Code no later than 7 days after the date of this judgment.

The other time limits provided by the Code will apply. The Council will select the Chief Electoral Officer pursuant to section 12.2.

[32] At the hearing, Mr. Drew informed me that he has kept the election papers in a safe place pursuant to section 12.51 of the Code. Given my finding that the electoral process has ended with the cancellation of the election, I will authorize Mr. Drew to destroy these papers.

[33] The parties have not addressed the issue of the extension of Justice Ngo's interlocutory order allowing the incumbent Council to remain in place in a caretaker role until the decision on the merits. Nevertheless, Justice Ngo's reasons for making this order remain valid until the new election takes place—a governance gap must be avoided. I will thus maintain her order in force until the council elected on December 19, 2026, takes office.

[34] Given the above, it is not necessary to address the Council's reference pursuant to section 18.3 of the *Federal Courts Act*.

III. Disposition

[35] For these reasons, the application for judicial review will be allowed and the Court will issue a remedy along the lines mentioned above.

[36] I will not award costs. Costs are usually awarded to the winning party. However, as in *Sinclair-Desgagné* at paragraph 73, the situation that gave rise to this application is not attributable to any of the Mohawk parties. Moreover, all the Mohawk parties want a new election

to take place, even though they differ as to certain details. In truth, there are no winners and losers in this matter.

[37] With respect to costs against Mr. Drew, one must not confuse costs and an action in damages. An award of costs relates to the expenses and the conduct of the parties in the proceeding. In contrast, the conduct that forms the subject matter of the proceeding may give rise to damages, but usually not to an award of costs. Some of the Mohawk parties have sought elevated costs against Mr. Drew on grounds that relate more to his decision to cancel the election than to the way in which he responded to the proceeding. This may or may not form the basis of an action in damages. I express no opinion on the matter, as this is outside this Court's jurisdiction. Nevertheless, I find that there is no basis to award costs against Mr. Drew.

[38] Likewise, Ms. Simon's request for elevated costs against the Council is based on matters that are outside the scope of this application for judicial review.

JUDGMENT in T-3143-25

THIS COURT’S JUDGMENT is that

1. The application for judicial review is granted.
2. An election for the Mohawk Council of Kanesatake will be held on December 19, 2026.
3. The Council will issue a call for tenders provided by section 12.2 of the *Mohawks of Kanesatake Custom Electoral Code* no later than 7 days after the date of this judgment.
4. The *Mohawks of Kanesatake Custom Electoral Code*, including the time limits other than that set forth in section 12.2, will apply to this election.
5. Mr. Graeme Drew is authorized to destroy the papers of the election set for August 2, 2025.
6. Paragraph 2 of this Court’s order dated October 16, 2025, in the present matter remains in force until the council elected on December 19, 2026, takes office.
7. No costs are awarded.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-3143-25

STYLE OF CAUSE: MOHAWK COUNCIL OF KANESATAKE v GRAEME DREW, 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

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 23, 2026

REASONS AND JUDGMENT: GRAMMOND J.

DATED: SEPTEMBER 28, 2026

APPEARANCES:

Adrienne Tessier Nicholas Dodd Mathilde Chouinard (stagiaire)	FOR THE APPLICANT
Graeme Drew	FOR THE RESPONDENT GRAEME DREW (ON HIS OWN BEHALF)
John T. Pepper Jr.	FOR THE RESPONDENTS OTHER THAN GRAEME DREW AND CLAIRE AMANDA KWANENTAWI SIMON
Vincent Carney	FOR THE RESPONDENT CLAIRE AMANDA KWANENTAWI SIMON

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FOR THE RESPONDENTS OTHER THAN
GRAEME DREW AND CLAIRE AMANDA
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