

Federal Court



Cour fédérale

Date: 20250602

Docket: T-3359-24

Citation: 2025 FC 991

Toronto, Ontario, June 2, 2025

PRESENT: Madam Justice Go

BETWEEN:

**POUNDMAKER CREE NATION, CHIEF DUANE ANTOINE,
COUNCILLOR MARLENE CHICKENESS, COUNCILLOR
LEON ANTOINE, COUNCILLOR NORMAN CHECKOSIS
AND COUNCILLOR LESTER FAVEL**

Applicants

and

**DARLENE STONESTAND, DEANNE KASOKEO, KAYLIN
SEMAGANIS**

Respondents

ORDER AND REASONS

I. Overview

[1] Chief Duane Antoine, and Councillors Marlene Chickeness, Leon Antoine, Norman Checkosis and Lester Favel [together, “Individual Applicants”] were elected Chief and Council of the Poundmaker Cree Nation [PCN] in an election that took place on May 22, 2024 [2024

Election]. Subsequently, two or more appeals were filed to the Poundmaker Cree Nation Election Tribunal [“PCN Election Tribunal” or “Election Tribunal”] with respect to the 2024 Election.

[2] On November 18, 2024 the PCN Election Tribunal issued a decision [Decision] which directs, among other things, a new election to be held for all positions of Chief and Council and that Chief Antoine be banned from future elections. The Election Tribunal also recommends Councillor Marlene Chickeness and two previous Councillors be ineligible to run in future elections.

[3] On November 29, 2024, the Individual Applicants, along with the PCN [together “Applicants”] filed an application for judicial review challenging the Decision as both unreasonable and procedurally unfair.

[4] Before the Court are two motions brought by the Applicants.

[5] The first motion is for an order pursuant to Rules 372 and 373 of the *Federal Courts Rules*, SOR/98-106 [Rules] for an interlocutory injunction:

- a. staying the Decision of the PCN Election Tribunal purporting to remove the Individual Applicants from office, calling a new election and banning Chief Antoine from running in future elections;
- b. enjoining the Election Tribunal and the three individual members of the Tribunal, Sharon Baptiste, Lester Bugler and Delainee Antoine-Tootoosis from taking steps to enforce the Decision or calling any meeting for the purposes of setting nomination or election dates;
- c. directing that the Individual Applicants are validly in office as Chief and Council;
- d. directing that the interlocutory injunction shall remain in force until this Court’s determination of the underlying judicial review application; and
- e. costs of this motion

[6] The second motion is for an order pursuant to Rules 75 and 76 of the *Rules* allowing the Applicants leave to amend the Notice of Application for Judicial Review and the Notice of Motion for Interlocutory Injunction by:

- a. striking the names of “Poundmaker Cree Nation Election Tribunal 2024, Lester Bugler, Sharon Baptiste, Delainee Antoine-Tootoosis, and Loretta Pete Lambert, “Chief Electoral Officer” as Respondents in the style of cause; and
- b. inserting the names of “Darlene Stonestand, Deanne Kasokeo, and Kaylin Semaganis” as Respondents in the style of cause.

[7] For the reasons set out below, I grant the Applicants’ motions without costs.

II. Background

[8] The 2024 Election was administered according to the Draft Poundmaker Cree Nation Band Custom Election Regulations [Draft Regulations]. Under the Draft Regulations, the Election Tribunal is comprised of three members and hears election appeals. On or around May 15, 2024, Lester Bugler, Sharon Baptiste and Marie Adams were selected to sit on the Election Tribunal.

[9] On or about June 18, 2024, the Individual Applicants became aware of at least two appeals with respect to the 2024 Election. Subsequently, the Individual Applicants became aware that there were up to three more appeals. The Individual Applicants allege that the Election Tribunal refused or failed to share these appeals with them, and refused to provide any documents in relation to the appeals.

[10] On November 18, 2024, the Election Tribunal issued the Decision allowing at least some of the appeals and directed that:

- a. A new election shall be held for all positions of Chief and Council;
- b. The Individual Applicants must leave office immediately;
- c. Chief Duane Antoine is banned from future elections;
- d. Virtual emergency band meetings take place until PCN members choose a date for the next nomination meeting and election;
- e. Recommending that Applicant Councillor Marlene Chickeness and two previous Councillors who were unsuccessful candidates in the 2024 Election be disallowed from running in future elections due to, *inter alia*, their “allegedly coordinated efforts” to impact the 2024 election, “reported misconduct,” bribery, defamation and breach of fiduciary duty;
- f. Meeting notices would be shared through “word of mouth and social media,” and;
- g. The Government of Canada “needs to step in and maintain essential services.”

[11] The Decision did not identify any of the appeals that were before the Tribunal, which appeals were heard, which appeals were successful, which Council members had committed the purported misconduct, and who were the appellants.

[12] On July 23, 2024, the Individual Applicants received notice that Marie Adam was resigning from the Election Tribunal, citing as reasons, bias on the part of the remaining two members of the Election Tribunal and that the Election Tribunal had decided the appeals without hearing from the parties. Following Ms. Adam’s resignation, a new member, Delainee Antoine-Tootoosis was appointed to the Election Tribunal.

[13] On September 14, 2024, the Election Tribunal convened to hear the appeals. On September 17, 2024 the CEO forwarded her written submissions in the appeals to the PCN.

[14] Throughout the entire process, the Individual Applicants, through counsel for PCN, objected to the process on the basis that the Election Tribunal undertook to convene the meeting and appeal hearings without proper notice or authority, appoint a new Election Tribunal member without regard to the PCN customs, and make decision on the appeals without sharing any information about the appeals and without regard to due process.

[15] After the Applicants filed the underlying judicial review application, on December 5, 2024, Justice Blackhawk ordered the application to proceed as a specially managed proceeding. On the same date, the Applicants brought their motion for an interlocutory injunction.

[16] On December 6, 2024, I issued an order granting the Applicants an Interim Injunction. The Interim Injunction Order grants, in large part, the same relief being sought in the present motion, and the Interim Injunction Order is to remain in effect until the Applicants' motion for an interlocutory injunction is heard by the Court. For various reasons, the hearing of the Applicants' motion for interlocutory injunction has been delayed until now.

[17] Meanwhile, the case management judge [CMJ] assigned to this matter advised the Applicants that the PCN Election Tribunal and the members of the Election Tribunal are not properly named as respondents. During a case management conference that took place on February 24, 2025, the CMJ asked the Election Tribunal to provide the names of the individuals who filed the appeals that were the basis for the juridical review. Ms. Sharon Baptiste then provided the names of three individuals, whose names the Applicants are now seeking to insert as the Respondents.

III. Issues

[18] The issues before me are whether the Applicants' motions should be granted.

[19] The Respondents initially named in the underlying application and motions do not oppose to the Applicants' motion to amend the style of cause and take no position on the Applicants' motion for the interlocutory injunction. However, the Election Tribunal and its members ask for costs for the Applicants' motion to amend on the basis that they were not properly named and had to incur legal expense to take part in the motions.

[20] I will first deal with the motion to amend, followed by the motion for interlocutory injunction. Finally, I will address the issue of costs.

IV. Analysis

A. *Motion to Amend Style of Cause*

[21] Under Rule 75(1) of the *Rules*, the Court may, on motion, allow a party to amend a document, on such terms as will protect the rights of all parties. The Court confirmed in *Astrazeneca AB v. Apotex Inc.*, 2006 FC 7 at para 19 that Rule 75 applies to all proceedings.

[22] Further, under Rule 76, an amendment may be made, with leave of the Court, to correct the name of a party, unless to do so would result in prejudice to a party that would not be compensable by costs or an adjournment: *Dené Tha' First Nation v Canada*, 2008 FC 679.

[23] In *Canderel Ltd. v. Canada (C.A.)*, 1993 CanLII 2990 (FCA), [1994] 1 FC 3 [*Canderel*], the Federal Court of Appeal considered a non-exhaustive list of factors for determining whether an amendment serves the interests of justice. They are: the timeliness of the motion to amend, the extent to which the proposed amendment would delay the proceedings, the extent to which a position taken originally by one party has led another party to follow a course of action in the litigation which it would be difficult or impossible to alter, and whether the amendments sought will facilitate the court's consideration of the true substance of the dispute in its merits.

[24] Applying the *Rules* and the case law to the matter before me, I find that allowing the Applicants to amend the style of cause will not result in injustice. To the contrary, allowing the requested amendments will be of benefit to the three individuals who filed the appeals against the 2024 Election, as they are interested parties in this matter and should have an opportunity to respond. While the Court is hearing both motions concurrently, and these appellants are thus unable to participate in the motion hearing, they will have the opportunity to participate in the underlying judicial review application.

[25] I also take into consideration the fact that the Applicants brought their motion to amend as soon as reasonably possible. The Election Tribunal, through Ms. Sharon Baptiste, only advised the Applicants of the names of the individuals who brought the underlying appeals that are now before the Court on February 24, 2025.

[26] Finally, allowing the motion would remove the respondents who should not have been named in the first place.

[27] For these reasons, allowing the amendment serves the interest of justice: *Canderel*.

B. *Motion for the interlocutory injunction*

[28] The Supreme Court of Canada [SCC] in *RJR-MacDonald v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*] established the tripartite test to obtain an interlocutory injunction. An interlocutory injunction is warranted only if all three elements of the test are satisfied, namely: (i) the underlying matter raises a serious issue; (ii) the moving party will suffer irreparable harm if the interlocutory order is not granted; and (iii) the balance of convenience favours the granting of the order.

i. *Serious Issue to be tried*

[29] The threshold for satisfying the first branch of the tripartite test is low: the Applicants need only prove that the claim is not frivolous or vexatious: *RJR-MacDonald* at para 49.

[30] The Applicants argue there are serious issues arising from the Decision due to the following concerns:

- a. The Election Tribunal's authority is limited to what is set out in the Draft Regulations which limits the Election Tribunal's authority to either 1) uphold the election or 2) order a new election for the positions appealed. The Election Tribunal does not have the authority to prohibit specific members from running in future elections.
- b. Even if the Election Tribunal is found to have had jurisdiction over the matter, the Decision cannot stand due to a complete lack of procedural fairness afforded to the Individual Applicants. The findings of the Election Tribunal carry serious consequences for both the Council and the First Nation. As a result, a councillor is entitled to a fair

hearing. Basic rights, such as notice and the right to make representations before the Election Tribunal rendered its decision must be respected; it was not in the case at hand.

[31] In support of their arguments, the Applicants submitted to the Court an affidavit from Chief Duane Antoine dated December 2, 2024 setting out in detail the events that transpired after the 2024 Election, including communications between the Applicants and the Election Tribunal, as well as the concerns the Applicants raised with respect to the process the Election Tribunal undertook to consider the appeals. Chief Antoine also provided evidence about the election process on the PCN by including a copy of the Draft Regulations.

[32] The Election Tribunal also submitted an affidavit from Ms. Baptiste laying out the steps adopted by the Election Tribunal and the basis for the Decision. Ms. Baptiste's affidavit addressed the reasons for the Decision, but did not address the legal issues raised by the Applicants.

[33] Considering the record before me, I find the Applicants have raised serious issues with respect to the alleged breach of procedural fairness and the argument that the PCN Election Tribunal may have exceeded its authority by deciding on matters not properly before them. Whether or not the Applicants' submissions will ultimately prevail remain to be seen; however, at this stage, I find that the issues the Applicants raise are neither frivolous nor vexatious. As such, they have met the first branch of the test.

ii. *Irreparable Harm*

[34] Irreparable harm refers to harm which cannot be compensated in money; it is the nature rather than the magnitude of the harm, which is to be examined: *RJR-MacDonald* at 341. The law requires that irreparable harm be established based on evidence, not assertions or speculation: *Buffalo v Rabbit*, 2011 FC 420 at para 29 [*Rabbit*].

[35] The Applicants submit that the position of a Councillor within a First Nation is a position of important status. When a Councillor is removed from their position, this entails a loss of status that cannot be compensated by damages, which thus constitutes irreparable harm: *Orr v Fort McKay First Nation*, 2011 FC 37 at para 20; *Gabriel v Mohawk Council of Kanesatake*, 2002 FCT 483 (CanLII); *Rabbit* at paras 34-36.

[36] I agree.

[37] More importantly, I agree with the Applicants that there is sufficient evidence to demonstrate that not maintaining the status quo will cause irreparable harm to the PCN and its members.

[38] As set out in the Affidavit of Chief Antoine dated December 2, 2024, the Chief and Council are the sole governing authority on PCN reserve land and are responsible for providing its members with services. These services include education, bussing of students, social development, care of bison and cattle, water and sewer, monthly social assistance payments,

ensuring Elders' bills are covered and they are taken care of, healthcare for members on reserve, implementing child and family services on reserve, assistance for funerals, and the list goes on. Without leadership in place, these critical services are in jeopardy.

[39] Chief Antoine further stated that the Decision has impacted the operations and affairs of the PCN and has caused great disruption to the Nation due to the uncertainty with respect to the PCN Chief and Council positions.

[40] In addition, Chief Antoine stated in another affidavit dated December 10, 2024, that he received a letter from Rob Harvey, Regional Director General for Indigenous Services Canada [ISC] dated December 6, 2024, a copy of which was attached to Chief Antoine's affidavit as an exhibit. In this letter, Mr. Harvey stated that the ISC received a copy of the Decision, and noted that further to the Decision, a notice of application for judicial review was filed with the Court. Mr. Harvey advised that, pending the Court's decision with respect to the Applicants' request for an interim and interlocutory injunction, ISC has paused actioning or processing any documents related to PCN's ongoing operations, including Band Council Resolutions and amendments to funding agreements.

[41] As a result of the ISN's decision, the Applicants submit that the Chief and Council cannot effectively manage PCN's day to day operations. The members of PCN, especially their most vulnerable members, depend on the services and programming provided by PCN. According to Chief Antoine, the situation is escalating to such a point where the Chief and Council cannot effectively deliver essential services to their members or manage their ongoing operations. Chief

Antoine is concerned that the PCN members, especially those who are most vulnerable, will suffer if the Applicants cannot obtain interlocutory relief on an urgent basis.

[42] The Election Tribunal and its members take no position on the interlocutory injunction, nor provide any evidence to counter the Applicants' submission.

[43] I find there is more than sufficient, non-speculative, evidence before me to demonstrate that, should the status quo not be maintained, there will be serious negative impact on the members of the PCN, especially those who are the most vulnerable.

[44] I therefore find the Applicants have demonstrated irreparable harm to the personal interests of the Individual Applicants and to the interests of the PCN and its members, thus satisfying the second prong of the tripartite test.

iii. *Balance of Convenience*

[45] At this final stage of the tripartite test, the Court should determine "which of the two parties will suffer the greatest harm from the granting or refusal of an interim injunction, pending a decision on the merits:" *RJR-Macdonald* at para 62.

[46] This Court has held that, in cases relating to applications to judicially review first nations' election appeal decisions, it is preferable for elected Chief and Council members to continue holding office pending the outcome of such applications in order to maintain status quo: *Napaokesik v Shamattawa First Nation*, 2012 FC 153 at paras 32-34, *Lower Nicola First Nation*

v The Council, 2012 FC 103 at paras 36-37, *Bird v Peter Ballantyne Cree Nation*, 2022 FC 994 at para 43.

[47] I draw the same conclusion in this case. The interlocutory injunction would ensure that the PCN can continue functioning, pending the outcome of the underlying application.

V. Conclusion

[48] For the reasons cited above, I grant the Applicants' motion for an interlocutory injunction and the motion to amend the style of cause of the interlocutory injunction and the judicial review application.

VI. Costs

[49] The Applicants seek costs for their motions, while the Election Tribunal and its members seek costs for the Applicants' motion to amend.

[50] The Election Tribunal and its members submit that they were named improperly by the Applicants in this proceeding and have been required to respond to it. While they were appointed to the PCN Election Tribunal in accordance with the PCN's customs, they have not been paid for their time, and are responsible for their own legal costs.

[51] The Election Tribunal and its members further submit that there is a significant imbalance between their resources and those of the Applicants, and they have not been given the

benefit of legal counsel while making the Decision. Now that they have been improperly named in the Applicants' application of the Decision, they have incurred legal costs in order to navigate the litigation process, including responding to multiple motions. As such the Election Tribunal and its members submit that PCN should be responsible for their costs in this case.

[52] In support of their position, the Election Tribunal and its members rely on decisions from this Court with respect to the general principles of cost awards involving First Nations disputes: *Anderson v Francis*, 2021 FC 843 at para 91, citing *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119. The Election Tribunal and its members also cite *Knebush v Maygard*, 2014 FC 1247 [*Knebush*] for the proposition that the Court should consider the question of "the imbalance between an individual member of a First Nation who brings a judicial review to have a First Nation's laws observed and the respondents who are the governing body of the First Nation:" *Knebush* at para 59.

[53] The Applicants submit, in response, that the Election Tribunal and its members could have avoided being named in this application had they provided the names of the appellants to the Applicants in the first place. As the Applicants explained to the CMJ, they had not received documentation from the Election Tribunal at any point in time relating to the appellants, and as the Attorney General for Canada was not an interested party, the Applicants had no other parties available to name as respondents. It was only at the request of the CMJ that Ms. Baptiste provided the names of the individuals who filed the appeals that were the basis for the judicial review.

[54] For the reasons set out below, I find that costs are not appropriate in the motions before me.

[55] With respect to the members of the Election Tribunal, while I sympathize that they are not paid for their time serving on the Election Tribunal, it is not the role of the Court to ratify the PCN's failure to properly compensate its members for their services. While I also acknowledge that it is difficult for the Election Tribunal's members to navigate the court proceedings on their own, I agree with the Applicants that the Election Tribunal and its members have not been forthcoming about the information the Applicants needed to initiate the court proceedings. At the very least, the motion to amend would not have been necessary had the Election Tribunal and its members provided the names of the appellants before the filing of the underlying application.

[56] Further, as I noted at the hearing, I am not convinced that the PCN ought to have been included as an applicant in the first place, let alone being directed to pay costs.

[57] As Justice Grammond noted in *Rock v Pessamit Innu First Nation*, 2023 FC 1597 [*Rock*], Associate Judge Mireille Tabib, as she then was, decided to grant the request of the Conseil de la nation innue de Pessamit [Conseil] to be removed as a respondent. AJ Tabib concluded that the Conseil was not [translation] "directly affected" by the potential reversal of the Appeal Committee's decision and that it should therefore not be named as a respondent under Rule 303 of the *Rules*: *Rock* at para 8. As quoted by Justice Grammond, AJ Tabib explains her decision as follows:

[translation]

For a person to be considered directly affected by an order and, therefore, a proper respondent for an application for review, the order sought must affect a party's legal rights, impose legal obligations upon it, or prejudicially affect it in some direct way (*Forest Ethics Advocacy Association v Canada (National Energy Board)* 2013 FCA 236, at para 21). The reversal of the election, if applicable, could trigger for the Conseil the obligation to appoint an electoral officer or delay the decision-making until it is properly constituted. However, these obligations and inconveniences are just normal consequences of the reversal sought. The reversal of the election does not impose on the Conseil any new legal obligations or constraints that did not previously exist. A reversal does not legally change how the Conseil must be constituted. Thus, the interests of the Conseil are merely incidental or indirect.

[58] Without deciding on this issue, I am of the view that the same rationale in *Rock* could apply in determining whether or not a First Nation should be named as an applicant in matters concerning election appeals. Further, while the PCN on the one hand and the Chief and Council on the other may share some common interests, their interests do not always align, particularly in the litigation context.

[59] If the PCN is not a proper applicant, then it may not be proper to issue costs award against it, as the Election Tribunal and its members have asked the Court to do.

[60] With respect to the Applicants' request for costs, there are several factors that mitigate against the granting of costs award even though the Applicants are the successful party in the motions.

[61] First, unlike the Chief and Council, the Election Tribunal and its members do not have the benefit of counsel paid for by the PCN, even though they were duly appointed in accordance with the customs of the PCN. There is a power balance that the Court should take into account in deciding whether costs are appropriate in this case.

[62] Second, because the Election Tribunal and its members were not properly named, they should not bear the costs of the court proceedings. Meanwhile, since the appellants who are the proper respondents were never notified of the motions, they too ought not bear the costs of the proceedings to date.

[63] For these reasons, I will not order costs.

ORDER in T-3359-24

THIS COURT ORDERS that:

1. The Applicants' motion to amend the Notice of Application for Judicial Review dated November 29, 2024, and the Notice of Motion for Interlocutory Injunction dated December 12, 2024, is granted. Specifically:
 - a. The Court order the names of "Poundmaker Cree Nation Election Tribunal 2024, Lester Bugler, Sharon Baptiste, Delainee Antoine-Tootoosis, and Loretta Pete Lambert, Chief Electoral Officer" as Respondents be struck in the style of cause in both the Application for Judicial Review and the Notice of Motion for Interlocutory Injunction; and
 - b. The Court order the names of "Darlene Stonestand, Deanne Kasokeo, and Kaylin Semaganis" be inserted as Respondents in the style of cause in both the Application for Judicial Review and the Notice of Motion for Interlocutory Injunction.
2. The Applicants' motion for an Interlocutory Injunction is granted. Specifically, the Court grants:
 - a. an Order for an interlocutory injunction:
 - i. staying the decision of the Poundmaker Cree Nation Election Appeal Tribunal dated November 18, 2024, to remove the Applicants from office and to call a new election and banning Chief Duane Antoine from running in future elections;
 - ii. enjoining the Poundmaker Cree Nation Election Appeal Tribunal, Sharon Baptiste, Lester Bugler and Delainee Antoine-Tootoosis from taking further

- steps to enforce the Decision or call any meeting for the purposes of setting nomination or election dates;
- iii. directing that the Applicants Chief Duane Antoine and Councillors Marlene Chickeness, Leon Antoine, Norman Checkosis and Lester Favel are validly in office as Chief and Council;
- b. The interlocutory injunction shall remain in force until the Court's disposition of the underlying Judicial Review Application.
3. There will be no costs on these motions.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-3359-24

STYLE OF CAUSE: POUNDMAKER CREE NATION, CHIEF DUANE ANTOINE, COUNCILLOR MARLENE CHICKENESS, COUNCILLOR LEON ANTOINE, COUNCILLOR NORMAN CHECKOSIS AND COUNCILLOR LESTER FAVEL v DARLENE STONESTAND, DEANNE KASOKEO, KAYLIN SEMAGANIS

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 29, 2025

ORDER AND REASONS: GO J.

DATED: JUNE 2, 2025

APPEARANCES:

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TRIBUNAL 2024, LESTER BUGLER, SHARON
BAPTISTE, DELAINEE ANTOINE-TOOTOOSIS)

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TRIBUNAL 2024, LESTER BUGLER, SHARON
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