

Federal Court



Cour fédérale

**Date: 20170529**

**Docket: 17-T-22**

**Citation: 2017 FC 527**

**Toronto, Ontario, May 29, 2017**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**VINCENT DAOUST**

**Applicant**

**and**

**MOHAWK COUNCIL OF KANESATAKE**

**Respondent**

**ORDER AND REASONS**

[1] This decision concerns a motion by Vincent Daoust who seeks the following relief:

[TRANSLATION] EXTEND the time limit to file an application for judicial review concerning the decision dated September 23, 2016, of the Kanesatake Band Council Social Assistance Advisor, a decision which suspended the applicant's social assistance, on the following ground: "Waiting for political directive from MCK Chief-in-council";

AUTHORIZE the applicant to file his Notice of Application for judicial review no later than 30 days following the applicant's receipt of the Order extending the time limit;

ORDER the respondent to pay the applicant all of the Social Assistance withheld since September 23, 2016, within ten (10) days of receipt of the Order to be rendered (Rule 53);

ORDER the respondent to pay the applicant the Social Assistance to which he was entitled prior to September 23, 2016, following receipt of the Final Judgment/Order to intervene after filing the Notice of Application for judicial review (Rule 53);

ISSUE any other directive, order or finding that this Court considers just or impose any finding from such conditions and directions as it considers just (Rule 53);

REPORT to counsel for the applicant, if applicable, any gap in the proof or proceedings of this motion record case and, if appropriate, permit the party to remedy it on such conditions that the Court considers just (Rule 60);

ORDER the respondent to pay costs pursuant to this motion;

[2] There are two distinct aspects to this motion. First, Mr. Daoust requests an extension of the deadline for filing an application for judicial review. As indicated in the quote above, the application would relate to a decision made in September 2016 by the Mohawk Council of Kanesatake (MCK) suspending Mr. Daoust's social assistance payments. The second aspect of this motion seeks an order requiring the MCK to pay to Mr. Daoust the amount of the social assistance withheld to date and the amounts claimed going forward.

[3] I will deal with each of these aspects of the motion in the paragraphs below.

I. Request for Deadline Extension

[4] The test applicable to a request for a deadline extension was provided by the Federal Court of Appeal in *Canada (Attorney General) v Larkman*, 2012 FCA 204 at paras 61-62 [*Larkman*]. The following questions are relevant:

1. Did the moving party have a continuing intention to pursue the application?
2. Is there some potential merit to the application?
3. Has the opposing party been prejudiced from the delay?
4. Does the moving party have a reasonable explanation for the delay?

[5] It is not necessary that all four questions be answered in favour of the moving party. The overriding consideration is whether the interests of justice are served.

[6] The MCK does not dispute that the first and fourth criteria (continuing intention to pursue the application and reasonable explanation for the delay) are met. Accordingly, the criteria in issue are the second and third. These are addressed in turn.

A. *Is there some potential merit to the application?*

[7] Mr. Daoust's proposed application would rely on the fact that the sole reason provided by the MCK for suspending his social assistance payments was his occupation of a residence which he is allegedly not entitled to occupy (it had allegedly already been allocated for use as the community's Elders' Centre). Mr. Daoust argues that illegal occupation of a residence is not a proper basis for denial of social assistance, and he seeks to have the MCK's decision set aside. It

is notable that Indigenous and Northern Affairs Canada (INAC) appears to agree with Mr. Daoust's argument in its letter dated January 24, 2017: "Withholding social assistance payments is not the venue to resolve this matter".

[8] The MCK argues that Mr. Daoust's proposed application has no potential merit because he has an adequate alternative remedy. Specifically, the MCK points to the complaints process before INAC, which Mr. Daoust has already initiated. The MCK argues that "INAC's most recent letter, dated March 10, 2017, clearly demonstrates that INAC intends to provide [Mr. Daoust] with the relief he seeks, whether via the MCK, or by other means." The passage from INAC's letter upon which the MCK relies reads as follows:

Therefore, INAC demands that appropriate steps be taken so that the management of the Income Assistance Program meets the department's guidelines and the confirmation be provided to the Department no later than March 22, 2017. Otherwise, the Department will have no other choice but to consider other alternatives to ensure that the program is delivered to all eligible community members.

[Emphasis added by the respondent. Footnote omitted.]

[9] In my view, this passage shows a clear demand by INAC, but it falls well short of being a clear demonstration that INAC will ensure that Mr. Daoust receives the relief he seeks. In my view, INAC's demand does not constitute an adequate alternative remedy such as to deny Mr. Daoust's proposed application of potential merit.

[10] I find that Mr. Daoust's proposed application has potential merit.

B. *Has the opposing party been prejudiced from the delay?*

[11] The MCK argues that it is prejudiced by Mr. Daoust's delay in commencing his application because it made a difficult decision in good faith, and

[h]aving the case re-opened many months later will have a negative psychological impact on Kanesatake elders and community members who are fearful that others can enter their homes by force without redress being provided by the MCK.

[12] Even if I accept that the MCK's decision was difficult and that Mr. Daoust's occupation of the Elders' Centre has caused the alleged concerns in the community, I am not satisfied that the proposed application concerning denial of Mr. Daoust's social assistance is sufficiently related to the occupation of the Elders' Centre to constitute prejudice for the purposes of this motion. Firstly, I am not convinced by the MCK's argument that it had little practical alternative means of obtaining Mr. Daoust's removal from the Elders' Centre other than by denial of social assistance. Moreover, based on the record before me, it does not appear that the denial of Mr. Daoust's social assistance has improved the situation of improper occupation in any way.

[13] In addition, I am not satisfied that any difficulties within the community in Kanesatake would have been any less if Mr. Daoust had commenced his proposed application within 30 days following the MCK's decision as he was entitled to do. Accordingly, I am not convinced that the delay in commencing the proposed application has caused any prejudice to the MCK or the Kanesatake community.

C. *Conclusion concerning request for deadline extension*

[14] Being satisfied that all of the criteria identified in *Larkman* favour Mr. Daoust, and being convinced that the interests of justice will be served by granting the requested deadline extension, I will do so.

II. Order requiring MCK to pay social assistance to Mr. Daoust

[15] Mr. Daoust seeks an order for the payment before trial of the social assistance he has been denied and which is the subject of his proposed application. He argues that permitting the status quo to continue will unjustly extend the violation of his rights to dignity, security and a decent lifestyle.

[16] The MCK argues several reasons that the order for the payment before trial should not be granted. Without attempting to address all of these reasons, I am prepared to state that I agree with the MCK on the following points.

[17] First, Mr. Daoust has failed to respect s 372(2) of the *Federal Courts Rules*, SOR/98-106 [the *Rules*], to the effect that “[a] party bringing a motion before the commencement of a proceeding shall undertake to commence the proceeding within the time fixed by the Court.” Though it certainly appears that Mr. Daoust’s purpose in making the present motion is to commence the proposed application, he has not provided the required undertaking. He has neither complied with the requirement of s 372(2) nor sought relief from that requirement.

[18] Second, Mr. Daoust has failed to provide the undertaking contemplated in s 373(2) of the *Rules* to pay any damages caused by granting the requested order. I agree with the MCK's argument that what Mr. Daoust seeks in this aspect of his motion is effectively an interlocutory injunction. Accordingly, s 373(2) of the *Rules* applies. Mr. Daoust has neither provided the required undertaking nor sought to be relieved of the obligation to provide it.

[19] Finally, I note that s 372(1) of the *Rules* provides that a motion seeking interlocutory relief may not be brought before the commencement of an application except in a case of emergency. Though the denial of social assistance might be seen as an emergency, it is difficult to accept that Mr. Daoust has treated this matter with urgency, given the time that has passed since his social assistance was suspended. It also does not appear that Mr. Daoust intends to act with urgency going forward, given that he still seeks another 30 days before even commencing his application. Mr. Daoust has not adequately addressed the requirement of s 372(1) of the *Rules*.

[20] For the foregoing reasons, I am not prepared to order any interim payments of social assistance.

**ORDER in 17-T-22**

**THIS COURT ORDERS that:**

1. The deadline for filing a notice of application as contemplated in Mr. Daoust's motion record is extended to 30 days after the date of this order.
2. The costs of the present motion shall be in the cause.

“George R. Locke”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** 17-T-22

**STYLE OF CAUSE:** VINCENT DAOUST v MOHAWK COUNCIL OF  
KANESATAKE

**MOTION MADE IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES* (SOR/98-106) CONSIDERED AT TORONTO, ONTARIO.**

**ORDER AND REASONS:** LOCKE J.

**DATED:** MAY 29, 2017

**APPEARANCES:**

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FOR THE RESPONDENT

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