Federal Court  Cour fédérale

Date: 20180720

Docket: T-949-17

Citation: 2018 FC 766

Ottawa, Ontario, July 20, 2018

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

VINCENT DAOUST

Applicant

and

MOHAWK COUNCIL OF KANESATAKE

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This case, brought under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, opposes a member of the indigenous community known as the Mohawks of Kanesatake to the community's governing body, the Mohawk Council of Kanesatake [the Council]. At issue is the validity of the Council's decision to suspend the Applicant's income assistance benefits payable under the Income Assistance Program [IAP or the Program] set up and funded by the

Department of Indigenous and Northern Affairs Canada [INAC]. At the heart of the dispute between the parties is the Applicant's alleged illegal occupation at the community's Elders' Centre which was prompted by the highly degraded conditions of the house the Applicant has been occupying as his residence since the early 1990s. This house is one of a number of houses purchased by the federal government in the wake of the Oka crisis. These properties are located on the community's interim land base as defined in the *Kanesatake Interim Land Base Governance Act*, SC 2001, c 8 [the Act].

[2] The Applicant – an "Indian" within the meaning of the *Indian Act*, RSC 1985, c I-5 – claims that the Council had no authority to suspend the payments of his income assistance benefits as he clearly meets the IAP's eligibility criteria and as nothing in the Program's terms and conditions allows for the suspension of such benefits on the basis of extraneous considerations such as the one resorted to by the Council in this case. He points out that INAC has been critical of the Council's decision on the ground that the matter of illegal occupation is not a consideration under the Program's criteria and has been urging the Council to take the appropriate steps to ensure that the Program is managed in accordance with its guidelines.

[3] The Council submits that its decision to suspend the Applicant's income assistance benefits until he vacates the Elders' Centre was justifiable, transparent and intelligible and the only reasonable decision it could take in regard of the facts and the law of the case. In particular, the Council contends that INAC's guidelines regarding the IAP are non-binding instruments and that the impugned decision was in any event authorized by the Moratorium on Development of the Kanesatake Interim Land Base [the Moratorium] adopted in 2011 in order to respond to

personal appropriation by members of the Kanesatake community of lands set aside for community use.

[4] The Council further contends that the impugned decision was the only means at its disposal to assert law and order in the Kanesatake community which, for all intents and purposes, is unpoliced since 2005. It claims in this respect that consistent with its fiduciary obligation towards the members of the Kanesatake community, it has a duty to protect the community's public property from appropriation and deterioration.

[5] In the alternative, the Council urges the Court, should it find that the Applicant has made out the case for the remedies he seeks, to exercise its discretion not to grant these reliefs. It claims that such course of action is warranted in the circumstances of this case because: (i) it has undertaken to restore the Applicant's income assistance benefits the very moment the Applicant removes himself from the Elders' Centre; (ii) granting these remedies would cause a disproportionate impact on the Council and on the other members of the community; and (iii) the Applicant does not come to the Court with "clean hands."

II. Background

A. *The Income Assistance Program*

[6] The IAP is part of a number of social programs delivered by the Council and funded by INAC through contribution agreements between Her Majesty the Queen in Right of Canada and the Mohawks of Kanesatake as represented by the Council. Other funded programs through such

agreements include education, health, community infrastructure, land and economic development and Band support funding.

[7] The funding agreement applicable to the IAP while the events leading to this judicial review application were unfolding is the Streamlined Funding Agreement [the Agreement], which came into force on April 1, 2016, and which is valid for a period of three years. By virtue of the Agreement's Annex 1B ("Contribution and Grant Funding"), the Council committed "to administer the Income Assistance Program in accordance with DIAND's *Social Programs – National Manual* and any current approved program documentation issued by DIAND as amended from time to time."

[8] The version of the *Social Programs – National Manual* relevant to the present case is the 2017-2018 version [the Manual], which replaced the 2012 version. According to section 2.0 of the Manual, its purpose is to "provid(e) direction for the delivery of the Social Programs funded by INAC (…)." These programs, in addition to the IAP, include the Assisted Living Program, the Family Violence Prevention Program as well as the First Nations Child and Family Services Program. Section 3.0 provides that the Manual applies "to all Funding Recipients that have entered into Funding Agreements with INAC (…) for the delivery of Social Programs." There is no dispute in this case that the Mohawks of Kanesatake, as represented by the Council, are a "Funding Recipients" within the meaning of the Manual.

[9] The Manual provides a description of each funded social program and sets out eligibility requirements for each program's "clients." A "client" is a person "who ultimately receives the

benefit of programs or services funded by INAC (…).” Again, there is no dispute here that the Applicant was, at all relevant times, a “client” within the meaning of the Manual with respect to the IAP.

[10] The provisions of the Manual dealing specifically with the IAP are found in Chapter 2. According to these provisions, the IAP is designed to provide funds to individuals and families “who are ordinarily resident on reserve, as a last resort where all other means of generating income to cover basic needs have been exhausted.” It has four funding components: (i) funds to meet basic needs for food, clothing and (utilities and rent); (ii) special needs allowances for goods and services essential to the physical or social well-being of a client; (iii) employment and pre-employment supports; and (iv) funding for service delivery to enable the Council to administer the program.

[11] Client eligibility requirements are set out in section 3.0 of Chapter 2. They provide that in order to be eligible for income assistance benefits, a client must demonstrate that he or she (i) is ordinarily resident on reserve; (ii) is eligible for basic or special financial assistance as defined by the province or territory of residence, and confirmed by an assessment covering employability, family composition and age, and financial resources available to the household; and (iii) has no other source of funding to meet basic needs. According to section 3.2 of Chapter 2, in order for be eligible for income assistance benefits, clients must also “meet the qualifying requirements of the reference province or territory of residence, including an assessment covering [their] financial needs (income and assets); employability; family composition and age; and financial resources available to the Client’s household.”

[12] It is not contested that until his income assistance benefits were suspended in September 2016 and except for a few months in 2009 and 2010 when he was imprisoned, the Applicant had been receiving – and had been eligible to receive – such benefits through the IAP since at least 2008.

B. *The Applicant's Housing Situation*

[13] Before moving into the Elders' Centre in the summer of 2016, the Applicant lived in a house located at 51, 1st avenue, Terrasse Raymond [the Terrasse Raymond Property] "for more than 20 years" (Applicant's Affidavit, at para 6). As indicated at the outset of these Reasons, this is one of a number of properties located on lands that were acquired by the federal government in the 1990s in the aftermath of the Oka crisis. According to Grand Chief Serge Simon, these newly acquired properties, originally administered by the federal government but now under the Council's responsibility, were soon occupied by members of the Kanesatake community, in some cases without any authorization of the government (Grand Chief Serge Simon's Affidavit, at paras 8-9).

[14] On April 28, 1995, the Applicant's occupation of the Terrasse Raymond Property was regularized when he signed a tenancy agreement with Her Majesty the Queen in Right of Canada for a monthly rent of $161. According to that agreement, the Applicant was, as of that date, "authorized to take possession" of that property for "housing or residence purposes" (Applicant's Affidavit, Exhibit P-3). According to Grand Chief Serge Simon, the Terrasse Raymond Property was a summer cottage slatted, at the time, to be demolished and not worth "putting any money into" (Grand Chief Serge Simon's Cross-Examination, at p. 51).

[15] The Applicant's evidence is that he has had, over the years, multiple problems with the Terrasse Raymond Property which, further to sanitary inspections conducted by Health Canada, was, at different times between 2002 and 2013, held to be a health risk to its occupants. These inspections revealed the presence of mould and problems related to high humidity levels due, in large part, to a major year-long water infiltration in the basement and a leaky roof. The inspections also revealed the presence of vermiculite in the property's attic and, more generally, the need for substantial repairs (Applicant's Affidavit, Exhibits P-4, P5 and P-7).

[16] The Applicant claims that despite numerous requests to the Council to have the Terrasse Raymond Property repaired under the Council's Housing Policy, which provides for renovation and decontamination programs, the only work done was to remove the vermiculite from the attic. He says that when he followed up with the Council as to the other work that needed to be done on the property, he was told that his file had been lost and that they could not do anything for him (Applicant's Affidavit, at paras 12-13 and 20 and Exhibit P-6).

[17] Grand Chief Serge Simon recognizes that the Terrasse Raymond Property is in need of repair and that Health Canada has noted that it has mould problems but he claims that this is true of many houses in the community. He further claims that INAC's funding "does not even come close to covering the amount that would be needed to affect all necessary repairs to our housing stock" (Grand Chief Serge Simon's Affidavit, at para 15). Despite this, he states, the Council has spent approximately $18,000 in repair work on the Terrasse Raymond Property over the last 10 years. These repairs include repairs to the ceiling and walls in January and February 2012,

and repairs to the roof in October 2013, including re-shingling, re-insulating and correcting airflow problems (Grand Chief Serge Simon's Affidavit, at para 16).

[18] The Applicant claims that only part of the roof was replaced and no vent was installed (Applicant's Cross-Examination, at p. 36). Grand Chief Serge Simon testified that he witnessed "around 2012" some of the work that had been done on the property, adding that he "could not believe we actually paid a contractor to do such a mess" (Grand Chief Serge Simon's Cross-Examination, at pp. 52-53).

[19] In the summer of 2016, when, according to the Applicant, the situation was getting worse and something had to be done to make sure that he and his family were living in a healthy and secure home, the Applicant claims he noticed that the weekly lunches held at the Elders' Centre, located at 420 rue de la Fauvette [420 de la Fauvette Property], had ceased to occur and that some of the property's furniture had been removed. He claims having learned shortly thereafter that the Elders' Centre had been moved to another location, the Riverside Elder's Home. In his view, therefore, the 420 de la Fauvette Property was not being used anymore and he decided to make it his new residence (Applicant's Affidavit, at paras 22 to 26).

[20] The Applicant contends that to his knowledge, when a house becomes available on the community's territory, there is no formal process to follow for the house to be attributed to someone else. Hence, according to him; the "person that needs it just takes it" (Applicant's Affidavit, at paras 29-30).

C. *The Decision to Suspend the Applicant's Assistance Income Benefits*

[21] The Council considers the Applicant's occupation of the 420 de la Fauvette Property to be illegal as these premises have been leased to the Elders of Kanesatake since 1996 for community use, that is for providing the community's Elders a place to hold their various functions. It further denies that houses within the community are attributed in the manner suggested by the Applicant, claiming that the Moratorium was adopted to prevent just that.

[22] At its regular meeting of August 23, 2016, the Council discussed the Applicant's occupation of the 420 de la Fauvette Property, the available options and the threats the Applicant had made when invited to leave these premises. According to the minutes of that meeting, the issue would "only be resolved according to the wishes of elders." On September 13, 2016, the Council met again and determined that the Applicant would cease to receive income assistance benefits "because he does not have a rental agreement." According to the proposed re-wording of the decision-letter, the Applicant would be advised that he is no longer eligible to receive these benefits "while [he] occup[ies] illegally this building, one which a rental agreement already exists with the Elders of Kanesatake."

[23] By inter-office memorandum dated September 29, 2016, the community's Social Assistance Clerk was directed to immediately cease issuing income social assistance payments to the Applicant in response to Applicant's illegal occupation of the 420 de la Fauvette Property. This memorandum makes reference to previous unsuccessful attempts to have the Applicant vacate these premises. It also refers to the Council's duty to "act within its powers to insure (sic)

that the disrespectful and the moral violation towards our elders and our processes and policies cease forthwith." Finally, it reveals that the Council was divided regarding that measure, "with three Council member (sic) not in support and four Council members in support of stopping social assistance benefits to Mr. Daoust Sr."

[24] On September 30, 2016, the Applicant was informed by letter that due to his illegal occupation of the 420 de la Fauvette Property, his income assistance benefits were suspended until he vacates the premises. The letter makes reference to the fact that the Applicant was "due for [his] annual social assistance re-evaluation appointment in the month of October 2016 […] in compliance with national guidelines." The "Notification of Decision" form (Applicant's Affidavit, Exhibit P-1) makes reference to the fact that the Applicant's "request for social assistance" has been "suspended." A handwritten note in the form's "Raisons – Reasons" heading reads as follows: "waiting for political directive from MCK Chief – […] – Council." That form was received by the Applicant on September 23, 2016.

[25] At the time of the hearing of this judicial review application, the Applicant was still living in these premises despite his income assistance benefits having been suspended. The 420 de la Fauvette Property also has mould problems (Grand Chief Serge Simon's Affidavit, at paras 21-22).

[26] I note that a number of Elders reacted to the change of venue from 420 de la Fauvette to the Riverside Elder's Home by sending a letter to the Council on February 1, 2017. In that letter, they first showed their appreciation for the accommodations made by the Kanesatake Heath

Center and the Riverside Elder's Home. Then they informed the Council that their group was rapidly growing, that they enjoyed their social gatherings on Wednesdays but that the facility was too small for groups of more than 20 people (Grand Chief Serge Simon's Affidavit, Exhibit R-7). On the other hand, in a newspaper article filed by the Applicant, the coordinator of the Elders' luncheon program is quoted as saying that the program is "working very well" since it moved to the Riverside Elder's Home and that the Elders "really like it there" (Applicant's Affidavit, Exhibit P-9).

III. Issue and Standard of Review

[27] The issue to be determined in this case is whether the Council committed a reviewable error, as contemplated by section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, by suspending the Applicant's income assistance benefits in the circumstances in which it did. If I find that the Council did commit a reviewable error, then I will need to consider, as the Council urges me to do, whether I should exercise my discretion so as to refrain from granting the remedies sought by the Applicant.

[28] The Applicant submits that the deference owed to a Band council in the administration of INAC's social assistance programs has not been satisfactorily established and that therefore the standard of review should be determined by applying the principles developed in *Dunsmuir v New-Brunswick*, 2008 SCC 9 [*Dunsmuir*] (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48; *McArthur v White Bear First Nation*, 2015 FC 1357 at para 34). He claims on the basis of these principles that the impugned decision shall be reviewed against the correctness standard of review since (i) there is no privative clause in play, (ii) the

Council has no particular expertise in administering these programs, and (iii) the issue at stake in the present case is of central importance to our legal system as a whole because allowing the Council's decision to stand would establish a dangerous precedent permitting Band councils across the country to sanction members of their community by preventing their access to social assistance. Hence, no deference should be given to the Council's decision to suspend his income assistance benefits.

[29] The Council contends that in situations where the applicable standard of review has not previously been established in a satisfactory manner, there is a presumption that the standard of reasonableness applies (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd,* 2016 SCC 47 at para 22 [*Edmonton*]). It claims that none of the issues that would normally rebut that presumption are present in this case as there are (i) no constitutional questions regarding the division of powers, (ii) no issues that are both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise; (ii) no true questions of jurisdiction or *vires*; and (iv) no issues "regarding the jurisdictional lines between two or more competing specialized tribunals" (*Edmonton* at para 24; *Dunsmuir* at paras 58-61).

[30] The Council further submits that providing social programs services and administering the underlying INAC's programs to the benefit of the members of the Kanesatake community is part of its normal functions. As a Funding Recipient for the purposes of the Manual for quite some time, it claims to have developed a special expertise in this area. Therefore, the Council argues, there is no basis to depart from the presumption that the impugned decision shall be examined against the standard of reasonableness.

[31] I agree with the Council that, as a Funding Recipient, it has a special expertise in administrating INAC's social programs. It is the Council, through the Administrator it designates (here the Social Assistance Clerk), which has the responsibility to "deliver programs in accordance with the terms and conditions set out in the Funding Agreement" (Manual, Chapter 1, at sections 1.2.1 and 6.1). In so doing, it is the Council's responsibility to assess clients' eligibility to these programs, including the IAP (Manual, Chapter 2, at section 3.0). This requires assessing the personal situation of each claimant against a number of the programs' criteria, including criteria set out in the legislation of the claimant's province of residence.

[32] To the extent the Council is bound by obligations contracted under the funding agreements and by policy guidelines it has undertaken, under these agreements, to comply with, those are decisions of mixed fact and law. Hence, to the extent the impugned decision is primarily a decision purportedly taken in such context, I see no reason to depart from the presumption that the reasonableness standard of review should apply to it.

[33] In particular, I am not persuaded, at this juncture, that the decision to suspend the Applicant's assistance income benefits under the IAP raises an issue of general law that is of central importance to the legal system as a whole, or that it is an issue that requires a uniform and consistent answer because it is "at the heart of the administration of justice" (*Dunsmuir* at para 60).

[34] However, this more deferential standard does not shield the impugned decision from judicial scrutiny, especially if it was based on extraneous and irrelevant considerations, as I believe it was.

IV. Analysis

[35] The present case presents itself against a backdrop of poor housing conditions, funding and policing issues, contentious residence-attribution policies and reluctance on the part of the Council to use the full powers conferred upon it by the Act. There are no perfect solutions to such a multi-layer imbroglio and the present decision is certainly not intended to solve all these problems, nor could it do so.

[36] What is clear to me though is that whether the Applicant's occupation of the 420 de la Fauvette Property is illegal or not, the Council did not comply with the IAP, which is ultimately intended to benefit the Kanesatake community members who meet the Program's eligibility requirements, when it suspended the Applicant's income assistance benefits. In my view, the Council had no authority under that Program, as it currently stands, to impose on its Administrator such a course of action. I agree with INAC's position that the matter of illegal occupation is not a valid consideration for determining whether an indigenous community member is eligible – or no longer eligible – for income assistance benefits under the IAP, again in its current configuration.

[37] The argument that the Manual is a mere guideline, or non-binding instrument is unpersuasive in the circumstances of this case. Whether guidelines or internal directives create

legal rights which a court can define or enforce depends on the intent and context of the guidelines or directives (*Endicott v Canada (Treasury Board)*, 2005 FC 253 at para 12).

[38] As I indicated previously, the Council has undertaken, under the Agreement, to administer the IAP in accordance with the Manual and any other current program documentation by INAC. The Agreement makes it an imperative obligation subject only to the Agreement's non-derogation clause relating to treaty or aboriginal rights, inherent right to self-government or land claims. This clause reads as follows:

> 1.0 Nothing in this Agreement will be construed to diminish, abrogate, derogate from, or prejudice any treaty or aboriginal rights of the [Mohawks of Kanesatake] and nothing in this Agreement will:
>
> (a) prejudice whatsoever any applications, negotiations or settlements with respect to land claims or land entitlement between Her Majesty the Queen in Right of Canada and the [Mohawks of Kanesatake];
>
> (b) prejudice whatsoever the implementation of any inherent right to self-government nor prejudice in any way negotiations with respect to self-government involving the [Mohawks of Kanesatake]; and
>
> (c) be construed as modifying any existing treaty.
>
> 1.1 Nothing in this Agreement will be construed to create a treaty within the meaning of the *Constitution Act, 1982*.

[39] Here, there is no claim whatsoever on the part of the Council that the power to suspend the Applicant's income assistance benefits in the circumstances in which it did is derived from a treaty or aboriginal right or from an inherent right to self-government.

[40] The Manual is not a guideline adopted in order to assist public servants in the efficient application or enforcement of a legislation or program. Rather, the Manual provides rules the Council has agreed to abide by in return for the funding necessary to deliver programs and services it wishes to provide "for the benefit of its community members."

[41] I find, therefore, that the Manual is binding on the Council as a condition to the Agreement and for the benefit of the members of the Kanesatake indigenous community for whom the Agreement is ultimately intended. The decision to suspend income assistance benefits under the IAP no doubt directly affects the interests of the person concerned as it deprives that person of the funds required to meet his or her basic needs in a context where such benefits, as required by the Program's criteria, are to be the person's only source of income (Manual, Chapter 2, sections 1.1 and 3.3).

[42] In other words, the IAP is meant to protect members of the Kanesatake community ordinarily resident on the community's territory from indigence and entrusts the Council with the responsibility of ensuring that protection, through funding provided by INAC. Within such framework, any decision from the Council depriving an otherwise eligible community member of the protection of the IAP on the basis of extraneous considerations, including for the express intended objective of achieving an end unrelated to the goals, object, purpose and criteria of that program is, in my view, unreasonable.

[43] The Council insists that the Applicant's past criminal convictions and tendency to utter threats in certain situations reinforces its decision to suspend the Applicant's IAP benefits. It

refers in particular to an incident that occurred in early September 2017 when Patricia Meilleur, one of the Council's Chiefs, was visiting the construction site of the community's new daycare facilities located on a lot adjacent to the 420 de la Fauvette Property, which the Applicant occupied at the time. That incident resulted in the Applicant being charged with assault with a weapon.

[44] Although the evidence on file shows that the Applicant has had a number of encounters with the law and is capable of anger outbursts, behavioral turpitude or inaptitude is not a criteria under the IAP to terminate or suspend payment of income assistance benefits to an otherwise IAP eligible client.

[45] The cases of *V.V. c Québec (Ministre du travail, de l'emploi et de la solidarité sociale)*, [2015] QCTAQ 05662 [*V.V.*] and *S.C. c Québec (Ministre de l'emploi et de la solidarité sociale)*, [2015] QCTAQ 0495 [*S.C.*] do not support the Council's claim that in Quebec, there is no rule of public order that states that a person must receive public assistance regardless of their situation or behaviour. Apart from the fact the Court is not bound by the decisions of an administrative tribunal (here the Tribunal Administratif du Québec), the facts of each case are easily distinguishable. In one case, the claimants were denied benefits because they did not meet the applicable criteria (*V.V.* at paras 13-17), while in the other, further benefits were refused because the claimant in that case had unreasonably squandered $17,748,59 of funds received four months earlier on gambling and gifts to family members (*S.C.* at paras 30-31).

[46] Neither of these situations is analogous with the Applicant's as his income assistance benefits were suspended for reasons unrelated to his eligibility or his previous use of allocated funds.

[47] The Council also stresses the fact that the Applicant has subscribed to Shaw Direct, a cable TV provider, since occupying the 420 de la Fauvette Property. If it is so, then it may be that the Applicant has access to another source of income which disqualifies him, based on the Program's criteria, from receiving IAP benefits. However, this is not the basis for which the Applicant's income assistance benefits were suspended.

[48] Having decided that the Manual, through the operation of the Agreement, is binding on the Council and that none of the Agreement's non-derogation clauses apply to the present situation, I find that the Moratorium is of no assistance to the Council in this case. As indicated previously, the Moratorium is a Council resolution adopted in May 2011. It was effective "immediately" on "all land use and development on all the Kanesatake Interim Land Base" unless such use was authorized by the Council. It was resolved that the Council would take "immediate measures to ensure that the Moratorium on development of the Kanesatake Interim Land Base is effectively enforced through the Mohawk Council of Kanesatake and appropriate authorities."

[49] The Moratorium does not say what these "immediate measures" would – or could – be and I will not venture in attempting to describe what they could be. A broad discretion appears to be left to the Council. However, such measures, in my view, cannot entail the Council abdicating

its binding commitment to abide by the rules and criteria of the IAP, as set out in the Manual and other program documentation issued by INAC. Again, these rules and criteria do not provide for the suspension of IAP benefits on grounds related to the illegal occupation of the Kanesatake Interim Land Base or the violation of the Moratorium or other existing Council resolutions for that matter.

[50] One such measure might have been to amend the Manual, by way of negotiations, so as to provide for the suspension of IAP benefits on such grounds but this was not done. I note in that regard that the Moratorium pre-dates the Agreement (March 2016) and the Manual (2017-2018). In other words, both instruments were negotiated and agreed upon while the Moratorium had been in place for a number of years. Yet, there are no references whatsoever to the Moratorium in either instrument.

[51] It is important to underscore at this point that I refrain from deciding whether the Applicant's occupation of the 420 de la Fauvette Property contravenes the Moratorium or more generally the community's residence or land-attribution policy. In other words, I would reach the same conclusion, for the reasons I have already given, even if I was to find that the Applicant's occupation of the 420 de la Fauvette Property violates the Moratorium or otherwise offends the Council's duty to protect the community's public property from appropriation and deterioration. Suspending the Applicant's income assistance benefits is simply not permitted given the Council's commitment under the Agreement to adhere to the terms and conditions of the IAP, as set out in the Manual, as it currently stands

[52] As for the Council's submission that suspending the Applicant's income assistance benefits was the only means available to it to assert law and order in the community, I can fully appreciate the challenges the Council faces in enforcing its policies and decisions in the context it describes. However, the Moratorium provides the Council with a fairly broad discretion to ensure the Moratorium is effectively enforced. I have no evidence that these broad powers were fully explored. There is also evidence on record that the Council can turn to the Courts to litigate Moratorium-related issues and that the Sûreté du Québec did intervene on the community's territory in certain situations. The September 2016 incident referred to above and involving Chief Patricia Meilleur and the Applicant is one such example. Furthermore, the suspension of the Applicant's income assistance benefits appears to have been, so far, a wholly ineffective means of ensuring the effective enforcement of the Moratorium as, at the time of the hearing of the present proceeding, nearly 18 months after said suspension, the Applicant still occupied the 420 de la Fauvette Property.

[53] Finally, for reasons of its own, the Council has opted not to enact laws addressing the illegal occupation of community land and preventing or prohibiting, with appropriate sanctions, the entry onto or occupation of lands without lawful authority, as the Act enables it to do. Therefore, although, again, I am mindful of the Council's challenges in enforcing the Moratorium, I am unable to conclude that suspending someone's income assistance benefits is the only effective means of addressing an alleged violation of that resolution.

[54] There is no doubt that maintaining order and stability in the community and fostering the respect of Elders are important community and societal values, but so is ensuring that indigent members of the community are not left without the resources needed to meet their basic needs.

[55] In sum, I am satisfied that the decision to suspend the Applicant's income assistance benefits as a result of his alleged illegal occupation of the 420 de la Fauvette Property was unreasonable.

[56] The issue now is whether I should exercise my discretion so as to decline granting the remedies sought by the Applicant. The Council claims that such exercise of discretion is warranted in the circumstances of this case because: (i) it has undertaken to restore the Applicant's income assistance benefits the very moment the Applicant removes himself from the Elders' Centre; (ii) granting these remedies would cause a disproportionate impact on the Council and on the other members of the community; and (iii) the Applicant does not come to the Court with "clean hands."

[57] The Applicant is seeking the following remedies:

a. A declaration that the impugned decision is illegal;

b. An order enjoining the Council to reimburse to the Applicant the income assistance benefits he would otherwise have been entitled to if it had not been for the impugned decision.

[58] The Applicant is also seeking his costs.

[59] The general rule is that once it has been determined that an administrative tribunal has exceeded its jurisdiction by rendering an unreasonable decision on a matter within its jurisdiction, the case must, in theory, be sent back to the tribunal (*Giguère v Chambre des notaires du Québec*, 2004 SCC 1 at para 65 [*Giguère*]). It is correct to say, however, that the Court does have the discretion not to grant the remedy sought or to only grant the remedy in part (*Strickland v Canada (Attorney General)*, 2015 SCC 37 at paras 37-38; *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at para 52; *Maple Lodge Farms Ltd v Canadian Food Inspection Agency*, 2017 FCA 45 at para 51). This is a discretion that ought not to be used lightly or arbitrarily (*Giguère* at para 66).

[60] Here, I see no reason not to grant the declaratory relief sought by the Applicant. This relief, as apparent from my reasons for judgment, declares that the Council, given its commitments under the Agreement, cannot suspend income assistance benefits on grounds extraneous to the IAP criteria or for an improper purpose, that is for a purpose unrelated to the IAP's goals, objectives and purposes. At the same time, this judgment leaves it open to the Council to pursue other means, in light of its broad powers under the Moratorium, to tackle what it claims to be a violation on the part of the Applicant of that resolution..

[61] As for the second remedy, I am not prepared to grant it, as requested. According to the evidence, the impugned decision was handed down while the Applicant was in the process of having his "annual social assistance re-evaluation appointment" (Applicant's Affidavit, Exhibit P-2). What was suspended is his request for social assistance for the period that appeared to be

starting in October 2016 (Applicant's Affidavit, Exhibits P-1 and P-2). His income assistance benefits appear to have been paid up until September 23, 2016 (Applicant's Affidavit, at para 4).

[62] In these circumstances, the appropriate remedy, in my view, is to refer the matter back to the Council so that it can assess the Applicant's eligibility under the IAP, as it would have done had the impugned decision not been taken, for the period beginning on October 1, 2016 up until the date of this judgment. As I indicated previously, it may be that the Applicant no longer meets the Program's eligibility criteria but it is up the Council, not the Court, to conduct such an assessment and determine eligibility on the basis of the Program's rules and requirements.

[63] Granting these remedies, in my view, does not negatively impact, in the circumstances of this case, when considered as a whole, either of the three concerns raised by the Council as justification for not granting the remedy sought by the Applicant.

[64] The Council urges the Court, regardless of the outcome of this case, to award no costs as there was no abusive behaviour on its part and as the Applicant is represented through legal aid. I agree that this is a case where no order as to costs is appropriate.

[65] Although the Applicant's proceedings were filed in French and the hearing was held, for the most part, in that language, counsel have asked me to release my decision in English as this is both parties' preferred official language.

JUDGMENT IN T-949-17

THIS COURT'S JUDGMENT is that

1. The judicial review application is allowed in part;

2. The decision suspending the Applicant's income assistance benefits, dated September 23, 2016, is set aside and the matter is referred back to the Council of Kanesatake so it can assess the Applicant's eligibility to Income Assistance Program benefits as of October 1, 2016 up to the date of this judgment in accordance with the Program's eligibility criteria as set out in the relevant version(s) of the *Social Programs – National Manual* and any current approved program documentation issued by the Department of Indigenous and Northern Affairs Canada;

3. No costs are awarded.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-949-17
STYLE OF CAUSE:	VINCENT DAOUST v MOHAWK COUNCIL OF KANESATAKE
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MARCH 28, 2018
JUDGMENT AND REASONS:	LEBLANC J.
DATED:	JULY 20, 2018

APPEARANCES:

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Nicholas Dodd Sarah-Maude Belleville-Chenard	FOR THE RESPONDENT

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