

**Date: 20061018**

**Docket: T-1913-05**

**Citation: 2006 FC 1247**

[ENGLISH TRANSLATION]

**Montréal, Quebec, October 18, 2006**

**PRESENT: Richard Morneau, Esq., Prothonotary**

**BETWEEN:**

**CHARLES ROBERTSON**

**Applicant**

**and**

**SHELLEY ROBERTSON  
WILLY ROBERTSON  
CARLA ROBERTSON  
TRACEY JACOBS**

**and**

**MOHAWK COUNCIL OF KAHNAWÁ:KE**

**and**

**MOHAWK BAND OF KAHNAWÁ:KE**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion to strike moved by the respondents as part of an application for judicial review undertaken by the applicant against a decision by the Council of Elders, in which the applicant's status as Mohawk was suspended.

[2] The respondents argue that this Court does not have *ratione materiae* jurisdiction to examine that decision because, in their view, the Council of Elders cannot be seen as a federal board, commission or other tribunal as defined in sections 2 and 18 of the *Federal Court Rules*, R.S. (1985), c. F-7, as amended.

[3] For this motion by the respondents to be allowed, particularly as it is a motion to strike against an application for judicial review, their position must have a plain and obvious basis.

[4] However, the Court cannot reach that conclusion.

[5] First, although the respondents argue that the Council exists and draws its authority solely from a law passed by the Mohawk Council of Kahnawá:ke (the Council), it is not plain and obvious, as claimed by the applicant, that this situation regarding the decision in question excludes the initial participation, in the background, of provisions of the *Indian Act*, R.S.C. (1985), c. I-5, as amended.

[6] Second, even if the respondents were correct in their position expressed above, the fact nonetheless remains that the Council of Elders is a creation of the Council. In that vein, it is clear that this Court is particularly reticent to place the actions of band councils out of its jurisdiction, even though it is claimed that those actions or decisions were not carried out under federal law,

but by custom or any equivalent power (in this regard, see inter alia *Roseau River Anishinabe First Nation v. Atkinson et al.* (2003), 228 F.T.R. 167, at paras 17 to 23; *Francis v. Mohawk Council of Kanesatake*, [2003] 4 F.C. 1133, at paras 11 to 17, and the jurisprudence cited in those two decisions).

[7] This motion to strike by the respondents is therefore dismissed, with costs.

**“Richard Morneau”**

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Prothonotary

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

**DOCKET:** T-1913-05

**STYLE OF CAUSE:** CHARLES ROBERTSON

and

SHELLEY ROBERTSON  
WILLY ROBERTSON  
CARLA ROBERTSON  
TRACEY JACOBS

and

MOHAWK COUNCIL OF KAHNAWÁ:KE

and

MOHAWK BAND OF KAHNAWÁ:KE

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 16, 2006

**REASONS FOR ORDER:** PROTHONOTARY MORNEAU

**DATED:** October 18, 2006

**APPEARANCES:**

John Glazer FOR THE APPLICANT

Moira Létourneau FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Leithman & Glazer FOR THE APPLICANT  
Montréal, Quebec

Legal Services FOR THE RESPONDENTS  
Mohawk Council of Kahnawá:ke

