Federal Court Cour fédérale

Date: 20250725

Docket: T-2243-24

Citation: 2025 FC 1329

Ottawa, Ontario, July 25, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

CLINTON DAVID KEY

Applicant

and

**DAVID COTE, KIMBERLY KESHANE,
SIDNEY KESHANE, AND FERNIE O'SOUP**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of several Band Council Resolutions [BCR] passed by the Respondents from August 2, 2023, to present.

[2] The Applicant asks this Court for orders to quash and declare that 79 BCRs passed by the Respondents are invalid and an order of *certiorari* to prevent the Respondents and others from relying on the BCR's that they have purportedly passed.

2025 FC 1329 (CanLII)

[3] The Respondents underscore that the application seeks to set aside many BCRs adopted since August 2023, which would effectively paralyze the operation of The Key First Nation [Key Nation].

2025 FC 1329 (CanLII)

[4] As noted in my decision on the interlocutory injunction motion (*Key v Cote*, 2025 CanLII 27039 (FC) [Injunction]), there has been a long-protracted history of litigation concerning the election results of the Key Nation since it became a participating First Nation to the *First Nations Elections Act*, SC 2014, c 5 [*FNEA*], on March 29, 2016. It is important to highlight that the decision to participate in the *FNEA* removed the Key Nation from the electoral scheme under section 74 of the *Indian Act*, RSC 1985, c I-5 [*Indian Act*].

[5] It is regrettable that the Key Nation is plagued by such a lamentable history, as this has detracted from the important work that the Chief and Council of the Key Nation have been elected to do on behalf of the membership. The ongoing litigation and personal grievances have made it impossible for the members of Chief and Council to work together for the good of the community they serve.

[6] A brief note on the terminology used in these reasons for judgment and order. The terms “Indian” and “Aboriginal” appear in the *Constitution Act, 1982* and in many other pieces of Canadian legislation, policy, and jurisprudence that are relevant to the issues in this application. The terms “band” and “council of the band” appear in the *Indian Act* and the *FNEA*, as well as their respective regulations, to describe the elected governing body of a First Nation.

[7] I acknowledge that the terms “Indigenous,” “First Nation,” “Métis,” and “Inuit,” as appropriate, have supplanted the use of the earlier terms referenced above. I also acknowledge that is not the contemporary terminology used. Where these reasons reference specific legislation, policy, or jurisprudence, the terminology from those sources is used. I do not intend any disrespect by my use of such terminology.

2025 FC 1329 (CanLII)

[8] For the reasons that follow, this application is granted in part.

II. Background

[9] On June 12, 2022, the Key Nation held an election for the chief and councillors (*FNEA*, s 2) [June 2022 Election]. The Applicant, Clinton David Key, was the successful candidate for the position of Chief [Chief Key]. The successful candidates for the five councillor positions were David Cote, Kimberly Keshane, Sidney Keshane, Fernie O’Soup, and Solomon Reece. Together, the elected council of the Key Nation, being Chief Key and the five successful councillors, are the “Key Nation Council” (see *FNEA*, s 23).

[10] The individually named Respondents are four of the elected councillors. I will refer to these individuals collectively as the “Subgroup.”

[11] The Applicant filed an application for judicial review on August 26, 2024, Federal Court File No. T-2243-24, the first of the present consolidated applications. The Applicant seeks declaratory relief affirming the application of the *Indian Act* and the *Indian Band Council Procedure Regulations*, CRC, c 950 [*Council Regulations*], to the Key Nation; that the Subgroup

is not the decision-making body of the Key Nation and may not substitute itself for the Key Nation Council; and that any and all BCRs purported to be passed by the Subgroup are invalid. In the alternative, the Applicant seeks an order setting aside all BCRs passed by the Subgroup from August 2, 2023, to present.

2025 FC 1329 (CanLII)

[12] The Applicant did not specify all the BCRs he challenged in the notice of application; however, he did highlight the following:

Date	BCR #	Subject
2024-04-23	041	Removal of Chief Key and appointment of Councillor S. Keshane as portfolio holder and Councillor Cote as alternate portfolio holder for Painted Hand Casino Holdings Limited Partnership
2024-04-23	042	Removal of Chief Key and appointment of new portfolio holders and alternates
2024-05-21	051	Termination of legal services of Alberta Counsel and Banishment of E. Picard from Key Nation
2024-06-18	068	Bailey, Wadden, Duffy, Alberta Counsel cease and desist

[13] On October 31, 2024, the Applicant filed a subsequent application for judicial review, Federal Court File No. T-2951-24, the second of the present consolidated applications. The Applicant seeks an order declaring that BCR # 086 dated October 1, 2024 is invalid or improper pursuant to section 81 of the *Indian Act*, or in the alternative, a declaration that the BCR #086 required community ratification; an order declaring the October 1, 2024 meeting was not duly convened and the Subgroup did not have the authority to pass BCR # 086; and an order that all BCRs and decisions passed pursuant to BCR # 086 are invalid.

[14] On November 4, 2024, the applications in Federal Court File No. T-2243-24 and T-2951-24 were joined and consolidated under Court File No. T-2243-24, pursuant to Rule 105 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

2025 FC 1329 (CanLII)

[15] On July 11, 2022, Shannon Brass, an unsuccessful candidate for chief in the June 2022 Election, filed an application to judicially review Chief Key's election (Federal Court File No. T-1437-22) (*Brass v Key First Nation*, 2024 FC 304 [*Brass Election Appeal*]). On July 9, 2024, Justice Roy released a subsequent decision arising from the same application addressing the legal representation of the Key Nation in *Brass v Key First Nation*, 2024 FC 1074 [*Brass Representation*].

[16] In *Brass Representation*, the Court considered the *FNEA* and what constitutes proper quorum of a band council, and the requirements for a duly convened band council meeting. The Court found that "[t]he law is clear; the [Band] Council is composed of both the councillors, not just some of them, and the Chief." The question before the Court became "what is the basis on which Quorum of Council can legitimately operate on behalf of the KFN" (*Brass Representation* at paras 59–60).

[17] Ultimately, the Court found that the Quorum of Council "are a sub-group and there is no legal authority that is derived from the mere *ad hoc* creation of that group…there is no evidence, or argument, that has been presented that would give 'Quorum of Council' any authority to supplant the [Band] Council as defined by in the *FNEA*" (*Brass Representation* at para 61). Further, the Court noted that paragraph 2(3)(b) of the *Indian Act* requires the "consent of a majority of the councillors of the band <u>present at a meeting of the council duly convened</u>"

[emphasis in original, at para 62]. The Court found no supporting evidence that BCRs # 286 and # 287 were adopted at a duly convened meeting because the required notice was not provided and stated that "[a] meeting of Quorum of Council is not a meeting of Council as defined in the *FNEA*" (at paras 64-66):

> … The evidence before the Court is that the so-called "Quorum of Council" sought to operate as a sub-group of the First Nation Council, operating independently of the legally constituted Council consisting of the Chief and the elected councillors. Such a sub-group may exist, but it cannot substitute itself for the Council.
>
> (at para 74).

2025 FC 1329 (CanLII)

[18] The Applicant asserts that not withstanding the decision of this Court in *Brass Representation*, which was not appealed by any party, the Subgroup continued to pass many BCRs that the Applicant argues are invalid.

A. *Disclosure of BCRs passed by the Subgroup*

[19] The record demonstrates that Chief Key made several requests to the Subgroup for copies of BCRs and meeting minutes passed by them since August 2, 2023. Chief Key testified that he attempted to get this information during the *Brass Election Appeal* proceedings. He also gave evidence indicating that the binder of BCRs kept in the Director of Operations Office was not maintained. He also requested this information during meetings on July 19 and July 30, 2024. In addition, he emailed this request to the Director of Operations, Melody Brass, on September 16, 2024.

[20] In addition, Councillor Reece made similar requests for the BCRs and meeting minutes passed by the Subgroup at meetings on July 19 and July 30, 2024. Councillor Reece also emailed these requests to Melody Brass on July 30 and August 8, 2024. These requests were not acted upon. Further, the Applicant requested disclosure of this information in both notices of application for this matter.

2025 FC 1329 (CanLII)

[21] Counsel for the Applicant received 267 BCRs passed by the Subgroup in October 2024 (see the cross-examination of Clinton David Key transcript from February 5, 2025, page 14, lines 26–27, and page 15, lines 1–3, 7–12). In addition, the Applicant received a "BCR Summary Log" on November 4, 2024. However, despite the disclosure of 267 BCRs, a significant number were missing. Counsel for the Applicant requested the following from Respondents counsel:

Date	BCR #
2023-09-07	196
2023-10-10	208–209
2024-04-02 – 2024-04-23	001–042
2024-06-07 – 2024-07-23	064–073
2024-10-01 – 2024-10-05	087–103
2024-10-21 – 2025-02-18	105–157

[22] On March 4 and 5, 2025, counsel for the Respondents sent the Applicant's counsel BCRs # 077–109, #110–157, and BCRs # 001–042, respectively. On March 5, 2025, counsel for the Respondents advised that they believed BCRs # 064–073 were misnumbered.

B. *BCRs passed by the Subgroup placing Chief Key's duties in abeyance*

[23] On August 2, 2023, the Subgroup passed BCR # 183, which placed the Applicant's duties as Chief of the Key Nation into abeyance:

> **BE IT RESOLVED THAT**:
>
> 1. Clinton Key's duties as Chief of The Key First Nation are hereby held in abeyance with pay until the Federal Court renders its decision and/or the RCMP investigation is complete;
>
> 2. Clinton Key will have opportunity in [*sic*] August 31, 2023 to explain why this should not happen;
>
> 3. Clinton Key is removed as primary signer or any authority for the Key Frist Nation band accounts…
>
> **FURTHER BE IT RESOLVED THAT**: That [*sic*] Clinton Key is hereby removed from representing TKFN on any boards including but not limited to all FSIN, ISC, CDC, and YTC and Project Management Teams until such time that the court case is complete.

[24] There are several similar BCRs passed by the Subgroup that place Chief Key's authority to act as Chief of the Key Nation in abeyance pending the resolution of the Federal Court application in *Brass Election Appeal* and the alleged RCMP investigation, including BCR # 190 dated August 15, 2023; BCR # 231 dated December 5, 2023; BCR # 284 dated March 6, 2024; and BCR # 004 dated April 2, 2024. Additionally, BCR # 231 also banned Chief Key from the Key Nation administration offices:

> **THEREFORE, BE IT RESOLVED THAT**:
>
> 1. Chief Clinton Key, by his conduct or actions, has breached the peace, law and order of The Key First Nation Reserve No. 65, has created a nuisance among Members, including but not limited to engaging in activities or conduct that has brought the reputation of The Key First Nation into disrepute and, as a result, Chief Clinton Key is prohibited from attending the Administration office of The Key First Nation; and

2025 FC 1329 (CanLII)

> 2. This order, prohibition and restraining order shall remain in full force and effect as against Chief Clinton Key unless and until Council, by resolution, order otherwise;
>
> 3. This order, prohibition and restraining order may be enforced by members of the Royal Canadian Mounted Police, on behalf of the Nation and its Members, in addition to the Attorney General of Canada exhibiting an information in the Federal Court claiming, on behalf of The Key First Nation, a permanent injunction prohibiting Chief Clinton Key from trespassing at the Administration office of The Key First Nation, pursuant to Sections 30 and 31 of the *Indian Act*, respectively.

2025 FC 1329 (CanLII)

[25] On May 31, 2024, the Subgroup passed BCR # 052, wherein it rescinded BCR # 284 dated March 6, 2024. No other BCRs passed by the Subgroup that purport to place Chief Key's duties into abeyance or to prohibit him from attending the Key Nation administration offices were rescinded.

C. *Notice of Subgroup and Key Nation Council meetings*

[26] The record indicates that Chief Key started to receive notice of meetings of the Subgroup in spring of 2024, shortly following the *Brass Election Appeal* and *Brass Representation* decisions.

[27] Chief Key attempted to call special meetings of the Key Nation Council on June 4, August 16, and August 30, 2024, two of which were intended to address governance issues and mediation. Only Councillor Reece attended these meetings; therefore, the meetings were cancelled as the requisite quorum was not achieved.

[28] On September 7, 2024, legal counsel for the Subgroup emailed a notice of a meeting being held on September 11 to discuss the Key Nation's land claims and a document entitled "Council Accountability and Procedure By-law."

2025 FC 1329 (CanLII)

[29] On September 15, 2024, legal counsel for the Subgroup emailed a notice of a subsequent meeting for September 17 to discuss the second draft of the proposed "Council Meeting Procedures By-law."

[30] On September 25, 2024, legal counsel for the Subgroup emailed a notice of a meeting for October 1 to discuss the "final draft" of the "The Key First Nation – Council Accountability and Procedures By-law". The By-Law was passed by the Subgroup in BCR # 086, dated October 1, 2024 [Procedures By-Law]. Chief Key appears to have received all notices sent from legal counsel for the Subgroup, and the record shows he attended the meeting on September 17, 2024.

D. *The BCRs at issue in the Application*

[31] The Applicant requested that the Court quash 79 BCRs that were passed by the Subgroup between August 2023 and December 2024. The BCRs covered a range of issues. To better assess the earlier motion for injunctive relief, I clustered the impugned BCRs into seven groups: 1) Chief Key and Authority of the Key Nation Council; (2) the Procedures By-Law; (3) Legal Representation; (4) Key Nation Lands and Other Transactions; (5) Post-Secondary Education Funding and Allocation of Housing Units; (6) Key Nation Membership; and (7) Other Miscellaneous Business.

2025 FC 1329 (CanLII)

Group 1: Chief Key and Authority of the Key Nation Council

Date	BCR #	Subject
2023-08-02	183	Chief Key's duties as Chief are held in abeyance with pay; Chief Key does not have signing authority on any Key Nation accounts; Chief Key will no longer represent Key Nation on any boards; and travel budget restrictions, until decision in Brass Election Appeal and/or completion of RCMP investigation
2023-08-15	189	Chief Key removed as primary signatory on band accounts
2023-08-15	190	Chief Key's duties as Chief of the Key Nation are held in abeyance with pay; Chief Key does not have signing authority on any Key Nation accounts; and Chief Key will no longer represent Key Nation on any boards, until decision in Brass Election Appeal and/or completion of RCMP investigation
2023-09-07	196	Authorization – Sasktel, Complete Tech; only K. Keshane and M. Brass are signing authorities
2023-09-14	201	Signing authority on all Affinity Credit Union accounts for Key Nation to primary S. Keshane and K. Keshane and secondary D. Cote and F. O'Soup
2023-09-14	202	Signing authority on all RBC accounts for Key Nation to primary S. Keshane and K. Keshane and secondary D. Cote and F. O'Soup
2023-09014	204	Removing Chief Key as a representative of the Key Nation until all legal matters resolved. Appointment of S. Keshane as representative on Painted Hand Community Development Board – all notices be forwarded to him
2023-12-05	231	Chief Key's position held in abeyance until allegations resolved
2024-01-23	240	Appointment of portfolio holders
2024-03-06	284	Requesting the Minister to remove Chief Key for contravention of s.16(f) of the FNEA

2024-03-12	289	M. Brass and K. Keshane have sole access to the Sage 300 Accounting System
2024-04-02	004	Requesting the Minister to remove Chief Key for contravention of s.16(f) of the FNEA
2024-04-02	005	Councillor F. O'Soup will be the Key Nation representative in band business and meetings until a by-election is held for the position of Chief
2024-04-23	041	Removal of Chief Key and appointment of S. Keshane as portfolio holder and D. Cote as alternate portfolio holder for Painted Hand Casino Holdings Limited Partnership
2024-04-23	042	Removal of Chief Key and appointing new portfolio holders and alternates
2024-05-07	046	Removing Chief Key as representative Chief at meetings and appointment of F. O'Soup as Lead Councillor and representative where a Chief of Key Nation is requested
2024-08-19	076	Request that all information re: services provided by FSIN be sent directly to elected councillors of Key Nation
2024-10-21	104	Omnibus Ratification and confirmation BCR 2023/24
2024-10-21	105	Yorkton Tribal Council voting delegates for Key Nation – excluding Chief Key
2024-13-03	127	M. Brass and K. Keshane only authorized representatives re: Complete Tech Services agreement

Group 2: the Procedures By-law

Date	BCR #	Subject
2024-09-17	079	Adoption of Key Nation Procedures By-Law – effective September 17, 2024
2024-10-01	086	Adoption of Key Nation Procedures By-Law – effective October 1, 2024

2025 FC 1329 (CanLII)

Group 3: Legal Representation

Date	BCR #	Subject
2023-08-22	190A	Bailey Wadden & Duffy LLP ("BWD LLP") and Alberta Counsel retained re: land claims against Canada
2023-08-22	190B	Councillors K. Keshane and S. Keshane signatory authority for payment of legal expenses for work undertaken by BWD LLP and Alberta Counsel re: land claims against Canada
2023-09-07	197	Retaining BWD LLP as general counsel for Key Nation
2023-11-16	229	Terminating Alberta Counsel re: c-92 work and retaining JFK LLP as general counsel for Key Nation
2023-11-24	230A	Termination of contingency fee agreement with Alberta Counsel and BWD LLP re: land claims; retaining BWD LLP for land claims
2023-11-24	230B	Transfer of funds to BWD LLP for administration of financial obligations of Key Nation re: negotiation of land claims
2024-03-06	285	Legal representation from I. Bailey for the Key Nation Specific Claims
2024-03-06	286	Terminating legal services of E. Picard
2024-03-06	287	Retaining legal services of D. Kasokeo
2024-04-02	001	Retaining BWD LLP for development of a Custom Election Code and policy
2024-04-02	002	Alberta Counsel to cease all work and retain BWD LLP re: Maurice Law retainer review and taxation files
2024-04-02	003	Reconfirming BWD LLP retainer re: land claim negotiations, Agricultural Benefits Claims and 1909 Unlawful Surrender Claim – negotiation team to include elected councillors of Key Nation
2024-05-06	043	Retaining D. Kasokeo for representation on Papequash matter
2024-05-21	051	Terminating Alberta Counsel E. Picard; banishment of E. Picard from Key Nation buildings and reserve; Brass and Papequash files to be returned to D. Kasokeo
2024-06-07	066	D. Kasokeo retainer

2025 FC 1329 (CanLII)

2024-06-18	067	BWD LLP – Agricultural and land claims
2024-06-18	068	Alberta Counsel cease and desist
2024-06-18	069	BWD LLP – general counsel
2024-09-17	082	Law Society Complaint re: Alberta Counsel
2024-11-19	111	Retainer of DD West LLP re: recovery of files from Alberta Counsel
2024-11-19	112	Retainer of A. Hnatyshyn
2024-12-03	126A	Hnatyshyn Retainer

2025 FC 1329 (CanLII)

Group 4: Key Nation Lands and Other Transactions

Date	BCR #	Subject
2023-09-07	200	Rental Agreement with WAMCO
2023-11-06	226	Key Junction Gas Bar and Convenience Centre approval
2024-07-02	070	WAMCO 5-year permit
2024-12-17	127A	WAMCO Land Lease

Group 5: Post-Secondary Education Funding and Allocation of Housing Units

Date	BCR #	Subject
2023-08-15	186	Post-secondary education funding for Fall 2023 semester – Chief Key objected to funding for 4 students
2023-10-23	218	Allocation of housing unit 1702 to Chief Key
2023-11-14	227VV	Post-secondary education funding Winter 2024 semester – BCR appears to have excluded a student and corrected in BCR 227WW dated 2023-11-14
2023-11-14	227WW	Post-secondary education funding Winter 2024 semester – Chief Key objects to funding for 4 students

2024-04-09	006	Post-secondary education Spring/Summer 2024 – Chief Key objects to funding for 2 students
2024-06-04	058	Allocation of housing unit 1701 to S. Keshane
2024-07-23	071	Allocation of housing unit 1505
2024-08-19	075	Post-secondary education funding for 2024 Fall Semester – Chief Key objects to funding for 1 student
2024-12-03	119	Allocation of housing unit 1803
2024-12-03	123	Allocation of housing unit 1706
2024-11-19	107	Post-secondary education funding Winter 2025 semester – Chief Key objects to funding for 1 student

2025 FC 1329 (CanLII)

Group 6: Key Nation Membership

Date	BCR #	Subject
2023-11-14	227TT	Approval of transfer of membership to Key Nation
2024-04-23	010	Acceptance of new member to Key Nation
2024-04-23	011	Acceptance of new member to Key Nation
2024-04-23	012	Acceptance of new member to Key Nation
2024-04-23	014	Acceptance of new member to Key Nation
2024-04-23	015	Acceptance of new member to Key Nation
2024-04-23	018	Acceptance of new member to Key Nation
2024-04-23	019	Acceptance of new member to Key Nation
2024-04-23	020	Acceptance of new member to Key Nation
2024-04-23	021	Acceptance of new member to Key Nation
2024-04-23	024	Acceptance of new member to Key Nation
2024-04-23	025	Acceptance of new member to Key Nation
2024-04-23	026	Acceptance of new member to Key Nation

2024-10-01	089	Acceptance of new member to Key Nation
2024-10-01	090	Acceptance of new member to Key Nation
2024-10-01	091	Acceptance of new member to Key Nation
2024-10-01	100	Acceptance of new member to Key Nation

Group 7: Other Miscellaneous Business

Date	BCR #	Subject
2024-11-19	110	Purchase of deep freeze for Chief Key residence
2023-11-14	227B	Christmas Hamper Payout to approved band members – BCR contains an error that was corrected in BCR 228 dated 2023-11-15

III. Issues and Standard of Review

[32] The applicable standard of review in this application is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[33] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[34] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

2025 FC 1329 (CanLII)

[35] The standard of review applicable to determining if a decision maker complied with the duty of procedural fairness is generally described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question is: did the Applicant know the case to be met, and did the Applicant have a full and fair opportunity to make submissions?

[36] The issues to be determined in this application are:

1. Do the Council Regulations govern meetings of the Key Nation Council?
2. Did the Respondents have authorization to pass BCRs on behalf of the Key Nation Council?
3. Is the Procedures By-law, dated October 1, 2024 valid? and
4. Costs and compensation.

[37] In addition to the main issues set out in the consolidated application, there are two preliminary issues raised by the Respondents that must also be addressed:

1. Is the application fundamentally flawed because it violates subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-87 [*FC Act*], and Rule 302, in that the Applicant seeks to nullify approximately 79 BCRs?
2. Should this Court exercise its discretion to permit the Respondents Rule 312 motion to admit new evidence?

2025 FC 1329 (CanLII)

IV. Analysis

A. *Preliminary Issues*

[38] As noted above, the Applicant seeks to have 79 BCRs that were passed by the Respondents between August 2023 and December 2024 quashed and declared invalid.

[39] The Respondents argued that the application was procedurally flawed and a clear violation of subsection 18.1(2) of the *FC Act*, in that many of the impugned BCRs related to decisions that were made more than 30 days before the second application was filed in October 2024. Further, the Respondents argued that the application is a clear violation of Rule 302, as the Applicant is seeking to challenge multiple BCRs in one application.

(1) Procedural issues

[40] Subsection 18.1(2) of the *FC Act* establishes a time limitation of 30 days to make an application for judicial review in respect of a decision or an order of a federal administrative tribunal, board, or commission.

[41] As explained in the Injunction, an order granting an extension of time is discretionary. To be granted an extension of time, an applicant must demonstrate: a continuing intention to pursue the application; that the application has some merit; that no prejudice to the respondent arises from the delay; and that a reasonable explanation for the delay exists (*Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA), 167 FTR 158 [*Hennelly*] at para 3; *Tourangeau v Smith's Landing First Nation*, 2020 FC 184 at para 40).

2025 FC 1329 (CanLII)

2025 FC 1329 (CanLII)

[42] The Federal Court of Appeal has clarified that it is not always necessary to satisfy all four factors (*Whitefish Lake First Nation v Grey*, 2019 FCA 275 at para 3). As noted recently by Madam Justice Pallotta in *Whitelaw v Canada (Attorney General)*, 2023 FC 1410, "[t]he overriding consideration is whether it is in the interests of justice that the extension of time be granted" (at para 50).

[43] In the Injunction, I found that the Applicant did not know the full extent of the Respondents/Subgroup's actions, as he only received copies of the BCRs passed by the Subgroup in October 2024 and received a further batch of BCRs on March 4 and 5, 2025 (at para 101).

[44] The record indicates that Chief Key made some attempts to obtain copies of all BCRs passed by the Respondents in July and September 2024. There is no evidence that Chief Key took additional steps, apart from requiring such disclosure in the context of the consolidated applications on August 26, 2024, and October 31, 2024, respectively.

[45] There is no dispute that some of the challenged BCRs predate the August 26, 2024, notice of application by more than 30 days.

[46] Rule 302 of the Rules provides that, "[u]nless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought. Rule 302 does not apply when an application concerns a continuous course of conduct" (*Canadian Coalition for Firearm Rights v Canada (Attorney General)*, 2021 FC 447 [*Canadian Firearm Rights*] at paras 18–19).

[47] In *Canadian Firearm Rights*, Associate Chief Justice Gagné (as she then was) noted that the circumstances that warrant the Court to make a Rule 302 exception are where "the decisions concern the same parties and arise from the same facts and decision maker" (at para 21, citing *Lessard-Gauvin v Canada (Attorney General)*, 2016 FC 227 [*Lessard*] at para 6).

2025 FC 1329 (CanLII)

[48] A review of this Court's jurisprudence highlights that a course of conduct "includes a general decision, the implementation steps, or a combination of the two, where they combine to result in unlawful government action" (*David Suzuki Foundation v Canada (Health)*, 2018 FC 380 [*Suzuki*] at para 173). A continuing course of conduct is one where "[t]he decisions in question are so closely linked as to be properly considered together" (*Shotclose v Stoney First Nation*, 2011 FC 750 [*Shotclose*] at para 64).

[49] Madam Justice Strickland recently noted in *Claxton v Tsawout First Nation*, 2024 FC 1546 [*Claxton*] at paragraph 62:

> As held in *Suzuki*, referenced by both parties, the factors to be considered in determining whether there is a continuing act or course of conduct include, for the purposes of Rule 302, (a) whether the decisions are closely connected; (b) whether there are similarities or differences in the fact situations, including, the type of relief sought, the legal issues raised, the basis of the decision and decision-making bodies; (c) whether it is difficult to pinpoint a single decision; and (d) based on the similarities and differences, whether separate reviews would be a waste of time and effort (*Mahmood v Canada*, 1998 CanLII 8450 (FC); *Truehope Nutritional Support Ltd v Canada (Attorney General)*, 2004 FC658 at para 6; *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at paras 18–20; *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, 2021 FC 447 at paras 20–21).

[50] Finally, I note Justice Rennie's findings in *Key First Nation v Lavallee*, 2021 FCA 123, where he underscored the importance of that Band councils operate in a manner consistent with the rule of law:

> [64] The over-arching purpose of judicial review is to ensure that the governance and administration of public authorities is conducted in a manner consistent with the law, including, in this case, the *Indian Act* and any applicable by-law of the band. The focus of judicial review is to quash decisions that were not made in accordance with legal requirements or to prohibit, pre-emptively, such decisions from being made. The *Federal Courts Act* is designed to enhance accountability and to promote access to justice, and it should be interpreted in such a way as to promote those objectives (*Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585 at paras. 26, 32).
>
> [65] Judicial review serves a critical role in ensuring that the rule of law is respected. Here, that requires recognition of the judgment of the Federal Court. … Band councils must operate according to the rule of law and are subject to judicial supervision when they do not. As Rothstein J. said in *Long Lake Cree Nation v. Canada (Minister of Indian and Northern Affairs)*, [1995] F.C.J. No. 1020, 1995 CarswellNat 3203 at paragraph 31:
>
>> On occasion, conflicts can become personal between individuals or groups on Council. But Councils must operate according to the rule of law whether that be the written law, custom law, the Indian Act or whatever other law may be applicable. Members of Council and/or members of the Band cannot take the law into their own hands. Otherwise, there is anarchy. The people entrust the Councillors to make decisions on their behalf and Councillors must carry out their responsibilities in a way that has regard for the people whose interest they have been elected to protect and represent. The fundamental point is that Councils must operate according to the rule of law.
>
> [66] Applying these principles in the context of this case, the role of the Court is to ensure respect for the Federal Court decision… and to ensure compliance with the provisions of the *First Nations Elections Act*. These ought to have been paramount considerations in the exercise of discretion whether the Court ought to hear this matter. Nor should it be forgotten that the band council is under an

2025 FC 1329 (CanLII)

> obligation, sometimes characterized as being fiduciary in nature, in dealing with band funds and the band membership (*Buffalo v. Canada (Minister of Indian Affairs and Northern Development)*, 2002 FCT 1299, 226 F.T.R. 65 at para. 11; *Cottrell v. Chippewas of Rama Mnjikaning First Nation*, 2009 FC 261, 342 F.T.R. 295 at paras. 49, 75). Quite apart from the sums of money involved, which were significant, the judicial review application raised questions of transparency and lawful governance. These considerations were not taken into account in the exercise of discretion.
>
> [Emphasis added].

2025 FC 1329 (CanLII)

[51] As will be set out in further detail below, the record demonstrates that the Respondents engaged in an ongoing and deliberate course of action wherein they took steps to act in the place of the Key Nation Council. Not withstanding the order of Justice Roy in *Brass Representation*, wherein he questioned the authority of the Respondents to act as a subgroup in place of the Key Nation Council, the Respondents continued to act by meeting and purporting to pass BCRs on behalf of the Key Nation Council.

[52] The Applicant argued that the BCRs are all decisions that arise from the same decision maker, the Respondents/Subgroup. He argued that the decisions purported to relate to the business of the Key Nation Council and are all actions that were invalid following this Court's decision in *Brass Representation*. Further, considering the fractured history of the relationship between the Applicant and the Respondents, the Applicant argued that he was not fully aware of all BCRs as he was unable to obtain copies of the BCRs, and was not provided notice of meetings or decisions.

[53] As noted earlier, the Applicant did not receive all BCRs that he is now challenging until the Respondents provided disclosure in the context of this application in October 2024 and March 2025.

2025 FC 1329 (CanLII)

[54] The Applicant has satisfied the *Suzuki* factors to establish a continuing course of action, such that Rule 302 does not prohibit the Court's consideration of all BCRs being challenged. The BCRs are easily identified, as each decision is numbered and dated, such that there is no prejudice to the Respondents to know the BCRs that are being challenged. I am of the view that there is a sufficient nexus between the decisions to properly consider all challenged BCRs in a single application. A review of the record illustrates that the BCRs are all grounded in the same factual background, such that separate reviews of each BCR being challenged would be waste of time and resources.

[55] As the Applicant has satisfied the *Suzuki* considerations and illustrated that all the BCRs are linked to a continuing course of conduct, in my view, this addresses the Respondents' procedural concerns regarding the timing of the application (*FC Act*, ss 18.1(2)). In any event, I am satisfied that the Applicant has demonstrated a continuing intention to pursue the applications to challenge the BCRs, that there is no prejudice to the Respondents because of the delay and that it is in the interests of justice that an extension of time be granted, to the extent required.

(2) Rule 312 Motion to admit new evidence

[56] On May 15, 2025, the Respondents brought a motion to be considered by the Court in the context of the consolidated application heard on May 27, 2025. They sought the admission of an additional affidavit of Yolanda Woods, Legal Assistant, that included the following exhibits:

- A proposed agenda for a meeting of the Key Nation Council to be held on May 6, 2025;
- An email dated May 5, 2025, that set out the agenda and details for the May 6, 2025 meeting;
- An email dated May 7, 2025, that set out minutes from the May 6, 2025 meeting; and
- An additional email dated May 8, 2024, that contained minutes and BCRs from the May 6, 2025 meeting.

[57] Included in the Respondents Rule 312 materials is BCR # 006 dated May 6, 2025, which purports to rescind the Group 1 BCRs, as defined in the Injunction order, on the basis that they had been previously rescinded, or had been otherwise spent or exhausted. In addition, BCR # 006 purported to make changes to the Procedures By-law:

> **AND WHEREAS**: In the Court Decision, Justice Blackhawk stayed the operation of the Group 1 BCRs, as that term is defined in the Court Decision. For Greater Certainty, the group 1 BCRs include BCR #183, BCR #189, BCR #190, BCR #196, BCR #201, BCR #202, BCR #204, BCR #231, BCR #240, BCR #284, BCR #289, BCR #004, BCR #005, BCR #041, BCR #042, BCR #046, BCR #076, BCR #104, BCR #105, BCR #127 (the "**Group 1 BCRs**").
>
> **AND WHEREAS**: Many of the Group 1 BCRs had already either been rescinded or were otherwise spent/exhausted. In light of the

2025 FC 1329 (CanLII)

> Court Decision, and in light of the circumstances of the Group 1 BCRs and the Nation's non-reliance on these BCRs, the Nation has determined that it is in the best interests of the Nation to rescind all of the Group 1 BCRs.
>
> **THEREFORE, BE IT RESOLVED THAT**:
>
> 1. All Group 1 BCRs are hereby rescinded and repealed.
> 2. The Group 1 BCRs shall no longer have any legal force or effect and shall not be relied upon.
> 3. For greater certainty, Chief Key's position is not in abeyance, he has not been removed as Chief, and he enjoys full privileges related to the office of Chief of the Key First Nation.

2025 FC 1329 (CanLII)

[58] The Respondents argued that if the Court exercises its discretion and permits the fresh evidence, the validity of the Group 1 BCRs (related to the authority of Chief Key) are now moot.

[59] The Applicant objected to the Respondents' motion and argued that this was an attempt to circumvent the application; was irrelevant to the application—the authority of the Respondents' and the validity of the BCRs purportedly passed by the Respondents—; does not determine the validity of the Procedures By-law; and that the evidence goes beyond the personal knowledge of the affiant.

[60] The test for the admission of new evidence requires that the evidence is relevant to an issue before the reviewing court, and that the evidence is admissible on an application (*Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at para 4), which is generally restricted to material before the original decision maker subject to the exceptions set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licencing Agency (Access Copyright)*, 2012 FCA 22).

[61] As noted by the Applicant, the overriding consideration for this Court in exercising its discretion is will the interest of justice be served by permitting the Respondents' motion?

[62] The Applicant argued that the motion violates the rule against case-splitting. The Applicant acknowledge that the evidence set out in the motion came into existence following the filling of the initial affidavits in support of the application. However, the Applicant argued that the Respondents are attempting to circumvent the Court's process and authority. Further, the Applicant argued that the new evidence set out in the motion is prejudicial.

[63] The Respondents' Rule 312 motion clearly violates the rules against case-splitting. Generally, the rule against case-splitting "applies to promote the goals of trial fairness and efficiency, by ensuring that the responding party knows the case it has to meet and avoids an endless alternation between the parties in adducing evidence" (*Merck Sharpe & Dohme Corp v Pharmascience Inc*, 2021 FC 1456 at para 4). This Court cannot allow case-splitting that seeks "to bolster a party's evidence in chief or merely rebut an opposing party's evidence" (*Janssen Inc v Teva Canada Limited*, 2019 FC 1309 at para 57).

[64] The evidence the Respondents seek to introduce would permit the Respondents to "introduce precisely the prejudice and inefficiency that the prohibition against case-splitting aims to prevent" (*Pharmascience Inc v Janssen Inc*, 2025 FC 669 at para 22).

[65] Further, I do not agree with the Respondents that BCR # 006 illustrates that the Applicant's arguments concerning the Group 1 BCRs are moot. While the BCR may be some evidence that as of May 6, 2025, the Respondents are no longer acting in a manner that has

2025 FC 1329 (CanLII)

placed Chief Key's authority into abeyance, there is absolutely no evidence to illustrate that the Group 1 BCRs had otherwise been rescinded, spent or exhausted. A review of the Group 1 BCRs confirms that while certain BCRs purporting to place Chief Key's authority into abeyance were time limited (BCRs # 183, # 190 and # 005), the remaining BCRs in Group 1 had no limitations or indicators that they had been otherwise spent or exhausted. Further, there was no evidence that the Respondents did not rely on these BCRs; as noted above, the evidence supports the conclusion that the Respondents were of the view that the BCRs were valid, and they acted accordingly.

[66] Therefore, I am dismissing the Respondents' motion pursuant to Rule 312, with costs to the Applicant.

[67] I will conclude this section by adding that the evidence that the Respondents attempted to advance was not determinative of the issues that are before me in the context of the consolidated applications. While BCR # 006 attempts to illustrate that the Group 1 BCRs have been rescinded and certain amendments were made to the Procedures By-law, this misconstrues the issues that the Court has been asked to address in these applications, which fundamentally requires the Court to determine the authority of the Respondents to hold and conduct meetings, and pass BCRs on behalf of the Key Nation Council.

2025 FC 1329 (CanLII)

B. *Main issues*

(1) Application of the *Indian Band Council Regulations*

[68] The Applicant argued that the Key Nation must follow the *Indian Act* and the *Council Regulations* in is governance processes. Failure to follow these applicable rules renders the alleged business of the Key Nation *ultra vires*.

[69] In support of this position, the Applicant relied on *Balfour v Norway House Cree Nation*, 2006 FC 213 [*Balfour*], where Justice Blais noted that the source and extent of a band councils' power is outlined in the *Indian Act*, and that as autonomous elected bodies, a band council is free to make decisions falling within the scope of its powers, "provided that the decisions are informed and reached by a majority vote at duly convened meetings" (at para 13).

[70] Conversely, the Respondents did not clearly specify which band council meeting rules they relied on, nor did they provide evidence of a band council meeting practice or procedure that was accepted by the Key Nation.

(a) *Statutory provisions*

[71] The relevant statutory provisions I have considered in my determination of this issue are:

a) *Indian Act*:

Elected Councils	**Conseils élus**
74(1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order	74(1) Lorsqu'il le juge utile à la bonne administration d'une bande, le ministre peut déclarer par arrêté qu'à

2025 FC 1329 (CanLII)

that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.	compter d'un jour qu'il désigne le conseil d'une bande, comprenant un chef et des conseillers, sera constitué au moyen d'élections tenues selon la présente loi.
…	[…]
Regulations respecting band and council meetings	**Règlements sur les assemblées de la bande et du conseil**
80. The Governor in Council may make regulations with respect to band meetings and council meetings and, without restricting the generality of the foregoing, make regulations with respect to:	80 Le gouverneur en conseil peut prendre des règlements sur les assemblées de la bande et du conseil et, notamment, des règlements concernant :
(a) presiding officers at such meetings;	a) les présidents de ces assemblées;
(b) notice of such meetings;	b) les avis de ces assemblées;
(c) the duties of any representative of the Minister at such meetings; and	c) les fonctions de tout représentant du ministre à ces assemblées;
(d) the number of persons required at such meetings to constitute a quorum.	d) le nombre de personnes requis à ces assemblées pour constituer un quorum.

b) Council Regulations

Meetings of the Council	**Assemblées du conseil**
3(1) The first meeting of the council shall be held not later than one month after its election, on a day, hour and place to be stated in a notice given to each member of the	3(1) La première assemblée du conseil se tiendra dans un délai d'un mois au plus tard après l'élection, au jour, à l'heure et à l'endroit qui seront indiqués à l'avis

2025 FC 1329 (CanLII)

council, and meetings shall thereafter be held on such days and at such times as may be necessary for the business of the council or the affairs of the band.

communiqué à chacun des membres du conseil, et les assemblées subséquentes se tiendront au jour et à l’heure déterminés, selon ce que requièrent les affaires du conseil ou les intérêts de la bande.

(2) No member of council may be absent from meetings of the council for three consecutive meetings without being authorized to do so by the chief of the band or superintendent, with the consent of the majority of the councillors of the band.

(2) Aucun membre d’un conseil ne peut être absent à trois assemblées consécutives du conseil sans en obtenir l’autorisation du chef de la bande ou du surintendant, moyennant le consentement de la majorité des conseillers de la bande.

4 The chief of the band or superintendent may, at any time, summon a special meeting of the council, and shall summon a special meeting when requested to do so by a majority of the members of the council.

4 Le chef de la bande ou le surintendant peut en tout temps convoquer une assemblée extraordinaire du conseil et doit convoquer une telle assemblée s’il en est requis par la majorité des membres du conseil.

5 The superintendent shall notify each member of the council of the day, hour and place of the meeting.

5 Le surintendant doit notifier à chaque membre du conseil le jour, l’heure et l’endroit de l’assemblée.

Order and Proceedings

Conduite des délibérations

6. A majority of the whole council shall constitute a quorum, but where a council consists of nine or more members five members shall constitute a quorum.

6 Une majorité du conseil en son entier constitue quorum, mais lorsque le conseil est de neuf membres ou plus, cinq membres forment quorum.

…

[…]

31 The council may make such rules of procedure as are not inconsistent with these

31 Le conseil peut, s’il l’estime nécessaire, établir tout règlement interne, qui ne

2025 FC 1329 (CanLII)

Regulations in respect of matters not specifically provided for thereby, as it may deem necessary.	soit pas en contradiction au présent règlement, en ce qui concerne des points qui n'y sont pas spécifiquement prévus.
…	[…]

2025 FC 1329 (CanLII)

c) FNEA

[72] The *FNEA* and *First Nations Elections Regulations*, SOR/2015-86 [*FNER*], apply to First Nations who have applied for an order to be added to the schedule of participating First Nations (*FNEA*, s 3). Together, the *FNEA* and *FNER* set out applicable rules for the orderly conduct of band council elections for participating First Nations. The *FNEA* and *FNER* do not set out applicable rules for the conduct of band council meetings following an election. The preambular provision of the *FNEA* states: "An Act respecting the election and term of office of chiefs and councillors of certain First Nations and the composition of the council of those First Nations".

[73] In other words, participating *FNEA* First Nations have chosen to select their leadership through a process distinct from the election process articulated in the *Indian Act*. However, *FNEA* First Nations continue to be subject to the *Indian Act* with respect to matters not related to elections and the selection of leadership. For example, provisions related to the management of reserve land would continue to apply.

[74] As stated previously, the Key Nation became a participating *FNEA* First Nation on March 29, 2016. Accordingly, the Key Nation's elections are not governed by the *Indian Act*, rather they have opted to conduct elections in a manner consistent with the *FNEA*.

[75] The fact that a First Nation has chosen to opt out of the *Indian Act* for the purposes of the conduct of its elections does not determine the application of the *Council Regulations*.

(b) *Evidence of predecessor Key Nation Council practices*

2025 FC 1329 (CanLII)

[76] A review of the record supports the Applicant's position that the Key Nation had not adopted its own band council meeting procedures (*Council Regulations*, s 31), and that the Key Nation had followed, albeit by times loosely, the *Council Regulations*.

[77] The record indicates that the predecessor Key Nation Council (2018 – 2022) followed practices that mirror those set out in the *Council Regulations*. For example, BCR # 168 dated July 3, 2018, states [Papequash BCR]:

> **WHEREAS** Indigenous Services Canada requires a Band Council Resolution signed by the newly elected Chief and Council within the first 30 days in offices advising them as to when the regular Chief and Council meetings will be held
>
> **THEREFORE LET IT BE RESOLVED** The Chief and Council have decided that their duly convened regular Chief and Council meetings will be held the 1st and the 2nd last Tuesday of every month

[78] Subsection 3(1) of the *Council Regulations* requires that the first meeting of a band council shall be held no later than one month following the election. Further, subsection 3(1) requires the council to set the day(s) and time(s) for council meetings.

[79] In the cross-examination of his affidavit evidence, Respondent Councillor Cote confirmed that the predecessor Key Nation Councils followed the *Council Regulations* to govern the conduct of meetings from 2006 to 2016.

[80] In a letter dated October 20, 2021 to Chief and Council of the Key Nation from Marsha Hordos, Manager, Individual Services and Governance South, Indigenous Services Canada states:

> The Key First Nation holds elections pursuant to the *First Nations Elections Act (FNEA)*, which provides the First Nation the ability to adopt your own meeting procedures if you wish or to use the *Indian Band Council Procedures Regulations*, like many First Nations choose.
>
> If you choose the *Indian Band Council Procedures Regulations*, Section 6 of the *Indian Band Council Procedures Regulations* states the following regarding quorum:
>
> "**A majority of the whole council shall constitute a quorum**"
>
> As the Council of The Key First Nation currently consists of the Chief and 5 Councilors [*sic*], Quorum is set at four (4).
>
> …
>
> If The Key uses its own meeting procedures to determine quorum, please let Indigenous Services Canada know so we may update your profile.

(c) *Evidence of the Key Nation Council members*

[81] I note that the affidavits of the Respondent Councillors Cote, O'Soup and K. Keshane, former Chief Papequash and former Councillor Gareau deny that the Key Nation Council followed the *Council Regulations* concerning the conduct of their meetings. However, the documentary evidence and the evidence from the cross-examinations contradict their affidavit evidence.

[82] In addition to the contradictory evidence on this point, I cannot assign substantial weight to the affidavit evidence from Councillors Cote, O'Soup and K. Keshane. All three affidavits use

2025 FC 1329 (CanLII)

the exact same language when discussing material elements of the alleged practices of the Key Nation Council for the conduct of meetings (*Labelle v Chiniki First Nation*, 2022 FC 456 [*Labelle*] at para 77). Specifically, the affidavits contain the same wording with respect to the following facts:

- that the Respondents do not operate as a subgroup;
- that the Key Nation does not operate meetings pursuant to the *Indian Act* or the *Council Regulations*;
- that the Superintendent of ISC has never called or chaired a meeting of the Key Nation;
- that they have regularly scheduled meetings, that they were advised by ISC they are self-governing, and that ISC does not impose rules or procedures for meetings on them;
- that the BCR binder is available at the Director of Operations Office for all members to review; and
- that the Key Nation has now adopted regulations to govern their meetings, and this was done at a duly convened meeting which included Chief Key and Councillor Reece.

[83] All three affidavits were sworn on October 21, 2024 and taken in the presence of Dustin Dayan Brass, Commissioner of Oaths in and for Saskatchewan. With respect, the degree of repetition in the three affidavits calls into question their veracity. I appreciate that it is common

2025 FC 1329 (CanLII)

practice for counsel to draft affidavits, putting the deponent's words and evidence onto paper. To be clear, there is nothing improper in an affidavit that is drafted by counsel; however, counsel must ensure that the evidence is that of the affiant and that the affidavit reflects their words (see *Fabrikant v Canada*, 2012 FC 1496 at para 6).

2025 FC 1329 (CanLII)

[84] The Applicant raised a concern regarding the identical wording that is reflected in each of the affidavits. The Applicant has not gone so far as to suggest that the affidavits are anything but the evidence of each of the individual affiants. Rather, the Applicant argued that the wording is a matter that should be considered with respect to the weight of the affidavits (*Labelle* at para 77). I agree.

[85] Following the June 2022 Election, Chief Key held a meeting of the new Key Nation Council on June 16, 2022 in accordance with subsection 3(1) of the *Council Regulations*. At this meeting, the signing authority for the Key Nation bank accounts was determined.

[86] Chief Key scheduled another meeting for June 27, 2022 with the following set out at item 5 on the agenda:

> 5. Meetings of Band Council
> a. Regularly scheduled meetings – date, time and location
> b. Special meetings – when they may be called, by whom, etc.
> c. Agenda preparation – prepared by whom, when distributed,
> amendments, etc.

[87] The record for this application illustrates that the Key Nation Council was not able to establish a schedule for its meetings. There is some evidence to indicate that there was a discussion that the Key Nation Council would continue to follow the *Council Regulations* for the

conduct of its meetings, however it is not clear that this was agreed too, and there is no evidence of any other process that was followed by the Key Nation Council at that time.

[88] The Applicant argued that because the Key Nation Council did not come to an agreement for the scheduling of regular meetings, all meetings the Key Nation Council are "special meetings", pursuant to subsection 4 of the *Council Regulations*:

> The chief of the band or superintendent may, at any time, summon a special meeting of the council, and shall summon a special meeting when requested to do so by a majority of the members of the council.

[89] The Papequash BCR, establishes that the former Key Nation Council approved a regular council meeting schedule for the first and second last Tuesday of every month. This BCR appears to be the last approved council meeting schedule for the Key Nation. However, there is no evidence that this schedule was adopted or agreed to by the current Key Nation Council.

[90] That said, I acknowledge that the evidence from Councillors Cote, O'Soup and K. Keshane seems to suggest that there was an agreement that there would be regular meetings following the same schedule as the previous Key Nation Council. However, there is no supporting BCR or other evidence to establish this.

[91] Former Chief Papequash and Former Chief Cote, now Councillor Cote, also confirmed in cross-examination that each newly elected Key Nation Council would establish a schedule for regular meetings.

2025 FC 1329 (CanLII)

2025 FC 1329 (CanLII)

[92] Finally, I note that subsection 3(1) of the *Council Regulations* indicates that the first meeting of a newly elected band council shall be conducted within one month of its election, and meetings thereafter shall be held on such days and at such times as necessary. In my view, this means that the Key Nation Council was required to formalize a schedule for regular meetings, rather than informally adopting the previous council's schedule.

[93] Furthermore, the record illustrates that the Subgroup often did not have their meetings on a date as set out in the Papequash BCR. I note that the following meetings were not on the first or second last Tuesday of the month: August 15, 2023; September 7, 2023; September 14, 2023; March 6, 2024; March 12, 2024; August 19, 2024; and October 21, 2024.

[94] In the cross-examination of their affidavit evidence, both Councillors Cote and O'Soup agreed that in the first 14 months of the current Key Nation Council's term, the meetings were called and presided over by Chief Key, and that Chief Key only voted on matters where it was necessary to break a tie. This aligned with the evidence of Chief Key and Councillor Reese, who confirmed that there were special meetings of the Key Nation Council between June 2022 and August 2023. This is further evidence to support the Applicant's position that the Key Nation Council followed the *Council Regulations*, as this approach mirrors the processes set out at subsections 3, 4, 8, 9(1), 10, and 18(2) of the *Council Regulations*.

[95] In *Cassidy v Recalma-Clutesi*, 2006 FC 854 [*Cassidy*], Justice Hughes considered the relevant jurisprudence in his determination if a meeting was a special or a regular meeting. He summarized his findings at paragraph 43:

> [43] From all of the decisions set out above, having regard to the *Act* and *Regulations*, it is clear that:
>
> 1. A **special meeting is different from a regular meeting**. There must be some clearly stated purpose for a special meeting.
>
> 2. **The Chief or superintendent when requested by a majority of the Band Council, must call a special meeting**. There is no discretion.
>
> 3. The request made to the Chief or superintendent must be provided upon reasonable notice, it cannot simply be "sprung upon" such person. The notice should provide a reasonable indication as to the purpose of the meeting.
>
> 4. Once reasonable notice is given, the Chief or superintendent cannot refuse to call a special meeting and must not unreasonably delay in doing so.
>
> 5. If the Chief or superintendent refuse or delay unreasonably in calling a special meeting the Councillors cannot take matters into their own hands. Their remedy lies in a *mandamus* application in an appropriate Court.
>
> [Emphasis in original and added].

[96] Turning back to the present Application, the evidence supports the Applicant's assertion that following the meeting on June 27, 2022, wherein the Key Nation Council did not reach an agreement for the scheduling of regular band council meetings, all Key Nation Council meetings were special meetings.

[97] Pursuant to section 4 of the *Council Regulations*, only Chief Key had the authority to summon special meetings.

[98] Not withstanding my finding that the Key Nation Council conducted their meetings following the processes set out in the *Council Regulations*, the record indicates that the

2025 FC 1329 (CanLII)

Respondents were not comfortable with this and were of the view that the Key Nation ought to have its own practices. While I have assigned their affidavits little weight, Councillors Cote, O'Soup and K. Keshane have expressed the view that the Key Nation Council did not follow these practices, and they highlighted that steps that have been taken to develop Key Nation practices.

2025 FC 1329 (CanLII)

[99] It is not clear if the Respondents desire to develop a Key Nation practice for the conduct of meetings was the impetus, what is known is that the Key Nation Council scheduled training with their legal counsel, Alberta Counsel, from February 28 – March 3, 2023. Among the topics covered at the training was the conduct of meetings for the Key Nation Council. A slide from the training materials presented by Alberta Counsel states:

- If the Council hasn't (yet) passed any procedural bylaw, then it is left with just the *Indian Act* and the *Indian Band Council Procedure Regulations* to govern its meeting procedures.
- Meetings of the Council (Section 3-5)
    - First meeting of Council must be held within 1 month of election
    - The Chief may at any time call a special meeting of Council
    - The Chief must call a special meeting when requested to do so by a majority of the Council
    - Regulation is silent on calling general meetings – left to each Nation to decide – what is the procedure in place currently?
- Order and procedure (sections 6 – 31) …
    - Quorum (majority of Council)
    - Voting (51% of Councillors present)
    - Ect.

[100] The record indicates that the Respondents were not happy with the information received from Alberta Counsel at the training session. The training session was cut short, ending sometime on March 1, 2023. The Respondents, Chief Key and Councillor Reese subsequently met with ISC Officials in Fort Qu'Appelle for a second opinion later that same week. During their meetings with ISC Officials, they were advised that the Key Nation Council could continue to follow *Council Regulations* or it could adopt its own meeting procedures rules and bylaw.

2025 FC 1329 (CanLII)

[101] A letter from Alberta Counsel to the Key Nation dated February 28, 2024 regarding the Key Nation Council meeting procedures states:

> With regard to the proper Council meeting procedures for The Key First Nation, you will recall the following from our emails to you dated February 6, 2023 and February 7, 2023:
>
> – to our knowledge, The Key First Nation has not passed any procedural Bylaws regarding Council meetings, which it is empowered to do under s. 31 of the *Indian Band Council Procedure Regulations*;
>
> – where a First Nation has not passed any procedural Bylaws regarding Council meetings, the *Indian Band Council Procedural Regulations* will apply to govern its Council meetings;
>
> – under section 3(1) of the *Indian Band Council Procedure Regulations*, all members of Council are entitled to notice of each Council meeting, including its date, hours and location;
>
> – under section 4 of the *Indian Band Council Procedure Regulations*, all Council meetings must be called by either the Chief or the Superintendent. The Chief or the Superintendent may call a Council meeting at any time, and the Chief or the Superintendent must call a meeting when requested by a majority of the members of Council.
>
> Accordingly, we remind all members of Chief and Council that any meeting of Council which purports to be a meeting of The Key First Nation must comply with the *Indian Band Council Procedure Regulations*.

> We caution all members of Chief and Council against holding any meetings which purport to be meetings of The Key First Nation but which do not accord with the *Indian Band Council Procedure Regulations*, as any attempts to conduct business of The Key First Nation at such meetings will not have any force or effect in law.

2025 FC 1329 (CanLII)

[102] The evidence of Councillor Reese and Chief Key indicates that Councillor Sidney Keshane attempted to call an emergency meeting on August 10, 2022. However, in the Key Nation Council group chat messages, Councillor Reece reminded all members of the Key Nation Council that only the Chief could call meetings pursuant to the *Council Regulations*. Councillor Sidney Keshane appears to have included excerpts of the *Council Regulations* as screenshots into the same group chat (see exhibit J Affidavit of Chief Key, sworn September 27, 2024).

[103] On balance, the evidence illustrates that the Key Nation practice was to follow the *Council Regulations* to govern the conduct of the Key Nation Council meetings. This is illustrated through a clear pattern of reliance on the practices articulated in the legislation.

(d) *Custom*

[104] In the alternative, the Applicant argued that the customs of the Key Nation Council illustrate that the Key Nation adopted the *Council Regulations*.

[105] The Respondents asserted that the Key Nation Council followed their own unique customs and practices to govern meetings. However, they were unable to direct me to clear, unambiguous evidence of Key Nation customs regarding the process for the conduct of meetings that differed from those practices set out in the *Council Regulations*.

[106] As summarized by Justice Grammond in *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at paragraphs 31–41, this Court understands “custom” to mean “the norms that are the result of the exercise of the inherent law-making capacity of a First Nation”. Put differently, customs are “consensual and community-based” laws that are not constrained by ancient practices to permit modern communities to develop laws that balance traditional and modern practices. Where the custom is shown to reflect the broad consensus of a community, this Court has recognized such laws. Consensus of a community can been evidenced through a vote of the members or through evidence of a course of conduct that demonstrates a community’s agreement to a particular rule or law (*Pittman v Ashcroft First Nation*, 2022 FC 1380 at para 118). Further, evidence of a repetitive act over a sustained period may constitute evidence of a custom that has been accepted by the community members (*Labelle* at paras 42-43).

[107] I am not persuaded that the evidence in this application demonstrates that the Key Nation has customarily adopted the *Council Regulations*. While the evidence demonstrates that the current and predecessor Key Nation Councils followed the *Council Regulations*, there was no evidence advanced that supports a finding of broad acceptance of this by the members of the Key Nation.

(e) *Summary - Application of the Indian Band Council Regulations*

[108] To summarize, there is no dispute that the Key Nation conducts their elections for chief and council pursuant to the *FNEA*, as it is a participating First Nation. As well, the evidence demonstrates that all members of the Key Nation Council were aware that the Key Nation had not adopted a process for the conduct of band council meetings, and that the Key Nation Council

2025 FC 1329 (CanLII)

were following the process set out in the *Council Regulations* in the absence of their own process. It is equally clear that the Key Nation Council was advised that the Key Nation was free to adopt its own processes for the conduct of such meetings, however failing to do so, they would be following the processes set out in the *Council Regulations*.

2025 FC 1329 (CanLII)

[109] In view of the foregoing, I find that the Key Nation Council was conducting their meetings in a manner consistent with the *Council Regulations*. There is no evidence of custom or documentation to support the Respondents' assertion that the Key Nation Council was following a process for the conduct of their meetings that differed from those set out in the *Council Regulations*, prior to the June 2022 Election.

C. *Authority of the Respondents to pass BCRs on behalf of the Key Nation*

[110] The Applicant argued that following the relationship breakdown between the Key Nation Council members, the Respondents met and purported to carry out the business of the Key Nation Council as a "Subgroup". The Applicant argued that all BCRs passed by the Respondents/Subgroup are invalid. His position builds off this Court's reasons in *Brass Representation*, where Justice Roy found that pursuant to section 7 of the *FNEA*, the Key Nation Council "is composed of both the councillors, not just some of them, and the Chief" (at para 59).

[111] The Applicant argued that the Respondents were acting as a "quorum of council" or "subgroup" outside the rule of law; *Brass Representation* at paragraphs 60–62. Specifically, the Respondents continued to meet as a group of four (4) to the exclusion of the Applicant and

Councillor Reese, and the Respondents continued to pass BCRs. In other words, the Respondents were purporting to govern in place of the duly elected Key Nation Council.

2025 FC 1329 (CanLII)

[112] In addition, the Applicant argued that the Respondents did not have the requisite authority to call regular or special meetings of the Key Nation Council, pursuant to the *Council Regulations*, therefore any meetings of the Respondents/Subgroup were not duly convened and any BCRs purportedly passed at the meetings are invalid.

[113] The Respondents argued that they are not operating as a subgroup or in any other untoward manner. They argued that they have called duly convened meetings, held votes on various orders of business and all BCRs passed were validly passed by a quorum representing the majority of the Key Nation Council. They argue that the fact that Chief Key and Councillor Reese chose not to participate in duly convened meetings or vote on BCRs does not render them invalid. They argued that they were duly elected councillors of the Key Nation, and they were operating and acting within their capacities as elected members of the Key Nation Council.

(1) Background to the issue

[114] As I explained in the Injunction:

> [52] As stated earlier, Justice Roy found that subsection7(1) of the *FNEA* clearly provides that "the Council is composed of both the councillors, not just some of them, and the Chief. As can be seen, the Council, that is the Chief and the elected councillors, operates largely on the basis of resolution" (*Brass Representation* at para 59; see also, *Knibb Developments Ltd v Siksika First Nation*, 2021 FC 1214 at para 10).
>
> [53] Paragraph 2(3)(b) of the *Indian Act* provides that the "power conferred on the council of a band shall be deemed not to be

> exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened." In other words, "[t]o pass Band Council resolutions, a meeting of the Band Council must be 'duly convened' in accordance with section 2(3) of the *Indian Act*" (*Bigsky v Muskowekwan First Nation*, 2024 FC 1582 (CanLII) [*Bigsky*] at para 38). This requirement is the bare minimum and was previously confirmed by Justice Roy, that "[w]hatever power is to be exercised by Council, that is the Chief and elected councillors according to s 7 of the *FNEA*, a duly convened meeting is required" (*Brass Representation* at para 62).
>
> [54] It is vital that band councils operate "according to the rule of law and to respect the notion of democracy and the duty of procedural fairness" (*Peguis First Nation v Bear*, 2017 FC 179 [*Peguis*] at para 57). This is because "[a] decision that affects the entire Band 'may only be made in the course of a public meeting duly convened with the participation of all the elected members' to ensure an open, democratic discussion: *Vollant v* Sioui, 2006 FC 487 at para 36" (*Bigsky* at para 38). The operation of band councils in accordance with the rule of law has long been emphasized by this Court (see *Peguis* at para 57; *Balfour v Norway House Cree Nation*, 2006 FC 213 at para 12).
>
> [55] The basic requirements for a duly convened meeting of a band council, the Chief and elected councillors pursuant to section 7 of the *FNEA*, have been articulated by this Court: "[t]here must be notice of the meeting to all Councillors and the Chief; the date, place, and time must be set out; and there must be an opportunity to make representations… Additional *indicia* of a duly convened meeting are that it is held on a set day and time, notice is provided to all, and a quorum of Council is present" (*Peguis* at paras 47, 62; *Bigsky* at para 39).

[115] As a participating *FNEA* First Nation, the Key Nation did not pass a formal meeting procedures protocol prior to the June 2022 Election. Accordingly, I have found that the Key Nation conducted band council meetings in accordance with the processes set out in the *Council Regulations*.

2025 FC 1329 (CanLII)

[116] Further and as noted above, the Key Nation Council did not agree to a schedule for regular meetings. Accordingly, because the Key Nation Council conducted their meetings pursuant to the *Council Regulations*, all meetings of the Key Nation Council following the June 2022 election were special meetings. Section 4 of the *Council Regulations* is clear that only the Chief (or superintendent) may call a special meeting.

[117] The record indicates that the Key Nation Council regularly met and conducted business on behalf of the Key Nation through special meetings called by the Chief for approximately 14 months, from June 2022 to August 2023.

[118] It is not clear exactly when or why, but sometime in late July or early August 2023, the relationship between the Applicant and the Respondents deteriorated and the Key Nation Council ceased operating as a cohesive band council. Evidence of this fractured relationship is manifested through multiple BCRs passed by the Respondents that purport to place Chief Key's duties as Chief of the Key Nation into abeyance: For example, BCR # 183 dated August 2, 2023, states:

> **BE IT RESOLVED THAT**:
>
> 1. Clinton Key's duties as Chief of The Key First Nation are hereby held in abeyance with pay until the Federal Court renders its decision and/or the RCMP investigation is complete;
>
> 2. Clinton Key will have opportunity in [sic] August 31, 2023 to explain why this should not happen;
>
> 3. Clinton Key is removed as primary signer or any other authority for The Key Frist Nation band accounts…
>
> **FURTHER BE IT RESOLVED THAT**: That [*sic*] Clinton Key is hereby removed from representing TKFN on any boards including but not limited to all FSIN, ISC, CDC, and YTC and Project Management Teams until such time that the court case is complete.

2025 FC 1329 (CanLII)

[119] The Respondents argued that they met the necessary requirement for quorum at a meeting because they are a “majority of the elected Key Nation Council”, and they were properly acting as the governing body of the Key Nation. They further argued that they did not exclude Chief Key or Councillor Reese from their governance activity.

2025 FC 1329 (CanLII)

[120] To assess the propriety of the Respondents’ actions, it is important to acknowledge and understand the history of litigation involving members of the current Key Nation Council and what this Court has found in respect of certain actions.

[121] In *Brass Representation*, Justice Roy found “[t]here is nothing on this record that could explain the basis on which four councillors can declare that they are now acting on behalf of the [Key Nation]. No indication is given either as to what constitutes a duly convened meeting” (at para 33). Justice Roy went on to find that the Respondents were acting as a subgroup with no apparent legal authority to supplant the full elected Key Nation Council.

> [60] … The question is therefore what is the basis on which Quorum of Council can legitimately operate on behalf of the KFN.
>
> [61] For ease of reference, I reproduce again the description made of what is a “Quorum of Council” in *Balfour*:
>
>> [5] The “quorum of Council” is a sub-group of the Band Council councillors that operates separately from the rest of the Band Council. It does not follow the rules laid out in the guidelines for conducting convened meetings of Council. This sub-group of councillors should not be confused with what constitutes the quorum of the Band councillors at a convened Council meeting that is subject to the guidelines and paragraph 2(3)(b) of the *Indian Act*.
>
> The description is on all fours with the evidence presented in this case. That is clearly what the four Councillors of the KFN are

> when they refer to themselves as "Quorum of Council". They are a sub-group and there is no legal authority that is derived from the mere *ad hoc* creation of that group. I add that there is no evidence, or argument, that has been presented that would give "Quorum of Council" any authority to supplant the Council as defined in the *FNEA*.
>
> [62] But there is more. S 2(3)(b) of the *Indian Act* requires that the "power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened". This constitutes the most basic requirement. Whatever power is to be exercised by Council, that is the Chief and the elected councillors according to s 7 of the *FNEA*, a duly convened meeting is required.
>
> [Emphasis in original].

2025 FC 1329 (CanLII)

[122] Justice Roy found that the Respondents did not present evidence that established that they could substitute themselves as the governing body of Key Nation (*Brass Representation* at paras 44-45, 74).

(2) Factual and legal considerations

[123] In the context of this Application, the Respondents have not presented evidence to establish they had the authority to make decisions and act in the place of the Key Nation Council. The Respondents argued that the Key Nation Council consists of six (6) members, one (1) chief and five (5) councillors; accordingly, therefore, the quorum of the Key Nation Council is four (4). Indeed, BCR # 028 dated June 16, 2022, passed at the first meeting of the current Key Nation Council, clarified that the "band council quorum is restored to four (4)", up from three (3) under previous councils.

[124] Further, Councillors Cote, O'Soup and K. Keshane indicated that they held regular meetings on the first and third Tuesday of each month. The Respondents asserted that as these were regular meetings of the Key Nation Council, further notice of the meetings to the Applicant was not required because this information was known to all Key Nation Council members. However, Councillor K. Keshane acknowledged on cross-examination that Chief Key was not given advance notice of the BCRs which purported to place his authority as Chief into abeyance. Similarly, Councillor O'Soup acknowledged that Chief Key was not given notice of meetings of the Subgroup until after this Court's decision in *Brass Representation*.

[125] In the Injunction, I observed that the Respondents passed multiple BCRs that purport to place Chief Key's authority to act as Chief of the Key Nation in abeyance (see the list of Group 1 BCRs). In addition, BCR # 231 purports to ban Chief Key from the Key Nation administration offices.

[126] There is little evidence to support the Respondents' assertion that they provided notice to the Applicant of their meetings. Rather, the Respondents did not provide notice or opportunities for the Applicant to participate in their meetings, relying on the strength of the BCRs that placed Chief Key's authority into abeyance and that Chief Key was no longer permitted to be at the Key Nation administration offices.

[127] In *Balfour*, Justice Blais observed that even if a majority of councillors passes BCRs complete with minutes of the meeting, this may still be a violation of subsection 2(3) of the *Indian Act* (at para 52). The Court drew an analogy with municipal decisions where there was evidence that the decisions were predetermined and not in the best interests of the residents. The

2025 FC 1329 (CanLII)

Court found that band councillor functions are similar to municipal councillors. In *Balfour*, the parties argued that they could take proper steps to ratify BCRs at a subsequent duly convened meeting, however the Court found that all BCRs must be "debated and passed in accordance with the rules and guidelines of the Band and in accordance with the principles of democracy," (at para 55).

2025 FC 1329 (CanLII)

[128] Justice Blais highlighted the importance of band councils acting in accordance with the rule of law, respecting democratic principles and the duty of procedural fairness. In his review of the jurisprudence on these issues, Justice Blais noted:

> [12] In *Long Lake Cree Nation v. Canada (Minister of Indian and Northern Affairs)*, [1995] F.C.J. No. 1020 (T.D.) (QL), Justice Rothstein, at paragraph 31, emphasized that band councils must operate according to the rule of law:
>
> > On occasion, conflicts can become personal between individuals or groups on Council. But Councils must operate according to the rule of law whether that be the written law, custom law, the *Indian Act* or whatever other law may be applicable. Members of Council and/or members of the Band cannot take the law into their own hands. Otherwise, there is anarchy. The people entrust the Councillors to make decisions on their behalf and Councillors must carry out their responsibilities in a way that has regard for the people whose interest they have been elected to protect and represent. The fundamental point is that Councils must operate according to the rule of law.
>
> [13] In *Assu v. Chickite*, 1998 CanLII 3974 (BCSC), [1999] 1 C.N.L.R. 14, Justice Romilly of the British Columbia Supreme Court, discussed the source and the extent of a band council's power as it is outlined in the law. He said the following, at paragraph 30:
>
> > The Act expressly confers a number of powers on Band Councils. The courts have made it clear that, as an autonomous elected body, a Council is

> entitled to make decisions as it sees fit on the matters falling within the scope of its powers, provided that the decisions are informed and are reached by majority vote at duly convened meetings… It is now generally accepted that a Council holds not only all of these express powers, but also all additional powers necessary to effectively carry out its statutory responsibilities, including the power to bring or defend claims on behalf of the Band… It would therefore appear that the Band is bound by the decisions of its elected Council unless they act in bad faith.
>
> [14] Justice Romilly recognized that band council decisions were binding if derived from powers conferred by the Act, reached by a majority vote at a duly convened meeting and not made in bad faith. Acting in accordance with the rule of law entails the obligation to adhere to the notion of democracy and a commitment to respect the duty of procedural fairness regarding decisions band councillors take in the interest of those they were elected to protect.
>
> [Emphasis added].

2025 FC 1329 (CanLII)

[129] In *Dennis v Community Panel of the Adams Lake Indian Band*, 2010 FC 62 [*Dennis*], Justice Barnes stated that it is well understood at law that “the jurisdiction of a decision-maker is dependent upon the maintenance of proper quorum” (at para 13). Justice Barnes emphasized the principles expressed and summarized in *Parlee v College of Psychologists of New Brunswick*, (2004) NBCA 42 [*Parlee*] at paragraphs 26–32, noting that in essence, quorum is the minimum number of persons required to constitute a valid meeting, in the absence of which no valid business may be transacted (at para 13). The Court noted that a review of the jurisprudence clarifies that courts have consistently insisted on compliance with quorum requirements, which may not be excused or waived by parties (at para 14).

[130] Justice Kane in *Peguis First Nation v Bear*, 2017 FC 179, observed that "[d]emocracy and procedural fairness require more" than pointing to the *Council Regulations*, *Indian Act* and BCRs "without respecting the spirit and intention of the provisions in their entirety" (at para 58).

2025 FC 1329 (CanLII)

[131] In *Vollant v Sioui*, 2006 FC 487, Justice de Montigny (as he then was), underscored the importance of a duly convened meeting where all elected members of council participate in the process (at para 36):

> [36] It seems to me that there are good reasons why decisions that affect the entire band may only be made in the course of a public meeting duly convened with the participation of all the elected members. In a democracy, ideas expressed within the framework of a forum where all viewpoints are welcome provide the best assurance that everyone's rights are respected and that the interests of the community are protected. This objective may be at times set aside in the interest of expeditiousness and efficiency in the business world, but this should never be the case when the welfare of members of a public body is at stake. The risks are too great to allow the slightest deviation from this rule.

[132] In this application, there is no dispute that the Key Nation Council has set the quorum for band council meetings at four (4). There is also no dispute that the Respondents are all duly elected councillors of the Key Nation. However, I am of the view that more is required, otherwise the spirit and intent behind the requirement for quorum is lost.

[133] Quorum in this context requires that all members of the elected council are invited and have an opportunity to meaningfully participate in the meeting.

[134] The record does not clearly demonstrate that the Respondents satisfied all the necessary elements to demonstrate that their meetings were duly convened meetings of the Key Nation Council and that the requirement for quorum has been meaningfully complied with.

2025 FC 1329 (CanLII)

[135] The Respondents have not demonstrated that all members of the Key Nation Council were provided adequate notice of all meetings held where they purported to conduct the business of the Key Nation Council and that all members of the Key Nation Council were afforded an opportunity to meaningfully participate in all meetings. For example, there is no evidence that Chief Key was provided notice of the meetings held by the Subgroup on December 5, 2023, January 23, March 6, March 12, April 2, April 23 or May 7, 2024.

[136] As noted in paragraphs 28–30, counsel for the Respondents provided Chief Key notice of the meetings for September 11, 17 and October 1, 2024. However, the record indicates that the September 11, 2024, meeting to discuss the proposed Key Nation meeting procedures bylaw appears to have been held in Winnipeg, Manitoba rather than at the Key Nation administration office. Further, Councillor Reece stated that at the September 17, 2024 meeting, debate on the proposed bylaw was limited and Councillor's O'Soup and S. Keshane indicated that the bylaw would be passed as written, notwithstanding input from him or Chief Key.

[137] As previously found, in the absence of a schedule for regular meetings of the Key Nation Council, all meetings of the current Key Nation Council were special meetings that could only be called by the Chief. However, the record illustrates that while Chief Key attended some of the meetings, he did not call any of the meetings of the Subgroup (*Council Regulations* s. 4).

[138] In addition, the record indicates that the following meetings were not chaired by Chief Key and/or they were chaired by a person who was not an elected member of the Key Nation Council, contrary to the *Council Regulations* (s. 8, 9): August 15, September 7, September 14, December 5, 2023 and March 6, April 2, April 23, May 7 and August 19, 2024.

2025 FC 1329 (CanLII)

[139] In view of the foregoing, the Respondents have not persuaded me that the meetings they held where they purported to conduct the business of the Key Nation Council satisfied the elements of a duly convened meeting as set out in the applicable *Council Regulations*.

[140] I appreciate that a majority of the Key Nation Council were at these meetings, but there is little to no evidence that all members of the Key Nation Council were provided adequate notice of all meetings held by the Subgroup, or that all members of the Key Nation Council had an opportunity to meaningfully participate in the meetings. In addition, as these meetings were special meetings, only Chief Key had the authority to convene such meetings, pursuant to the *Council Regulations*.

[141] There is no evidence that the Respondents requested that Chief Key convene the special meetings. In any event, even if the Respondents had made such requests and Chief Key had refused to hold meetings, the remedy was not to proceed by taking matters into their own hands. The Respondents' remedy was to seek *mandamus* in the appropriate court (*Cassidy* at para 43).

[142] Finally, I will note that concerns regarding the Respondents' actions and their authority to act were raised by others. For example, an email from the Department of Justice [DOJ] counsel, Melanie LeDain, to Joe Wadden and Ian Bailey of Bailey Wadden & Duffy LLP on March 14,

2024, regarding legal representation of the Key Nation and the 1909 Surrender Specific Claim states that the *Brass Representation* decision "has confirmed the Chief as a member of Council and as a result duly convened meetings by The Key First Nation will need to ensure the Chief and all Councillors, among other procedural requirements, are provided with notice of the meeting time and location and the business to be conducted, as well as an opportunity for all Council members to attend."

2025 FC 1329 (CanLII)

[143] In a letter to the Key Nation Council dated May 10, 2024, Rob Harvey, Regional Director General of ISC [Regional Director] advised that:

> … ISC is only able to action BCRs that are issued in accordance with the direction of the Federal Court in the Order issued February 26, 2024, and are:
>
> 1. signed by all six individuals who were elected on June 13, 2022 (the 2022 Council); or
>
> 2. signed by four or more members of the 2022 Council, elected on June 13, 2022, and are accompanied by written confirmation, from all six members of the 2022 Council that:
>   - A meeting was called at the request of a majority of the councillors,
>   - Advance notice of the meeting, outlining the business to be conducted, was given to each member of the 2022 Council, and
>   - The meeting was attended by a quorum of the 2022 Council.

[144] In a response letter to the Regional Director on May 24, 2024, the Respondents requested that he call a meeting of the Key Nation Council, and that he and/or his delegate serve as the presiding officer for the meeting. The letter referenced Federal Court File No. T-759-24 and the Applicant's position that the *Council Regulations* apply to govern the conduct of meetings for the Key Nation, which the Respondents disputed.

[145] In response to their request in a letter dated September 24, 2024, the Regional Director advised that:

> …
>
> 2. First Nations whose governance is not under s. 74 of the *Indian Act*, including First Nations under the *First Nations Elections Act* can choose to adopt and use the processes set out in the *IBCP Regulations* for the First Nations' own purposes.
>
> 3. If a First Nation not conducting its elections under the *Indian Act* adopts the processes set out in the *IBCP Regulations*, those processes cannot include any actions by the superintendent. In other words, a First Nation not conducing its elections under the *Indian Act* cannot bind, invoke or require any action by the superintendent pursuant to the *IBCP Regulations*. Under the *IBCP Regulations*, the role of the superintendent is only applicable to First Nations whose governance is under the *Indian Act*.

2025 FC 1329 (CanLII)

[146] In my view, this correspondence illustrates that the DOJ and ISC were concerned that the Respondents may not have been following the proper process for meetings of a duly convened band council and the passage of BCRs. This is also further evidence that the Respondents were on notice of concerns related to the course of action they chose. Not withstanding those concerns, the Respondents continued to push forward with their chosen course of action.

(3) Summary

[147] In summary, considering the relevant legal constraints and the factual record, the Respondents did not have the authority to call duly convened meetings of the Key Nation Council. As the meetings of the Subgroup were not duly convened, it follows that the BCRs that were passed by the Respondents are invalid (*Dennis* at para 13, citing *Parlee* at paras 26- 32, 36).

[148] Accordingly, the BCRs identified in Group 1, Chief Key and Authority of the Key Nation Council, were invalidly passed at meetings that were not duly convened. Therefore, these BCRs are quashed.

[149] I will address the validity of the Group 2 Procedures By-law in the next section.

[150] With respect to the BCRs in Groups 3−7 concerning legal representation, post-secondary education funding, allocation of housing units, membership, lands and other transactions, neither party provided specific targeted argument concerning the validity of these BCRs.

[151] The Respondents submitted that an order that would set aside all these BCRs will have significant negative consequences for the Key Nation, as this will undo a significant amount of ordinary band council business that has transpired between August 2023 and December 2024.

[152] Further, the Respondents have persuaded me that the subject matters addressed in the Groups 3−7 BCRs concern private law issues and are not properly the subject of a judicial review. The Applicant has not demonstrated how the BCRs in Groups 3−7 are of a sufficient public character to warrant this Court's intervention on an application for judicial review.

[153] A review of this Court's jurisprudence in respect of band council resolutions that are of a private law nature and not amenable to judicial review include: a direction to the band manager to not pay certain debts (*Peace Hills Trust Co v Moccasin*, 2005 FC 1364 at paras 61−62); land leases to cottagers (*Devil's Gap Cottagers (1982) Ltd v Rat Portage Band No 38B* (FC), 2008

2025 FC 1329 (CanLII)

FC 812 at paras 4, 45–46); housing evictions (*Cyr v Batchewana First Nation of Ojibways*, 2022 FCA 90 at para 44); a ratification vote in relation to the settlement of a claim (*Prairie Chicken v Blood Tribe Band Council*, 2024 FC 1151 at paras 33–44); and the decision to enter, honour or otherwise deal with contracts (*McMullen v Piikani First Nation*, 2023 FC 1531 [*McMullen*] at para 39; *Knibb Developments Ltd v Siksika First Nation*, 2021 FC 1214 at para 16).

2025 FC 1329 (CanLII)

[154] The BCRs in Groups 3–7 are of a similar private nature addressing subjects such as the provision of post-secondary education funding for students, the allocation of band housing units, legal representation, management of reserve lands and money, and membership in the Key Nation.

[155] The individual Key Nation members who may be impacted by a decision to quash the BCRs in these Groups have not been provided notice of the Application, nor provided an opportunity to make submissions.

[156] In my view, it would be reckless and irresponsible to quash all the BCRs in Groups 3–7. Such an order would only further frustrate the governance of the Key Nation and would have a disproportionate impact on certain individual members who are not party to this proceeding.

[157] That said, to be clear, the Respondents do not have the authority to continue to meet as a Subgroup or to pass BCRs on behalf of the Key Nation Council. For further clarity, the meeting process set out for the Key Nation Council in the Injunction order remain the only meeting

process for the Key Nation Council, pending proper passage of a BCR establishing Key Nation band council meeting procedures.

[158] As I indicated in the Injunction decision, it is long past time for all members of the Key Nation Council, being Chief Key and Councillors Cote, O'Soup, K. Keshane, S. Keshane and Reese, to reset their working relationship to serve the members of the Key Nation in the roles for which they were elected. The fall out from the fractured relationship of the Key Nation Council has been that the members of the Key Nation have been deprived of a fully functional government. Important business and decisions of the Key Nation have most likely not advanced or not advanced as they ought to have because of the acrimonious relationships among the members of the Key Nation Council. Further, significant personnel and other resources have been expended on the internal conflicts of the Key Nation Council, rather than on the business and affairs of the Key Nation community. This is truly tragic and the members of the Key Nation deserve better.

D. *Validity of the Procedures By-Law*

[159] A review of the record indicates that following the training session with Alberta Counsel scheduled for February 28 - March 3, 2023, the Respondents wanted to develop Key Nation Council meeting procedures. I note that at the Key Nation Council training session with Alberta Counsel and the subsequent meeting with ISC Officials in March 2023, all members of the Key Nation Council were advised that Key Nation was free to develop their own processes for meetings.

2025 FC 1329 (CanLII)

[160] The Respondents passed two BCRs that set out procedural guidelines for meetings of the Key Nation Council, BCR # 079 dated September 17, 2024, and BCR # 086 dated October 1, 2024 , the Procedures By-law.

2025 FC 1329 (CanLII)

[161] The Applicant argued that the Respondents did not have the necessary authority to pass the Procedures By-law, because they were not operating as the elected Key Nation Council at a duly convened meeting; accordingly, the Procedures By-law is invalid.

[162] The Applicant also argued that the Procedures By-law purports to make significant and fundamental alterations to the roles and responsibilities of Key Nation Council members, specifically the role of the Chief, and therefore requires that the Procedures By-law be ratified by the Key Nation membership.

[163] The Applicant argued that Key Nation membership have not been provided notice of the Procedures By-law or been given an opportunity to review it and provide comment, nor have the members of the Key Nation ratified the Procedures By-law.

[164] The Respondents acknowledged that their first attempt to pass the Procedures By-law on September 17, 2024, was premature. Following this meeting, the Respondents convened a meeting on October 1, 2024, with notice of the meeting provided to all members of the Key Nation Council.

[165] While the record is clear that notice of the October 1, 2024, meeting was provided to the Key Nation Council, this is not responsive to the *Council Regulations*; only Chief Key had the

authority to convene a special meeting of the Key Nation Council to discuss the proposed Procedures By-law (*Council Regulations* s. 4).

[166] Accordingly, the meeting on October 1, 2024, was not a proper duly convened meeting, and for the reasons outlined above, the Procedures By-law is invalid.

2025 FC 1329 (CanLII)

(1) Further observations concerning the Procedures By-law and Procedural Fairness

[167] The record demonstrates that the Procedures By-law was pushed through by the Respondents in an apparent effort to put procedures in place for the Key Nation Council that would supersede the *Council Regulations*, which they took exception to.

[168] I have not come to this conclusion lightly, as I acutely appreciate and understand the important role that band councils have in the revitalization of their unique governance practices to move away from the generic and colonial practices set out in the *Indian Act* and the *Council Regulations*.

[169] I know that self-determination requires communities to undertake the hard work of defining their own institutions, and this begins with the development of practices and procedures that are responsive to their unique circumstances and are properly reflective of their culture and traditional practices, laws and governance structures.

[170] I have no doubt that the Respondents have worked hard to develop the Procedures By-law. This is an important first step and I sincerely hope that the Key Nation will appreciate the

spirit and hard work that went into this document and continue to work together as a Nation to formalize a procedures bylaw for the Key Nation in the not-too-distant future.

[171] The Court acknowledges the importance of having workable procedural mechanisms in place to ensure prosperous, functional and accountable governments in communities. The Court also appreciates that it can be challenging for First Nation communities with a small population to retain individuals with the necessary skills and to procure resources to undertake this work.

2025 FC 1329 (CanLII)

[172] However, the Federal Court of Appeal has indicated that while Indigenous governing bodies ought to be given latitude to determine their own processes and interpret their laws and customs, “basic procedural safeguards must be in place” (*Labelle* at para 96, citing *Bruno v Samson Cree Nation*, 2006 FCA 249 at para 22).

[173] To put it differently, and as noted earlier in these reasons, the rule of law is paramount, and band councils must operate in accordance with the rule of law. The rule of law obligates band councils to respect procedural fairness in the exercise of their powers and to ensure that decisions are made in the interests of the electorate they serve (*Prince v Sucker Creek First Nation*, 2008 FC 1268, aff’d 2009 FCA 40).

[174] As noted by Madam Justice L’Heureux-Dubé in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*], a factor that shapes the duty of fairness is the importance of the decision to those affected. Specifically, “[t]he more important the decision is to the lives of those affected and the greater its impact on that person or

those persons, the more stringent the procedural protections that will be mandated" (*Baker* at para 25).

[175] In *Shotclose*, this Court held that changes to the community's electoral practices required fair notice, an opportunity to be heard, and a vote on the changes (at para 93).

[176] In *Johnny v Dease River First Nation*, 2024 FC 1636, I found that the community members had a reasonable expectation that revisions to the community's governance processes "would be preceded by a process that included: fair notice of meetings to discuss the proposed changes and the rationale behind them; an opportunity to provide comments and see revised versions of the changed regulations; and a ratification vote on the proposed changes" (at para 84).

[177] The record indicates that the first reading of the proposed Procedures By-law occurred at a meeting in Winnipeg, Manitoba on September 11, 2024. As noted at paragraph 28, counsel for the Respondents emailed notice of this meeting to the Applicant. However, only the Respondents participated in this discussion.

[178] The second reading of the Procedures By-law was on September 17, 2024, following which the Respondents voted to pass BCR # 079. However, counsel for the Respondents suggested that they table the passage of the Procedures By-law to a later date as Councillor Reece raised a number of concerns and wanted further discussion and consideration on the proposed bylaw.

2025 FC 1329 (CanLII)

[179] The Respondents suggested that the Procedures By-law had been discussed at several meetings, however, the record for this application does not support that assertion. There is no mention of the Procedures By-law or any earlier drafts in any of the meeting agendas or minutes in advance of the meeting on September 11, 2024.

2025 FC 1329 (CanLII)

[180] The Applicant has persuaded me that the Procedures By-law alters the roles of the Key Nation Council members, particularly the role of Chief. A review of the Procedures By-law indicates that the governance structure of the Key Nation, being the roles of the Chief and Council, are redefined. Procedural fairness requires that the Key Nation Council provide notice to the membership of the proposed changes, host a duly convened meeting open to all members of the Key Nation membership to discuss the proposed changes and make necessary amendments to the Procedures By-law, and hold a ratification vote to implement the Procedures By-law.

[181] I am not persuaded by the Respondents argument that paragraph 81(1)(c) of the *Indian Act* granted them the authority to pass the Procedures By-law. A plain reading of this section indicates that bylaws must not be inconsistent with the *Council Regulations*. In my view, the Procedures By-law changes to the role of Chief and Council members and is therefore inconsistent with the *Council Regulations* and exceeds the scope of the bylaw making authority set out at paragraph 81(1)(c) of the *Indian Act*.

[182] Ultimately, as noted above, the Procedures By-law is not valid, as it was passed at a meeting that was not duly convened, and the process was in breach of the principles of procedural fairness.

[183] I encourage the Key Nation Council to continue with the important work to develop their own meeting procedures. The level of procedural fairness required will be determined by the nature of the procedures, and any impacts that it will have on the governance structure and roles and responsibilities of members of the Key Nation Council.

2025 FC 1329 (CanLII)

(2) Costs and Compensation

[184] The Applicant seeks an order for his costs and has requested that this Court reinstate the renumeration and other benefits he would have received but for the unlawful abeyance of his duties. In addition, the Applicant seeks an accounting of all renumeration provided to the Respondents.

[185] The Respondents argued that the Applicant's request for an accounting must be rejected as it was not set out in either notice of application, nor is it proper relief in an application for judicial review.

[186] In *Beeswax v Chippewas of the Thames First Nation*, 2023 FC 767 [*Beeswax*], Justice Strickland noted that "First Nation councils do not have inherent authority to remove elected officers from office" (at para 71).

[187] The Respondents' actions purported to do just that, remove Chief Key from his elected office. As highlighted earlier, the Respondents purported to pass, albeit invalidly, multiple BCRs that placed Chief Key's authority as Chief of the Key Nation into abeyance. They also passed several BCRs that removed Chief Key from positions of authority on various other boards and

councils that he was a part of as Chief of the Key Nation. Finally, the Respondents banned Chief Key from the Key Nation administration offices. In effect, the Respondents' actions removed Chief Key from his elected office.

2025 FC 1329 (CanLII)

[188] The Applicant is the democratically elected Chief of the Key Nation (see *Brass Election Appeal*). The Respondents did not point to any authority that would justify their removal of the Applicant from his elected office.

[189] A review of the BCRs that purport to place Chief Key's authority into abeyance indicates that the Respondents were motivated by accusations of vote buying in the June 2022 Election. Pursuant to subsection 16(f) and paragraph 37(2)(b) of the *FNEA*, it is an offence for a candidate "to offer money, goods, employment or other valuable consideration in an attempt to influence an elector to vote or refrain from voting for a particular candidate". Any person convicted of an offence under paragraphs 37(2)(a)-(b) is not eligible to be elected as a chief or councillor for a 5-year period following conviction, in addition to the penalties prescribed by the *FNEA*.

[190] In *Brass Election Appeal*, Justice Roy found that while there was evidence of one incident of electoral misconduct by Chief Key, particularly a breach of subsection 16(f) of the *FNEA*, this was not sufficient to satisfy the "magic number test" for the Court to exercise its discretion to overturn the results of the June 2022 Election (at paras 111−116).

[191] Despite the Court's findings in *Brass Election Appeal*, the Respondents attempted to have ISC Officials remove Chief Key from office; however, the ISC Officials indicated that they were bound by the Court's decision, which did not overturn the results of the June 2022 Election.

[192] The record refers to an alleged RCMP investigation into the June 2022 Election and allegations of voter interference and vote buying. There is no evidence in the record of this alleged investigation or its status. The Respondents have not pointed to any evidence that granted them the authority to remove Chief Key from his elected office.

[193] The Respondents appear to suggest that this Court's findings in *Brass Election Appeal* gave them the authority to remove Chief Key from his position. I do not agree. It cannot be assumed that by virtue of their elected office as councillors of the Key Nation, that the Key Nation membership authorized them take such action. It is for the First Nation's membership to determine what kind of conduct warrants the suspension or removal of an elected official from office (*Beeswax* at para 89; *Whalen* at para 79).

[194] The jurisprudence is clear that when the Court quashes a BCR to suspend or hold in abeyance a member of council, renumeration and other benefits the individual should have received from the date of their impugned suspension from office are payable (see *Tsetta v Band Council of the Yellowknife Dene First Nation*, 2014 FC 1052 at para 42; *Beeswax* at para 130).

[195] I will note that in the Directions to Attend for cross-examination on their affidavits, Councillors Cote, O'Soup and K. Keshane were also requested to provide a detailed accounting of payment received for their portfolio positions and renumeration. These records were not provided.

[196] In my view, the Respondent members of the Subgroup benefited from their conduct and deprived Chief Key of the renumeration he ought to have received as Chief of the Key Nation.

2025 FC 1329 (CanLII)

Accordingly, the Applicant is entitled to a retroactive reinstatement of the remuneration and benefits of the office he would have received but for his unlawful removal from office.

2025 FC 1329 (CanLII)

[197] I was not provided information to determine the quantum of retroactive renumeration owed to the Applicant. The parties are directed to work together to determine that amount. If the parties are unable to reach an agreement within 60 days of the date of this Order, they may make submissions to the Court for consideration as set out below.

[198] Similarly, the parties did not make submissions on the issue of costs. The parties are directed to reach an agreement on the issue of costs within 60 days of this decision. However, if they are unable to reach an agreement, they may provide submissions to the Court for consideration as set out below.

[199] As set out earlier in respect of the preliminary issues, the Applicant was the successful party in respect of the Rule 312 motion and is therefore granted his costs in respect of that motion, which are fixed at $5,000.

V. Conclusion

[200] The Key Nation is a participating band in the *FNEA*, as such their elections are not governed by the election scheme set out under section 74 of the *Indian Act*.

[201] The Key Nation's participation in the *FNEA* is not determinative of the application of the *Council Regulations* to govern the conduct of band council meetings. Pursuant to the *Council*

Regulations, bands may elect to use the *Council Regulations*, or they may develop their own processes, formally or by custom.

[202] The Key Nation had not developed or adopted their own band council procedure processes prior to the June 2022 Election, and the evidence illustrated that the Key Nation followed the processes set out in the *Council Regulations*.

[203] The Key Nation Council did not develop a schedule for regular meetings of the band council following the June 2022 Election. Accordingly, all meetings of the Key Nation Council were special meetings. Pursuant to the *Council Regulations*, only the chief of a First Nation, or the superintendent of ISC, may call special meetings.

[204] Following the breakdown of the Key Nation Council, the Respondents formed a Subgroup that purported to govern in the place of the Key Nation Council. The meetings of the Subgroup were not proper, duly convened meetings. As the meetings were not duly convened, the BCRs passed by the Respondents at those meetings are not valid.

[205] The BCRs in Groups 1 and 2 are quashed. However, the BCRs in Groups 3–7 are not quashed, due to the private nature of the subjects covered by the BCRs, as it would not be in the interests of justice to do so.

[206] Until such time as the Key Nation develops and properly adopts its own process for the conduct of meetings, the process set out in my Injunction order will continue to govern the conduct of Key Nation Council meetings.

2025 FC 1329 (CanLII)

2025 FC 1329 (CanLII)

<u>JUDGMENT in T-2243-24</u>

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted in part.

2. The BCRs in Groups 1 and 2 are invalid and herby quashed.

3. The Applicant is entitled to retroactive renumeration as Chief of the Key Nation. The parties are directed to reach an agreement as to quantum, or in the alternative, they are to provide submissions for the Courts consideration as follows:

   - The Applicant shall file and serve written submissions regarding retroactive remuneration and/or costs no later than Friday, October 3, submissions shall be limited to 10 pages of text double-spaced.

   - The Respondents shall file and serve their written submissions regarding retroactive remuneration and/or costs in response no later than Tuesday, October 14; submissions shall be limited to 10 pages of text double-spaced.

   - The Applicant shall file and serve their reply(s), if any, no later than Monday, October 20; submissions shall be limited 3 pages of text double-spaced.

4. The parties are directed to come to an agreement as to costs, considering that the Court has found the Applicant is entitled to costs in respect of the Respondents Rule 312 motion fixed at $5,000. If the parties are unable to reach an agreement, they are to provide submissions for the Courts consideration as follows:

- The Applicant shall file and serve written submissions regarding retroactive remuneration and/or costs no later than Friday, October 3, submissions shall be limited to 10 pages of text double-spaced.

- The Respondents shall file and serve their written submissions regarding retroactive remuneration and/or costs in response no later than Tuesday, October 14; submissions shall be limited to 10 pages of text double-spaced.

- The Applicant shall file and serve their reply(s), if any, no later than Monday, October 20; submissions shall be limited 3 pages of text double-spaced.

5. The Key Nation Council meetings are to be governed as follows:

Regular Meetings of the Key Nation Council

1. The Key Nation Council (the elected Chief and all elected Councillors) (“Council”) shall meet for regularly scheduled meetings on the first and third Tuesday of each month.

2. All regular meetings of Council shall start at 10:00 a.m. and be held at the Key Nation Administrative Office. There will also be a virtual attendance option to facilitate attendance for all members of the Council, the parties’ legal counsel, and members of the Key Nation.

3. The Applicant and/or the Applicant’s counsel will send a draft agenda to all parties by 12:00 p.m. on the Wednesday prior to the scheduled meeting of the Council.

4. Any amendments or additions to the agenda items from an elected Councillor must be sent to all members of the Council (and their counsel) by 12:00 p.m. on the Friday prior to the scheduled meeting of Council.

5. The Applicant and/or the Applicant’s counsel will finalize the agenda and include any amendments and additions provided by elected Councillors and send a final agenda to all parties by 12:00 p.m. on the Monday preceding the scheduled meeting of the Council. The Chief cannot refuse to add items for discussion to the agenda.

6. The Chief does not have a veto over items that will be discussed and voted upon at meetings.

2025 FC 1329 (CanLII)

Order and Proceedings

7. A secretary must be appointed by the Council. The secretary shall be a person who is viewed among community members as independent from the Council. The secretary shall not be an immediate family member of any member of Council. The secretary shall be appointed by agreement or in the alternative a simple majority vote of the Council members.

8. The secretary shall be responsible for creating and facilitating the virtual attendance option, taking detailed minutes of the meetings, and ensuring a final copy of the agenda, minutes of meeting, and any BCRs passed are available for membership upon request. The secretary is also responsible for emailing to all members of the Council and their counsel final minutes and BCRs passed. This shall be completed within 48 hours of each meeting.

9. Quorum requires a majority of the Council. If quorum is not reached within 30 minutes of the time appointed for the meeting, the secretary shall call the roll and take the names of the members then present, and the Council shall stand adjourned until the next meeting.

10. The Chief shall be the presiding officer or, in the event that the Chief is not present, the secretary may name a member of Council as the presiding officer for that meeting.

11. Upon quorum being reached, the presiding officer shall call the meeting to order.

12. The presiding officer shall maintain order and decide all questions of procedure, including the tabling of items for further discussion.

13. All parties are expected to conduct themselves at meetings in a courteous, professional manner. Abusive language and behavior shall not be tolerated. In the event that the behavior of one or more members of the Council becomes abusive, the secretary shall be permitted to close the meeting, and no items will be voted upon. The secretary shall maintain a detailed record of such behaviour and the parties.

14. The order of business at each regular meeting shall be as follows:

a. Reading (correction, if any) and adoption of the minutes of the previous meeting;
b. Unfinished business;
c. Presentation and reading of correspondence and petitions;
d. Presentation and consideration of reports of committees;
e. New business;
f. Hearing deputations;
g. Adjournment.

2025 FC 1329 (CanLII)

15. Each resolution shall be presented or read by the mover, and when duly moved and seconded and placed before the meeting by the presiding officer, shall be open for consideration.

16. After a resolution has been placed before the meeting by the presiding officer it shall be deemed to be in the possession of the Council, but it may be withdrawn by consent of the majority of the Council members present.

17. When any member desires to speak, they shall address their remarks to the presiding officer and confine themselves to the question/issue then before the meeting.

18. In the event of more than one member desiring to speak at one time, the presiding officer shall allow each member to speak in the order in which their questions are raised.

19. The presiding officer or any member may call a member to order while speaking and the debate shall then be suspended, and the member shall not speak until the point of order is determined.

20. A member may speak only once on a point of order.

21. Any member may appeal the decision of the presiding officer to the Council and all appeals shall be decided by a majority vote and without debate.

22. All questions before the Council shall be decided by a majority vote of the councillors present.

23. The presiding officer shall not be entitled to vote but whenever the votes are equal, the presiding officer shall cast the deciding vote.

24. Every member present when a question is put forward shall vote thereon unless the Council excuses them or unless they are personally interested in the question, in which case they shall not vote.

25. A member who refuses to vote shall be required to set out reasons for the abstention for the record.

26. Whenever a division of the Council is taken for any purpose, each member present and voting shall announce their vote upon the question openly and individually to the Council, and the secretary shall record the same.

27. Any member may require the question or resolution under discussion to be for their information at any period of the debate, but not so as to interrupt a member who is speaking.

28. The regular meetings shall be open to members of the Key Nation, and no member shall be excluded therefrom except for improper conduct. If a situation arises

2025 FC 1329 (CanLII)

that requires a special meeting of the Council, the following rules apply, in addition to the Order and Proceedings section above.

Special Meetings of the Council

29. Before any member of the Council can request a special meeting, there must be a clearly stated purpose and objective.

30. Requests for a special meeting must be provided to the Chief with reasonable notice. Requests must provide reasonable indications as to the purpose and objective of the special meeting.

31. The Chief must call a special meeting when requested a member of the Council. There is no discretion to refuse to call a special meeting and the Chief must not unreasonably delay in doing so.

32. If the Chief refuses or delays unreasonably in calling a special meeting, the Councillors cannot take matters into their own hands. Their remedy lies in a *mandamus* application in an appropriate court.

33. The process for determining the agenda for special meetings shall follow the procedure outline above for regular meetings.

34. The order and proceedings for special meetings shall follow the procedure outlined above for regular meetings.

"Julie Blackhawk"

Judge

2025 FC 1329 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2243-24
STYLE OF CAUSE:	CLINTON DAVID KEY v DAVID COTE, KIMBERLY KESHANE, SIDNEY KESHANE, AND FERNIE O'SOUP
PLACE OF HEARING:	EDMONTON, ALBERTA
DATES OF HEARING:	MAY 27, MAY 28 AND MAY 29, 2025
JUDGMENT AND REASONS:	BLACKHAWK J.
DATED:	JULY 25, 2025

APPEARANCES:

Brian Anslow	FOR THE APPLICANT
Brian Meronek Jeremy McKay	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Willis Law Barristers and Solicitors Edmonton, Alberta	FOR THE APPLICANT
DD WEST LLP Barristers and Solicitors Winnipeg, Manitoba	FOR THE RESPONDENTS

2025 FC 1329 (CanLII)