Federal Court Cour fédérale

Date: 20170918

Docket: T-744-17

Citation: 2017 FC 835

Ottawa, Ontario, September 18, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

CHIEF PAUL MICHEL

Applicant

and

ADAMS LAKE INDIAN BAND COMMUNITY PANEL

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an Application for judicial review filed under s. 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. For the reasons that follow, I am dismissing the Application.

[2] In December 2016, the Applicant, Chief Paul Michel, was elected Chief of the Adams Lake Indian Band [Band]. Chief Michel defeated the runner-up, Nelson Leon, by 75 votes.

[3] Mr. Leon filed a petition [Petition] in May 2017 with the Respondent Adams Lake Indian Band Community Panel [Panel] seeking Chief Michel's removal from office under the 2014 Adams Lake Secwepemc Election Rules [Election Rules].

[4] In his Petition, Mr. Leon alleged that Chief Michel had violated the Election Rules and breached his Oath of Office [Alleged Violations].

[5] The Panel commenced its investigation into the Alleged Violations. The Panel held a meeting on May 6, 2017, during which its members intended to interview Chief Michel about the matters raised in the Petition. At this meeting, Chief Michel alleged that the Panel members exhibited bias and conflicts of interest and called for the Panel to step down by the following day. The Panel members did not step down [the Bias Decision]. Rather, they continued investigating the Petition.

[6] Chief Michel filed this Application on May 19, 2017 requesting judicial review of the Bias Decision. In his Notice of Application, Chief Michel seeks an order from this Court quashing the Bias Decision and declaring it to have been made perversely, capriciously, and on the basis of erroneous factual findings. He also seeks an order declaring the Petition to be invalid and beyond the jurisdiction of the Panel due to the nature of the Alleged Violations.

[7] Chief Michel's Application was filed while two other proceedings before this Court challenging the Panel's decision-making were ongoing: in 2015 and 2016, the Panel removed Band councillors Georgina Johnny, Brandy Jules, Ronald Jules, and Doris Johnny from office

following two petitions pursuant to the Election Rules. These former councillors also sought judicial review, arguing that the Panel's removal decisions should be quashed (see *Johnny v Adams Lake Indian Band*, 2016 FC 1399; *Johnny v Adams Lake Indian Band*, 2017 FC 156). This Court dismissed both applications, and both were appealed to the Federal Court of Appeal [FCA], which ultimately found in favour of the councillors, as will be discussed below.

[8] On June 4, 2017, after the filing of this Application, the Panel issued its decision on Mr. Leon's Petition [Removal Decision]. Specifically, the Panel found that Chief Michel had breached his Oath of Office in four ways:

1. by approving a Band Council Resolution [BCR] approving funds for Ronald Jules, Brandy Jules, and Georgina Johnny to attend court proceedings in Vancouver;
2. by being part of the Council that suspended the Panel in January 2017;
3. by allowing a BCR to be passed relating to the legal representation of the Band without declaring his own alleged conflict of interest; and
4. by filing an affidavit with the FCA in support of councillors Georgina Johnny, Brandy Jules, and Ronald Jules.

[9] As a result of these findings, the Panel ordered the removal of Chief Michel from office for a period of two terms.

[10] On June 5, 2017, Chief Michel filed a notice of motion seeking an interlocutory injunction restoring him to the office of Chief pending the hearing of this Application.

On June 14, 2017, this Court granted the injunction, staying the Panel's removal order and ordering the judicial review to be heard on an expedited basis (Order of Justice Strickland, T-744-17).

[11] On July 5, 2017, the FCA released its decisions in (i) *Johnny v Adams Lake Indian Band*, 2017 FCA 146 [*Johnny and Jules*], and (ii) *Johnny v Adams Lake Indian Band*, 2017 FCA 147 [*Johnny*]. The FCA allowed both appeals, finding that the Panel had (i) failed to respect principles of natural justice, and (ii) unreasonably interpreted the requirements of the Election Rules, respectively.

[12] As a result of these two FCA decisions, and particularly in light of the FCA's findings as to the Panel's breaches of procedural fairness, the Panel wrote a letter to Chief Michel dated July 19, 2017, the core contents of which are as follows:

> Re: Rehearing of the Petition of Nelson Leon
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> On May 5, 2017, the Community Panel received a petition from Nelson Leon alleging that you breached the Adams Lake Secwepemc Election Rules and your oath of office (the "Petition"). On June 4, 2017, the Community Panel issued its decision regarding the Petition, removing you from office (the "Decision"). The effect of the Decision was later stayed by court order.
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> On July 5, 2017, the Federal Court of Appeal allowed the appeal of councillors Georgina Johnny, Brandy Jules and Ronald Jules and set aside the decision of the Community Panel removing those councillors from office on the basis that the Community Panel had breached the duty of fairness owed to those councillors.
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> In light of the court's reasons for judgment in that case and, in particular, the court's discussion of the content of the duty of fairness owed by the Community Panel to members of council accused of breaching their oath of office, the Community Panel has recognized that it failed to meet the requirements of the duty of

> fairness owed to you in its consideration of the Petition, rendering the Decision null and void. In light of this conclusion, the Community Panel hereby withdraws the Decision.
>
> The Community Panel will promptly make arrangements to rehear the Petition in a manner that that accords with the Adams Lake Secwepemc Election Rules and with the requirements of the duty of fairness as outlined by the court.
>
> (Respondent's Record [RR] at p 37).

In short, through this letter [the Nullification Letter], the Panel advised all parties concerned that its Removal Decision was of no effect and would be reconsidered in accordance with the guidance received from the FCA.

[13] Notwithstanding the Nullification Letter, Chief Michel, in his written submissions, continued to seek various forms of relief in this Application relating to the Bias Decision and the Removal Decision. However, during oral argument, Chief Michel's counsel clarified that only two issues were before this Court:

1. whether the Panel had the jurisdiction to decide the complaints raised by the Petition; and
2. whether the Panel members exhibited a reasonable apprehension of bias.

II. Analysis

Issue 1: Mootness and Prematurity

[14] I will first consider whether the two issues raised by Chief Michel are moot, and, if they are, whether I will exercise my discretion to hear them. In broad terms, an issue is "moot" when,

as a result of changed circumstances, its disposition will have no practical effect on the parties (see *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 (SCC) at 353, 1989 CarswellSask 241 (WL Can) at para 15 [*Borowski*]). The changed circumstances arise here from the Panel's withdrawal of its Removal Decision after the filing of Chief Michel's Application.

[15] The *Borowski* test for mootness was summarized by this Court in *Harvan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1026 at paragraph 7 as follows:

> The test for mootness comprises a two-step analysis. The first step asks whether the Court's decision would have any practical effect on solving a live controversy between the parties, and the Court should consider whether the issues have become academic, and whether the dispute has disappeared, in which case the proceedings are moot. If the first step of the test is met, the second step is – notwithstanding the fact that the matter is moot – that the Court must consider whether to nonetheless exercise its discretion to decide the case. The Court's exercise of discretion in the second step should be guided by three policy rationales which are as follows:
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> i. the presence of an adversarial context;
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> ii. the concern for judicial economy;
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> iii. the consideration of whether the Court would be encroaching upon the legislative sphere rather than fulfilling its role as the adjudicative branch of government.

(1) Jurisdiction

[16] The Petition alleges, among other things, that Chief Michel breached his Oath of Office by permitting certain BCRs to be passed by Council and filing an affidavit in support of the councillors removed from office by the Panel. Chief Michel argues that duly passed BCRs and his decision to provide evidence in proceedings before the FCA, are matters outside of his Oath

of Office and thus outside of the Panel's jurisdiction. He maintains that this jurisdictional question should be determined by this Court even though the Removal Decision is of no effect. The Panel, on the other hand, maintains that the matter is moot.

[17] I cannot accept Chief Michel's position. Under the first step of the *Borowski* test, the issue of jurisdiction is clearly moot. It became academic when the Panel nullified its Removal Decision, and will remain so until the Panel confirms whether it will rehear the Petition and what the content of any such rehearing would be.

[18] Under the second step of the *Borowski* test, none of the three considerations favour exercising the Court's discretion to decide the issue. First, there is at present no adversarial context.

[19] Second, judicial economy militates against my making, on this Application, any decision regarding Chief Michel's conduct or the grounds properly considered in such a future determination. Of course, should the Panel ultimately render a decision that Chief Michel disagrees with, he may then challenge that decision's underlying procedure or merits before this Court in a future judicial review. But to do so now, before a tribunal hearing has even been confirmed, and before Chief Michel has raised his jurisdictional objections in front of the Panel that would decide such a petition, is putting the cart well before the horse.

[20] Third, for many of the reasons set out in the paragraph above, having the Court pre-emptively weigh in on the jurisdiction of the Panel and what it may decide in the future, would

be for the Court to encroach on the Panel's legislative sphere; under the Election Rules, jurisdiction to first hear and decide matters relating to the election and conduct of Chief and Council clearly lies with the Panel, not this Court.

[21] The fact that the issues raised by the Petition may indeed be reheard by the Panel does not assist Chief Michel. To the contrary, his request is premature: the administrative process is not yet complete and, in fact, it has not even begun. Absent exceptional circumstances, parties cannot proceed to the courts until the administrative process is over (*Canada (Border Service Agency) v CB Powell Limited*, 2010 FCA 61 at para 31 [*Powell]*). The rule against prematurity prevents the fragmentation of the administrative process and avoids the "waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway" (*Powell* at para 32). Jurisdictional issues, like those advanced by Chief Michel, have been held to not constitute "exceptional circumstances" justifying premature application to this Court (*Powell* at paras 33, 39-40).

[22] Going back to the basics then, fundamental administrative review principles do not allow the Court to intervene in this case. The Removal Decision is "null and void" according to the Panel itself, so there is no administrative decision for this Court to review. Furthermore, the record also shows that Chief Michel's jurisdictional arguments were never put to the Panel.

[23] This Court cannot intervene in the affairs of an administrative decision-maker on administrative law grounds when no administrative decision exists. To do so would be similar to a Court determining, on judicial review, matters that were not raised before the administrative

tribunal, thereby substituting itself for the tribunal (see *Rouleau v Canada (Attorney General)*, 2017 FC 534 at paras 36-38).

[24] If the Panel does not rehear the merits of the Petition, the matter will remain moot. Should the Panel decide to rehear the Petition, Chief Michel may then raise all his objections, including those based on jurisdiction. The Panel will then decide whether to reconsider the matter and, if so, how to conduct the rehearing. If at that point Chief Michel wishes to challenge the Panel's decision on jurisdictional or other grounds, there would then be a decision for this Court to review.

[25] During oral arguments, counsel for Chief Michel conceded that, through a request for a review of jurisdictional issues, Chief Michel in effect seeks an injunction preventing the Panel from investigating or rehearing the matters raised by the Petition. Injunctive relief is familiar to Chief Michel, who succeeded in staying the Removal Decision, allowing him to maintain his role as Chief for an interim period.

[26] If Chief Michel wished to seek a permanent injunction against the Panel, he should have focused his written and oral arguments on demonstrating that the stringent test for injunctive relief was met. He did not. It is very rare for a Court to grant an injunction against an administrative decision-maker before or during a proceeding (*Powell* at para 33).

[27] While I understand that the issues raised in this Application are important and time-sensitive to the parties, those motivations do not allow the Court to dispense with either its

procedural rules, or the fundamental administrative law principles at play. Were I to review the Panel's nullified Removal Decision and conduct a premature analysis towards what would effectively amount to injunctive relief, this Court — rather than the Panel — would be exceeding its own jurisdiction.

(2) Reasonable Apprehension of Bias

[28] Chief Michel argues, as a second issue, that the composition of the Panel offends principles of natural justice because its members exhibit bias based on various conflicts of interests. He submits that bias remains a live issue notwithstanding the Nullification Letter, because this Panel may rehear the matter before the appointment of the next Panel (which is due for election as of October 2017). He notes that the same five members of the Panel may be re-appointed at that time.

[29] In its Memorandum of Fact and Law, the Panel responds that whether or not there was a reasonable apprehension of bias, the proceeding is moot. However, as an alternative position, in the event that the Court decides to exercise its discretion to decide the issue of bias, the Panel also provided submissions as to why no reasonable apprehension of bias exists.

[30] Following upon these written submissions, the Panel's counsel informed the Court during a case management conference held on July 26, 2017, and then subsequently at the July 31, 2017 hearing of this matter, that it did not oppose the Court's guidance on the issue of bias, which it felt would be helpful should the same Panel reconvene.

[31] Given the positions of the parties, and the fact that the same Panel members may end up rehearing this matter, I will exercise my discretion under the second step of the *Borowksi* test to decide the bias issue.

Issue 2: Reasonable Apprehension of Bias

[32] The Panel is an administrative body with a primarily adjudicative function and, as such, it must be free from a reasonable apprehension of bias (*Johnny and Jules* at para 43). If bias amongst its members is established, this constitutes a breach of procedural fairness because it deprives a party of a fair hearing (see *Gaziova v Canada (Citizenship and Immigration)*, 2017 FC 679 at para 24, citing *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 (SCC) at para 45). Although, traditionally, questions of procedural fairness were reviewable on a standard of correctness (see *Johnny and Jules* at para 19; *Khela v Mission Institution*, 2014 SCC 24 at para 79), the FCA recently cautioned that the law in this area remains unsettled (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at para 13). However, in this matter, I do not need to decide whether the standard of reasonableness or correctness applies; under either standard, Chief Michel has not established a reasonable apprehension of bias.

[33] To disqualify the Panel members for bias, Chief Michel must demonstrate that an informed person, viewing the matter realistically and practically, and having thought the matter through, would think it more likely than not that the Panel would not decide fairly (*Committee for Justice & Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 (SCC) at 394, 1976 CarswellNat 434 (WL Can) at para 40). In its recent judgment in *Johnny and Jules*, the FCA

commented on the test for reasonable apprehension of bias as it relates to decision-making bodies whose members are drawn from a small community:

> [41] The Election Rules do not preclude Band employees from holding office as a member of the Community Panel. Only members of the Band Council or candidates in an election are precluded from election as a member of the Community Panel. Thus, I do not disagree with the Federal Court's conclusion that the mere fact that a member of the Community Panel is employed by the Band does not give rise to a reasonable apprehension of bias. What is required is an actual conflict of interest in a given case (reasons, paragraph 41). This is consistent with the reasoning in *Sparvier v. Cowessess Indian Band #73*, [1993] 3 F.C.R. 142, [1994] 1 C.N.L.R. 182 (F.C.T.D.) where Justice Rothstein wrote, at pages 167-168:
>
>> … it does not appear to me to be realistic to expect members of the Appeal Tribunal, if they are residents of the reservation, to be completely without social, family or business contacts with a candidate in an election. …
>>
>> If a rigorous test for reasonable apprehension of bias were applied, the membership of decision-making bodies such as the Appeal Tribunal, in bands of small populations, would constantly be challenged on grounds of bias stemming from a connection that a member of the decision-making body had with one or another of the potential candidates. Such a rigorous application of principles relating to the apprehension of bias could potentially lead to situations where the election process would be frustrated under the weight of these assertions. Such procedural frustration could, as stated by counsel for the respondents, be a danger to the process of autonomous elections of band governments.
>
> [42] It follows that if a member of the Community Panel is in a position of conflict of interest with respect to a particular issue, the member must not participate in any way in the process that leads to a decision on that issue. In some circumstances, where allegations are made with respect to a number of issues and where the nature of the conflict would cause a reasonable and informed person to perceive that the member would, consciously or unconsciously, be

> unable to decide other issues fairly, the member must not participate at all in deciding any issue.
>
> [43] This said, the Community Panel must be free from a reasonable apprehension of bias. A tribunal such as the Community Panel which is primarily adjudicative in its functions, must meet the test for bias articulated in *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369, at page 394:
>
>> …[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.... [That] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

[34] In short, looking through the prism of a small First Nations community, the mere fact that a member of an administrative body may have a family or work connection to others touched in some way by matters at issue, does not lead directly or invariably to a reasonable apprehension of bias. This is exactly the situation that we find ourselves in here: every one of the Panel members is tied either through work or family to sitting members of Chief and Council, or Band administration. Tribunal members serving small Bands cannot avoid having friends and relatives involved in Band administration and/or Council, and the fact of such ties alone does not raise a reasonable apprehension of bias. Rather, what is needed to breach that threshold is an actual conflict, such as a financial interest in the outcome of the dispute, or close family members directly linked to the allegations at issue.

[35] The facts of *Johnny and Jules*, in which the FCA found a reasonable apprehension of bias for Panel members Maryann Yarama and Lynn Kenoras (who are also Panel members in this case), were very different from these facts. In *Johnny and Jules*, the allegations regarding Ms. Kenoras included mistreatment of her mother, Councillor Norma Manuel. Although Ms. Kenoras absented herself during the Panel interview of and discussion regarding her mother, she participated in the ultimate decision on that issue.

[36] As for Ms. Yarama, in *Johnny and Jules*, she had previously declared herself to be in a position of conflict with respect to a security contract transition to Band staff, having been the Manager of Maintenance and Housing for the Band. Nonetheless, she fully participated in the discussion and decision on that issue.

[37] The FCA found that both member Kenoras' and Yarama's involvement in the Panel decision led to a reasonable apprehension of bias (*Johnny and Jules* at paras 46-50).

[38] Allegations of bias must be not be undertaken lightly and the threshold for a finding of bias is high (*R v S(RD)*, [1997] 3 SCR 484 (SCC) at para 113). Allegations must be supported by concrete evidence and not mere assertions (*Panov v Canada (Citizenship and Immigration)*, 2015 FC 716 at para 20).

[39] Here, I conclude that, unlike the specific context in *Johnny and Jules*, Chief Michel has not established that the Panel members should be disqualified because of a reasonable

apprehension of bias, based on the following analysis on a member-by-member basis. I will begin with the same two members recently addressed in *Johnny and Jules*.

(1) Maryann Yarama

[40] Chief Michel deposes in his Affidavit that Ms. Yarama is biased against him because (i) she criticized him at a Band meeting, (ii) he put forward a motion at a Band Council meeting to revoke her cheque-signing authority due to her alleged improper disclosure of confidential information, (iii) senior Band employees under Ms. Yarama's supervision tried to interfere with Chief Michel's execution of his duties, and (iv) Ms. Yarama (or others) disclosed privileged and confidential information to Mr. Leon for the purpose of assembling the records in support of his Petition.

[41] I do not find the record to support any of these allegations. The meeting minutes in question simply indicate a healthy dialogue in which Ms. Yarama responds to comments made by Chief Michel regarding her alleged conflict of interest. I agree with the Panel's characterization of Ms. Yarama's comments as restrained and responsive, rather than an attack on Chief Michel.

[42] For her part, Ms. Yarama deposes — in response to the allegation that senior staff she supervises attempted to interfere with Chief Michel's role — that she does not supervise any senior staff.

[43] I further agree with the Panel that even if Ms. Yarama did indeed supervise senior staff members, her involvement as a supervisor or non-supervisor does not raise a reasonable apprehension of bias: Chief Michel has made no specific allegation and proffered no specific evidence that any staff members did anything at Ms. Yarama's behest or acted on her instructions.

[44] Finally, with respect to the "privileged and confidential" information alleged to have been provided by Ms. Yarama or others to Mr. Leon, Chief Michel has offered no specifics as to what this information is, or when and how Ms. Yarama or others are to have provided it. Furthermore, Ms. Yarama deposes that nothing of the sort occurred. This contention is supported independently by the Human Resources Manager of the Band, Debra Sloat, in her affidavit. In short, Chief Michel has not satisfied the Court that Ms. Yarama cannot hear the Petition. The allegations in his affidavit do not demonstrate a reasonable apprehension of bias.

(2) Lynn Kenoras

[45] Chief Michel deposes that Lynn Kenoras (i) should have resigned from the Panel upon the election of her mother (Councillor Manuel), (ii) attacked him at a general Band meeting, and (iii) is a cousin of Mr. Leon. Chief Michel submits that this all leads to an apprehension of bias.

[46] Again, I disagree. If there was a prohibition from sitting on the Panel due to a relative serving on Council, the Panel rules would so stipulate. There is no such prohibition. Certainly, Chief Michel has not demonstrated, in his allegations, any reasonable apprehension of bias, because Ms. Manuel was neither named in, nor gave any evidence regarding, the allegations in

Mr. Leon's Petition. This is distinguishable from a decision of the Panel considering positions taken or votes cast on Council by Ms. Kenoras' mother — as was the case in *Johnny and Jules*.

[47] As for the meeting, again the minutes do not show anything out of order or bordering on "an attack". Rather, as with Member Yarama, the minutes reflect a healthy debate.

[48] Finally, simply being a cousin of the petitioner (Mr. Leon) does not give rise to a reasonable apprehension of bias. While there might be other contexts where this might apply, as explained above by the FCA in *Johnny and Jules* with reference to *Sparvier*, that was not the case here, in a small First Nations community.

(3) David Nordquist

[49] The Applicant's allegations against David Nordquist are that his ex-wife is a cousin of Mr. Leon, and also that employees under Mr. Nordquist's supervision have tried to interfere with Chief Michel's role. Finally, Chief Michel alleges that Mr. Nordquist also disclosed confidential information.

[50] As to Mr. Nordquist's family members, in this case the links to any bias — like those Chief Michel raised regarding Ms. Kenoras — are highly tenuous at best: Mr. Nordquist and his ex-wife have been divorced for about four years, and, in any event, Mr. Nordquist believes that she is only a second or third cousin of Mr. Leon.

[51] Finally, Chief Michel, similar to the allegations against Ms. Yarama, provides no particulars as to how the employees under Mr. Nordquist's supervision tried to interfere with his role, other than deposing that senior members of the administration falling under the supervision of Mr. Nordquist tried to interfere in his role as Chief. This mere allegation, without more evidence, cannot support a finding of reasonable apprehension of bias, particularly because Mr. Nordquist deposes that he did not supervise any senior staff members at the relevant time.

[52] Chief Michel further alleges that Mr. Nordquist disclosed confidential information, and, in this regard, my analysis and comments on Chief Michel's unsupported allegations against Ms. Yarama also apply (see paragraph 44 of these Reasons). As with the similar allegations about confidentiality breaches against Ms. Yarama, an independent third party disavows them as against Mr. Nordquist.

[53] In sum, nothing alleged by Chief Michel rises to the level of establishing a reasonable apprehension of bias for Mr. Nordquist.

(4) Sandra Lund

[54] Chief Michel alleges that Sandra Lund is biased because she is Chief Michel's cousin. For her part, Ms. Lund deposes that while they are indeed cousins, they were raised in different areas, have never lived in the same community, and do not see each other socially.

[55] For the reasons explained above, I agree that a mere family relationship in the context of a small First Nations community does not give rise to reasonable apprehension of bias.

(5) Hilda Jensen

[56] Hilda Jensen recused herself from the panel in the Bias Decision because she nominated Nelson Leon for Chief. She therefore neither participated in the Panel’s deliberations of Mr. Leon’s Petition, nor the Removal Decision. The Panel concedes that this was the correct position to take, and therefore that Ms. Jensen would again sit out again should this same Panel decide to rehear the matter. I agree with that stance and there is no need to comment further on the allegation of bias against Ms. Jensen, who acknowledges the bias.

III. Costs

[57] The Panel asks that the Band be ordered to pay its costs on a full indemnity basis.

[58] I make two observations with respect to costs. First, it appears to me that the proper Respondent should have been the Band, not the Panel. The Band was correctly named as the Respondent in the two related proceedings *Johnny* and *Johnny and Jules*. There is no substantial difference between the Respondent in these cases. The Band should have been named as the Respondent. But it wasn’t.

[59] Indeed, the evidence demonstrates that the Panel was acting in the best interests of the Band and simply doing its job—namely, holding a hearing and making a decision in response to a petition. The Panel, subsequently reviewing the FCA decisions in both *Johnny* and *Johnny and Jules*, recognized defects in its decision-making process. So it issued the Nullification Letter.

[60] Under all the circumstances, in my view the fairest approach to costs is first of all, that Chief Michel must cover the Panel's costs on a partial indemnity basis according to the standard tariff for this judicial review, namely under Column III to Tariff B.

[61] Second, despite the fact that the Band was never made a party to this application, the Band should pay any remaining costs reasonably incurred by the Panel, or by its individual members, while acting in response to this judicial review, as has been recognized to be appropriate in certain circumstances (see *Bellegarde v Poitras,* 2009 FC 1212 at para 9; *Knebush v Maygard*, 2014 FC 1247 at paras 67-69). This is one of those circumstances where it would be unjust for tribunal members simply doing their job to hear and decide an Election Rules petition, to then have to personally cover any costs shortfall in defending legal proceedings filed against their tribunal.

IV. Conclusion

[62] This application for judicial review is dismissed with costs payable to the Panel in accordance with these Reasons.

JUDGMENT in T-744-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. Costs to the Panel in accordance with the directions provided in Section III above.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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