Federal Court Cour fédérale

Date: 20210622

Docket: T-693-20

Citation: 2021 FC 650

Ottawa, Ontario, June 22, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

JOHN LOUIE

Appellant

and

MINISTER OF INDIGENOUS SERVICES, JENELLE RENEE BREWER AND THE ESTATE OF JIMMIE LOUIE, ALSO KNOWN AS JIMMIE JAMES LOUIE, REPRESENTED BY HIS EXECUTRIX, JENELLE RENEE BREWER

Respondents

JUDGMENT AND REASONS

[1] John Louie applied to the Minister of Indigenous Services to invalidate a will made by his brother, the late Jimmie Louie. He argued that his brother lacked testamentary capacity because of his alcoholism and that his will is contrary to the custom of his First Nation, the

Okanagan Indian Band, because it purports to devise reserve land to a person who is not a member of the Louie family. The Minister denied his application.

[2] John Louie now appeals to this Court. I am dismissing his appeal. There is insufficient evidence to rebut the presumption of testamentary capacity. Moreover, even assuming Indigenous law can be taken into account when determining the validity of Jimmie Louie's will, there is insufficient evidence of the alleged custom.

I. Background

[3] Jimmie Louie, a member of the Okanagan Indian Band [Okanagan], died on March 28, 2015. By will dated September 27, 2011, he left the residue of his estate to a friend, the respondent Jenelle Renee Brewer, who is also a member of Okanagan. His estate comprises valuable lands on Okanagan's reserve, for which he holds a certificate of possession pursuant to section 20 of the *Indian Act*, RSC 1985, c I-5 [the Act].

[4] The lands in question originally belonged to John and Jimmie Louie's grandfather, Gaston Louie, and then to their father William Louie. Upon William Louie's death in 1998, the lands passed to Esther Louie, William's widow. In 2002, Esther transferred one-half of the lands to her son Jimmie Louie and the other half to her son John Louie.

[5] After Jimmie Louie's death, John Louie applied to the Minister of Indigenous Services to have Jimmie's will declared void, pursuant to section 46 of the Act. He initially invoked duress

or undue influence, lack of capacity and the fact that Jimmie had to provide for his sister, Madeline, who has Down syndrome.

[6] On March 24, 2016, the Manager, Estates, British Columbia region, purporting to act on behalf of the Minister, dismissed John Louie's appeal. While the reasons are succinct, the Minister essentially found that there was no evidence to substantiate John Louie's allegations. John Louie appealed to this Court pursuant to section 47 of the Act. Counsel for the Minister then realized that the person who made the decision did not have the necessary delegation from the Minister. Thus, on October 19, 2017, on consent, my colleague Justice Roger R. Lafrenière allowed the appeal, returned the matter to the Minister for reconsideration and set a calendar allowing time for John Louie to try to obtain his brother's medical records.

[7] John Louie took some time to obtain these records. He made additional submissions to the Minister in February 2020. In addition to the grounds invoked in support of the initial application, he alleged that his brother's will was contrary to Okanagan's custom. He provided the affidavits of five Elders of Okanagan or neighbouring First Nations, who described a custom whereby lands allotted by way of certificates of possession under the Act to a family head were intended to remain in the family. Thus, according to these five Elders, Jimmie Louie could not bequeath his land to Ms. Brewer, who is not a member of the Louie family.

[8] On April 28, 2020, the Minister issued a new decision dismissing John Louie's application to void his brother's will. The Minister found that there was no evidence of duress or undue influence, nor evidence that the will would impose hardship on Madeline Louie; that there

was insufficient evidence of lack of testamentary capacity; that the will was not contrary to the *Indian Act* and that John Louie had not proved that it was contrary to the interests of Okanagan.

[9] John Louie now appeals from the Minister's decision.

II. Analysis

[10] John Louie's challenge to the validity of his brother's will is based on the following provisions of the Act:

46 (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that	**46 (1)** Le ministre peut déclarer nul, en totalité ou en partie, le testament d'un Indien, s'il est convaincu de l'existence de l'une des circonstances suivantes :
[…]	[…]
(b) the testator at the time of execution of the will lacked testamentary capacity;	**b)** au moment où il a fait ce testament, le testateur n'était pas habile à tester;
[…]	[…]
(d) the will purports to dispose of land in a reserve in a manner contrary to the interest of the band or contrary to this Act;	**d)** le testament vise à disposer d'un terrain, situé dans une réserve, d'une façon contraire aux intérêts de la bande ou aux dispositions de la présente loi;
[…]	[…]

[11] With respect to paragraph 46(1)(b), John Louie argues that his brother's alcoholism prevented him from making a valid will. With respect to paragraph 46(1)(d), he argues that his

brother's will is contrary to Okanagan's custom, and therefore "purports to dispose of land in a reserve in a manner contrary to the interest of the band." In his application before the Minister, John Louie invoked other grounds, but he does not insist on them before this Court.

[12] Before analyzing these two potential grounds of invalidity, I must identify the standard of review and the framework for assessing John Louie's argument that the Minister provided insufficient reasons.

A. *Standard of Review and Lack of Reasons*

[13] Section 47 of the Act provides that decisions made by the Minister pursuant to sections 42, 43 or 46 may be appealed to this Court. According to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 36–52, the appellate standard of review is applicable. This means that questions of law are reviewed on a correctness standard. Appellate courts, however, will intervene on questions of fact only if the decision contains a palpable and overriding error. The latter standard also applies to questions of mixed fact and law, unless there is an extricable question of law.

[14] Mr. Louie insisted on the insufficiency of the Minister's reasons. Reasons perform several functions. They allow the parties to understand why the decision was made. They facilitate the exercise of the right of appeal. They constitute a form of quality assurance. They also serve the broader purposes of ensuring transparency and accountability on the part of the decision-maker. Nonetheless, the insufficiency of reasons is not an independent ground of appeal and an appellate court may look to the record to understand the rationale of the decision: *R v GF*,

2021 SCC 20 at paragraphs 69–70; *Mayer v Superintendent of Motor Vehicles*, 2020 BCSC 474 at paragraphs 47–51. There are cases where "the trial judge's conclusion is apparent from the record, even without being articulated": *R v Shepperd*, 2002 SCC 26 at paragraph 55, [2002] 1 SCR 869.

B. *Testamentary Capacity*

[15] John Louie's main argument in his initial application to void the will was that Jimmie Louie lacked testamentary capacity because of his alcoholism. In this regard, the Minister's reasons are contained in one sentence: "[t]he evidence is not sufficient to prove that Jimmie Louie lacked testamentary capacity when he made the Will." John Louie now contends that these reasons were insufficient, because the Minister does not analyze the evidence in detail nor explain why he rejected evidence of Jimmie Louie's alcoholism.

[16] It is unfortunate that the Minister gave only what amounts to "boilerplate" or "tick-box" reasons. One of the functions of reasons is to reassure the parties that the decision-maker reached a fair outcome based on a consideration of all the evidence. Here, the Minister's reasons came well short of the mark. As I mentioned above, however, insufficiency of reasons is not an independent ground of appeal. Where the stated basis for the decision is the lack of sufficient evidence, a review of the record may provide an explanation for the conclusion. I must therefore consider the evidence myself to determine if the Minister's decision is the result of a palpable and overriding error.

[17] In doing so, I must be mindful of the applicable legal standard. Paragraph 46(1)(b) of the Act states that the Minister may void a will made by a testator who lacked testamentary capacity. According to sections 8.1 and 8.2 of the *Interpretation Act*, RSC 1985, c I-21, the concept of testamentary capacity must be understood by reference to the law of the relevant province, in this case, British Columbia; see also *Albas v Gabriel*, 2009 BCSC 198 at paragraph 86 [*Albas*].

[18] In British Columbia, as in other Canadian common law provinces and territories, testamentary capacity is often defined by reference to the 19th-century case of *Banks v Goodfellow* (1870), LR 5 QB 549 (QB) at 565:

> It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effect; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

[19] A more recent formulation of the test is found in *Re Schwartz* (1970), 10 DLR (3d) 15 at 32 (Ont CA), aff'd [1972] SCR 150:

> The testator must be sufficiently clear in his understanding and memory to know, on his own, and in a general way (1) the nature and extent of his property, (2) the persons who are the natural objects of his bounty, and (3) the testamentary provisions he is making; and he must, moreover, be capable of (4) appreciating these factors in relation to each other; and (5) forming an orderly desire as to the disposition of his property...

[20] Moreover, there is a presumption of testamentary capacity when certain formalities are complied with, as the British Columbia Court of Appeal recently explained in *Wilton v Koestlmaier*, 2019 BCCA 262 at paragraph 24:

> The propounder of a will bears the burden of proving that: (1) the formalities of will-making were complied with; (2) the testator possessed the requisite capacity to make the will; and (3) the testator knew and approved of the will's contents. Propounders are aided in this task by a rebuttable presumption of testamentary capacity, which directs the court to presume that testators have capacity to make a will where it is duly executed in accordance with the appropriate formalities and read by or to the testator, who appeared to understand it: *Vout v. Hay*, [1995] 2 S.C.R. 876 at paras. 25–26.

[21] In this regard, the most relevant evidence is an affidavit sworn by Ms. Elise Allan, the lawyer who drafted Jimmie Louie's will. She testifies that Jimmie Louie appeared to be competent and of sound mind when he gave instructions to her and when he came to her offices to execute the will. Ms. Allan's evidence triggers the presumption of capacity.

[22] In addition to his own affidavit, the evidence filed by John Louie in support of his application consists mainly of handwritten letters from family members or friends describing their interactions with Jimmie Louie. This evidence shows that Jimmie Louie suffered from alcoholism. It is not disputed that he died from a cirrhosis of the liver. However, it does not show that Jimmie Louie lacked capacity when he gave instructions to Ms. Allan or when he executed the will. Rather, the authors of some of the letters were aware that Jimmie Louie had bequeathed his land to Ms. Brewer and tried to discourage him from doing so. Jimmie Louie, however, refused to listen to them. In fact, there is overwhelming evidence that Jimmie Louie did not want to bequeath his property to John Louie or other members of his family. That he consistently

expressed his intention when discussing with others tends to demonstrate that he had capacity when he made a will giving effect to this intention.

[23] The mere fact that Jimmie Louie suffered from alcoholism is insufficient to demonstrate lack of capacity. There is no evidence that he was under the influence of alcohol when he gave instructions and executed the will. Quite the contrary, Ms. Allan found that he had capacity. Similar arguments were rejected in *Albas*, at paragraph 104; *deBalinhard (Estate) (Re)*, 2014 SKQB 162; *Dujardin v Dujardin*, 2018 ONCA 597 at paragraph 64.

[24] Moreover, after the Minister's first decision was set aside, John Louie obtained access to his brother's medical records, but was unable to find any evidence that would support a finding of incapacity.

[25] Likewise, the fact that a testator makes a will that may be considered eccentric, or fails to advantage members of his family, does not, in and of itself, constitute proof of incapacity: *Vout v Hay*, [1995] 2 SCR 876 at paragraph 7; *Chalmers v Uzelac*, 2004 BCCA 533 at paragraph 49. After all, the point of testamentary freedom is that is may be exercised in unconventional ways.

[26] Therefore, the Minister did not make an error in finding that the evidence was insufficient to prove testamentary incapacity.

C. *Custom*

[27] John Louie argues that his brother's will disposes of reserve land in a manner contrary to Okanagan's interests, which is a ground for voiding it under paragraph 46(1)(d) of the Act. This would result from the fact that the will is contrary to Okanagan's custom. John Louie filed evidence tending to show that Okanagan's custom requires holders of certificates of possession to transmit their lands to their eldest son or daughter. If someone does not have children, they must bequeath their land to their closest relative, in order for land to remain in the family. Jimmie Louie would have acted contrary to custom when he bequeathed his land to Ms. Brewer, who is not a member of the Louie family.

[28] Assessing this argument involves a question of Canadian law and a question of Okanagan law. The Canadian law question is whether the reference to the "interest of the band," in paragraph 46(1)(d), amounts to a reference to Okanagan law (or "custom"). In other words, Canadian law would consider that what is contrary to Okanagan law would be against Okanagan's interest, within the meaning of paragraph 46(1)(d). The Okanagan law question is whether there is a prohibition on bequeathing land outside of one's family.

[29] As I am of the view that John Louie has not made out his case under Okanagan law, I will say as little as possible about the Canadian law issue. I will simply assume, without deciding, that the "interest of the band" in paragraph 46(1)(d) includes compliance with a First Nation's laws (or "customs"), and that this explicit language, which is absent in other provisions of the Act dealing with certificates of possession, is a basis for distinguishing cases such as *Boyer v R*,

[1986] 2 FC 393 (CA) [*Boyer*]; *Tsartlip Indian Band v Canada (Minister of Indian Affairs and Northern Development)*, [2000] 2 FC 314 (CA); and *Songhees Indian Band v Canada (Minister of Indian Affairs and Northern Development)*, 2006 FC 1009, [2007] 3 FCR 464, aff'd 2008 FCA 46 [*Songhees*].

[30] John Louie's claim, however, fails on the Okanagan law issue. I cannot take judicial notice of the alleged Okanagan law. The party who alleges it must prove it: *Whalen*, at paragraph 41, and the cases cited therein. I find that the evidence in this case is insufficient. To understand why, it is necessary to describe what John Louie set out to prove and what is the legal test governing proof of this kind of Indigenous law.

[31] John Louie seeks to prove the alleged custom by filing the affidavits of five persons. Three of those persons are members of Okanagan; two are members of neighbouring First Nations who are said to share the same customs. These five persons, who are between 61 and 84 years old, recognize each other as Elders, with the exception of one affiant who does not know three of the four others and who is not known to the others. From other documents in the record, we know that one of the affiants, Ms. Pamela Oppenheimer, is John Louie's sister-in-law, although this is not mentioned in the affidavit.

[32] The affidavits are substantially similar. The full extent of what they teach about Okanagan law is found in the following excerpts from the affidavit of Mr. Frederick Louis:

> When the Indian Act came into being the indigenous laws and customs were that land on the [Okanagan] reserve was passed down along family lines when an [Okanagan] landowner band

> Member dies. Usually this was done through the eldest son who became the spokesperson for the family.
>
> […]
>
> Maintaining the allocation along family lineage provides a nucleus for the Louie family.
>
> […]
>
> When the lands were originally allocated under the Indian Act, the allocation was determined based upon the occupational needs of the [Okanagan] band Members. For example, fishermen needed to be near rivers and lakes, whereas hunters needed to be near forested areas and farmers, cattle and horse ranchers needed to be on flatlands. The boundaries within each reserve for Certificates of Possession were often defined by the occupational needs of the respective band Member families.
>
> Historically, whenever disputes arose between competing interests of band Members on [Okanagan] the Chief would mediate a settlement between the Members and then the band would allocate specific landholdings to each family, which was to be passed on through those Members families to other Member families within the family lineage.
>
> The aforementioned manner of passing land ownership in the [Okanagan] is the practice that has been followed for as long as I can remember and in accordance with the oral traditions and customs passed down from other Elders.

[33] Mr. Louis also expresses the opinion that Jimmy Louie's will is contrary to this custom, as it purports to transfer reserve land to Ms. Brewer, who is not a member of the Louie family.

[34] The other affidavits convey the same ideas using almost identical language, with minor variations. For example, Ms. Oppenheimer adds that "[o]nce the lands had been allocated by the [Okanagan] Chief and Council a band member could not transfer those lands to another family outside their family lineage."

[35] Given that Indigenous law may take many forms, it is important to characterize properly what is being claimed in the case at bar, what sources of law are or are not invoked in support and what we know about the context surrounding the alleged custom.

[36] The alleged custom pertains to the manner in which holders of certificates of possession exercise their powers granted by the Act. In this regard, it is useful to highlight two features of the Act, which are both related to the principle that a reserve is set apart for the collective benefit of members of a First Nation. First, pursuant to section 20 of the Act, the council of the First Nation may allocate parcels of land to individual members, who receive what is commonly known as a certificate of possession. Subject to the restrictions set out in the Act, a certificate of possession confers rights akin to private property: *Brick Cartage Ltd v The Queen*, [1965] Ex CR 102 at 106–107. It has been said that the First Nation's interest in land subject to a certificate of possession "has disappeared or is at least suspended": *Boyer*, at 404. Second, the Act contains provisions regarding wills and estates of First Nation members. One of their aims is to ensure that reserve land is not transmitted to non-members. The Act, however, does not restrict testamentary freedom more than necessary to achieve this objective: *Pronovost v Minister of Indian Affairs and Northern Development*, [1985] 1 FC 517 (CA) at 522, 527; *Songhees*, at paragraph 58.

[37] Despite Ms. Brewer's arguments to the contrary, the fact that the alleged custom stems from the application of the Act and arose after the assertion of British sovereignty does not disentitle it from recognition. Indigenous law is not frozen in time and may be recognized even if it arose after the assertion of British sovereignty. It may also borrow from Western sources

without losing its Indigenous character: *Pastion v Dene Tha' First Nation*, 2018 FC 648 at paragraphs 13–14, [2018] 4 FCR 467 [*Pastion*]. For example, this Court frequently applies Indigenous electoral laws even though selecting leaders through election was most likely borrowed from Western law after the assertion of British sovereignty. When assessing whether Indigenous law is recognized by the common law or legislation, the tests developed by the Supreme Court of Canada for the proof of aboriginal rights under section 35 of the *Constitution Act, 1982* are not relevant. The recognition of Indigenous law by the common law, alluded to in *Mitchell v MNR*, 2001 SCC 33 at paragraph 10, [2001] 1 SCR 911, has always been understood as a dynamic process allowing for its evolution. Section 35 comes into play when the validity of legislation is challenged, which is not the case here.

[38] John Louie did not attempt to anchor the alleged custom in a broader legal tradition. For example, the affidavits do not explain how the alleged custom would be linked to Okanagan's conception of the family or political structure. Contrary to cases such as *Restoule v Canada (Attorney General)*, 2018 ONSC 7701, no evidence was provided with respect to the foundational principles of the legal tradition of the Indigenous community involved. Apart from the grounds for the initial allocation between the families, which may or may not be relevant today, and the assertion that following the custom provides a "nucleus" for the families, I have no information as to the rationale for the custom. While it may have roots in Indigenous philosophies or spirituality, or what Professor John Borrows calls sacred and natural sources of law, these roots were not revealed to me: John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 23–58.

[39] As a result, what John Louie is putting forward is a custom in the technical sense of the word—a practice recognized as binding by the persons concerned: *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 732 at paragraph 36, [2019] 4 FCR 217 [*Whalen*]. In this regard, I have described electoral customs as the "recent practice of democracy": *Whalen*, at paragraph 57. In the same fashion, the alleged custom in this case would reflect the recent practice of testamentary freedom.

[40] Because their nature and source are the same, the same test should be applied for proving electoral customs and the alleged custom regarding testamentary dispositions. With respect to elections, the test applied by this Court was expounded by my colleague Justice Luc Martineau in *Francis v Mohawk Council of Kanesatake*, 2003 FCT 115 at paragraphs 35–36, [2003] 4 FC 1133 :

> It is quite common that behaviours arising through attitudes, habits, abstentions, shared understandings and tacit acquiescence develop alongside a codified rule and may colour, specify, complement and sometimes even limit the text of a particular rule. Such behaviours may become the new custom of the band which will have an existence of its own and whose content will sometimes not be identical to that of the codified rule pertaining to a particular issue. In such cases, and bearing in mind the evolutionary nature of custom, one will have to ascertain whether there is a broad consensus in the community at a given time as to the content of a particular rule or the way in which it will be implemented.
>
> For a rule to become custom, the practice pertaining to a particular issue or situation contemplated by that rule must be firmly established, generalized and followed consistently and conscientiously by a majority of the community, thus evidencing a "broad consensus" as to its applicability. This would exclude sporadic behaviours which may tentatively arise to remedy certain exceptional difficulties of implementation at a particular moment in time as well as other practices which are clearly understood within the community as being followed on a trial basis. If present, such a "broad consensus" will evidence the will of the community

> at a given time not to consider the adopted electoral code as having an exhaustive and exclusive character.

[41] When applying this test, this Court typically engages in a detailed review of the practice: see, for example, *Da'naxda'wx First Nation v Peters*, 2021 FC 360. A mere statement of opinion will not suffice.

[42] Proving the alleged custom in this case faces an additional challenge. Unlike electoral customs that deal with collective processes, the alleged custom pertains to individual and private behaviour. Thus, it is not enough to take a global look at the community's behaviour. There must be evidence that individuals act in accordance with the alleged custom.

[43] The evidence adduced by John Louie is insufficient to prove the alleged custom. Given the nature of the alleged custom, a bare assertion that the practice has been followed for a long time does not prove that it attracts the broad consensus of the community. It should come as no surprise that many individuals bequeath their property to their children. Yet, the fact that they often, or almost always act in this way does not abrogate testamentary freedom.

[44] In this regard, John Louie's position is significantly undermined by Ms. Brewer's evidence of land transactions between members of different families. Moreover, in an undated note for the Regional Director General, departmental staff highlighted the fact that Jimmie Louie's estate comprises land that was transferred to his mother by members of another family. This is difficult to reconcile with a complete ban on inter-family land transfers.

[45] The affidavits also describe the alleged custom in a manner that stresses its flexibility. It is said that land is transmitted to a family member, "usually the eldest son," but some of the affiants add that nowadays land may be transmitted to a son or daughter. The facts of this case provide another example of this flexibility. Ms. Louie transferred lands to her two sons, not just her eldest son, which had the effect of dividing the family's land. When this happened, John Louie did not raise any objection, despite being the eldest son. Thus, the evidence suggests that the alleged custom is more in the nature of a general practice, which is followed most of the time but allows for exceptions or deviations. Again, the lack of evidence regarding the rationale for the custom or its anchoring in an Indigenous legal tradition makes it very difficult to assess the permissible scope of the exceptions or deviations.

[46] Another factor bearing on my decision is that John Louie did not avail himself of the dispute resolution process described by the affiants—mediation under the aegis of the Chief. This process is significant in two ways. First, it provides a forum that will enable a much better informed consideration of the alleged custom than by decision-makers external to the community, such as the Minister or the courts: *Pastion*, at paragraphs 21–27. Second, it may indicate that the custom was not meant to be enforced by Canadian courts. Enforcement by Canadian courts may result in the community's loss of control over the contents and practical application of its laws. It is possible that the alleged custom cannot be separated from its dispute resolution process.

[47] In the result, John Louie has not brought sufficient evidence of the custom he alleges. In reaching this conclusion, I do not wish to suggest that proving Indigenous law in a Canadian

court is an impossible task. I am mindful that Indigenous laws have been disregarded for a long time by Canadian authorities and that extensive evidence of them may not be readily available. Nevertheless, the matter should be taken seriously and the dangers of incorrectly recognizing Indigenous laws must not be overlooked.

[48] In closing, I note that in his affidavit, Mr. Louis indicated that there was a conflict between those who wish to "commercialize" Okanagan lands and those who would keep them "for the Indigenous people alone." In this regard, while it has been said that the First Nation's proprietary interest is displaced or suspended by a certificate of possession, its regulatory power remains. Subsection 81(g) of the Act empowers the First Nation's council to make by-laws regarding zoning, which may address concerns regarding "commercialization": see *Boyer*, at 412. Whether and how this power should be exercised is not for this Court to decide—it is a collective decision to be made by Okanagan members and their elected representatives.

D. *Referral to British Columbia Supreme Court*

[49] John Louie also asked the Minister to transfer the matter to the British Columbia Supreme Court, pursuant to section 44 of the Act. The Minister refused. Deciding this case through a judicial instead of an administrative process might have provided a more appropriate forum for the proof of Indigenous law. In my view, however, John Louie is now foreclosed from challenging this aspect of the Minister's decision. He consented to the order of Justice Lafrenière remanding the matter to the Minister for a new decision. It is now too late to ask for a different process. Thus, I need not decide whether this part of John Louie's appeal should be considered as

an application for judicial review and whether the Minister's decision to deny the transfer was reasonable.

III. Conclusion

[50] To summarize, John Louie fails to demonstrate that his brother Jimmie Louie lacked testamentary capacity or that his will was contrary to Okanagan's custom. Thus, his appeal will be dismissed.

[51] Both respondents are asking for their costs. I am of the view that an amount of $1000 to be paid to each group of respondents is adequate.

JUDGMENT in T-693-20

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed.

2. The appellant is condemned to pay costs in the amount of $1000, inclusive of taxes and disbursements, to each of the Minister of Indigenous Services and the other respondents.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-693-20
STYLE OF CAUSE:	JOHN LOUIE v MINISTER OF INDIGENOUS SERVICES, JENELLE RENEE BREWER AND THE ESTATE OF JIMMIE LOUIE, ALSO KNOWN AS JIMMIE JAMES LOUIE, REPRESENTED BY HIS EXECUTRIX, JENELLE RENEE BREWER
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