

September 28, 2017

RECEIVED

SEP 28 2017

ADAMS LAKE BAND

Dear Adams Lake Community Members:

This letter is to update the community with respect to the legal proceedings and court decisions regarding the removal of Councillors Ronnie Jules, Brandy Jules and Gina Johnny and Chief Paul Michel.

Ron Jules, Brandy Jules & Gina Johnny

Following the Adams Lake Indian Band Community Panel's ("the Panel") decision to remove Ronnie Jules, Brandy Jules and Gina Johnny ("Jules'/Johnny") from their positions on the Band Council, Jules/Johnny sought Judicial Review of that decision and on February 8, 2017 the Federal Court, Trial Division upheld the decision of the Panel in its decision. That decision of the Federal Court was subsequently appealed and on July 5, 2017 the Federal Court of Appeal found that the three Councillor's had been denied "procedural fairness" in the hearing of the petition against them. Procedural fairness is a legal principle that applies to all quasi-judicial tribunals. A quasi-judicial tribunal is best defined as a body capable of making legally binding decisions. They are not a court, but are a tribunal that makes decisions on legal matters specifically outlined in the law that sets out their terms of reference.

The Panel is not a committee. It is a quasi-judicial tribunal and takes its jurisdiction to act as such from the 2014 Adams Lake Secwepemc Election Rules. Even if the members of the Panel change, the decisions of the Panel stand and any matters outstanding must still be heard and decided by the Panel. To suggest otherwise would be the same as saying that a court case would be dismissed if the judge who was hearing the case suddenly retired. Of course this cannot be the case. Rather a different judge would hear the matter just as in the case of the Panel, the new members of the Panel would be obliged to decide any outstanding appeals or petitions.

The status of the Panel as a tribunal is confirmed by the Federal Court of Appeal decision. The judgment of the Federal Court of Appeal is as follows:

"The appeal is allowed and the judgment of the Federal Court is set aside with costs here and in the Federal Court. The decision of the Community panel is set aside in its entirety including the prohibition placed on the appellants running for office in the elections to be held in 2018 and 2021. ... If the petitions to remove the appellants is to be pursued, members of the Community Panel shall participate in the decision-making in accordance with the Courts reasons."

The Court did not replace the Panel's ruling with its own. The Court did not say the petition was unwarranted and the decision wrong. What it said was that the approach taken by the Panel in reaching its decision was inconsistent with the rules of procedural fairness. The court also held that the Panel is free to re-hear the petition and must do so in accordance with the rules of procedural fairness and other administrative law principles that every quasi-judicial tribunal must follow.

In accordance with the Court's decision, the Panel is in the process of preparing guidelines consistent with the Court of Appeal's ruling and will be issuing a new Notice of Hearing in this matter in due course.

With the possibility of an election of new members to the Community Panel, voters must keep in mind that a newly constituted Community Panel will also be bound by the rules of procedural fairness and other administrative law guidelines established by the Federal Court of Appeal, including rules relating to conflict of interest.

Paul Michel

With respect to the petition regarding Paul Michel, the Panel withdrew its decision in light of the ruling in the Jules/Johnny cases. Nonetheless, Mr. Michel opted to seek a ruling from the Federal Court. On September 18 the Court released its decision which basically held that it was in no position to rule on a decision of the Panel when in fact the Panel had withdrawn its decision. In the words of the Court:

[58] ...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 this case. 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 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...

[61] Secondly, 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 ... 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.”

The entire decision can be viewed online by cutting and pasting the following link into your browser

<https://www.canlii.org/en/ca/fct/doc/2017/2017fc835/2017fc835.html?searchUrlHash=AAAAAQARY2hpZWYgcGF1bCBtaWNoZWwAAAAAAQ&resultIndex=1>

Mr. Michel has until October 18, 2017 to appeal this decision. In the event that he does not appeal the court's decision, the Panel will issue a notice to re-hear the petition. Should he choose to appeal the decision, the Panel will await the court's decision before rehearing the petition.

We trust this will assist the community in understanding the current status of these petitions.

Yours Truly,

Adams Lake Indian Band Community Panel

cc: Adams Lake Band Council

Adams Lake Band Administrator