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Federal Court of Appeal Decision

Councillors Gina Johnny, Ron Jules, and Brandy Jules

Federal Court of Appeal

Gina Johnny, Ron Jules, and Brandy Jules challenged the Federal Court decision to remove them from office as determined on Federal 8, 2017. The Federal Court of Appeal matter heard on June 19, 2017 was to challenge the Federal Court ruling that they were removed as Councillors. On July 5, 2017 the three Federal Court Judges Dawson, Webb, and Rennie found that “I would allow the appeal and set aside the judgement of the Federal Court...I would set aside the decision of the community panel in its entirety, including the prohibitions placed on the appellants’ running for office in the elections to be held in 2018 and 2021”.

Essentially, the community panel decision was overturned and the Federal Court of Appeal granted the 3 Councillors appeal and now they are fully reinstated as councilors with no sanctions.

Community Panel

The Federal Court of Appeal judges ruled that the Community Panel was biased , procedurally unfair and made errors in rendering their decision. I will summarize the issues that were discussed.

Issue #1 Federal Court Judge at the Judicial Review on January 20, 2017 erred (Overturned the lower court decision)

There were two main issues that the 3 Federal Court appeal judge reviewed. First, they found that the Federal Court judge at the judicial review erred in using the “reasonableness standard of review” and erred in failing to find that the “Community Panel’s decision was

reached in a manner that was procedurally unfair in a number of respects.”

#### Issue #2 Issue of Procedural Fairness

The Federal Court of Appeal Judges found that the Community Panel did not conduct their decision with procedural fairness. In other words, the Community Panel was procedurally unfair against the 3 Councillors. The Federal Court of Appeal Judges said that since the Community Panel had extreme powers to remove a Councillor then they were to have a high level duty to make sure that they were procedurally fair. The judges said, “First, the Committee reached its decision through a process resembling that of a court, since it has the task of receiving complaints by reference to Regulations establishing rights and duties. The Supreme Court has stated that such decisions warrant a high degree of procedural fairness...The fact that there is no internal appeal in the statutory scheme also militates in this direction...” They decided that the Community Panel did not meet a high level of procedural fairness.

Also the decision to remove a Councillor is serious given that the Councillors are also removed from receiving their honoraria and they are duly elected. The Community Panel were to be careful in their decision-making powers and to make sure that the actions alleged in the petition warranted the Councillors removal. The Federal Court of Appeal judges said that the Community Panel did not follow these principles, rather they were procedurally unfair.

#### Issue #3 Ron Jules

The evidence upon examination from the Federal Court of Appeal shows that Ron Jules’ actions did not violate a conflict of interest. In the Community Panel decision the facts show that Ron Jules declared a



conflict related to Roddy Jules' house. The Community Panel said that Ron Jules did not declare a conflict and he was removed based on their ruling; however, the evidence showed that Ron Jules did declare a conflict. The Federal Court of Appeal judges declared that the Community Panel did not even examine the evidence properly and they were wrong in their ruling that Ron Jules was guilty.

#### Issue #4 He Who Decides Must Hear

The Community Panel in their decision against Gina Johnny, Ron Jules, and Brandy Jules were also in violation of rendering a proper decision because there were many instances where the Community Panel were not in attendance to listening to all of the the witnesses either because of conflict or they missed the interviews. All 5 Community Panel members signed the removal of the 3 Councillors; however, they all did not stay and listen to all of the evidence. The Federal Court of Appeal judges says that a Community Panel member cannot find guilt unless they heard all of the testimony. "Only those members of the Tribunal who hear the case may take part in the decision."

They also found that the Community Panel has a quorum of 3 but "The quorum provision does not authorize members to come and go and participate in a decision when they have not heard all of the evidence or the submission of the parties." They also say that it is not appropriate for the other members to inform the missing Community Panel member verbally or by report on what they missed, it is essential that they personally heard the testimony especially if it was contradictory.

The Community Panel members that breached this "He who decides must hear" were Sandy Lund, Lynn Kenoras, and Maryann Yarama.

## Issue #5 Apprehension of Bias

“Apprehension of Bias” refers to the removal and disqualification of a decision-maker due to their real or perceived bias.

The Federal Court of Appeal judges ruled that an “Apprehension of Bias” existed with the following Community Panel members

- Maryann Yarama on the Ron Jules ruling
- Lynn Kenoras on the Ron Jules ruling
- Maryann Yarama on the Gina Johnny ruling
- Lynn Kenoras on the Brandy Jules ruling

## Issue #6 Adequacy of the Ruling and “range of acceptable outcomes”

The Federal Court of Appeal judges said that the Community Panel did not ponder or give reasons or justification that their ruling that the Councillors could not run for the next two elections was an adequate ruling. The ruling itself does not give a strong reason or rationale on why the Councillors deserved to be removed and not allowed to run for the next two elections. The Community Panel ruling was vague. The Federal Court of Appeal Judges said that this did not reach the level of an acceptable outcome. They did not give solid reasons for the removal of the 3 Councillors from office. They failed in their duty to be fair and reasonable.

## Issue #7 Inculpatory evidence versus exculpatory evidence.

The Federal Court of Appeal judges recognized that the Community Panel only looked at guilty evidence (Inculpatory) and ignored the fair and honest evidence showing no wrong doing (exculpatory evidence). Thus, they ruled that they could not support the Community Panel decision and it did not pass the reasonableness standard.so

Summary

The entire Community Panel decision was set aside (rejected) and the 3 Councillors were reinstated. They are also permitted to run on any upcoming elections.

Councillor Doris Johnny

Federal Court Judicial Review

Doris Johnny challenged the Federal Court Judicial Review decision that removed her from office. The matter heard on June 19, 2017 was to overturn the Federal Court ruling that she was removed as Councillor. On July 5, 2017 the three Federal Court Judges Dawson, Webb, and Rennie found that "I would allow the appeal and set aside the judgement of the Federal Court...I would set aside the decision of the community panel in its entirety, including the prohibitions place on the appellants' running for office in the elections to be held in 2018".

Essentially, the community panel decision was overturned and the Appeal judges sided with Johnny and recognized that her actions did not warrant removal by the community panel. She is also eligible to run in any upcoming elections.

There were many issues that was raised to support the Doris Johnny decision

Issue #1 Judicial Review judge erred in law concerning duty of fairness and erred in application of reasonableness standard of review.

It was found that the Federal Court judge at the judicial review was in error in making the decision that supported removal of Doris Johnny. There were two main issues that the 3 Federal Court appeal judge

reviewed. First, they found that the Federal Court judge at the judicial review erred in using the “reasonableness standard of review” and erred in failing to find that the “Community Panel’s decision was reached in a manner that was procedurally unfair in a number of respects.”

Issue 2                      Doris Johnny was in her right to conduct business as she did

In the petition the Community Panel declared that Doris Johnny was in violation when she asked Joyce Kenoras that she was out of order during a Taxation meeting. The Federal Court of Appeal judges know that “Band Councillors must be able to speak and act frankly and boldly without fear of sanction, so long as they speak and act honestly, in good faith and within the margin of appreciation afforded democratically elected leaders acting within the political mileau.”

The Federal Court Judges agreed that Doris Johnny was in her rights to ask Joyce Kenoras to remain focused on the meeting and stop her interruptions. However, they also ruled that if Doris Johnny did “momentarily” lose her dignity and respect in the heat of the debate that this happens frequently in political office and it does not warrant removal of a Councillor.

The Federal Court of Appeal judges agreed that the Community Panel did not provide an adequate reason that justified removal of Doris Johnny as Councillor.

Issue # 3    Did not raise to a level that warranted removal from office

The Federal Court of Appeal judges ruled that Doris Johnny's actions did not rise to the level that warranted her from being removed from office (a democratically elected Councillor position.) They determined that the Community Panel did not take into consideration that Doris Johnny was doing her duty as Councillor during this meeting. The Community Panel was not realistic and they did not use their common sense. At all times, the Community Panel was to determine if the wrongdoing warranted removal of a duly elected Councillor. They did not consider this in Doris Johnny's case. The Customs Election says Councillors "may" not "shall" be removed. This fairness assessment was not present in this case against Doris Johnny.

Issue #4 Failure to Interpret severity of statements from Doris Johnny

The Community Panel failed to explain why Doris Johnny's "We don't want to hear of your illness" and "We don't need to hear of your problems" merited removal as Councillor. Essentially, Doris Johnny was in her rights to get the Taxation meeting on-track and that her comments was to keep the meeting in order. So the Community Panel erred in their decision.

### Summary

The Federal Court of Appeal judges said that the Community Panel's judgement was not "justified, transparent or intelligible" They ruled that Doris Johnny's appeal is upheld and that the Judicial Review judge erred in his decision. All sanctions were removed and Doris Johnny can run in the 2018 election.

The Community Panel's decision was set aside in its entirety.

