Federal Court  Cour fédérale

Date: 20140403

Docket: T-1957-12

Citation: 2014 FC 325

Ottawa, Ontario, April 3, 2014

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SIMON POKUE

Applicant

and

INNU NATION, PROTE POKER, JEREMY ANDREW, AGATHE RICH, NORA MISTENAPEO, MARIE AGATHE RICHE, CLARENCE NUI, PETER PASTEEN, EDWARD PIWAS

Respondents

REASONS FOR ORDER AND ORDER

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I. Overview

[1] The respondent Innu Nation brings this motion to strike the underlying judicial review application commenced by the applicant Simon Pokue (Mr. Pokue). In that application, Mr. Pokue seeks to set aside the results of an election for the offices of Grand Chief and Deputy Grand Chief of the Innu Nation, held in September, 2012.

[2] This motion turns on the proper characterization of the Innu Nation's election. If it is characterized as falling within the exercise of power of a "federal board, commission or other tribunal" then it is subject to Federal Court jurisdiction and the motion to strike will be dismissed. If not, then it is not subject to Federal Court jurisdiction and the motion to strike will succeed.

[3] I conclude that the Innu Nation, in its holding of an election, is within the judicial review jurisdiction of the Federal Court. While the Innu Nation has certain, limited, technical attributes that are contrary to this conclusion, in substance, its status, mandate and conduct bring it within the meaning of a "federal board, commission or other tribunal." As a consequence, I dismiss the motion to strike.

II. Background

[4] I begin with the historical background and the evolution of governance of the Innu people.

[5] The Innu, formerly known as the Montagnais and Naskapi, are an Aboriginal group residing in Labrador and Newfoundland. The Innu in Labrador reside in two communities, the Mushuau Innu in Natuashish and the Sheshatshiu Innu in Sheshatshiu. They were not recognized by the

federal government as Indians under the *Indian Act* (RSC, 1985, c I-5). They had no band council. In light of this vacuum, in 1976 the Innu established a not-for-profit organization under Part II of the *Canada Corporations Act* (RSC 1970, c C-32) called the Naskapi-Montagnais Indian Association (the NMIA). Its objects then, as now, were to carry out numerous governance and civic functions on behalf the Innu, including the negotiation of land claims, and the provision of education, healthcare and social services in the two communities.

[6] In 1990, the NMIA changed its name to the Innu Nation, and continued as a not-for-profit corporation under the *Canada Corporations Act*.

[7] On November 21, 2002, by Order in Council, the Innu were granted status as First Nations under the *Indian Act*, with reserves being established. The lands reserved for the benefit of the Mushuau Innu First Nation were set aside in 2003, before it moved from Davis Inlet to Natuashsish in Northern Labrador. Two local band councils of Mushuau and Sheshiatshiu were established and recognized under the *Indian Act*, and exercise some of the powers and authority accorded band councils.

[8] The Innu Nation has negotiated an Agreement in Principle with Canada and Newfoundland and Labrador. While I return to this later, the Grand Chief of the Innu Nation, in his affidavit, explains its significance:

> Should the Innu eventually ratify the Final Land Claims Agreement, then the Innu Nation will, under the terms of the Final Agreement, become the Innu Government. The two band councils will become the Innu Community Governments. However, Innu Nation is not yet the Innu Government.

[9] The statement that the Innu Nation is "not yet the Innu Government" is the core of the Innu Nation's opposition to this application. It says that it is a private body, exercising only private rights. As will be evident, this assertion is inconsistent with the evidence. Essentially, the Innu Nation concedes that once the Final Land Claims Agreement is ratified, it will be a federal board. It further concedes that it is now, *de jure* and *de facto*, the overarching government body, but is insulated from any form of judicial review by reason of its status as a "private association." However, being a federal board is an issue of *substance*, not *form*. The Innu Nation's perspective on the makeup of a federal board which shelters behind its corporate antecedence belies the court's multi-variable approach in *Air Canada v Toronto Port Authority*, 2011 FCA 347.

[10] As will be evident from the review of the evidence, the Innu Nation is an umbrella organization that unites both of the band councils into a single governance body. To this end, most, but not all, core governance functions associated with a band council have been subsumed by the Innu Nation. Indeed, according to the Grand Chief, it is the Innu Nation, and not the local band councils, that negotiated the Final Land Claims Agreement on behalf of the Innu.

III. Analysis

A. *Motions to Strike*

[11] Successful motions to strike judicial review applications are exceptional. The basic rule is that expressed in *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 at 600 and affirmed in *Canada v JP Morgan Asset Management*, 2013 FCA 250 at para 47:

> The Court will strike a notice of application for judicial review only where it is "so clearly improper as to be bereft of any possibility of

> success" *[...]* There must be a "show stopper" or a "knockout punch" - an obvious, fatal flaw striking at the root of this Court's power to entertain the application.

[12] The decision to hear a preliminary motion to strike an application for judicial review is discretionary. In the circumstances of this case, several factors, including ready access to a decision, economy and the discrete nature of the issue weigh in favour of hearing this motion. All the necessary evidence is before the Court and both parties seek a determination on the issue raised.

B. *The Disputed Characterization: Whether the Innu Nation's Election Constitutes a Public Act by a "federal board, commission or other tribunal"*

[13] The Innu Nation contends that the Court has no jurisdiction to hear the application for judicial review of the election of the Innu Nation because it is not a "federal board, commission or other tribunal." The foundation of its argument is its legal status as a not-for-profit corporation incorporated under the *Canada Corporations Act*. In consequence, it says the particular decision sought for review (the election result of September, 25, 2012) is entirely a private matter. The Innu Nation contends that there is nothing in the evidence which supports its characterization as a federal board and that the powers that it exercises cannot be linked to the exercise of powers under the *Indian Act*.

[14] It is well established that a body may be a federal board for some purposes and not others: *DRL Vacations Ltd v Halifax Port Authority*, 2005 FC 860 at para 48. The focus must remain in the character of the particular function in question, when situated in the context and circumstances of the particular case. As the Federal Court of Appeal recognized in *Toronto Port Authority* at paras 49-50, even when it is undisputed that the actor in question exercises authority conferred by federal law, the ultimate question is whether or not the power exercised itself is "of a public character."

Consequently, the legal status of the Innu Nation as a not-for-profit corporation (the foundation of the respondent's argument) is but one factor to be considered in the characterization of its exercise of power when coordinating its election. The historical origin, mandate and function of the Innu Nation, and the nature of its activities and powers are components of that context, and help frame how the particular power in question, the election, is characterized.

(1) Governing Principles Regarding the Disputed Characterization

[15] A "federal board, commission or other tribunal" is defined as follows in the *Federal Courts Act*, section 2:

> "federal board, commission or other tribunal" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*.

[16] This section is to be given a flexible and purposive interpretation. Justice Anne Mactavish made the point in *Halifax Port Authority*, at para 48, that section 2 is "particularly broad" and should be given a liberal interpretation. The Court of Appeal made a similar observation earlier in *Gestion Complexe Cousineau (1989) Inc v Canada (Minister of Public Works and Government Services)*, [1995] 2 FC 694 at para 7 (CA).

[17] The Court of Appeal provides a robust overview of the approach to characterizing the "public character" of an action in *Toronto Port Authority*. While this case was not relied upon in argument by counsel, it is nonetheless the leading authority on the approach to characterizing public acts, and is therefore directly applicable. First, Justice Stratas notes that "[t]he majority of decided

cases concerning the characterization of a "federal board, commission or other tribunal" turn on whether or not there is a particular federal act or prerogative underlying an administrative decision-maker's power or jurisdiction" (at para 48). However, critically, he also notes that the ultimate legal question is directed at the *power exercised* rather than the *exerciser of power*. Put differently, being subject to judicial review depends principally on whether or not the power exercised possesses public character, not whether the actor exercising that power is technically public itself (at paras 52-60).

[18] With that focus established, Justice Stratas then outlines a non-exhaustive list of factors relevant to the public vs. private characterization flowing from the jurisprudence, namely:

a) the character of the matter for which review is sought,
b) the nature of the decision-maker and its responsibilities,
c) the extent to which the decision is founded in law as opposed to private discretion,
d) the body's relationship to other statutory schemes or other parts of government,
e) the extent to which the decision-maker is an agent of government or is significantly influenced by a public entity,
f) the suitability of public law remedies,
g) the existence of compulsory power over individuals, and
h) whether the conduct has a serious public dimension (an exceptional circumstance).

[19] In light of the foregoing, the legal question in this case is whether the Innu Nation's election possesses public character and is thus subject to judicial review.

(2) Application of the Governing Principles to the Disputed Characterization

(a) *Decision Founded in Private Discretion*

[20] Following the approach in *Toronto Port Authority*, I first note that the Innu Nation's powers do not originate from a federal act or prerogative. While it is a not-for-profit corporation operating under the legal authority of the *Canada Corporations Act*, its mandate and powers come from its by-laws, not statute. Consequently, factor c) from *Toronto Port Authority* (whether the power is founded in law or private discretion) favours the characterization of the Innu Nation election as beyond the ambit of judicial review. That being said, an analysis of the remaining factors tilts the scale demonstrably in favour of the opposite conclusion.

(b) *Character of the Matter*

[21] In this case, the character of the matter for which review is sought is the Innu Nation's election. It is difficult to conceive of a power more public in nature than an election of those who will exercise wide and significant powers which directly affect individuals and, for the Innu people, the generations that will follow. The decisions of the Innu Nation have wide-reaching implications for its Aboriginal membership that directly correspond with those of typical band councils. In that regard, this election is entirely dissimilar from an election of the board members in a corporation whose conduct relates solely to private matters. While I readily accept that not all elections of not-for-profit corporations are the exercise of public powers, the election of the Grand Chief and councillors of the Innu Nation is not a "private matter" akin to membership in a club or philanthropic association as argued. This election, when situated in light of the past, current and stated intentions of the Innu Nation, is in substance, the exercise of a public power. This brings me to the second factor from *Toronto Port Authority*: the nature of the Innu Nation and its responsibilities.

(c) *Nature of the Decision-Maker*

[22] The nature of the decision-maker (the Innu Nation) and its responsibilities also support the characterization of the election as a public act. In particular, the Innu Nation's intended and actual activities support its characterization as a band council (whose elections certainly fall within the ambit of judicial review: *Elders of Mitchikinabikok Inik (Algonquin of Barriere Lake) v Algonquins of Barriere Lake Customary Council*, 2010 FC 160, [2010] 2 CNLR 275, at para 106).

[23] First, on its website, the Innu Nation describes and represents itself to the Innu and others as the governing body. This description is clearly inconsistent with the exercise of "private powers," as argued by the Innu Nation:

> **Innu Organizations and Land Claims**
> The Innu people of Labrador formally organized under the Naskapi Montagnais Innu Association (NMIA) in 1976 to better protect their rights, lands, and way of life against industrialization and other outside forces. The NMIA changed its name to the Innu Nation in 1990 and *today functions as the governing body of the Labrador Innu*. The group won recognition for its members as status Indians under Canada's Indian Act in 2002 and is currently involved in land claim and self-governance negotiations with the federal and provincial governments. [Emphasis added]

[24] Second, the Innu Nation functions as a band council by acting as a representational governing body over a discrete Aboriginal community. In fact, there are representational links between the band councils and the Innu Nation. For example, disputes over membership in the Innu Nation is to be determined by reference to band council membership lists. Further, the Innu Nation is elected by members of the two bands, each of which has equal representation on the board. The Chiefs of each band also sit on the council of the Innu Nation. Counsel for the respondent admits that the Innu Nation derives its authority "from the people."

[25] Third, the Innu Nation acts as a band council by pursuing and executing a mandate similar to that of a band council. Drawing from its own evidence, there are three components to the mandate of the Innu Nation. The first is to provide "a unified political voice to protect the Innu people from outside threats." The second is "to pursue land claims agreements" and the third is "to assist in the delivery of education, healthcare and other social services." In furtherance of this mandate, the Innu Nation has performed numerous acts consistent with its characterization as a band council, some of which I outline below.

[26] In November, 2012, the Innu Nation was the signatory to the New Dawn Agreement with the government of Newfoundland and Labrador and Newfoundland Power. It is signed by the Deputy Minister of Justice, the President of the Energy Corporation of Newfoundland and Labrador, and the Innu Nation Grand Chief and Deputy Grand Chief.

[27] The agreement is a land claim settlement in principle and is supplemented by an impact and benefits agreement which ensures that the Innu people will benefit from resource development on its territory. It is a comprehensive framework that provides for revenue sharing from the Upper Churchill hydro electric development, the identification of 5000 square miles of Innu lands in the land selection process, 130,000 square miles over which certain hunting and trapping rights can continue, and commitments to process the identification of hydro transmission corridors.

[28] Significantly, some sections of the agreement are contingent upon the timely resolution of consultation obligations. As *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73,

[2004] 3 SCR 511 and *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388 teach, consultation is a core component of the relationship between Aboriginal people and governments. In this case, the consultation process with the Innu people is conducted through and with the Innu Nation.

[29] Section 2(a) of The New Dawn Agreement also provides that the Innu Nation is the recipient of land claim settlement funds and of the continuing royalty stream from the Upper Churchill Project:

> **Upper Churchill Project**
> (a) The Province shall pay to Innu Nation or, if established, the Innu Government (collectively hereafter "**Innu Nation**") an annual payment of two million dollars Canadian ($2,000,000.00) commencing upon ratification and execution of the IBA and terminating on August 31, 2041.

[30] These facts demonstrate that the Innu Nation exercises financial, political and legal control and authority consistent with its character and stature as a public body, exercising public powers.

[31] This conclusion is reinforced by other conduct and decisions of the Innu Nation, all of which are of a public character:

a) The Innu Nation has undertaken legal action on behalf the Innu people in the two communities.

b) The Grand Chief and Deputy Grand Chief of the Innu Nation, along with the two Chiefs of the Bands, represent the Innu at the Round Table, a Federal and Provincial government forum for discussion of common issues.

c) The relocation agreements, by which the Band formerly moved from the Davis Inlet to Natuashish were negotiated by the Innu Nation.

d) The comprehensive health care agreement with the governments of Canada and Newfoundland and Labrador was negotiated by the Innu Nation, along with the band councils.

e) The Fisheries Guardian Program, which trains Innu people to work as fisheries conservation officers was negotiated between the Innu Nation and the Government of Canada.

f) The province of Newfoundland and Labrador negotiated an agreement with the Innu Nation to allow full Innu participation in forest planning in Central Labrador.

g) The Innu Nation has received on behalf of the Innu, over $4,000,000,000 in royalties from Inco Ltd. in respect of the Voisey Bay nickel mine. The Innu Nation is responsible for the proper management of these financial resources on behalf of the Innu people.

h) The agreement of the Innu Nation to the New Dawn Agreement is binding on band councils and future governments.

[32] While not determinative, I note that the Innu Nation has recently abandoned the formal titles characteristic of a not-for-profit corporation under the *Canada Corporations Act* (Board of Directors, President and Vice-President) and replaced them with the titles and offices consistent with public governing authorities; those of Grand Chief, Deputy Grand Chief and council.

[33] Finally, Canada, Newfoundland and Labrador recognize the Innu Nation as the political representative of the Innu Nation. This is not disputed. This fact, together with several of the facts noted above, bear on criteria d) of *Toronto Port Authority*, namely, the body's relationship to other parts of government.

[34] All of these activities provide context to and frame the specific question at hand, and in turn support the characterization of the Innu Nation as a "federal board, commission or other tribunal," in so far as it holds elections.

(d) *The Existence of Compulsory Power over Individuals*

[35] A third *Toronto Port Authority* factor, the existence of compulsory power, further establishes the Innu Nation as a public body. By way of example, the Innu Nation passed a resolution in February, 2013 authorizing the harvesting of caribou in the George River herd. The Innu Nation says that it is not a by-law enacted under section 81 of the *Indian Act*, because it was not referred to the Minister for approval, and is therefore irrelevant to the disputed characterization.

[36] In substance, it is a by-law and was clearly intended by the Innu Nation to be treated as such. The resolution provides, in part:

> AND WHEREAS the George River Caribou Herd is currently in a state of decline, and Innu Nation is determined to take necessary steps to sustainably manage their hunt through the exercise of communal jurisdiction to limit the amount of caribou that may be harvested by Innu Nation Members;
>
> AND WHEREAS the Innu Nation has consulted with the Innu Nation membership and obtained the advice and direction of leadership, elders and hunters, BE IT HEREBY RESOLVED THAT:

> Innu Nation will establish community harvesting guidelines […] that will limit the taking of caribou […] These guidelines will be in effect for a period of one (1) year. Innu Nation will continue to monitor the situation and will take such steps as may be necessary in future.

[37] The regulation of harvesting of fur bearing animals is, under the *Indian Act*, a matter within the authority of the band council. When asked as to the basis of the Innu Nation's authority to issue a resolution of this nature, Grand Chief Prote Poker admitted that the Innu Nation functions as the Aboriginal governing body:

> Q. And how come—for what reason, why wouldn't the respective band councils have passed this resolution?
>
> A. Because it's the responsibility of the Innu Nation, as we—we act as a governing body, as a government, moving—even though we're not a government, but we are moving in that direction, so we are just exercising our right and when we become a government, we are just practicing or doing the things that we need to do to become a government.

[38] While the Innu Nation contends that the resolution was not binding, the evidence of Mr. Pokue, which was not disputed on this point, was to the contrary. The resolution was posted in public places, had the form and style of a by-law and, importantly, according to Grand Chief Poker, the Innu Nation expected that the Innu people would abide by its terms.

(e) ***Suitability of Public Law Remedies***

[39] The availability and suitability of public law remedies is a further criterion to be considered in characterizing the act in question.

[40] Allowing status under the *Canada Corporations Act* to be determinative would restrict the Innu people's access to effective judicial remedies. Judicial review would be limited to those governance functions that still remain with the local band council. In respect of the significant activities and decisions undertaken by the Innu Nation, many of which are of the highest order of decision making, and have direct impact on the people, there would be no recourse.

[41] The respondent says that the applicant has remedies available to it under the *Canada Corporations Act*. There are problems, legal and practical, with this. First, apart from a vague allusion to oppression remedies, no means of recourse was identified. Oppression remedies are available in respect of *Canada Business Corporations Act* (RSC, 1985, c C-44), and not in respect of *Canada Corporations Act* entities. While this is sufficient to dispose of this argument, the respondent's suggestion would depend on the awkward conceptualizing of band members as shareholders, and some delineation of who is a "minority" shareholder. It is a very awkward fit. Importantly, if dissatisfied with the management a *Canada Corporations Act* corporation, members can simply walk away and choose not to participate. Here, however, the actions of the Innu Nation reach deep into the heart of daily life of band members, and the generations that will follow. They cannot simply walk away. These observations highlight the wisdom of focussing on the nature of the power exercised, and its consequences.

[42] Moreover, to accept the narrow definition of a federal board advanced by the respondents would produce odd and dysfunctional results. As we have seen, some of the agreements with respect to policing and health care were negotiated between the governments, the Innu Nation and the band councils, acting jointly. The decision to enter into the agreement, and decisions taken

under the agreement (assuming that they are amenable to judicial review), would be reviewable only to the extent that they were attributable to the Band, but not the Innu Nation.

[43] Third, construed as "private powers," the binding agreements made by the Innu Nation and its conduct, generally, would be immune from judicial review. The power at hand, the election, would be detached from the vast body of law which affirms the importance of procedural fairness and natural justice in the Aboriginal electoral process, and regulated by private law constructs, inappropriate to the nature of the interests at hand.

(f) ***Serious Public Dimension***

[44] Public confidence in the integrity and fairness of electoral processes in respect of governing bodies, regardless of the office, is integral to our democratic principles. Elections for public office, such as those of the Innu Nation, must conform to the principles of natural justice. As Justice Marshall Rothstein stated in *Long Lake Cree Nation v Canada (Minister of Indian and Northern Affairs)*, [1995] FCJ No 1020 (FCTD) at para 31:

> 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.

[45] The point was made more recently by Justice Robert Mainville who stated in *Algonquins of Barriere Lake v Algonquins of Barriere Lake (Council)*, [2010] FCJ No 185 (*Mitchikinabikok Inik*):

> …those who carry out and supervise leadership selection processes for public bodies, such as a band council, are required at a minimum

> to project and demonstrate a degree of fair play and impartiality such as to ensure a credible result from those processes.

[46] Elections that select individuals who exercise broad and significant power over communities of individuals, and in particular, powers that are conventionally exercised by public bodies, have a serious public dimension. In light of this, the contention that this election is merely analogous to an election to the executive of a private club, fails.

(3) Specific Arguments to the Contrary

[47] The respondent points to the absence of an express authority under the *Indian Act* for some of the functions carried out by the Innu Nation. Such direct linkage has never been a requirement. A similar argument was advanced in *Sparvier v Cowessess Indian Band*, [1993] 3 FC 175. In that case, it was argued that there was no jurisdiction in the Federal Court to hear a customary band council election as it was not a band council election under the *Indian Act*. Justice Rothstein rejected that argument. In doing so he drew on long-standing appellate jurisprudence, including *Peter Canatonquin et al v Louis Gabriel et al*, [1980] 2 FC 792 at 793 (CA):

> We see no merit in the appellants' contention that the Trial Division does not have jurisdiction because the only issue raised by the action, namely the validity of the election of the defendants to the Council of the Band, is governed by customary Indian law and not by a federal statute.

[48] I should, before leaving the issue of the public character of the election process, turn to the decision in *Lonechild v Federation of Saskatchewan Indian Nations, Inc*, [2011] SJ No 524 (Sask. QB).

[49] The decision stands on an entirely different factual footing than this case. In *Lonechild*, the Court was clear that the Federation of Saskatchewan Indians did not hold itself out as the government, was organizationally discreet from the Bands, did not perform band council functions and that its mandate did not overlay with that of the Bands. There are numerous distinctions between the *Lonechild* case and the facts before me, such that the case is of no assistance to the Innu Nation.

IV. Conclusion

[50] Band councils cannot circumvent judicial review by delegating their functions to an umbrella corporation. Nor can elections and other government conduct and decisions be immunized from judicial review by sheltering behind a corporate structure. Band councils should be free to modify existing structures of governance or to consider innovative models in order to address local needs. However, the communities that they govern should not feel that in making these choices they lose access to justice.

[51] The respondent's argument is predicated on the fact of its corporate status. This status as a corporation with "members", the argument goes, determines the characterization of the election as a private matter. In my view, to accept this argument would have the Court turn a blind eye to the facts and focus on the legal form. The courts have long departed from excessive formalism in their analysis of public law issues. Such an approach also directly contradicts the contextual and "substance over form" approach endorsed by the Federal Court of Appeal in *Toronto Port Authority*.

[52] While the *Canada Corporations Act* may be the legal platform from which the Innu Nation technically operates, as we have seen, many of the activities that it performs are band council functions. It is important to note that the functions of the Innu Nation are not simply "analogous" to those of the band council. They are, in fact, band council functions. The negotiation of the agreements for the provision of healthcare, policing and the regulation of trapping and fishing on reserve lands are core band council functions. The fact that some services may be delivered at an operational level by the band councils themselves, while another factor in the equation, does not tip the balance in favour of the election being a private power. Similarly, the absence of an express delegation of authority from the band council to the Innu Nation is not a compelling argument. At a minimum, the band councils have acquiesced in the Innu Nation discharging many of their core functions.

[53] The question of whether an institution, body, or person is acting in the capacity of a federal board in a given set of circumstances is one that must be resolved on a case by case basis, having regard to the criteria articulated in *Toronto Port Authority* regarding public character. The Innu Nation's election is properly the subject of judicial review because it possesses such public character. Its public character flows from a consideration of the multiple factors established in *Toronto Port Authority* in relation to "federal boards, commissions or other tribunals" and the application of those factors to the makeup and conduct of the Innu Nation.

[54] To be clear regarding the scope of this decision, I have determined that the Innu Nation, in the holding of its election, is exercising public powers and falls within the definition of section 2 of

the *Federal Courts Act*. I make no determination with respect to other functions that may be performed by the Innu Nation.

ORDER

THIS COURT ORDERS that:

1. The motion is dismissed with costs to the applicant.

2. If the parties cannot agree on costs, they may file, within twenty days of the date of this decision, submissions of three pages or less.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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