

# Court of Queen's Bench of Alberta



Citation: *Boucher v. Métis Nation of Alberta Association*, 2008 ABQB 262

Date:  
Docket: 0703 15317  
Registry: Edmonton

Between:

**Rick Boucher**

Applicant

- and -

**Métis Nation of Alberta Association, Audrey Poitras, Métis Judiciary Council, Dale Friedel, Toby Racette, Ken Shaw, Bertha Clarke-Jones and Bonnie Bell**

Respondents

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**Reasons for Decision  
of the  
Honourable Mr. Justice M.A. Binder**

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## **Nature of the Application**

[1] The Applicant, Rick Boucher seeks to quash a Métis Judiciary Council ("MJC") decision finding that he contravened conflict of interest provisions contained in the Métis Nation of Alberta Bylaws ("MNA Bylaws") and acted in a manner gravely detrimental to the Métis Nation of Alberta ("MNA").

## **Background**

[2] The MNA is a society duly incorporated pursuant to the provisions of the *Societies Act*. It is comprised of six geographic regions within the Province of Alberta. Every three years, the members of the MNA elect a President and a Vice-President. At the same time, the members of each region elect a President and Vice-President for that region. Pursuant to the MNA Bylaws, the twelve

persons elected as President and Vice-President of a region serve as members of the MNA Provincial Council together with the persons elected as the MNA Provincial President and Provincial Vice-President, for a total of fourteen elected members on the MNA Provincial Council.

[3] The Applicant was a member of the MNA Provincial Council in February 2007, having been elected to the position of Vice-President of MNA Region 1 in 1999 and re-elected to that position in 2002 and 2005.

[4] The Respondent, Audrey Poitras, is the President of the MNA, and serves as Chair of the MNA Provincial Council.

[5] On November 29, 2006, the MNA entered into an agreement with the Métis National Council ("MNC") which provided for the delivery to Métis persons in Alberta of their share in the Aboriginal Health Human Resources Initiative ("AHHRI") which are funds aimed at the promotion of health-related issues and education within the Métis Nation. This agreement followed upon the signing of a Contribution Agreement between the MNC and Health Canada, whereby the federal government provided the MNC, which represents the Métis at the national level, with funds it was then bound to distribute to the various provinces. Citing concerns with the structure of the November 29, 2006 Agreement, the MNA withdrew from the same and returned the MNC funds that had already been forwarded as part of the AHHRI.

[6] At the MNA Provincial Council meeting on February 7, 2007, Audrey Poitras advised Provincial Council members of the MNA's repudiation of the deal signed in November with the MNC. The Applicant suggests that certain Provincial Council members did not feel they had been fully informed as to what had taken place over the past three months between the MNA and MNC. Nevertheless, a motion (seconded by the Applicant) was passed to seek an agreement directly with Health Canada.

[7] Having already entered into a multi-year agreement with the MNC, the Federal Government refused overtures from the MNA for a direct bilateral relationship to deliver the AHHRI in Alberta. David Chartrand, MNC Minister of Health, advised Audrey Poitras and Health Canada that an interim strategy would be employed to ensure provision of funding under the program to Alberta, in order that Métis students residing in Alberta not be excluded from the benefits of the AHHRI.

[8] The Applicant and Ken Bourque, MNA Region 1 President, subsequently signed an Agreement (the "AHHRI Agreement") dated March 23, 2007, which provided for the delivery of health-related initiatives to Métis persons in Alberta through Metco Ventures Inc. ("Metco") and Region 1 of the MNA. Metco was to act as a facilitator and all funds under the AHHRI Agreement flowed directly to Region 1. The Applicant submits that at the time that he signed the AHHRI Agreement, he owned 75% of the shares in Metco; the other 25% of the shares in Metco were held in trust for Region 1 of the MNA. The Respondents submit that he was the sole director and shareholder. The Applicant had not transferred all of the shares he held in Metco to Region 1 of the MNA as was required by an agreement with the MNA dated July 29, 2003. The MNA had continued

to do business with Metco, as indicated by Provincial Council minutes of July 2005, indicating approval of a contract between the MNA and Metco.

[9] On March 30, 2007, the Applicant divested himself of all shares in Metco. The AHHRI Agreement was superseded by an Agreement of May 23, 2007 which read in part:

It is a condition of this agreement that no personal shareholder of Metco Ventures Inc. shall receive a direct benefit from funds provided under this Delegation Agreement and no profit will be accrued by Metco Ventures Inc. from funds provided by MNC.

[10] On April 3, 2007, David Chartrand travelled from Winnipeg to Edmonton at the Applicant's request to give a presentation on all aspects of the AHHRI Agreement. The Applicant states that the following day, the Vice President of the MNA, Trevor Gladue attempted to put forward a motion at Provincial Council expressing support for the AHHRI Agreement (the support of a majority of the Provincial Council already having been confirmed in writing), however Audrey Poitras would not accept the motion, and the meeting was adjourned, and there have been no further meetings of the MNA Provincial Council since that date.

[11] As of May 2, 2007, Ms. Poitras assumed the duties of the Minister of Justice portfolio of the MNA, after the previous Provincial Council member who served in that role was dismissed.

[12] On May 7, 2007, Ms. Poitras submitted a complaint ("Complaint") to the MJC regarding Boucher's conduct relative to the matters outlined above. The Complaint alleges that the Applicant was in breach of the conflict of interest provisions of the MNA Bylaws. After reciting the alleged facts underlying the Complaint in some detail, the Complaint concludes:

19. The foregoing actions on the part of Rick Boucher constitute breaches of his duties as a member of the MNA Provincial Council to adhere to the Provincial Council Conflict of Interest Guidelines as set out in the MNA Bylaws.
20. The foregoing actions on the part of Rick Boucher further constitute conduct which is, has been, and will be gravely detrimental to the Métis Nation of Alberta Association and its interests, in breach of Art. 9.1 of the MNA Bylaws and a breach of his Oath of Membership to put service to his people ahead of self interest.

[13] The powers of the MJC are set out in Article 30 of the MNA Bylaws, and include review and determination on:

- Art. 30.1(c) ...all matters concerning the suspension of rights of any Métis member and the reinstatement thereof;

Art. 30.1(d) ...all matters concerning conflict of interest...

[14] The following Articles are those upon which the Complaint is based:

Art. 22.1 A member of the Provincial Council, who is a party to a contract with the Métis Nation or has a material interest in any company who is party to a contract with the Métis Nation, shall fully disclose to the Provincial Council the nature and extent of his or her interest.

Art. 22.2 A member of the Provincial Council, shall not make or participate in making a decision in his or her capacity where the elected member reasonably knows that in making the decision there is the opportunity to further, directly or indirectly, their private interest or that of their family which includes spouse, children, parents, brothers and sisters.

Art. 9.1 The Métis Judiciary Council may suspend any member's rights other than the right to vote at an annual assembly, special meeting or general election for any conduct or act which the Métis Judiciary Council determines is, has been, or will be, gravely detrimental to the Métis Nation or the interests of the Métis Nation.

[15] The Applicant successfully applied for adjournments of the hearing on July 20, 2007 (the Applicant was unable to attend because he had an urgent personal matter) and July 30, 2007 (the Applicant was in Ottawa attending meetings). No testimony from witnesses was heard on either of those dates.

[16] Article 29.2 of the MNA Bylaws mandates that the MJC be comprised of six members. Vice Chairperson Deschamps heard applications by the Applicant on July 20, 2007 and July 30, 2007 concerning apprehension of bias, provision of disclosure, and adjournment, but resigned for personal reasons on August 31, 2007, before the hearing proper began on September 20, 2007. As he was not replaced, the MJC heard evidence in the matter at bar comprised of five individuals

[17] On September 20, 2007, Applicant's counsel objected to the continuation of the hearing because Vice Chairperson Deschamps had resigned. That application was dismissed. On the same date, the MJC heard from legal counsel for both parties regarding disclosure of Provincial Council minutes and the MJC ruled that it would not direct disclosure at that time, but reserved the right to revisit the issue after it had heard from the witnesses.

[18] The MJC heard evidence on the Complaint on September 20 and 21, 2007 (case in chief) and November 24, 2007 (Applicant's examination and cross-examination). Ms. Poitras' counsel requested permission to call a rebuttal witness, Ron Harrison (author or recipient of certain Canada Revenue Agency documents) to testify at the close of the Applicant's case. Ms. Poitras' counsel provided the MJC and the Applicant's counsel with copies of the documents in question for them to review in advance of Ron Harrison's testimony scheduled for the following day, November 25, 2007. The MJC authorized the Applicant's counsel to submit any documents relevant to the issues raised by the CRA documents or Ron Harrison's testimony.

[19] On November 25, 2007, the Applicant's counsel applied for reconsideration of the decision to allow Ron Harrison to testify and to have the CRA documents ruled inadmissible. The application was denied and he was asked to proceed and call his next witness. The Applicant's counsel then asked for an adjournment so that he could "go to court". The MJC denied that application and asked him to proceed to call his next witness. At that point, the Applicant and his counsel left the hearing.

[20] The MJC advised that they felt they had sufficient evidence upon which to render a decision and that they would disregard the CRA documents in their deliberations.

[21] On December 18, 2008, the MJC issued a written decision, finding that the Applicant was in breach of the conflict of interest guidelines provided for in the MNA Bylaws and had conducted himself in a manner which was gravely detrimental to the MNA and its interests. The MJC concluded that the Applicant's actions in signing the Metco Contract were done in contravention of the Provincial Council Resolution, without the approval of the MNA Provincial Council, and without any notice to the MNA Provincial Council of his intended actions.

[22] The MJC found that in signing the Metco Contract:

- 1) the Applicant did so knowing that the MNA Provincial Council, MNA Executive and MNA Health Committee did not want to enter into an agreement with the MNC similar to the Metco Contract;
- 2) the Applicant did so without consulting the MNA President, the full MNA Provincial Council, the MNA Health Minister and Health Committee, MNA Region 1 Council and without seeking authority from the MNA Provincial Council to do so;
- 3) the Applicant did so in direct contravention of the Provincial Council Resolution which he was obliged to support;
- 4) the Applicant was in breach of the Conflict of Interest Guidelines for members of the MNA Provincial Council as set out in Article 22 of the MNA Bylaws; and

- 5) the Applicant had acted in a way that was gravely detrimental to the Métis Nation.

### Issues

[23] The following issues emerge from the foregoing:

- 1) Is the MJC a public or private body?
- 2) What is the appropriate scope and standard of review?
- 3) Is there a reasonable apprehension of bias?
- 4) Was the MJC properly constituted?
- 5) Did the MJC act reasonably in refusing the adjournment request on November 25, 2007?
- 6) Is the substance of the decision subject to review, and if so does it meet the appropriate standard?

*1) Is the MJC a public or private body?*

#### *Position of the Applicant*

[24] The Applicant submits that the MJC is a public tribunal, as it is court-like in nature, having the power to exclude the public, and to compel individuals. It administers its adjudicative function for the benefit of the Métis people in Alberta, and there are parallels between the MJC and Indian Band Councils. Issues which come before the MJC do not involve property or contractual rights; rather, they concern allegations of wrongdoing as against the MNA and by extension the Métis people at large, or issues of entitlement to designation as a Métis. The proceedings were governed by the Bylaws as opposed to legislation in the realm of private law.

[25] The Applicant states that he had no option but to submit to the jurisdiction of the MJC if he was to clear his name and salvage his position in the MNA. This matter concerns an elected official, and the MJC purports to have the power to strip him of his ability to be an elected official. The elections are much like other political elections.

[26] The Applicant further argues that even if the MJC is characterized as a private tribunal, *Penton v. Métis Nation of Alberta Association*, [1995] A.J. No. 474 (Q.B.) is authority for the proposition that the principles of judicial review of the decision of a public body apply in this case. Further, in *Kaplan v. The Canadian Institute of Actuaries* (1994), 25 Alta. L.R. (3d) 108 (Q.B.),

affirmed (1997), 151 D.L.R. (4th) 481 (C.A.), leave to appeal dismissed, [1997] S.C.C.A. No. 563, Hunt J. determined that although the body in question looked like a private consensual tribunal, it had a public impact. The Applicant states that *Knox v. Conservative Party of Canada*, [2007] A.J. No. 1046, 2007 ABCA 295, leave denied [2007] S.C.C.A. No. 567 is distinguishable in that the Bylaws in this case do not incorporate arbitration.

### *Position of the Respondents*

[27] The Respondents submit that the MJC is a private consensual tribunal established under Article 29.1 of the MNA Bylaws to provide a dispute resolution mechanism for disputes concerning the MNA and its members. It does not exercise any statutory powers vested in it for the benefit of the public. The MJC performs a number of functions set out under Article 30.1, one of which is to initially establish rules and procedures for the MJC until the date of the next Annual Assembly at which time that Annual Assembly establishes the rules and procedures of the MJC (Article 30.1(i)). The Policy and Procedures were ratified by the 70<sup>th</sup> Annual Assembly of the MNA in 1998.

[28] The MJC is allocated its own budget (Article 30.3). The Provincial Council of the MNA must approve all budgetary requirements of the MNA and is financially accountable to the Annual Assembly (Article 13.5). A member of the MJC may not hold an elected position or employment with the MNA (Article 30.4). As a private tribunal, the MJC does not have any powers to compel the attendance of witnesses or the production of documents from third parties. No such provisions appear in the MNA Bylaws or the Rules and Procedures which concern only the obligations of complainants and respondents.

[29] The MNA itself is a voluntary and consensual private body incorporated under the *Societies Act*. The MNA is not directly delegated any statutory authority nor are its day-to-day activities licensed or regulated by any level of government. Article 30.2 of the MNA Bylaws provides:

The Métis Judiciary Council shall be the final Métis Judiciary authority of the Métis Nation of Alberta. All decisions of the Métis Judiciary council shall be final and without appeal.

[30] The Respondents submit that the MJC does not take away a role from the courts; it was not created to adjudicate disputes between parties for any public purpose. It is not sufficient to be "court-like", and receipt of public funds is not determinative. The decisions of the MJC do not affect the public rights of a member of the MNA in any manner.

[31] The Respondents further submit that *Knox* has overruled or distinguished *Penton* and that the MJC is clearly a private law organization. The application in *Penton* was for declaratory relief (a private law remedy) and the decision makes no mention of the distinctions between domestic and administrative tribunals. As well, *Kaplan* was rendered prior to *Knox*, and the Court of Appeal in *Kaplan* upheld the Queen's Bench decision without going into much detail on this issue. They cite

*Aubichon v. Metis Society of Saskatchewan Inc.* (1999), 179 Sask.R. 149 (Q.B.) in support of the argument that the MJC is a private consensual tribunal.

### *Analysis*

[32] *Knox* provides a helpful analysis of the factors to be considered in determining the classification of a tribunal as public or private. Factors which support a finding that the tribunal is a public body include the following: the body is court-like; it administers a function for the benefit of the public on behalf of a level of government; it is empowered by legislation to supervise and regulate a trade, profession, industry or employment, or an element of commerce, business, finance, property or legal rights for the benefit of the public generally; it set standards for the benefit of the public; it exercises powers that do not accrue to private organizations, and that are only vested in the tribunal by statute for the benefit of the public; it exercises public powers; it discharges public duties or exercises powers of a public nature.

[33] The Court in *Knox* also identified matters which are not determinative, including the following: the body is subject to public regulation; the organization holds a licence or permit of some kind; it is in receipt of public money; it is incorporated; the corporation is expressly or implicitly authorized by statute to retain staff or engage in other business; it is registered as a charity; it has public importance.

[34] The Court stated that although the democratic process, elections, and the activities of political parties are of great public importance, public importance is not the test for whether a tribunal is subject to judicial review.

[35] As was noted by the Supreme Court of Canada in *R. v. Powley*, 2003 SCC 43, [2003] 2 S.C.R. 207, self-identification (and not just short-term self-identification) as a member of a Métis community is only one of three broad factors cited as indicia of Métis identity. It follows that membership in the MNA alone does not confer any legal Aboriginal rights on the member, although membership in a Métis organization may provide easier access to government funded programs for Métis people.

[36] In my view, *Penton* is of limited relevance on this particular question, as no thorough analysis was undertaken in that case as to whether the MNA was a public or private body. *Kaplan* was described in *Knox* as an illustration of the outer boundaries of what is a public body subject to judicial review, the discipline by the Canadian Institute of Actuaries having public and private aspects.

[37] Although the MJC is court-like, it does not administer a function for the benefit of the public on behalf of a level of government. It is not empowered by legislation to supervise and regulate property or legal rights for the benefit of the public generally, nor does it set standards for the benefit of the public. It exercises powers that accrue to other private organizations. It does not discharge a public duty or exercise powers of a public nature. While it is true that the MNA is incorporated under

the *Societies Act*, and that the MNA and the MJC receive public monies, these factors are not determinative, nor is the fact that its activities are of public importance.

[38] I find that the MJC is properly characterized as a private consensual tribunal.

2) *What is the appropriate scope and standard of review?*

*Position of the Applicant*

[39] The Applicant submits that in effect the only material difference between private law and judicial review analyses is that the “patently unreasonable” standard applies to the decisions of private tribunals, whereas public bodies have been subject to a range of standards of review. At a minimum, the court has jurisdiction to ensure that the decision is not “patently unreasonable” (now the “reasonableness” standard under *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, 2008 SCC 9).

*Position of the Respondents*

[40] The Respondents submit that the MJC decision is not reviewable on the merits. As private law remedies are applicable, only an invalid decision or action may be set aside and the merits will be reviewed only in the clearest of cases: *Falk v. Calgary Real Estate Board Co-Operative Ltd.* (2000), 82 Alta.L.R. (3d) 201 (Q.B.); *Knox, Lee v. Showmen’s Guild of Great Britain*, [1952] 1 All E.R. 1175, *Schaer v. Barrie Yacht Club*, [2006] O.J. No. 3582 (Sup.Ct.Just.). Therefore, such reviews are generally based on the three grounds laid out in *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at para. 10, being whether the decision was carried out according to the applicable rules, with regard to the principles of natural justice, and without *mala fides*. The Court in *Hofer* did state that review would be available where a property or civil right turns on the question of membership. Generally, however, the focus is on the procedure, rather than the substance of a private tribunal’s decision.

[41] The Respondents further submit that Rule 753.07 of the *Alberta Rules of Court* can be applied to certain instances where the actions of the MJC may be found not to have been perfectly in accord with their jurisdiction or the principles of natural justice but where these minor defects cannot be found to have been sufficient to have altered the outcome of the MJC hearing or to have changed the MJC decision: *Street v. B.C. School Sports*, 2005 BCSC 958.

*Analysis*

[42] The Court of Appeal in *Knox* held that the *Pushpanathan* test is largely inapplicable to private consensual tribunals. The first part of the test is the existence of a privative clause, which is purely a matter of statute. The second part of the test is the expertise of the tribunal. The third factor, the intention of the statute as a whole, also does not apply to private tribunals. The absence of any

public dimension to the activities of a private tribunal undermines the *raison d'être* of the *Pushpanathan* test.

[43] In my view, as contract law applies with respect to private tribunals, Article 30.2, which is like a privative clause, should be enforced as such unless it is against public policy. Further, I find nothing in *Dunsmuir* to suggest that the principles set out in *Hofer* are no longer applicable to review of private tribunals. The move toward a single reasonableness standard in the context of judicial reviews does not pave the way for a more intrusive review of decisions of private tribunals. In effect, *Dunsmuir* supports *Knox* in not following *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653. I agree with the Respondents that any review must focus primarily on procedure.

[44] It is worth noting that the case law does not uniformly set out a standard of review of the substance of the decision of a private tribunal. The grounds cited include *ultra vires*, irrelevant considerations or failure to consider relevant matters, and errors in law. It might be possible to construe certain fundamental and egregious errors as "jurisdictional". Further, in my view any decision of a private tribunal that is so far off base, that it makes no sense - the now retired patently unreasonable standard of judicial review - would be subject to a declaration of invalidity and set aside. In any event, I believe it is safe to say that there is a general consensus in the case law that review of the substance of private consensual tribunals will occur only in rare cases.

### 3) *Is there a reasonable apprehension of bias?*

[45] The MNA Bylaws provide that all parties appearing before it have the right to a fair and impartial hearing (Article 31.1c)).

#### *Position of the Applicant*

[46] The Applicant alleges that an institutional bias existed, as Audrey Poitras, President of the MNA, made the complaint, and she had contact with the members of the MJC, citing *Nicholson v. Haldimand-Norfolk Regional Board of Police*, [1979] 1 S.C.R. 311; *Kane v. University of British Columbia*, [1980] 3 W.W.R. 125 (S.C.C.); *Fld. Telephone Co. v. Nfld. (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623; *The King v. Sussex Justices*, [1924] 1 K.B. 256; *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369; *Bennett v. British Columbia (Superintendent of Brokers)*, [1993] B.C.J. 203 (C.A.); *Szilard v. Szasz*, [1955] S.C.R. 3; *R. v. Valente*, [1985] 2 S.C.R. 673. The Applicant points to meetings which occurred between the MJC and Ms. Poitras.

[47] The Applicant also points out that Ms. Poitras is the President of the MNA and that effective May 2, 2007 she took on responsibility for aspects of the portfolio of the former MNA Minister of Justice. He submits that she should have taken greater steps to insulate herself.

*Position of the Respondents*

[48] The Respondents cite *Robertson v. Edmonton (City) Police Service*, [2004] A.J. No. 805, 2004 ABQB 519 and *CEP (Local 707) v. Alberta (Labour Relations Board)*, 2004 ABQB 63 as supporting the conclusion that no institutional bias exists in this case.

[49] The Respondents further submit that because of the close relationship between members in private voluntary associations, courts accept that members of a tribunal in such an organization will have a certain amount of involvement in, knowledge of and direct interest in the determination of the issue under consideration, without creating a reasonable apprehension of bias, citing *Hofer, Schaer v. Barrie Yacht Club*, [2006] O.J. No. 3582 (Sup.Ct.Just.), *Communications, Energy and Paperworkers Union of Canada, Local 707 v. Alberta (Labour Relations Board)*, [2004] A.J. No. 83, 2004 ABQB 63. The question is whether a reasonable person would find a disqualifying taint on the particular facts in this case.

[50] The Respondents argue that the fact that Ms. Poitras assumed the duties of the portfolio of the former MNA Minister of Justice does not create an automatic apprehension of bias, nor do her communications in her capacity as President. To find otherwise would mean that she or any MNA President would never be able to make a complaint to the MJC in a private or public capacity. Further, nothing in the personal connections or relationships between Poitras and any one or more of the MJC panel is anything other than benign in nature. The decisions of the MJC do not evidence bias.

*Analysis*

[51] Ms. Poitras noted in her examination on affidavit, and cross-examination that she met with the MJC on April 30, 2007 regarding various matters concerning ongoing administration of the MJC. She also met with the MJC on January 5, 2008 in relation to discussions concerning possible amendments of boundaries of the Regions of the MNA as raised at the last Annual Assembly, because the MJC is the body that recommends boundary changes (Articles 11.3 and 30.1(e)). They also discussed certain other ongoing administrative matters. She confirmed that she did not meet with members of the MJC at any time after she filed her complaint on May 7, 2007 until after the MJC decision was issued on December 18, 2007. She further confirmed that she did not discuss any of the matters relative to the complaint she made with members of the MJC at either of these meetings or at any time.

[52] *R. v. R.D.S.*, [1997] 3 S.C.R. 484 and other cases stand for the proposition that the onus of establishing an allegation of bias lies with the person alleging its existence, the threshold for a finding of real or perceived bias is high and a real likelihood of probability of bias must be demonstrated (mere suspicion is not enough), and there is a presumption that a member of a tribunal will act fairly and impartially in the absence of evidence to the contrary.

[53] Article 32.1 provides that a lifetime member who has reason to believe that a Provincial Council member did not comply with the Conflict of Interest guidelines may request that the MJC give an opinion respecting the compliance with the Conflict of Interest guidelines. Ms. Poitras is a lifetime member.

[54] I find that there could be no apprehension of bias in the mind of a reasonable person on the facts of this case. It is not unusual for there to be a certain amount of contact among members of a private association. Ms. Poitras was entitled, as a lifetime member, to lay a complaint. Ms. Poitras had no meetings with the MJC from the time the complaint was laid until the decision was issued. The threshold for a finding of real or perceived bias is high, and the facts of this case simply do not reach that threshold.

4) *Was the MJC properly constituted?*

*Position of the Applicant*

[55] The Applicant argues that when a statute confers jurisdiction upon a tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with: *Harris v. The Law Society of Alberta*, [1936] S.C.R. 88. Here, the Bylaws state that the MJC "shall consist" of six members: Article 29. The Applicant suggests that the MJC made a jurisdictional error on September 20, 2007 in ruling that it could proceed with the hearing with five members, relying on *Parlee v. College of Psychologists of New Brunswick*, [2004] N.B.J. No. 191 at para. 16. The Applicant states that because the MNA Bylaws state that the MJC will consist of six members and there is no reference in the Bylaws to a quorum, the MJC was no longer properly constituted once Vice Chairperson Deschamps resigned.

*Position of the Respondents*

[56] The Respondents state that where a body is composed of a definite number of members and no definite provision for quorum is made, a quorum consists of a majority of the members: *Montreal Trust Company v. The Oxford Pipe Company et al*, [1942] O.R. 260 (Ont.H.C.), aff'd [1942] O.R. 490 (C.A.), *Murray v. Rockyview (Municipal District No. 44)*, [1980] A.J. No. 649 (C.A.). *Harris* in effect supports the common law rule. The Bylaws contemplate removal of a member. There is no suggestion that the MJC cannot continue to meet in such event. Further, if the Applicant's position were correct, then any single member would have a veto over the proceedings of the MJC.

[57] The Respondents further note that Article 3.1 of the MJC Policy and Procedures for Resolving Disputes states that the MJC procedures have been established to promote justice, fairness and economy in resolving disputes, while allowing the MJC the flexibility to vary its processes to adapt to the various roles and duties assigned to it.

*Analysis*

[58] There is no specific provision in the MNA Bylaws or the Rules and Procedures dealing with the issue of the quorum for a meeting or hearing of the MJC. In my view, it would be unreasonable to conclude that the stipulation that the MJC “shall” consist of six members implies that a decision of five members is invalid. Such an approach would put MJC proceedings at constant risk of being hijacked by one member and would either potentially compromise the integrity of the process or lead to unnecessary inefficiency.

[59] I find that the stipulation in Article 29 does not preclude application of the common law rule as stated in *Oxford* and *Murray* to the effect that a majority of the MJC forms a quorum. Consequently, I find that the resignation of Vice Chairperson Deschamps for personal reasons prior to the hearing did not invalidate the proceedings.

5) *Did the MJC act reasonably in refusing the adjournment request on November 25, 2007?*

*Position of the Applicant*

[60] The Applicant asserts that if, for good reason, one party cannot advance its case on the date set for the hearing, then that party is entitled to an adjournment, citing *Penton*. In this case, Ms. Poitras raised a serious suggestion of wrongdoing, and the Applicant was entitled to an adjournment to assess his options. The refusal to grant the adjournment was irrational and unfair.

*Position of the Respondents*

[61] The Respondents submit that the decision whether or not to grant a request for an adjournment is a discretionary procedural decision of the MCJ. In this case, the request for adjournment was made so that the Applicant could bring an application in court to challenge a ruling. The courts are very reluctant to allow premature applications to challenge rulings made by a tribunal while the hearing is still proceeding: *Robertson v. Edmonton (City) Police Service*, [2003] A.J. No. 1213, 2003 ABCA 279, *Workum v. Alberta Securities Commission*, [2006] A.J. No. 722, 2006 ABCA 185.

[62] Further, the Respondents submit that a tribunal has the right to continue a hearing where a person leaves or walks out of the hearing and the person who chooses to leave may have a limited right to complain later regarding a decision made in their absence: *Violette v. New Brunswick Dental Society*, [2004] N.B.J. No. 5, 2004 NBCA 1; *510264 N.B. Inc. (c.o.b.) Angie's Show Palace v. New Brunswick (Department of Public Safety)*, [2004] N.B.J. No. 118, 2004 NBCA 29; *Re Windsor Airline Limousine Services Ltd. and Ontario Taxi Association 1688 et al.* (1980), 30 O.R. (2d) 732 (Div.Ct.); *Re McGill and City of Brantford* (1980), 28 O.R. (2d) 721 (Div.Ct.); *Tomaszewska v. College of Nurses of Ontario*, [2007] O.J. No. 1731 (Div.Ct.).

[63] In any event, in deciding to proceed with the hearing, the MJC indicated that it had determined not to refer to the documents submitted the previous day and to the questions concerning issues between Metco and the CCRA. It also declined to hear further submissions or evidence from Ms. Poitras or her legal counsel.

*Analysis*

[64] I find that the MJC did not act unreasonably in refusing the request for an adjournment on November 25, 2007, and in any event the refusal to grant the adjournment did not undermine the fairness of the hearing. The MJC had previously granted adjournments to the Applicant, and he was given a fair opportunity to address the Complaint. The Applicant, in requesting this particular adjournment, expressed an intention to circumvent the proceedings. There was no evidence called at any point when the Applicant and his counsel were not present. The MJC was of the view that it had sufficient evidence upon which to make a ruling, and it declined to refer to the contentious documents or to hear future submissions on the Complaint. I find no breach of fairness in the circumstances.

6) *Is the substance of the decision subject to review, and if so does it meet the appropriate standard?*

*Preliminary*

[65] In essence, the MJC found that the Applicant used information he gained in his position and had his company enter into an agreement with the MNC, contrary to a motion he seconded directing the Provincial Council, of which he was a part, to enter into an agreement that would allow the MNA to administer and distribute all of the HHRI funds. The MJC also found that the Applicant did not disclose his interest in the agreement to the Provincial Council.

[66] Article 22.1 provides that a member of the Provincial Council, who is a party to a contract with the MNA or has a material interest in any company who is a party to a contract with the MNA, shall fully disclose to the Provincial Council the nature and extent of his or her interest. Article 22.2 provides that a member of the Provincial Council shall not make or participate in making a decision in his or her capacity where the elected member reasonably knows that in the making of the decision there is the opportunity to further, directly, or indirectly, their private interest or that of their family which includes spouse, children, parents, brothers and sisters.

[67] The parties agree that the MJC erred in finding that the Applicant had breached Articles 22.1 and 22.2.

*Position of the Applicant*

[68] The Applicant submits that on any standard, the decision of the MJC cannot stand. The MJC found that the Applicant breached the conflict of interest provisions in Articles 22.1 and 22.2 of the

Bylaw, but the facts cannot support such a finding. Given that he did not contravene the conflict of interest provisions, there is no justification for the suspension of his membership rights in the MNA. Article 9.1 is the punishment section, not a "catch-all" and cannot be relied on to support the finding of breach of the Bylaws. The finding that the Applicant's conduct was gravely detrimental to the MNA flows from the finding of a breach of Articles 22.1 and 22.2. At best, it is not clear whether the MJC mistakenly considered the misconstrued violation of these provisions to be "gravely detrimental to the MNA", or whether the conduct of the Applicant, regardless of its categorization, was deemed to be "gravely detrimental". The fact that one must wade through the various facts and scenarios indicates that the requisite level of intelligibility is missing. The reasons are inadequate.

### *Position of the Respondents*

[69] The Respondents note that the original complaint was based on two grounds: breach of the conflict of interest provisions, and conduct which was gravely detrimental to the MNA. They argue that the MJC was entitled to find gravely detrimental conduct under Article 9.1 on the facts of the case. The determinations of conflict of interest and gravely detrimental conduct were separate findings. The powers of the MJC as set out in Article 30.1 include reviewing and deciding all matters concerning the suspension of rights of any Métis member and the reinstatement thereof, and reviewing and deciding all matters concerning conflict of interest. Conflict of interest which is gravely detrimental can be found even if the fact scenario does not neatly fit within those contemplated in Article 22. The reasons must be read as a whole.

### *Analysis*

[70] I must determine whether this is one of those rare cases where the Court should intervene with respect to the substance of a decision emanating from a private consensual tribunal. In my view, even if the Respondents had not so conceded, the decision of the MJC is subject to being set aside on the basis of lack of jurisdiction to the extent that it incorrectly interpreted Articles 22.1 and 22.2. However, the nature of the MJC's error in finding breach of Articles 22.1 and 22.2 is not really in issue, as the parties agree that this aspect of the decision cannot stand. What is in issue is whether the MJC found, and was entitled to find, that the conduct which it characterized as a conflict of interest was gravely detrimental to the MNA, where that conduct was not in breach of any specific conflict of interest provisions contained in the Bylaws. In this sense, the question is jurisdictional.

[71] I do not agree with the Applicant that the decision is unintelligible due to the error with respect to Articles 22.1 and 22.2. The original complaint cited two grounds: conflict of interest by a member of the Provincial Council, and conduct deserving of suspension by an MNA member. The MJC stated on p. 4 of the decision:

...As a member of Provincial Council, Mr. Boucher owed a duty to the MNA to support its policy as expressed in the motion passed on February 7, 2007. He had no right to act on his own contrary to the motion based on information that he obtained

as a Councillor. The MNA could not operate if every councillor felt entitled to take information obtained through the MNA and then act on their own through other companies preventing the MNA from proceeding with negotiating agreements when the Provincial Council had authorized the negotiation of such agreements.

[72] One cannot fault the logic of this statement. Clearly, the MJC viewed the Applicant as having used information he obtained in his position, and in doing so having undermined the workings and effectiveness of the MNA.

[73] There is no doubt that the MJC has very broad powers under the Bylaws to review and decide all matters concerning the suspension of rights of any Métis member and the reinstatement thereof, and to review and decide "all matters concerning conflict of interest". Further, Article 9.1 clearly gives the MJC the power to suspend any member's rights for any conduct or act which it determines is, has been, or will be, gravely detrimental to the MNA or its interests. That power does not depend on a finding that a Provincial Council member has breached a particular conflict of interest bylaw.

[74] In considering the MJC's reasons as a whole, I conclude that the fact that the MJC misconstrued the import of Articles 22.1 and 22.2 does not vitiate its conclusion that the Applicant's conduct was gravely detrimental to the MNA. Consequently, I find that the MJC did not exceed its jurisdiction in concluding that the Applicant's conduct was gravely detrimental to the MNA. Having so found, in my view, this is not one of those rare cases where the Court should embark on a more exacting review of the substance of the decision.

[75] However, there was much discussion in this case with respect to the status of the MJC and the appropriate standard of review. In the event that I am wrong in concluding that the reasonableness standard is inapplicable, I would add that if I were to apply that standard, I would find that the MJC's conclusion was not unreasonable, despite the misapplication of Articles 22.1 and 22.2 of the Bylaws. I find that there is a line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. In other words, there are tenable reasons that are sufficient to support the conclusion reached.

### **Conclusion**

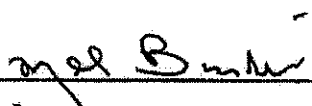
[76] The application is dismissed.

### **Costs**

[77] In my view, success was split (the Respondents having conceded during the hearing that the conflict of interest provisions were misapplied), and this was somewhat of a test case given the very recent decision in *Dunsmuir*. In the circumstances, it is reasonable that the parties bear their own costs.

Heard on the 13<sup>th</sup> day of March, 2008.

Dated at the City of Edmonton, Alberta this 1<sup>st</sup> day of May, 2008.

  
\_\_\_\_\_  
M.A. Binder  
J.C.Q.B.A.

**Appearances:**

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Sid Tarrabain  
M. Ali Moughel  
for the Applicant

Howard J. Sniderman  
Paul W. Messner  
for the Respondents, Métis Nation of Alberta Association and Audrey Poitras

David N. Jardine  
for the Respondents Métis Judiciary Council, Dale Freidel, Toby Racette, Ken Shaw,  
Bertha Clarke-Jones, and Bonnie Bell