

Federal Court



Cour fédérale

Date: 20260112

Docket: T-441-24

Citation: 2026 FC 39

Ottawa, Ontario, January 12, 2026

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

ROBERT LOUIE JR.

Applicant

and

LOWER KOOTENAY INDIAN BAND

Respondent

and

**THE FIRST NATIONS FINANCIAL
MANAGEMENT BOARD**

Intervenor

JUDGMENT AND REASONS

I. Overview

[1] Robert Louie Jr. [Mr. Louie or “the Applicant”] is a member of the Lower Kootenay Indian Band [LKIB] and brings an application for judicial review of the decisions of the LKIB to : (a) repeal the *Lower Kootenay Indian Band Financial Administration Law, 2014* [2014 FAL] adopted by the LKIB in relation to financial transparency and accountability; and (b) refuse to comply with the 2014 FAL. In the alternative, if the 2014 FAL is no longer in force, then an earlier financial administration law entitled *Lower Kootenay Indian Band Financial Administration Law, 2012* [2012 FAL] is in force and includes many of the same key provisions of the 2014 FAL. Therefore, the LKIB is in breach of its obligations of financial transparency and accountability under either the 2014 FAL or the 2012 FAL and the Court should grant relief to compel the LKIB to implement its financial transparency and accountability obligations.

[2] For the reasons that follow, the application for judicial review is granted. Both the 2014 FAL and key provisions of the 2012 FAL are currently in force and the LKIB has failed to implement the required financial transparency and accountability mechanisms found therein. Moreover, the LKIB decision to repeal the 2014 FAL is not unreasonable or invalid because in purporting to repeal the 2014 FAL, the LKIB Council did not breach its fiduciary duty toward its members. However, the repeal of the 2014 FAL is not yet in force, as it has not yet been approved by the First Nations Financial Management Board [Board] under subsection 9(2) of the *First Nations Fiscal Management Act*, SC 2005, c 9 [FNFMA].

II. Background Facts

[3] The LKIB, known in the Ktunaxa language as Yaqan Nukiy, has approximately 255 members and a territory comprising 6000 acres in reserve lands, with a traditional territory centred in the Kootenay region of southern British Columbia. It is governed by a Chief and 4 councillors elected in accordance with custom, as codified in the *Lower Kootenay Band Custom Elections By-Law*.

[4] Over the period of 2012-2014, the LKIB purchased the Ainsworth Hot Springs – a hotel / resort business on Lake Kootenay, on the LKIB’s traditional territory.

[5] In order to secure financing for the transaction, the LKIB sought to borrow funds from the First Nations Financial Authority [FNFA] established under the *FNFMA* and therefore started the process of opting into the borrowing scheme established therein. That scheme includes the requirement for a First Nation to adopt various standard form laws, including a “financial administration law” [FAL].

[6] The 2012 FAL was enacted on July 23, 2012, as a “financial administration law” under the *FNFMA*, thereby enabling the LKIB to be qualified to borrow funds from the FNFA. The provisions of the 2012 FAL did not all come into force at that time. Under subsection 106(1) of the 2012 FAL, only sections 1-7, 26-30, 69-76, 81 and 106 came into force on the date of the enactment. Under subsection 106(2), all other sections came into force on the date that was 36 months after the 2012 FAL was approved by the Board as required under section 9 of the *FNFMA*.

There is no dispute that the Board eventually approved the 2012 FAL (although the parties cannot indicate the date when the Board approved it) and therefore that its provisions, including the key provisions for which the Applicant is seeking implementation by the LKIB, came into force.

[7] Interestingly, the LKIB enacted the 2014 FAL on May 27, 2014. The 2014 FAL is also a “financial administration law” under the *FNFMA*. The 2014 FAL was adopted before the key provisions of the 2012 FAL related to this case and providing for transparency and accountability entered into force 36 months after being approved by the Board. In other words, the 2014 FAL was adopted within the 36 months following the Board’s approval of the 2012 FAL. As such, upon enacting the 2014 FAL, the LKIB ought to have been fully aware that the 2012 FAL was scheduled to completely come into force at some point in the near future as the Board had already approved it, or if the Board had not yet approved the 2012 FAL, the LKIB continued to seek the Board’s approval of the 2012 FAL resulting in the coming into force of its remaining provisions.

[8] However, just like the 2012 FAL before it, the provisions of the 2014 FAL did not all come into force at the same time. Under subsection 104(1) of the 2014 FAL, only sections 1-7, 24, 26, 27, 29, 30, 68-76, 81 and 93 came into force when the 2014 FAL was approved by the Board under section 9 of the *FNFMA*. Those sections, with some minor amendments, essentially reciprocate the corresponding related sections existing in the 2012 FAL, which came into force on the date of the 2012 FAL enactment.

[9] Section 103 of the 2014 FAL also provides that the 2012 FAL is repealed. However, section 103 is not one of the sections that came into force upon approval of the Board under subsection 104(1). Instead, subsection 104(2) provides that all other sections, including the section repealing the 2012 FAL and the key provisions for which the Applicant seeks implementation, only come into force on the day that is 36 months after the LKIB becomes a “borrowing member of the First Nations Finance Authority”.

[10] The LKIB submits that it never became a “borrowing member”. This issue is consequential because if the LKIB was never a “borrowing member” of the FNFA, then section 103 of the 2014 FAL never came into force and the 2012 FAL was never repealed in its entirety. If that is the case, other key provisions of the 2012 FAL that came into force 36 months after the date marking the Board’s approval, have also never been specifically repealed.

[11] On the other hand, if the LKIB was a “borrowing member” of the FNFA, then the 2012 FAL was repealed under sections 103 and 104(2) when the 2014 FAL came into force in its entirety, including the key provisions for which the Applicant seeks implementation.

[12] The issue is of importance because the Applicant seeks remedies that relate to, *inter alia*, the appointment of members to the “Finance and Audit Committee” [Committee] and the LKIB’s financial accountability and responsibilities thereunder. That Committee was first adopted under section 12 of the 2012 FAL and it survived under section 12 of the 2014 FAL. The Applicant’s other requests for financial accountability and responsibility also fall under certain provisions of the 2012 FAL which were reproduced in the 2014 FAL.

[13] Indeed, the 2012 FAL and the 2014 FAL both contain numerous provisions setting out roles, responsibilities, and expectations of the individuals responsible for managing the LKIB's finances. It also establishes the requirements for how the LKIB's finances and capital projects are to be managed, including rules on how to avoid and resolve conflicts of interest issues. Notably, the financial administration law provides an obligation for the LKIB to:

- a) appoint eligible members to the Committee (s. 12(1));
- b) follow certain prescribed procedures regarding the annual budget and multi-year financial plan, by certain dates each year (s. 27);
- c) establish policies or procedures or give directions respecting the means by which LKIB members must be informed about or involved in consideration of the borrowing for new capital projects (s. 55);
- d) prepare an annual report on the operations and financial performance of the LKIB for the previous fiscal year (s. 77);
- e) establish policies or procedures or give directions for the provision of information to the LKIB members respecting capital projects, or the involvement of members of the First Nation in consideration of capital projects (s. 92);
- f) maintain and publish a current organizational chart (s. 21);
- g) prepare and maintain a current operations manual (s. 79).

[14] Mr. Louie is a LKIB member and asserts his right to require that the LKIB comply with the obligations of financial transparency and accountability binding its Council members under the 2014 FAL and, in the alternative, the 2012 FAL.

[15] Mr. Louie raised concerns about the need for better financial governance and sent a letter to the LKIB Council on November 28, 2023. In the letter, Mr. Louie mentions the relevant sections of the 2014 FAL and demands that the LKIB adhere to them.

[16] The LKIB responded on December 12, 2023, stating that pursuant to section 104 of the 2014 FAL, the requirements identified by the Applicant were not yet in force because the LKIB is not a “borrowing member” of the FNFA. The LKIB took the position that the sections of the 2014 FAL, on which Mr. Louie relies upon, are not in force under subsection 104(2) of the 2014 FAL. However, the LKIB’s position does not discuss section 103 of the 2014 FAL and whether the 2012 FAL was repealed or remains in force.

[17] Mr. Louie responded on February 6, 2024, that he did not agree with the LKIB’s position that the 2014 FAL was not in force and again demanded compliance with the relevant sections.

[18] After taking the position that the key provisions on which Mr. Louie relies upon under the 2014 FAL were not in effect, on April 5 and April 19, 2024, the LKIB purported to pass Band Council Resolutions to respectively (a) request for the Minister of Crown-Indigenous Relations [Minister] to remove the LKIB from the Schedule of the *FNFA*; and (b) repeal the 2014 FAL in its entirety. No mention was made of the 2012 FAL in those resolutions.

[19] The LKIB asserts that after the Applicant’s letter asking that the LKIB comply with the 2014 FAL, the LKIB began to realize that the 2014 FAL was confusing and the “coming into force” provisions were unclear. As explained by the Chief Administrative Officer of the LKIB during cross-examination: “it became clear that this financial administrative law was causing more confusion than -- than any of us wanted. And the way it was drafted with only certain provisions coming into play in a rather obscure spot” (Cross-examination of Ms. Suttie, Application Record at p 843, lines 17-22). At that time, the LKIB leadership decided that they needed to clarify the

status of the financial administration law. As further explained by the Chief Administrative Officer during cross-examination, the LKIB Council made the decision that repealing the 2014 FAL would bring everybody onto the same page about what the LKIB's obligations were (Cross-examination of Ms. Suttie, Application Record at p 844, lines 7-12, 17-27).

[20] A letter requesting that the LKIB be removed from the Schedule to the *FNFA* was sent to the Minister on April 5, 2024.

[21] The question of whether the LKIB is a “borrowing member” is of paramount importance, especially because the LKIB repealed the 2014 FAL. If the LKIB is a “borrowing member”, then the 2012 FAL was repealed and since the LKIB repealed the 2014 FAL, the Applicant would be without recourse. However, if the LKIB is not a “borrowing member”, then it will be important to determine if the 2012 FAL survived after the adoption of the 2014 FAL and whether financial transparency and accountability obligations, such as the creation of the Committee, continue to exist for the LKIB under the 2012 FAL.

[22] In relation to the issue of whether the LKIB is a “borrowing member” of the FNFA, the LKIB enacted a “borrowing law” authorizing Chief and Council to enter into a loan agreement with the FNFA, and there is no dispute between the parties that the LKIB was added to the schedule of the *FNFA* and remains listed to this day (Application Record at p 165).

[23] It is also important to note that the validity of the LKIB's attempt to repeal the 2014 FAL is contested by the Applicant. He argues that the repeal of the 2014 FAL is in bad faith, was done simply to interfere with this case, and is in breach of the LKIB's fiduciary duty to its members.

[24] Moreover, the Board, which intervened in this case, submits that the LKIB's repeal of the 2014 FAL is not currently in force, because the repeal constitutes an "amendment" to the 2014 FAL for which the Board's approval is required before coming into force, under subsection 9(2) of the *FNFA*. Since the Board has not yet approved the repeal, the purported repeal is not yet in force and, consequently, the 2014 FAL remains in force.

[25] In the end, the intended borrowing of funds from the FNFA, which was the subject matter of the 2012 FAL and the 2014 FAL (for the purchase of the Ainsworth Hot Springs – a hotel / resort business on Lake Kootenay), ultimately never took place. Instead, the LKIB obtained financing elsewhere and completed the business purchase without using FNFA funds. The 2014 FAL that was adopted (as well as the 2012 FAL if it was not repealed) remained on the books but the majority of LKIB members were not aware of its existence.

III. Issues and Standard of Review

[26] Mr. Louie proposes the following issues:

- a) Is the 2014 FAL (or 2012 FAL) in force (whether partially or completely)?
- b) Did the LKIB fail to abide by the 2014 FAL (or the 2012 FAL, as the case may be)?
- c) Did the LKIB validly repeal the 2014 FAL?

[27] The Applicant submits that the proper standard of review to assess the LKIB's decisions is correctness. The LKIB's decisions ultimately come down to whether a governmental authority can decide to ignore a non-discretionary statute (whether that is the 2012 FAL or the 2014 FAL), including section 9.1 of the *FNFA* which provides that a First Nation who is a "borrowing member" of the FNFA may not repeal a financial administration law "unless that law is replaced by another financial administration law that has been approved by the Board". According to the Applicant, correctness applies since this is an issue of central importance to the legal system. In the alternative, the Applicant submits that if the standard of reasonableness applies, the LKIB's decisions are unreasonable.

[28] I disagree with the Applicant. As argued by the LKIB, the standard of reasonableness applies because the issue is not a question of law "of central importance to the legal system". The issue in this case does not relate to *res judicata*, religious neutrality, or solicitor-client or parliamentary privilege (*Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653 [*Vavilov*] at paras 58-60). The presumption that the standard of reasonableness applies is not rebutted simply because an issue of law is raised; it is presumed that the legislature intended that the decision maker be able to fulfil its mandate, including to interpret applicable law (*Vavilov* at para 24). In the circumstances, the standard of review is reasonableness and the LKIB Council is entitled to deference.

IV. Analysis

A. *The First Nations Fiscal Management Act*

[29] The *FNFMA* scheme is optional legislation that creates a framework for First Nations to access capital markets in order to finance governance and economic development initiatives (Woodward, Jack, *Aboriginal Law in Canada* (Toronto: Thomson Reuters, 2025) (looseleaf release 2025) volume 2 at §12:7 [Woodward]). Upon opting into the *FNFMA* legislative scheme, First Nations must, *inter alia*, enact financial administration laws that are designed to contain a set of governance and financial administration practices enabling good governance, and providing a means for First Nations to exercise greater autonomy over their financial affairs for the benefit of their members. Financial administration laws then allow First Nations substantive rights, including the right to become a borrowing member of the FNFA and the power to enact local revenue laws (Woodward at §12:10 – 12:14).

[30] Various types of participation by First Nations are contemplated in the *FNFMA*. Some First Nations are simply listed in the schedule to the *FNFMA* by making a request to the Minister. Some other First Nations are “investing members”, which have made investments in the investment pool managed by the FNFA. There are also “borrowing members”, which are members that have applied and been formally approved as a “borrowing member” under section 76 of the *FNFMA*. Ultimately, the rights and obligations of a First Nation under the *FNFMA* depend on what level of participation the First Nation has been approved for.

[31] Financial administration laws are subject to some oversight under the *FNFMA*. A financial administration law is not effective until it has been approved by the Board under subsection 9(2) of the *FNFMA*. Any amendment to a financial administration law also requires the Board's approval before coming into force, pursuant to subsection 9(2) of the *FNFMA*. Finally, if a First Nation is a "borrowing member" of the FNFA, it cannot revoke the financial administration law without replacing it with another financial administration law approved by the Board, as required under section 9.1 of the *FNFMA*.

B. *The LKIB is Not a "Borrowing Member" Under the 2014 FAL and the FNFMA*

[32] Mr. Louie submits that the 2014 FAL is in force because the LKIB is a "borrowing member" of the FNFA. Mr. Louie relies on the fact that the LKIB is listed on the Schedule under the *FNFMA* and has enacted a financial administration law as well as a "borrowing law" directing Council to execute an agreement with the FNFA in order to become a "borrowing member".

[33] I find that the LKIB is not a "borrowing member" under section 76 of the *FNFMA*. There is no doubt that the LKIB adopted the 2012 FAL and the 2014 FAL to eventually become a "borrowing member", and even adopted a "borrowing law" directing Council to enter into an agreement with the FNFA.

[34] However, the evidence demonstrates that the LKIB Council never went forward with an agreement with the FNFA since it managed to obtain funding from a different source. I accept the evidence of Ms. Suttie, the LKIB's Chief Administrative Officer, that the LKIB found no record of having applied for and having been approved as a "borrowing member" by the FNFA, and that

the LKIB has never borrowed funds from the FNFA (Cross-examination of Ms. Suttie, Application Record at p 785, lines 4-11, p 786 lines 15-17). I also accept that if the LKIB had been approved as a “borrowing member”, outstanding loans would have been noted on the LKIB’s financial statements, which is not the case (Cross-examination of Mr. Louie, Respondent’s Record at p 33, lines 18-27, p 34, lines 1-27, p 35, lines 1-27, p 36, line 1).

[35] As a result, there is no conclusive evidence that the LKIB was approved as a “borrowing member” by the FNFA and therefore, the key provisions under the 2014 FAL never came into force.

C. *The 2012 FAL Remains In Force*

[36] Section 103 of the 2014 FAL, which purports to repeal the 2012 FAL, comes into force only if/when the LKIB becomes a “borrowing member” of the FNFA, as provided under subsection 104(2) of the 2014 FAL. Since the LKIB never became a “borrowing member”, section 103 never came into force and the 2012 FAL was never repealed in its entirety.

[37] The 2012 FAL, including the key provisions on which the Applicant relies upon to ensure greater financial transparency and accountability, came into force 36 months after the date marking the Board’s approval of the 2012 FAL. The parties do not contest that the Board did approve the 2012 FAL, and therefore all of its provisions eventually came into force.

[38] However, the issue is whether the enactment of the 2014 FAL had an impact on the remaining key provisions of the 2012 FAL. As noted above, under subsection 104(1) of the 2014

FAL, some provisions came into force when the 2014 FAL was approved by the Board, and those provisions slightly amended or reproduced certain provisions already existing in the 2012 FAL.

[39] Section 103 of the 2014 FAL purporting to repeal the 2012 FAL in its entirety, however, did not come into force when the Board approved the 2014 FAL because, as previously stated, the repeal of the 2012 FAL under section 103 only comes into force if/when the LKIB becomes a “borrowing member”, as provided under subsection 104(2), which has not occurred.

[40] During the hearing, the LKIB argued that even if section 103 of the 2014 FAL repealing the 2012 FAL did not come into force, it is clear that the intention of the LKIB was to repeal the 2012 FAL in its entirety and therefore, the doctrine of implied repeal applies. The LKIB relied on *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2013 SCC 42 at paragraph 44 to argue that “a prior statute is repealed by implication only ‘if the entire subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provisions in the prior statute could not have been intended to subsist’ [...] That is to say, an implied repeal has occurred if subsequent legislation has occupied the field to such an extent that the court can infer that the legislature intended to repeal the earlier statutes”.

[41] In my view, the 2014 FAL, had it completely come into force, would have impliedly repealed the 2012 FAL in its entirety (even without the specific repeal found at section 103) because the 2014 FAL would have occupied the “entire field”, leaving no room for the 2012 FAL to continue to exist. Indeed, there is no express or standard form of repeal and no formula is necessary to do so. As long as an enacting body makes it clear and leaves no room for the former

provision, the legislature impliedly expressed its intention to repeal the former provision in favour of the new one (Sullivan, Ruth, *The Construction of Statutes*, 7th ed. Toronto: LexisNexis, 2022 at §24.04, p 704-706 [Sullivan]).

[42] However, in this case, under subsection 104(1) of the 2014 FAL, only sections 1-7, 24, 26, 27, 29, 30, 68-76, 81 and 93 came into force when the 2014 FAL was approved by the Board under subsection 9(2) of the *FNFMA*. Therefore, even if section 103 of the 2014 FAL repealing the 2012 FAL is not in force, those sections of the 2014 FAL that did come into force have implicitly repealed and replaced the corresponding sections of the 2012 FAL, but not the 2012 FAL in its entirety. In other words, sections 1-7, 24, 26, 27, 29, 30, 68-76, 81 and 93 of the 2014 FAL “cover the field” previously occupied by the corresponding sections of the 2012 FAL (sections 1-7, 26, 27, 29, 30, 69-76, 81 of the 2012 FAL – which are essentially reproduced with amendments in the same sections under the 2014 FAL), and those sections of the 2012 FAL are now repealed by the operation of the 2014 FAL, to prevent conflictual operations of both financial administration laws.

[43] However, the other key provisions of the 2012 FAL that are not affected by the new provisions of the 2014 FAL remain in force, as the new provisions of the 2014 FAL that are in force do not “cover the field” of the remaining provisions of the 2012 FAL. None of the other sections of the 2014 FAL are in force and, indeed, section 103 of the 2014 FAL affirming the repeal of the 2012 FAL in its entirety, has specifically not come into force by the operation of subsection 104(2) of the 2014 FAL.

[44] Moreover, there is no evidence as to the intent of the LKIB Council when enacting the 2014 FAL. What is known is that when the 2014 FAL was enacted, the 2012 FAL was not yet completely in force because many of its provisions would only come into force later at a date that was 36 months after the date of the Board’s approval. The Board eventually approved the 2012 FAL. Presumably in full knowledge that the 2012 FAL had not yet but would eventually come into force – the legislator is presumed to know its own existing laws and statute book (Sullivan at §8.02, p 205-206; §13.05, p 413) – the LKIB Council still decided to include section 103 of the 2014 FAL within subsection 104(2). As a result, the complete repeal of the 2012 FAL was not effective as of the entry into force of the initial provisions of the 2014 FAL, pursuant to subsection 104(1). Instead, the LKIB Council specifically decided that section 103 of the 2014 FAL and the repeal of the 2012 FAL would not come into force until the LKIB would become a “borrowing member” under section 104(2) of the 2014 FAL.

[45] As a result, I find that the LKIB Council did not intend to repeal the 2012 FAL in its entirety until the LKIB became a “borrowing member”. Consequently, the key provisions of the 2012 FAL on which the Applicant relies in this case were never repealed and remain in force.

D. *The Repeal of the 2014 FAL Requires the Approval of the Board*

[46] On April 19, 2024, the LKIB purported to adopt a Band Council Resolution to repeal the 2014 FAL in its entirety. No mention was made of the 2012 FAL in that resolution.

[47] The Applicant argues that the repeal is invalid because it is in breach of section 9.1 of the *FNFA* and is in breach of the LKIB’s fiduciary duty towards its members.

[48] Section 9.1 of the *FNFA* provides that “borrowing members” cannot repeal a financial administration law unless it is replaced by another financial administration law that is approved by the Board. As I found above that the LKIB is not a “borrowing member” of the FNFA, section 9.1 does not apply.

[49] The Board intervened in this matter to provide submissions on the interpretation and application of the *FNFA*. The Board submits that the Band Council Resolution repealing the 2014 FAL is not yet in force because it also requires the Board’s approval under subsection 9(2) of the *FNFA*, which provides:

(2) A law made under subsection (1), including any amendment of such a law, does not have any force or effect until it is approved by the First Nations Financial Management Board.	(2) Le texte législatif pris en vertu du paragraphe (1) — y compris une modification de celui-ci — est inopérant tant qu’il n’a pas été agréé par le Conseil de gestion financière des premières nations.
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[50] The Board argues that under section 2 of the *Interpretation Act*, RSC 1985, c I-21 [*Interpretation Act*], the term “regulation” is defined as including “an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established (a) in the execution of a power conferred by or under the authority of an Act [...]”.

[51] In this case, the 2014 FAL is a financial administration law enacted by the LKIB and consists in a “by-law” or “other instrument” made by the LKIB “in the execution of a power conferred by or under the authority of an Act”, that power being conferred under subsection 9(1)

of the *FNFMA*. The 2014 FAL therefore falls within the definition of a “regulation” for the purposes of the *Interpretation Act*.

[52] In turn, subsection 31(4) of the *Interpretation Act* provides that:

<p>(4) Where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the same manner and subject to the same consent and conditions, if any, to repeal, amend or vary the regulations and make others.</p>	<p>(4) Le pouvoir de prendre des règlements comporte celui de les modifier, abroger ou remplacer, ou d’en prendre d’autres, les conditions d’exercice de ce second pouvoir restant les mêmes que celles de l’exercice du premier.</p>
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[53] In the Board’s view, if the LKIB has the power to “make regulations” (the 2014 FAL) under subsection 9(1) of the *FNFMA*, that power also includes the power to repeal it under subsection 31(4) of the *Interpretation Act*. Therefore, the repeal of the 2014 FAL constitutes on its own a “financial administration law” under subsection 9(1) of the *FNFMA*. The Board thus submits that since it must approve any financial administration law and any amendment under subsection 9(2) of the *FNFMA*, it must also approve any repeal under this subsection of the *FNFMA*.

[54] The Board argues that its proposed interpretation is consistent with the principles of statutory interpretation, the plain meaning of the terms and the object and purpose of the *FNFMA* read as a whole (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 87 citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983) at p 87; see also *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 at para 26; *Vavilov* at para 117).

[55] In support of its interpretation, the Board notes that every financial administration law adopted by a First Nation and approved by the Board is published in the First Nations Gazette under subsection 55(4) of the *FNFMA*, and the Court may take judicial notice of a financial administration law under subsection 9(6) of the *FNFMA*. The Board submits that if a First Nation by-law repealing a financial administration law did not need to be approved by the Board, the repeal would not be published in the Gazette and a Court could take judicial notice of a financial administration law in error (since it was repealed), leading to an absurd result. On the other hand, if the by-law repealing the financial administration law is required to be approved by the Board, then the repeal will also be published in the Gazette ensuring that the Court does not take judicial notice of a financial administration law that no longer exists.

[56] The LKIB argues in response that when Parliament intended to provide specific requirements for the repeal of a financial administration law, it specifically did so. For example, sections 9.1, 11 and 77 of the *FNFMA* all prescribe that financial administration laws cannot be repealed or provides specific procedures to do so. Therefore, since subsection 9(1) does not provide any specific procedure for the repeal of a financial administration law, there cannot be a requirement that the Board must approve the repeal. Otherwise, Parliament would have specifically provided for it as it did elsewhere in the *FNFMA*. In other words, interpreting a procedure for the repeal of a financial administration law under subsection 9(1) would make the specific procedure for repeal under sections 9.1, 11 and 77 redundant, which goes against the presumption against tautology presuming that Parliament intends to avoid superfluous or meaningless words and that every word is presumed to have a specific role in advancing legislative purpose (*R v Proulx*, 2000 SCC 5 at para 28; *Canada (National Revenue) v Shopify*

Inc., 2025 FC 968 at para 225; Sullivan at §8.05). For this reason, courts avoid adopting interpretations that would render any portion of a statute redundant or meaningless.

[57] I agree with the interpretation proposed by the Board in its entirety.

[58] In *Piekut v Canada (National Revenue)*, 2025 SCC 13 at paragraphs 42 and 43, the Supreme Court of Canada recently restated that “a court considers the words used in legislation “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”” and that the court must interpret “statutory language “according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole””.

[59] Applying these principles, the argument of the LKIB on the interpretation of the *FNFMA* must be dismissed. Sections 9.1, 11 and 77 of the *FNFMA* do not provide for any procedure relating to the repeal of a financial administration law, but rather prohibit any repeal, until loans are repaid or unless the financial administration law is replaced with another that is approved by the Board. Sections 9.1 and 11 both operate in a specific context in which the First Nation has obligations to other third parties. Those sections are not rendered redundant by an interpretation of subsections 9(1) and 9(2) providing that the repeal of a financial administration law generally is itself a financial administration law under subsection 9(1) that requires the approval of the Board under subsection 9(2) of the *FNFMA*, including if the intent is the repeal of the financial administration law and for a First Nation to withdraw from the *FNFMA*.

[60] To the contrary, the interpretation proposed by the Board, which I adopt completely, is consistent with the *Interpretation Act* and with the entire context of the *FNFMA* read as a whole. Most importantly, it is the only interpretation that provides for greater transparency and certainty amongst all parties affected by the *FNFMA*, and prevents absurd consequences including ensuring that the courts are not misled, which are all objects of the *FNFMA* read as a whole.

[61] Consequently, the repeal of a financial administration law must be approved by the Board before it comes into force and, as a result, the repeal of the 2014 FAL is not yet in force since the Board has not yet approved it.

E. *The Repeal of the 2014 FAL Was Not Unreasonable or in Bad Faith*

[62] While the repeal of the 2014 FAL is not yet in force, the Applicant raises two arguments to assert that the decision to repeal the 2014 FAL is unreasonable or invalid: (i) the repeal breached section 9.1 of the *FNFMA*; and (ii) the repeal was a breach of the LKIB Council's fiduciary duty.

[63] As already discussed, section 9.1 of the *FNFMA* does not apply in this case since the LKIB is not a "borrowing member" of the FNFA.

[64] Mr. Louie submits that the purported resolution to repeal the 2014 FAL and the request for removal of the LKIB from the Schedule to the *FNFMA* are invalid because they were made in bad faith and in breach of the LKIB Council's fiduciary duty to exercise their discretion in the best interest of the LKIB members (*Gilbert v Abbey*, 1992 CanLII 921 (BC SC), [1992] BCWLD 1783; *Cottrell v Chippewas of Rama Mnjikaning First Nation*, 2009 FC 261 at para 75). Since the repeal

of the 2014 FAL was made to avoid accountability and financial transparency, the repeal is not in the best interest of the LKIB members. Furthermore, it was not made in consultation with the members and therefore breaches the LKIB Council's fiduciary duty to its members.

[65] According to Mr. Louie, both the 2012 FAL and the 2014 FAL impose a duty on the LKIB Council to establish policies and procedures with respect to any proposed amendment of the financial administration law, as well as a requirement to post a public notice of each LKIB Council meeting when a proposed amendment to a financial administration law is presented for approval (see 2012 FAL at subsections 104(2)-(4) and 2014 FAL at subsection 101(2)-(4)). The Applicant submits that it is illogical and unreasonable for the LKIB Council to repeal the 2014 FAL without any notice or consultation with the LKIB membership.

[66] The Applicant also submits that as noted in *Annapolis Valley First Nations Band v Toney*, 2021 FC 7112 at paragraph 28, any fiduciary relationship includes the duties of good faith of the fiduciary to the beneficiary and the duty to act in the beneficiary's best interests. In this case, the Applicant argues that the clear purpose for the repeal of the 2014 FAL is to avoid accountability and transparency in the face of a pending judicial application. Repealing the 2014 FAL, without consulting or giving prior notice to the LKIB members, is also contrary to the LKIB's fiduciary duty to its members. Indeed, the LKIB has not provided any explanation as to why the repeal of the 2014 FAL is in the best interests of the First Nation (which is contrary to the LKIB's position that the adoption of the 2014 FAL was in the LKIB member's best interests). The LKIB provided no reason for eliminating the only mechanism the LKIB members have to oversee the management

of their LKIB funds and did so without even attempting to involve its members or replace it with something else.

[67] The LKIB responds that both the 2012 FAL and the 2014 FAL were adopted for a specific purpose, which was the purchase of the Ainsworth Hot Springs resort. When financing was secured elsewhere, the purpose of the financial administration law was eliminated. Moreover, the financial administration law was not originally voted on by the LKIB members but was simply signed by the Chief and Council of the day. This is not a law that was the subject of community consultation and a ratification vote, as would be the case for an election law or membership code.

[68] The LKIB also argues that contrary to what is asserted by the Applicant, the financial administration law is not “the only mechanism Band members had for overseeing the management of their Band funds” (Applicant’s Memorandum of Argument at para 60, Application Record at p 1029). The LKIB submits that, as explained by Ms. Suttie in her cross-examination, there is extensive disclosure and involvement of members in relation to the LKIB funds. Leadership regularly reports to the community regarding financial payments received by the LKIB, like Specific Claims settlements and payments from impact benefit agreements. The LKIB holds referenda on how funds are to be used. There is community consultation through community meetings. There is input on the budgeting process. Most importantly, the financial statements are shared publicly and any member can access them. In addition, the remuneration of Chief and Council are publicly posted for all members to see. The LKIB submits that the Applicant has failed to establish any breach of fiduciary duty by the Chief and Council.

[69] I find that, on the evidence adduced, in deciding to repeal the 2014 FAL, the LKIB Council did not act in bad faith and did not breach its fiduciary duty towards the LKIB members.

[70] First, the evidence demonstrates and I find that the 2012 FAL (and later the 2014 FAL) were enacted for a single purpose and that once financing was secured elsewhere, the purpose of the financial administration laws was extinguished (Cross-examination of Ms. Suttie, Application Record, p. 853, lines 11-13). Indeed, the LKIB members were generally unaware of its existence (Second Affidavit of Mr. Louie at para 11, Application Record at p 194).

[71] Moreover, the Applicant's affidavit is inconclusive as to any specific issue relating to financial transparency or accountability. Other than a blanket statement that "[t]here continues to be a lack of transparency from LKIB Council about the financial management of the band" (First Affidavit of Mr. Louie at para 8, Application Record at p 18), no specific example was provided such as, for example, the failure of the LKIB Council to comply with its statutory obligations. Other comments made by the Applicant in his affidavits were disputed by Ms. Suttie in her cross-examination and I accept her evidence. The Applicant's affidavit does demonstrate that the LKIB did not comply with the 2012 FAL and the 2014 FAL, which is not contested, but that on its own does not establish that the LKIB has failed to consult the members or mismanaged the LKIB funds.

[72] I note that Mr. Louie argues that greater transparency is required of the LKIB, and relies on *Louie v Louie*, 2015 BCCA 247 where the British Columbia Court of Appeal held that financial mismanagement has occurred previously and that a previous LKIB Council had breached their fiduciary duties toward the LKIB members. However, the events in that case occurred in 2009.

While there may not have been a financial administration by-law at the time, the events of 2009 and the lack of accountability at that time is not conclusive evidence that the current circumstances also establish that mismanagement occurred and that the repeal of the 2014 FAL was made in bad faith and in breach of any fiduciary duty.

[73] I accept the evidence of Ms. Suttie that, even if the LKIB has not complied with the 2012 FAL and the 2014 FAL, other measures have been put in place to ensure financial accountability, such as disclosure and consultation of members in relation to the LKIB funds, including for Specific Claims settlements and payments from impact benefit agreements (Cross-examination of Ms. Suttie, Application Record, p. 821, lines 9-17, p. 856, lines 7-10, p. 856, lines 7-19). Also, there are community meetings and referenda on the budgeting process and how funds are to be used (Cross-examination of Ms. Suttie, Application Record, p. 819, lines 23-26, p. 856, lines 7-19). Finally, the LKIB financial statements are available to the public and the Applicant has been able to consult them (Cross-examination of Mr. Louie, Respondent's Record, p. 31, lines 2-7).

[74] As a result, the LKIB's attempt to repeal the 2014 FAL and intent to replace it with a different financial administration mechanism that is within the capabilities of the LKIB was not made in bad faith and did not breach the LKIB Council's fiduciary duty toward its members. I accept the evidence of Ms. Suttie, who is the Chief Administrative Officer of the LKIB, that upon noticing that the 2014 FAL and the entry into force (or not) of its provisions were confusing, the LKIB Council decided to revoke the 2014 FAL and create their own financial administration law based on what the LKIB could be able to produce within its own capacities and in the pursuit of clarity, instead of following the *FNFMA* process. The 2012 FAL and 2014 FAL were enacted for

a single purpose, which no longer exists, and the LKIB does not have the staffing, time and expertise to fully comply with the processes and policies established under the *FNFMA* (Cross-examination of Ms. Suttie, Application Record, p 844, lines 6-27 to p 845, lines 4-12, p. 853, lines 6-26).

[75] Finally, in relation to the Applicant's argument that the LKIB did not consult its members before repealing the 2014 FAL, as required under subsections 101(2)-(4), those provisions of the 2014 FAL are not in force since the LKIB never became a "borrowing member" under subsection 104(2). Moreover, as discussed above, the April 19, 2024, Band Council Resolution does not discuss the 2012 FAL. Should the LKIB decide to repeal the 2012 FAL, which remains in force, then consultation would be required under subsections 104(2)-(4) of the 2012 FAL since those provisions have come into force 36 months after the date which marked the Board's approval, under subsection 106(2) of the 2012 FAL. On this point, I note that consultation of LKIB members is possible, as currently done and as stated by Ms. Suttie in her cross-examination. With only 255 members, there is no evidence suggesting that consultation would be complicated, or difficult, for the LKIB to determine the process it wishes to adopt for proper financial transparency and accountability and if whether the 2012 FAL should indeed be repealed.

[76] In the end, as stated many times by this Court, judicial intervention in Indigenous decision-making should be avoided whenever possible to encourage Indigenous self-government (*Pastion v Dene Tha' First Nation*, 2018 FC 648 at para 23; *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 732 at para 19; *Heron v Salt River First Nation No. 195*, 2024 FC 413 at para 33; *Bellegarde v Carry the Kettle First Nation*, 2024 FC 699 at para 140). In this case, and on the

evidence adduced, I cannot conclude that the LKIB Council's decision to repeal the 2014 FAL, or of the 2012 FAL if it chose and worked with the Board to do so, would be in breach of the LKIB Council's fiduciary duty to its members. As the evidence established, the financial administration laws were adopted for a single purpose, and other transparency and accountability measures are applied by the LKIB Council and are more responsive to its size and capabilities.

F. *Remedy*

[77] The Applicant seeks an order of *mandamus* compelling the LKIB to implement its financial transparency and accountability obligations under the 2012 FAL or 2014 FAL, whichever is in force.

[78] There are eight conditions for a *mandamus* to issue:

- a) there must be a legal duty to act;
- b) the duty must be owed to the applicant;
- c) there must be a clear right to performance of that duty;
- d) where the duty sought to be enforced is discretionary, certain additional principles apply;
- e) no adequate remedy is available to the applicant;
- f) the order sought will have some practical value or effect;
- g) the Court finds no equitable bar to the relief sought; and
- h) on a balance of convenience an order of *mandamus* should be issued.

(*Apotex v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (FCA); *Canada (Health) v The Winning Combination Inc.*, 2017 FCA 101 at para 60).

[79] *Mandamus* is a discretionary remedy (*Bedard v Canada (Attorney General)*, 2024 FC 570 at paras 25, 84; *Right to Life Association of Toronto v Canada (Attorney General)*, 2022 FCA 220 at para 17 [*Right to Life Association*]) and the onus of establishing a clear legal right to the performance of a legal duty lies on the Applicant (*Shirambere v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 602 at para 48).

[80] A court may grant a mandatory order of *mandamus* where the “evidence can lead only to one result” or in circumstances of extreme maladministration (*D’Errico v Canada (Attorney General)*, 2014 FCA 95 at para 16; *Canada (Public Safety and Emergency Preparedness) v LeBon*, 2013 FCA 55 at para 14; *Doyle v Canada (Attorney General)*, 2022 FCA 56 at paras 6-7; *Right to Life Association* at para 17).

[81] The Applicant submits that all the conditions are met, either because the key provisions under the 2012 FAL remain in force, or because they were overtaken by the 2014 FAL (if the LKIB is a “borrowing member”) and the purported repeal is invalid.

[82] The Applicant submits that the LKIB has a legal duty to act because the financial administration law is a law of the Nation and its compliance is not discretionary. For example, under section 12 of the 2012 FAL or section 12 of the 2014 FAL, a Finance and Audit Committee “must” be appointed. Moreover, the other conditions for the issuance of a *mandamus* are met because (i) the duty to implement the financial administration law is a duty owed to the entire Nation, including the Applicant; (ii) there is a clear right to the performance of that duty; (iii) there

is no other adequate remedy; (iv) the order will have some practical value; (v) there is no equitable bar to the relief and (vi) on a “balance of convenience”, an order of *mandamus* should be issued.

[83] Fundamentally, the Applicant relies on the rule of law and the principle of “legality” that laws are meant to be enforced, not ignored (see *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at para 20).

[84] The LKIB argues that *mandamus* is not available because the key provisions under which the Applicant relies upon were never in force or were repealed by the LKIB. As such, there is no “duty to act” and therefore *mandamus* cannot be granted. The LKIB does not dispute that the other elements of the conditions for the issuance of a *mandamus* are met.

[85] As discussed above, the key provisions that the Applicant relies upon remain in force under the 2012 FAL. Moreover, the 2014 FAL has not yet been repealed, since the Board has not yet approved the resolution adopted by the LKIB Council.

[86] Consequently, I agree with the Applicant that the conditions are met for the issuance of a *mandamus*. The LKIB must comply with and implement its obligations under the 2012 FAL and the 2014 FAL within 120 days of this Order, including the establishment of a Finance and Audit Committee as required under section 12 of the 2012 FAL.

[87] However, and as discussed above, nothing precludes the LKIB Council from repealing the 2012 FAL and the 2014 FAL, after having consulted the LKIB members and obtained the approval

of the Board. This Order is therefore without prejudice to the LKIB Council to work in parallel with the Board, in compliance with the *FNFMA*, and finalize the repeal of the 2012 FAL and 2014 FAL, should that be its decision. The LKIB is entitled to make those types of governance decisions, pursuant to its self-government powers.

[88] In the end, the Applicant comes to the Court to ensure greater financial transparency and accountability from his First Nation. The LKIB agrees that transparency and accountability is required because its members are entitled to receive information about the Nation's finances. The only dispute between the parties is the mechanism under which the LKIB Council will provide transparency and accountability. The LKIB Council submits that the 2014 FAL and 2012 FAL are too cumbersome since the LKIB is a small First Nation that does not have the capacity to comply with the requirements of the 2014 FAL or 2012 FAL. That is why the LKIB Council sought to repeal the 2014 FAL and proceed with drafting their own financial administration law that will be specific and responsive to the LKIB and to the capacity of the finance department (Cross-examination of Ms. Suttie, Application Record, at p 844 lines 17-27). Should the LKIB Council decide to proceed and repeal the 2012 FAL and the 2014 FAL, and obtain the approval of the Board, the Court encourages the LKIB to proceed with the adoption, as it suggested, of a finance administration law that is responsive to the requirement for financial transparency and accountability, while at the same time be proportionate with its capabilities.

V. Conclusion

[89] The Application for judicial review is granted.

[90] The parties agree that costs at the middle of column III of Tariff B are appropriate and will be awarded to the successful party. Costs are therefore awarded to the Applicant in accordance with the middle of column III of Tariff B, payable forthwith.

JUDGMENT in T-441-24

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted.
2. The LKIB must comply with and implement its obligations under the 2012 FAL and the 2014 FAL within 120 days of this Order, including the establishment of a Finance and Audit Committee as required under section 12 of the 2012 FAL.
3. This Order is without prejudice to the LKIB Council to work with the Board, in compliance with the *FNFMA*, and finalize the repeal of the 2012 FAL and 2014 FAL, should that be its decision.
4. Costs in accordance with the middle of column III of Tariff B are awarded to the Applicant, payable forthwith.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-441-24

STYLE OF CAUSE: ROBERT LOUIE JR. V LOWER KOOTENAY INDIAN BAND

PLACE OF HEARING: CALGARY (ALBERTA)

DATE OF HEARING: DECEMBER 2, 2025

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: JANUARY 12, 2026

APPEARANCES:

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