Federal Court Cour fédérale

Date: 20210531

Docket: T-1316-20

Citation: 2021 FC 512

Ottawa, Ontario, May 31, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

DENNIS CYR

Applicant

and

BATCHEWANA FIRST NATION OF OJIBWAYS, BATCHEWANA FIRST NATION HOUSING AUTHORITY

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for a judicial review related to the eviction of the Applicant by the Respondents, the Batchewana First Nation Housing Authority [“Housing Authority”] and the Batchewana First Nation of Ojibways on July 9, 2020 [collectively the “BFN”].

II. Background

[2] The Applicant, Mr. Dennis Cyr, is a registered band member of the BFN who was evicted by the Housing Authority. He had entered into a rent-to-own agreement on December 27, 2002, for the residence located on 68 August Street, BFN, Ontario. The agreement provided for a rent-to-own payment schedule where he paid $400 per month for a total of $72,000 for the house. Contained in the agreement were provisions that related to the maintenance of the property and building, as well as not permitting waste, and other rules and regulations.

[3] Over the years, Mr. Cyr had received from the Housing Authority many notices for arrears as well as several notices for maintenance of the property. But, he says he always complied with the notices in the past and he says he was told by the Housing Authority, on or about June 3, 2019, that his house was paid for in full. That is disputed by the Housing Authority.

[4] Mr. Cyr was allegedly served by the Housing Authority with a notice to vacate the premises on July 29, 2019. There is much disagreement whether he was served or not with the notice. The grounds for the initial notice to vacate was failure to complete a repayment and failure to comply with the sale agreement:

> 3a: not to permit waste;
>
> 3d: to maintain the lands and premises in good, neat and clean condition and state of repair; and
>
> 3g: to abide by the rules and regulations generally in force from time to time regarding occupancy of residential properties in the neighbourhood).

[5] While the Applicant was hospitalized in October 2019, his sister brought a motion to the Band Council, requesting for an appeal of his eviction. The appeal was granted by unanimous motion on November 19, 2019. Mr. Cyr received an extension of six months to develop a plan of support to meet his, and the Housing Authority Board's, needs.

[6] When he had not vacated on May 20, 2020, another notice gave him nine days to vacate. He was able to secure an extension for one month from the Housing Authority, and he signed an agreement with them where he agreed to vacate by June 29, 2020. However, he did not vacate on June 29, 2020.

[7] On July 9, 2020, with assistance from the Batchewana Police Service and members of the OPP, Mr. Cyr was removed from his house and relocated to a hotel. Sgt Jim Sayers, a 28-year veteran of the Batchewana Police Service (which is not a stand-alone force but operates under the umbrella of the OPP) was in attendance to assist with the eviction for the removal. The police attended given that it was determined that "civilian and officer safety was of paramount concern due to a previous drug warrant being executed and a loaded handgun being found" (Affidavit of Sgt Jim Sayers, at para 19).

[8] Mr. Cyr says he did not have time to properly dress at the time of his eviction and was forced out of his home wearing nothing but his underwear. The contradictory evidence filed is that Mr. Cyr left on his own and was then allowed to go back into the residence to collect his belongings, and then taken to temporary lodging for himself and his sons.

[9] In the Notice of Application, Mr. Cyr alleges breaches of his section 7 *Charter* rights, because he was removed from his house in his underwear, as well as allegations of numerous breaches of procedural fairness, and the denial of a right to counsel. He also claims that he was detained during the eviction contrary to the Supreme Court of Canada's findings in *R v Grant*, 2009 SCC 32, presumably breaching his rights under section 7 of the *Charter*.

[10] In the Applicant's Memorandum of Fact and Law ["Applicant's Memorandum"], he alleges that his *Charter* rights were engaged because the BFN knew or ought to have known that he had a right to counsel, and his liberty interests were "significantly impaired due to his limited access to resources and doubly so during a global pandemic." The Applicant does not specify in the memorandum which *Charter* right is engaged, or provide any detailed arguments regarding the alleged breaches.

[11] The Applicant's Memorandum also alleges Mr. Cyr had a legitimate expectation that he would not be evicted and that there was a bias or reasonable apprehension of bias. However, again, no argument is made to the facts, and the allegation, I believe, is made in support of this Court having jurisdiction given that is the extent of the submissions.

[12] Mr. Cyr claims that he paid the house off fully, and then, subsequently, was told of a charge of either $130 or $180 that he still owed. The Applicant states that the refusal to pay this amount to the Housing Authority led to the eviction. He claims that he was not in violation of the rules of the agreement, and that multiple letters alerting him of his violations were either not

served, or were manufactured all at once by the Housing Authority as a way to bolster the case against eviction.

[13] The Respondents claim that Mr. Cyr was in frequent violation of the rules of the Housing Authority, and that they sent him many warnings over the years. The Housing Authority claims that his yard was a mess, that there was wildlife activity, and that there were complaints from other residents. They also claim that his account was often in arrears, and that there was serious criminal activity going on in the house.

[14] There are no formal reasons outlining the decision of the Housing Authority, and Mr. Cyr disputes the record of the matter. There is also nothing in the record regarding reasons for the appeal granted, which Mr. Cyr's sister sought and obtained.

III. Issues

A. Was the Batchewana First Nation of Ojibways and Batchewana First Nation Housing Authority acting as a "federal board, commission or other tribunal" when it engaged in the conduct of evicting Dennis Cyr?

B. Is the contested evidence of the Applicant admissible?

C. What is the proper standard of review?

D. Was the Applicant denied procedural fairness?

E. Was the decision of the BFN reasonable?

IV. Analysis

A. *Was the Batchewana First Nation of Ojibways and Batchewana First Nation Housing Authority acting as a "federal board, commission or other tribunal" when it engaged in the conduct of evicting Dennis Cyr?*

[15] The Notice of Application does not set out exactly what administrative action is to be judicially reviewed, but relies on an extension of time decision by Justice Little:

> Justice Little held that the substantive decision occurred immediately prior to the [*sic*] May 20, 2020. The Applicant accepts Justice Little's holding and considers the continuing conduct as described herein an extension of that decision up to July 8, 2020, the date the Applicant was forcibly removed from his home.
>
> (Notice of Application, overview)

[16] The Notice of Application goes on to state that "[t]he Applicant sought to move into the Home prior to filing this application of which the Respondents denied on October 29, 2020" (Notice of Application, overview). Of note is that the actual removal of Mr. Cyr occurred on July 9, 2020, and not July 8, 2020, as set out in the Notice of Application.

[17] When asked to address this issue at the hearing, neither party arose to the challenge of explaining which decision or matter was being judicially reviewed (see also section 18 and 18.1 of the *Federal Courts Act*, RSC 1985 c F-7 [*FC Act*]).

[18] Given the materials placed before the Court and the argument, I can surmise the decision under review was the administrative action to evict.

[19] The Federal Court of Appeal ["FCA"] in *Air Canada v Toronto Port Authority*, 2011 FCA 347, at paragraph 24 [*Air Canada*], sets out the test to decide if this is an administration action that triggers a right to bring a judicial review. To be subject to a judicial review, the FCA said the administrative body must affect the legal rights, impose legal obligations or cause prejudicial effects (*Krause v Canada*, [1999] 2 FC 476, [1999] FCJ No 179 (FCA)). As well, the FCA determined that "matter" could include not only decisions of a tribunal but any matter that a remedy may be available under section 18 of the *FC Act*.

[20] But before delving into whether this is an administrative matter that can be subject to a judicial review, given that the parties provided no argument on this issue, I will deal with whether this Court has jurisdiction to deal with the "matter". I have some but limited arguments from the parties on whether this Court has jurisdiction on these facts. Given either assessment is determinative, for the sake of this analysis only; I will assume that this is a matter that the Federal Court has a right to judicially review.

[21] In Justice Little's previous decision regarding the extension of time and leave to file an Application for Judicial Review in this file he said:

> I also note, on this motion , neither party raised an issue concerning this Court's jurisdiction under subs. 18(1) of the Federal Courts Act to hear and determine an application for judicial review concerning the decision to evict the applicant. See, for example, *Jimmie v Council of the Squiala First Nation*, 2018 FC 190 (Crampton, CJ); *Kaquitts v Council of the Chiniki First Nation*, 2019 FC 498 (Southcott, J).
>
> (*Dennis Cyr v Batchewana First Nations of Ojibways et al*, 2020 FC 1001 at para 50 [*Cyr Extension*])

[22] The Respondents, in their written submissions, argued that the Federal Court does not have jurisdiction to hear this matter. They say that the sale agreement between the parties constitutes a private contract dealing with the terms and conditions of Mr. Cyr's occupation of the premises, and that all of the elements of a private contract, offer, acceptance, and consideration, were present. Because of the nature of the contract, they assert, there is no duty of fairness owed, and there is no jurisdiction for the Federal Court to hear the matter. In support of this, they cite *Cottrell v Chippewas of Rama Mnjikaning First Nation Band*, 2009 FC 261 [*Cottrell*].

[23] Mr. Cyr suggests that if other jurisprudence holds that Band Council decisions regarding land issues attract a duty of fairness and are reviewable by the Federal Court, and that the presence of a contract does not change this fact.

[24] The jurisprudence is clear that decisions of a band council are reviewable, as they constitute, for purposes of section 18 of the *FC Act*, "a federal board, commission or other tribunal" (*Shotclose v Stoney First Nation*, 2011 FC 750 at para 47; *Sparvier v Cowessess Indian* Band No 73, [1993] 3 FC 142).

[25] Therefore, resolutions of a Band Council are considered decisions under the *FC Act* and may be subject to judicial review. It is of note that there was no Band Council Resolution ["BCR"] regarding the eviction notice. Nor was there evidence one was necessary, as it appears to be solely in the hands of the Housing Authority. However, there is a carried motion dated November 19, 2019, by the Band Council when they gave the Applicant a six-month extension

"during which time a plan of support is to be developed to ensure the Band member's needs are met as well as those of the Housing Authority Board".

[26] Reviewable applications must not only find their source in federal law, but must also be of a public nature. Therefore, the actions of the tribunal are reviewed to see if those actions are public or private. If the actions are brought within the public law sphere then it is subject to judicial review by the Federal Court (*Air Canada*, at para 60).

[27] The only Band Council involvement was when that Mr. Cyr's sister brought a motion directly to them and they granted an extension for six months to develop a plan of support to meet both Mr. Cyr's and the Housing Authority's needs (see para 25 above). I note the BCR does not dispute the validity of the eviction.

[28] Nor is there any evidence or submissions by the parties that this is a matter subject to or under any land code, or under the framework of the *First Nations Land Management Act*, SC 1999, c 24 [*FNLMA*]. The November 19, 2019 six-month extension appears to be addressing social needs, and does not impede on the Housing Authority. The one-month extension dated May 29, 2020, was given by the Housing Authority and was specifically to give Mr. Cyr time to vacate the premises. As well all notices are from the Housing Authority. Therefore, for all purposes before me, the evidence is that the Housing Authority is a separate entity with its own decision-making processes that deals with housing of Band members.

[29] Mr. Cyr points to the following section of the December 27, 2002 housing agreement for support that the Federal Court has jurisdiction:

> (3) The Purchaser agrees also […]
>
> (g) to abide by rules and regulations generally in force from time to time regarding occupancy of residential properties in the neighbourhood of the lands and premises and without generality of same to abide by the rules and regulations…

[30] He argues that this provision "imputes a public law element and incorporates any policies, rules and laws applicable to the Respondent's decision-making including but not limited to the *Indian Act*".

[31] He also suggests that the employees of BFN were acting in an administrative capacity similar to those of public servants, making the conduct reviewable. For support of this submission he cited *Roseau River Tribal Council v James and Nelson*, [1989] 4 CNLR 149 (Canada Arbitration), that there is a duty of procedural fairness distinguishable from current case law, and also that under *Carter v Canada (Attorney General)*, 2015 SCC 5 [*Carter*], the Court is permitted to depart from previous rulings, such as *Cottrell*.

[32] In making this argument, he reproduces the test in *Carter*:

> Trial courts may reconsider settled rulings of higher courts in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that "fundamentally shifts the parameters of the debate" (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 42).
>
> (*Carter*, at para 44)

[33] Mr. Cyr then declared that the new legal issues and evidence turn on the following:

> 1. The Applicant had a legitimate expectation:
>
> > i. that he would not be evicted from his Home without an inspection in accordance with past practice;
> >
> > ii. that he would have an opportunity to rectify any breaches, namely have notice of the $180 fee of which there is no notice;
> >
> > iii. that he would be given an opportunity to appeal the decisions of the Respondents, including their employees.
>
> 2. The Respondents' employees were acting in a public capacity similar to those as public servants whose conduct is reviewable by this Honourable Court.
>
> 3. The Applicant had a right to counsel without delay upon being detained during the eviction process, first when Sgt. Sayers met with the Applicant on June 25, 2020, then again on July 7, 2020 and finally on July 9, 2020. There is no evidence the Applicant was read his rights to counsel as Sgt. Sayers provided sworn affidavit evidence that his notes are "confidential" and Sgt. Sayers provides no evidence that he read the Applicant's his right to counsel.
>
> (Applicant's Memorandum, at para 34)

[34] Generally speaking, the Federal Court does not have jurisdiction in matters of contract or private law that would otherwise be in the domain of the provinces. What is at issue, however, is whether in making the decision to evict Mr. Cyr, the Respondents were acting in a public or private nature, that is, whether that specific decision (matter) is reviewable by this Court.

[35] Chief Justice Crampton dealt with a similar jurisdictional issue in *Jimmie v Council of the*

Squiala First Nation, 2018 FC 190 [*Jimmie*], where he directs us to look to the decision of Justice Stratas in *Air Canada v Toronto Port Authority*, 2011 FCA 347:

> In *Port Authority*, above, the Federal Court of Appeal explained that not all conduct of "a federal board, commission or other tribunal" is amenable to review under the *Federal Courts Act*. The determination turns on whether the conduct in question is best characterized as having been public or private in nature (*Port Authority*, above, at paras 50-55). The Court identified "renting and managing premises," as well as "hiring support staff," as examples of acting in private ways (*Port Authority*, above, at para 52). After observing that it can be "tricky" to ascertain what is a public law power and what is private law power, the Court identified the following eight factors to be considered in making that assessment:
>
> > i. The character of the matter for which review is sought;
> >
> > ii. The nature of the decision-maker and its responsibilities;
> >
> > iii. The extent to which a decision is founded in and shaped by law as opposed to private discretion;
> >
> > iv. The body's relationship to other statutory schemes or other parts of government;
> >
> > v. The extent to which a decision-maker is an agent of government or is directed, controlled or significantly influenced by a public entity;
> >
> > vi. The suitability of public law remedies;
> >
> > vii. The existence of compulsory power; and
> >
> > viii. An "exceptional" category of cases where the conduct has attained a serious public dimension.
> >
> > (*Port Authority*, above, at para 60. Citations omitted.)
>
> (*Jimmie*, at para 40)

[36] In *Jimmie*, the decision to evict a Band member was found to be a decision that was a public function. The reason was because that decision was a result of the Band's land code and *FNLMA* agreement derived from the Federal Government. That is not the case on these facts.

[37] Nor was it as in *Des Roches v Wasauksing First Nation*, 2014 FC 1126. There, Justice Kane found the Federal Court did not have jurisdiction to consider the application regarding a decision to impose a surcharge on tax-exempt cigarettes. She found it was not an entity acting as a federal board, commission or tribunal because it was a private contractual matter. She was presented with several other cases (*Peace Hills Trust Co v Saulteaux First Nation*, 2005 FC 1364 [*Peace Hills*]; *Cottrell* and *Devil's Gap Cottagers (1982) Ltd v Rat Portage Band No 38B (Wauzhushk Onigum Nation)*, 2008 FC 812) where it was found that there were decisions made by Band Councils acting under their private power to enter into contracts. Justice Kane utilized a two-step process set out by the FCA in *Anisman v Canada (Border Services Agency)*, 2010 FCA 52 [*Anisman*]. *Anisman* was decided before *Air Canada* but the considerations are along the same vein so the older cases are still useful when determining if the application fits within the jurisdiction of the Federal Court as a decision of a "*federal board, commission or other tribunal*", as defined in section 2(1) of the *FC Act*.

[38] The case of *Cottrell* is very much like the instant case, where an applicant, who was a Band member, was evicted from rental accommodations on a reserve. The applicant alleged a number of procedural fairness issues similar to the ones that have arisen on these facts. The parties had signed a rent purchase agreement. It was found to be a private law contract dealing with his right to live in the house. Justice Russell relied on the FCA in *Gamblin v Norway House*

Cree Nation (Band Council), 2002 FCA 385 [*Gamblin*], where it upheld *Gamblin v Norway House Cree Nation (Band Council)*, [2000] FCJ No 2132 (FCTD). *Gamblin* was a decision where the Court found the relationship between the Band Council in allocating a house to Mr. Gamblin to be a private law contract thus a breach attracted no procedural fairness (*Cottrell*, at paras 91-95).

[39] In *Peace Hills*, Justice Heneghan found that a BCR directing a third party manager to withhold payments to a bank constituted a commercial contract, and that administrative principles should not apply to what is in essence a private contract. She found that "it does not follow that every BCR will lie within the jurisdiction of this Court for the purposes of judicial review pursuant to subsection 18.1(3) of the *Federal Courts Act*…" (*Peace Hills*, at para 60). Thus, in that case the third party manager was not a federal board, commission or other tribunal for the purposes of a judicial review by the Federal Court.

[40] It is clear, then, that the analysis of factors as set out in *Air Canada* and followed in *Jimmie* is an exercise that must be carried out in each case and a determination made on the specific nature of each case.

[41] I will now go through the various factors to determine if the decision of the Housing Authority was of a public or a private nature.

(1) The character of the matter for which review is sought

[42] The breaches relied on by the Housing Authority for the eviction are contained within the purchase agreement, and the eviction is a direct result of those violations, implying that a breach of contract is the reason for the eviction. Mr. Cyr had been in arrears in the past and received notices as well as several notices regarding conditions of both the exterior and interior of the house.

[43] The goals of the contract to facilitate housing for the Band members and evictions based on the upkeep of the property can be seen as a public function of the Housing Authority; that is, maintaining a safe and clean community for the other residents.

[44] I find that the point of the rent-to-own program has a public dimension as it gives Band members access to housing, and the eviction policies go beyond simple private law contractual breaches, and more towards the benefit of the community and its residents. When looking at the purchase agreement, paragraph 5 explicitly states that the intent of the agreement is to facilitate housing for Band members.

[45] Mr. Cyr filed a draft “Rent-to-Own Housing Program Policy” dated April 2017. This draft is a detailed guide for the Housing Policy, but it is not yet in effect or at least, there is no evidence that it is. Under the submitted draft, it is indicated that the housing department is responsible for all the day-to-day administration and enforcement of all housing programs and services, but that the Chief and Council have the final decision on all the housing programs and

services (see sections 4.1.1 and 4.2.1 of the draft Rent-to-Own Housing Program Policy, Applicant's Record, at pp 547-597). Section 15 deals with evictions and gives, at section 15.3.6, the director of the Housing Authority the authority to evict occupants that violate the rent-to-own agreement with council being informed but not the decision-maker. If this draft was enacted it would seem to reflect what the current scheme is and how it is working. The Housing Authority is the authority, and the authority is not exercised by any by-law or statue. From the limited record before the Court, it would seem that the day-to-day decisions, including evictions, are done by the Housing Authority.

[46] In summary, the Housing Authority is the body that the Applicant dealt with. It is also the body that issues notices, and administered the housing—including the decision to evict him based on the breaches of contract. There is no evidence that the Housing Authority's composition and authority is based on a land code, and it appears to be a separate decision making entity from the Band Council. The *Whereas* preamble from the draft agreement says the First Nation has authorization under the *Indian Act*, RSC 1985 c I-5 [*Indian Act*] to administer its own housing program. That is the only evidence before the Court regarding the Respondents' granting authority, it is not in evidence whether the draft policy has been adopted and is in affect, and it is not referenced in the purchase agreement signed by Mr. Cyr.

[47] Overall, this factor is weighted toward a private function of the day-to-day aspects of managing the Band's housing, including arrears notices and other notices including the decision to evict based on a contract.

(2) The nature of the decision-maker and its responsibilities

[48] The CEO of the BFN, Kim Lambert, said in her affidavit at paragraphs 6-7:

> BFN has housing programs that allow for such a Rend-to-Own Agreement, however, the Certificate of Possession and thus "ownership" does not transfer to a member, unless, all conditions of the Agreement are met including any inspections. Further, a Band Council Resolution must be completed at a duly convened meeting of Chief and Council before the Minister of Indian Affairs or its designate can issue a Certificate of Possession.
>
> The residence has been in very poor condition for many years. I have observed the residence to be littered with garbage, dilapidated vehicles and in a decrepit state. This has caused concern from members to brought [*sic*] to Chief and Council regarding the health and safety of not only the Applicant, but his children and neighbours.
>
> (Emphasis added)

[49] This relationship with the Government of Canada and the community shows that there is indeed a public law element when the agreement is fulfilled, namely the Band Council. It is only then that it appears that the Band Council is engaged. Complaints are brought to the Chief and Council but until the contract is complete, it appears that essentially the decisions are left for the Housing Authority to deal with.

[50] On the other hand, the Council addresses a common interest, because the responsibilities are to the community rather than for any private function. That function is to provide housing to Band members provided they meet the terms of the contract, which also satisfies a need of the Band members, which weights toward a public function. As well, the engagement of the Band to

obtain a BCR on completion of the contract favors on this factor towards an element of public law.

(3) The extent to which a decision is founded in and shaped by law as opposed to private discretion

[51] The Housing Authority finds its authority for the eviction in the purchase agreement. Thus, no decisions made by the Housing Authority were shaped by law but by the discretion of the Housing Authority and the contracts entered into. In the July 29, 2019 letter to Mr. Cyr (RE: Notice to Vacate), the Housing Authority refers to the purchase agreement rather than any by-laws or other legal instruments. In *Jimmie*, unlike the present case, the communication of the decision referred directly to a contravention of the land code, not a contract (*Jimmie*, at para 53). This factor weighs in favour of this being a private law decision.

(4) The body's relationship to other statutory schemes or other parts of government

[52] The relationship of the Housing Authority to the BFN has not been put into evidence. The contract is entered into by the BFN and Mr. Cyr, and not with the Housing Authority, although the latter clearly administers the contract during its duration. The Band is given the authority to administer its housing program under the *Indian Act*. This means that the "administrative body is woven into the network of government and is exercising a power as part of that network, [and so] its actions are more likely to be seen as a public matter" (*Jimmie*, at para 57, citing *Port Authority*, at para 60).

(5) The extent to which a decision-maker is an agent of government or is directed, controlled or significantly influenced by a public entity

[53] There is nothing on the record to suggest that the Housing Authority is influenced in any way by a public entity or is an agent of the government. In fact, it appears they exercise their own decision-making powers and discretion. This factor weighs in favour of it being a private decision.

(6) The suitability of public law remedies

[54] This factor, in my view, weighs strongly in favour of this being a private law issue. In *Jimmie*, the Chief Justice decided that an order setting aside the decision had potential to address the dispute. In this case, I would say, it does not. Given the history between the parties, and the long attempts to evict Mr. Cyr, a return to the Band Council would almost definitely return the same result, offering no relief, and a potential cycle of evictions and judicial reviews.

[55] If it turns out that Mr. Cyr was wrongfully evicted, he would, outside of this forum, have access to damages for the value of the property, his expenses outside of his home, and other potential remedies. Here, the decision would simply be sent back for another determination by the same body. I do not see how this would be any relief to Mr. Cyr.

(7) The Existence of Compulsory Power

[56] This factor may be relevant in assessing the exercise of a compulsory power over the public at large or over a defined group, such as a profession, but is not relevant in this context (*Jimmie*, at para 67).

(8) Exceptional cases where the conduct has attained a serious public dimension

[57] This factor does not apply in the present context given that:

> This factor may contemplate cases "where the existence of fraud, bribery, corruption or a human rights violation transforms the matter from one of private significance to one of great public moment"
>
> (*Jimmie*, at para 68, citing *Port Authority*, at para 60).

[58] Justice Stratas, in *Air Canada*, said that all the circumstances must be weighed when making the public/private determination. He held that "whether or not any one factor or a combination of particular factors tips the balance and makes a matter 'public' depends on the facts of the case and the overall impression registered upon the court" (*Air Canada*, at para 60).

V. Conclusion

[59] With that in mind and after going through the factors individually, I can say that on this set of facts, I have determined that the matters subject to this review are of a private law nature and the Housing Authority was not acting as a "federal board, commission or other tribunal".

Thus, this application is not within the jurisdiction of the Federal Court and the application is dismissed.

[60] Given my findings there is no need to deal with the other issues.

VI. Costs

[61] The parties were given seven days from the hearing to provide the Court with Bills of Costs. They also gave argument at the hearing.

[62] The Applicant's Bill of Costs was for $4,653.67 for fees and disbursements at column III. The Applicant sought personal costs against the Respondents' individual counsel. The Applicant quantified it as $500.00 against each of the counsel personally to send a message to them. The basis for the personal costs is set out in the Notice of Application at paragraphs 60-61.

[63] The Respondents' Bill of Costs was not in units and was $60,437.55 for fees and disbursements. At the hearing, the Respondents sought costs against the Applicant in the lump sum amount of $15,000.

[64] Given the limited success of the Respondents—as the application is dismissed for lack of jurisdiction rather than the merits—I will award costs to be paid forthwith by the Applicant to the Respondents in the lump sum inclusive of fees and disbursements of $1,000.00. Included in that lump sum award are the costs on the extension of time motion awarded in the cause by Justice Little in the *Cyr Extension* decision dated October 23, 2020.

JUDGMENT IN T-1316-20

THIS COURT'S JUDGMENT is that:

1. This application is dismissed;

2. Costs are awarded payable forthwith to the Respondents by the Applicant in the lump sum amount of $1,000.00 inclusive of disbursements and taxes.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1316-20
STYLE OF CAUSE:	DENNIS CYR v BATCHEWANA FIRST NATION OF OJIBWAYS, BATCHEWANA FIRST NATION HOUSING AUTHORITY
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	MAY 31, 2021

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