

Fast Track

COURT OF APPEAL OF ALBERTA

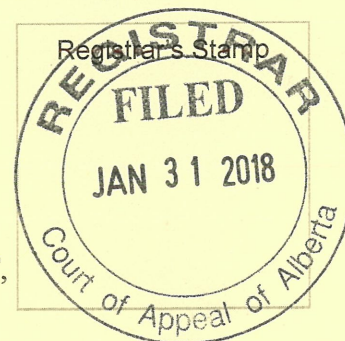
Form AP-5

[Rule 14.87]

COURT OF APPEAL FILE NO.: 1703-0239AC

TRIAL COURT FILE NO.: 1103 14112

REGISTRY OFFICE: Edmonton



IN THE MATTER OF THE TRUSTEE ACT,
RSA 2000, C T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE
BAND, INTER VIVOS SETTLEMENT,
CREATED BY CHIEF WALTER PATRICK
TWINN, OF THE SAWRIDGE INDIAN
BAND, NO. 19, now known as SAWRIDGE
FIRST NATION, ON APRIL 15, 1985 (the
"1985 Sawridge Trust")

APPLICANT: MAURICE FELIX STONEY AND HIS
BROTHERS AND SISTERS

STATUS ON APPEAL: Interested Party

RESPONDENTS (ORIGINAL
APPLICANTS): ROLAND TWINN, CATHERINE TWINN,
WALTER FELIX TWIN, BERTHA
L'HIRONDELLE AND CLARA MIDBO, AS
TRUSTEES FOR THE 1985 SAWRIDGE
TRUST (the "Sawridge Trustees")

STATUS ON APPEAL: Respondents

RESPONDENTS: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: Not a Party to the Appeal

INTERVENOR: SAWRIDGE FIRST NATION

STATUS ON APPEAL: Respondent

INTERESTED PARTY PRISCILLA KENNEDY, Counsel for Maurice
Felix Stoney and His Brothers And Sisters

STATUS ON APPEAL: Appellant

DOCUMENT: **FACTUM OF THE APPELLANT**

Appeal from the Decision of
The Honourable Mr. Justice D.R.G. Thomas
Dated the 31st day of August, 2017
Filed the 31st day of January, 2018

**FACTUM OF THE APPELLANT
PRISCILLA KENNEDY**

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Felix Stoney and His Brothers And Sisters

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OVERVIEW

1. The Appellant lawyer was punished by the Case Management Judge (CMJ) with personal liability for a severe award of costs. The costs, awarded on a solicitor and own client indemnity basis, were for an interlocutory motion on behalf of her aboriginal client, Maurice Stoney and his siblings. The motion was to participate in an ongoing application for Advice and Direction respecting the 1985 Sawridge Trust in which the applicant claimed a potential interest. The CMJ also reported the Appellant to the Law Society of Alberta. The amount of the costs has not been settled but the parties entitled to them submitted draft bills for more than \$200,000.

2. The Appellant submits that this punishment was (1) unwarranted, (2) based upon errors of law, a misapprehension of the relevant circumstances, and irrelevant considerations; and (3) procedurally unfair. Specifically the award of costs:

- Was disproportionate to the alleged misconduct;
- Was grounded in a new theory of a lawyer's personal liability for costs based on an erroneous interpretation of binding Supreme Court of Canada authority;
- Was based on a finding that the application in question was "busybody" litigation when in fact it was a representative claim which is authorized under the *Rules of Court*;
- Was based on a finding that the application involved arguments rejected in earlier proceedings when in fact the application involved arguments never adjudicated;
- Accused the lawyer and her client of interfering in the self-governing rights of a First Nation when in fact the application was based on the applicant's own treaty rights and undisputed historical connection to the First Nation;
- Was on a scale that was determined in an earlier proceeding without opportunity for submissions on the Appellant's behalf.

3. The Appellant respectfully submits the CMJ's findings that she engaged in conduct justifying sanction by way of personal liability for costs should be set aside.

FACTS

The litigation below

4. The motion giving rise to the costs award (the Motion) arose in the context of litigation concerning the 1985 Sawridge Trust. This Court recently described that litigation in *Twinn v Twinn*.¹ It is an application by the trustees for Advice and Direction (the A and D proceedings) respecting a proposed distribution of the Trust assets (approximately \$70 million) and amendments to the

¹ *Twinn v Twinn*, 2017 ABCA 419 at paras 1-4 [*Twinn*], Appellant's Authorities [Authorities] Tab 7

definition of beneficiaries. It has been suggested that beneficiaries might be redefined as present members of the Sawridge First Nation (the SFN).²

5. This Court noted in *Twinn* that the absence of any commencement document setting out the relief being sought has resulted in lack of clarity regarding whose interests will be affected by any variation to the definition of beneficiary, and how. This Court also noted the absence of any direction from the CMJ regarding procedures for beneficiaries or potential beneficiaries to participate either individually or through representatives. It urged these matters be addressed.³

6. Maurice Stoney retained DLA Piper and was represented by the Appellant, who is an associate counsel. She participated in the A and D proceedings informally from the outset⁴ to advance his interest as a potential beneficiary and address the redefinition of who qualified as such.

The Motion

7. In August, 2016, following a decision in this Court that Maurice Stoney had no standing in the A and D proceedings,⁵ the Appellant brought the Motion on behalf of Maurice Stoney and his siblings to be added as parties or interveners as potential beneficiaries. Their claim to potential beneficiary status was grounded in their assertion of entitlement to membership in the band on a legal basis never previously adjudicated. The CMJ had held he would not determine membership issues but would consider questions touching on membership to the extent they concerned the issues in the A and D proceedings such as the definition of the trust beneficiaries.⁶

8. The Motion identified itself as “APPLICATION TO BE ADDED as Party or Intervener by Maurice Felix Stoney and his brothers and sisters” and was supported by the Affidavit of Maurice Stoney. The Appellant confirmed on the record that the Motion was brought by Maurice Stoney on a representative basis for himself and for his surviving siblings.⁷ The Sawridge Trustees submissions recognized the nature of the Stoney Application as a representative action. They objected to Mr. Stoney as representative on the basis that not all siblings “share the same facts on their application for membership.”⁸

² *Ibid* at para 3

³ *Ibid* at paras 21-22

⁴ *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365 at para 37 [*Sawridge #1*], **Authorities Tab 1**; The SFN also participated on an informal basis. See: *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 at para 15 [*Sawridge #3*], **Authorities Tab 3**

⁵ *Stoney v Twinn*, 2016 ABCA 51 [*Sawridge #4*], **Authorities Tab 5**

⁶ *Sawridge #1* at paras 53-54, **Authorities Tab 1**

⁷ Transcript of Questioning on Affidavit of Maurice Stoney, Sept 23, 2016 and filed Oct 21, 2016 at pages 66-67, **Extracts of Key Evidence [EKE] p. A002-A003**

⁸ Written Submissions of Sawridge Trustees filed Oct 31, 2016 at para 31, **EKE p. A005**

9. In his Affidavit, Maurice Stoney set out the basis of his claim as being grounded in his treaty rights as follows:

9. I applied to Sawridge in 1985 for recognition of my membership because I had been removed from membership by Canada after the enfranchisement of my father. I remained a descendant of the signatories to *Treaty #8* throughout all of the years when Canada treated me as “enfranchised”. In 1982 when section 35 was passed as part of the *Constitution*, all of our family’s treaty rights were recognized. I believe I am an acquired rights member recognized as a Registered Indian in 1985 when Sawridge’s membership was governed by Indian Affairs. The Sawridge Membership Rules did not become effective until September 26, 1985...

14. ...All aboriginal and treaty rights were recognized and affirmed in 1982 and enfranchisement was removed in 1985 in Bill C-31 in order to have the *Indian Act* comply with the *Constitution Act, 1982*.⁹

Mr. Stoney’s affidavit made explicit reference to prior Federal Court decisions concerning previous applications brought by him seeking to establish his membership in the band. The Appellant’s written submissions on the Motion also referred to the decisions and sought to distinguish them on the basis they had not addressed the specific legal basis underpinning the Motion.

10. At the CMJ’s direction the Motion was heard in writing only, in tandem with another application for participation rights. Submissions were completed by November 15, 2016.¹⁰ While the Motion was on reserve the CMJ issued other decisions in the proceedings including *Sawridge #4* (April, 2017) in which he stated:

[30] ... Attempts by persons to intrude into the process without a valid basis, for example, in an abusive attempt to conduct a collateral attack on a concluded court or tribunal process, can expect very strict and substantial costs awards against them (both applicants and lawyers), on a punitive or indemnity basis¹¹

and *Sawridge #5* (May, 2017) in which the CMJ dismissed the parallel application with costs on a solicitor and own client indemnity basis.¹² That award of costs was set aside by this Court in *Twinn*.

The CMJ’s decision on the Motion

11. The CMJ issued his decision on the Motion on July 12, 2017. He denied the Motion, holding that Maurice Stoney “is making the same argument he has before – and which has been rejected”; that the question of Maurice Stoney’s entitlement to membership in the band was *res judicata* by virtue of the previous Federal Court decisions; and that as a result he was “a third-party interloper”

⁹ Affidavit of Maurice Felix Stoney, sworn May 17, 2016 (filed Aug 10, 2016), **EKE p. A007-A009**

¹⁰ Order of the CMJ pronounced August 24, 2016, **Appeal Record [AR] Tab 8**

¹¹ *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 299 [*Sawridge #4*], **Authorities Tab 5**

¹² *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377 at paras 47-53 [*Sawridge #5*], **Authorities Tab 6**

with no basis for participation in the A and D proceedings.¹³ The CMJ's Reasons made no reference to the treaty-based issue raised in Mr. Stoney's Affidavit and Submissions.

12. The CMJ concluded the Motion demonstrated indicia of abusive litigation, including collateral attacks on prior decision, hopeless proceedings and "busybody" proceedings. With respect to the "busybody" finding the CMJ held that in the absence of evidence the Appellant had been retained by Maurice Stoney's siblings he would treat the application as being on behalf of Maurice Stoney only, then said: "I will return to this topic because it has other implications for Maurice Stoney and his lawyer Priscilla Kennedy."¹⁴ The CMJ's Reasons made no reference to the evidence or submissions indicating that the Motion had been brought on a representative basis.

13. The CMJ noted the Trustees and the band sought solicitor and client indemnity costs against Maurice Stoney, and relied on his previous costs award in *Sawridge #5*.¹⁵ The CMJ went on to say that the Appellant had advanced a futile application that was potentially a "serious abuse of the legal system" and ordered her to appear before him "to make submissions on why she should not be personally responsible for some or all of the costs award against her client, Maurice Stoney."¹⁶

The show cause hearing and CMJ Decision finding the Appellant personally liable for costs

14. A partner of DLA Piper, Donald Wilson, appeared at the show cause hearing to speak on the Appellant's behalf. Mr. Wilson began by referring to "the gravity of this application that's been brought to Ms. Kennedy, Mr. Stoney, and I will say to myself and my partners." He went on to acknowledge he was not conversant with the litigation and did not practice aboriginal law. He described the Appellant as someone who "litigates with her heart" then said—twice—that she "has prosecuted this action on his behalf further than I would've, further than I think she should've." Mr. Wilson referred to the CMJ's decision in *Sawridge #5* as "foreshadowing" that "could not have been clearer" regarding the Court's approach to costs. His submissions also included the following statements:

Now, I can tell you that in the course of the last week, other than reading way too many Sawridge decision, I had occasion to speak in depth with Ms. Kennedy. And Ms. Kennedy tried to convince me of the merits of Mr. Stoney's claim. And at a certain point in time I had to tell her that he has exhausted his remedies in the legal realm with respect to the Sawridges and it's time to move on.

and

¹³ 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 530 at paras 47-52 [*Sawridge #6*], **Authorities Tab 8**

¹⁴ *Ibid* at paras 10-12

¹⁵ *Ibid* at paras 67-68

¹⁶ *Ibid* at paras 78-79

My submission would be that the application that resulted in *Sawridge #6* should not have been made. It was ill-advised. But was not done with bad motives, an attempt to abuse the process. It had that effect, I have to say in front of my friends it absolutely had that effect but it is an advocate putting forward a position she believes in, believes in the remedy that her client is trying to seek.

Mr. Wilson submitted affidavits evidencing support for the Motion by two of the family members which he said was all that could be obtained in the short time available from people who weren't easy to get hold of. He concluded by submitting personal liability for costs was unnecessary.¹⁷

15. Mr. Wilson's made no reference to the Appellant's legal theory or the fact that theory had never been adjudicated in prior proceedings. He also did not refer to the evidence and submissions concerning the Motion's representative nature and the relevant Rule, or the scale of the costs award which had already been determined in *Sawridge #6*.

16. The CMJ issued lengthy written Reasons finding that the Appellant had conducted a proceeding that was "a serious abuse of the judicial system on two independent bases:

(1) she conducted futile litigation that was a collateral attack of a prior unappealed decision of a Canadian court, and

(2) she conducted that litigation allegedly on behalf of persons who were not her clients on a "busybody" basis"

warranting personal liability for costs.¹⁸

17. In reaching this finding the CMJ applied what he described as "a new two branch analysis" arising from the recent SCC decision in *Jodoin*.¹⁹ He held the second branch had established "a new basis on which to award costs against a lawyer" which he said was an "unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system". The CMJ also concluded that the "culture shift" in litigation flowing from the SCC decision in *Hryniak* called for a new standard to be applied to lawyer's actions and inactions and that the Appellant's conduct be scrutinized "in this new reality".²⁰

18. The CMJ identified what he considered to be a variety of aggravating factors supporting his finding of serious abuse, one of which he described as "a special aggravating element". This was his characterization of the Motion as a challenge to the internal decision-making, self-determination and self-government of the SFN as an aboriginal community. The CMJ held that he would, if necessary,

¹⁷ Transcript of Proceedings, July 28, 2017 at pages 3-8, **AR Tab 19**

¹⁸ *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 530 at para 150 [*Sawridge #7*], **Authorities Tab 11**

¹⁹ *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26, [2017] 1 SCR 478 [*Jodoin*], **Authorities Tab 15**

²⁰ *Sawridge #7* at paras 34, 50, and 120, **Authorities Tab 11**

have been prepared to find a serious abuse of the judicial system on that basis as well.²¹ His analysis did not reference Maurice Stoney's Indian status, treaty rights or historic connection with the band.

19. In the result the CMJ ordered the Appellant be personally liable for the costs that he ordered in *Sawridge #6* at paras 67 and 68, jointly and severally with Maurice Stoney.²²

20. The Appellant has been granted leave to appeal this decision in unqualified terms.²³ An application by the Appellant to be added as a party Appellant to Maurice Stoney's appeal from the CMJ's decision in *Sawridge #6* in order to address the original award, and scale, of costs in the proceeding where it was made was dismissed as unnecessary.²⁴

ISSUES ON APPEAL

21. The Appellant submits the following issues arise on appeal:

- (a) Did the learned CMJ err in his identification and description of the test for an award of costs against a lawyer personally; and
- (b) Did the learned CMJ err in finding the conduct of the Appellant warranted personal liability for costs on a solicitor and own client full indemnity basis?

STANDARD OF REVIEW

22. The Appellants submit issue 23 (a) is an extricable question of law to which the standard of correctness applies. With respect to issue 23 (b) the Appellant submits costs awards are discretionary decisions entitled to deference. The standard of review applicable to a costs award was recently stated by the Court in *Twinn*, which held appellate intervention is required where a) a case management judge failed to give sufficient weight to relevant considerations; b) a case management judge proceeded arbitrarily, on wrong principles or on an erroneous view of the facts; or c) there is likely to be a failure of justice if the impugned decision is upheld.²⁵

ARGUMENT

Courts must be extremely cautious in awarding costs personally against a lawyer and such awards can only be justified on an exceptional basis. The Appellant's conduct did not rise to such a level.

23. An award of costs against a solicitor personally is made pursuant to Rule 10.50 which Appears under Division 4 of Part 10 of the Rules. Division 4 is entitled "Sanctions" and permits an

²¹ *Ibid* at paras 148-149

²² *Ibid* at para 154

²³ 1985 *Sawridge Trust v Kennedy*, 2017 ABCA 368, **Authorities Tab 12**

²⁴ 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABCA 418, at paras 47, 52, 53, 56 and 57, **Authorities Tab 9**

²⁵ *Twinn*, *supra*, **Authorities Tab 7**

award only where there has been a finding of “serious misconduct”.²⁶ The serious nature of such an award was expressed by McLachlin J (as she then was) in *Young v Young*, where she observed “...courts must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular cases.”²⁷ More recently, in *Jodoin*, Gascon J observed: “Only serious misconduct can justify such a sanction against a lawyer.”²⁸ He went on to observe an award of costs against a lawyer personally “...can be justified only on an exceptional basis where the lawyer’s acts have seriously undermined the authority of the courts or seriously interfered with the administration of justice.”

24. The Appellant’s conduct fell far short of that threshold. In particular:

- She engaged in no deliberate or wilful misconduct;
- She brought forward the Motion with a genuine belief in its merit;
- She sought to protect the potential interests of her aboriginal client, Maurice Stoney, as well as those of his identically or similarly situated siblings, in the process leading to the distribution of the 1985 Sawridge Trust;
- She did so by way of a representative motion, the most economical means for determination of an issue concerning a group;
- The potential interest she sought to protect was rooted in the assertion the group was entitled to membership in the band on a novel basis never adjudicated by any Court;
- In doing so she disclosed and addressed previous judicial decisions concerning her client and the band;
- Her Motion did not ask the CMJ, who had previously said he would not adjudicate band membership issues, to do so but rather to recognize their claim as sufficiently meritorious to warrant their participation in the A and D proceedings;
- She based that claim on their historic connections to the band, the undisputed fact that they were treaty Indians with formal Indian status, and an ingenious legal theory concerning the effect, as opposed to the language, of Bill C-31.

Given the foregoing, even if the CMJ’s finding that the underpinning of her claim was *res judicata* is accepted, the finding that the Appellant had engaged in exceptional misconduct calling for personal liability for costs was unwarranted.

25. Further, the costs award in issue was the most severe award possible. As this Court observed in *Luft*²⁹ and reiterated in *Twinn*³⁰ awards of solicitor and own client indemnity costs are “virtually

²⁶ Alberta Rules of Court, Part 10, Division 4, **Appendix A**

²⁷ *Young v Young*, [1993] 4 SCR 3 at p 136, cited in *Jodoin* at para 25, **Authorities Tab 15**

²⁸ *Jodoin*, supra at para 25, **Authorities Tab 15**

²⁹ *Luft v Taylor, Zinkhofer & Conway*, 2017 ABCA 228 at para 78, **Authorities Tab 16**

³⁰ *Twinn*, supra at para 25, **Authorities Tab 7**

unheard of except where provided by contract”. With respect such an award against the Appellant is not justified in the circumstances here.

The CMJ’s misinterpreted the test for a lawyer’s liability for costs as set out in the SCC decision in *Jodoin*

26. The CMJ explicitly based his punishment of the Appellant on his interpretation of the SCC decision in *Jodoin*, which he held had created a new basis for a lawyer’s liability in costs that did not require deliberate misconduct on the part of the lawyer.³¹ This is an incorrect reading and interpretation of *Jodoin*.³²

27. In reaching his conclusion the CMJ may have been led astray by a suspect English translation of the judgment that was originally rendered in French. A recent case comment by counsel for an intervener in *Jodoin* notes that the English translation of the relevant passage from *Jodoin* contains an ambiguity. This makes it possible to incorrectly read the branch of the test relied upon by the CMJ as not requiring deliberate misconduct.

28. As the case comment notes however the French original contains no such ambiguity and clearly states the requirement of deliberate misconduct applies to both branches of the test. The case comment went on to refer to the effect of the unfortunate English translation in these proceedings, leading the CMJ “to read *Jodoin* as creating a lower threshold for imposing costs in the absence of deliberate misconduct.”³³

29. However caused, the CMJ’s application of a test for lawyer liability that did not require deliberate misconduct, coupled with the absence of deliberate misconduct on the part was an error of law that resulted in the threshold for the Appellant’s liability being set too low. The Appellant submits that she clearly did not engage in deliberate misconduct and that on the proper test for personal liability no award against her should have been made.

The CMJ’s finding that the Appellant was simply repeating arguments previously rejected was in error. The legal theory underlying the Motion had never been adjudicated.

30. The CMJ concluded Ms. Kennedy’s arguments on the Motion simply repeated the arguments rejected in previous decisions of the Federal Court of Canada in proceedings involving Maurice Stoney. This was not the case. Those decisions addressed whether Mr. Stoney fell within any of the categories of persons upon whom the Bill C-31 (and subsequent) amendments to the

³¹ *Sawridge* #7 at paras 32-34, **Authorities Tab 11**

³² The Appellant notes that in *Morin v TransAlta Utilities Corporation*, Graesser J reached a different conclusion, stating *Jodoin* “is interesting but does not create a remedy that was not already there in the Rules of Court or at common law in civil proceedings.”, 2017 ABQB 409 at para 39 **Authorities Tab 17**

³³ Stephen Aylward, *Quebec v. Jodoin: Costs Against Criminal Defence Lawyers*, Dec 11, 2017, p. 2-3, **Authorities Tab 18**

Indian Act expressly conferred the automatic right of membership in a First Nation.³⁴ The legal theory underpinning the application to participate in the A and D proceedings was that the effect of other sections of those amendments led to his entitlement to membership.

31. In brief, the Appellant's argument was that the combination of (1) Mr. Stoney's constitutionally affirmed treaty rights (which included a right to band membership) coupled with (2) Bill C-31's repeal of the enfranchisement provisions which had been a burden on that treaty right resulting in his loss of membership, had the effect of resurrecting his treaty entitlement to membership in the band. Since that entitlement to membership arose immediately upon the repeal of the enfranchisement provisions and the SFN did not establish a band membership code until months later, Mr. Stoney's membership could not be said to be subject to that code. Rather he should be considered as falling within the category of persons whose right to membership might be called automatic, and thus entitled to the benefit of an injunction issued by the Federal Court in 2003 requiring the SFN to acknowledge the membership of such persons.

32. This legal theory was not adjudicated in any of Mr. Stoney's prior litigation concerning his band membership. The Appellant recognizes it may be found that this could have or should have been brought forward in those prior proceedings. Nonetheless the Stoney Application was based on issues which have never been addressed by the Courts. The Appellant submits her duty as an advocate required she make this argument.

33. The Appellant submits the fact the application in *Sawridge #6* was conducted entirely in writing may have contributed to the CMJ's misunderstanding. The Appellant's written material could have described this theory more clearly and explicitly. The absence of oral submissions means the CMJ did not have the benefit of the opportunity to ask questions, clarify submissions and clear up misunderstandings by hearing directly from the Appellant. While an oral hearing did occur in *Sawridge #7* Mr. Wilson did not explain the legal theory behind the Motion, referring only to the fact that the Appellant had apparently sought to explain it to him.

The CMJ's finding that the Appellant engaged in busybody litigation was in error and *per incuriam*

34. The CMJ held Ms. Kennedy "did not have instructions or a legal basis" to file the Motion on behalf of "Maurice Felix Stoney and his brothers and sisters" and thus had engaged in unauthorized

³⁴ See *Stoney v Sawridge First Nation*, 2013 FC 509, **Authorities Tab 19**; *Huzar v Canada*, 258 NR 246, 2000 CarswellNat 1132 (FCA), **Authorities Tab 20**; *Huzar v Canada*, Reasons of Campbell J dated May 6, 1998, Federal Court Docket T-1529-95, **Authorities Tab 21**; *Huzar v Canada*, 1997 CarswellNat 2332 (FC), Reasons of Prothonotary Hargrave, **Authorities Tab 22**. Note that only the first two decisions were specifically put before the CMJ.

“busybody litigation”³⁵ deserving of sanction. In doing so he noted that this was not a class action scenario, nor was there any documentation to establish that Maurice Stoney applied or was appointed as a litigation representative for his siblings under Rules 2.11-2.21.³⁶ The CMJ expressed serious concern that Ms. Kennedy had exposed Mr. Stoney’s siblings to potential costs liability.³⁷

35. In fact, the Motion was advanced as a representative proceeding, which is authorized by Rule 2.6. Under Rule 2.6, where numerous persons have a common interest in the subject of an intended claim one of those persons may make the claim for the benefit of all.³⁸ A representative action does not require court approval and “is good unless and until set aside.”³⁹ In such an action, only the representative faces potential costs liability pursuant to Rule 10.32. No specific reference was made to Rule 2.6 by the Appellant, other parties or Mr. Wilson and the CMJ did not cite it.

36. The nature of the Stoney Application as a representative motion was part of the record before the Court. That representative character was not based upon any incapacity on the part of the siblings that might have engaged Rules 2.11 to 2.21 cited by the CMJ. It was upon their common interest and shared characteristics. This was recognized by the Trustees whose submissions objected to Mr. Stoney as representative on the basis that not all siblings “share the same facts on their application for membership.”⁴⁰ This objection was not noted or addressed in the CMJ’s decision.

37. With respect, the CMJ did not correctly appreciate the nature of the application before him and addressed his mind to an irrelevant consideration when he asked whether Mr. Stoney’s siblings had retained Ms. Kennedy. In a representative pleading it is the representative who retains counsel. The affidavits provided by the family members demonstrated family endorsement of Mr. Stoney’s representative status.⁴¹ The CMJ’s finding that Ms. Kennedy engaged in “busybody” litigation because she did not have direct instructions from family members was in error.

38. The Appellant also submits that the CMJ’s entire analysis would, of necessity, have been different had he recognized the representative nature of the Motion. Mr. Stoney’s siblings were not parties to the prior litigation respecting entitlement to membership in the band. The arguments raised by the Appellant could not be considered to be *res judicata* with respect to them. There was no basis for objecting to their advancing the Motion or the Appellant’s legal theory.

³⁵ *Sawridge #7* at para 137-138, **Authorities Tab 11**

³⁶ *Ibid* at para 136

³⁷ *Ibid* at para 139-140; see also *Sawridge #6* at paras 8-12, **Authorities Tab 8**

³⁸ Alberta Rules of Court, *supra*, **Appendix A**

³⁹ *Lameman v Canada (Attorney General)*, 2007 ABCA 180 at para 2, **Authorities Tab 23**; *Western Canadian Shopping Centres Inc. v Bennett Jones Verchere*, 1998 ABCA 392 at paras 11 and 14, *var’d* other grounds 2001 SCC 46, **Authorities Tab 24**

⁴⁰ Written Submissions of Sawridge Trustees filed Oct 31, 2016 at para 31, **EKE p. A005**

⁴¹ Affidavits of Bill Stoney, Gail Stoney, and Shelley Stoney, sworn July 20, 2017 and filed July 27, 2017, **EKE p. A055-A057**

The CMJ relied upon irrelevant considerations and factors incorrectly identified as aggravating

39. In a lengthy passage of his Reasons (paragraphs 59 to 70) entitled “**The Nuremberg Defence – I was Just Following Orders**” the CMJ forcefully asserted a lawyer cannot avoid liability for costs by saying they were only following their client’s instructions. At no time did the Appellant seek to justify her actions on this basis. This was followed by a section entitled “**No Constitutional Right to Abusive Litigation**” (paragraphs 71 to 75). The Appellant had never sought to assert such a constitutional right. In sections entitled “**Special Forms of Litigation Abuse**” (paragraphs 108 to 114) and “**Delay**” (paragraphs 115 to 117) the CMJ discussed a variety of type of wrongdoing by litigants and lawyers none of which related to the Appellant.

40. The CMJ also identified factors that he considered “aggravating”. These included failing to acknowledge the Motion was “a long shot”, seeking to have the costs of participation in the A and D proceedings borne by the Trust and failing to offer to provide security for costs for that participation. The Appellant submits none of these can reasonably be factors in her personal liability for costs. The CMJ also held that by advancing the Motion, the Appellant had ignored his earlier decision that he would not take jurisdiction to review the band membership process.⁴² The Appellant submits the Motion did not seek such review. The Motion sought to establish that there was sufficient merit to the applicants’ claim of entitlement to membership on a constitutional basis that it was appropriate they participate in the A and D proceedings.

41. In another passage the CMJ stated that the Stoney application had “a special aggravating element” because it amounted to a challenge to the self-determination and self-government of an aboriginal community.⁴³ The Appellant submits this is a mischaracterization of the nature of the interests at stake and fails to recognize Mr. Stoney’s own status as an aboriginal person and status Indian born into the Sawridge Band with his own treaty entitlements.

42. The competing aboriginal interests involved when band membership is at issue were recognized by the Federal Court of Appeal in *Sawridge Band v Canada*. That case involved an unsuccessful challenge by Sawridge to the constitutionality of Bill C-31 on the grounds that it compelled them to accept new members against their will. As the FCA observed: “Indeed, as noted earlier, the dispute before the [the trial judge] involved in reality conflicting claims among various segments of the Aboriginal community to control or to claim membership in Indian bands.”⁴⁴ The CMJ’s finding that Mr. Stoney’s reliance on a claim to membership in the Motion constituted “a

⁴² *Sawridge #3*, supra at paras 33-35, **Authorities Tab 3**

⁴³ *Sawridge #7* at paras 148-49, **Authorities Tab 11**

⁴⁴ *Sawridge Band v Canada*, [1997] 3 FCR 580, 1997 CarswellNat 1086 at para 15, **Authorities Tab 25**

serious abuse of the judicial system in light of the interests involved” ignored the nature or basis of Mr. Stoney’s own interest and amounted to a significant error in principle.⁴⁵

The procedure leading to the costs award deprived the Appellant of the opportunity to speak to the scale of costs and was procedurally unfair

43. In their written submissions on the Motion the Trustees and the SFN sought costs against Maurice Stoney, but not the Appellant. The CMJ did not request further submissions on liability for, or the appropriate scale of, costs before rendering his decision on the Motion. Rather, he awarded costs against Maurice Stoney on the highest possible basis based on the written submissions and directed the Appellant to appear before him to show cause “why she should not be personally responsible for some or all of the costs awarded against her client.”⁴⁶

44. The reference to “some or all of the costs” was not an invitation or opportunity to the Appellant to reargue the scale of costs already awarded. What the CMJ meant by “some or all” was this: had the Appellant only been involved in certain steps of the Motion her liability might have been limited to the costs awarded for those steps. However the Appellant had been involved in the entire Motion and was therefore liable for the full costs awarded in *Sawridge #6*.⁴⁷

45. The process adopted by the CMJ deprived the Appellant of any opportunity for submissions on her own behalf respecting the scale of the costs for which she was held personally liable. As the Transcript of the proceedings shows, Mr. Wilson appeared to have understood that ship had sailed and made no effort to address the scale of costs. The unfortunate consequence was that the liability of Mr. Stoney for costs on the highest possible scale was determined without consideration of the relative levels of responsibility as between him and the Appellant or the opportunity for explanations that might have been provided respecting the thinking behind the Motion. As for the Appellant, her liability was for a predetermined level of costs that was ordered before she was even aware of her personal jeopardy and which she had no opportunity to address on her own behalf. The Appellant submits this was unfair and further vitiates the CMJ’s award.

⁴⁵ The Appellant notes the *Indian Act* provisions concerning Indian status and band membership remain in flux. Further amendments to the *Act* concerning Indian status and band membership were enacted in 2017 as a result of the decision in *Descheneaux*. That legislation requires consultation between Canada, First Nations and other interested parties: “in order to address, in collaboration with those First Nations and other parties, issues raised by the provisions of the Indian Act related to registration and band membership, including consultations on... (e) enfranchisement” the results of which are to be laid before Parliament. See: *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux v. Canada (Procureur general)*, SC 2017, c-25, s 11, **Appendix B**

⁴⁶ *Sawridge #6* at paras 67, 68, 78 and 79, **Authorities Tab 8**

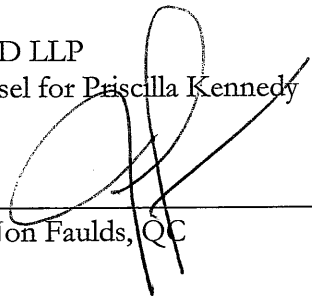
⁴⁷ *Sawridge #7* at paras 152-53, **Authorities Tab 11**

RELIEF SOUGHT

46. The Appellant respectfully asks that the finding of her personal liability for costs be set aside with costs of this appeal and of the show cause hearing below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31ST DAY OF January, A.D. 2018

FIELD LLP
Counsel for Priscilla Kennedy

Per: 
P. Jon Faulds, QC

Estimated time for argument: 45 minutes

TABLE OF AUTHORITIES

Decisions in these Proceedings

1. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365, 2012 CarswellAlta 1042 (*Sawridge #1*)
2. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2013 ABCA 226, 2013 CarswellAlta 1015 (*Sawridge #2*)
3. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799, 2015 CarswellAlta 2373 (*Sawridge #3*)
4. *Stoney v Twinn*, 2016 ABCA 51, 2016 CarswellAlta 238 (application for extension of time to appeal *Sawridge #3*)
5. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 299, 2017 CarswellAlta 745 (*Sawridge #4*)
6. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377, 2017 CarswellAlta 1193 (*Sawridge #5*)
7. *Twinn v Twinn*, 2017 ABCA 419, 2017 CarswellAlta 2650 (appeal of *Sawridge #5*)
8. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 436, 2017 CarswellAlta 1236 (*Sawridge #6*)
9. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABCA 418, 2017 CarswellAlta 2594 (application by Kennedy for party appellant status in *Sawridge #6*)
10. *Stoney v Trustees for the 1985 Sawridge Trust*, 2017 ABCA 437, 2017 CarswellAlta 2740 (security for costs application against Stoney in appeal of *Sawridge #6*)
11. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 530, 2017 CarswellAlta 1569 (*Sawridge #7*)
12. *1985 Sawridge Trust v Kennedy*, 2017 ABCA 368, 2017 CarswellAlta 2303 (application re leave to appeal *Sawridge #7*)
13. *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548, 2017 CarswellAlta 1639 (*Sawridge #8*)
14. *Kennedy v Trustees for the 1985 Sawridge Trust*, 2017 ABCA 439, 2017 CarswellAlta 2698 (application to dismiss Kennedy's appeal of *Sawridge #8*)

Additional Authorities

15. *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26, [2017] 1 SCR 478
16. *Luft v Taylor, Zinkhofer & Conway*, 2017 ABCA 228, 2017 CarswellAlta 1183
17. *Morin v TransAlta Utilities Corporation*, 2017 ABQB 409, 2017 CarswellAlta 1125
18. *Stephen Aylward, Quebec v. Jodoin: Costs Against Criminal Defence Lawyers*, Dec 11, 2017
19. *Stoney v Sawridge First Nation*, 2013 FC 509, 2013 CarswellNat 1434
20. *Huzar v Canada*, 258 NR 246, 2000 CarswellNat 1132 (FCA)
21. *Huzar v Canada*, Reasons of Campbell J dated May 6, 1998, Federal Court Docket T-1529-95
22. *Huzar v Canada*, 1997 CarswellNat 2332 (FC), Reasons of Prothonotary Hargrave
23. *Lameman v Canada (Attorney General)*, 2007 ABCA 180, 2007 CarswellAlta 685
24. *Western Canadian Shopping Centres Inc. v Bennett Jones Verchere*, 1998 ABCA 392, 1998 CarswellAlta 1173
25. *Sawridge Band v Canada*, [1997] 3 FCR 580, 1997 CarswellNat 1086

APPENDICES

- A. Alberta Rules of Court, Alta Reg 124/2010, Rule 2.6 and Part 10, Division 4
- B. *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)*, SC 2017, c-25

Tab A

(3) The person on whom the notice to disclose is served must comply with it within 10 days after the date the notice is served.

Representative actions

2.6(1) If numerous persons have a common interest in the subject of an intended claim, one or more of those persons may make or be the subject of a claim or may be authorized by the Court to defend on behalf of or for the benefit of all.

(2) If a certification order is obtained under the *Class Proceedings Act*, an action referred to in subrule (1) may be continued under that Act.

Amendments to pleadings in class proceedings

2.7 After a certification order is made under the *Class Proceedings Act*, a party may amend a pleading only with the Court's permission.

Questioning of class and subclass members

2.8(1) If under section 18(2) of the *Class Proceedings Act* the Court requires a class member or subclass member to file and serve an affidavit of records, the Court may do either or both of the following:

- (a) limit the purpose and scope of the records to be produced and of questioning;
- (b) determine how the evidence obtained may be used.

(2) If a class member or subclass member is questioned under section 18(2) of the *Class Proceedings Act*, the Court may do either or both of the following:

- (a) limit the purpose and scope of the questioning;
- (b) determine how the evidence obtained may be used.

Class proceedings practice and procedure

2.9 Despite any other provision of these rules, the Court may order any practice and procedure it considers appropriate for a class proceeding under the *Class Proceedings Act* to achieve the objects of that Act.

- (a) the litigation representative has engaged in serious misconduct, and
- (b) the Court so orders.

Recovery of goods and services tax

10.48(1) Unless the Court otherwise orders, a party entitled to a costs award is entitled to an additional amount on account of goods and services tax

- (a) on the fees portion of the costs award, and
- (b) on those disbursements, if any, that are taxable supplies under the *Excise Tax Act* (Canada).

(2) Notwithstanding subrule (1), no additional amount on account of goods and services tax is recoverable where the tax is refundable or rebateable pursuant to the *Excise Tax Act* (Canada).

AR 124/2010 s10.48;140/2013

**Division 4
Sanctions****Subdivision 1
Penalty****Penalty for contravening rules**

10.49(1) The Court may order a party, lawyer or other person to pay to the court clerk a penalty in an amount determined by the Court if

- (a) the party, lawyer or other person contravenes or fails to comply with these rules or a practice note or direction of the Court without adequate excuse, and
- (b) the contravention or failure to comply, in the Court's opinion, has interfered with or may interfere with the proper or efficient administration of justice.

(2) The order applies despite

- (a) a settlement of the action, or
- (b) an agreement to the contrary by the parties.

Costs imposed on lawyer

10.50 If a lawyer for a party engages in serious misconduct, the Court may order the lawyer to pay a costs award with respect to a person named in the order.

**Subdivision 2
Civil Contempt of Court****Order to appear**

10.51 The Court may grant an order in Form 47 that requires a person to appear before it, or may order a peace officer to take a person into custody and to bring the person before the Court, to show cause why that person should not be declared to be in civil contempt of Court.

Declaration of civil contempt

10.52(1) Except when a person is before the Court as described in subrule (3)(a)(ii) or (v), before an order declaring a person in civil contempt of Court is made, notice of the application in Form 27 for a declaration of civil contempt must be served on the person in the same manner as a commencement document.

(2) If a lawyer accepts service of a notice of an application seeking an order declaring the lawyer's client to be in civil contempt of Court, the lawyer must notify the client of the notice as soon as practicable after being served.

(3) A judge may declare a person to be in civil contempt of Court if

- (a) the person, without reasonable excuse,
 - (i) does not comply with an order, other than an order to pay money, that has been served in accordance with the rules for service of commencement documents or of which the person has actual knowledge,
 - (ii) is before the Court and engages in conduct that warrants a declaration of civil contempt of Court,
 - (iii) does not comply with an order served on the person, or an order of which the person has actual knowledge, to appear before the Court to show cause why the person should not be declared to be in civil contempt of Court,
 - (iv) does not comply with an order served on the person, or an order of which the person has actual knowledge, to attend for questioning under these

Tab B

First Session, Forty-second Parliament,
64-65-66 Elizabeth II, 2015-2016-2017

Première session, quarante-deuxième législature,
64-65-66 Elizabeth II, 2015-2016-2017

STATUTES OF CANADA 2017

LOIS DU CANADA (2017)

CHAPTER 25

CHAPITRE 25

An Act to amend the Indian Act in response
to the Superior Court of Quebec decision
in Descheneaux c. Canada (Procureur
général)

Loi modifiant la Loi sur les Indiens pour
donner suite à la décision de la Cour
supérieure du Québec dans l'affaire
Descheneaux c. Canada (Procureur général)

ASSENTED TO

DECEMBER 12, 2017

BILL S-3

SANCTIONNÉE

LE 12 DÉCEMBRE 2017

PROJET DE LOI S-3

SUMMARY

This enactment amends the *Indian Act* to provide new entitlements to registration in the Indian Register in response to the decision in *Descheneaux c. Canada (Procureur général)* that was rendered by the Superior Court of Quebec on August 3, 2015, and to provide that the persons who become so entitled also have the right to have their name entered in a Band List maintained by the Department of Indian Affairs and Northern Development. This enactment requires the Minister of Indian and Northern Affairs to initiate consultations on issues related to registration and band membership and to conduct reviews on sex-based inequities under the *Indian Act*, and to report to Parliament on those activities.

SOMMAIRE

Le texte modifie la *Loi sur les Indiens* en accordant de nouveaux droits à l'inscription au registre des Indiens pour donner suite à la décision rendue par la Cour supérieure du Québec, le 3 août 2015, dans l'affaire *Descheneaux c. Canada (Procureur général)* et en accordant aux personnes visées le droit à ce que leur nom soit consigné dans la liste de bande tenue au ministère des Affaires indiennes et du Nord canadien. Le texte exige du ministre des Affaires indiennes et du Nord canadien qu'il débute des consultations ayant trait à l'inscription et à l'appartenance à une bande, qu'il procède à l'examen des iniquités fondées sur le sexe causées par la *Loi sur les Indiens* et qu'il présente au Parlement des rapports sur ces activités.

64-65-66 ELIZABETH II

CHAPTER 25

An Act to amend the Indian Act in response to the Superior Court of Quebec decision in *Descheneaux c. Canada* (Procureur général)

[Assented to 12th December, 2017]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. I-5

Indian Act

1 Section 5 of the *Indian Act* is amended by adding the following after subsection (5):

Unknown or unstated parentage

(6) If a parent, grandparent or other ancestor of a person in respect of whom an application is made is unknown — or is unstated on a birth certificate that, if the parent, grandparent or other ancestor were named on it, would help to establish the person's entitlement to be registered — the Registrar shall, without being required to establish the identity of that parent, grandparent or other ancestor, determine, after considering all of the relevant evidence, whether that parent, grandparent or other ancestor is, was or would have been entitled to be registered. In making the determination, the Registrar shall rely on any credible evidence that is presented by the applicant in support of the application or that the Registrar otherwise has knowledge of and shall draw from it every reasonable inference in favour of the person in respect of whom the application is made.

No presumption

(7) For greater certainty, if the identity of a parent, grandparent or other ancestor of an applicant is unknown or unstated on a birth certificate, there is no presumption that this parent, grandparent or other ancestor

64-65-66 ELIZABETH II

CHAPITRE 25

Loi modifiant la Loi sur les Indiens pour donner suite à la décision de la Cour supérieure du Québec dans l'affaire *Descheneaux c. Canada* (Procureur général)

[Sanctionnée le 12 décembre 2017]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

L.R., ch. I-5

Loi sur les Indiens

1 L'article 5 de la *Loi sur les Indiens* est modifié par adjonction, après le paragraphe (5), de ce qui suit :

Ascendants inconnus ou non déclarés

(6) Si une demande est présentée à l'égard d'une personne dont le parent ou un autre de ses ascendants est inconnu — ou est non déclaré sur un certificat de naissance, lequel serait utile pour établir le droit à l'inscription de la personne si le nom du parent ou de l'ascendant y était inscrit —, le registraire, sans devoir établir l'identité du parent ou de l'ascendant, décide, après avoir considéré toute la preuve pertinente, si ce parent ou cet ascendant a le droit d'être inscrit, ou avait ou aurait eu ce droit. Pour arriver à la décision, le registraire se fonde sur tout élément de preuve crédible que lui fournit le demandeur à l'appui de sa demande, ou sur tout élément de preuve crédible dont il a connaissance par ailleurs, et en tire les conclusions raisonnables les plus favorables à la personne à l'égard de laquelle la demande est présentée.

Aucune présomption

(7) Il est entendu que, si l'identité d'un parent ou un autre des ascendants du demandeur est inconnue ou non déclarée sur un certificat de naissance, il n'y aucune présomption que le parent ou l'autre ascendant n'a pas le

is not, was not or would not have been entitled to be registered.

2010, c. 18, s. 2(2)

2 (1) Paragraph 6(1)(a) of the Act is replaced by the following:

(a) that person was registered or entitled to be registered immediately before April 17, 1985;

2010, c. 18, s. 2(3)

(2) Paragraph 6(1)(c) of the Act is replaced by the following:

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list before September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as any of those provisions;

(c.01) that person meets the following conditions:

(i) the name of one of their parents was, as a result of that parent's mother's marriage, omitted or deleted from the Indian Register on or after September 4, 1951 under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as either of those provisions,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.02) that person meets the following conditions:

(i) the name of one of their parents was omitted or deleted from the Indian Register on or after September 4, 1951 under subparagraph 12(1)(a)(iv) or subsection 12(2), as each provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as either of those provisions,

droit d'être inscrit ou n'avait pas ou n'aurait pas eu ce droit.

2010, ch. 18, par. 2(2)

2 (1) L'alinéa 6(1)a) de la loi est remplacé par ce qui suit :

a) elle était inscrite ou avait le droit de l'être le 16 avril 1985;

2010, ch. 18, par. 2(3)

(2) L'alinéa 6(1)c) de la même loi est remplacé par ce qui suit :

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de l'une de ces dispositions;

c.01) elle remplit les conditions suivantes :

(i) le nom de l'un de ses parents a été, en raison du mariage de la mère de celui-ci, omis ou retranché du registre des Indiens le 4 septembre 1951 ou après cette date en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de l'une de ces dispositions,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

(iii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

c.02) elle remplit les conditions suivantes :

(i) le nom de l'un de ses parents a été omis ou retranché du registre des Indiens le 4 septembre 1951 ou après cette date en vertu du sous-alinéa 12(1)a)(iv) ou du paragraphe 12(2) dans leur version antérieure au 17 avril 1985 ou en vertu de toute disposition antérieure de la présente loi portant sur

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(3) Subsection 6(1) of the Act is amended by adding the following after paragraph (c.1):

(c.2) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.1) or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died, and

(ii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.3) that person meets the following conditions:

(i) they were born female during the period beginning on September 4, 1951 and ending on April 16, 1985 and their parents were not married to each other at the time of the birth,

(ii) their father was at the time of that person's birth entitled to be registered or, if he was no longer living at that time, was at the time of death entitled to be registered, and

(iii) their mother was not at the time of that person's birth entitled to be registered;

(c.4) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.2) or (c.3) or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died,

le même sujet que celui de l'une ou l'autre de ces dispositions,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

(iii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

(3) Le paragraphe 6(1) de la même loi est modifié par adjonction, après l'alinéa c.1), de ce qui suit :

c.2) elle remplit les conditions suivantes :

(i) l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa c.1) ou, s'il est décédé, avait ce droit à la date de son décès ou aurait eu ce droit à la date d'entrée en vigueur de cet alinéa n'eût été son décès,

(ii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

c.3) elle remplit les conditions suivantes :

(i) elle est une personne née de sexe féminin pendant la période commençant le 4 septembre 1951 et se terminant le 16 avril 1985, et ses parents n'étaient pas mariés l'un à l'autre au moment de sa naissance,

(ii) son père avait le droit d'être inscrit au moment de sa naissance ou, s'il était décédé à ce moment, avait ce droit à la date de son décès,

(iii) sa mère n'avait pas le droit d'être inscrite au moment de sa naissance;

c.4) elle remplit les conditions suivantes :

(i) l'un de ses parents a le droit d'être inscrit en vertu des alinéas c.2) ou c.3) ou, s'il est décédé, avait ce droit à la date de son décès ou aurait eu ce droit à la date d'entrée en vigueur de cet alinéa n'eût été son décès,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.5) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.4) and one of that parent's parents is entitled to be registered under paragraph (c.3) or, if that parent or parent's parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph (c.4) or (c.3), as the case may be, came into force, had he or she not died,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.6) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.02) — or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died — and the name of one of that parent's parents was omitted or deleted from the Indian Register on or after September 4, 1951 under subsection 12(2), as that provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that provision,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at

de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

(iii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

c.5) elle remplit les conditions suivantes :

(i) l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa c.4) et l'un des parents de ce parent a le droit d'être inscrit en vertu de l'alinéa c.3) ou, si ce parent ou le parent de ce parent est décédé, avait ce droit à la date de son décès ou aurait eu ce droit à la date d'entrée en vigueur de l'alinéa en cause n'eût été son décès,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

(iii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

c.6) elle remplit les conditions suivantes :

(i) l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa c.02) — ou, si ce parent est décédé, avait ce droit à la date de son décès ou aurait eu ce droit à la date d'entrée en vigueur de cet alinéa n'eût été son décès — et le nom de l'un des parents de ce parent a été omis ou retranché du registre des Indiens le 4 septembre 1951 ou après cette date en vertu du paragraphe 12(2) dans sa version antérieure au 17 avril 1985 ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cette disposition,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

(iii) elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l'un à l'autre au moment de sa naissance, soit après le 16 avril 1985, si ses parents se sont mariés l'un à l'autre à n'importe quel moment avant le 17 avril 1985;

the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

R.S., c. 32 (1st Supp.), s. 4

(4) Paragraph 6(1)(f) of the Act is replaced by the following:

(f) both parents of that person are entitled to be registered under this section or, if the parents are no longer living, were so entitled at the time of death.

R.S., c. 32 (1st Supp.), s. 4

(5) Subsection 6(2) of the Act is replaced by the following:

Persons entitled to be registered

(2) Subject to section 7, a person is entitled to be registered if one of their parents is entitled to be registered under subsection (1) or, if that parent is no longer living, was so entitled at the time of death.

Clarification

(2.1) A person who is entitled to be registered under both paragraph (1)(f) and any other paragraph of subsection (1) is considered to be entitled to be registered under that other paragraph only, and a person who is entitled to be registered under both subsection (2) and any paragraph of subsection (1) is considered to be entitled to be registered under that paragraph only.

(6) Subsection 6(3) of the Act is amended by striking out “and” at the end of paragraph (b), by adding “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) a person who is described in paragraph (1)(c.01) or (c.02) or any of paragraphs (1) (c.2) to (c.6) and who was no longer living on the day on which that paragraph came into force is deemed to be entitled to be registered under that paragraph.

2.1 (1) Paragraphs 6(1)(c.01) to (c.2) of the Act are repealed.

(2) Paragraphs 6(1)(c.4) to (c.6) of the Act are repealed.

(3) Paragraph 6(1)(c) of the Act is renumbered as paragraph (a.1) and is repositioned accordingly.

(4) Paragraph 6(1)(c.3) of the Act is renumbered as paragraph (a.2) and is repositioned accordingly.

L.R., ch. 32 (1^{er} suppl.), art. 4

(4) L’alinéa 6(1)f) de la même loi est remplacé par ce qui suit :

f) ses parents ont tous deux le droit d’être inscrits en vertu du présent article ou, s’ils sont décédés, avaient ce droit à la date de leur décès.

L.R., ch. 32 (1^{er} suppl.), art. 4

(5) Le paragraphe 6(2) de la même loi est remplacé par ce qui suit :

Personnes ayant droit à l’inscription

(2) Sous réserve de l’article 7, une personne a le droit d’être inscrite si l’un de ses parents a le droit d’être inscrit en vertu du paragraphe (1) ou, s’il est décédé, avait ce droit à la date de son décès.

Précision

(2.1) La personne qui a le droit d’être inscrite à la fois en vertu de l’alinéa (1)f) et d’un autre alinéa du paragraphe (1) est considérée avoir le droit d’être inscrite en vertu de cet autre alinéa seulement et celle qui a le droit d’être inscrite à la fois en vertu du paragraphe (2) et d’un alinéa du paragraphe (1) est considérée avoir le droit d’être inscrite en vertu de cet alinéa seulement.

(6) Le paragraphe 6(3) de la même loi est modifié par adjonction, après l’alinéa c), de ce qui suit :

d) la personne qui est visée à l’un des alinéas (1)c.01), c.02) ou c.2) à c.6) et qui est décédée avant la date d’entrée en vigueur de l’alinéa en cause est réputée avoir le droit d’être inscrite en vertu de celui-ci.

2.1 (1) Les alinéas 6(1)c.01) à c.2) de la même loi sont abrogés.

(2) Les alinéas 6(1)c.4) à c.6) de la même loi sont abrogés.

(3) L’alinéa 6(1)c) de la même loi devient l’alinéa a.1) et est déplacé en conséquence.

(4) L’alinéa 6(1)c.3) de la même loi devient l’alinéa a.2) et est déplacé en conséquence.

(5) Subsection 6(1) of the Act is amended by adding the following after paragraph (a.2):

(a.3) that person is a direct descendant of a person who is, was or would have been entitled to be registered under paragraph (a.1) or (a.2) and

(i) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or

(ii) they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(6) The portion of subsection 6(3) of the Act before paragraph (a) is replaced by the following:

Deeming provision

(3) For the purposes of paragraphs (1)(a.3) and (f) and subsection (2),

(7) Paragraph 6(3)(b) of the Act is replaced by the following:

(b) a person who is described in paragraph (1)(a.1), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 is deemed to be entitled to be registered under that paragraph or subsection; and

(8) Paragraph 6(3)(c) of the Act is repealed.

(9) Paragraph 6(3)(d) of the Act is replaced by the following:

(d) a person who is described in paragraph (1)(a.2) or (a.3) and who was no longer living on the day on which that paragraph came into force is deemed to be entitled to be registered under that paragraph.

3 (1) Subsection 11(3) of the Act is amended by striking out “and” at the end of paragraph (a) and by adding the following after that paragraph:

(a.1) a person who would have been entitled to be registered under any of paragraphs 6(1)(c.01) to (c.6), had they been living on the day on which that paragraph came into force, and who would otherwise have been entitled, on that day, to have their name entered in a Band List, is deemed to be entitled to have their name so entered; and

2010, c. 18, s. 3

(2) Subsection 11(3.1) of the Act is replaced by the following:

(5) Le paragraphe 6(1) de la même loi est modifié par adjonction, après l’alinéa a.2), de ce qui suit :

a.3) elle est un descendant en ligne directe d’une personne qui a droit à l’inscription, ou qui avait ou aurait eu ce droit, en vertu de l’un des alinéas a.1) ou a.2) et elle est née soit avant le 17 avril 1985, que ses parents aient été ou non mariés l’un à l’autre au moment de sa naissance, soit après le 16 avril 1985 et ses parents se sont mariés à n’importe quel moment avant le 17 avril 1985;

(6) Le passage du paragraphe 6(3) de la même loi précédant l’alinéa a) est remplacé par ce qui suit :

Présomption

(3) Pour l’application des alinéas (1)a.3) et f) et du paragraphe (2) :

(7) L’alinéa 6(3)b) de la même loi est remplacé par ce qui suit :

b) la personne qui est visée à l’un des alinéas (1)a.1), d), e) ou f) ou au paragraphe (2) et qui est décédée avant le 17 avril 1985 est réputée avoir le droit d’être inscrite en vertu de l’alinéa ou du paragraphe en cause;

(8) L’alinéa 6(3)c) de la même loi est abrogé.

(9) L’alinéa 6(3)d) de la même loi est remplacé par ce qui suit :

d) la personne qui est visée à l’un des alinéas (1)a.2) ou a.3) et qui est décédée avant la date d’entrée en vigueur de l’alinéa en cause est réputée avoir le droit d’être inscrite en vertu de celui-ci.

3 (1) Le paragraphe 11(3) de la même loi est modifié par adjonction, après l’alinéa a), de ce qui suit :

a.1) la personne qui, n’eût été son décès, aurait eu le droit d’être inscrite en vertu de l’un des alinéas 6(1)c.01) à c.6) à la date d’entrée en vigueur de l’alinéa en cause et qui aurait eu, à cette date, le droit à ce que son nom soit consigné dans la liste de bande est réputée avoir droit à ce que son nom y soit consigné;

2010, ch. 18, art. 3

(2) Le paragraphe 11(3.1) de la même loi est remplacé par ce qui suit :

Additional membership rules — paragraphs 6(1)(c.01) to (c.6)

(3.1) A person is entitled to have their name entered in a Band List that is maintained in the Department for a band if

(a) they are entitled to be registered under paragraph 6(1)(c.01) and one of their parents ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.01)(i);

(b) they are entitled to be registered under paragraph 6(1)(c.02) and one of their parents ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.02)(i);

(c) they are entitled to be registered under paragraph 6(1)(c.1) and their mother ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.1)(i);

(d) they are entitled to be registered under paragraph 6(1)(c.2) and one of their parents is entitled to be registered under paragraph 6(1)(c.1) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.1) came into force, had he or she not died;

(e) they are entitled to be registered under paragraph 6(1)(c.3) and their father is entitled to have his name entered in the Band List or, if their father is no longer living, was so entitled at the time of death;

(f) they are entitled to be registered under paragraph 6(1)(c.4) and one of their parents is entitled to be registered under paragraph 6(1)(c.2) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.2) came into force, had he or she not died;

(g) they are entitled to be registered under paragraph 6(1)(c.4) and their mother is entitled to be registered under paragraph 6(1)(c.3) and to have her name entered in the Band List or, if their mother is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.3) came into force, had she not died;

(h) they are entitled to be registered under paragraph 6(1)(c.5) and one of their parents is entitled to be registered under paragraph 6(1)(c.4) and to have his or her name entered in the Band List or, if that parent is

Règles d'appartenance supplémentaires — alinéas 6(1)(c.01) à c.6)

(3.1) Toute personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour celle-ci au ministère dans l'un ou l'autre des cas suivants :

a) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.01) et l'un de ses parents a cessé d'être un membre de la bande en raison des circonstances prévues au sous-alinéa 6(1)(c.01)(i);

b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.02) et l'un de ses parents a cessé d'être un membre de la bande en raison des circonstances prévues au sous-alinéa 6(1)(c.02)(i);

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.1) et sa mère a cessé d'être un membre de la bande en raison des circonstances prévues au sous-alinéa 6(1)(c.1)(i);

d) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.2), l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa 6(1)(c.1) et a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, il avait ces droits à la date de son décès, ou il aurait eu ces droits à la date d'entrée en vigueur de l'alinéa 6(1)(c.1) n'eût été son décès;

e) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.3) et son père a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès;

f) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.4), l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa 6(1)(c.2) et a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, il avait ces droits à la date de son décès, ou il aurait eu ces droits à la date d'entrée en vigueur de l'alinéa 6(1)(c.2) n'eût été son décès;

g) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.4), sa mère a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.3) et a droit à ce que son nom soit consigné dans la liste de bande ou, si elle est décédée, elle avait ces droits à la date de son décès, ou elle aurait eu ces droits à la date d'entrée en vigueur de l'alinéa 6(1)(c.3) n'eût été son décès;

h) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)(c.5), l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa 6(1)(c.4) et a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, il avait ces droits à la date de son décès, ou il aurait eu

no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.4) came into force, had he or she not died; or

(i) they are entitled to be registered under paragraph 6(1)(c.6) and one of their parents is entitled to be registered under paragraph 6(1)(c.02) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.02) came into force, had he or she not died.

3.1 (1) Paragraph 11(1)(c) of the Act is replaced by the following:

(c) that person is entitled to be registered under paragraph 6(1)(a.1) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(2) Paragraphs 11(3)(a) and (a.1) of the Act are replaced by the following:

(a) a person whose name was omitted or deleted from the Indian Register or a Band List in the circumstances set out in paragraph 6(1)(a.1), (d) or (e) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member is deemed to be entitled to have the person's name so entered;

(a.1) a person who would have been entitled to be registered under paragraph 6(1)(a.2) or (a.3), had they been living on the day on which that paragraph came into force, and who would otherwise have been entitled, on that day, to have their name entered in a Band List, is deemed to be entitled to have their name so entered; and

(3) Paragraphs 11(3.1)(a) to (i) of the Act are replaced by the following:

(a) they are entitled to be registered under paragraph 6(1)(a.2) and their father is entitled to have his name entered in the Band List or, if their father is no longer living, was so entitled at the time of death; or

(b) they are entitled to be registered under paragraph 6(1)(a.3) and one of their parents, grandparents or other ancestors

(i) ceased to be entitled to be a member of that band by reason of the circumstances set out in paragraph 6(1)(a.1), or

ces droits à la date d'entrée en vigueur de l'alinéa 6(1)c.4) n'eût été son décès;

i) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c.6), l'un de ses parents a le droit d'être inscrit en vertu de l'alinéa 6(1)c.02) et a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, il avait ces droits à la date de son décès, ou il aurait eu ces droits à la date d'entrée en vigueur de l'alinéa 6(1)c.02) n'eût été son décès.

3.1 (1) L'alinéa 11(1)c) de la même loi est remplacé par ce suit :

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)a.1) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

(2) Les alinéas 11(3)a) et a.1) de la même loi sont remplacés par ce qui suit :

a) la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues à l'un des alinéas 6(1)a.1), d) ou e) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de la bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné;

a.1) la personne qui, n'eût été son décès, aurait eu le droit d'être inscrite en vertu des alinéas 6(1)a.2) ou a.3) à la date d'entrée en vigueur de l'alinéa en cause et qui aurait eu, à cette date, le droit à ce que son nom soit consigné dans la liste de bande est réputée avoir droit à ce que son nom y soit consigné;

(3) Les alinéas 11(3.1)a) à i) de la même loi sont remplacés par ce qui suit :

a) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)a.2) et son père a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès;

b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)a.3) et l'un de ses parents ou un autre de ses ascendants, selon le cas :

(i) a cessé d'avoir le droit d'être membre de la bande en raison des circonstances prévues à l'alinéa 6(1)a.1),

(ii) was not entitled to be a member of that band immediately before April 17, 1985.

3.2 Subsections 64.1(1) and (2) of the Act are replaced by the following:

Expenditure of capital moneys with consent

64.1 (1) A person who has received an amount that exceeds \$1,000 under paragraph 15(1)(a), as it read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that paragraph, by reason of ceasing to be a member of a band in the circumstances set out in paragraph 6(1)(a.1), (d) or (e) is not entitled to receive an amount under paragraph 64(1)(a) until such time as the aggregate of all amounts that the person would, but for this subsection, have received under paragraph 64(1)(a) is equal to the amount by which the amount that the person received under paragraph 15(1)(a), as it read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that paragraph, exceeds \$1,000, together with any interest.

Expenditure of capital moneys in accordance with by-laws

(2) If the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds \$1,000 under paragraph 15(1)(a), as it read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(a.1), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds \$1,000, together with any interest, has been repaid to the band.

Transitional Provisions

Definition of *declaration*

4 (1) In sections 5 to 8 and 15, *declaration* means the declaration made on August 3, 2015 by the Superior Court of Quebec in *Descheneaux c. Canada* (Procureur général), 2015 QCCS 3555, that paragraphs 6(1)(a), (c) and (f) and subsection 6(2) of the *Indian Act* are inoperative.

(ii) n'avait pas droit d'être membre de la bande le 16 avril 1985.

3.2 Les paragraphes 64.1(1) et (2) de la même loi sont remplacés par ce qui suit :

Dépense de sommes d'argent au compte en capital avec consentement

64.1 (1) Une personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a), dans sa version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, du fait qu'elle a cessé d'être membre d'une bande dans les circonstances prévues aux alinéas 6(1)a.1), d) ou e) n'a pas le droit de recevoir de montant en vertu de l'alinéa 64(1)a) jusqu'à ce que le total de tous les montants qu'elle aurait reçus en vertu de l'alinéa 64(1)a), n'eût été le présent paragraphe, soit égal à l'excédent du montant qu'elle a reçu en vertu de l'alinéa 15(1)a), dans sa version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, sur mille dollars, y compris les intérêts.

Dépenses sur les sommes d'argent au compte de capital

(2) Lorsque le conseil d'une bande prend, en vertu de l'alinéa 81(1)p.4), des règlements administratifs mettant en vigueur le présent paragraphe, la personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a) dans sa version antérieure au 17 avril 1985, ou en vertu de toute autre disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, parce qu'elle a cessé d'être membre de la bande dans les circonstances prévues aux alinéas 6(1)a.1), d) ou e) n'a le droit de recevoir aucun des avantages offerts aux membres de la bande à titre individuel résultant de la dépense d'argent des Indiens au titre des alinéas 64(1)b) à k), du paragraphe 66(1) ou du paragraphe 69(1) jusqu'à ce que l'excédent du montant ainsi reçu sur mille dollars, y compris l'intérêt sur celui-ci, ait été remboursé à la bande.

Dispositions transitoires

Définition de *déclaration*

4 (1) Aux articles 5 à 8 et 15, *déclaration* s'entend de la déclaration d'inopérabilité relative aux alinéas 6(1)a), c) et f) et au paragraphe 6(2) de la *Loi sur les Indiens* rendue le 3 août 2015 par la Cour supérieure du Québec dans l'affaire *Descheneaux c. Canada* (Procureur général), 2015 QCCS 3555.

Same meaning

(2) Words and expressions used in sections 5 to 10.1 have the same meaning as in the *Indian Act*.

Application

5 Sections 6 to 8 apply if the suspension of the declaration expires before the day on which the order referred to in subsection 15(1) is made.

Registration continued

6 For greater certainty, subject to any deletions made by the Registrar under subsection 5(3) of the *Indian Act*, any person who was, immediately before the suspension of the declaration expires, registered and entitled to be registered under paragraph 6(1)(a), (c) or (f) or subsection 6(2) of that Act continues to be registered.

Registration entitlements recognized

7 For greater certainty, subject to any deletions made by the Registrar under subsection 5(3) of the *Indian Act*, for the purposes of paragraph 6(1)(f) and subsection 6(2) of that Act, the Registrar must, in respect of the period beginning on the day after the day on which the suspension of the declaration expires and ending on the day on which the order referred to in subsection 15(1) is made, recognize any entitlements to be registered that existed under paragraph 6(1)(a), (c) or (f) or subsection 6(2) of the *Indian Act* immediately before the suspension of the declaration expires.

Membership continued

8 For greater certainty, any person whose name appeared immediately before the expiry of the suspension of the declaration on a Band List maintained in the Department is not deprived of the right to have their name entered on that Band List by reason only of the declaration.

Related Provisions

Construction

9 The provisions of the *Indian Act* that are amended by this Act are to be liberally construed and interpreted so as to remedy any disadvantage to a woman, or her descendants, born before April 17, 1985, with respect to registration under the *Indian Act* as it read on April 17, 1985, and to enhance the equal treatment of women

Terminologie

(2) Les termes des articles 5 à 10.1 s'entendent au sens de la *Loi sur les Indiens*.

Application

5 Les articles 6 à 8 s'appliquent si l'expiration de la suspension de la déclaration survient avant la date de la prise du décret visé au paragraphe 15(1).

Inscription maintenue

6 Il est entendu que, sous réserve de tout retranchement effectué par le registraire en vertu du paragraphe 5(3) de la *Loi sur les Indiens*, toute personne qui, à l'expiration de la suspension de la déclaration, était inscrite et avait le droit de l'être en vertu des alinéas 6(1)a), c) ou f) ou du paragraphe 6(2) de cette loi demeure inscrite.

Droit à l'inscription reconnu

7 Il est entendu que, sous réserve de tout retranchement effectué par le registraire en vertu du paragraphe 5(3) de la *Loi sur les Indiens*, pour l'application de l'alinéa 6(1)f) et du paragraphe 6(2) de cette loi — et pour la période commençant le lendemain de la date d'expiration de la suspension de la déclaration et se terminant à la date de la prise du décret visé au paragraphe 15(1) — le registraire est tenu de reconnaître tout droit d'être inscrit qui existait, en vertu des alinéas 6(1)a), c) ou f) ou du paragraphe 6(2) de cette loi, à l'expiration de la suspension de la déclaration.

Appartenance maintenue

8 Il est entendu que la déclaration à elle seule ne peut priver quiconque dont le nom apparaît, à l'expiration de celle-ci, sur la liste de bande tenue au ministère du droit à ce que son nom y soit consigné.

Dispositions connexes

Règle d'interprétation

9 Les dispositions de la *Loi sur les Indiens* qui sont modifiées par la présente loi s'interprètent de façon large afin de remédier à tout désavantage qu'ont subi les femmes ou leurs descendants nés avant le 17 avril 1985 en ce qui a trait à l'inscription au titre de la *Loi sur les Indiens* dans sa version du 17 avril 1985 et afin de parvenir à un traitement égal, sous le régime de la *Loi sur les*

and men and their descendants under the *Indian Act*.

No liability

10 For greater certainty, no person or body has a right to claim or receive any compensation, damages or indemnity from Her Majesty in right of Canada, any employee or agent of Her Majesty in right of Canada, or a council of a band, for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties, only because

(a) a person was not registered, or did not have their name entered in a Band List, immediately before the day on which this section comes into force; and

(b) one of the person's parents is entitled to be registered under paragraph 6(1)(c.01) or (c.02) or any of paragraphs 6(1)(c.2) to (c.6) of the *Indian Act*.

No liability

10.1 For greater certainty, no person or body has a right to claim or receive any compensation, damages or indemnity from Her Majesty in right of Canada, any employee or agent of Her Majesty in right of Canada, or a council of a band, for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties, only because

(a) a person was not registered, or did not have their name entered in a Band List, immediately before the day on which this section comes into force; and

(b) that person or one of the person's parents, grandparents or other ancestors is entitled to be registered under paragraph 6(1)(a.1), (a.2) or (a.3) of the *Indian Act*.

Consultations and Reports

Consultations by Minister

11 (1) The Minister must, within six months after the day on which this Act receives royal assent, initiate consultations with First Nations and other interested parties in order to address, in collaboration with those First Nations and other parties, issues raised by the provisions of the *Indian Act* related to registration and band membership, including consultations on

Indiens, des femmes et des hommes et de leurs descendants.

Absence de responsabilité

10 Il est entendu qu'aucune personne ni aucun organisme ne peut réclamer ou recevoir une compensation, des dommages-intérêts ou une indemnité de l'État, de ses préposés ou mandataires ou d'un conseil de bande en ce qui concerne les faits — actes ou omissions — accomplis de bonne foi dans l'exercice de leurs attributions, du seul fait qu'une personne n'était pas inscrite — ou que le nom d'une personne n'était pas consigné dans une liste de bande — à la date d'entrée en vigueur du présent article et que l'un de ses parents a le droit d'être inscrit en vertu des alinéas 6(1)c.01), c.02), ou c.2) à c.6) de la *Loi sur les Indiens*.

Absence de responsabilité

10.1 Il est entendu qu'aucune personne ni aucun organisme ne peut réclamer ou recevoir une compensation, des dommages-intérêts ou une indemnité de l'État, de ses préposés ou mandataires ou d'un conseil de bande en ce qui concerne les faits — actes ou omissions — accomplis de bonne foi dans l'exercice de leurs attributions, du seul fait qu'une personne n'était pas inscrite — ou que le nom d'une personne n'était pas consigné dans une liste de bande — à la date d'entrée en vigueur du présent article et que la personne ou l'un de ses parents ou un autre de ses ascendants a le droit d'être inscrit en vertu de l'un des alinéas 6(1)a.1), a.2) ou a.3) de la *Loi sur les Indiens*.

Consultations et rapports

Consultations par le ministre

11 (1) Le ministre, dans les six mois suivant la date de la sanction de la présente loi, débute les consultations et la collaboration avec les Premières Nations et les autres parties intéressées en vue d'apporter des solutions aux questions soulevées à l'égard des dispositions de la *Loi sur les Indiens* concernant l'inscription et l'appartenance à une bande, notamment des consultations à l'égard :

- (a) issues relating to adoption;
- (b) the 1951 cut-off date for entitlement to registration;
- (c) the second-generation cut-off rule;
- (d) unknown or unstated paternity;
- (e) enfranchisement;**
- (f) the continued federal government role in determining Indian status and band membership; and
- (g) First Nations' authorities to determine band membership.

Requirement

(2) The Minister, the First Nations and the other interested parties must, during the consultations, consider the impact of the *Canadian Charter of Rights and Freedoms*, of the United Nations Declaration on the Rights of Indigenous Peoples and, if applicable, of the *Canadian Human Rights Act*, in regard to those issues.

Report to Parliament — design of consultation process

(3) The Minister must cause to be laid before each House of Parliament, within five months after the day on which this Act receives royal assent, a report on the design of a process by which the Minister is to carry out the consultations described to in subsection (1).

Report to Parliament — results of consultations

(4) The Minister must cause to be laid before each House of Parliament, within 12 months after the day on which the consultations begin, a report on the progress made as a result of the consultations and collaboration. The report must set out details as to the consultations carried out, including details related to

- (a) issues relating to adoption;
- (b) the 1951 cut-off date for entitlement to registration;
- (c) the second-generation cut-off rule;
- (d) unknown or unstated paternity;

- a) de questions relatives à l'adoption;
- b) de la date limite de 1951 relativement au droit à l'inscription;
- c) de l'exclusion après la deuxième génération;
- d) de la paternité inconnue ou non déclarée;
- e) de l'émancipation;
- f) du rôle continu de l'administration fédérale dans la détermination du statut d'Indien et de l'appartenance à une bande;
- g) des pouvoirs des Premières Nations en vue de la détermination de l'appartenance à une bande.

Obligation

(2) Le ministre, les Premières Nations et les autres parties intéressées doivent, lors des consultations, tenir compte des effets de la *Charte canadienne des droits et libertés*, de la Déclaration des Nations Unies sur les droits des peuples autochtones et, si elle est applicable, de la *Loi canadienne sur les droits de la personne* relativement aux questions soulevées.

Rapport au Parlement — plan du processus de consultation

(3) Le ministre fait déposer devant chaque chambre du Parlement, dans les cinq mois suivant la date de la sanction de la présente loi, un rapport sur le plan du processus par lequel il procédera aux consultations prévues au paragraphe (1).

Rapport au Parlement — résultats des consultations

(4) Le ministre fait déposer devant chaque chambre du Parlement, dans les douze mois suivant la date du début des consultations, un rapport sur les progrès réalisés à la suite des consultations et de la collaboration. Le rapport contient des détails concernant les consultations qui ont eu lieu, notamment des détails à l'égard :

- a) de questions relatives à l'adoption;
- b) de la date limite de 1951 relativement au droit à l'inscription;
- c) de l'exclusion après la deuxième génération;

(e) enfranchisement;

(f) the continued federal government role in determining Indian status and band membership; and

(g) First Nations' authorities to determine band membership.

Referral to committee

(5) Each report stands referred to any committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established to review matters related to Aboriginal affairs.

Report to Parliament

12 (1) The Minister must, within three years after the day on which this Act receives royal assent,

(a) undertake the following reviews:

(i) a review of the provisions of section 6 of the *Indian Act* that are enacted by this Act in order to determine whether all of the sex-based inequities have been eliminated with respect to those provisions, and

(ii) a review of the operation of the provisions of the *Indian Act* that are enacted by this Act; and

(b) cause to be laid before each House of Parliament a report on those reviews that includes, if he or she determines that any sex-based inequities still exist with respect to the provisions of section 6 of the *Indian Act* that are enacted by this Act, a statement of any changes to the *Indian Act* that he or she recommends in order to reduce or eliminate those sex-based inequities.

Referral to committee

(2) The report stands referred to any committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established to review matters related to Aboriginal affairs.

d) de la paternité inconnue ou non déclarée;

e) de l'émancipation;

f) du rôle continu de l'administration fédérale dans la détermination du statut d'Indien et de l'appartenance à une bande;

g) des pouvoirs des Premières Nations en vue de la détermination de l'appartenance à une bande.

Renvoi en comité

(5) Sont saisis d'office de ces rapports tout comité du Sénat, tout comité de la Chambre des communes et tout comité mixte désignés ou constitués pour étudier les questions relatives aux affaires autochtones.

Rapport au Parlement

12 (1) Dans les trois ans suivant la date de sanction de la présente loi, le ministre :

a) procède à l'examen :

(i) des dispositions de l'article 6 de la *Loi sur les Indiens* édictées par la présente loi pour déterminer si toutes les iniquités fondées sur le sexe à l'égard de ces dispositions ont été éliminées,

(ii) de l'application des dispositions de la *Loi sur les Indiens* édictées par la présente loi;

(b) fait déposer devant chaque chambre du Parlement un rapport portant sur l'examen visé à l'alinéa a), lequel fait état notamment — s'il conclut qu'il existe toujours des iniquités fondées sur le sexe à l'égard des dispositions de cet article 6 de la *Loi sur les Indiens* édictées par la présente loi — des modifications qu'il recommande d'apporter à la *Loi sur les Indiens* pour réduire ou éliminer ces iniquités.

Renvoi en comité

(2) Sont saisis d'office de ce rapport tout comité du Sénat, tout comité de la Chambre des communes et tout comité mixte désignés ou constitués pour étudier les questions relatives aux affaires autochtones.

Publication

13 The Minister must publish every report laid before Parliament under sections 11 and 12 on the Department's website immediately after their tabling.

Same meaning

14 Words and expressions used in sections 11 to 13 have the same meaning as in the *Indian Act*.

Coming into Force

Order in council

15 (1) This Act, other than sections 2.1, 3.1, 3.2 and 10.1, comes into force or is deemed to have come into force on a day to be fixed by order of the Governor in Council, but that day must be the day on which the suspension of the declaration expires.

Order in council

(2) Sections 2.1, 3.1, 3.2 and 10.1 come into force on a day to be fixed by order of the Governor in Council, but that day must be after the day fixed under subsection (1).

Publication

13 Le ministre publie les rapports déposés au Parlement en application des articles 11 et 12 sur le site Web de son ministère immédiatement après leur dépôt.

Terminologie

14 Les termes des articles 11 à 13 s'entendent au sens de la *Loi sur les Indiens*.

Entrée en vigueur

Décret

15 (1) La présente loi, sauf les articles 2.1, 3.1, 3.2 et 10.1, entre en vigueur ou est réputée être entrée en vigueur à la date fixée par décret, laquelle doit correspondre à la date d'expiration de la suspension de la déclaration.

Décret

(2) Les articles 2.1, 3.1, 3.2 et 10.1 entrent en vigueur à la date fixée par décret, laquelle doit être postérieure à la date fixée en vertu du paragraphe (1).

