

Clerk's stamp:



COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

EDMONTON

IN THE MATTER OF THE TRUSTEE ACT,
R.S.A. 2000, c. T-8, AS AMENDED

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")

APPLICANTS

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

WRITTEN QUESTIONS

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Reynolds, Mirth, Richards & Farmer LLP
3200 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3W8

Attention: Marco S. Poretti
Telephone: (780) 425-9510
Fax: (780) 429-3044
File No: 108511-001-MSP

WRITTEN QUESTIONS OF ALINE ELIZABETH HUZAR

1. Do you acknowledge that your answers to these questions are affirmed as being true, and may be treated in the same fashion as answers given at a questioning on Affidavit?
2. Do you acknowledge that these questions relate to your Affidavit sworn on November 30, 2011 (the "Affidavit") in the within proceedings?

3. Attached as Appendix "A" to these Written Questions is an Amended Statement of Claim filed in the Federal Court of Canada Trial Division (the "Huzar Action"). Are you one of the plaintiffs in the Huzar Action?
4. Attached as Appendix "B" to these Written Questions is the Federal Court of Appeal decision in Huzar v. Canada [2000] F.C.J. No. 873, dated June 13, 2000 (the "Huzar FCA Decision"). Are you one of the respondents identified in the Huzar FCA Decision?
5. Paragraph 6 of the Huzar FCA Decision awards costs against the respondents in both the Federal Court of Appeal and in the Trial Division. Did you or any of the other respondents pay these costs?
6. Paragraph 13 of your Affidavit states that you reapplied for membership in the Sawridge First Nation on June 22, 2010, with no response as to whether or not you had been accepted. On or about December 14, 2011, did you receive notice that your application for membership to the Sawridge First Nation had been denied?

APPENDIX "A"

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

BETWEEN:

ALINE ELIZABETH HUZAR,
JUNE MARTHA KOLOSKY,
WILLIAM BARTHOLOMEW MCGILLIVRAY
MARGARET HAZEL ANNE BLAIR,
CLARA HEBERT,
JOHN EDWARD JOSEPH MCGILLIVRAY
MAURICE STONEY ,
ALLAN AUSTIN McDONALD ,
LORNA JEAN ELIZABETH McREE,
FRANCES MARY TEES, ,
BARBARA VIOLET MILLER (NEE McDONALD)

Plaintiffs

- and -

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,
DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS
CANADA, and WALTER PATRICK TWINN, is Chief
of the Sawridge Indian Band and the SAWRIDGE
INDIAN BAND,

Defendants

AMENDED STATEMENT OF CLAIM

AMENDED NOVEMBER 28TH, 1997

STATEMENT OF CLAIM

FILED on the 20th day of July, 1995.
TO THE HONOURABLE THE FEDERAL COURT OF CANADA:

1. The Plaintiffs, ALINE ELIZABETH HUZAR, WILLIAM BARTHOLOMEW MCGILLIVRAY, JOHN EDWARD JOSEPH MCGILLIVRAY and MARGARET HAZEL ANNE BLAIR are ALL residents of Prince George, in the Province of British Columbia.
2. The Plaintiff, JUNE MARTHA KOLCSKY is a resident of Chetwynd, in the Province of British Columbia.
3. The Plaintiff, CLARA HEBERT is a resident of Leduc, in the Province of Alberta.
4. The Plaintiff, ALLAN AUSTIN McDONALD is a resident of Slave Lake, in the Province of Alberta.
5. The Plaintiffs, MAURICE STONEY, LORNA JEAN ELIZABETH McREE and FRANCES MARY TEES are residents of Slave Lake, in the Province of Alberta, and the Plaintiff, BARBARA VIOLET MILLER (NEE McDONALD) is a resident of Slave Lake, in the Province of Alberta.
6. The Defendant, HER MAJESTY THE QUEEN, IN THE RIGHT OF CANADA, by way of the Department of Indian and Northern Affairs Canada is duly constituted to administer aboriginal affairs in Canada.
7. The Defendant, WALTER PATRICK TWINN is the Chief of the Sawridge Indian Band and the Defendant, the SAWRIDGE INDIAN BAND is a part of the group of Indian Bands known as Treaty 8 Group of Indians whose reserve lands are located in the Province of Alberta. At various dates commencing on June 21st, 1899 representatives of the Sawridge Indian Band or their predecessors signed or executed instruments of adhesion to Treaty No. 8 made with Her Majesty The Queen.

8. At the time of the signing of adhesion to Treaty No. 8 the predecessors and forebearers of the Plaintiffs named herein were members of the Sawridge Indian Band, or alternatively, were duly constituted Band members after the adhesion to Treaty No. 8..

9. The Plaintiffs are all Treaty Indians by virtue of the operations of Sections 8 to 14.3, both inclusive of The Indian Act as amended by Section 4 of the Act entitled, "an Act to amend The Indian Act, Statutes of Canada, 1985, Chapter 27.

10. The Plaintiffs are aboriginal peoples of Canada within the meaning of Section 35 of the Constitution of Canada.

11. Section 35(1) of The Constitution Act, 1982 constitutionally entrenched the aboriginal rights and treaty rights of the aboriginal peoples of Canada as they existed on April 17th, 1982, the date on which The Constitution Act, 1982 was proclaimed in force. When used herein, The Constitution Act, 1867 to 1982 will be referred to collectively as the "Constitution".

12. The aboriginal rights of the Plaintiffs, including their property rights, customary laws and governmental institutions which were possessed by the aboriginal people at the time of adhesion to Treaty No. 8 on June 21st, 1899 are still retained and possessed by the Plaintiffs herein notwithstanding such adhesion.

13. Treaty rights are the rights conferred or obtained by Indian Tribes or Bands pursuant to Treaties entered into with Her Majesty The Queen. These rights flow to the members of the Band. At no time were the rights of the Plaintiffs, their ancestors and forebearers, to membership in the Sawridge Indian Band affected by the signing of the Treaty.

14. Membership to the Sawridge Indian Band was ascertained by a physical presence within the Band and at all material times, the ancestors and predecessors to the Plaintiffs were historically

members of the Sawridge Indian Band. These membership rights of the predecessors and ancestors of the Plaintiffs have not been abrogated, neither by the signing of the Treaty nor by The Constitution Act, 1982.

15. The predecessors and ancestors of the Plaintiffs herein were historically members of the Sawridge Indian Band when Treaty No. 8 was signed, and as a result of such membership, the Sawridge Indian Band obtained such rights and benefits as would normally accrue to the Band from Canada as a result of its membership, which membership included the predecessors and ancestors of the Plaintiffs herein, inter alia as follows:

- (i) The right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered.
- (ii) One square mile for each family of five for such number of families as may elect to reside on Reserves.
- (iii) Land in severality to the extent of 160 acres to each Indian for those Indians who may prefer to live apart from the Band Reserves.
- (iv) A treaty payment of \$5.00 annually to each and every Indian.
- (v) The salaries of teachers to instruct children.
- (vi) Agricultural and economic incentives.
- (vii) The bounty and benevolence of Her Majesty The Queen.

16. The Sawridge Band, at no time possessed the right to strip members of its Band, to take away Band membership, though from time to time, Band members formally lost their membership in the Band by way of operation of The Indian Act until the discrimination

inherent in such loss was legislatively abolished pursuant to "An Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27.

17. Statutes of the Parliament of Canada enforced from time to time prior to the entrenchment of the existing aboriginal and treaty rights of the aboriginal peoples of Canada in The Constitution Act governed and controlled who would be members of Indian Bands, in that all members were entitled to membership unless their membership rights were lost through operation of law.

18. The enactment of an Act entitled "An Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27 (The 1985 amendment), removed those discriminatory sections of The Indian Act which had unilaterally caused Band members to formally lose their membership rights and Indian status in a discriminatory fashion and thus nunc pro tunc, re-establishes existing Bands as they should have been had it not been for the indiscriminate and wanton intervention of the provisions of The Indian Act, terminating membership of Band members who were truly entitled to the same, in general, and to the Plaintiffs in particular.

19. Section 4 of the 1985 amendment adds new Sections 8, 9, 10, 11 and 12 to The Indian Act, which may be summarized as follows:

- (a) A Band List must be maintained for each band in which shall be entered the name of every person who is a member of that Band. (Section 8)
- (b) Commencing on April 17, 1985, certain persons who were not prior to that date members of a band became entitled to have their names entered in a Band List for that Band maintained in the Department. These include persons whose names were omitted or deleted from the Indian Register, or from a Band List prior to September 4th, 1951, under certain prescribed provisions of The Indian Act as they read immediately prior to April

17th, 1985, or under any former provision of The Indian Act relating to the same subject matter as any of those provisions. The disqualifying provisions included the marriage by an Indian woman to a man who was not registered as an Indian and included any children of that woman born prior to that marriage and illegitimate children of Indian women whose membership in the band was protested under Section 12(2) of the 1951 Act. (Subsection 11(1))

(c) Commencing on June 28th, 1987 large numbers of additional persons who were not prior to April 17th, 1985 members of a band will become entitled to have their names entered in a Band List for that Band maintained in the Department. These include Indian men and their families who voluntarily gave up their Indian status; first generation descendants of persons whose names were omitted or deleted from the Indian Register or from a Band List by virtue of the disqualifying provisions referred to in paragraph(b); first generation descendants of Indian men who voluntarily gave up their Indian status; and first generation descendants of the members of the families of such men who were alive at the time that the men voluntarily gave up their Indian status. (Subsection 11(2))

(d) A Band may assume control of its own membership if a majority of the electors of the Band consent to its so doing and consent to the establishment by the Band of membership rules. (Section 10)

(e) Membership rules established by the Band may not disqualify from membership in the Band any of the persons described in paragraphs (b) and (c) above by reason only of a situation that existed or an action that was taken before the rules came into force. (Subsections 10(4) and (5))

20. Pursuant to the Sections hereinbefore set forth, the Plaintiffs are entitled to membership in the Sawridge Indian Band, and in pursuance thereof, the Department of Indian Affairs and Northern Development has caused to be issued to the Plaintiffs, status cards, identifying them as members of the said, Sawridge Indian Band.

21. The Plaintiffs hereinbefore set forth, have, inter alia, applied for, petitioned or requested their reinstatement as members of the Sawridge Indian Band, however, the Defendants, Walter Patrick Twinn and the Sawridge Indian Band, has neglected and failed to reinstate the Plaintiffs as members of the Sawridge Indian Band in accordance with the legislation hereinbefore set forth.

22. The Plaintiffs, ALINE ELIZABETH HUZAR (DOB August 7th, 1941), JUNE MARTHA KOLOSKY (DOB June 6th, 1937), WILLIAM BARTHOLOMEW MCGILLIVRAY (DOB October 28th, 1932), MARGARET HAZEL ANNE BLAIR (DOB November 5th, 1928), JOHN EDWARD JOSEPH MCGILLIVRAY (DOB September 7th, 1923) and CLARA HEBERT (DOB February 14th, 1927) are all entitled to be reinstated as members of the Sawridge Indian Band by virtue of the following facts:

(a) Each of the above mentioned Plaintiffs are the children of Caroline Mary McGillivray (nee Assiniboine) (Stoney) Treaty #29, the child of Johnny Assiniboine (Stoney) and Henriette Calder (Sinclair) Treaty #18, all of whom were treaty Indians and members of the Sawridge Indian Band.

(b) Caroline Mary McGillivray married Simon Mountrose McGillivray the 21st day of June, A.D. 1921, a man of Metis ancestry.

(c) As a result of not having married a treaty Indian and as a result of the discriminatory provisions of The Indian Act, she lost her status as a band member of the Sawridge Indian Band.

(d) Consequential to the discriminatory provisions of The Indian Act, the Plaintiffs hereinbefore set forth, being the children of Caroline Mary McGillivray, lost their entitlement to band membership, as did their children.

(e) Pursuant to the 1985 amendments to The Indian Act, the Plaintiffs hereinbefore set forth, have applied for their treaty status and have regained their entitlement to be registered as members of the Sawridge Indian Band.

(f) The Plaintiffs hereinbefore set forth have applied for reinstatement in the Sawridge Band of Indians, but their application has been neglected and denied by the Defendants, Walter Patrick Twinn and the Sawridge Indian Band.

23. The Plaintiff, MAURICE STONEY is entitled to membership in the Sawridge Band of Indians by virtue of the following facts:

(a) Maurice Stoney was born September 24th, 1941 at Slave Lake, Alberta. He was the son of William J. Stoney, Treaty Number 59 and Margaret M. Stoney, Treaty Number 59 and is the grandson of Johnny Stoney, founder of the Sawridge Reserve, Treaty #18 .

(b) The Defendants, Walter Patrick Twinn and the Sawridge Indian Band have discriminated against Maurice Stoney by failing to recognize his Band membership or entitlement to Band membership, arising out of his progenitory.

(c) That pursuant to the 1985 amendments to The Indian Act, Maurice Stoney has regained his Indian status, and his entitlement to membership in the Sawridge Band of Indians.

(d) The Plaintiff, Maurice Stoney has applied for re-instatement in the Sawridge Band of Indians, but his application has been denied by the Defendants, Walter Patrick Twinn and the Sawridge Band of Indians.

24. The Plaintiffs, ALLAN AUSTIN McDONALD (date of birth January 13th, 1938), LORNA JEAN ELIZABETH McREE (date of birth October 6th, 1935), FRANCES MARY TEES (date of birth August 20th, 1948) and BARBARA VIOLET MILLER (date of birth August 22nd, 1950) are all entitled to membership in the Sawridge Band of Indians by virtue of the following facts:

(a) Each of the preceding Plaintiffs are the children of Annie McDonald (nee Stoney) Treaty #53, the child of Henrietta and Johnny Stoney Treaty #18, Treaty Indians and members of the Sawridge Indian Band.

(b) Annie Stoney married William McDonald, a non-treaty Indian, March 4th, 1935 and due to the discriminatory provisions of The Indian Act, was stripped of her status, and lost her membership in the Sawridge Indian Band December 3rd, 1936 and consequently, her children were born without membership in the Sawridge Band of Indians.

(c) That pursuant to the 1985 amendments to The Indian Act, the Plaintiffs hereinbefore set forth have regained their Indian status, and their entitlement to membership in the Sawridge Band of Indians.

(d) The Plaintiffs herein have applied for re-instatement in the Sawridge Band of Indians, but their applications for re-instatement has been refused by Walter Patrick Twinn and the Sawridge Band of Indians.

25. The Plaintiffs claim that as a result of their loss of membership in the Sawridge Band, due to the discriminatory operation of The Indian Act, and that as a result of the operation of the 1985 amendments to The Indian Act, the Plaintiffs are entitled to membership in the Sawridge Band of Indians, along with all rights and benefits accruing thereto and therewith, along with damages for the economic loss arising out of the lost benefits and entitlements consistent with membership in the Sawridge Band of Indians, inter alia as follows:

- (i) Education costs.
- (ii) Medical Care Benefits.
- (iii) On reserve housing.
- (iv) Tax exemption.

26. The Plaintiffs are entitled to reinstatement of Band membership in the Sawridge Indian Band, and each claims damages against the Defendants in excess of \$1,000,000.00 , and in totality, damages in excess of \$11,000,000.00 for lost benefits and entitlements as more fully set forth in paragraph 25..

27. In the alternative, as a result of the failure of the Sawridge Band of Indians to grant unto the Plaintiffs herein membership in the Band as required by Law, each of the Plaintiffs are entitled to damages as against the Defendants herein for their:

- (i) pro rata share of the economic value of the reserve, in excess of \$1,000,000.00 or in totality, damages in excess of \$11,000,000.00, plus
- (ii) the value of lost economic benefits consequential to the loss of membership status as is more fully hereinbefore set forth in paragraph 25, in an amount in excess of \$1,000,000.00 per Plaintiff, or in totality, a sum in excess of \$11,000,000.00.

28. The Plaintiffs further claim as a result of the discriminatory provisions of The Indian Act hereinbefore set forth and as a result of the failure of the Sawridge Band of Indians to allow the Plaintiffs to be reinstated as members of the Band, the progeny and the next-of-kin of the Plaintiffs has suffered economic loss and each of the Plaintiffs hereto claim damages in excess of \$1,000,000.00 for economic loss for and on behalf of their progeny, and in totality, general damages for all Plaintiffs in excess of \$11,000,000.00.

29. The Plaintiffs claim as against the Defendants punitive damages and exemplary damages in excess of \$11,000,000.00 as a result of the arrogant and high-handed manner in which Walter Patrick Twinn and Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members of the Sawridge Band, which denial is unwarranted and unjustified, and has been only out of malice, spite and the selfish desire of Walter Patrick Twinn and the Sawridge Band of Indians to deprive the Plaintiffs of their just rights and dues, so that the Band and the Chief may be enriched, at the expense of the Plaintiffs.

30. The effect of the legislation prior to 1985 was to discriminate against aboriginal people in general and the Plaintiffs, their forefathers and forebearers in particular, thereby depriving the Plaintiffs of their Indian Heritage, ancestry, entitlements and benefits, all of which was as a consequence of discriminatory legislation passed by the Parliament of Canada, and administered by the Department of Indian Affairs, Northern Development, all of which resulted in a loss to the Plaintiffs as hereinbefore set forth in paragraphs 26, 27, 28 and 29.

31. In the alternative, the Plaintiffs claim that loss of their membership in the Sawridge Band of Indians was due to the operation of Law and the administration of that Law by Her Majesty The Queen, In the Right of Canada, through the Department of Indian Affairs and Northern Development and as a result of the discriminatory legislation so passed, the Plaintiffs are entitled to damages as against Her Majesty The Queen, In the Right of Canada, and the Department of Indian Affairs, Northern Development, as hereinbefore set forth more fully in paragraphs 26, 27, 28 and 29..

32. The Plaintiffs further claim as against the Sawridge band of Indians and Walter Twinn, a pro rata share of the assets of the Sawridge Band, including a pro rata share of the value of the holdings, savings, and any other entitlements or benefits which may accrue to the Plaintiffs as a result of their Indian status and Band membership.

33. The ancestors and forebearers of the Plaintiffs, either signed or were a party to Treaty No. 8, wherein Her Majesty The Queen, In The Right of Canada, inter alia, undertook certain obligations toward the aboriginal people of Canada in general and the Plaintiffs in particular. The Government of Canada breached its fiduciary duty to the Plaintiffs in particular by being a party to and originator of inherently discriminatory legislation by which the Plaintiffs were deprived by Law of their membership status in the Sawridge Indian Band. Her Majesty The Queen, In The Right of Canada is a guardian and trustee of the Plaintiffs and holds a portion of the goods, assets and chattels of the Sawridge Band for and on behalf of the Plaintiffs hereinbefore set forth, as a resulting trust, or alternatively, as a constructive trust, against which the Plaintiffs hereinbefore set forth, claim in accordance with paragraphs 26, 27, 28 and 29.

Amended
Nov. 28th
1997

34. "The Plaintiffs plead Sections 1 and 2 of the Canadian Bill of Rights 8-9 Elizabeth The Second, Chapter 44 (Canada) R.S.C. 1970, Appendix III and state as the fact is that they have suffered discrimination, by reason of race, national origin and sex and as a consequence of such discrimination, have been deprived of their fundamental human rights and fundamental freedoms, namely:

(a) life, liberty and security of the person and enjoyment of property on a reserve which they have been deprived of due to discrimination.

(b) due to discrimination, have been deprived of the right to equality before the law, and protection of the law,

the said discrimination being the automatic loss of Indian Status by female treaty Indian and her progeny, when she married a non-treaty Indian, while a treaty male, who married a non-treaty woman, did not lose his Indian Status."

35. The Plaintiffs are owed a fiduciary duty by the Defendants, Walter Patrick Twinn and the Sawridge Indian Band, wherein they are charged with a trustee pursuant to the provisions of The Indian Act and who hold the assets of the Sawridge Indian Band for and on behalf of the Plaintiffs. The said Defendants hold those goods, assets and chattels of the Sawridge Band for and on behalf of the Plaintiffs as a resulting trust, or alternatively, as a constructive trust against which the Plaintiffs claim in accordance with paragraphs 26, 27, 28 and 29.

36. The Plaintiffs plead the Doctrine of Unjust Enrichment and state as the fact is that as a result of the discrimination against the Plaintiffs by the Defendant, Walter Patrick Twinn and the Sawridge Band of Indians that Walter Patrick Twinn and the Sawridge Band is enriched, all of which is at the expense and detriment of the Plaintiffs.

37. The Plaintiffs further claim that the Defendants, Walter Patrick Twinn and the Sawridge Indian Band are committing waste upon the Sawridge Reserve and are in the process of dissipating and squandering the assets of the Reserve to which the Plaintiffs herein have a vested interest. The Plaintiffs pray to this Court for an Order by way of injunction, restraining and prohibiting the said named Defendants from dissipating and wasting the assets of the Sawridge Band.

CLAIM

The Plaintiffs therefore claim as follows:

- (a) For a declaration pursuant to Section 8 to 14.3 of The Indian Act as amended by Section 4 of the Act entitled "an Act to amend The Indian Act", Statutes of Canada, 1985, Chapter 27, the Plaintiffs herein are entitled to membership in their historical Band, the Sawridge Band.

- (b) For a declaration in the nature of a mandamus, that pursuant to the 1985 amendments of The Indian Act, that an Order be given directing the Department of Indian Affairs and the Sawridge Band include the names of the Plaintiffs on the Band List for the Sawridge Band.
- (c) For a declaration that the Plaintiffs herein are members of the Sawridge Band and entitled to all rights and benefits of such members.
- (d) Alternatively, the Plaintiffs claim damages as against the Sawridge Band of Indians, Walter Twinn and Her Majesty the Queen, In The Right of Canada for the value of their membership benefits, which may be proven at trial.
- (e) For a declaration that the Defendants hold on behalf of the Plaintiffs, the assets of the Sawridge Band as a resulting trust or alternately, a constructive trust.
- (f) The Plaintiffs claim damages as against the Defendants, each in excess of \$11,000,000.00.
- (g) The Plaintiffs further claim exemplary and punitive damages as the said Defendants, in excess of \$11,000,000.00.
- (h) An Order in the nature of an injunction, restraining the Defendants from wasting and dissipating the assets of the Sawridge Band.
- (i) The Plaintiffs further claim costs on a solicitor-client basis.

DATED at Prince Albert, in the Province of
Saskatchewan this 30th day of June, A.D. 1995.

EGGUM, ABRAMETZ & EGGUM
Per: "Peter V. Abrametz"
Solicitors for the Plaintiffs

ADDRESS FOR SERVICE OF THE PLAINTIFF IS THE OFFICE OF:

EGGUM, ABRAMETZ & EGGUM
Barristers and Solicitors
101 - 88 - 13th Street East
PRINCE ALBERT, Saskatchewan
S6V 1C6
Solicitor in charge of file: Peter V. Abrametz
Telephone: (306) 763-7441

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN:

ALINE ELIZABETH HUZAR ET AL,
Plaintiffs

- and -

HER MAJESTY THE QUEEN, IN RIGHT OF
CANADA, DEPARTMENT OF INDIAN AND
NORTHERN AFFAIRS CANADA, and WALTER
PATRICK TWINN, as Chief of the
Sawridge Indian Band and the SAWRIDGE
INDIAN BAND,
Defendants

STATEMENT OF CLAIM

Notice to the Defendants

You are required to file in the Registry of the Federal Court of Canada, at the City of Ottawa or at a local office of the Court, your defence to the enclosed Statement of Claim or declaration within 30 days after the day of service hereof in accordance with the Federal Court Rules, if you are served within Canada.

If you are served in the United States of America, the period for filing the statement of defence is 40 days.

If you are served outside Canada and the United States of America, the period for filing the statement of defence is 60 days.

Instead of filing a statement of defence, you may apply to the Court for leave to file a conditional appearance pursuant to Rule 401 of the Federal Court Rules.

If you fail to defend this proceeding, you will be subject to have such judgment given against you as the Court thinks just upon the plaintiff's own showing.

- NOTE:
- (1) Copies of the Federal Court Rules, information concerning the local office of the Court, and other necessary information may be obtained upon application to the Registry of the Court at Ottawa - telephone - (613)992-4238 - or at any local office thereof.
 - (2) The Statement of Claim is filed by EGGUM, ABRAMETZ & EGGUM Solicitors for the Plaintiffs

APPENDIX "B"

Indexed as:
Huzar v. Canada

Between
Her Majesty the Queen, in right of Canada, Department of
Indian and Northern Affairs Canada and Walter Patrick Twinn,
as Chief of the Sawridge Indian Band and the Sawridge Indian
Band, defendants (appellants), and
Aline Elizabeth Huzar, June Martha Kolosky, William
Bartholomew McGillivray, Margaret Hazel Anne Blair, Clara
Hebert, John Edward Joseph McGillivray, Maurice Stoney, Allen
Austin McDonald, Lorna Jean Elizabeth McRee, Frances Mary
Tees, Barbara Violet Miller (née McDonald), plaintiffs
(respondents)

[2000] F.C.J. No. 873

[2000] A.C.F. no 873

258 N.R. 246

Docket A-326-98

Federal Court of Appeal
Toronto, Ontario

Décary, Sexton and Evans JJ.

Heard: June 13, 2000.
Oral judgment: June 13, 2000.

(6 paras.)

Practice -- Pleadings -- Striking out pleadings -- Grounds, failure to disclose a cause of action or defence -- Actions, commencement of -- Choice of method of commencement of proceedings.

Appeal by the defendants from a decision allowing the plaintiffs' motion to amend their statement of claim and dismissing the defendants' motion to strike the statement of claim as disclosing no rea-

sonable cause of action. It was conceded that without the proposed amending paragraphs, the statement of claim disclosed no reasonable cause of action.

HELD: Appeal allowed. The motions judge erred in law. The proposed amending paragraphs amounted to a claim for declaratory relief against the Band, which was a federal board, commission or other tribunal within the meaning of the Federal Court Act. Such relief could only be sought on an application for judicial review under that Act, and could not be included in a statement of claim. Accordingly, the statement of claim was struck as disclosing no reasonable cause of action.

Statutes, Regulations and Rules Cited:

Federal Court Act, ss. 2, 18(3), 18.1.

Counsel:

Philip P. Healey, for the defendants (appellants).

Peter V. Abrametz, for the plaintiffs (respondents).

The judgment of the Court was delivered orally by

1 EVANS J.:-- This is an appeal against an order of the Trial Division, dated May 6th, 1998, in which the learned Motions Judge granted the respondents' motion to amend their statement of claim by adding paragraphs 38 and 39, and dismissed the motion of the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, to strike the statement of claim as disclosing no reasonable cause of action.

2 In our respectful opinion, the Motions Judge erred in law in permitting the respondents to amend and in not striking out the unamended statement of claim. The paragraphs amending the statement of claim allege that the Sawridge Indian Band rejected the respondents' membership applications by misapplying the Band membership rules (paragraph 38), and claim a declaration that the Band rules are discriminatory and exclusionary, and hence invalid (paragraph 39).

3 These paragraphs amount to a claim for declaratory or prerogative relief against the Band, which is a federal board, commission or other tribunal within the definition provided by section 2 of the Federal Court Act. By virtue of subsection 18(3) of that Act, declaratory or prerogative relief may only be sought against a federal board, commission or other tribunal on an application for judicial review under section 18.1. The claims contained in paragraphs 38 and 39 cannot therefore be included in a statement of claim.

4 It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

5 It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the

Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

6 For these reasons, the appeal will be allowed with costs in this Court and in the Trial Division.

EVANS J.

cp/d/qlndn