


	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 (the "Trustees")
DOCUMENT	AFFIDAVIT OF ELIZABETH POITRAS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Janet L. Hutchison Chamberlain Hutchison #155, 10403 - 122 Street NW Edmonton, Alberta T5N 4C1 Telephone: (780) 423-3661 Fax: (780) 426-1293 File No: 51433

AFFIDAVIT OF ELIZABETH POITRAS

Sworn on December 7, 2011

I, ELIZABETH POITRAS, of Elk Point, Alberta, SWEAR THAT:

1. I am currently a member of the Sawridge Indian Band and a Sawridge Trust beneficiary, as such, have personal knowledge of the matters sworn to herein, unless stated to be based on information and belief, in which case I verily believe the same to be true.
2. I lost my Indian status and Sawridge Band membership as a young woman when I married Homer Poitras, who was not a registered Indian, on October 16, 1965. When the Indian Act was amended in 1985 to allow women such as myself to regain their status and membership, I applied for reinstatement of my Indian status and my Sawridge Band membership.
3. My Registered Indian Status was restored by the Department of Indian Affairs. I was told by the Department of Indian Affairs that the Sawridge Indian Band had taken control of its own membership effective July 8, 1985 and that I would have to apply directly to the Band for membership.
4. Shortly after I received that information, I verbally requested membership for myself and my children, all of whom except Tracey were minors at that time, in a phone conversation with Chief Walter Twinn. I understood from that conversation my children and I would be reinstated to Band membership but that did not occur.
5. I later learned from the Department of Indian Affairs that the Sawridge Indian Band had a membership code and required an application form to be filled out. I did not receive that information from the Sawridge Indian Band directly. I then began asking the Sawridge Indian Band to provide me with information on its membership process and its membership application form but received no response.
6. In 1988, I began a court action in the Federal Court of Canada to have my Band membership recognized. The action is Federal Court Action T-2655-89.
7. After a lengthy wait, I received an application form from Sawridge Indian Band and submitted it. My application was dated December 16, 1994. At that time, the application form was approximately 75 pages and requested extensive and often intrusive personal information. It was never clear to me, nor did Sawridge Indian Band explain, why that information was needed to decide my Band membership.
8. In my applications, I was also seeking membership for the children Homer and I had - namely Tracey, born in 1966; Crystal Marie, born in 1968; Heather, born in 1970; Nicole Tanya, born in 1974; and Bruce, born in 1978. We also adopted our grandson, Corbin, born in 1988, and I sought membership for him as well.

9. As of the date of this affidavit, I have never received a response or a decision from Sawridge Indian Band on my application for membership or on my children's right to membership.
10. My Band membership was eventually recognized as a result of an injunction issued by the Federal Court in Sawridge vs. Canada. Attached to this my Affidavit as Exhibits "A" and "B", respectively, are the Federal Court trial division and Federal Court of Appeal decisions on the injunction. In these decisions, the court referred to the women, including myself, who were restored to status by Bill C-31 as "acquired rights women".
11. While I do not know the dates on which this occurred, I know that three of the other acquired rights women, Clara Midbo, Bertha L'Hirondelle and Freida Draney, were not only restored to membership but had their children restored to membership. I am aware of this because I saw their names on a membership voting list posted for elections some time after my membership was restored. These ladies are also the sisters of the late Chief Walter Twinn.
12. I am informed by my daughter, Tracey Poitras-Collins, that she has been applying to Sawridge Indian Band for membership directly since approximately 1985 and has never received a response to her applications. Attached to this my Affidavit as Exhibit "C" is a true copy of a Sawridge application form that Tracey advises me that she received from the Sawridge Indian Band. I am informed by Tracey and do verily believe that this is a recent version of the Sawridge Indian Band Membership application.
13. On or about October 1st, 2011 I was at a Sawridge Band meeting and I took a copy of membership applications completed by my children, Tracey, Crystal, Corbin and Nicole and hand delivered them to Chief Roland Twinn. I also advised the originals were being delivered to the Band office. I am informed by my children and do verily believe that they have not received any response to their membership applications at this time.
14. I have never been able to get an explanation from the Sawridge Indian Band as to why my children have been treated differently from the children of the other acquired rights women.
15. I have attached as Exhibit "D" to this my affidavit, a true copy of what I understand to be the current version of the Sawridge membership code. As far as I am able to tell from comparing this Code to the ones I have seen in the past, the membership provisions have not changed from the membership code I saw in the 1980's.
16. Based on my knowledge and experience dealing with the Sawridge Indian Band membership process over the past 3 decades, I would say that the membership process is very unclear and lacks transparency. Applicants may not even receive a

17. I make this application in relation to the application filed by the 1985 Sawridge Trust Trustees in the within action.

Brenda Lee Yuschyshyn
My Commission will
Expire June 4, 2014.

Elizabeth D. Poitras
ELIZABETH POITRAS

Case Name:
Sawridge Band v. Canada

Between
Bertha L'Hirondelle suing on her own behalf and on
behalf of all other members of the Sawridge Band,
plaintiffs, and
Her Majesty the Queen, defendant, and
Native Council of Canada, Native Council of Canada
(Alberta), Non-Status Indian Association of Alberta and
Native Women's Association of Canada, interveners

[2003] F.C.J. No. 723

[2003] A.C.F. no 723

2003 FCT 347

2003 CFPI 347

[2003] 4 F.C. 748

[2003] 4 C.F. 748

232 F.T.R. 54

[2003] 3 C.N.L.R. 344

123 A.C.W.S. (3d) 2

Docket T-66-86A

This is Exhibit "A" referred to in the
Affidavit (or statutory declaration) of

Elizabeth Poitras

Sworn (or affirmed or declared)

before me this 7th day of

December A.D. 20 11

A Commissioner for Oaths in and for Alberta

Brenda Lee Yuschyshyn

My Commission will

Expire June 4, 20 14

Federal Court of Canada - Trial Division
Toronto, Ontario

Hugessen J.

Heard: March 19 and 20, 2003.

Judgment: March 27, 2003.

(40 paras.)

Injunctions -- Interlocutory or interim injunctions -- Arguable issues of law involved or serious question to be tried -- Balance of convenience -- Requirement of irreparable injury -- Indians, Inuit and Metis -- Nations, tribes and bands -- Bands -- Membership.

Motion by the defendant Crown for an interlocutory declaration, or in the alternative for an interlocutory mandatory injunction. The plaintiff Sawridge Band sued the Crown for a declaration that certain amendments to the Indian Act were unconstitutional. The amendments conferred on Indian bands the right to control their own band lists, but obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the amendments. The Crown alleged that the Sawridge Band refused to comply with the remedial provisions of the amending legislation, resulting in 11 former members of the Band being denied the benefits of the amendments. The 11 former members were women who lost both their Indian status and their Band membership for having married non-Indian men. The Crown sought an interlocutory declaration that, pending a final determination of the action, the individuals who acquired the right to be members of the Sawridge Band before it took control of its own band list be deemed to be registered on the band list with full rights and privileges. In the alternative, the Crown sought an interlocutory injunction requiring the Band to register the names of those individuals on the band list, with full rights and privileges.

HELD: Motion for an injunction allowed. An interim declaration of right was a contradiction in terms, since a right either existed or did not exist. Therefore, the motion was treated as seeking only an interlocutory injunction. The Band had created pre-conditions to membership, but the statutory amendments provided for an automatic entitlement to Band membership for women who had lost it by marriage to non-Indians. Therefore, the Band's membership rules contravened the legislation, such that the Band had effectively given itself an injunction to act as though the law did not exist. The Band was not entitled to such an injunction. Even though it had raised a serious issue, enforcement of a duly adopted law did not result in irreparable harm. The inconvenience to the Band in admitting the 11 individuals was outweighed by the damage to the public interest in having federal law flouted.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, s. 15.

Federal Court Rules, Rule 369.

Indian Act, R.S.C. 1985, c. I-5, ss. 2(1), 5(1), 5(3), 5(5), 6(1)(c), 8, 9(1), 9(2), 9(3), 9(5), 10(1), 10(2), 10(4), 10(5), 10(6), 10(7), 10(8), 10(9), 10(10), 11(1)(c), 11(2), 12(1)(b).

Counsel:

Martin J. Henderson, Lori A. Mattis, Catherine Twinn and Kristina Midbo, for the plaintiffs.

E. James Kindrake and Kathleen Kohlman, for the defendant.

Kenneth S. Purchase, for the intervener, Native Council of Canada.

P. Jon Faulds, for the intervener, Native Council of Canada (Alberta).

Michael J. Donaldson, for the intervener, Non-Status Indian Association of Alberta.

Mary Eberts, for the intervener, Native Women's Association of Canada.

REASONS FOR ORDER AND ORDER

1 HUGESSEN J.:-- In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the Indian Act, R.S.C. 1985, c. I-5, commonly known as Bill C-31, are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial:

Briefly put, this legislation, while conferring on Indian bands the right to control their own band lists, obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the 1985 legislation. Such persons included: women who had become disentitled to Indian status through marriage to non-Indian men and the children of such women; those who had lost status because their mother and paternal grandmother were non-Indian and had gained Indian status through marriage to an Indian; and those who had lost status on the basis that they were illegitimate offspring of an Indian woman and a non-Indian man. Bands assuming control of their band lists would be obliged to accept all these people as members. Such bands would also be allowed, if they chose, to accept certain other categories of persons previously excluded from Indian status.

[Sawridge Band v. Canada (C.A.), [1997] 3 F.C. 580 at paragraph 2]

2 The Crown defendant now moves for the following interlocutory relief:

- a. An interlocutory declaration that, pending a final determination of the Plaintiff's action, in accordance with the provisions of the Indian Act, R.S.C. 1985 c. I-5, as amended, (the "Indian Act, 1985") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;
- b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the Plaintiffs' action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

3 The basis of the Crown's request is the allegation that the plaintiff Band has consistently and persistently refused to comply with the remedial provisions of C-31, with the result that 11 women, who had formerly been members of the Band and had lost both their Indian status and their Band membership by marriage to non-Indians pursuant to the former provisions of section 12(1)b of the Act, are still being denied the benefits of the amendments.

4 Because these women are getting on in years (a twelfth member of the group has already died and one other is seriously ill) and because the action, despite intensive case management over the past five years, still seems to be a long way from being ready to have the date of the new trial set down, the Crown alleges that it is urgent that I should provide some form of interim relief before it is too late.

5 In my view, the critical and by far the most important question raised by this motion is whether the Band, as the Crown alleges, is in fact refusing to follow the provisions of C-31 or whether, as the Band alleges, it is simply exercising the powers and privileges granted to it by the legislation itself. I shall turn to that question shortly, but before doing so, I want to dispose of a number of subsidiary or incidental questions which were discussed during the hearing.

6 First, I am quite satisfied that the relief sought by the Crown in paragraph a. above is not available. An interim declaration of right is a contradiction in terms. If a court finds that a right exists, a declaration to that effect is the end of the matter and nothing remains to be dealt with in the final judgment. If, on the other hand, the right is not established to the court's satisfaction, there can be no entitlement to have an unproved right declared to exist. (See *Sankey v. Minister of Transport and Stanley E. Haskins*, [1979] 1 F.C. 134 (F.C.T.D.)) I accordingly treat the motion as though it were simply seeking an interlocutory injunction.

7 Second, in the unusual and perhaps unique circumstances of this case, I accept the submission that since I am dealing with a motion seeking an interlocutory injunction, the well-known three part test established in such cases as *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *R J R Macdonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 should in effect be reversed. The universally applicable general rule for anyone who contests the constitutionality of legislation is that such legislation must be obeyed unless and until it is either stayed by court order or is set aside on final judgment. Here, assuming the Crown's allegations of non-compliance are correct, the plaintiff Band has effectively given itself an injunction and has chosen to act as though the law which it contests did not exist. I can only permit this situation to continue if I am satisfied that the plaintiff could and should have been given an interlocutory injunction to suspend the effects of C-31 pending trial. Applying the classic test, therefore, requires that I ask myself if the plaintiff has raised a serious issue in its attack on the law, whether the enforcement of the law will result in irreparable harm to the plaintiff, and finally, determine where the balance of convenience lies. I do not accept the proposition that because the injunction sought is of a mandatory nature, the test should in any way be different from that set down in the cited cases. (See *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.*, [1990] F.C.J. No. 514; 32 C.P.R. (3d) 340.)

8 It is not contested by the Crown that the plaintiff meets the first part of the test, but it seems clear to me that it cannot possibly meet the other two parts. It is very rare that the enforcement of a duly adopted law will result in irreparable harm and there is nothing herein which persuades me that this is such a rarity. Likewise, whatever inconvenience the plaintiff may suffer by admitting 11 old ladies to membership is nothing compared both to the damage to the public interest in having Parliament's laws flouted and to the private interests of the women in question who, at the present rate of progress, are unlikely ever to benefit from a law which was adopted with people in their position specifically in mind.

9 Thirdly, I reject the proposition put forward by the plaintiff that would deny the Court the power to issue the injunction requested because the Crown has not alleged a cause of action in sup-

port thereof in its statement of defence. The Court's power to issue injunctions is granted by section 44 of the Federal Court Act and is very broad. Interpreting a similar provision in a provincial statute in the case of *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation*, [1996] 2 S.C.R. 495, the Supreme Court said at page 505:

Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined... This accords with the more general recognition throughout Canada that the court may grant interim relief where final relief will be granted in another forum.

10 The Supreme Court of Canada confirmed the Federal Court of Canada's broad jurisdiction to grant relief under section 44 : *Canada (HRC) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626.

11 Likewise, I do not accept the plaintiff's argument to the effect that the Crown has no standing to bring the present motion. I have already indicated that I feel that there is a strong public interest at play in upholding the laws of Canada unless and until they are struck down by a court of competent jurisdiction. That interest is uniquely and properly represented by the Crown and its standing to bring the motion is, in my view, unassailable.

12 Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

13 This brings me at last to the main question: has the Band refused to comply with the provisions of C-31 so as to deny to the 11 women in question the rights guaranteed to them by that legislation?

14 I start by setting out the principal relevant provisions.

2.(1) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

...

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

...

- (5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

6. (1) Subject to section 7, a person is entitled to be registered if

...

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to 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 prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.
9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.
- (2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.
- (3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

...

- (5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.
10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.
- (2) A band may, pursuant to the consent of a majority of the electors of the band,
 - (a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and
 - (b) provide for a mechanism for reviewing decisions on membership.

...

- (4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.
- (5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.
- (6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.
- (7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith
 - (a) give notice to the band that it has control of its own membership; and
 - (b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.
- (8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.
- (9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.
- (10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.
- 11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if
 - ...
 - (c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;
- (2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section

13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

- (a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
- (b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

15 The amending statute was adopted on June 27, 1985 but was made to take effect retroactively to April 17, 1985, the date on which section 15 of the Charter took effect. This fact in itself, without more, is a strong indication that one of the prime objectives of the legislation was to bring the provisions of the Indian Act into line with the new requirements of that section, particularly as they relate to gender equality.

16 On July 8, 1985, the Band gave notice to the Minister that it intended to avail itself of the provisions of section 10 allowing it to assume control of its own Band List and that date, therefore, is the effective date of the coming into force of the Band's membership rules. Because C-31 was technically in force but realistically unenforceable for over two months before it was adopted and because the Band wasted no time in assuming control of its own Band List, none of the 11 women who are in question here were able to have their names entered on the Band List by the Registrar prior to the date on which the Band took such control.

17 The relevant provisions of the Band's membership rules are as follows:

- 3. Each of the following persons shall have a right to have his or her name entered in the Band List:
 - (a) any person who, but for the establishment of these rule, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either
 - (i) is lawfully resident on the reserve; or
 - (ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

...

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

...

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

18 Section 3(a)(i) and (ii) clearly create pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to section 11(1) of the Act. Those individuals must either be resident on the reserve, or they must demonstrate a significant commitment to the Band. In addition, the process as described in the evidence and provided for in section 11 of the membership rules requires the completion of an application form some 43 pages in length and calling upon the applicant to write several essays as well as to submit to interviews.

19 The question that arises from these provisions and counsel's submissions is whether the Act provides for an automatic entitlement to Band membership for women who had lost it by reason of the former paragraph 12(1)(b). If it does, then the pre-conditions established by the Band violate the legislation.

20 Paragraph 6(1)(c) of the Act entitles, inter alia, women who lost their status and membership because they married non-Indian men to be registered as status Indians.

21 Paragraph 11(1)(c) establishes, inter alia, an automatic entitlement for the women referred to in paragraph 6(1)(c) to have their names added to the Band List maintained in the Department.

22 These two provisions establish both an entitlement to Indian status, and an entitlement to have one's name added to a Band List maintained by the Department. These provisions do not specifically address whether bands have the same obligation as the Department to add names to their Band List maintained by the Band itself pursuant to section 10.

23 Subsection 10(4) attempts to address this issue by stipulating that nothing in a band's membership code can operate to deprive a person of her or his entitlement to registration "by reason only of" a situation that existed or an action that was taken before the rules came into force. For greater clarity, subsection 10(5) stipulates that subsection 10(4) applies to persons automatically entitled to membership pursuant to paragraph 11(1)(c), unless they subsequently cease to be entitled to membership.

24 It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

25 The meaning to be given to the word "entitled" as it is used in paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, inter alia, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

26 While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively : a band may not create barriers to membership for those persons who are by law already deemed to be members.

27 Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

28 The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows :

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

[Canada, House of Commons Debates, March 1, 1985, p. 2644]

29 A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status :

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and

residency should be determined by the relationship with the Indian communities to which they belong.

[Debates, supra at 2645]

30 Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved :

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

This is a difficult issue. It has been for many years. The challenge is striking. The fairest possible balance must be struck and I believe it has been struck in this Bill. I believe we have fulfilled the promise made by the Prime Minister in the Throne Speech that discrimination in the Indian Act would be ended.

[Debates, supra at 2646]

31 At a meeting of the Standing Committee on Indian Affairs and Northern Development, Minister Crombie again made it clear that, while the Bill works towards full Indian self-government, the Bill also has as a goal remedying past wrongs :

Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31...

[Canada, House of Commons, Minutes of the Proceedings of the Special Committee on Indian Affairs and Northern Development, Issue no. 12, March 7, 1985 at 12:7]

32 Furthermore, in the Minister's letter to Chief Walter Twinn on September 26, 1985, in which he accepted the membership code, the Minister reminded Chief Twinn of subsections 10(4) and (5) of the Act, and stated as follows :

We are both aware that Parliament intended that those persons listed in paragraph 6(1)(c) would at least initially be part of the membership of a Band which maintains its own list. Read in isolation your membership rules would appear to create a prerequisite to membership of lawful residency or significant commitment to the Band. However, I trust that your membership rules will be read in conjunc-

tion with the Act so that the persons who are entitled to reinstatement to Band membership, as a result of the Act, will be placed on your Band List. The amendments were designed to strike a delicate balance between the right of individuals to Band membership and the right of Bands to control their membership. I sponsored the Band control of membership amendments with a strongly held trust that Bands would fulfill their obligations and act fairly and reasonably. I believe you too feel this way, based on our past discussions.

33 Sadly, it appears from the Band's subsequent actions that the Minister's "trust" was seriously misplaced. The very provisions of the Band's rules to which the Minister drew attention have, since their adoption, been invoked by the Band consistently and persistently to refuse membership to the 11 women in question. In fact, since 1985, the Band has only admitted three acquired rights women to membership, all of them apparently being sisters of the addressee of the Minister's letter.

34 The quoted excerpts make it abundantly clear that Parliament intended to create an automatic right to Band membership for certain individuals, notwithstanding the fact that this would necessarily limit a band's control over its membership.

35 In a very moving set of submissions on behalf of the plaintiff, Mrs. Twinn argued passionately that there were many significant problems with constructing the legislation as though it pits women's rights against Native rights. While I agree with Mrs. Twinn's concerns, the debates demonstrate that there existed at that time important differences between the positions of several groups affected by the legislation, and that the legislation was a result of Parliament's attempt to balance those different concerns. As such, while I agree wholeheartedly with Mrs. Twinn that there is nothing inherently contradictory between women's rights and Native rights, this legislation nevertheless sets out a regime for membership that recognizes women's rights at the expense of certain Native rights. Specifically, it entitles women who lost their status and band membership on account of marrying non-Indian men to automatic band membership.

36 Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

37 As a result, I find that the Band's application of its membership rules, in which pre-conditions have been created to membership, is in contravention of the Indian Act.

38 While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that C-31 has the effect of imposing on it members that it does not want. Paragraph 22 of the Fresh as Amended Statement of Claim reads as follows :

22. The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection. Furthermore, such membership rights were granted to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.

39 I shall grant the mandatory injunction as requested and will specifically order that the names of the 11 known acquired rights women be added to the Band List and that they be accorded all the rights of membership in the Band.

40 I reserve the question of costs for the Crown. If it seeks them, it should do so by moving pursuant to Rule 369 of the Federal Court Rules, 1998. While the interveners have made a useful contribution to the debate, I would not order any costs to or against them.

ORDER

The plaintiff and the persons on whose behalf she sues, being all the members of the Sawridge Band, are hereby ordered, pending a final resolution of the plaintiff's action, to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this Order requires that the following persons, namely, Jeannette Nancy Boudreau, Elizabeth Courtoreille, Fleury Edward DeJong, Roseina Anna Lindberg, Cecile Yvonne Loyie, Elsie Flora Loyie, Rita Rose Mandel, Elizabeth Bernadette Poitras, Lillian Ann Marie Potskin, Margaret Ages Clara Ward and Mary Rachel L'Hirondelle be forthwith entered on the Band List of the Sawridge Band and be immediately accorded all the rights and privileges attaching to Band membership.

HUGESSEN J.

cp/e/qlaimdrs/d/qw/qlbdp/qlsdd/qljal

Case Name:
Sawridge Band v. Canada

Between
Bertha L'hirondelle, suing on her own behalf and on
behalf of all other members of the Sawridge Band,
plaintiffs (appellants), and
Her Majesty the Queen, defendant (respondent), and
Native Council of Canada, Native Council of Canada
(Alberta), Native Women's Association of Canada, and
Non-status Indian Association of Alberta, interveners
(respondents)

[2004] F.C.J. No. 77

[2004] A.C.F. no 77

2004 FCA 16

2004 CAF 16

[2004] 3 F.C.R. 274

[2004] 3 R.C.F. 274

316 N.R. 332

[2004] 2 C.N.L.R. 316

128 A.C.W.S. (3d) 856

Docket A-170-03

Federal Court of Appeal
Calgary, Alberta

Rothstein, Noël and Malone JJ.A.

Heard: December 15 and 16, 2003.
Judgment: January 19, 2004.

This is Exhibit B referred to in the
Affidavit (or statutory declaration) of
Elizabeth Poitras
Sworn 'or affirmed or declared)
before me this 7th day of
December A.D. 2011
A Commissioner for Oaths in and for Alberta
Brenda Lee Yuschyshyn
My Commission will
Expire June 4, 2014.

(61 paras.)

Counsel:

Martin J. Henderson and Catherine Twinn, for the appellant.
 E. James Kindrake and Kathleen Kohlman, for the respondent.
 Kenneth Purchase, for the intervener, Native Council of Canada.
 P. Jon Faulds, for the intervener, Native Council of Canada, Alberta.
 Mary Eberts, for the intervener, Native Women's Association of Canada.
 Michael J. Donaldson, for the intervener, Non-status Indian Association of Alberta.

The judgment of the Court was delivered by

1 ROTHSTEIN J.A.:-- By Order dated March 27, 2003, Hugessen J. of the Trial Division (as it then was) granted a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter or register on the Sawridge Band List the names of eleven individuals who, he found, had acquired the right to be members of the Sawridge Band before it took control of its Band list on July 8, 1985, and to accord the eleven individuals all the rights and privileges attaching to Band membership. The appellants now appeal that Order.

HISTORY

2 The background to this appeal may be briefly stated. An Act to amend the Indian Act, R.S.C. 1985, c. 32 (1st Supp.) [Bill C-31], was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the Canadian Charter of Rights and Freedoms [the Charter] came into force.

3 Among other things, Bill C-31 granted certain persons an entitlement to status under the Indian Act, R.S.C. 1985, c. I-5 [the Act], and, arguably, entitlement to membership in an Indian Band. These persons included those whose names were omitted or deleted from the Indian Register by the Minister of Indian and Northern Affairs prior to April 17, 1985, in accordance with certain provisions of the Act as they read prior to that date. The disqualified persons included an Indian woman who married a man who was not registered as an Indian as well as certain other persons disqualified by provisions that Parliament considered to be discriminatory on account of gender. The former provisions read:

12. (1) The following persons are not entitled to be registered, namely;

(a) a person who

...

(iii) is enfranchised, or

- (iv) is born of a marriage entered into after September 4, 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

unless, being a woman, that person is the wife or widow of a person described in section 11; and

- (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

- (2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if on the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

* * *

- 12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites :

- a) une personne qui, selon le cas :

...

- (iii) est émancipée,

- (iv) est née d'un mariage célébré après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a, b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e),

sauf si, étant une femme, cette personne est l'épouse ou la veuve de qu'un décrit à l'article 11;

- b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.

- (2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation dans les douze mois de l'addition; si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.

4 Bill C-31 repealed these disqualifications and enacted the following provisions to allow those who had been stripped of their status to regain it:

- 6(1) Subject to section 7, a person is entitled to be registered if

...

- (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to 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 prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

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

* * *

6. (1) Sous réserve de l'article 7, une personne a le droit d'être inscrite si elle remplit une des conditions suivantes :

...

- 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 d'une de ces dispositions;

...

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

...

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

5 By an action originally commenced on January 15, 1986, the appellants claim a declaration that the provisions of Bill C-31 that confer an entitlement to Band membership are inconsistent with section 35 of the Constitution Act, 1982 and are, therefore, of no force and effect. The appellants say that an Indian Band's right to control its own membership is a constitutionally protected Abo-

iginal and treaty right and that legislation requiring a Band to admit persons to membership is therefore unconstitutional.

6 This litigation is now in its eighteenth year. By Notice of Motion dated November 1, 2002, the Crown applied for:

an interlocutory mandatory injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

7 The basis of the Crown's application was that until legislation is found to be unconstitutional, it must be complied with. The mandatory injunction application was brought to require the Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By Order dated March 27, 2003, Hugessen J. granted the requested injunction.

8 This Court was advised that, in order for the Band to comply with the Order of Hugessen J., the eleven individuals in question were entered on the Sawridge Band list. Nonetheless, the appellants submit that Hugessen J.'s Order was made in error and should be quashed.

ISSUES

9 In appealing the Order of Hugessen J., the appellants raises the following issues:

1. Does the Band's membership application process comply with the requirements of the Act?
2. Even if the Band has not complied with the Act, did Hugessen J. err in granting a mandatory interlocutory injunction because the Crown lacks standing and has not met the test for granting interlocutory injunctive relief.

APPELLANTS' SUBMISSIONS

10 The appellants say that the Band's membership code has been in effect since July 8, 1985 and that any person who wishes to become a member of the Band must apply for membership and satisfy the requirements of the membership code. They say that the eleven individuals in question have never applied for membership. As a result, there has been no refusal to admit them. The appellants submit that the code's requirement that all applicants for membership go through the application process is in accordance with the provisions of the Act. Because the Band is complying with the Act, there is no basis for granting a mandatory interlocutory injunction.

11 Even if the Band has not complied with the Act, the appellants say that Hugessen J. erred in granting a mandatory interlocutory injunction because the Crown has no standing to seek such an injunction. The appellants argue that there is no lis between the beneficiaries of the injunction and the appellants. The Crown has no interest or, at least, no sufficient legal interest in the remedy. Further, the Crown has not brought a proceeding seeking final relief of the nature sought in the mandatory interlocutory injunction application. In the absence of such a proceeding, the Court is without jurisdiction to grant a mandatory interlocutory injunction. Further, there is no statutory authority for the Crown to seek the relief in question. The appellants also argue that the Crown has not met the three-part test for the granting of an interlocutory injunction.

ARE THE APPELLANTS COMPLYING WITH THE INDIAN ACT?

The Appropriateness of Deciding a Legal Question in the Course of an Interlocutory Injunction Application

12 The question of whether the Sawridge Band membership code and application process are in compliance with the Act appears to have been first raised by the appellants in response to the Crown's injunction application. Indeed, the appellants' Fresh As Amended Statement of Claim would seem to acknowledge that, at least when it was drafted, the appellants were of the view that certain individuals could be entitled to membership in an Indian Band without the consent of the Band. Paragraph 22 of the Fresh as Amended Statement of Claim states in part:

The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection.

13 There is nothing in the appellants' Fresh As Amended Statement of Claim that would suggest that an issue in the litigation was whether the appellants were complying with the Act. The entire Fresh As Amended Statement of Claim appears to focus on challenging the constitutional validity of the Bill C-31 amendments to the Indian Act.

14 The Crown's Notice of Motion for a mandatory interlocutory injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. The Crown's assumption appears to have been that there was no dispute that, barring a finding of unconstitutionality, the legislation required the appellants to admit the eleven individuals to membership.

15 Be that as it may, the appellants say that the interpretation of the legislation and whether or not they are in compliance with it was always in contemplation in and relevant to this litigation. It was the appellants who raised the question of whether or not they were in compliance in response to the Crown's motion for injunction. It, therefore, had to be dealt with before the injunction application itself was addressed. The Crown and the interveners do not challenge the need to deal with the question and Hugessen J. certainly accepted that it was necessary to interpret the legislation and determine if the appellants were or were not in compliance with it.

16 Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction. However, that is what occurred here. In the unusual circumstances of this case, I think it was appropriate for Hugessen J. to have made such a determination.

17 Although rule 220 was not expressly invoked, I would analogize the actions of Hugessen J. to determining a preliminary question of law. Rules 220(1) and (3) read as follows:

220. (1) A party may bring a motion before trial to request that the Court determine

(a) a question of law that may be relevant to an action;

...

- (3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

* * *

220. (1) Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :

a) tout point de droit qui peut être pertinent dans l'action;

...

- (3) La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel.

18 Although the appellants did not explicitly bring a motion under Rule 220, the need to determine the proper interpretation of the Act was implicit in their reply to the respondent's motion for a mandatory interlocutory injunction. It would be illogical for the appellants to raise the issue in defence to the injunction application and the Court not be able to deal with it. There is no suggestion that the question could not be decided because of disputed facts or for any other reason. It was raised by the appellants who said it was relevant to the action. Therefore, I think that Hugessen J. was able to, and did, make a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

Does the Band's Membership Application Process Comply with the Requirements of the Indian Act?

19 I turn to the question itself. Although the determination under appeal was made by a case management judge who must be given extremely wide latitude (see *Sawridge Band v. Canada*, [2002] 2 F.C. 346 at paragraph 11 (C.A.)), the determination is one of law. Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness.

20 The appellants say there is no automatic entitlement to membership and that the Band's membership code is a legitimate means of controlling its own membership. They rely on subsections 10(4) and 10(5) of the Indian Act which provide:

10(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

- (5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

* * *

10(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce que son nom soit consigné dans la liste de bande avant leur établissement du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.

- (5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.

21 The appellants say that subsections 10(4) and (5) are clear and unambiguous and Hugessen J. was bound to apply these provisions. They submit the words "by reason only of" in subsection 10(4) mean that a band may establish membership rules as long as they do not expressly contravene any provisions of the Act. They assert that the Band's code does not do so. The code only requires that if an individual is not resident on the Reserve, an application must be made demonstrating, to the satisfaction of the Band Council, that the individual:

has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band (paragraph 3(a)(ii)).

22 With respect to subsection 10(5), the appellants say that the words "if that person does not subsequently cease to be entitled to have his name entered in the Band List" mean that the Band is given a discretion to establish membership rules that may disentitle an individual to membership in the Band. They submit that nothing in the Act precludes a band from establishing additional qualifications for membership.

23 The Crown, on the other hand, says that persons in the position of the individuals in this appeal have "acquired rights." I understand this argument to be that paragraph 11(1)(c) created an automatic entitlement for those persons to membership in the Indian Band with which they were previously connected. The Crown submits that subsection 10(4) prohibits a band from using its membership rules to create barriers to membership for such persons.

24 Hugessen J. was not satisfied that subsections 10(4) and (5) are as clear and unambiguous as the appellant suggests. He analyzed the provisions in the context of related provisions and agreed with the Crown.

25 The appellants seem to object to Hugessen J.'s contextual approach to statutory interpretation. However, all legislation must be read in context. Driedger's well known statement of the modern approach to statutory construction, adopted in countless cases such as *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 21, reads:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of

Parliament (Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87).

Hugessen J. interpreted subsections 10(4) and (5) in accordance with the modern approach and he was correct to do so.

26 I cannot improve on Hugessen J.'s statutory construction analysis and I quote the relevant portions of his reasons, which I endorse and adopt as my own:

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used by paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, inter alia, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively: a band may not create barriers to membership for those persons who are by law already deemed to be members.

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially

leaves to the band's discretion the admission of the descendants of women who "married out."

...

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual [sic] to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

27 I turn to the appellants' arguments in this Court.

28 The appellants assert that the description "acquired rights" used by Hugessen J. reads words into the Indian Act that are not there. The term "acquired rights" appears as a marginal note beside subsection 10(4). As such, it is not part of the enactment, but is inserted for convenience of reference only (Interpretation Act, R.S.C. 1985, c. I-21, s. 14). However, the term is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c), became entitled to automatic membership in the Indian Band with which they were connected. In other words, the instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band.

29 The appellants say that the words "by reason only of" in subsection 10(4) do not preclude an Indian Band from establishing a membership code, requiring persons who wish to be considered for membership to make application to the Band. I acknowledge that the words "by reason only of" could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into force. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c).

30 A band may enact membership rules applicable to all of its members. Yet subsections 10(4) and (5) restrict a band from enacting membership rules targeted only at individuals who, by reason of paragraph 11(1)(c), are entitled to membership. That distinction is not permitted by the Act.

31 The appellants raise three further objections. First, they say that their membership code is required because of "band shopping." However, in respect of persons entitled to membership under paragraph 11(1)(c), the issue of band shopping does not arise. Under paragraph 11(1)(c), the individuals in question are only entitled to membership in the band in which they would have been a member but for the pre-April 17, 1985 provisions of the Indian Act. In this case, those individuals would have been members of the Sawridge Band.

32 Second, the appellants submit that the opening words of subsection 11(1), "commencing on April 17, 1985," indicate a process and not an event, i.e. that there is no automatic membership in a

band and that indeed some persons may not wish to be members; rather, the word "commencing" only means that a person may apply at any time on or after April 17, 1985. I agree that there is no automatic membership. However, there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question in this appeal acquired an automatic entitlement to membership in the Sawridge Band.

33 Third, the appellants say that the individuals in question have not made application for membership. Hugessen J. dealt with this argument at paragraph 12 of his reasons:

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

34 The appellants submit, contrary to Hugessen J.'s finding, that there was no evidence that the individuals in question here wanted to become members of the Sawridge Band. A review of the record demonstrates ample evidence to support Hugessen J.'s finding. For example, by Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution. Of the eleven individuals in question here, eight were included on that list. In addition, the record contains applications for Indian status and membership in the Sawridge Band made by a number of the individuals.

35 For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. As Hugessen J. found, requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act

36 Of course, this finding has no bearing on the main issue raised by the appellants in this action, namely, whether the provisions entitling persons to membership in an Indian band are unconstitutional.

THE INJUNCTION APPLICATION

Standing

37 I turn to the injunction application. The appellants say that there was no lis between the Band and the eleven persons ordered by Hugessen J. to be included in the Band's Membership List. The eleven individuals are not parties to the main action. The appellants also say that the Crown is not entitled to seek interlocutory relief when it does not seek the same final relief.

38 I cannot accept the appellants' arguments. The Crown is the respondent in an application to have validly enacted legislation struck down on constitutional grounds. It is seeking an injunction, not only on behalf of the individuals denied the benefits of that legislation but on behalf of the pub-

lic interest in having the laws of Canada obeyed. The Crown, as represented by the Attorney General, has traditionally had standing to seek injunctions to ensure that public bodies, such as an Indian band council, follow the law (see Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (Aurora, ON: Canada Law Book, 2002) at paragraph 3.30; *Ontario (Attorney General) v. Ontario Teachers' Federation* (1997), 36 O.R. (3d) 367 at 371-72 (Gen. Div.)). Having regard to the Crown's standing at common law, statutory authority, contrary to the appellants' submission, is unnecessary. Hugessen J. was thus correct to find that the Crown had standing to seek the injunction.

39 I also cannot accept the argument that the Crown may not seek interlocutory relief because it has not sought the same final relief in this action. The Crown is defending an attack on the constitutionality of Bill C-31 and is seeking an interlocutory injunction to require compliance with it in the interim. If the Crown is successful in the main action, the result will be that the Sawridge Band will have to enter or register on its membership list the individuals who are the subject of the injunction application. The Crown therefore is seeking essentially the same relief on the injunction application as in the main action.

40 Further, section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7, confers jurisdiction on the Federal Court to grant an injunction "in all cases in which it appears to the Court to be just or convenient to do so." The jurisdiction conferred by section 44 is extremely broad. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, the Supreme Court found that the Federal Court could grant injunctive relief even though there was no action pending before the Court as to the final resolution of the claim in issue. If section 44 confers jurisdiction on the Court to grant an injunction where it is not being asked to grant final relief, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction is therefore sufficiently connected to the final relief claimed by the Crown.

The Test for Granting an Interlocutory Injunction

41 The test for whether an interlocutory injunction should be granted was set out in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) and adopted by the Supreme Court in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 where, at 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

42 The appellants submit that Hugessen J. erred in applying a reverse onus to the test. Since, as will be discussed below, the Crown has satisfied the traditional test, I do not need to consider whether the onus should be reversed.

Serious Question

43 In *RJR-Macdonald* at 337-38, the Court indicated that the threshold at the first branch is low and that the motions judge should proceed to the rest of the test unless the application is vexatious or frivolous.

44 The appellants say that in cases where a mandatory injunction is sought, the older pre-American Cyanamide test of showing a strong *prima facie* case for trial should continue to apply. They rely on an Ontario case, *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.), in support of this proposition. Of course, that case is not binding on this Court. Furthermore, it has been questioned by subsequent Ontario decisions in which orders in the nature of a mandatory interlocutory injunction were issued (*493680 Ontario Ltd. v. Morgan*, [1996] O.J. No. 4776 (Gen. Div.); *Samoila v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (S.C.J.)). In *Morgan*, Hockin J. stated that *RJR-Macdonald* had modified the old test, even for mandatory interlocutory injunctions (paragraph 27).

45 The jurisprudence of the Federal Court on this issue in recent years is divided. In *Relais Nordik Inc. v. Secunda Marine Services Ltd.* (1988), 24 F.T.R. 256 at paragraph 9, Pinard J. questioned the applicability of the American Cyanamide test to mandatory interlocutory injunctions. On the other hand, in *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.* (1990), 36 F.T.R. 98 at paragraph 15, MacKay J. accepted that the American Cyanamide test applied to mandatory injunctions in the same way as to prohibitory ones. Both of these cases were decided before the Supreme Court reaffirmed its approval of the American Cyanamide test in *RJR-Macdonald*. More recently, in *Patriquen v. Canada (Correctional Services)*, [2003] F.C.J. No. 1186, 2003 FC 927 at paragraphs 9-16, Blais J. followed the *RJR-Macdonald* test and found that there was a serious issue to be tried in an application for a mandatory interlocutory injunction (which he dismissed on the basis that the applicant had not shown irreparable harm).

46 Hugessen J. followed *Ansa International* and held that the *RJR-Macdonald* test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. In light of *Sopinka* and *Cory JJ.*'s caution about the difficulties of engaging in an extensive analysis of the constitutionality of legislation at an interlocutory stage (*RJR-Macdonald* at 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

47 In this case, the Crown's argument that Bill C-31 is constitutional is neither frivolous nor vexatious. There is, therefore, a serious question to be tried.

Irreparable Harm

48 Ordinarily, the public interest is considered only in the third branch of the test. However, where, as here, the government is the applicant in a motion for interlocutory relief, the public interest must also be considered in the second stage (*RJR-Macdonald* at 349).

49 Validly enacted legislation is assumed to be in the public interest. Courts are not to investigate whether the legislation actually has such an effect (*RJR-Macdonald* at 348-49).

50 Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores* at 143, quoting *Morgentaler v. Ackroyd* (1983), 42 O.R. (2d) 659 at 666-68 (H.C.)).

51 Further, the individuals who have been denied membership in the appellant band are aging and, at the present rate of progress, some are unlikely ever to benefit from amendments that were adopted to redress their discriminatory exclusion from band membership. The public interest in

preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality.

52 The appellants argue that there cannot be irreparable harm because, if there was, the Crown would not have waited sixteen years after the commencement of the action to seek an injunction. The Crown submits that it explained to Hugessen J. the reasons for the delay and stated that the very length of the proceedings had in fact contributed to the irreparable harm as the individuals in question were growing older and, in some cases, falling ill.

53 The question of whether delay in bringing an injunction application is fatal is a matter of discretion for the motions judge. There is no indication that Hugessen J. did not act judicially in exercising his discretion to grant the injunction despite the timing of the motion.

Balance of Convenience

54 In *Metropolitan Stores at 149*, Beetz J. held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry." In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown.

55 As discussed above and as Hugessen J. found, there is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. As well, Bill C-31 was designed to remedy the historic discrimination against Indian women and other Indians previously excluded from status under the Indian Act and band membership. There is therefore a public interest in seeing that the individuals in this case are able to reap the benefits of those amendments.

56 On the other hand, the Sawridge Band will suffer little or no damage by admitting nine elderly ladies and one gentleman to membership (the Court was advised that one of the eleven individuals had recently died). It is true that the Band is being asked to take the positive step of adding these individuals to its Band List but it is difficult to find hardship in requiring a public body to follow a law that, pending an ultimate determination of its constitutionality, is currently in force. Even if the Band provides the individuals with financial assistance on the basis of their membership, that harm can be remedied by damages against the Crown if the appellants subsequently succeed at trial. Therefore, as Hugessen J. found, the balance of convenience favours granting the injunction.

CONCLUSION

57 The appeal should be dismissed.

COSTS

58 The Crown has sought costs in this Court and in the Court below. The interveners have sought costs in this Court only.

59 In his Reasons for Order, Hugessen J. reserved the question of costs in favour of the Crown, indicating that the Crown should proceed by way of a motion for costs under rule 369. He awarded no costs to the interveners. It is not apparent from the record that the Crown made a costs motion under rule 369 and in the absence of an order for costs and an appeal of that order, I would not make any award of costs in the Court below.

60 As to costs in this Court, the Crown and interveners are to make submissions in writing, each not exceeding 3 pages, double-spaced, on or before 7 days from the date of these reasons. The appellants shall make submissions in writing, not exceeding 10 pages, double-spaced, on or before 14 days from the date of these reasons. The Court will, if requested, consider the award of a lump sum of costs inclusive of fees, disbursements, and in the case of the interveners, GST (See *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, [2003] 2 F.C. 451 (C.A.)).

61 The Judgment of the Court will be issued as soon as the matter of costs is determined.

ROTHSTEIN J.A.

NOËL J.A.:-- I agree.

MALONE J.A.:-- I agree.

cp/e/qw/qlklc/qlhcs

SAWRIDGE INDIAN BAND MEMBERSHIP APPLICATION FORM

The answers in this membership questionnaire will be kept confidential and shall be disclosed only to those persons involved in the membership determination process as well as appropriate Band employees and advisors unless otherwise necessary in respect of a membership matter before the courts.

This questionnaire has been created to assist the Band Council in assessing applicants who are seeking or surrendering membership in the Band. The data provided will also assist the Band in the planning, including programs and services, required to accommodate members.

INSTRUCTIONS

1. Please print or type.
2. Please answer all questions, or indicate why no answer is provided.
3. If more space is required to fully answer a question, please attach additional sheets and indicate which question it applies to.
4. Please attach a current colour passport photo of yourself.
5. Please attach supporting documents as indicated.
6. Please attach a copy of your treaty "status" card.
7. This application may be followed by an interview. Additional questions may be asked at the interview.

1. APPLICATION FOR (CHECK ONE)											
APPLICATION FOR MEMBERSHIP IN THE BAND BY NON-MEMBER											
APPLICATION BY MEMBER TO SURRENDER MEMBERSHIP IN THE BAND											
2. IDENTIFICATION											
A. NAME		FIRST			MIDDLE			LAST			
Other Names You Have Used (Maiden/Nicknames/Alias):											
B. ADDRESS											
MAILING ADDRESS (if different):											
C. PHONE NUMBERS			HOME			WORK					
D. Sex		MALE		FEMALE		E. BIRTHDATE		Month	Day	Year	Attach Birth Certificate
F. PLACE OF BIRTH					G. MARITAL STATUS						
H. YOUR SOCIAL INSURANCE NUMBER											
I. YOUR DRIVERS LICENSE NUMBER											
J. WHAT IS YOUR HEIGHT					K. WHAT IS YOUR WEIGHT						
L. IF THIS IS AN APPLICATION FOR MEMBERSHIP PLEASE EXPLAIN THE BASIS OF YOUR APPLICATION											
M. HAVE YOU EVER BEEN A MEMBER OF THE SAWRIDGE BAND?											
YES											
NO											
If yes,		HOW DID YOU BECOME A MEMBER?									
		WHEN DID YOU BECOME A MEMBER?									
		HOW DID YOU CEASE TO BE A MEMBER?									
		WHEN DID YOU CEASE TO BE A MEMBER?									
		HOW MUCH OF THE BAND'S MONEY DID YOU RECEIVE?									
		WHEN DID YOU RECEIVE IT?									
		HOW MUCH IS LEFT?									

This is Exhibit "C" referred to in the Affidavit (or statutory declaration) of

Elizabeth Paitras

Sworn (or affirmed or declared)

before me this 7th day of December A.D. 20 11

1
Brenda Lee Yuschyshyn
My Commission will
expire June 4, 20 14

A Commissioner for Oaths in and for Alberta

ARE YOU WILLING TO REPAY PRINCIPLE AMOUNT WITH INTEREST OF MONIES RECEIVED WHEN YOU ENFRANCHISED?															
IF YOU DID NOT RECEIVE ANY MONEY PLEASE EXPLAIN															
N. HAVE YOU EVER BEEN ADOPTED?										YES		NO			
IF YES, PLEASE PROVIDE FULL DETAILS.															
3. RESIDENCE AND STATUS															
A. HAVE YOU EVER RESIDED ON THE SAWRIDGE INDIAN RESERVE?										YES		NO			
IF YES, PROVIDE DETAILS															
DATES FROM								TO							
WHO WITH															
LOCATION															
B. WHERE HAVE YOU RESIDED SINCE BIRTH?															
DATES FROM		TO		ADDRESS		ON A RESERVE		LANGUAGE(S) SPOKEN		WITH WHOM (parents, siblings, others)					
BIRTH						YES		NO							
						YES		NO							
						YES		NO							
						YES		NO							
C. HAVE YOU EVER BEEN OR ARE YOU NOW A MEMBER OF ANY INDIAN BAND OTHER THAN SAWRIDGE?										YES		NO			
IF YES PROVIDE DETAILS OF EACH BAND INCLUDING NAME															
DATE OF BEGINNING AND ENDING MEMBERSHIP															
HOW YOU BECAME A MEMBER?															
WHY YOU CEASED TO BE A MEMBER															
D. ARE YOU A STATUS INDIAN?										YES		NO			
E. HAVE YOU ALWAYS BEEN A STATUS INDIAN?										YES		NO			
F. INDICATE DURING WHAT PERIOD OR PERIODS YOU WERE A STATUS INDIAN															
G. DATE AND REASON FOR THE CHANGE IN STATUS															
4. SPOUSES															
A. LIST ALL SPOUSES' NAMES ATTACH MARRIAGE CERTIFICATE OR IF COMMON-LAW PROVIDE DETAILS OF COHABITATION				#1				#2				#3			
NAME PRIOR TO MARRIAGE															
B. MARRIED OR COMMON-LAW (PRESENT STATUS)				MARRIED COMMON-LAW				MARRIED COMMON-LAW				MARRIED COMMON-LAW			
C. DATE OF MARRIAGE															
D. PLACE OF MARRIAGE															
E. SPOUSES' STATUS PRIOR				INDIAN				INDIAN				INDIAN			
				NON-STATUS				NON-STATUS				NON-STATUS			

TO MARRIAGE	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
F. NUMBER OF CHILDREN						
G. DATE AND PLACE OF DIVORCE/SEPARATION (PLEASE ATTACH DIVORCE JUDGMENTS)						
H. CURRENT STATUS OF SPOUSE	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
	DECEASED		DECEASED		DECEASED	
	DATE OF DEATH		DATE OF DEATH		DATE OF DEATH	

5. CHILDREN

LIST NAMES OF ALL YOUR CHILDREN (USE ADDITIONAL SHEETS IF NECESSARY)

A. NAME						
B. SEX	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
C. BIRTHPLACE						
D. OTHER PARENT'S NAME						
E. BIRTHDATE						
F. YOUR STATUS AT BIRTH OF CHILD	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
G. CHILD'S STATUS AT BIRTH	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
H. CHILD'S CURRENT STATUS	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
	DECEASED		DECEASED		DECEASED	
	DATE OF DEATH		DATE OF DEATH		DATE OF DEATH	
I. REASON FOR CHANGE IN STATUS						
J. RELATIONSHIP TO CHILD	BIOLOGICAL		BIOLOGICAL		BIOLOGICAL	
	ADOPTED		ADOPTED		ADOPTED	
	NON-ADOPTED STEP CHILD		NON-ADOPTED STEP CHILD		NON-ADOPTED STEP CHILD	
K. HAVE EACH OF YOUR CHILDREN RESIDED WITH YOU SINCE BIRTH, AND HAVE YOU PROVIDED FOR THE CHILD SINCE BIRTH?					YES	NO
IF NO, PLEASE PROVIDE DETAILS:						
L. HAVE ANY OF YOUR CHILDREN EVER BEEN APPHREHENDED OR PLACED IN CARE?						
YES NO						
IF YES, PROVIDE DETAILS						
M. HAVE ANY OF YOUR CHILDREN EVER BEEN THE SUBJECT OF A GUARDIANSHIP ORDER?						
YES NO						
IF YES, PROVIDE DETAILS:						

N. HAVE ANY OF YOUR CHILDREN EVERY BEEN ADOPTED OR PUT UP FOR ADOPTION?

YES ☐ NO ☐

IF YES,

NAME OF CHILD(REN)

BIRTHDATE(S)

REASONS FOR ADOPTION

DATE OF ADOPTION(S)

ADOPTING PARENT A RELATIVE

YES ☐ NO ☐

**O. NAME OF ADOPTING PARENT(S)
(IF KNOWN)**

6. GENEALOGY

FOR EACH OF YOUR PARENTS AND GRANDPARENTS, PLEASE PROVIDE THE INFORMATION SET OUT BELOW OR, IF YOU HAVE A GENIOLOGY WHICH CONTAINS THIS INFORMATION, PLEASE PROVIDE A COPY:

- FULL NAME
- ANY ALIASES (INCLUDING MAIDEN NAME)
- RELATIONSHIP INCLUDING WHETHER BIOLOGICAL, ADOPTED OR STEP
- BIRTHDATE (COPY OF BIRTH CERTIFICATE)
- STATUS AT BIRTH (NON STATUS, INDIAN, BAND MEMBER (NAME OF BAND) OTHER)
- HOW STATUS ATTAINED (NON-STATUS, INDIAN, BAND MEMBER, ETC).
- MARITAL STATUS AT TIME OF YOUR BIRTH
- CURRENT STATUS (NON-STATUS, INDIAN, BAND MEMBER, ETC.)
- IF STATUS CHANGED, EXPLAIN
- LANGUAGE SPOKEN
- LEVEL OF EDUCATION ACHIEVED
- CONNECTION OR POSITION HELD IN THE BAND OR COMMUNITY.
- IF DECEASED, DATE OF DEATH

7. SIBLINGS (USE ADDITIONAL SHEETS FOR ADDITIONAL BROTHERS AND SISTERS)

A. HOW MANY BROTHERS DO YOU HAVE?

B. NAME OF EACH BROTHER #1 #2 #3

C. BIRTHDATE

D. BIRTHPLACE

E. FULL, HALF BROTHER, OR STEP

FULL	FULL	FULL
HALF	HALF	HALF
STEP	STEP	STEP

F. IF HALF OR STEP, WHICH PARENT IS COMMON

FATHER	FATHER	FATHER
MOTHER	MOTHER	MOTHER

G. HOW MANY SISTERS DO YOU HAVE?

H. NAME OF EACH SISTER #1 #2 #3

I. BIRTHDATE

J. BIRTHPLACE

K. FULL, HALF SISTER, OR STEP

FULL	FULL	FULL
HALF	HALF	HALF
STEP	STEP	STEP

L. IF HALF OR STEP, WHICH PARENT IS COMMON

FATHER	FATHER	FATHER
MOTHER	MOTHER	MOTHER

8. FINANCIAL

A. WHAT RESOURCES ARE AVAILABLE TO YOU?

B. WHAT ARE YOUR MEANS AND RESOURCES?

C. ARE YOU LIVING WITHIN YOUR MEANS?

D. ARE YOU SELF-SUFFICIENT? (IF NO, PLEASE EXPLAIN)

E. DO YOU HAVE ANY DEPENDANTS? IF SO, HOW MANY?

F. DO YOU OR ANY DEPENDANTS HAVE SPECIAL NEEDS? IF SO, PLEASE EXPLAIN.

9. CRIMINAL AND DRIVERS RECORD

A. LIST THE OFFENCE(S), OFFENCE DATE(S), CONVICTION DATE(S), AND SENTENCE(S).

USE ADDITIONAL SHEET IF NECESSARY

B. HAS YOUR DRIVER'S LICENSE EVEN BEEN SUSPENDED?

YES

NO

IF YES, PLEASE PROVIDE DETAILS INCLUDING DURATION, REASON(S), AND DETAIL(S) OF REINSTATEMENT

USE ADDITIONAL SHEET IF NECESSARY

10. EMPLOYMENT HISTORY

STARTING WITH YOUR MOST RECENT JOB, LIST EVERY JOB (FULL TIME/YEAR ROUND) WHICH YOU HAVE HAD. (USE ADDITIONAL SHEET IF NECESSARY). HAVE YOU BEEN REGULARLY EMPLOYED?

A. LIST YOUR SIGNIFICANT EMPLOYMENT RELATIONSHIPS, DATES AND REASON FOR LEAVING

B. LIST ANY EXPERTISE AND INTEREST AND ANY EXPERIENCE AND TRAINING IN THESE AREAS

C. WHAT AGE DID YOU ENTER THE WORKPLACE?

11. BACKGROUND & PERSONAL INTERESTS (CAN BE DONE IN WRITING ON SEPARATE SHEET OR ORALLY THROUGH RECORDING DEVICE)

A. WHAT DO YOU KNOW ABOUT THE HISTORY OF THE SAWRIDGE INDIAN BAND (PRE-TREATY AND POST-TREATY)? WHAT ARE THE SOURCES OF YOUR KNOWLEDGE?

B. WHAT ARE YOUR UNDERSTANDINGS OF THE TREATY AND TREATY LAW?

C. WHAT DO YOU KNOW ABOUT THE CUSTOMS, THE LAWS, THE CULTURE, TRADITIONS AND PRACTICES VALUES AND PRINCIPLES OF THE SAWRIDGE INDIAN BAND

D. WHO DO YOU HAVE A MEANINGFUL RELATIONSHIP WITH SOMEONE WHO IS A MEMBER OF THE SAWRIDGE INDIAN BAND? (PROVIDE NAMES, HOW LONG YOU HAVE KNOWN, AND DESCRIBE YOUR ACTIVITIES AND RELATIONSHIPS WITH EACH PERSON AS WELL AS THE HISTORY OF THAT RELATIONSHIP. ALSO INDICATE IF THAT PERSON IS A RELATIVE AND WHAT RELATION THEY ARE TO YOU).

E. DO ANY CURRENT BAND MEMBERS SUPPORT YOUR BID FOR MEMBERSHIP? (FOR APPLICATIONS FOR MEMBERSHIP ONLY). IF YES, PLEASE PROVIDE THE NAME OR NAMES OF SUPPORTERS AND A LETTER SETTING OUT THEIR SUPPORT.

YES

NO

F. HOW WOULD YOU DESCRIBE YOUR LIFESTYLE?	
G. WHAT IS YOUR CURRENT INVOLVEMENT WITH THE BAND?	
H. WHAT ARE YOUR HOBBIES?	
I. WHAT ARE YOUR OTHER RECREATIONAL ACTIVITIES?	
J. WHAT DO YOU HOLD AS MOST IMPORTANT AND VALUABLE? WHY?	
K. DESCRIBE YOUR ATTITUDE TOWARDS THE BAND, ITS MEMBERS AND THE COUNCIL.	
L. WHAT DO YOU SEE AS YOUR ROLE AND RESPONSIBILITY AS A BAND MEMBER?	
12. FUTURE PLANS (CAN BE DONE IN WRITING ON SEPARATE SHEETS OR ORALLY THROUGH A RECORDING DEVICE).	
A. WHY DO YOU WISH TO BECOME A MEMBER OF THE SAWRIDGE INDIAN BAND?	
B. WHAT ARE YOUR PLANS FOR THE FUTURE? (INCLUDING PLANS FOR RESIDENCY, EMPLOYMENT, OCCUPATION, EDUCATION, RETIREMENT, TRAVEL, MARRIAGE, FAMILY, RECREATION, ETC.).	
13. EDUCATION	
A. PROVIDE A DETAILED HISTORY OF YOUR EDUCATION BOTH FORMAL AND TRADITIONAL	
B. ARE YOU WILLING UPON REQUEST TO PROVIDE A TRANSCRIPT OF ALL OF YOUR SECONDARY AND POST-SECONDARY EDUCATION, IF ANY.	
C. HONOURS, AWARDS, DISTINCTIONS, SCHOLARSHIPS, MERITS	
D. IF YOUR LEARNING WAS INTERRUPTED OR YOU WERE UNABLE TO COMPLETE	EXPLAIN
E. PLEASE PROVIDE A DETAILED HISTORY OF ALL OF YOUR EXTRA CURRICULAR ACTIVITIES	
F. WHAT ARE YOUR PLANS FOR FUTURE EDUCATION, IF ANY?	
14. HEALTH AND WELLNESS (PLEASE NOTE THAT YOUR HEALTH IS IMPORTANT TO THE BAND, BUT IT IS NOT A SINGLY DETERMINATIVE FACTOR IN MAKING A DECISION ON MEMBERSHIP). THESE QUESTIONS CAN HELP DETERMINE WHETHER THE BAND NEEDS TO APPLY FOR FUTURE GRANTS, FUNDING, ETC.	
A. WHAT IS THE CONDITION OF YOUR HEALTH?	
B. DO YOU HAVE ANY PROBLEMS?	LIST
C. DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITIES (INCLUDING EMOTIONAL)?	
	YES <input type="checkbox"/> NO <input type="checkbox"/>
IF YES, EXPLAIN	
D. HAVE YOU EVER HAD ANY ALCOHOL OR DRUG RELATED ADDICTIONS OR ILLNESS?	
	YES <input type="checkbox"/> NO <input type="checkbox"/>
IF YES	PLEASE EXPLAIN
E. HAVE YOU EVER SUFFERED FROM MENTAL ILLNESS?	
	YES <input type="checkbox"/> NO <input type="checkbox"/>
IF YES (PLEASE EXPLAIN)	

F. HOW DO YOU DEFINE YOUR PERSONAL WELLNESS AND HOW CAN YOU CONTRIBUTE TO THE WELLNESS OF THE SAWRIDGE INDIAN BAND?

G. WHAT IS YOUR PRESENT CODE OF CONDUCT?

15. CONTRIBUTIONS

PLEASE WRITE A BRIEF STATEMENT OR ORALLY RECORD YOUR ANSWER ON A RECORDING DEVICE ABOUT:

A. YOUR ROLE, PLACE AND RESPONSIBILITIES IN THE LIFE AND HEALTH OF THE COMMUNITY.

B. WHERE YOU CAN BEST CONTRIBUTE, INCLUDING CONTRIBUTIONS TO THE BAND.

C. THE SPIRITUAL VALUES AND PRINCIPLES THAT YOU LIVE BY AND ASPIRE TO IN ALL YOUR RELATIONSHIPS.

D. WHAT SUPPORT YOU HOPE FOR FROM THE BAND.

E. DESCRIBE THE RELATIONSHIP AND SUPPORT SYSTEM YOU HAVE WITH OUR FAMILY MEMBERS.

16. REFERENCES (FOR THOSE SEEKING MEMBERSHIP ONLY)

PLEASE PROVIDE FOUR LETTERS OF REFERENCE.

17. PROBATIONARY PERIOD (FOR THOSE SEEKING MEMBERSHIP ONLY)

A. ARE YOU PREPARED TO COME TO THE COMMUNITY TO PARTICIPATE AND/OR ASSIST THE BAND? YES ☐ NO ☐

B. WHAT DO YOU FEEL DURING THE PERIOD THIS APPLICATION IS BEING ASSESSED YOU COULD DO TO CONTRIBUTE TO THE BAND AND TO SHOW YOUR COMMITMENT?

C. ARE YOU WILLING TO PARTICIPATE IN A COMMUNITY WELLNESS BUILDING PROCESS AS A CONDITION TO THIS APPLICATION AND/OR THE GRANTING OF MEMBERSHIP? YES ☐ NO ☐

D. WHAT IS YOUR UNDERSTANDING OF THE RIGHT, OBLIGATIONS AND RESPONSIBILITIES OF MEMBERSHIP?

18. FAMILY

A. HOW OFTEN DO YOU VISIT OR TALK TO FAMILY MEMBERS AND WHAT ACTIVITIES DO YOU SHARE WITH THEM?

19. GENERAL

A. HOW DO YOU IDENTIFY YOURSELF?

B. DID YOU HAVE ANY ASSISTANCE IN COMPLETING THIS APPLICATION? YES ☐ NO ☐

IF YES, WHO ASSISTED YOU?

20. DO YOU HAVE ANY QUESTIONS, CONCERNS, OR COMMENTS?

CERTIFICATION

I certify that all of the information provided in this application is complete and true. I understand that if any of the information provided is found to be false or misleading then this shall be sufficient grounds for the denial of my application, or if the application has been approved then it shall be sufficient grounds for the reversal of my application at the option of the Band at any time in the future. Such denial or reversal shall be final; there shall be no right of appeal and no right to reapply after any such denial or reversal. I hereby authorize Sawridge Indian Band to obtain any and all factual information regarding me from other persons, organizations, institutions, or government agencies. I hereby authorize any person, organization, institution, or government agency who has any information regarding me to release that information regarding me in confidence to the Sawridge Indian Band.

Dated at _____, _____, this _____ day of _____, 20__.

Applicant Name

Applicant Signature

I was present and did see _____, the applicant herein sign above.
(PLEASE PRINT)

Witness

Witness

(Print Name)

(Print Name)

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SAWRIDGE MEMBERSHIP RULES

1. These Rules shall come into force on the day on which the Band gives notice to the Minister pursuant to subsection 10(6) of the Act. [PASSED JULY 4, 1985]

2. On and after the day these Rules come into force the Band List of the Band shall be maintained by the Band under the direction and supervision of the Band Council and only those persons whose names are included therein, or who have rights to have their names entered therein, pursuant to these rules shall be members of the Band. [PASSED JULY 4, 1985]

3. Each of the following persons shall have a right to have his or her name entered in the Band List; [PASSED JULY 4, 1985]

(a) any person who, but for the establishment of these rules, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either

(i) is lawfully resident on the reserve; or

(ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

List; (b) a natural child of parents both of whose names are entered on the Band

(c) with the consent of the Band Council, any person who

(i) has applied for membership in the Band;

Act; (ii) is entitled to be registered in the Indian Register pursuant to the

(iii) is the spouse of a member of the Band, and

(iv) is not a member of another band;

(d) with the consent of the Band Council, any person who

(i) has applied for membership in the Band,

(ii) was born after the date these rules come into force, and

This is Exhibit D referred to in the Affidavit (or statutory declaration) of

Elizabeth Poiras

Sworn (or affirmed or declared)

before me this 7 day of

December A.D. 2011

A Commissioner for Oaths in and for Alberta

Brenda Lee Yuschysnyn

My Commission will

Expire June 4, 2014

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(iii) is the natural child of a member of the Band, and

(e) any member of another band admitted into membership of the Band with the consent of the council of both bands and who thereupon ceases to be a member of the other band.

4. For the purpose of section 3(a)(i) and section 6 the question whether a person is lawfully resident on the reserve shall be determined exclusively by reference to by-laws made by the Band Council pursuant to section 81 of the Act except that, at any time when there are no such applicable by-laws in force, no person shall be considered to be lawfully resident on the reserve for the purpose of section 3(a)(i) and section 6 unless the residence of such person on the reserve has been approved or ratified by a resolution of the Band Council that is expressed to be made for the purpose of these Rules. **[PASSED JULY 4, 1985]**

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force. **[PASSED JULY 4, 1985]**

6. The Band Council may at any time delete from the Band List the name of any person who has applied to the Band Council to have his or her name deleted from the Band List or the name of any person who is not then lawfully resident on the reserve and who, in the judgment of the Band Council, either does not have a significant commitment to the history, customs, traditions, culture and communal life of the Band or has a character or lifestyle that would cause his or her continued membership in the Band to be seriously detrimental to the future welfare or advancement of the Band; provided that, before a decision to delete the name of any person from the Band List is made under this section, otherwise than pursuant to an application by such person, the Band Council shall give fifteen days notice to such person who shall then be entitled to make representation to the Band Council in writing, in person or through an agent or counsel within such period of fifteen days. **[PASSED JULY 4, 1985]**

7. Where the name of a person is deleted from the Band List pursuant to section 6, the names of his or her minor children may, in the discretion of the Band Council, also be deleted from the Band List. **[PASSED JULY 4, 1985]**

8. Notwithstanding section 6 the Band Council shall delete from the Band List the name of any person who has been admitted into membership of another band with the consent of both the Band council and the admitting band. **[PASSED JULY 4, 1985]**

9. Except as otherwise expressly provided in these Rules, no application shall be required before the Band Council may enter in the Band List the name of any person who has a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JULY 5, 1985]**

10. Where, pursuant to section 3 of these Rules, an application is required before a person has a right to have his or her name entered in the Band List, such application may be made in such manner and form as the Band Council may determine from time to time and, for greater certainty, the Band Council may permit applications to be made

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under section 3(d) by a parent or guardian of a natural child referred to therein who is an infant at the time the application is made. **[PASSED JULY 5, 1985]**

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and at such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion. **[PASSED JULY 5, 1985]**

12. Any person whose application for membership in the Band pursuant to section 3 of these Rules has been denied, or whose name has been deleted from the Band List pursuant to section 6, by the Band Council may appeal such decision to the electors of the Band by delivering notice in writing to the Band Council at the office of the Band within 15 days after communication to him or her of the decision of the Band Council. **[PASSED JULY 5, 1985]**

13. Within 60 days after receipt of a notice of appeal pursuant to section 12 of these Rules the Band Council shall convene a meeting of the electors of the Band for the purpose of disposing of the appeal and the applicant shall be entitled to be present at such meeting and make representations thereto in person or through an agent or counsel. **[PASSED JULY 5, 1985]**

14. Each discretionary power conferred upon the Band Council under these rules shall be exercised by the Band Council in good faith, without discrimination on the basis of sex and in accordance with its judgment of the best interests and welfare of the Band. **[PASSED JULY 5, 1985]**

15. No person shall have a right to have his or her name entered in the Band List except as provided in section 3 of these Rules **[PASSED JULY 5, 1985]** and, for greater certainty, no person shall be entitled to have his or her name included in the Band List unless that person has, at some time after July 4, 1985, had a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JUNE 24, 1987]**

16. In the event that any of the foregoing provisions of these Rules is held by a court of competent jurisdiction to be invalid in whole or in part on the ground that it is not within the power of the Band to exclude any particular person or persons from membership in the Band, these Rules shall be construed and shall have effect as if they contained a specific provision conferring upon each such person a right to have his or her name entered in the Band List, but for greater certainty, no other person shall have a right to have his or her name entered or included in the Band List by virtue of the provisions of this Section and, in particular, no person referred to in Subsection 11(2) of the Act shall be entitled to membership in the Band otherwise than pursuant to Section 3 of these Rules. **[PASSED JUNE 24, 1987]**

17. In the event that any provision, or part of any provision, of these Rules is held to be invalid or of no binding force or effect by any court of competent jurisdiction, these Rules shall be construed and applied as if such provision or part thereof did not apply to or in the circumstances giving rise to such invalidity and the effect of the remaining provisions, or parts thereof, of these Rules shall not be affected thereby. **[PASSED JUNE 24, 1987]**