

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190704

Docket: A-179-18

Citation: 2019 FCA 197

**CORAM: DAWSON J.A.
WOODS J.A.
RIVOALEN J.A.**

BETWEEN:

**PETERS FIRST NATION BAND COUNCIL,
NORMA WEBB in her capacity as Chief of Peters First Nation,
LEANNE PETERS in her capacity as Councillor of Peters First Nation and
VICTORIA PETERS in her capacity as Councillor of Peters First Nation**

Appellants

and

GUY PETERS

Respondent

Heard at Vancouver, British Columbia, on April 10, 2019.

Judgment delivered at Ottawa, Ontario, on July 4, 2019.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**DAWSON J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] In 2016, the Peters First Nation Band Council rejected an application made by Guy Peters to become a member of Peters First Nation (PFN). Mr. Peters' father, and other relatives on his father's side, were members of PFN. His mother, who was not married to his father, was a member of the Skwah First Nation.

[2] Mr. Peters sought judicial review of the Band Council's decision. The Federal Court (2018 FC 544) allowed the application for judicial review and declared that Mr. Peters was a member of PFN. The Band Council has appealed the Federal Court's judgment to this Court.

[3] I will begin with an outline of the relevant statutory provisions.

I. Relevant statutory scheme

[4] The current *Indian Act*, R.S.C. 1985, c. I-5 (Act) was the subject of significant amendments by *An Act to Amend the Indian Act*, S.C. 1985, c. 27 (Bill C-31). The Bill C-31 amendments that are relevant to this appeal came into effect on April 17, 1985 (Bill C-31, s. 23(1)). In these reasons, I will refer to the Act prior to the amendments brought about by Bill C-31 as the "Pre-1985 Act".

[5] Statutory provisions in both the Act and the Pre-1985 Act are relevant to this appeal. I will begin the outline with the Act, which was in force at the time Mr. Peters made his application for membership. Some of the provisions of the Pre-1985 Act will then be set out. All of these provisions are reproduced in appendices to these reasons.

A. *Scheme of the Act*

[6] The Department of Indian Affairs and Northern Development (Department) is required to maintain an Indian Register, which records the names of persons who are entitled to be registered

as an Indian under the Act (Act, s. 5(1)). The Indian Register is maintained by the Registrar who is an official of the Department.

[7] One category of persons generally entitled under the Act to be registered are persons who are “registered or entitled to be registered immediately before April 17, 1985” (Act, s. 6(1)(a)).

[8] In addition, a Band List is to be maintained in accordance with the Act for each band, which is to include the names of every member of the band (Act, s. 8). A “member of a band” is defined in subsection 2(1) of the Act to mean “a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.”

[9] Band Lists may either be maintained by the Department (Act, s. 9) or by the band (Act, s. 10).

[10] “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” (Act, s. 9(1)).

[11] While the Band List is maintained by the Department, section 11 of the Act describes persons who are entitled to have their names entered on the list. This category includes a person described in paragraph 11(1)(a) of the Act, which provides:

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

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

band if

si elle remplit une des conditions
suivantes :

(a) the name of that person was
entered in the Band List for that band,
or that person was entitled to have it
entered in the Band List for that band,
immediately prior to April 17, 1985;

a) son nom a été consigné dans cette
liste, ou elle avait droit à ce qu'il le
soit le 16 avril 1985;

...

[...]

[12] A band may assume control of its membership by satisfying certain conditions and giving notice to the Minister of Indian Affairs and Northern Development. After this time, any additions or deletions to the Band List by the Registrar are of no effect unless they are in accordance with the membership rules established by the band (Act, s. 10(8)). Once the Registrar provides the Band List to the band, the Registrar has no further responsibility for the list (Act, s. 10(9)).

[13] A band that assumes control of its membership may establish its own membership rules (Act, s. 10(2)). However, by virtue of subsections 10(4) and 10(5), if someone had already acquired the right to membership in the band prior to the time that the band established membership rules, the rules established by the band may not deprive that person of their acquired right “by reason only of a situation that existed or an action that was taken before the rules came into force.”

[14] Subsections 10(4) and 10(5) of the Act were considered by this Court in *Sawridge Band v. Canada*, 2004 FCA 16, [2004] 3 F.C. 274 at paras. 26-30. The Crown had applied to the Federal Court for an injunction to require Sawridge Band to include several individuals on their Band List on the basis that they had acquired the right to be members before Sawridge Band took control of its Band List on July 8, 1985. In the appeal of the Federal Court’s decision granting

the injunction, this Court adopted the Federal Court’s interpretation of subsections 10(4) and 10(5) as follows: “... the band is obliged to enter the names of all entitled persons on the list which it maintains. ...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” (*Sawridge Band* at para. 26).

B. *Scheme of the Pre-1985 Act*

[15] The scheme of the Pre-1985 Act contemplated that a person could not be entered on a Band List unless they were also entitled to registration as an Indian (Pre-1985 Act, s. 6). The Department was responsible for maintaining an Indian Register which recorded the names of persons entitled to be registered as an Indian (Pre-1985 Act, s. 5).

[16] The Indian Register under this legislative scheme also included the Band Lists. Persons who were entitled to be registered as Indians were to be recorded by the Registrar on either a Band List, if they were a member of a band, or on a General List, if they were not a member of a band (Pre-1985 Act, s. 6). For this purpose, “member of a band” includes a person “who is entitled to have his name appear on a Band List” (Pre-1985 Act, s. 2(1)).

[17] Section 10 of the Pre-1985 Act is a provision that describes an entitlement to be on a Band List. It reads:

10 Where the name of a male person is included in, omitted from, added to

10 Lorsque le nom d’une personne du sexe masculine est inclus dans une

or deleted from a Band List or a General List, the names of his wife and minor children shall also be included, omitted, added or deleted, as the case may be.

liste de bande ou une liste générale, ou y est ajouté ou omis, ou en est retranché, les noms de son épouse et de ses enfants mineurs doivent également être inclus, ajoutés, omis ou retranchés, selon le cas.

[18] Subsection 11(1) of the Pre-1985 Act prescribed persons who were entitled to be registered. Paragraph 11(1)(c) is relevant in this appeal. It is reproduced below, along with the other provisions referred to in paragraph 11(1)(c):

11 (1) Subject to section 12, a person is entitled to be registered if that person

11 (1) Sous réserve de l'article 12, une personne a droit d'être inscrite dans les cas suivants:

(a) on May 26, 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other real property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;

a) elle était, le 26 mai 1874, pour l'application de l'*Acte pourvoyant à l'organisation du Département du Secrétaire d'État du Canada, ainsi qu'à l'administration des Terres des Sauvages et de l'Ordonnance*, chapitre 42 des Statuts du Canada de 1868, loi modifiée par l'article 6 du chapitre 6 des Statuts du Canada de 1869 et par l'article 8 du chapitre 21 des Statuts du Canada de 1874, considérée comme ayant droit à la détention, l'usage ou la jouissance des terres et autres biens immeubles appartenant aux tribus, bandes ou groupes d'Indiens au Canada, on affectés à leur usage;

(b) is a member of a band

b) elle est membre d'une bande :

(i) for whose use and benefit, in common, lands have been set apart or since May 26, 1874, have been agreed by treaty to be set apart, or

(i) soit à l'usage et au profit communs de laquelle des terres ont été mises de côté ou, depuis le 26 mai 1874, ont fait l'objet d'un traité les mettant de cote,

(ii) that has been declared by the Governor in Council to be a

(ii) soit que le gouverneur en conseil a déclarée constituer une

band for the purposes of this Act;

bande pour l'application de la présente loi;

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

c) elle est du sexe masculin et descendante directe par les hommes d'une personne du sexe masculin décrite à l'alinéa a) ou b);

...

[...]

[19] In 1983, the Supreme Court of Canada clarified that paragraph 11(1)(c) of the Pre-1985 Act applies to both legitimate and illegitimate children (*Martin v. Chapman*, [1983] 1 S.C.R. 365, 150 D.L.R. (3d) 638).

II. Application history

[20] Mr. Peters was born on October 24, 1965, and from the age of 19 attempted several times to become a member of PFN. As some of his applications are relevant to this appeal, the application history is outlined below.

[21] On September 17, 1985, Mr. Peters applied to be registered under the Act. He received a letter from the Acting Registrar, dated August 21, 1987, confirming that he had been registered in the Indian Register in accordance with paragraph 6(1)(a) of the Act and as a member of PFN in accordance with paragraph 11(1)(a) (appeal book at p. 82). These provisions generally qualify persons for registration or membership if they were so entitled immediately prior to April 17, 1985.

[22] In an internal communication within the Department, also dated August 21, 1987, the Registrar expanded on the reason for the decision:

Guy Peters is a male person who is a direct descendant in the male line of Robert Wilmer Peters No. 23 Peters Band. He is therefore entitled to be registered as an Indian and a member of the Peters Band under the provisions of Section 6(1)(a) and 11(1)(a) of the Indian Act as amended on June 28, 1985, on the basis of his entitlement to registration under Section 11(1)(c) of the Indian Act as it read prior to April 17, 1985.

(appeal book at p. 83)

[23] Effective June 25, 1987, the PFN assumed control over its membership (appeal book at p. 101-102).

[24] On October 15, 1987, the Registrar provided the PFN with a copy of the Band List that had been maintained by the Department as it is required to do under the Act (Act, s. 10(7)). The Band List was comprised of three parts: (1) a computer listing, which was a copy of the Band List as entered and maintained in the computer records of the Registrar; (2) a manually maintained list, which was a list of persons whose entitlement to membership had recently been confirmed but whose name did not appear in the computer records; and (3) a list of persons who had recently been added to the band list pursuant to subsection 11(2) of the Act (appeal book at p. 354-356). Mr. Peters' name appeared on the manually maintained list.

[25] On November 12, 1987, Chief Frank Peters wrote to the Registrar asking to have Mr. Peters' name removed from the manually maintained list. Chief Frank Peters asserted that the PFN had authority to delete names from the Band List, including the removal of people who had

a parent who was a member of another Band (appeal book at p. 352-353). In his affidavit, Mr. Peters stated that “[he] found out [he] had been taken off the Band List in December 1987” (appeal book at p. 51). Mr. Peters did not seek judicial review of the decision of Chief Frank Peters to remove him from the Band List.

[26] Mr. Peters subsequently applied for membership in the PFN in October 1996 and again in October 2012 (appeal book at p. 53-54). The Band Council did not render decisions with respect to either of these applications.

[27] On March 11, 2016, Mr. Peters submitted another application for membership in the PFN (appeal book at p. 143-145). The Band Council rejected this application on July 25, 2016 (appeal book at p. 117).

[28] On August 17, 2016, Mr. Peters appealed the Band Council’s decision of July 25, 2016 (appeal book at p. 155-159). According to Part V of the PFN Membership Code, “[w]ithin 60 days after receipt of a notice of appeal a general meeting of the Band Electors shall be convened to review the Band Council’s (Membership Committee’s) decision at which the general meeting renders a final decision” (appeal book at p. 377). A general meeting of the Band Electors was never convened to review the Band Council’s decision of July 25, 2016.

[29] The Band Council’s decision of July 25, 2016 to deny Mr. Peters’ membership application was the subject of the application for judicial review before the Federal Court.

III. Decision of the Band Council

[30] The membership application which is the subject of this appeal was made on March 11, 2016. The application was rejected by the Band Council for reasons which are reproduced in full below:

Council have carefully considered your application for membership and sought legal advice. In reviewing the records, it appears that the Department of Indian Affairs placed your name on the manually maintained list pursuant to subsection 11(2) of the *Indian Act* in 1987. In anticipation of the passage of the Membership Code, it was left to the discretion of Council for the Peters First Nation as to whether you would be admitted as a member of the Peters First Nation. By letter dated November 12, 1987, Chief Frank Peters advised the Acting Registrar that your name was to be removed from the subsection 11(2) list and thus you did not become a member of the Peters First Nation. Several other individuals were removed at that point as well.

Unfortunately at present it is our view, which has been confirmed by our legal counsel, that you are not entitled to membership in the Peters First Nation. We appreciate your desire to become a member of the Peters First Nation.

(appeal book at p. 117)

IV. Decision of the Federal Court

[31] The Federal Court applied a reasonableness standard of review and determined that the Band Council could not deprive Mr. Peters of membership (Reasons at para. 42-44).

[32] Relying on the correspondence from the Registrar to Mr. Peters dated August 21, 1987 which stated that Mr. Peters was registered as a member pursuant to paragraph 11(1)(a) of the Act, and the fact that Mr. Peters' name appeared on the manually maintained list sent to the PFN

on October 15, 1987, the Federal Court found that Mr. Peters had acquired a right to membership in the PFN before its Membership Code came into effect. Therefore, by virtue of subsection 10(4) of the Act, the PFN could not deprive him of his previously acquired right to membership in PFN. The Federal Court concluded that “[t]he Band Council’s failure to recognize that Mr. Peters was statutorily entitled to membership in the PFN through the operation of Bill C-31 renders its decision unreasonable” (Reasons at para. 44).

[33] The Federal Court also concluded that since Mr. Peters was entitled to membership through the operation of law, “no useful purpose would be served by remitting [Mr. Peters’] application for membership to the Band Council for redetermination” (Reasons at para. 58). A declaration was granted stating that Mr. Peters is a member of the PFN.

V. Issues

[34] Three issues are raised in this appeal:

1. Is the judicial review application premature?
2. Was the Band Council’s decision reasonable?
3. If the Band Council’s decision was unreasonable, what is the appropriate remedy?

VI. Is the judicial review application premature?

[35] Before this Court, the Band Council argues that the judicial review application is premature because Mr. Peters has not exhausted the appeal process under the PFN Membership Code. The Federal Court made no determinations with respect to this issue.

[36] Part V of the PFN Membership Code contemplates that an applicant can appeal a decision of the Band Council to deny membership. If such an appeal is brought, a general meeting of the Band Electors is to be convened within 60 days and they are to render a final decision (appeal book at p. 377).

[37] As a general rule, absent exceptional circumstances, a Court should refuse to hear a judicial review application unless all the administrative appeal processes have been exhausted (*Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332 at paras. 30-33). In *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557 at para. 101, this Court held, “[judicial review] is a tool of last resort, available only when a cognizable administrative law claim exists, all other routes of redress now or later are foreclosed, ineffective or inadequate, and the Federal Court has the power to grant the relief sought”.

[38] In *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713 at paras. 42-45, the majority of the Supreme Court noted that since refusing to hear an application for judicial review on the basis that the parties have not exhausted an alternative remedy is

discretionary, before deciding whether to refuse to hear the application for judicial review, the court must consider all the circumstances of the case, including: the convenience of the alternative remedy, the basis of the judicial review application, the nature of the other forum and its remedial capacity, expeditiousness, the relative expertise of the alternative decision-maker, the economical use of judicial resources, and the costs incurred by the parties. The court should identify and balance the relevant factors in the context of each case to determine whether judicial review is appropriate.

[39] In my view, in the circumstances of this case, it is appropriate for the Court to entertain the application for judicial review, notwithstanding the fact that the appeal process before the Band Electors was not completed.

[40] First, this is not a case in which a party is trying to short-circuit the administrative appeal process. Rather, Mr. Peters took all of the necessary steps under the PFN Membership Code to initiate the administrative appeal process. According to Part V of the Membership Code, the Band Council was obliged to convene a general meeting of the electors within 60 days of Mr. Peters submitting his appeal. The Band Council did not do so, nor have they provided any justification for not doing so. Mr. Peters should not be penalized for the Band Council's failure to convene a general meeting in a timely manner.

[41] Second, given that the Band Electors' decision is made by way of a vote, it is far from clear that a decision rendered by the Band Electors would result in any additional findings that would assist the Court in reviewing the reasonableness of the decision.

[42] Finally, Mr. Peters has been trying to become registered as a member of the PFN since at least September 17, 1985. Given the length of the dispute between the parties, it would serve the interests of justice for this Court to consider the merits of the application for judicial review and provide guidance to the Band Council with respect to the reasonableness of its decision.

VII. Was the Band Council's decision reasonable?

[43] When reviewing a decision of the Federal Court on an application for judicial review, this Court must determine whether the Federal Court judge chose the appropriate standard of review and applied it properly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47).

[44] The Federal Court properly selected reasonableness as the appropriate standard of review to apply when assessing the Band Council's decision to deny membership (see *Pastion v. Dene Tha' First Nation*, 2018 FC 648, [2018] 4 F.C.R. 467 at paras. 18-27). This Court is to "step into the shoes" of the Federal Court and focus on the decision of the Band Council. Accordingly, the central question before this Court is whether the Band Council's decision was reasonable.

[45] The Band Council's rejection of Mr. Peters' application was made on the basis that it had properly excluded him from membership in their discretion in 1987 because he had been placed by the Registrar on a conditional membership list pursuant to subsection 11(2) of the Act.

[46] In order for the Band Council's decision of July 25, 2016 to withstand scrutiny under reasonableness review, the Band Council's reasons must provide a justified, transparent and intelligible basis for its decision (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47). The decision fails to satisfy these indicia for the following reasons.

[47] First, the Band Council misapprehended the record before it when it found that Mr. Peters had been placed on the band list "pursuant to subsection 11(2)" of the Act. He was not. Mr. Peters was placed on the manually maintained list. This list was separate and distinct from the subsection 11(2) list.

[48] Second, and importantly, the reasons given by the Band Council give no indication that the Council considered PFN's Membership Code in effect when Mr. Peters applied for membership in 2016. Instead, PFN focussed on the fact that Mr. Peters was excluded from membership in 1987. The current Membership Code is relevant to Mr. Peters' application and it was unreasonable for the Band Council not to consider it.

[49] At the hearing, PFN submitted that it was appropriate for the Band Council to rely on the decision taken in 1987 and took the position that the membership rules were the same in 1987 and 2016. One difficulty with this submission is that there is no evidence that PFN took these membership rules, or any membership rules, into account when it decided to exclude Mr. Peters from membership in 1987.

[50] Further, the record before the Court does not support PFN's submission that the PFN Membership Code had not changed between 1987 and present. It is clear from correspondence between PFN and the Registrar in 1987 that the initial membership rules in 1987 were very brief interim rules that simply recognized prior acquired rights. The more detailed Membership Code that is applicable to Mr. Peters' application in 2016 did not come into effect until 1990 (appeal book at p. 85, 101-102, 110).

[51] The reasons of the Band Council are bereft of any consideration of the applicable membership rules. The Band Council was required to consider those rules and its failure to do so, coupled with its misapprehension of the factual record, renders its decision unreasonable.

VIII. What is the appropriate remedy?

[52] Having concluded that the Band Council's decision was unreasonable, it remains to be considered whether this Court should make the decision that the Band Council should have made, as the Federal Court did, or whether the matter should be referred back to the Band Council for redetermination.

[53] Mr. Peters suggests that it is not necessary to refer the matter back to the Band Council because the Federal Court correctly decided that he is statutorily entitled to membership in PFN by operation of ss. 6(1)(a), 11(1)(a) and 10(4) of the Act. By virtue of these provisions, Mr. Peters submits, he was entitled to membership immediately before April 17, 1985 (respondent's memorandum at para. 49).

[54] The difficulty with this submission is that the Federal Court's conclusion was made without consideration of the applicable legislative provisions in the Pre-1985 Act. Instead, the Federal Court relied upon the content of the August 21, 1987 letter from the Acting Registrar to the effect that Mr. Peters was a member of the PFN. It was an error for the Court to simply accept the Acting Registrar's conclusion and declare Mr. Peters to be a member of the PFN without satisfying itself that, at law, Mr. Peters was entitled to membership under the Pre-1985 Act. It was necessary for the Federal Court to undertake a proper analysis of the relevant provisions of the Pre-1985 Act in order to make this determination and declare Mr. Peters to be a member of the PFN.

[55] Mr. Peters also requests that this Court decide the matter in the interests of justice and judicial economy (respondent's memorandum at paragraph 72). Mr. Peters' position is understandable in the context of this longstanding dispute, but in my view this remedy is not appropriate in the circumstances of this case.

[56] In a judicial review, remedies are discretionary. Courts should consider whether remitting the decision to the administrative decision-maker would serve any "practical or legal purpose". However, courts should at the same time exercise caution and resolve any doubt by sending the matter back for redetermination. "[T]he job of the reviewing court normally is not to delve into the merits, i.e., find the facts, find the law and apply the law to the facts." (*Maple Lodge Farms Ltd. v. Canada (Food Inspection Agency)*, 2017 FCA 45, 411 D.L.R. (4th) 175 at paras. 48-52.)

[57] In this case, neither the Band Council nor the Federal Court grappled in their reasons with two central issues to be decided: (1) Is Mr. Peters statutorily entitled to membership? and, if not, (2) Is Mr. Peters entitled to membership under the relevant Membership Code?

[58] Instead of grappling with these issues, the Band Council dismissed Mr. Peters' application on an entirely different ground, which was based on an erroneous interpretation of the 1987 decision of the Acting Registrar.

[59] Further, neither of these issues was raised by Mr. Peters in his application for membership and there is no indication in the record that he raised them subsequently with the Band Council.

[60] The Federal Court also did not consider these issues, and instead relied entirely on the 1987 decision of the Acting Registrar.

[61] If this Court were to decide the matter, it would effectively be acting as a decision-maker of first instance. This is not the Court's role.

[62] One of the issues in this appeal involves an interpretation of PFN's Membership Code and the other concerns an interpretation of the Pre-1985 Act. These issues should be addressed by the Band Council, with the assistance of submissions from Mr. Peters, before the courts intervene. It may also be possible for the Band Council to obtain assistance from the Department concerning the interpretation of the Pre-1985 Act.

[63] As a result, it is appropriate to refer the application back to the Band Council for redetermination.

[64] If, in the redetermination, the Band Council concludes that Mr. Peters is entitled to membership under PFN's membership rules, it would not be necessary for the Band Council to consider the Pre-1985 Act. Otherwise, the Band Council will be required to consider whether Mr. Peters had acquired a statutory right to membership under the Pre-1985 Act.

IX. Conclusion

[65] In light of the reasons above, I would allow the appeal and:

- (i) set aside the decision of the Band Council dated July 25, 2016;
- (ii) set aside the portion of the judgment of the Federal Court that declared Mr. Peters to be a member of PFN; and
- (iii) refer the respondent's application back to the Band Council for redetermination.

[66] In light of the parties' mixed success in this appeal, I would not award costs to either party. I would also not disturb the costs award in the Federal Court as it did not apply only to Mr. Peters but to other parties as well.

"Judith Woods"

J.A.

"I agree.
Eleanor R. Dawson J.A."

"I agree.
Marianne Rivoalen J.A."

APPENDIX A

Indian Act, R.S.C. 1985, c. I-5

Definitions

2. (1) In this Act,

...

“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;

...

Indian Register

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.

...

Persons entitled to be registered

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

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

...

Band Lists

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

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

« membre d'une bande » Personne dont le nom apparaît sur une liste de bande ou qui a droit à ce que son nom y figure.

[...]

Tenue du registre

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant le droit d'être inscrite comme Indien en vertu de la présente loi.

[...]

Personnes ayant droit à l'inscription

6. (1) Sous réserve de l'article 7, toute personne a le droit d'être inscrite dans les cas suivants :

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

[...]

Tenue

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre.

is a member of that band.

Band Lists maintained in Department

Liste de bande tenue au ministère

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.

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire.

...

[...]

Band control of membership

Pouvoir de décision

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.

10. (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.

Membership rules

Règles d'appartenance

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(2) La bande peut, avec l'autorisation de la majorité de ses électeurs :

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs;

(b) provide for a mechanism for reviewing decisions on membership.

b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.

...

[...]

Acquired rights

Droits acquis

(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

(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

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.

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.

Idem

Idem

(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.

(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.

...

[...]

Effective date of band's membership rules

Date d'entrée en vigueur des règles d'appartenance

(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.

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au ministre a été donné en vertu du paragraphe (6); les additions ou retranchements effectués par le registraire à l'égard de la liste de la bande après cette date ne sont valides que s'ils sont effectués conformément à ces règles.

Band to maintain Band List

Transfert de responsabilité

(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

(9) À compter de la réception de l'avis prévu à l'alinéa (7)b), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministère, à compter de cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Band List from that date.

...

Membership rules for Departmental
Band 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

(a) the name of that person was
entered in the Band List for that
band, or that person was entitled to
have it entered in the Band List for
that band, immediately prior to
April 17, 1985;

...

[...]

Règles d'appartenance pour une liste
tenue au ministère

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 :

a) son nom a été consigné dans
cette liste, ou elle avait droit à ce
qu'il le soit le 16 avril 1985;

[...]

APPENDIX B

Indian Act, as it read prior to April 17, 1985

Interpretation

2. (1) In this Act,

...

“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;

...

Indian Register

5. An Indian Register shall be maintained in the Department, which Register shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian.

Band Lists and General Lists

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List.

Wife and minor children

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and minor children shall also be

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

«membre d'une bande» Personne dont le nom apparaît sur une liste de bande ou qui a droit à ce que son nom y figure.

[...]

Registre des Indiens

5. Est maintenu au ministère un registre des Indiens, composé des listes de bande et des listes générales et où doit être consigné le nom de chaque personne ayant droit d'être inscrite comme Indien.

Listes de bande et listes générales

6. Le nom de chaque personne qui est membre d'une bande et a droit d'être inscrite doit être consigné sur la liste de bande pour la bande en question, et le nom de chaque personne qui n'est pas membre d'une bande et a droit d'être inscrite doit apparaître sur une liste générale.

L'épouse et les enfants mineurs

10. Lorsque le nom d'une personne du sexe masculin est inclus dans une liste de bande ou une liste générale, ou y est ajouté ou omis, ou en est retranché, les noms de son épouse et de ses

included, omitted, added or deleted, as the case may be.

enfants mineurs doivent également être inclus, ajoutés, omis ou retranchés, selon le cas.

Persons entitled to be registered

Personnes ayant droit à l'inscription

11. (1) Subject to section 12, a person is entitled to be registered if that person

11. (1) Sous réserve de l'article 12, une personne a droit d'être inscrite dans les cas suivants:

(a) on May 26, 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other real property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;

a) elle était, le 26 mai 1874, pour l'application de *l'Acte pourvoyant à l'organisation du Département du Secrétaire d'État du Canada, ainsi qu'à l'administration des Terres des Sauvages et de l'Ordonnance*, chapitre 42 des Statuts du Canada de 1868, loi modifiée par l'article 6 du chapitre 6 des Statuts du Canada de 1869 et par l'article 8 du chapitre 21 des Statuts du Canada de 1874, considérée comme ayant droit à la détention, l'usage ou la jouissance des terres et autres biens immeubles appartenant aux tribus, bandes ou groupes d'Indiens au Canada, ou affectés à leur usage;

(b) is a member of a band

b) elle est membre d'une bande :

(i) for whose use and benefit, in common, lands have been set apart or since May 26, 1874, have been agreed by treaty to be set apart, or

(i) soit à l'usage et au profit communs de laquelle des terres ont été mises de côté ou, depuis le 26 mai 1874, ont fait l'objet d'un traité les mettant de côté,

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;

(ii) soit que le gouverneur en conseil a déclarée constituer une bande pour l'application de la présente loi;

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

c) elle est du sexe masculin et descendante directe par les hommes d'une personne du sexe masculin décrite à l'alinéa a) ou b);

(d) is the legitimate child of

(i) a male person described in paragraph *(a)* or *(b)*, or

(ii) a person described in paragraph *(c)*;

(e) is the illegitimate child of a female person described in paragraph *(a)*, *(b)* or *(d)*; or

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph *(a)*, *(b)*, *(c)*, *(d)* or *(e)*.

...

d) elle est l'enfant légitime :

(i) soit d'une personne du sexe masculin décrite à l'alinéa *a)* ou *b)*,

(ii) soit d'une personne décrite à l'alinéa *b)*;

e) elle est l'enfant illégitime d'une personne du sexe féminin décrite à l'alinéa *a)*, *b)* ou *d)*;

f) elle est l'épouse ou la veuve d'une personne ayant le droit d'être inscrite aux termes de l'un des alinéas *a)* à *e)*.

[...]

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-179-18

STYLE OF CAUSE: PETERS FIRST NATION BAND
COUNCIL, NORMA WEBB IN
HER CAPACITY AS CHIEF OF
PETERS FIRST NATION,
LEANNE PETERS IN HER
CAPACITY AS COUNCILLOR OF
PETERS FIRST NATION AND
VICTORIA PETERS IN HER
CAPACITY AS COUNCILLOR OF
PETERS FIRST NATION v.
GUY PETERS

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

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CONCURRED IN BY: DAWSON J.A.
RIVOALEN J.A.

DATED: JULY 4, 2019

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