

Received by Damien Lee, October 2, 2012, ATIP # A-2012-00689

ADM/PENDING
2ND MINISTER
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EM/PENDING
ADM/LRT
PA
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DG/PENDING
J.M. FLEMMING
J. ALLEN
CHRONO
PENDING

SEP 26 1990

Chief Christi Pervais
Fort William Band
P.O. Box 786, Station F
THUNDER BAY, Ontario
P7C 4Z2

E-6000-1 180

Dear Chief Pervais:

Thank you for the letter and affidavit dated October 10, 1989 addressed to Ms. Jeanne Flemming concerning the membership rules of your band.

In this affidavit you state that the submission which was sent to this department in June 1987, purporting to be your band's membership rules, was only ~~discussion notes~~. You further state that the vote of the band electors held on June 26, 1987 actually approved the membership rules that you subsequently sent to the department on July 11, 1988.

On the basis of your submission of June 26, 1987 my predecessor, the Honourable Bill McKnight, had informed your predecessor on January 15, 1988 that he could not give notice that your band has control of its membership. In light of the foregoing information, I have decided to give notice pursuant to subsection 10(7) of the Indian Act that the Fort William Band has control of its membership effective June 26, 1987.

Hereafter, all additions to and deletions from the band list will be made by your band in accordance with the membership rules that you have established. I would remind the band of the provisions of the Indian Act requiring membership rules to respect acquired rights:

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- 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 or 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.
- 10(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.

As subsection 10(7) of the Indian Act requires me to give notice to the band, I would ask you to post this notice, or copies thereof, in prominent places on the reserve.

It is important for you to appreciate that should the band's membership rules be successfully challenged by anyone in court with the result that the membership rules are struck down in whole or in part, then the membership provisions of the Indian Act could become operative. Also, if such rulings were made by a court, it could call into question band decisions which were based on the rules which had been struck down.

At this time, I would like to bring the following matters to your attention. Item 4 under the heading "Probationary Members" may be ultra vires of the authority to enact membership rules as it purports to govern commercial activities. Item 11 under the heading "Termination of Probationary Membership" may breach the principles of fundamental justice as it appears to provide for an arbitrary termination of band membership for reasons which do not necessarily relate to one's status as a band member. Item 5 under the heading "Screening Applicants for Probationary Membership" appears to offend section 15 of the Canadian Charter of Rights and Freedoms and the

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Canadian Human Rights Code. Item 3(c) under the heading "Referendum Rules" is in apparent conflict with item 10(d) under the heading "Probationary Members". Item 6 under the heading "Transfers to Other Bands" may be ultra vires as it relates to the issues of lands and band funds which are beyond the authority of membership rules made under section 10 of the Indian Act. There appear to be problems with item 1 under the heading "Children". Item 1(a) seems to provide that where a child is a member of the band his parents are deemed to be members. I presume that the opposite was intended. Item 1(b) appears to be in conflict with item 1 under the heading "Adoption by Band Members". Item 9(1) under the heading "Appeals" provides for an appeal against the actions of the band or band administrative staff but fails to provide for appeals against the actions of the membership committee which is referred to under the heading "Screening Applications for Probationary Membership". Item 13 under the heading "Jurisdiction of the Membership Court" purports to exclude appeals from a decision of the membership court, exclude the jurisdiction of any other court, tribunal or body; and purports to bind Her Majesty the Queen and the Government of Canada to decisions of the membership court. All of these provisions may be ultra vires.

I am sure that you share these concerns and will, no doubt, consult your legal advisors on these matters and on the validity of the rules generally.

Yours sincerely,

Original signed by
Original signé par
TOM SIDDON

Tom Siddon, P.C., M.P.

J. ALLEN/953-6223
March 6, 1990/tb
J.M. Flemming/IRBLD
E6000-9-187

c.c.: Regional Director
Lands, Revenues and Trusts
Ontario Region

District Manager
Western District