

Federal Court



Cour fédérale

Date: 20210623

Docket: T-1124-20

Citation: 2021 FC 657

Ottawa, Ontario, June 23, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KEVIN MATTHEW GARNER

Applicant

and

**UNION BAR FIRST NATION AND
ANDREW ALEX IN HIS CAPACITY AS
CHIEF AND
COUNCIL OF UNION BAR FIRST NATION**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision allegedly made by Union Bar First Nation, and/or Chief Andrew Alex, removing the Applicant from the Union Bar First Nation Band List or otherwise revoking his membership with Union Bar First Nation [the “Decision”].

II. Background

[2] The Applicant, Kevin Matthew Garner, considered himself to be and was treated as a Union Bar First Nation [Band] member from his birth in 1967 until about July of 2019.

[3] The Respondent is either or both the Band and/or Chief Andrew Alex [Chief Alex], in his capacity as Chief and Council of the Band. The Band is a “band” within the meaning of the *Indian Act*, RSC, 1985, c I-5 [the “*Indian Act 1985*”]. Chief Alex has governed the Band without elections since 1967 and without councillors since 1994.

A. *The Applicant’s Ties to the Union Bar First Nation*

[4] The Applicant has longstanding cultural ties to the Band. His mother and son are Band members. His mother served as an elected Band councillor from 1966 to the late 1970s. His father is from Seabird Island First Nation. The Applicant’s parents were not married.

[5] The Applicant received an annual clothing allowance from the Band as a child and other benefits from the Band as an adult, including a modest cash payment around Christmas.

[6] The Applicant describes himself as a fisherman and a hunter. He fishes with his son at the family hereditary fishing sites (Sister Rock, just below American Creek and upriver of American Creek). He also teaches other Band members how to hunt and prepare traditional foods and provides traditional foods to elders and Band members in need.

[7] The Applicant has further represented the Band in fisheries activities, including on the Lower Fraser Fisheries Alliance, on the board of the Fraser Valley Aboriginal Fisheries Society, and under a 2018 Aboriginal Communal Fishing Licence.

[8] The Applicant's Certificate of Indian Status was issued in 2015 and lists the Band as his registry group. In 2000, the Respondent approved the issuance of a Certificate of Possession to the Applicant for his family ancestral home on the Band reserve.

B. *The Band List*

[9] Between 1970 and 1986, the Applicant's name consistently appeared on the Band List. At this time, the Band List was maintained by the federal government [then the Department of Indian Affairs], as provided for in section 9 of the *Indian Act 1985*:

Band Lists maintained in Department

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.

Liste de bande tenue au ministère

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

[10] The Band assumed control of its membership and the Band List on June 25, 1987 in accordance with section 10 of the *Indian Act 1985*:

Band control of membership

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.

Pouvoir de décision

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.

[11] The Band enacted Interim Membership Rules until the adoption of a final membership code, the "Membership Code 2019", on November 22, 2019. The Interim Membership Rules provided for the continued application of subsection 11(1) of the *Indian Act 1985*. Subsection 11(1) of the *Indian Act 1985* codified a person's entitlement to have their name entered in a Band List, as maintained by the Department of Indian Affairs [now the Department of Indigenous Services Canada].

C. The Applicant's Exclusion from Union Bar First Nation Activities and Entitlements

[12] Beginning in or about July of 2019, the Applicant was excluded by the Respondent from various band-related activities and entitlements, including: (i) the ratification of the Seabird Island Reserve Specific Claim Settlement Agreement [the "Settlement Agreement"]; (ii) the ratification of the Membership Code 2019, in which the current membership list excluded the Applicant; and (iii) cash distributions of settlement proceeds paid to Band members,

approximating a total of \$84,000 per-capita (as evidenced by the cash distributions received by both the Applicant's mother and son).

[13] On or about July 24, 2019, counsel for the Band advised the Applicant that he was not a Band member, but only "affiliated" with the Band. This was in response to the Applicant's inquiries as to why he had not received a voting package for the ratification of the Settlement Agreement, like his mother and son.

[14] Between August 15 and August 21, 2019, the Applicant submitted documents to help verify his Band membership, including his Certificate of Indian Status, a letter from another band confirming he was not a member of that band and his mother's birth certificate.

[15] The Applicant's name was not included in the Schedule "A" Membership List appended to the Membership Code 2019, adopted on November 22, 2019.

[16] By letter, dated November 26, 2019, the Respondent informed the Applicant that his family's entitlement to Band membership, including that of his mother and son, had been called into question by undisclosed allegations of non-Indigenous ancestry. In response to the Respondent's request, the Applicant attempted to obtain ancestral birth certificates.

[17] The Applicant's counsel requested the Interim Membership Rules, Band Lists maintained by the Band and the process used in developing Schedule A of the 2019 Membership Code on February 25, 2020 to help clarify the legal basis of the Respondent's alleged revocation of the

Applicant's Band membership. On March 12, 2020, the Respondent took the position that the Applicant was not a Band member and therefore was not entitled to the requested documents.

III. Decision Under Review

[18] The Applicant is seeking an Order or Orders declaring that the Decision is invalid or unlawful and quashing or setting aside the Decision. The Decision is allegedly the Respondent's removal of the Applicant's name from the Band List, or otherwise his Decision to revoke the Applicant's Band membership, which occurred in or before July of 2019. The Respondent denies that such a Decision was made. The Applicant also seeks costs of and incidental to this application on a solicitor-and-client basis.

IV. Issues

[19] The issues in this case are:

- A. Did the Respondent make a reviewable Decision?
- B. Does this Court have jurisdiction to review the Decision?
- C. Was there a breach of procedural fairness in rendering the Decision?
- D. Is the Decision unreasonable?
- E. What remedy is appropriate in the circumstances?

V. Standard of Review

[20] The alleged breach of procedural fairness is reviewable on the standard of correctness.

The merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Analysis

A. *The Parties' Positions*

[21] The Applicant asserts that the Respondent removed his name from the Band List or otherwise revoked the Applicant's Band membership on an unknown date. This is a reviewable decision, within this Court's jurisdiction. The Decision breached the duty of procedural fairness owed to the Applicant, as it was rendered without notice and without providing the Applicant with an opportunity to be heard. The Decision is further unreasonable as there is no factual or legal basis for it – the Applicant is allegedly entitled to Band membership.

[22] The Applicant further states that if his Band membership is not recognized or restored, he stands to suffer very serious, irreparable harm, including the loss of his home, community and cultural identity and his ability to pass these things to his son.

[23] It is the Respondent's position that the Applicant is not, and has never been, a Band member. Further, although more research is required, the Respondent believes that the entire "Garner lineage" is not entitled to Band membership, as the Applicant's great-grandparents were

allegedly not entitled. While the Applicant was provided with certain benefits as an affiliate of the Band, this does not mean that he was a Band member. Further, Chief Alex made a mistake granting the Certificate of Possession to the Applicant to his family ancestral home.

[24] The Respondent did not remove or direct removal of the Applicant's name from the Band List. As such, there is no evidence that the Decision was in fact made. It therefore cannot be reviewed by this Court.

B. *Did the Respondent make a reviewable decision?*

[25] There is a threshold issue of whether the Respondent made the Decision to remove the Applicant's name from the Band List or otherwise revoke the Applicant's Band membership. The Respondent denies taking or instructing any such action.

[26] However, it is clear that during the period in which the federal government maintained the Band List, the Applicant's name was included therein. The evidence further supports that the Respondent considered the Applicant to be a Band member, until some point in July of 2019, when the Applicant no longer received the same entitlements as other Band members.

[27] I do not accept the Respondent's position that the Applicant only received some benefits as a Band affiliate. The Applicant not only has deep cultural ties to the Band, but has represented the interests of the Band in fisheries activities. The Applicant has received the benefits of Band membership up until about July of 2019. The evidence does not support a separate class of persons which only received some benefits as affiliates to the Band.

[28] Further, the Certificate of Possession was approved by the Respondent in 2000. There is no reasonable excuse provided to support the Respondent's position that, over 10 years later, the Respondent can claim he issued the Certificate of Possession in error, on the basis of an alleged, but unproven lack of Band membership.

[29] I further note the Applicant's argument regarding his Band membership entitlement, which is uncontested. The Applicant was registered under section 11(1)(e) of the *Indian Act*, RSC 1970, c I-6:

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

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

[30] This entitlement was preserved by section 11(1)(a) of the *Indian Act 1985*, providing:

**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;

[31] Further, this entitlement would have continued to exist under the Interim Membership Rules until November of 2019. As such, the Respondent was precluded from removing the Applicant's name from the Band List.

[32] While it is unclear on the record at which point the Applicant's name was no longer included in the Band List, the Respondent cannot claim no Decision was made. The Respondent's treatment of the Applicant changed dramatically in 2019. There can be no doubt that the Respondent made and acted upon a Decision. The failure to formalize the Decision is not a bar to judicial review, as this "would be an encouragement for band councils and other administrative entities to refrain from recording their decision and to proceed on the basis of informal decisions" (*Okemow-Clark v Lucky Man Cree First Nation*, 2008 FC 888 at paras 29-30 [*Okemow-Clark*], aff'd 2010 FCA 48).

[33] The Respondent asserts it is the Applicant's responsibility to first ascertain whether the Registrar or Department of Indian Affairs (as it was at the time) deleted the Applicant's name from the Band List. In such an instance, there may have been a reviewable decision (*Landry v Canada (Registrar of the Indian Register, Indian & Northern Affairs Canada)*, 118 FTR 184 at paras 36, 37, 41, 45-48, 52 [*Landry*], 67 ACWS (3d) 3). Further, the appropriate course of action for the Applicant would be to apply for Band membership pursuant to the Membership Code 2019. If the Applicant is refused such membership, at this time, he may seek judicial review.

[34] I do not find the circumstances in *Landry* applicable to this case. The Federal Court in *Landry* considered the application of subsection 5(3) and section 14.2 of the *Indian Act* in

relation to the Department of Indian Affairs' authority to add or remove the name of any person from the Indian Register. In *Landry*, it was determined that within this context, a final decision had not been rendered. In the current case, a decision has been rendered by the Band. I have not been pointed to any internal review process in which the Applicant has failed to participate.

C. *Does this Court have jurisdiction to review the Decision?*

[35] Judicial review of the Decision falls within this Court's jurisdiction. A band council's decision to remove a person's name from a Band List, the authority for which is provided under section 10 of the *Indian Act 1985*, is a decision of a "federal board, commission or other tribunal" and subject to judicial review (*Federal Courts Act*, RSC 1985, c F-7, ss 2(1), 18(1); *Ermineskin v Ermineskin Band Council*, [1995] FCJ No 821 at paras 13-14, 96 FTR 181).

D. *Was there a breach of procedural fairness in rendering the Decision?*

[36] The Decision has a significant impact on the Applicant. He identifies with the Band and has been treated as a Band member since his birth. The Applicant stands to lose the right to possess his family ancestral home, his connection with the Band and his share of the per-capita distribution of the settlement proceeds. The stakes for the Applicant are extremely high.

[37] I accept the Applicant's position that he was entitled to notice and a meaningful opportunity to participate in the decision-making process, including the right to be heard. I further add that the Applicant was entitled to relevant disclosure in order to appropriately

respond. This includes, but is not limited to, the documents requested by his counsel on February 25, 2020.

[38] No procedural fairness was afforded to the Applicant in the context of making the Decision. The Applicant received no notice, received evasive responses to his inquiries and was not afforded any meaningful disclosure, or an opportunity to be heard. The Decision was made on the basis of undisclosed allegations, which remain unsubstantiated. The Respondent breached the Applicant's right to procedural fairness.

E. *Is the Decision unreasonable?*

[39] The Decision does not meet the standard of reasonableness. There is no reasonable factual or legal basis for the Respondent's Decision to remove the Applicant's name from the Band List or otherwise to revoke his Band membership. The Decision lacks justification, transparency and intelligibility. The only explanation offered by the Respondent appears to be the suggestion that two of the Applicant's great-grandparents were either non-Indigenous or "not of the Union Bar lineage". No evidence was provided to support the proposition, nor rationale that this would create a legal basis to revoke the Applicant's Band membership. In fact, the Respondent appears to be trying to gather evidence "after-the-fact" of the Decision to substantiate the revocation of the Applicant's Band membership. As stated in the Respondent's memorandum of fact and law at paragraph 2:

It was Chief Alex's belief that the Applicant is not a member, and has never been a member, of Union Bar, although it appears that Canada had included the Applicant on the Union Bar membership list maintained by it until December 31, 1986. Union Bar took control of its membership list on June 25, 1987.

[40] Chief Alex's Affidavit, sworn on March 2, 2021, suggests that the Band is currently investigating the circumstances of the Applicant's Band membership, with the stated objective of trying to prove the Applicant is not entitled (paragraphs 3, 5):

As stated in paragraph five of My First Affidavit, Union Bar First Nation has retained a researcher to locate the documents supporting the Union Bar First Nation's position that Joseph Garner and his wife, Annie Garner, should never have been placed on the Union Bar's Membership List and thus that error should have been corrected, and Joseph Garner and Annie Garner and all of their descendants, including the Applicant Kevin Matthew Garner, should have been removed from Union Bar's Membership List maintained by what was then the Department of Indian Affairs ("DIA") at the latest the day before the Union Bar First Nation took control of its Membership List on June 25, 1987. As such, Kevin Garner should not have been on the Membership List of the Union Bar First Nation as I now see that it appears that he was prior to June 25, 1987. The DIA's adding Joseph Garner to Union Bar's Membership List then maintained by the DIA resulted in huge losses of Union Bar's timber resources to the benefit of Joseph Garner and the detriment of Union Bar and its members.

...

It is my position as the Chief of the Union Bar First Nation that until the Union Bar First Nation is able to obtain the documentation that I saw, review it and properly present it to this honourable Court, this matter is not capable of fair resolution and the Union Bar First Nation will be severely prejudiced...

[41] It is troubling that the Respondent submits it does not know if it received a copy of the Band List from the Department of Indian Affairs when it assumed control of the Band List. Chief Alex further does not know whether the Applicant was on the Band List. Meanwhile, the Band List was maintained by Chief Alex's wife, once the Band assumed control and subsequently by Chief Alex's daughter, beginning in 2013.

[42] Moreover, even after the Band's adoption of the Membership Rules 2019, the Respondent's authority to remove names from the Band List was constrained by subsections 10(4) and 10(5) of the *Indian Act 1985*:

Acquired rights

(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.

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.

Droits acquis

(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.

Idem

(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.

[43] The research of the Respondent as to the "Garner lineage" constitutes "a situation that existed or an action that was taken before the [Membership Rules 2019] came into force". To the extent the Membership Code 2019 contravenes subsections 10(4) and 10(5) of the *Indian Act 1985*, it does not provide a valid basis for removing the Applicant's Band membership. For example, subsection 8.1(b) and 8.2-8.3 of the Membership Code 2019 states:

Part VIII – Loss of Membership

8.1 A person's entitlement to be a Member, and all the benefits that accrue as a result of being a Member, ceases immediately upon:

(b) a final determination being made that the person became a Member as a result of an error or on the basis of false or inaccurate information; or

...

8.2 Where the Membership Administrator has reason to believe that a person became a Member as a result of an error or on the basis of false or inaccurate information the Membership Administrator shall advise the Member in writing of the error or inaccurate information and allow the Member thirty (30) days from the date the notice was given to provide additional information.

8.3 Upon expiration of the time limit referred to in section 8.2, the Membership Administrator shall submit the original information and any information received from the Member to the Chief and, if applicable, the Council who shall render a decision in writing and provide reasons for the decision.

[44] While the Respondent may seek to rely on subsection 8.1(b) of the Membership Code 2019, no final determination was rendered by the Respondent in this case. While the Respondent made and acted upon the Decision as to the Applicant's Band membership, it is clear the Respondent is still gathering evidence to make a final determination, as described in subsection 8.1(b) of the Membership Code 2019. The Applicant further was not provided with any notice or opportunity to respond. Even if subsection 8.1(b) of the Membership Code 2019 were to apply to the Applicant's circumstances, the Respondent effectively breached the process prescribed in any event.

[45] The Respondent's position that the Applicant is not a Band member is simply not supported by the record. His Decision to remove the Applicant from the Band List or revoke

Band membership is unsupported and lacks justification, transparency and intelligibility. The basis of such a revocation is further not supported in law, pursuant to subsections 10(4) and 10(5) of the *Indian Act 1985*.

F. *What remedy is appropriate in the circumstances?*

[46] The Respondent submits that the matter should be referred back to the Band for redetermination (*Peters First Nation Band Council v Peters*, 2019 FCA 197 at paras 52, 55-63 [*Peters*]; *Okemow-Clark*, above at paras 35-38).

[47] Remedies are discretionary. It is most often appropriate to remit a matter for redetermination by a decision maker, in circumstances where a decision cannot be upheld by applying the reasonableness standard (*Vavilov*, above at para 141). However, a reviewing Court should consider whether remitting the matter would serve any practical or legal purpose (*Peters*, above at para 56; *Vavilov* at para 142). This is not such a case.

[48] I find it appropriate to quash the Decision and re-instate the Applicant's Band membership, without interruption. The Applicant's entitlement to Band membership is such that the outcome is inevitable and remitting the matter to the Band would serve no useful purpose, but rather stymie the timely and effective resolution of the matter (*Vavilov* at para 142). Unlike the authorities relied on by the Respondent, there is no question as to the Applicant's Band membership up until July of 2019.

[49] The circumstances of this case are distinguishable from the Federal Court of Appeal's decision in *Peters*. That case considered a contemporaneous application for band membership, where the band council had failed to grapple with two central issues related to the applicant's entitlement to band membership. The Federal Court in *Okemow-Clark* found in part that there was little evidence to support whether the applicants in that case had their names entered on the band list in question, prior to the day the Lucky Man Cree Nation assumed control of its membership (*Okemow-Clark* at paras 35-37).

[50] The evidence is undisputed that the Applicant's name was present on the Band List maintained by the federal government, prior to the Band's assumption of control. The Respondent admits that "Canada has included the Applicant on the Union Bar membership list maintained by it until December 31, 1986", prior to the Band assuming control.

[51] I further note the Respondent's complete disregard for procedural fairness and unwavering, yet unfounded position that the Applicant is not entitled to Band membership. In such circumstances, concerns for delay, fairness to the parties and the urgency of providing a resolution to the dispute also favour this Court's exercise of remedial discretion in this case.

[52] The impact of quashing the Decision in this case is an uninterrupted re-instatement of the Applicant's Band membership.

[53] I find that lump sum costs should be awarded to the Applicant, pursuant to the *Federal Courts Rules*, SOR/98-106, rule 400(4). While the Applicant seeks costs on a solicitor-and-client

basis, this award is rarely granted and reserved for cases where a party displays “reprehensible, scandalous or outrageous conduct” (*Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 67). This high threshold has not been established in this case. However, the circumstances of this case nonetheless justify lump sum costs, awarded on an elevated scale in the amount of 50% of actual legal fees, \$54,086.87 (50% of \$108,173.74) (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 at paras 28, 33 [*Whalen*]). The Applicant is also entitled to his disbursements in the amount of \$1,501.26. Costs are payable forthwith by the Respondent.

[54] The discretion to award lump sum costs is exercised in consideration of all relevant factors, including those enumerated in rule 400(3) of the *Federal Courts Rules* (*Whalen*, above at para 31). The appropriate magnitude of a lump sum award typically falls within a range of 25% to 50% of actual legal costs of the successful party (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 17 [*Nova Chemicals*]; *Whalen* at para 33). The relevant rule 400(3) factors weigh in favour of an elevated lump sum costs award in this case.

[55] The Respondent began to treat the Applicant dramatically different in July of 2019, with no legal or factual basis for doing so. The onus was placed on the Applicant, who made inquiries with the Respondent, only to discover unsubstantiated concerns existed as to his Band membership. The Applicant was afforded no notice, no opportunity to respond and no disclosure, despite requests for further information.

[56] It was the Respondent’s responsibility to maintain the Band List, after assuming control on June 25, 1987. The Band List was supposedly maintained by his wife and later, his daughter.

Therefore, to the extent the Respondent claims a lack of knowledge of whether a Band List was received from the Department of Indian Affairs and the members listed therein over the years, the Respondent is seeking to rely on his own failure to assume these responsibilities.

[57] Such conduct, an exercise of careless power, must be discouraged by this Court and warrants a lump sum costs award at the high end of the range described by the Federal Court of Appeal in *Nova Chemicals*, of 50% of actual legal fees.

VII. Conclusion

[58] For the reasons set out above, the Decision is quashed. The Applicant's membership in the Union Bar First Nation is reinstated, without interruption in the Applicant's entitlements and benefits. Costs are awarded to the Applicant on a lump sum basis in the amount of \$54,086.87, plus disbursements of \$1,501.26.

VIII. Appendix A: Relevant Provisions

[59] The relevant provisions of the *Indian Act 1985* include:

Band Lists maintained in Department

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.

Band control of membership

Liste de bande tenue au ministère

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

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.

Acquired rights

(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.

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.

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

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.

Droits acquis

(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.

Idem

(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.

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

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;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

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

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

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;

b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)b) comme membre de cette bande;

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

d) elle est née après le 16 avril 1985 et a le droit d'être inscrite en vertu de l'alinéa 6(1)f) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

JUDGMENT in T-1124-20

THIS COURT'S JUDGMENT is that:

1. This Application is allowed and the decision to remove the Applicant as a member of the Union Bar First Nation is quashed;
2. The Applicant is hereby reinstated as a Union Bar First Nation member, without interruption in said membership; and
3. Costs and disbursements are awarded to the Applicant in the amount of \$55,588.13, inclusive of taxes and interest, and are payable forthwith by the Respondent.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1124-20

STYLE OF CAUSE: KEVIN MATTHEW GARNER v UNION BAR FIRST NATION AND, ANDREW ALEX IN HIS CAPACITY AS CHIEF AND, COUNCIL OF UNION BAR FIRST NATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 15, 2021

JUDGMENT AND REASONS: MANSON J.

DATED: JUNE 23, 2021

APPEARANCES:

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