

Date: 20070124

Docket: T-1985-05

Citation: 2007 FC 30

BETWEEN:

**BAND COUNCIL OF THE ABENAKIS OF ODANAK,
a federal board, commission or other tribunal within the meaning of
subsection 2(1) of the *Federal Courts Act*, in its capacity as
Council of the band of the Abenakis of Odanak,
a band within the meaning of the *Indian Act*, having its
business office at 102 Sibosis Street, Odanak, Quebec, J0G 1H0,**

Applicant

and

**THE HONOURABLE ANDY SCOTT, in his capacity as
Minister of Indian Affairs and Northern Development Canada,
a federal board, commission or other tribunal within the meaning of
subsection 2(1) of the *Federal Courts Act*, having a business office at
10 Wellington Street, Suite 2100, Gatineau, Quebec, K1A 0H4,**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of a decision dated October 3, 2005, by the respondent in his capacity as Minister of Indian Affairs and Northern Development Canada, under subsection 10(7) of the *Indian Act*, R.S.C. (1985), c. I-6 (the Act), by which the respondent refused

to give notice to the Abenakis of Odanak band that it would from now on have control of its own membership under the Act.

[2] Section 10 of the Act reads as follows:

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.

(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

(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.

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.

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

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

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

(3) Lorsque le conseil d'une bande prend, en vertu de l'alinéa 81(1)p.4), un règlement administratif mettant en vigueur le présent paragraphe à l'égard de la bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande âgés d'au moins dix-huit ans.

(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) 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.

(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.

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance.

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

(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.

(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.

(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.

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

[3] It was in the year 2001 that the Abenakis of Odanak band council, a “band” within the meaning of the Act, took steps with the Department of Indian Affairs and Northern Development Canada (DIAND) to assume control over its own membership under section 10 of the Act.

[4] The consent process required to assume control over its own membership began on May 8, 2003, when voting documents were mailed to members of the Abenakis of Odanak band. The Abenakis of Odanak band council (the applicant) ended the consent process on December 4, 2004. On January 12, 2005, the applicant forwarded its notice to the Minister, pursuant to subsection 10(6) of the Act, to the effect that from now on the Abenakis of Odanak band council would have control over its own membership.

[5] On October 3, 2005, the Minister advised the applicant that the Abenakis of Odanak band council could not assume control over its own membership because it had not obtained the consent to do so from a majority of its electors.

[6] It is important to reproduce the following excerpt from the letter dated October 3, 2005, to the Chief of the Abenakis of Odanak band council by the Minister of Indian Affairs and Northern Development Canada, as this extract contains the essential elements of the decision in question:

[TRANSLATION]

This is in answer to your correspondence dated January 12 and April 7, 2005, to the effect that the Odanak band will assume control over its membership from now on, pursuant to section 10 of the *Indian Act*.

You have advised me that, given that 85 per cent of your electors live off reserve and are dispersed across Canada and the United States, and since the Department of Indian Affairs and Northern Development Canada does not maintain a list of addresses of band electors, it was impossible for you to contact more than 330 of the 1,555 band electors. In spite of these difficulties, you confirmed that you had consulted with a majority of more than 59 per cent of electors for whom either the band or the Department had an address.

As you know, under subsection 10(1) of the Act, the Minister must be certain that a majority of the First Nation electors have authorized the rules of membership determined by the First Nation before it can be given a notice advising it that it may assume control of its own membership. The Act is very clear as to the consent which the majority of electors must give as a condition precedent to the transfer of membership. If, as you have suggested, your electoral base should be artificially reduced by striking out the names of electors whose addresses are not available, your First Nation and the Department might face legal liability for having reduced the electoral base. Application of the Odanak band membership rules could be considered null and void if legal proceedings were undertaken. Such a situation would mean that any person who became a band member under these rules could lose his or her membership. Furthermore, any person refused membership could probably claim the loss of future benefits. Considering this serious risk, I am unable to accept your suggestion to reduce your electoral base, and unfortunately I must advise you that I cannot give you a notice to the effect that the Odanak band may assume control of its membership.

[7] Section 8 of the Act states that 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. Section 9 of the Act provides that band lists are maintained by default by the DIAND, more specifically, by its Registrar, who applies the provisions of section 11 of the Act to update the list (sections 8, 9 and 11 of the Act are reproduced in an annex to these reasons). Section 10 of the Act, reproduced above, provides that an Indian band which meets its conditions may maintain its own band list.

[8] The word “elector”, to which section 10 refers, is defined as follows in subsection 2(1) of the Act:

<p>“elector” means a person who</p> <ul style="list-style-type: none"> (a) is registered on a Band List, (b) is of the full age of eighteen years, and (c) is not disqualified from voting at band elections; 	<p>« électeur » Personne qui remplit les conditions suivantes :</p> <ul style="list-style-type: none"> a) être inscrit sur une liste de bande; b) avoir dix-huit ans; c) ne pas avoir perdu son droit de vote aux élections de la bande.
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[9] For the purposes of applying section 10, the band must first establish its rules of membership in writing and then obtain the consent of a majority of its electors through a vote—this vote being held in accordance with procedures set by the band itself, as such procedures are not specifically provided for under the Act—before finally sending the Minister notice of its intention to assume control of its own membership.

[10] In this case, it appears from the decision in question that the rules for membership in the Abenakis of Odanak band are in compliance with subsection 10(1) of the Act. However, the Minister noted in this same decision that the consent process conducted by the band did not meet the

condition under the same subsection 10(1) to the effect that a band must obtain the consent of a majority of its electors.

[11] In practice, the electoral base of an Indian band which holds its elections in accordance with the Act, as the band did in this case, consists of persons at least 18 years of age whose names are on the band list maintained by the Registrar or the band, as the case may be (section 4 of the *Indian Band Election Regulations*, C.R.C., c. 952—this section is reproduced in the annex to these reasons). Since the decision of the Supreme Court of Canada in *Corbiere v. Canada (Minister of Indian Affairs and Northern Development Canada)*, [1999] 2 S.C.R. 203, band members who are not ordinarily resident on the reserve retain the right to vote and may be band “electors” if they meet the other required conditions. Thus, the number of eligible electors for a given vote or election, that is, the electoral base, is a precise and determinate number based on the relevant band list.

[12] On the one hand, the applicant interprets the words “a majority of the electors of the band gives its consent” in subsection 10(1) of the Act as meaning that if there are 1,000 electors on the band list, at least 501 of them must vote, and more than 50 per cent of them must be in favour. Therefore, according to the applicant, the [TRANSLATION] “majority of the majority” must be considered.

[13] On the other hand, the respondent submits that to have control over its membership under subsection 10(1) of the Act, a band must obtain a favourable or affirmative vote of 50 per cent of all band electors plus one, in other words, an absolute majority.

[14] In fact, it is not contested that on the date of the beginning of the consent process undertaken by the Abenakis of Odanak band council, that is to say, May 8, 2003, 1,555 persons of at least 18 years of age were registered on the relevant band list maintained by the Registrar. As at the date of the election in question, that is, October 3, 2005, the number of electors registered on this list had been reduced to 1,545, since the Registrar had struck out the names of seven persons who were deceased as of May 8, 2003, according to statutory declarations submitted by the Odanak local administrator of the Indian Register, and of three additional persons presumed to be dead because they would have been over 115 years of age on May 8, 2003.

[15] Therefore, it appears from the evidence that the electoral base of the Abenakis of Odanak band for the purposes of the consent vote it undertook under section 10 of the Act included 1,555 electors. This electoral base was then reduced to 1,545 electors because before the date of the decision in question, 10 files were struck out from the Indian Register and therefore from the band list used to establish the voters list of the Abenakis of Odanak band. Accordingly, to obtain the required consent of a majority of band electors under subsection 10(1) of the Act, the Abenakis of Odanak band had to either (a) obtain affirmative votes from 773 electors, if the absolute majority concept advanced by the respondent applies, or (b) have at least 773 electors participate in the vote, with at least 387 of these participants voting in favour, in accordance with the majority-of-the-majority argument submitted by the applicant.

[16] The results of the vote organized by the Abenakis of Odanak band were sent to the Minister after the band had chosen to end the consent process pursuant to subsection 10(6) of the Act. These results showed that no more than 770 (figure submitted by the applicant) and no less

than 769 (figure submitted by the respondent) electors had participated in the consent process, of which no more than 731 (figure submitted by the applicant) and no less than 728 (figure submitted by the respondent) had voted in favour of the band's assuming control of its membership.

[17] Therefore, even if we accept the figures of 770 participating electors and 731 electors in favour, as submitted by the applicant, the evidence shows that the majority required under the Act, be it an absolute majority or the majority of the majority, was not obtained. We are at least 42 affirmative votes short of the absolute majority advocated by the respondent, and to obtain the majority of the majority favoured by the applicant, there had to be at least three more participating electors.

[18] The balance of evidence from the affidavit of Janice McMichael and from the cross-examinations of Gilles O'Bomsawin and Daniel G. Nolett leads to the conclusion that the applicant was well aware of the criteria for consent and the electoral base required when it decided to end the consent process on December 4, 2004, and freely gave its notice to the Minister under subsection 10(6) of the Act on January 12, 2005.

[19] Moreover, the applicant tried to have the electoral base of the Abenakis of Odanak band reduced by requesting that the Registrar strike out the records of 33 persons [TRANSLATION] "presumed deceased" and asking the Minister to not take into consideration the persons whose addresses were unknown to the Abenakis of Odanak band council.

[20] With regard to the request to strike out the names of 33 persons presumed to be deceased, the applicant did not succeed in striking out all these records before the consent process was ended and notice was given to the Minister under subsection 10(6) of the Act. On this point, given that the applicant did not satisfy me that the Minister, his officials or the Registrar had arbitrarily refused to strike out these records, intervention by this Court is not warranted. In addition, nothing in the evidence shows that the provisions of section 11 of the Act concerning the updating of the band list were not respected.

[21] As regards the request to the Minister to not take into consideration the persons whose addresses were unknown to the band council, the Minister did not have the necessary discretion to reduce the band list of the Abenakis of Odanak and, consequently, the electoral base of that band. If he had done so, he would have arbitrarily deprived some electors of the Abenakis of Odanak band of the right to vote. Likewise, the Minister did not have the necessary discretion to accept the results of a vote that did not attain the level of consent required under subsection 10(1) of the Act.

[22] In these circumstances, there is no need to determine which of the two majorities in this case, either an absolute majority or a majority of the majority, should have been applied. In either case, it is clear that the majority of electors required under subsection 10(1) of the Act was not obtained.

[23] Alternatively, the applicant submits that there was a lack of procedural fairness resulting from the premature nature of the Minister's decision and his failure to fulfill the legitimate expectations he created.

[24] First of all, given the allegedly premature nature of the Minister's decision, as the applicant submits, it is important to note that it was the applicant that initiated the consent process in question in 1986 when it initially contacted DIAND to try to obtain funding to draft its membership code. After having completed its draft membership Code in consultation with DIAND officials, the applicant received confirmation from the officials that, in their opinion, this draft was in compliance with the requirements of section 10 of the Act, subject to approval by a majority of the band's electors, as required under subsection 10 (1) of the Act.

[25] In beginning the consent process required to assume control of its membership on May 8, 2003, the applicant decided to hold a postal vote, assisted by DIAND officials who sent the appropriate voting documents to 82 electors for whom the applicant had no address.

[26] As has already been mentioned, on November 25, 2004, the applicant decided to end the voting process, and on January 12, 2005, it gave notice to the Minister under subsection 10(6) of the Act, which specifies that "[w]here 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".

[27] On August 22, 2005, DIAND officials sent the Minister a memorandum containing all the documents required for a decision under subsection 10(7) of the Act, as well as their recommendations concerning the notice filed by the applicant under subsection 10(6) of the Act.

[28] On October 3, 2005, the Minister rendered the decision which is the subject of this application for judicial review.

[29] Therefore, these facts show that the Minister's decision was not in any way premature, as it was only a follow-up to the notice given to the Minister by the applicant, which called for a decision concerning the transfer of the control of band membership. The Minister had to act in accordance with subsection 10(7) of the Act, which states, "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". Having noted that the conditions set out in subsection 10(1) were not met, the Minister simply advised the applicant that the Abenakis of Odanak band could not consequently assume control over its membership. Nothing in the Act or in the facts adduced obliged the Minister to delay his decision.

[30] As far as the allegation concerning legitimate expectations created by the Minister during the approval process is concerned, no evidence shows that the Minister, his officials, or the Registrar told or promised the Abenakis of Odanak band, or led the band to believe, that the approval level required under section 10 of the Act would be reduced or adjusted to mitigate the impact of *Corbiere, supra*, which holds that all band members, whether residing on or off reserve, have the right to vote.

[31] More specifically, section 9 of the Act provides that the DIAND Registrar shall maintain the band list until the band assumes responsibility for it. Each band list includes the names of the band members, and 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”. The band list maintained in the Department “shall indicate the date on which each name was added thereto or deleted therefrom”. However, nothing requires the Registrar, for the purposes of registration, to search for the addresses of persons whose names are on a band list.

[32] The applicant should know that the Act does not allow the Registrar to delete names from a band list for reasons other than those set out in section 11. Therefore, the Registrar cannot delete from a band list, just as the Minister cannot strike from the electoral base, the names of persons who, for example, have not been in contact with the band or the Registrar for a certain number of years.

[33] I agree with the respondent that the accuracy of the information in the band list at the Registrar’s office depends to a large extent on the initiative and willingness of each registered person to advise the Registrar or the Indian Registry officer of the band of any changes in address or civil status, births and deaths in his family, and similar information. The Registrar is not required under the Act to update the addresses of which he is advised from time to time by band members when, for example, they wish to obtain an Indian card or when they wish to register themselves or a member of their family in the Indian Registry.

[34] As far as deceased persons on the Indian Registry are concerned, the Registrar strikes out the record when notified of the death of that person or when evidence of the death of that person is received: for example, a death certificate issued by a registrar of civil status, a death certificate issued by a funeral home director, or, in the case of persons from 100 to 114 years of age, a statutory declaration sent to the Registrar certifying that the affiant knew the person in question and knows that he or she is dead. Otherwise, the records of these persons remain active until the Registrar receives evidence of death or until it is reasonable to believe that such a person has died.

[35] The relationship the Registrar has with persons who are registered on the band list is therefore essentially limited to adding or deleting the names of these persons in respect of the Indian Registry or band list, and only for those reasons set out in the Act. This relationship does not include the obligation to maintain or update addresses on the list.

[36] The band list maintained by the Registrar for the Abenakis of Odanak actually did contain the names of persons for whom the Registrar did not have any known address and the names of other persons from 100 to 114 years of age for whom no recognized proof of death had been sent to the Registrar.

[37] Accordingly, the applicant knew or should have known that this was the band list of the Abenakis of Odanak as it was at the beginning of the consent process, and the number of persons registered on it was the reference number for the purposes of this process.

[38] The respondent did not in any way create a legitimate expectation that he would help the applicant contact 330 off-reserve electors for whom he did not have any address. Nothing in the evidence shows that the Minister, DIAND officials, or the Registrar had stated that the applicant would be given assistance in tracing the 330 electors.

[39] Furthermore, it should be noted that nothing in the Act obliges the Minister, his officials, or the Registrar to search for the addresses of band members for the purposes of the consent process under section 10 of the Act.

[40] The fact that DIAND officials were accommodating and helped the applicant by forwarding appropriate voting documents to 82 electors for whom the applicant did not have the addresses certainly did not create a legitimate expectation that they would help the applicant contact 330 off-reserve electors or, even less so, that they would recommend to the Minister that he render a decision favourable to the applicant in any case.

[41] Finally, nothing in the evidence shows that the Minister, DIAND officials, or the Registrar said, promised, or implied to the applicant that a reference number of electors would be set for the purposes of the consent process in question. As mentioned above, the evidence shows that the applicant was well aware of the criteria required for the consent and knew the electoral base required when the voting ended on December 3, 2004, and when the notice was sent to the Minister under subsection 10(6) of the Act.

[42] In these circumstances, the applicant's arguments as to the legitimate expectations created by the respondent or his officials must fail.

[43] For all these reasons, in spite of the sympathy one may have for the Abenakis of Odanak band council and the persons who assisted it during this first attempt, in especially difficult conditions, at obtaining the right to assume control over its membership, intervention by this Court is not warranted, and the application for judicial review must be dismissed. In the circumstances, there will be no order as to costs.

“Yvon Pinard”

Judge

Ottawa, Ontario
January 24, 2007

Certified true translation
Michael Palles

ANNEX

Indian Act, R.S.C. (1985), c. I-6

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.

(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.

(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.

11. 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

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.

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

(2) Les noms figurant à la liste d'une bande le 16 avril 1985 constituent la liste de cette bande au 17 avril 1985.

(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.

(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.

(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné, à moins qu'une demande à cet effet soit présentée au registraire.

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) 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)(c) 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.

(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.

- 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)c) 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.

(2) À compter du jour qui suit de deux ans la date de sanction de la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, ou de la date antérieure choisie en vertu de l'article 13.1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière dans l'un ou l'autre des cas suivants :

- a) elle a le droit d'être inscrite en vertu des alinéas 6(1)d) ou e) et elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas;
- b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)f) ou du paragraphe 6(2) et un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son

(3) For the purposes of paragraph (1)(d) and subsection (2),

- (a) a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered; and
- (b) a person described in paragraph (2)(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which that person has the closest family ties, as the case may be.

Indian Band Election Regulations, C.R.C., c. 952

4. (1) At least 79 days before the day on which an election is to be held

- (a) where the band holding the election has assumed control of its own membership under section 10 of the Act, the band shall provide the electoral officer with a list of the names of all electors; and

décès.

(3) Pour l'application de l'alinéa (1)d) et du paragraphe (2) :

- a) la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné;
- b) la personne visée à l'alinéa (2)b) est réputée avoir droit à ce que son nom soit consigné dans la même liste de bande que celle dans laquelle le parent visé au même paragraphe a ou avait, ou est réputé avoir, en vertu du présent article, droit à ce que son nom y soit consigné.

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits.

4. (1) Au moins soixante-dix-neuf jours avant l'élection :

- a) lorsque la bande qui tient l'élection a choisi de décider de l'appartenance à ses effectifs selon l'article 10 de la Loi, la bande fournit au président d'élection le nom des électeurs;

(b) where the Band List of the band holding the election is maintained in the Department under section 11 of the Act, the Registrar shall provide the electoral officer with a list of the names of all electors.

(2) A voters list shall set out

(a) where the reserve consists of more than one electoral section,

- (i) the names of band members eligible to vote for chief, in alphabetical order, and
- (ii) the names of band members eligible to vote for councilors, in alphabetical order;

(b) where the reserve consists of one electoral section, the names of all electors, in alphabetical order; and

(c) the band membership or registry number of each elector or, if the elector does not have a band membership or registry number, the date of birth of the elector.

(3) On request, the electoral officer or deputy electoral officer shall confirm whether the name of a person is on the voters list.

(4) The electoral officer shall revise the voters list where it is demonstrated that

- (a) the name of an elector has been omitted from the list;
- (b) the name of an elector is incorrectly set out in the list; or
- (c) the name of a person not qualified to vote is included in the list.

(5) For the purposes of subsection (4),

(a) a person may demonstrate that the name of an elector has been omitted from, or

b) lorsque la liste de la bande qui tient l'élection est tenue au ministère selon l'article 11 de la Loi, le registraire fournit au président d'élection le nom des électeurs.

(2) La liste électorale contient les renseignements suivants :

a) lorsque la réserve est divisée en plus d'une section électorale :

(i) le nom, en ordre alphabétique, des membres de la bande qui ont les qualités requises pour voter pour le chef,

(ii) le nom, en ordre alphabétique, des membres de la bande qui ont les qualités requises pour voter pour un conseiller;

b) lorsque la réserve se compose d'une seule section électorale, le nom des électeurs en ordre alphabétique;

c) le numéro de membre de bande ou le numéro de registre de l'électeur ou, à défaut d'un tel numéro, sa date de naissance.

(3) Sur demande, le président d'élection ou le président du scrutin confirme l'inscription de toute personne sur la liste électorale.

(4) Le président d'élection corrige la liste électorale si une personne établit que l'une des situations suivantes existe :

- a) le nom d'un électeur a été omis de la liste;
- b) l'inscription du nom d'un électeur est inexacte;
- c) la liste comporte le nom d'une personne inhabile à voter.

(5) Pour l'application du paragraphe (4) :

a) une personne établit que le nom d'un électeur a été omis

incorrectly set out in, the voters list by presenting to the electoral officer evidence from the Registrar or from the band that the elector

- (i) is on the Band List or is entitled to have his or her name entered on the Band List,
 - (ii) is at least 18 years of age, and
 - (iii) is qualified to vote at band elections; and
- (b) a person may demonstrate that the name of a person not qualified to vote has been included in the voters list by presenting to the electoral officer evidence that that person
- (i) is neither on the Band List nor entitled to have his or her name entered on the Band List,
 - (ii) is not at least 18 years of age, or
 - (iii) is not qualified to vote at band elections.

de la liste ou que son inscription est inexacte, sur présentation au président d'élection d'une preuve émanant du registraire ou de la bande indiquant les faits suivants :

- (i) l'électeur est inscrit sur la liste de bande ou a droit de l'être,
 - (ii) il est âgé d'au moins dix-huit ans,
 - (iii) il possède les qualités nécessaires pour voter à une élection de la bande;
- b) une personne établit qu'une personne inscrite sur la liste électorale est inhabile à voter, sur présentation au président d'élection de la preuve d'un des faits suivants :
- (i) elle n'est ni inscrite sur la liste de bande ni n'a droit de l'être,
 - (ii) elle n'est pas âgée d'au moins dix-huit ans,
 - (iii) elle ne possède pas les qualités nécessaires pour voter à une élection de la bande.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1985-05

STYLE OF CAUSE: BAND COUNCIL OF THE ABENAKIS OF ODANAK
v. THE HONOURABLE ANDY SCOTT

PLACE OF HEARING: Montréal, Quebec

DATES OF HEARING: December 11 and 12, 2006

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Pinard

DATED: January 24, 2007

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