

Federal Court



Cour fédérale

Date: 20160616

Docket: T-1717-15

Citation: 2016 FC 672

Ottawa, Ontario, June 16, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**PETER MALCOLM, JIMMI GRANT and ED
TATUM**

Applicants

and

FORT McMURRAY FIRST NATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicants are seeking an order declaring that the Membership Clerk of Fort McMurray First Nation's [FMFN 468] identical decision on each of the Applicants' membership application is contrary to the Membership Code of the FMFN 468 and to compel the Membership Clerk to make a decision pursuant to the Membership Code.

[1] For the reasons that follow, the application is dismissed.

II. Background

[2] On June 1, 2015, Peter Malcolm completed an application for membership in FMFN 468 on the basis that his grandmother, Caroline Thompson, was given scrip in 1899 as a member of the Cree-Chipewyan Band until it was cancelled in 1901.

[3] On June 17, 2015, Jimmie Grant completed an application for membership in FMFN 468 on the same basis and ancestor as Mr. Malcolm.

[4] On August 27, 2015, Edgar Kenneth Tatum completed an application for membership in FMFN 468.

[5] On September 17 and 18, 2015, the Membership Clerk advised Mr. Malcolm and Mr. Grant that in the absence of confirmation of their registration under the *Indian Act*, RCS 1985 c I-5, she was unable to take any further action regarding their application for membership in FMFN 468.

[6] On September 21, 2015, the Membership Clerk advised Mr. Tatum that in the absence of confirmation of his registration under the *Indian Act*, she was unable to take any further action regarding his application for membership in FMFN 468.

III. Impugned Decision

[7] On September 17, 18 and 21, 2015, the Membership Clerk advised the Applicants that their membership applications would not be processed as the Applicants had not established that they are “Indians” for the purpose of the Membership Code, which requires a written confirmation of Indian status by the Registrar of Indians on registration under the *Indian Act*.

IV. Issue

[8] This application raises the issue of whether the Applicants are entitled to have their membership applications processed without first being registered under the *Indian Act*.

V. Standard of Review

[9] In a case involving the interpretation of a Band’s own Membership Code and an issue of mixed fact and law, the deferential standard of review is that of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9.

VI. Analysis

[10] The Applicants submit that each Applicant is an Indian pursuant to the Membership Code as their ancestor was recognized as Indian and on the FMFN 468 membership list. The Applicants maintain that their ancestors were removed from the FMFN 468 membership list because of provisions of the *Indian Act* that permitted the removal of status from women. These

provisions have been corrected by Bill C-31 and Bill C-3 entitling recognition under the *Indian Act* and thus entitling the Applicants to membership in FMFN 468 without registering under the *Indian Act*.

[11] The Membership Code defines “Indian” in Section 1.1(j) as “a person registered or entitled to be registered as an Indian pursuant to the Indian Act [emphasis added].” The Applicants rely on the “entitled to be registered” words in order to argue that registration under the *Indian Act* is not required and they are entitled to status based on their ancestral lineage.

[12] Principles of statutory interpretation require that the ordinary meaning of words be taken into account in the context in which they are used and the purpose of the document in which they are found. Accordingly, the definition of “Indian” found in Section 1.1(j) of the Membership Code must not be read in isolation but as part of a longer definition that “Indian” means a person registered or entitled to be registered as an Indian pursuant to the *Indian Act* [emphasis added].

[13] Furthermore, the necessity for confirmation of registration pursuant to the *Indian Act* is mandated in section 3.3 of the Membership Code, which provides that all applicants for membership in FMFN 468, other than those whose names were included in the Indian Registry on December 1, 2013, the day after the approval of the Membership Code by FMFN 468, will only become members of FMFN 468 “upon the date that the Nation receives confirmation that such Person has been registered as an Indian under the *Indian Act*.” Section 3.3 of the Membership Code illustrates FMFN 468’s reliance on the written confirmation of status by the Registrar of Indians on registration under the *Indian Act*.

[14] The Membership Clerk thus did not err in not taking any further action in processing the Applicants' membership applications in the absence of proof of Indian status registration under the *Indian Act*. The Membership Clerk justly indicated that the Applicants' membership applications would continue once the necessary confirmation was received.

VII. Conclusion

[15] This application is dismissed and the Respondent is entitled to costs which I fix at \$750 all-in.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and costs are awarded to the Respondent.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1717-15

STYLE OF CAUSE: PETER MALCOLM, JIMMI GRANT AND ED TATUM
v. FORT MCMURRAY FIRST NATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MAY 4, 2016

JUDGMENT AND REASONS: ANNIS J.

DATED: JUNE 16, 2016

APPEARANCES:

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