

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Mclvor v. Canada (Registrar of Indian and Northern Affairs)***,
2010 BCCA 338

Date: 20100702
Docket: CA035223

Between:

Sharon Donna Mclvor and Charles Jacob Grismer

Respondents
(Plaintiffs)

And

**The Registrar, Indian and Northern Affairs Canada
The Attorney General of Canada**

Appellants
(Defendants)

And

**Native Women's Association of Canada, Congress of Aboriginal Peoples,
First Nations Leadership Council, West Moberly First Nations,
T'Sou-ke Nation, Grand Council of the Waban-Aki Nation,
the Band Council of the Abenakis of Odanak and
the Band Council of the Abenakis of Wôlinak,
Aboriginal Legal Services of Toronto**

Intervenors
(Defendants)

Before: The Honourable Madam Justice Newbury
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman

Supplementary Reasons (Further Extension of Suspension of Declaration of Invalidity) to Court of Appeal for British Columbia, April 6, 2009 (*Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153, No. CA035223) and April 1, 2010 (*Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, 2010 BCCA 168, No. CA035223)

Counsel for the Appellants:

Mitchell R. Taylor, Q.C.
Glynis Hart
Brett C. Marleau
Sean Stynes

Counsel for the Respondents:

Robert W. Grant
Gwen Brodsky

Date of Written Submissions:

June 21, 2010

Place and Date of Judgment:

Vancouver, British Columbia
July 2, 2010

Supplementary Reasons of the Court

Supplementary Reasons of the Court:

[1] In our judgment of April 6, 2009, we found that certain aspects of ss. 6(1)(a) and (c) of the *Indian Act*, R.S.C. 1985, c. I-5, infringe s. 15 of the *Canadian Charter of Rights and Freedoms* and are not saved by s. 1. We declared the impugned sections of the *Indian Act* to be of no force and effect, but suspended the declaration's operation for one year in order to allow Parliament to amend the legislation to bring it into conformity with the *Charter*. Our order provided that any party was at liberty to apply to extend the period of suspension. On April 1, 2010, on the application of the Attorney General of Canada, we granted an extension of the period of suspension to July 5, 2010.

[2] The Attorney General of Canada now applies for a further extension of the period of suspension to January 31, 2011. The application for a further extension is supported by the respondents.

[3] On March 11, 2010, the government introduced Bill C-3, *An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in Mclvor v. Canada (Registrar of Indian and Northern Affairs)*. The short title of the resulting statute, if enacted, will be the *Gender Equity in Indian Registration Act*. The bill received second reading in the House of Commons on March 29, and was referred to the Standing Committee on Aboriginal Affairs and Northern Development.

[4] During the month of April, the Standing Committee devoted six meetings to hearing witnesses and engaging in a detailed consideration of the bill. The Committee made its report to the House of Commons on April 29, with amendments to the bill. On May 11, 2010, the Speaker ruled certain amendments to be impermissible, and the bill was ordered reprinted.

[5] The House of Commons commenced debate at the report stage on May 25, 2010. Debate did not conclude on that date, and the bill was not re-called in the

House before it adjourned for the summer on June 17. The House of Commons is not scheduled to sit again until September 20.

[6] There were, we are advised, inter-party discussions on the bill between May 25 and June 17, 2010. We have been provided with some material that indicates that the bill's passage through the House of Commons has been slowed down because some members of the House wish to broaden the bill to deal with issues beyond those specifically raised by this Court's decision of April 6, 2009.

[7] In explanation of the request for a rather lengthy extension, the Attorney General of Canada's submissions explain that, "When Parliament resumes there will be multiple priorities and a number of bills vying for debate."

[8] Parliament, of course, is the master of its own procedure, and we do not in any way wish to interfere with its processes. The Court recognizes that there are many issues that must be dealt with in Parliament. We would remind the Attorney General, however, that a final determination by the courts that provisions of the *Indian Act* violate constitutional rights is a serious matter that must be dealt with expeditiously. We would also observe that while efforts of Members of Parliament to improve provisions of the *Indian Act* not touched by our decision are laudable, those efforts should not be allowed to unduly delay the passage of legislation that deals with the specific issues that this Court has identified as violating the *Charter*.

[9] We are satisfied that there has not, to date, been undue delay in Parliament's response to our decision, and are prepared to grant an extension of the suspension of our declaration of invalidity to January 31, 2011.

[10] The division of the Court that heard the appeal will remain seized of this matter until the end of the period of suspension, and will retain the power to vary the period of suspension on the application of any party.

“The Honourable Madam Justice Newbury”
“The Honourable Mr. Justice Tysoe”
“The Honourable Mr. Justice Groberman”