

CANADA

SUPERIOR COURT
CLASS ACTION

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No:

DENIS SARRAZIN,

500-06-000600-128

Petitioner

vs.

ATTORNEY GENERAL OF CANADA,
200 René-Lévesque West boulevard,
Complexe Guy-Favreau, 9th Floor, Tower
East, Montréal, Québec, H2Z 1X4;

and

ATTORNEY GENERAL OF QUÉBEC, 1
Notre-Dame East, Suite 4.100, Montréal,
Québec, H2Y 1B6;

Respondents

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 and following of the C.C.P.)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES THE
FOLLOWING:

INTRODUCTION

1. Petitioner wishes to institute a class action on behalf of the following Group of which
Petitioner is a member:

All persons in Canada or, alternatively, all persons in Québec:

a) who :

i) were born before April 17, 1985,

and,

ii) were born on or after September 4, 1951, or who had a brother or sister born on or after September 4, 1951;

and,

b) have a grandmother who had lost her Indian status, and where that grandmother subsequently regained Indian status pursuant to s. 6(1)(c) of the *Indian Act*, and the 1985 amendments thereto;

and,

c) have a parent who is eligible for registration pursuant s. 6(1)(c.1) of the *Indian Act*, as amended by the royal assent of the *Gender Equity in Indian Registration Act* (Bill C-3), on December 15, 2010, and entered into force on January 31, 2011;

and,

d) will themselves, as a result of s.6(1)(c) of the *Indian Act*, become entitled to Indian Status registration.

who have, after April 17, 1985, and since attaining 16 years of age, suffered injury, economic loss and damages as a result of the Respondents' acts, omissions, and wrongdoings, in violation of certain rights to which they were or ought to have been entitled to by virtue of the *Indian Act*.

(hereinafter referred to as the "Group", the "Group Members", the "members" or the "Group")

2. In this motion:

a) AANDC (previously known as INAC) refers to the Canadian Minister of Aboriginal

Affairs and Northern Development Canada;

b) **MNR** refers to the Canadian Minister of National Revenue;

c) **Health Canada** refers to the Canadian Minister of Health;

d) **MNRW** refers to the Québec Minister of Natural Resources and Wildlife;

e) **Revenue Quebec** refers to the Québec Minister of Revenue;

f) **"Indian"** and **"Status Indian"** are employed, unless otherwise indicated, to mean a person entitled to registration as an Indian pursuant to the *Indian Act*; and,

g) AANDC, MNR, Health Canada, MNRW, and Revenue Quebec are hereinafter referred to collectively as the **"Respondents"**;

3. Respondents acted through their employees, servants, and agents, and they are directly and vicariously liable. Respondent the Attorney General of Canada is responsible for the actions, faults, omissions, discrimination, violations and/or negligence of AANDC, MNR and Health Canada. Respondent the Attorney General of Québec is responsible for the actions, faults, omissions, discrimination, violations and/or negligence of MNRW and Revenue Quebec;

4. AANDC has the authority and responsibility for maintaining the "Indian Register" which serves as the official government registry of those individuals considered Status Indians pursuant to the *Indian Act*;

5. AANDC has had, and continues to have, the authority to grant or deny to any applicant registration as an Indian under the provisions of the *Indian Act*;

6. Under the provisions of the *Indian Act*, as amended to 1985, the grandchild of a woman conceived by way of a non-Indian father could not, unless that grandchild's parent married an Indian themselves, receive Indian status. The grandchild of an Indian man who married a non-Indian woman would, however, receive Indian status by virtue of his or her grandfather's status;

7. On April 6, 2009, the British Columbia Court of Appeal declared certain provisions of the *Indian Act* unconstitutional because they violated s. 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter") by virtue of gender discrimination (*Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153);
8. In essence, while Indian status and entitlement to registration as a Status Indian is hereditary and entitled to be passed on to one's children, provisions of the *Indian Act* discriminated in favour of the male line;
9. The British Columbia Court of Appeal in *Mclvor* suspended their judgment to allow time for the Canadian Parliament to amend the *Indian Act* in order to resolve this discrepancy;
10. Parliament developed Bill C-3, also known as the *Gender Equity in Indian Registration Act* ("**Bill C-3**"), to address this inequality and extend status to these individuals. Bill C-3 received Royal Assent on December 15, 2010, and was proclaimed in force as of January 31, 2011;
11. Notwithstanding Bill C-3's purpose, its effect of extending registration eligibility to those whose grandmothers lost their Indian status by virtue of their marriage to a non-Indian does nothing to redress the harms that the Group suffered as a result of the discriminatory treatment to date;
12. Respondents, namely but without limitation AANDC, have been aware, or ought to have been aware, of the discriminatory effects of these provisions of the *Indian Act* since at least 1985, yet took no steps to remedy or redress the discriminatory provisions;
13. Moreover, Bill C-3 purports to limit the constitutional rights of the Petitioner and other members of the Group to be compensated for this deliberate denial of their rights.

Section 9 of Bill C-3 declares that "***no person or body has a right to claim or receive any compensation, damages or indemnity from Her Majesty in right of Canada ... for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties, only because ... a person was not registered, or did not have their name entered in a Band List ...***";

14. Section 9 of Bill C-3 is unconstitutional;
15. Moreover, insofar as the actions of the Respondents knowingly discriminated against the Petitioners pursuant to s. 15 of the *Charter*, their powers were not exercised in good faith. As such, Section 9 of Bill C-3 is of no force and effect under the circumstances;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

16. The Petitioner, **DENIS SARRAZIN**, was born October 2, 1954, and is a resident of Gatineau, Québec;
17. The Petitioner's grandmother, Marie-Louise Tienis (Genis) Gagné, lost her Indian status as a result of her marriage to a non-Indian man, but became eligible to regain it after April 17, 1985, under s. 6(1)(c) of the *Indian Act*;
18. The Petitioner's mother, Thérèse Sarrazin (maiden name Gagné), daughter of Marie-Louise Tienis (Genis) Gagné, is a Status Indian. Thérèse Sarrazin attained status as an Indian, pursuant to s. 6(2) of the *Indian Act*, because of her mother Marie-Louise Tienis (Genis) Gagné' Indian, status;
19. Until the proclamation of Bill C-3, Thérèse Sarrazin has been unable to pass her s. 6(2) Indian Status on to her children, including Petitioner Denis Sarrazin;

20. Had the Petitioner's grandfather had Indian status then, regardless of who he had married, *his* children (i.e. the Petitioner's parent) would have received status pursuant to s. 6(1), and the Petitioner himself would be entitled to Indian Status pursuant to s. 6(2) of the *Indian Act*;
21. As it was her mother who had Indian status (but lost it as a result of marrying a non-Indian), the Petitioner's mother received Indian Status pursuant to s. 6(2) of the *Indian Act*, an Indian Status which is not transferrable to children;
22. Pursuant to Bill C-3, the Petitioner's mother will be entitled to convert her s. 6(2) registration to a s. 6(1)(c.1) registration, and the Petitioner will be entitled to registration under the *Indian Act* pursuant to s. 6(2);
23. The Petitioner has therefore been denied, since the passage of the 1985 amendments to the *Indian Act*, his rightful status as a Status Indian pursuant to s. 6(2) of the *Indian Act*. This outright denial will be remedied, albeit without restitution and subject to limitations with respect to the Petitioner's children, through Bill C-3;
24. In light of the *Mclvor* ruling, the Petitioner has, since 1985, always *had* the right to seek Indian status on or after his 16th birthday, a fact which remains true, notwithstanding the Respondents' denial of that right for the past 27 years;
25. Denis Sarrazin did not, upon reaching the age of 16, become eligible for Indian Status pursuant to the contention of AANDC, and thus he has not been afforded the advantages and benefits that such status entails him;
26. Denis Sarrazin has attended some post-secondary education. He is presently employed by Royal Canadian Mint;
27. The petitioner had previously applied to the AANDC for Indian status, but his

application was refused;

28. He subsequently reapplied on the 13th of May 2011, and his new application is still being processed;
29. However, in light of the new amendments brought on by Bill C-3, it is likely that his application will be accepted;
30. Denis Sarrazin was aware of, and would like to have pursued business opportunities, employment and educational opportunities targeted at and available only to Indians;
31. Had it been Petitioner's grandfather, rather than his grandmother, who had Indian Status, he would have been entitled to Indian Status pursuant to the *Indian Act*. The denial of his status has amounted to willful discrimination against him on the basis of gender;
32. As a Status Indian, the Petitioner would, *inter alia*, not have had to have paid certain income taxes, would not have had to have paid sales taxes on certain purchases, would have received financial and other assistance while attending post secondary education, and would have benefitted from business opportunities, including but not limited to several non refundable funding programs, and employment opportunities restricted to Status Indians. As a result, Petitioner suffered damages, as did others in the Group;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION
BY EACH OF THE MEMBERS OF THE GROUP

(a) *Generally*

33. Each of the Group Members has been affected by the Respondents in the same manner as the Petitioner. In particular, each Group Member who now is entitled to

registration pursuant to the Bill C-3 amendments to the *Indian Act* has, since April 17, 1985, been wrongfully denied said registration by AANDC;

34. The damages suffered by the Group Members have been a direct result or consequence of the AANDC's wrongful refusal to acknowledge and afford Indian Status to members of the Group;
35. AANDC's denial of the Group Members' rightful Indian Status has necessarily limited their ability to, *inter alia*, reside on a reserve, or enjoy the numerous benefits available to registered Indians. These benefits include, but are not limited to, the opportunity to attend First Nations University and to receive an education that is sensitive and responsive to the unique cultural needs of Indians, and the opportunity to pursue business, employment and career opportunities which are limited to status Indians;
36. Group Members have made significant life choices and decisions based on the understanding that they *were not* eligible for Indian Status, notwithstanding the discriminatory nature of the preclusion. Had Group Members been recognized as Indians in the absence of the impugned provisions of the *Indian Act*, they very likely would have maintained an even stronger connection with their First Nation's roots;
37. Insofar as the discriminatory registration provisions precluded Petitioner from having settled on and set up home upon a reserve, the Respondents have breached their duty to the Petitioner to protect his right to family life and various other rights elaborated in *The Canadian Bill of Rights*, 1960 c. 44 C-12.3 and the *Charter*;
38. In particular, the intentional manner in which the Respondents denied Petitioner the Indian Status to which he was and is entitled illustrates that the right of Petitioner to equality before the law and protection of the law was breached as per Section 1(b) of *The Canadian Bill of Rights*, 1960 c. 44 C-12.3 and the *Charter*;

39. The Respondents are liable *inter alia* to the Group Members for:
- a. Depriving the Group Members of their right to Indian Status as guaranteed through their maternal inheritance;
 - b. Collecting taxes and other amounts from the Group Members for which no right to collection existed in light of the exemptions in the *Indian Act*;
 - c. Failing to provide to the Group Members medical, dental, vision care, and other services to which they were entitled through the federal Non-Insured Health Benefits ("NIHB") program;
 - d. Failing to provide the Class Members access to post-secondary educational programs as well as existing non-refundable funding programs to which they were entitled; and
 - e. The employment of systematic strategies, such as denying transmittable Indian Status to the Group Members, aimed at, or having the effect of, eradicating "Status Indians" altogether.
40. The discriminatory provisions of the *Indian Act*, and the indirect effect of those provisions with regard to taxation and benefit entitlement, were within the knowledge and control of the Respondents. The resulting harms would not have occurred but for the willful disregard by the Respondents of the rights of the Group Members;
41. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Respondents have caused or materially contributed to the suffering injury, economic loss, and damages of the Group Members;

(b) AANDC

42. At all material times, AANDC was responsible for the registration of Indians, and the determination of eligibility therein;
43. Respondents knew, or ought to have known, that provisions of the *Indian Act*

discriminated against women on the basis of gender, contrary to s. 15 of the *Charter*;

44. AANDC provides funding, directly and indirectly, to Indians across Canada;
45. Indians are entitled to apply to AANDC, on a yearly basis, to receive an amount of \$5.00 which is paid automatically upon application. The Petitioner and the Group Members are entitled to recover from AANDC \$5.00 for each year they were entitled to receive the amount but did not, by virtue of AANDC's denial of their Indian Status;
46. Among other programs, AANDC administers funds, through its regional offices, supporting the continued education and development of Indians;
47. Funding for studies at post-secondary educational institutions is made available pursuant to the Post-Secondary Student Support Program ("PSSSP");
48. Had Group Members' status been appropriately recognized by AANDC, the Group Members would have been entitled to receive funding assistance for post-secondary studies under the PSSSP;
49. The Group Members did not receive this funding assistance, to which they were entitled, and incurred financial losses and hardships which, but for the willful denial of their rights by the Respondents, they would not have had to incur, or in the alternative, would not have had to incur to the same magnitude;
50. AANDC knew, or ought to have known, that the Group Members were, in fact, entitled to Indian Status;
51. AANDC is therefore responsible to the Group Members, for educational assistance funding that they ought to have received in view of their rightful Indian Status, but did not receive on account of AANDC's discriminatory determination of Indian Status;

52. AANDC is also responsible to the Group members for all other funding, assistance and support programs provided by AANDC that they ought to have received in view of their rightful Indian Status, but did not receive on account of AANDC's discriminatory determination of Indian Status;

(c) MNR

53. As persons entitled to registration as an Indian, Group Members ought to have been exempt from paying, *inter alia*, income tax on interest and investment income, RRSP withdrawals, capital gains, trust income, certain employment income, and other income;
54. Because the AANDC wrongfully deprived the Group Members of their rightful status as registered Status Indians, Group Members did wrongfully pay these tax amounts on their income to the MNR;
55. Therefore, the MNR owes to the Group Members an amount representing taxes and other contributions wrongfully collected;
56. Moreover, the Group Members have also paid, over time, significant amounts in Goods and Services Tax (GST) for purchases made on reserve land or delivered to a reserve, which amounts they should have been exempt from paying by virtue of their rightful Indian Status;

(d) Health Canada

57. Health Canada, pursuant to the *Indian Health Policy* (1979), provides Non-Insured Health Benefits ("NIHB") to Indians; regardless of their place of residence in Canada;
58. The NIHB provides insurance coverage for medically necessary procedures and treatments not otherwise covered by private or provincial health insurance plans.

This includes counseling services, dental benefits, drug benefits, vision care benefits, medical equipment and supplies, and medical transportation benefits;

59. NIHB has been available to Indians since 1979. Since 1985, when the Petitioner's grandmother Marie-Louise Tienis (Genis) Gagné re-gained her Indian status and the Petitioner should have re-gained Indian status, the Petitioner should have been eligible for NIHB benefits as a Status Indian. The Group Members likewise should have been eligible for NIHB benefits;
60. Health Canada failed to recognize members of the Group as Status Indians by virtue of AANDC's reliance upon discriminatory provisions of the *Indian Act* for the determination of said status;
61. Group Members expended funds and paid for medically necessary treatments which were eligible for coverage, and should have been paid for, through Health Canada's NIHB program;
62. The Group Members are therefore entitled to an amount representing the cost of medically necessary treatments, procedures and equipment paid for by Group Members and not reimbursed through the NIHB program;

(e) MNRW

63. MNRW administers hunting and angling activities in the Province of Quebec;
64. To the extent that Indians are exempted from the requirement to apply, pay for, and receive fishing, hunting, and other like licenses, MNRW has been unjustly enriched by the Group Members in the amount of said licenses purchased;
65. Because AANDC wrongfully deprived the Group Members of their rightful status as Status Indians, Group Members wrongfully paid to MNRW amounts for licenses

which they were not obligated to pay, and which MNRW had no right to receive;

66. Therefore, the Group Members are entitled, from MNRW, to an amount representing fees paid for legally unnecessary licenses and permits;

(f) Revenu Quebec

67. As persons entitled to registration as Status Indians, the Group Members ought to have been exempt from paying, *inter alia*, sales taxes, fuel taxes and tobacco taxes on purchases made on reserve land or delivered to a reserve. Moreover, Group Members ought to have been exempt from paying, *inter alia*, income tax on interest and investment income, RRSP withdrawals, capital gains, trust income, certain employment income, and other income;

68. Because AANDC wrongfully deprived the Group Members of their rightful status as registered Indians, Group Members did wrongfully pay these tax amounts on their income to Revenu Quebec;

69. Therefore, from Revenu Quebec, the Group Members are entitled to an amount representing taxes and other contributions wrongfully collected;

70. The Group Members have paid, over time, significant amounts in sales taxes, including Quebec Sales Tax (QST), tobacco taxes, and fuel taxes, to Revenue Quebec for purchases made. Had the Group Members been afforded their rightful status as Indians, these purchases on a reserve, or delivered to a reserve would have been exempt from these taxes;

(g) Discrimination continues

71. The implementation of Bill C-3 does not rid the Group Members of gender-based discrimination. All children born after April 17, 1985 are subject to the "second generation cut-off". That is, if a child is born to parents, where neither the parents nor

grandparents were themselves both full status Indians, that child would be subject to s. 6(2) registration and unable to, themselves, transmit Indian Status further;

72. Had Group Members been able to attain their Indian Status by virtue of their grandfather, they would have received their status under s. 6(1)(a) of the *Indian Act*, and be entitled to pass s. 6(1)(a) or s. 6(2) status on to their own children. With the implementation of Bill C-3, Group Members may, upon application, be themselves accorded s. 6(2) status, which is not transmittable to their children;
73. It is true that the right to Indian Status is a purely statutory one, and that there is no constitutional right to transmit that status to one's children; however, pursuant to s. 35(1) of the *Constitution Act*, the Group Members *do* enjoy the right to, among other things, parent their children in accordance with aboriginal traditions. The effectiveness of such parenting is limited if their children do not, themselves, have Indian Status, and are not privy or entitled to the cultural, familial, and societal benefits that could be accrued from a close connection with their aboriginal community, i.e. by involvement in on-reserve activities;
74. By erecting a societal wall between the children of Group Members and their Indian culture, AANDC has deprived the Group Members of their aboriginal rights and freedoms as guaranteed by s. 35(1) of the *Constitution Act*;
75. Achieving s. 6(2) status under the *Indian Act* pursuant to s. 6(1)(c.1) does not allow the Petitioner to transmit his status to his own children;
76. AANDC is not unaware of this dilemma. Amendments were proposed to the Parliamentary Committee responsible for reviewing Bill C-3 during Second Reading (April 27, 2010), in response to this well-recognized discriminatory provision. Those amendments, which would have rectified the discriminatory registration provisions for the Group Members, were ultimately disallowed on a technical basis that

including those amendments would have gone beyond the scope of the bill as authorized by Parliament during Second Reading. The discrimination was acknowledged, but correcting that discrimination was deemed inappropriate in the context of a bill that had been put forward to specifically address only the discrimination which arose in the *Mclvor* case;

77. It is true, as was noted in *Mclvor*, that Parliament is the master of its own procedure. Nevertheless, the effect for the Group Members of not fully remedying the discrimination is to continue the gender-based discrimination inherent to the *Indian Act*, notwithstanding *Mclvor*. In this sense, the Respondents have discriminated, through their application of the *Indian Act* s. 6, and will continue, through the Bill C-3 amendments to the *Indian Act*, to discriminate against the Group Members on the basis of gender by denying them the equivalent registration status that they would receive had their aboriginal lineage been traced along the paternal line;
78. The Respondents owed and owe to the Petitioner and the Group Members an extraordinary fiduciary duty of care which is constitutionally entrenched. The Respondents have violated that duty by willfully and knowingly discriminating against the Petitioner and the Group Members on the basis of gender, and by subjecting the Group Members to unconstitutional taxation in contravention of s. 87(1) of the *Indian Act*;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

79. The composition of the Group makes the application of Article 59 or 67 of the Quebec Code of Civil Procedure impractical for the following reasons:
- a) The number of potential Group Members is so numerous that joinder of all members is impracticable. While the exact number of Group Members is unknown to the Petitioner at the present time, AANDC has estimated the

number of new Status Indian registrations expected as a result of Bill C-3 to be approximately 45,000 people.

- b) The Group Members are widely geographically dispersed;
- c) Based on the number of potential Group Members, it is impossible for the Petitioner to identify all potential Group Members and obtain a mandate from each of them. Petitioner does not possess the names and addresses of potential Group Members.

80. The recourse of the Group Members raise identical, similar, or related questions of fact or law, namely:
- a) Has AANDC been primarily responsible for the determination of eligibility for Indian Status?
 - b) Have the Group Members been unlawfully denied Indian Status by AANDC, in contravention of s. 35(1) of the *Constitution Act*?
 - c) Have Respondents unreasonably relied on AANDC's determinations of eligibility in the implementation and application of their own respective legislative authorities? If so, are the Respondents liable, individually and solidarily to pay damages to the Group Members, and in what amounts?
 - d) Is Section 9 of Bill C-3, which purports to limit Crown liability for these discriminatory practices, unconstitutional?
 - e) Alternatively, is Section 9 of Bill C-3 of no force and effect under the circumstances?
 - f) Are the Respondents liable to reimburse or otherwise compensate Group Members for amounts unlawfully collected? If the answer is affirmative, in what amount?
 - g) Are the Respondents liable to compensate Group Members for amounts or benefits they would have been entitled to since April 17, 1985, but which they did not receive by virtue of their denied Indian Status? If the answer is affirmative, in what amount?
 - h) Does s. 6(2) of the *Indian Act*, as amended by Bill C-3, continue to

discriminate against the Group Members by affording them only s. 6(2) status, whereas s. 6(1) status ought to be available to them?

- i) Are the Respondents liable to pay moral damages to the Group Members and, if the answer is affirmative, in what amount?
- j) Are the Respondents liable to pay exemplary or punitive damages to the Group Members and, if the answer is affirmative, in what amount?

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

The action that Petitioner wishes to institute for the benefit of the members of the Group is an action in constitutional damages, recompense for the unjust enrichment of the Respondents and in reimbursement of fees, taxes, and other charges levied which should not have been paid by the Petitioner and the Group Members, and compensation for the wrongful denial of benefits;

81. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Petitioner's action against Defendants;

DECLARE that Section 9 of Bill C-3 is unconstitutional and contrary to the *Canadian Charter of Rights and Freedoms* insofar as it impedes the operation of s. 24 of the *Charter*, which could afford remedies to the Petitioners for the past and ongoing violation of their *Charter* rights;

ALTERNATIVELY DECLARE that Section 9 of Bill C-3 is of no force and effect because the actions of the Respondents were not undertaken in good faith and without knowledge of the discriminatory effects thereof;

DECLARE that the determination of Indian Status by the Minister of

Aboriginal and Northern Development did not release the other Respondents from their own obligation to ensure that their actions, in reliance upon the actions of Minister of Aboriginal and Northern Development or otherwise, did not constitute or further discrimination pursuant to the *Charter*, directly or indirectly;

DECLARE that the denial by the Minister of Aboriginal and Northern Development of the Petitioner's rightful Indian Status has constituted a breach of s. 35(1) of the *Constitution Act*.

DECLARE that s. 6 of the *Indian Act* discriminates against the Petitioner's and the Group Members by affording only s. 6(2) status, whereas s. 6(1) status ought to be available to Group Members as it would for a person in their situation whose Indian lineage is traced along the male line, rather than the female line;

CONDEMN the Attorney General of Canada to pay to the Group Members, an amount to be determined at trial for amounts they would have been eligible to receive, including, but not limited to, the \$5 yearly allocation and education amounts, which they did not receive;

CONDEMN the Attorney General of Canada to pay to the Group Members, an amount to be determined at trial, for amounts wrongfully collected including, but not limited to, income taxes, Canada Pension Plan premiums, and GST amounts;

CONDEMN the Attorney General of Canada to pay to the Group Members an amount to be determined at trial for reimbursement of Non-Insured Health Benefits that they were entitled to receive as persons entitled to registration as an Indian pursuant to the *Indian Act*;

CONDEMN the Attorney General of Canada and the Attorney General of Quebec, to pay to the Group Members an amount to be determined at trial for amounts wrongfully charged for and paid for licenses and permits.

CONDEMN the Attorney General of Canada and the Attorney General of Quebec, to pay to the Group Members an amount to be determined at trial for taxes and amounts wrongfully collected including, but not limited to, the Quebec Sales Tax, income taxes, tobacco taxes and fuel taxes;

CONDEMN Defendants to pay an amount in compensatory damages to the Group Members, in an amount to be determined by the Court, plus interest as well as the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to the Group Members, amount to be determined by the Court, plus interest as well as the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, in an amount to be determined by the Court, plus interest as well as the additional indemnity;

GRANT the class action of Petitioner on behalf of all members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members.

82. Petitioner submits that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Many Group members are believed to be domiciled or work in the District of Montréal;
- b) Petitioner's legal counsel practice law in the District of Montréal;
- c) Respondents are domiciled in the District of Montréal.

83. Petitioner, who is requesting to obtain the status of Representative, will fairly and adequately protect and represent the interest of the members of the Group since Petitioner:

- a) is a member of the Group;
- b) has been denied, in common with members of the Group, Indian Status, notwithstanding his maternal Indian lineage;
- c) has suffered damages and injuries as a result of this denial of his Indian Status;
- d) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the members of the Group;
- e) is available to dedicate the time necessary for the present action before the Courts of Québec, and to collaborate with Group attorneys in this regard;
- f) is ready and available to manage and direct the present action in the interest of the Group Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group Members;
- g) does not have interests that are antagonistic to those of other members of the Group;
- h) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;

- i) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed.

84. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

ASCRIBE the Petitioner the status of Representative of the persons included in the Group herein described as:

All persons in Canada or, alternatively, all persons in Québec:

a) who :

i) were born before April 17, 1985,

and,

ii) were born on or after September 4, 1951, or who had a brother or sister born on or after September 4, 1951;

and,

b) have a grandmother who had lost her Indian status, and where that

grandmother subsequently regained Indian status pursuant to s. 6(1)(c) of the *Indian Act* and the 1985 amendments thereto;

and,

c) have a parent who is eligible for registration pursuant s. 6(1)(c.1) of the *Indian Act*, as amended by the royal assent of the *Gender Equity in Indian Registration Act* (Bill C-3), on December 15, 2010, and entered into force on January 31, 2011;

and,

d) will themselves, as a result of S.6(1)(c) of the *Indian Act*, become entitled to Indian status registration.

who have, after April 17, 1985, and since attaining 16 years of age, suffered

injury, economic loss and damages as a result of the Respondents' acts, omissions, and wrongdoings, in violation of certain rights to which they were or ought to have been entitled to by virtue of the *Indian Act*.

(hereinafter referred to as the "Group", the "Group Members", the "members" or the "Group")

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Has AANDC been primarily responsible for the determination of eligibility for Indian Status?
- b) Have the Group Members been unlawfully denied Indian Status by AANDC, in contravention of s. 35(1) of the *Constitution Act*?
- c) Have Respondents unreasonably relied on AANDC's determinations of eligibility in the implementation and application of their own respective legislative authorities? If so, are the Respondents liable, individually and solidarily to pay damages to the Group Members, and in what amounts?
- d) Is Section 9 of Bill C-3, which purports to limit Crown liability for these discriminatory practices, unconstitutional?
- e) Alternatively, is Section 9 of Bill C-3 of no force and effect under the circumstances?
- f) Are the Respondents liable to reimburse or otherwise compensate Group Members for amounts unlawfully collected? If the answer is affirmative, in what amount?
- g) Are the Respondents liable to compensate Group Members for amounts or benefits they would have been entitled to since April 17, 1985, but which they did not receive by virtue of their denied Indian Status? If the answer is affirmative, in what amount?
- h) Does s. 6(2) of the *Indian Act*, as amended by Bill C-3, continue to discriminate against the Group Members by affording them only s. 6(2) status, whereas s. 6(1) status ought to be available to them?
- i) Are the Respondents liable to pay moral damages to the Group Members

and, if the answer is affirmative, in what amount?

- j) Are the Respondents liable to pay exemplary or punitive damages to the Group Members and, if the answer is affirmative, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Petitioner's action against Defendants;

DECLARE that Section 9 of Bill C-3 is unconstitutional and contrary to the *Canadian Charter of Rights and Freedoms* insofar as it impedes the operation of s. 24 of the *Charter*, which could afford remedies to the Petitioners for the past and ongoing violation of their *Charter* rights;

ALTERNATIVELY DECLARE that Section 9 of Bill C-3 is of no force and effect because the actions of the Respondents were not undertaken in good faith and without knowledge of the discriminatory effects thereof;

DECLARE that the determination of Indian Status by the Minister of Aboriginal and Northern Development did not release the Respondents from their own obligation to ensure that their actions, in reliance upon the actions of Minister of Aboriginal and Northern Development or otherwise, did not constitute or further discrimination pursuant to the *Charter*, directly or indirectly;

DECLARE that the denial by the Minister of Aboriginal and Northern Development of the Petitioner's rightful Indian Status has constituted a breach of s. 35(1) of the *Constitution Act*.

DECLARE that s. 6 of the *Indian Act* discriminates against the Petitioner's and the Group Members by affording only s. 6(2) status, whereas s. 6(1)

status ought to be available to Group Members as it would for a person in their situation whose Indian lineage is traced along the male line, rather than the female line;

CONDEMN the Attorney General of Canada to pay to the Group Members, ~~an amount to be determined at trial for amounts they would have been~~ eligible to receive, including, but not limited to, the \$5 yearly allocation and education amounts, which they did not receive;

CONDEMN the Attorney General of Canada to pay to the Group Members, an amount to be determined at trial, for amounts wrongfully collected including, but not limited to, income taxes, Canada Pension Plan premiums, and GST amounts;

CONDEMN the Attorney General of Canada to pay to the Group Members an amount to be determined at trial for reimbursement of Non-Insured Health Benefits that they were entitled to receive as persons entitled to registration as an Indian pursuant to the *Indian Act*;

~~the Republic of Quebec~~ **CONDEMN** the Attorney General of Canada and the Attorney General of Quebec, to pay to the Group Members an amount to be determined at trial for amounts wrongfully charged for and paid for licenses and permits.

CONDEMN the Attorney General of Canada and the Attorney General of Quebec to pay to the Group Members an amount to be determined at trial for taxes and amounts wrongfully collected including, but not limited to, the Quebec Sales Tax, income taxes, tobacco taxes and fuel taxes;

CONDEMN Defendants to pay an amount in compensatory damages to the Group Members, in an amount to be determined by the Court, plus interest as

well as the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to the Group Members, amount to be determined by the Court, plus interest as well as the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, in an amount to be determined by the Court, plus interest as well as the additional indemnity;

GRANT the class action of Petitioner on behalf of all members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members.

DECLARE that the members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

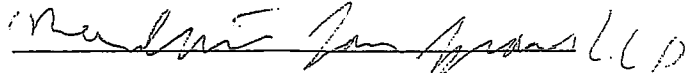
FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the members of the Group in accordance with Article 1008 C.C.P. and **ORDER** Respondents to pay for said publication costs.

THE WHOLE with costs.

MONTREAL, March 1, 2012

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(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner

NOTICE OF PRESENTATION

TO: **ATTORNEY GENERAL OF CANADA,**
200 René-Lévesque West boulevard,
Complexe Guy-Favreau, 9th Floor, Tower East,
Montréal, Québec, H2Z 1X4;

AND

ATTORNEY GENERAL OF QUÉBEC,
1 Notre-Dame East, Suite 4.100,
Montréal, Québec, H2Y 1B6

TAKE NOTICE that the Petitioner has filed this MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE in the office of the Superior Court of the Judicial District of Montréal. The Motion will be presented before one of the Honourable Judges of the Superior Court of Québec, District of Montréal, on **April 10, 2012 at 9:00 AM**, in room **2.16** of the Courthouse of Montréal situated at 1 Notre-Dame East, Montréal, Québec. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

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MONTRÉAL, March 1, 2012

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

[Signature] **LLP**
MERCHANT LAW GROUP LLP
Attorneys for Petitioner



N°:

500-06-000600-128

**SUPERIOR COURT
(CLASS ACTION)**

DISTRICT OF MONTREAL

DENIS SARRAZIN

Petitioner

- VS -

**ATTORNEY GENERAL OF CANADA
and
ATTORNEY GENERAL OF QUÉBEC**

Respondents

**MOTION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF
REPRESENTATIVE AND NOTICE OF
PRESENTATION**

COPY FOR THE COURT

Me Owen Falguero & Me Federico Tyrawskij

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