Federal Court Cour fédérale

Date: 20161130

Docket: T-401-16

Citation: 2016 FC 1328

Ottawa, Ontario, November 30, 2016

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

BRUCE BEATTIE and JOYCE BEATTIE

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under section 18.1 of the *Federal Courts Act,* RSC, 1985, c F-7 for judicial review of a decision of the Canadian Human Rights Tribunal [CHRT] dated February 24, 2016. The applicants alleged that the respondent breached section 5 of the *Canadian Human Rights Act,* RSC 1985, c H-6 [CHRA] by refusing to register certain land documents in the Indian Reserve Land Register [IRLR] pursuant to section 21 of the *Indian Act,* RSC 1985, c I-5

[*Indian Act*]. The CHRT dismissed the complaints as it found that they were solely a challenge to or a collateral attack upon legislation and beyond the jurisdiction of the Tribunal.

II. BACKGROUND

[2] The applicant Joyce Beattie, along with Jenelle Brewer and James Louie, filed three complaints dated March 30, 2012 with the Canadian Human Rights Commission (the Commission) on April 4, 2012. Ms. Beattie, Ms. Brewer and Mr. Louie authorized Mr. Bruce Beattie to act as their representative before the CHRT.

[3] Mr. Louie, who passed away on March 28, 2015, was a registered Indian under the *Indian Act* and a member of the Okanagan Indian Band. Ms. Brewer is also a registered Indian and a member of the same band. Ms. Brewer is the administrator and beneficiary of Mr. Louie's estate. The validity of the will is being challenged. Ms. Brewer and Mr. Louie's estate are not parties to this judicial review.

[4] Ms. Beattie, who is the spouse of Mr. Beattie, is a registered Indian under the *Indian Act* but she is not a member of the Okanagan Indian Band. Notably, Mr. Beattie is not of Aboriginal descent. Mr. Beattie and Ms. Beattie represented themselves on this application.

[5] The Commission requested the CHRT to institute an inquiry into the complaints on a consolidated basis on October 1, 2013 under paragraph 44(3)(a) of the CHRA. On May 8, 2015, the Commission advised the CHRT and the parties that it would not participate in the matter or appear at the hearing.

[6] The lands in question are located within the Okanagan Indian Reserve near Vernon British Columbia and include two parcels described as Lot 170-1 and Lot 175, Block 4, Plan 93082 CLSR in Indian Reserve No. 1.

[7] In his decision, at paragraph 9, the CHRT Member stated that the lands were allotted to Mr. Louie by the council of the Okanagan Indian Reserve. According to the Member, the allotment was approved by the Minister of Indian Affairs and Northern Development (now known as *Indigenous and Northern Affairs Canada*) and Certificates of Possession [CP] were issued to Mr. Louie under section 20 of the *Indian Act*. The Beatties say that (1) there was no allotment by the Band, (2) that possession of the lands had been in the Louie family for many years, and (3) the CPs were issued only after Mr. Louie had resurveyed the properties and applied to have them registered in his name on the Indian Lands Registry.

[8] In June 2007, Mr. Louie and Ms. Beattie applied for a ministerial lease under subsection 58(3) of the *Indian Act* with respect to Lot 170-1. In January 2008, they applied for a ministerial lease under subsection 58(3) for Lot 175. These applications were refused by the respondent and resulted in several complaints under the CHRA in 2008 and 2010. The complaints were substantiated on their merits.

[9] In 2011, Mr. Beattie submitted two applications for registration, dated July 25, 2011, to the Indian Lands Registry under section 21 of the *Indian Act*. Each application attached a lease. The first lease, pertaining to Lot 170-1, named Mr. Louie as lessor and Ms. Beattie as lessee. The second lease, pertaining to Lot 175, named Mr. Louie as lessor and Ms. Brewer as lessee. A

document titled "Assignment of Lease", signed March 1, 2012, was also submitted by Mr. Beattie for registration. The assignment of lease purports to assign the lease between Mr. Louie and Ms. Brewer regarding Lot 175.

[10] On September 30, 2013, the applications for registration were rejected by the Registrar of the Indian Reserve Land Register, Mr. Daryl Hargitt, for two reasons: (1) the leases did not indicate the Crown as a party and (2) no Ministerial approval had been provided. As the lease between Mr. Louie and Ms. Beattie was not acceptable for registration, the subsequent assignment of lease could also not be registered. As a result of this decision, the three complaints indicated above were filed with the Commission.

[11] The complaints alleged that by refusing to register the private leases and assignment of lease, the respondent discriminated against Mr. Louie, Ms. Brewer and Ms. Beattie on the grounds of their race, national or ethnic origin (as registered Indians), by denying a service, customarily available to the public, contrary to section 5 of the CHRA.

[12] At the hearing before the CHRT, a preliminary issue was raised by the respondent regarding whether the complaints were solely a challenge to or a collateral attack upon legislation, and therefore, beyond the jurisdiction of the CHRT. The CHRT accepted that argument and dismissed the complaints. The question of whether Mr. Beattie had any standing as a complainant was also raised by the respondent but not resolved. He had been a complainant in the 2008 and 2010 proceedings and had acted as agent for the other complainants. He was the

designated representative of Ms. Beattie, Ms. Brewer and Mr. Louie for the 2012 complaints. There was no evidence that he was authorized to represent Mr. Louie's estate at the hearing.

III. DECISION UNDER REVIEW

[13] The decision was rendered by Member Edward P. Lustig. Member Lustig held that the underlying complaints fell beyond the jurisdiction of the CHRT because they were solely a challenge to or a collateral attack upon legislation (i.e. the *Indian Act*) and nothing else.

[14] In reaching this conclusion, the Member considered the uncontradicted oral evidence of Ms. Sheila Craig, the Manager of Lands Modernization in the respondent's Lands and Economic Development British Columbia Regional Office. The Member found her evidence to be "highly credible". Ms. Craig explained how the land management system works under the *Indian Act* and the various rules that underpin it. Based on that evidence, the Member found that while the process of reviewing and eventually registering valid documents or not registering invalid documents may be a "service" under section 5 of the CHRA, the legislative criteria provided by the *Indian Act* for doing so is not. Therefore, the Member found that it is the law which denies access to the benefit, not the government agency.

[15] The CHRT accepted the respondent's argument that section 21 of the *Indian Act* is part of a broader statutory scheme that cannot be read alone without engaging other sections of that Act. The Member held that for registration to be completed under section 21, the Crown, as owner/landlord, must be a party to leases of the subject lands. In deciding that section 21 does

not stand in isolation, the CHRT relied on the statutory principles discussed by Ruth Sullivan in *Sullivan on the Construction of Statutes* (Markham, Ont: LexisNexis Canada, 2014).

[16] Member Lustig closely reviewed the Land Management System under the *Indian Act,* the 2006 as well as the 2013 *Indian Land Registration Manual* [Manual], and relevant Federal Court and Federal Court of Appeal jurisprudence. Finally, the Member considered and interpreted section 5 of the *CHRA,* and sections 2(1)(a), 18(1), 20(1), 24, 28(1), 58(3), and 21 of the *Indian Act.* A copy of the relevant statutory provisions of both pieces of legislation is attached as an appendix to these reasons.

[17] Member Lustig began his analysis by setting out three CHRT decisions which he considered to be relevant to the complaints before him: *Murphy v Canada Revenue Agency,* 2010 CHRT 9; *Matson et al v Indian and Northern Affairs Canada,* 2013 CHRT 13; *Andrews et al v Indian and Northern Affairs Canada,* 2013 CHRT 21. *Murphy* had been judicially reviewed by this Court in *Public Service Alliance of Canada v Canada (Revenue Agency),* 2011 FC 207, [2011] FCJ No 254 at para 33; aff'd 2012 FCA 7 [*Murphy*]. *Matson* and *Andrews* were reviewed together in *Canada (Canadian Human Rights Commission) v Canada (Indian and Northern Affairs),* 2015 FC 398, [2015] FCJ No 400; aff'd 2016 FCA 200 [*Matson* and *Andrews*].

[18] In all three cases, it was held that the complaints filed were directed against the legislation rather than "discriminatory practices". The Member found these three cases to be directly applicable to the case at bar since the underlying complaints were challenging the mandatory legislative scheme for being discriminatory.

[19] Citing subsections 2(1) and 18(1) of the *Indian Act,* the Member stated that the legislative scheme vests the subject lands and the title thereto in the Crown for the use and benefit of the Indian band for which it has been set aside – the Okanagan Indian Band in this case. Moreover, the Member held that a CP does not confer ownership as it is not an instrument of conveyance: *Tyendinaga Mohawk Council v Brant,* 2014 ONCA 565, [2014] OJ No 3605 at paras 80-84 [*Tyendinaga*]. The Member noted that the statutory requirement is reflected in section 10.1.12 of the 2013 Manual, which expressly provides that the possessor of the interest, i.e. the "lessor", must be the Crown in right of Canada.

[20] The Member found that Mr. Beattie's evidence and argument was not legally supported and was largely based on his own personal views. The Member summarized Mr. Beattie's submissions as follows: (1) the *Indian Act* itself is currently anachronistic, paternalistic and discriminatory towards Indians; (2) the Crown is not really the owner of the subject lands but that Mr. Louie, and now his estate, is the owner; (3) under section 21, the Registrar is mandated to register all leases, including private leases; and (4) in refusing to register the private leases between the registered Indians without the Crown's participation, the respondent contravened section 5 of the CHRA.

[21] The Member ultimately decided that the refusal to register the proposed private leases and assignment of lease did not violate section 5 of the CHRA because the refusal was in accordance with the requirements provided by the *Indian Act.*

IV. ISSUES

[22] As a preliminary question, I considered whether Mr. Beattie had any standing as a party to seek judicial review of the CHRT decision. As indicated above, he had been a complainant in the 2008 and 2010 CHRT proceedings. When the three 2012 complaints were filed, he was authorized by the complainants to act as their designated representative, which is permissible under the CHRT Rules.

[23] Counsel for the respondent advised that the question of Mr. Beattie's standing was raised at the CHRT hearing but not resolved. In his reasons the Member noted that Mr. Beattie considered himself a complainant and he was listed as such in the style of cause.

[24] In my view, it is doubtful that Mr. Beattie can be properly described as a person "directly affected by the matter in respect of which relief is sought" within the meaning of those words in subsection 18.1 (1) of the *Federal Courts Act.* Mr. Beattie's interest, if any, in the lands in question is wholly derived from that of his spouse, Ms. Beattie.

[25] In the circumstances, I decided to proceed with the hearing and to allow Mr. Beattie to make oral representations. In light of the conclusion I have reached on the merits of the application, it is not necessary to decide whether Mr. Beattie is or is not properly before the Court as a party.

[26] The issues argued on this application can be framed as follows:

1. What is the applicable standard of review?
2. Did the CHRT err in finding that the complaints were solely a challenge to or a collateral attack upon legislation and nothing else and therefore beyond its jurisdiction?
3. Were aboriginal rights at issue before the CHRT?

[27] As I consider that the second issue is dispositive, I do not intend to address the third issue other than to observe that no evidence was led to establish an aboriginal right in accordance with the test set out by the Supreme Court in *R v Van der Peet,* [1996] 2 SCR 507 at para 46. Mr. Beattie's argument in this regard was not legally supported and consisted of reading excerpts of section 35 of the *Constitution Act, 1982* to the Court and expressing his personal opinion as to their meaning.

V. ANALYSIS

A. *Standard of review*

[28] The applicants made no submissions on the standard of review. From Mr. Beattie's oral argument, I would infer that he considers that it should be correctness. He repeatedly urged the Court to find that the CHRT erred in its interpretation and application of the law.

[29] I agree with the respondent that deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have a particular familiarity: *Tervita Corp v Canada (Commissioner of Competition),* 2013 FCA 28, [2014] 2 FCR 352 at para 54; *Dunsmuir v New Brunswick,* 2008 SCC 9, [2008] 1 SCR 190 at para 54; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association,* 2011 SCC 61, [2011] 3 SCR 654 at para 30.

[30] The presumption of deference has been reinforced by the recent decision of the Supreme Court of Canada in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 22. The root of the presumption lies in the expertise of the decision maker. In this instance, the CHRT has particular expertise in interpreting the words "services", in section 5, and "discriminatory practices", in subsection 40(1), of its home statute.

[31] The Federal Court and the Federal Court of Appeal have consistently applied a reasonableness standard in cases where the CHRT dismissed complaints on the basis that they constituted a challenge to legislation, namely, section 6 of the *Indian Act*. In *Canadian Human Rights Commission v Canada (Attorney General)* 2016 FCA 200, [2016] FCJ No 818, on appeal from the Federal Court's decision in *Matson* and *Andrews,* the Federal Court of Appeal upheld its conclusions in *Murphy*, regarding the appropriate standard of review in following an extensive review of the principles and authorities. The Commission is seeking leave to appeal that decision to the Supreme Court of Canada but it remains binding on this Court.

[32] The Federal Court of Appeal reached a similar decision in *First Nations Child and Family Caring Society v Canada (Attorney General),* 2013 FCA 75, [2013] FCJ No 249 which also dealt with the interpretation of section 5 of the CHRA. The Court noted that the range of reasonableness may be very narrow as it is constrained by the text, context and purpose of the statute. Nonetheless, the Court found that the Tribunal is entitled to deference.

[33] I am satisfied that the appropriate standard of review in this instance is reasonableness. As such, the Court's intervention will not be warranted unless the decision does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir,* above, at para 47.

B. *Did the CHRT err in finding that the complaints were solely a challenge to or a collateral attack upon legislation and nothing else and therefore beyond its jurisdiction?*

[34] The applicants submit that the respondent raised this argument before the CHRT as a preliminary defence to challenge existing aboriginal rights, the Tribunal's jurisdiction, the wording of section 21 and the purpose of the Reserve Land Registry. The applicants frame the respondent's position on this issue as an "intent or motive defense". They argue that the respondent improperly relies on this defence to contend that the alleged discriminatory practice should be construed as enforcement of a requirement of the legislative scheme.

[35] The applicants argue that the respondent registered an entirely private, i.e. without the involvement of the Crown, aboriginal transaction involving the same reserve lands under section 21. This was done under the 2006 version of the Manual. They claim that the CPs issued at that time evidenced what were in fact private lands held under aboriginal customary law. As such, in arriving at its conclusion, the applicants say that the CHRT ignored the facts and traditional aboriginal knowledge of the complainants with respect to the intergenerational transfer of his grandfather's lands to Mr. Louie.

[36] The applicants assert that the respondent made changes to the Manual in July 2013 with the specific intention of excluding private aboriginal transactions from registration. This resulted in discrimination against them and, therefore, the applicants argue, it is the CHRT's obligation to impose a remedy to cure the alleged discriminatory practice.

[37] The applicants further argue that the CHRT failed to comply with the purpose set out in section 2 of the CHRA and thereby invalidated the inquiry process set out under the CHRA.

[38] Finally, the applicants submit that their effort to rely on section 21 is not a challenge to any law, and thus, the Federal Court and Federal Court of Appeal decisions referenced above, have no application to this case.

[39] The respondent submits that the evidence and arguments before the CHRT were not directed at the conduct of ministerial officials, the exercise of discretion, or at the implementation of departmental policies and practices. Therefore, the complaints fell outside the

scope of the CHRA. The respondent further submits that the CHRT properly decided that although the process of reviewing and registering documents may be a service, the legislative criteria for doing so is not.

[40] The respondent contends that section 21 of the *Indian Act* is part of a broader legislative scheme that forms a system for land management under the *Indian Act.* That system requires the Crown to be a party to leases of the lands at issue for the Registrar to be able to register the leases under section 21 where the Band Council has not assumed responsibility for managing the lands. Further, the respondent submits, in carrying out this function, the Registrar is acting pursuant to statutory responsibilities and authority rather than exercising discretion. As a result, the respondent contends, the CHRT reasonably concluded that the Registrar could not register leases under section 21 that did not comply with the legislative requirements set out, in part, by subsections 28(1) and 58(3) of the *Indian Act.* Registering leases that do not comply with the legislative requirements of section 21 would, the respondent submits, be contrary to the public interest that underpins the scheme.

[41] In response to the Court's questions at the hearing, the applicants acknowledged that their position is essentially that the Registrar was required to register the submitted lease documents without regard to any requirements imposed by the Minister or other provisions of the *Indian Act.* In effect, under this conception of its purpose, the Registry serves merely as a repository for any documentation regarding private possessory interests in land, regardless of its validity under the *Indian Act.* This is what Parliament intended by enacting section 21, the applicants argue, and only Parliament could change it.

[42] I am satisfied that the applicants' position is without merit and that the decision of the CHRT was reasonable. The CHRT was entitled to rely on the Federal Court of Appeal's decision in *Murphy,* as well as this Court's decision in *Matson* and *Andrews*, in its analysis of whether the underlying complaints were solely a challenge to or a collateral attack upon legislation and nothing else. In doing so, the CHRT did not disregard the evidence or make an erroneous finding of fact. The respondent presented uncontradicted evidence at the hearing that the purpose of the statutory land management scheme is to improve the economic situation of First Nations by, among other things, having a credible registry system to assist in encouraging on-reserve development. It was open to the CHRT to accept and rely on that evidence in preference to the private ownership concept advanced by the applicants.

[43] In *Matson* and *Andrews*, the Commission argued that the eligibility provisions of the *Indian Act* are discriminatory. However, applying those provisions is an act of enforcing the law even though the statute provides a benefit. Justice McVeigh concluded, at paragraph 59, that it was the law which denied access to the benefit, not the government agency which administered the provisions. On appeal, the Federal Court of Appeal agreed, at paragraph 97, that the CHRT had reasonably concluded that the binding precedent in *Murphy* supported that result. The appellants could not challenge the application of the legislation under section 5 of the CHRA because the adoption of legislation is not a service customarily available to the public.

[44] In this application for judicial review, the applicants are arguing that enforcement of the eligibility provisions for land registration under section 21 of the *Indian Act* is discriminatory. In reaching a conclusion on the preliminary objection raised by the respondent, the CHRT was

deciding an issue analogous to what was at issue in *Murphy,* as well as in *Matson* and *Andrews.* I find the CHRT's reliance on those authorities to be reasonable.

[45] The CHRT properly concluded that section 21 of the *Indian Act* does constitute a "service" under section 5 of the *CHRA*. However, it also properly found that section 21 is part of a mandatory statutory scheme or formula which a government organization applies without discretion. The Registrar could not, therefore, register documents under section 21 that are rendered invalid by other sections of the *Indian Act,* such as subsections 58(3) and 28(1). If the Registrar did register invalid documents, he or she would be acting in violation of the mandatory requirements of the legislation.

[46] In my view, the CHRT did not commit an error by considering the words of section 21 in the broader context of the land management scheme provided within the *Indian Act.* In reaching this conclusion, the CHRT properly relied on *Sullivan on the Construction of Statutes,* above, at paragraph 13.12:

> When analyzing the scheme of an Act, the court tries to discover how the provisions or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan. The court's reasoning is described by Greschuk J in *Melnychuk v Heard*:
>
>> The court must not only consider one section but all sections of an Act including the relation of one section to the other sections, the relation of a section to the general object intended to be secured by the Act, the importance of the section, the whole scope of the Act and the real intention of the enacting body.

[47] The reasoning in *Melnychuk v Heard* (1963), 45 WWR 257 was recently endorsed by this Court in *De Silva v Canada (Citizenship and Immigration),* 2014 FC 790, [2014] FCJ No 826 at para 42.

[48] At the hearing, Sheila Craig's testimony provided an explanation for the role played by the Manual in the land management scheme set out in the *Indian Act.* Specifically, she testified that the Manual is a document which describes the procedures for preparing, submitting and registering documents in the Indian Land Registry System [IRLS]. Notably, the key purposes of the ILRS is to fulfill the statutory requirements of the *Indian Act,* safeguard registered interests, and provide timely and reliable information to clientele. I see no reason to interfere with the CHRT's finding that her evidence was credible and uncontradicted.

[49] As noted above, the applications for registration with attached leases met all the registration requirements except for two necessary criteria (i.e. failing to indicate the Crown as a party and failing to obtain Ministerial approval) as provided by the *Indian Act.* To determine whether these two criteria were in fact required under the *Indian Act,* the CHRT had to assess section 21 within the broader land management scheme set out in various provisions including, section 24, and subsections 28(1), 28(2) and 58(3) of the *Indian Act*.

[50] Further, to determine whether naming the Crown as a party was a requirement under the *Indian Act,* the CHRT properly considered and interpreted subsections 2(1), 18(1) and 20(1) of that *Act.* Those provisions suggest that the lands in the case at bar and the title thereto are vested in the Crown for the use and benefit of the Okanagan Indian Band. The applicants' position that

there is no evidence of the title of the land in issue being vested in the Crown is without merit. The CP issued to Mr. Louie did not confer ownership of the lands on Mr. Louie, as Mr. Beattie readily acknowledged at the hearing. The CP is only evidence of the fact that an Indian band member has been allotted possession of reserve land: *Tyendinaga,* above, at para 81.

[51] *Tyendinaga* concerned the transfer of certain CPs against various parcels of land. At paragraph 83 of that case, the Ontario Court of Appeal held that:

> The band member cannot be allotted title to the land itself because that is always with the Crown. Thus, unless reserve land is surrendered to the Crown pursuant to the *Indian Act* and is no longer reserve land, an Indian or band can only ever retain a possessory right to use the land for his benefit.

[52] The applicants' contention that Mr. Louie (now his estate), and not the Crown, was the owner of the subject lands through customary aboriginal tradition is not supported by the legislation or the jurisprudence.

[53] The applicants argued that the 2013 changes to the policy Manual were the sole cause of the Registrar's refusal to register their proposed leases under section 21. This argument is also not supported by the evidence. The CHRT noted that the key grounds to reject an application (i.e. not meeting the requirements set out in the policy Manual including, naming the Crown as the lessor, and being provided Ministerial approval) were present in both the former (2006) and current version of the Manual.

[54] To conclude, in my view, the CHRT did not err in determining the scope of its jurisdiction. It was detailed in its analysis and properly found that the applicants' complaints were solely a challenge to or a collateral attack upon a mandatory legislative scheme and nothing else. Its reasoning was transparent, justified and intelligible and its finding was within the range of acceptable outcomes defensible on the facts and the law.

[55] The application for judicial review is therefore dismissed. As the respondent did not seek costs, none will be ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed without costs.

"Richard G. Mosley"

Judge

APPENDIX

Relevant provisions of the *Canadian Human Rights Act*

Prohibited grounds of discrimination	**Motifs de distinction illicite**
3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.	**3 (1)** Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.
Denial of good, service, facility or accommodation	**Refus de biens, de services, d'installations ou d'hébergement**
5 It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public	**5** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :
(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or	**a)** d'en priver un individu;
(b) to differentiate adversely in relation to any individual,	**b)** de le défavoriser à l'occasion de leur fourniture.
on a prohibited ground of discrimination	

Relevant provisions of the *Indian Act*

Definitions	**Définitions**
2 (1) In this Act,	**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.
reserve	**réserve**
(a) means a tract of land, the legal title to which is vested in Her	Parcelle de terrain dont Sa Majesté est propriétaire et qu'elle a mise de côté à

Majesty, that has been set apart by Her Majesty for the use and benefit of a band, and

l'usage et au profit d'une bande; y sont assimilées les terres désignées, sauf pour l'application du paragraphe 18(2), des articles 20 à 25, 28, 37, 38, 42, 44, 46, 48 à 51 et 58 à 60, ou des règlements pris sous leur régime. (reserve)

(b) except in subsection 18(2), sections 20 to 25, 28, 37, 38, 42, 44, 46, 48 to 51 and 58 to 60 and the regulations made under any of those provisions, includes designated lands; (réserve)

Reserves to be held for use and benefit of Indians

18 (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Les réserves sont détenues à l'usage et au profit des Indiens

18 (1) Sous réserve des autres dispositions de la présente loi, Sa Majesté détient des réserves à l'usage et au profit des bandes respectives pour lesquelles elles furent mises de côté; sous réserve des autres dispositions de la présente loi et des stipulations de tout traité ou cession, le gouverneur en conseil peut décider si tout objet, pour lequel des terres dans une réserve sont ou doivent être utilisées, se trouve à l'usage et au profit de la bande.

Possession of lands in a reserve

20 (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

Possession de terres dans une réserve

20 (1) Un Indien n'est légalement en possession d'une terre dans une réserve que si, avec l'approbation du ministre, possession de la terre lui a été accordée par le conseil de la bande.

Certificate of Possession

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

Certificat de possession

(2) Le ministre peut délivrer à un Indien légalement en possession d'une terre dans une réserve un certificat, appelé certificat de possession, attestant son droit de posséder la terre y décrite.

Register

21 There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve.

Registre

21 Il doit être tenu au ministère un registre, connu sous le nom de Registre des terres de réserve, où sont inscrits les détails concernant les certificats de possession et certificats d’occupation et les autres opérations relatives aux terres situées dans une réserve.

Transfer of possession

24 An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

Transfert de possession

24 Un Indien qui est légalement en possession d’une terre dans une réserve peut transférer à la bande, ou à un autre membre de celle-ci, le droit à la possession de la terre, mais aucun transfert ou accord en vue du transfert du droit à la possession de terres dans une réserve n’est valable tant qu’il n’est pas approuvé par le ministre.

Grants, etc., of reserve lands void

28 (1) Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

Nullité d’octrois, etc. de terre de réserve

28 (1) Sous réserve du paragraphe (2), est nul un acte, bail, contrat, instrument, document ou accord de toute nature, écrit ou oral, par lequel une bande ou un membre d’une bande est censé permettre à une personne, autre qu’un membre de cette bande, d’occuper ou utiliser une réserve ou de résider ou autrement exercer des droits sur une réserve.

Minister may issue permits

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

Le ministre peut émettre des permis

(2) Le ministre peut, au moyen d’un permis par écrit, autoriser toute personne, pour une période maximale d’un an, ou, avec le consentement du conseil de la bande, pour toute période plus longue, à occuper ou utiliser une réserve, ou à résider ou autrement exercer des droits sur une réserve.

Lease at request of occupant

58 (3) The Minister may lease for the

Location à la demande de l’occupant

58 (3) Le ministre peut louer au profit de

benefit of any Indian, on application of that Indian for that purpose, the land of which the Indian is lawfully in possession without the land being designated.

tout Indien, à la demande de celui-ci, la terre dont ce dernier est en possession légitime sans que celle-ci soit désignée.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-401-16
STYLE OF CAUSE:	BRUCE BEATTIE AND JOYCE BEATTIE V THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	NOVEMBER 8, 2016
JUDGMENT AND REASONS:	MOSLEY, J.
DATED:	NOVEMBER 30, 2016

APPEARANCES:

Bruce Beattie Joyce Beattie	FOR THE APPLICANTS (Self-represented)
Ainslie Harvey	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT