

5. CASES OF SPECIAL INTEREST

This section of the manual deals with cases of special interest which have had an effect on the Department's interpretation of the *Indian Act*. It includes:

- The Michel Band
- The Ranville Case
- The Jock Case
- The Martin Case

For the reader who wants a quick overview, the boxed headings provide brief summaries of the events in each case and the legislative implications. For those who wish a more in-depth explanation, the text below the headings provides a discussion of the events, legal opinions and judicial rulings. A note at the end of each case indicates the files in the Office of the Registrar where further information can be found.

THE MICHEL BAND

- The Michel Band was the only Indian band to enfranchise in recent times as a band. This enfranchisement was effective on March 31, 1958.
- Under current legislation, enfranchisement is abolished.
- Individuals from the band who now wish to regain status may or may not be eligible.

The Michel Band, which had a reserve 15 miles northwest of Edmonton, Alberta, began petitioning for enfranchisement in 1914. At that time, the government was reluctant to approve the enfranchisement of the entire band. In 1928, however, 10 families of the Band were allowed to enfranchise under Section 110 of the 1927 *Indian Act*.

The Band persisted in requesting that the rest of its members be enfranchised. In 1958, the government agreed to the enfranchisement of the entire band membership of 122 under Section 111 (later 112) of the 1956 *Indian Act*, which governed the enfranchisement of bands. As a result, the Michel Band ceased to exist.

When Bill C-31 was passed, the new legislation included a provision, Section 6(1)(d), which allowed for the reinstatement of Indians who were enfranchised under subsection 109(1) of the *Indian Act* as it read immediately prior to April 17, 1985 or under any similar provision relating to the same matter.

The question then arose as to whether this new provision covered members of the former Michel Band who wished to regain status. Department officials noted that Section 6(1)(d) refers to 109(1), which only dealt with *individuals* who had been enfranchised, not with bands. Band enfranchisement had been dealt with under Section 112.

On the other hand, department officials also noted that Section 6(1)(d) includes the phrase "... or under any former provision of this Act relating to the same subject-matter as any of those provisions." As the Registrar stated, "perhaps some consideration should be given to the possibility that enfranchisement as dealt with in section 112 of the former Act relates to the same subject-matter as enfranchisement under subsection 109(1) of the same Act."

The Department of Justice, however, concluded that:

- loss of status due to being a member of a whole band that has been enfranchised is not grounds for reinstatement under the 1985 legislation, and
- a person or the descendant of a person who lost status as a result of a whole band being enfranchised may be able to establish entitlement to registration under other grounds.

Consequently, a person from the Michel Band may be eligible if he/she was enfranchised or lost entitlement in other ways (such as through a woman's marriage to a non-Indian) prior to March 31, 1958, the date of the Michel Band's enfranchisement. His or her descendants may also be entitled to first-time registration as Indians. If eligibility is confirmed, such individuals will be registered on the General List.

(Information on the Michel Band can be found in Files #LO1163, #LO112 and #LO1177 in the Office of the Registrar.)

THE RANVILLE CASE - 1979

- Myrelene Ranville protested the deletion of her children from the Fort Alexander Band List after she married their father, a non-Indian. At that point, the Registrar considered the children legitimate under provincial law and no longer eligible.
- The judge ruled that the *Legitimacy Act of Manitoba* cannot deprive a child of Indian status and that the Ranville children were eligible for registration.
- As a result of this decision, provincial legislation cannot be used as a means of taking away Indian rights as provided by federal legislation under the *Indian Act*.

Sean Gerald Ranville, born in 1971, and Danielle Winona Ranville, born in 1972, were the children of Myrelene Henderson, a registered Indian who was unmarried at the time of their births.

Myrelene Henderson registered her two illegitimate children on the Fort Alexander Band List in accordance with Section 11(1)(e) of the *Indian Act*, which stated that a person is entitled to be registered if he/she is the illegitimate child of a female person who is herself eligible for registration.

In 1974, Myrelene married Brian Gerald Ranville, the father of her children. Brian, a non-Indian, had no eligibility for registration. The Registrar deleted the names of the Ranville children from the Fort Alexander Band List in 1978. His decision was based on the following:

- Myrelene had lost her status by marrying a non-Indian;
- under the *Legitimacy Act of Manitoba*, Myrelene's children were now considered legitimate (this Act states that a person is legitimate from birth for all purposes where his parents intermarry subsequent to his/her birth); and
- there is no provision in the *Indian Act* for the registration of the legitimate children of non-Indian parents.

When Myrelene protested the deletion of her children from the Band List, the Registrar affirmed his decision. Myrelene requested that the decision be appealed to a judge for review.

Judge Hudson noted that the *Indian Act* does not define *legitimacy* and *illegitimacy*. Therefore, under the *Act*, the Rainville children were still eligible for registration despite the marriage of their parents. The issue to be addressed, he said, was whether the *Manitoba Legitimacy Act* could be “referentially incorporated” into the *Indian Act* and affect the status of the children.

Judge Hudson referred to Natural Parents v. Superintendent of Child Welfare in which the Supreme Court of Canada was asked in 1976 to consider the combined effect of the British Columbia *Adoption Act* and the *Indian Act*. In this case, the Court decided that the *Adoption Act* could not “destroy Indianness and entitlement to registration under Section 11 (1)(d) of the *Indian Act*.”

In agreeing with the Supreme Court decision, Justice Hudson stated that the *Manitoba Legitimacy Act* was “equally incapable of destroying Indianness” and that “the status of Indian carried with it valuable rights not enjoyed by non-Indians. There would need to be clear unambiguous language to persuade me that it was the intention of the Parliament of Canada to deprive a child of such status because of the subsequent marriage of his parents.”

The Minister appealed Judge Hudson’s decision to the Supreme Court but the appeal was dismissed.

(Information on the Ranville Case can be found in Files #CJ16 and #CJ27 in the Office of the Registrar.)

THE JOCK CASE - 1980

- James David Jock protested the deletion of his name from the Iroquois of St. Regis Band List based on the double-mother clause. His mother had been a non-Indian prior to marriage, and his paternal grand-mother was an American Indian of the St. Regis, New York tribe.
- The judge ruled that James David Jock's grandmother was a member of the Canadian St. Regis Band in her own and that James David Jock was entitled to be registered.
- As a result of this decision, the Registrar will consider the registration of anyone in circumstances similar to that of James David Jock.

James David Jock (b. 1953) was the son of John Leslie Jock and Laura Elizabeth Berditt. John Leslie was a member of the Iroquois of St. Regis Band, now known as the Mohawks of the Akwesasne Band. Laura, prior to her marriage, was not an Indian as defined by the *Indian Act*. Rather, she automatically became a member of her husband's band and was registered as an Indian by reason of her marriage.

John Leslie's mother, Catherine Jock, was a Mohawk Indian, born on the American St. Regis Reservation which abuts the Canadian St. Regis Reserve. Her ancestors were American, rather than, Canadian, Mohawk Indians.

The Registrar decided that Catherine Jock had no Indian status, invoking sub-sections 11(b) and (d) of the 1951 legislation. These subsections stated that to be eligible for registration a person had to be a member or the descendant of a member of a band for "whose use and benefit, in common, lands have been set apart" by the Canadian government or "that has been declared by the Governor in Council to be a band for the purposes of this *Act*." Since Catherine Jock was not a member nor descended from members of the Iroquois of St. Regis Band, she was not eligible for registration and therefore not an Indian.

Once the Registrar decided that Catherine Jock was not eligible for registration, the double-mother clause came into play. This clause stated that a person born of a marriage entered on or after September 4, 1951 who has attained the age of 21 years and whose mother and whose father's mother were non-Indians would no longer be eligible for registration.

Since James David's mother had not been an Indian prior to her marriage and his paternal grandmother was not considered an Indian within the context of the *Indian Act*, the Registrar

removed James David from the band list in 1978, invoking the double-mother clause. The Band Council and James David Jock filed a protest against this decision, and the case went to appeal.

In his review of the legislation, Judge Smith examined the peculiar geographical situation of St. Regis, which straddles the Canadian/American border, and the intent of the *Indian Act*. He noted that the St. Regis Indians “consider themselves to be part of a homogeneous group sharing common ancestry, language, culture and traditions with a continental flavour.” Although the American tribe and the Canadian band had separate councils, the two shared one church in which “burials and marriages were conducted regardless of residence,” and ignored the international boundary “in many other particulars as well as social events, recreational meets and even medical facilities.”

Judge Smith also discussed the intent of the historic Indian legislation which had defined Indians as “all persons of Indian Blood, reputed to belong to the particular tribe, band or body of Indians.” Noting that St. Regis must have presented a problem when treaties were being created and boundaries set, he pointed out that the *Indian Act* of 1874 did not make specific reference to the two groups as separate political entities.

Therefore, Judge Smith stated, he did not feel compelled by the *Indian Act* of 1951 to find that the tribe had a “composition which became frozen in 1874,” adding that “Residence [was not] a factor in the minds of Canadian authorities...and that a person such as Catherine [Jock]...crossing over the border would have experienced no difficulty, even absent a marriage to a member of the Band in Canada, acquiring membership, living among the Band members and being reputed across the country as well as among her own, to belong to St. Regis.”

Once the appeals judge determined that Catherine Jock was eligible for registration, the double-mother clause was no longer valid, and James David Jock was entitled to be registered.

(Information on the Jock Case can be found in File #JC19 in the Office of the Registrar.)

THE MARTIN CASE - 1983

- John Martin, the illegitimate son of a non-Indian mother and Indian father, protested when his application for membership into his father's band was refused.
- The Registrar stated that he did not qualify under subsection 11(1)(c) on the grounds that it applied only to legitimate male children. When an appeal was made, the judge upheld the Registrar's decision.
- The Supreme Court, however, overturned the decision of the Registrar and the lower-court judge, stating that John Martin was eligible for registration.
- As a result of this decision, all male children of entitled Indian males were eligible for registration whether they were legitimate or not.

John Martin (b. 1953) was the illegitimate child of May Richards, a non-Indian, and Richard Martin, who had been registered with the Micmac of Maria Rand. When John Martin applied for band membership, the Registrar examined Section 11(1)(c) of the 1951 *Indian Act*, which stated that a person was entitled to be registered if he “is a male person...in direct descent in the male line of a male person” who is entitled to be registered as an Indian.

In 1979, the Registrar refused John Martin’s application for band membership on the grounds that Section 11(1)(c) applied only to legitimate sons in the male line of descent. When John Martin protested this decision, the Registrar upheld it and the case went to appeal.

In hearing the appeal, Judge Marceau noted that questions had arisen before over the word descendant in 11(1)(c), and whether it should be “understood in the wide sense of issue, whether legitimate or not, or in the narrow sense of legitimate descendants only.”

Noting that Parliament had always been careful to distinguish legitimate from illegitimate children in legislation, Judge Marceau stated that the *Indian Act* intended the term *child* to mean a legitimate child unless it formally and expressly referred to an illegitimate child. John Martin, therefore, was ruled not eligible for band membership.

John Martin appealed his case to the Supreme Court of Canada, which noted the following:

- John Martin was a male person in direct descent in the male line of a male person who was entitled to be registered as an Indian;

- the intent of the *Indian Act* was that “Indian status depends on proof of descent through the Indian male line” and that the subject of legitimacy is “relevant only when it has a bearing on [this] descent;” and
- there is no ambiguity in 11(1)(c) and it clearly includes both legitimate and illegitimate sons. Any other interpretation would render 11(1)(c) meaningless as 11(1)(d) provides for the registration of legitimate children of Indian males.

Therefore, the Court concluded that John Martin did fall within subsection 11(1)(c) and was entitled to be registered.

(Information on the Martin Case can be found in Files #CJ18 and #CJ23 in the Office of the Registrar.)