

**In the Court of Appeal of Alberta**

**Citation: Cunningham v. Alberta (Aboriginal Affairs and Northern Development), 2009 ABCA 239**

**Date:** 20090626

**Docket:** 0703-0275-AC

**Registry:** Edmonton

**Between:**

**Peavine Métis Settlement**

Not a Party to the Appeal  
(Applicant)

- and -

**Barbara Cunningham, John Kenneth Cunningham,  
Lawrent (Laurence) Cunningham, Ralph Cunningham,  
Lynn Noskey, Gordon Cunningham,  
Roger Cunningham and Ray Stuart**

Appellants  
(Applicants)

- and -

**Her Majesty the Queen in Right of Alberta  
(The Minister of Aboriginal Affairs and Northern Development)  
and The Registrar, Métis Settlements Land Registry**

Respondents  
(Respondents)

- and-

**Elizabeth Métis Settlement**

Intervener  
(Intervener)

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**The Court:**

**The Honourable Madam Justice Elizabeth McFadyen  
The Honourable Mr. Justice Peter Costigan  
The Honourable Mr. Justice Keith Ritter**

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**Reasons for Judgment Reserved of  
The Honourable Mr. Justice Ritter**

**Concurred in by The Honourable Madam Justice McFadyen  
Concurred in by The Honourable Mr. Justice Costigan**

Appeal from the Judgment by  
The Honourable Mr. Justice D.L. Shelley  
Dated the 13th day of August, 2007  
Filed on the 28th day of September, 2007  
(Docket: 0603-14676)

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**Reasons for Judgment Reserved of  
The Honourable Mr. Justice Ritter**

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[1] The appellants are individuals whose membership in the Peavine Métis Settlement (“Peavine”) was terminated pursuant to s. 90 of the *Métis Settlements Act*, R.S.A. 2000, c. M-14 (“*MSA*”), which calls for the removal of Métis settlement members who voluntarily register as Indians under the *Indian Act*, R.S.C. 1985, c. I-5. Section 75 of the *MSA* prohibits individuals with Indian status from obtaining Métis settlement membership. This appeal is from the chambers judge’s decision denying the appellants’ request for a declaration that ss. 75 and 90(1)(a) of the *MSA* (the “impugned provisions”) breach ss. 2(d), 7, and/or 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (“*Charter*”).

**Facts**

[2] Each of the appellants was a long time member of Peavine. In August 1999, the Peavine Council then in place (“Former Peavine Council”) provided the Registrar of the Métis Settlements Land Registry with a list of names of existing Peavine members who obtained Indian status after November 1, 1990, to be removed from the settlement membership list pursuant to s. 90 of the *MSA*. That list did not include all Peavine members who had registered as Indians after November 1, 1990, only the appellants (all of whom are members of the Cunningham family). In response, the Registrar advised that he could not remove the names from the membership list without confirming their status, and that the Department of Indian Affairs and Northern Development (“DIAND”) was unwilling to provide the necessary information. Contemporaneously, the Former Peavine Council asked the Provincial Minister of Aboriginal Affairs to confirm the Indian status of each of the appellants, but the Associate Minister was unwilling to involve herself in the matter without a further understanding of the issues.

[3] In November 2000, the Former Peavine Council applied for a *mandamus* order directing the Registrar to remove the appellants from the membership list in accordance with s. 90 of the *MSA*. That application was granted on March 2, 2001, and the Registrar was ordered to obtain the confirmatory information regarding the status of the appellants from the DIAND, and to update the Peavine membership list accordingly. In granting that application, the judge was unaware that the Former Peavine Council was seeking to de-register only members of the Cunningham family who had voluntarily registered as Indians. On May 9, 2001, the Registrar complied with the order and removed the appellants from the membership list.

[4] The appellants’ evidence was that they applied for Indian status to receive health care benefits and did not intend to give up their Métis settlement membership. As a result of their exclusion from Peavine membership, the appellants lost settlement benefits, including the right to participate as members of a Métis settlement community.

[5] Each of the appellants filed an affidavit detailing their circumstances and experiences in dealing with the Former Peavine Council. Ralph David Cunningham's affidavit is typical of those that were filed. In it, he outlines his date of birth and the involvement he and his family had in Peavine, including his parents' migration to what is now Peavine in the early 1950s. At the age of 19, he helped his father and brothers to clear bush and build homes on lands that now comprise part of the Peavine lands. Ralph states that he has lived on Peavine lands practically all his life. He also relates that his mother lost her Indian status when she married his Métis father, but subsequently regained it in 1985, meaning Ralph was also entitled to have Indian status, which is based on blood lines and marriage, not self identity. Because he suffers from diabetes and other medical conditions, Ralph applied for Indian status, which enables him to access a federal drug plan. The only benefit he accesses as a result of his Indian status is the drug plan and there is no similar plan available to Métis in Alberta. Ralph has never had any intention of living anywhere other than on Peavine.

[6] Ralph was not given notice of the meeting at which the Former Peavine Council passed the bylaw removing him from Peavine's membership list. Nor was he a party to the litigation that compelled the Registrar to remove his name from that list. He does not want to simply re-apply to Peavine to have his membership reinstated, as this would leave him at the mercy of subsequent councils who could pass new bylaws ending his membership again. Since his name has come off Peavine's list, Ralph has continued to live on Peavine but can no longer vote for council or with respect to referendums. He also cannot access programs that flow through the Council.

[7] Similar experiences are detailed by other appellants, some of whom also refer to invasive actions by the Former Peavine Council, such as refusals to provide utility services to their homes. All the appellants identify as Métis and believe other Métis at Peavine regard them as Métis. No one intends to live on an Indian reserve. Rather, each applied for Indian status in order to access medical benefits not available to Métis. Their doing so is at no cost to Peavine or the general Métis population in Alberta.

[8] In 2004, a new Peavine council was elected ("Present Peavine Council"). By letter dated April 18, 2005, it requested that the Registrar reinstate the appellants to the membership list. On November 17, 2005, the Registrar replied that he was unable to do so under s. 75 of the *MSA*, which does not allow Métis with Indian status to obtain settlement membership. The Registrar advised that the appellants could reapply for membership, however the appellants declined to do so as they felt they should not have to.

[9] On April 26, 2007, the appellants filed an originating notice in the Court of Queen's Bench of Alberta seeking a declaration that ss. 75 and 90(1)(a) of the *MSA* breach ss. 2(d), 7, and/or 15(1) of the *Charter*. The chambers judge granted Elizabeth Métis Settlement ("Elizabeth") intervener status in order to present s. 25 *Charter* arguments in support of the impugned provisions, should a s. 7 or s. 15(1) *Charter* breach be found. The chambers judge did not find any infringement of the appellants' *Charter* rights and the appellants appeal that decision.

## **Decision Below**

### **Section 2(d)**

[10] The chambers judge concluded that the impugned provisions do not breach the appellants' s. 2(d) freedom of association by infringing on their rights to fully belong to and participate in Peavine. She held that this case is not about the state's interference with individuals' rights to belong to an association, but about whether the impugned provisions breach s. 2(d) of the *Charter* by being under-inclusive, and about whether the government is obligated to extend settlement membership to the appellants despite their status as registered Indians: *Peavine Métis Settlement v. Alberta (Minister of Aboriginal Affairs and Northern Development)*, 2007 ABQB 517, 424 A.R. 271 at paras. 66-68.

[11] The chambers judge identified the three requirements set out in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016 at para. 71 ("*Dunmore*") that must be met to establish an under-inclusion claim. Based on those requirements, she concluded: (1) the appellants' claim was not founded in a fundamental freedom, but rather access to a particular statutory regime; (2) there was no substantial interference with a fundamental freedom; and (3) the state was not responsible for any such interference. In her assessment, the appellants did not satisfy any of the three factors, therefore no *Charter* breach was established: at para. 102.

### **Section 7**

[12] The chambers judge held that the impugned provisions "severely circumscribed" the appellants' right to live on Peavine, and therefore engaged their s. 7 *Charter* rights: at para. 122. However, relying on the Supreme Court's analysis in *R. v. Marmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571 ("*Marmo-Levine*"), she concluded that the impugned provisions are not arbitrary because: (1) they pursue the legitimate state interest of securing a land base and providing a measure of self-autonomy for Alberta Métis; and (2) they are not grossly disproportionate to the state interest, because the legislation was adopted after consultation with Métis in the province and the legislation allows the General Council to adopt a policy negating the exclusion.

### **Section 15(1)**

[13] The chambers judge used the three part test from *Law v. Canada (Minister of Employment & Immigration)*, [1999] 1 S.C.R. 497, 70 D.L.R. (4th) 1 ("*Law*") to determine whether s. 15(1) was breached: at paras. 146-206. This test requires that the claimant establish: (1) differential treatment based on a personal characteristic; (2) an enumerated or analogous ground; and (3) a discriminatory purpose or effect.

[14] Relying on the appellants' characterization of the comparator group as Métis settlement members who have not registered as Indians, the chambers judge found that the first and second parts of the *Law* test had been met, but the third part was not satisfied because the differential

treatment was not discriminatory under her application of the four contextual factors set out in *Law* at para. 88 and *Lovelace v. Ontario*, 2000 SCC 37, [2000] 1 S.C.R. 950 at para. 68 (“*Lovelace*”). The chambers judge held that: (i) the appellants are not uniquely disadvantaged in relation to the comparator group (para. 180); (ii) there is a correspondence between the ground on which the claim is based and the actual need, capacity, or circumstances of the appellants and the comparator group (para. 204); (iii) the *MSA* was intended to allow for Métis self-autonomy, which is an ameliorative effect (paras. 185 and 204); and (iv) although the loss of the right to participate in the Métis community is a severe effect of the impugned legislation, the appellants chose to pursue other rights and benefits as status Indians (para. 205). Based on the contextual factors, the chambers judge concluded that the impugned provisions do not affect the appellants’ human dignity and that discrimination was therefore not established for the purposes of s. 15(1) of the *Charter*: at para. 206.

### **Sections 1 and 15(2)**

[15] The chambers judge declined to analyse ss. 1 and 15(2) of the *Charter* because she found no underlying breach.

### **Legislation**

#### ***Canadian Charter of Rights and Freedoms, ss. 2(d), 7, 15(1) and 25***

2. Everyone has the following fundamental freedoms:

...

d) freedom of association.

...

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

...

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups

including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

...

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

***Métis Settlements Act, ss. 75, 90, and 221(1)(z)***

75(1) An Indian registered under the Indian Act (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement is not eligible to apply for membership or to be recorded as a settlement member unless subsection (2) or (3.1) applies.

(2) An Indian registered under the Indian Act (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement may be approved as a settlement member if

- (a) the person was registered as an Indian or an Inuk when less than 18 years old,
- (b) the person lived a substantial part of his or her childhood in the settlement area,
- (c) one or both parents of the person are, or at their death were, members of the settlement, and
- (d) the person has been approved for membership by a settlement bylaw specifically authorizing the admission of that individual as a member of the settlement.

(3) If a person who is registered as an Indian under the Indian Act (Canada) is able to apply to have his or her name removed from registration, subsection (2) ceases to be available as a way to apply for or to become a settlement member.

(3.1) In addition to the circumstances under subsection (2), an Indian registered under the Indian Act (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement may be approved as a settlement member if he or she meets the conditions for membership set out in a General Council Policy.

(4) A right to reside on patented land acquired under this or another enactment, a General Council Policy or a bylaw is not affected by a decision to refuse an application for membership when the decision is based on this section.

...

90(1) Unless a General Council Policy provides otherwise, a settlement member terminates membership in a settlement if

(a) the person voluntarily becomes registered as an Indian under the Indian Act (Canada), or

(b) the person becomes registered as an Inuk for the purpose of a land claims agreement.

(2) On receipt from the settlement council of notice of a termination of membership under subsection (1), and after any verification of the facts that is considered necessary, the Minister must remove the name of the person concerned from the Settlement Members List.

...

222(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies

...

(z) respecting membership in settlements generally;

### **Standard of Review**

[16] Assessing the impugned provisions' constitutionality under the *Charter* is an exercise involving questions of law, for which the standard of review is correctness: *Housen v. Nikolaisen*,

2002 SCC 33, [2002] 2 S.C.R. 235 at para. 8; *Thomson v. Alberta (Transportation and Safety Board)*, 2003 ABCA 256, 330 A.R. 262 at para. 14. Sections 1, 15(2) and 25 of the *Charter* were not dealt with by the chambers judge, leaving no prior decision to review. The Court can deal with these issues on a first instance basis: *Columbia Pictures Industries, Inc. v. Gaudreault*, 2006 FCA 29, 269 D.L.R. (4<sup>th</sup>) 177 at para. 11.

### Analysis

[17] This appeal is properly resolved on the analysis of s. 15(1) of the *Charter*. Since the operation of s. 15(1) is, to some extent, circumscribed by s. 15(2) of the *Charter*, I will first consider s. 15(2) and thereafter address s. 15(1). I will then deal with ss. 2(d) and 7 of the *Charter*, and will finally consider whether ss. 1 and 25 of the *Charter* override any breach found.

### **Section 15 of the *Charter***

[18] Just before the hearing of this appeal, the Supreme Court released its decision in *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483 (“*Kapp*”). At the appeal hearing, the respondents applied to adduce new evidence, taking the position that *Kapp* has changed the legal landscape with respect to s. 15 *Charter* claims. The appellants did not object to this panel receiving and considering the new evidence, but argued that regardless of the new evidence, *Kapp* does not operate to set aside any s. 15(1) *Charter* breach suffered by the appellants.

### Section 15(2)

[19] In *Kapp*, the Supreme Court dealt with the operation of s. 15(2) of the *Charter* in terms of limiting discrimination claims advanced under s. 15(1). The Court concluded that if the state can meet the requirements of s. 15(2), then a s. 15(1) claim will fail: *Kapp* at paras. 37-39. The respondents argue that so long as they are able to point to an ameliorative legislative purpose relating to disadvantaged persons, the impugned legislation will be saved by s. 15(2), regardless of whether others can make a case that the legislation discriminates against them.

[20] To succeed on s.15(2), the state must show that the impugned program or legislation (a) has an ameliorative or remedial purpose, and (b) targets a disadvantaged group identified by enumerated or analogous grounds: *Kapp* at para. 41. The chambers judge identified the appellants as being denied the benefits of settlement membership on the basis of their registration as Indians under the *Indian Act*, and correctly found that to be a personal characteristic analogous to an enumerated ground, citing *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, 173 D.L.R. (4<sup>th</sup>) 1 (“*Corbiere*”). Because the impugned provisions target the appellants, and those similarly situated, the second part of the s. 15(2) test is met.

[21] With respect to the first part, the impugned provisions must rationally advance their purported ameliorative purpose. The analysis parallels that performed in determining discrimination

under s. 15(1) of the *Charter*, where ameliorative purpose is considered as a contextual factor: see *Kapp* at para. 23.

[22] In the context of s. 15(1), the respondents argue that the *MSA*'s overall purpose, being the securing of a Métis land base, preserving Métis culture, and promoting Métis self government, is ameliorative, citing *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504 ("*Martin*"). They suggest that because the *MSA*'s purpose is ameliorative, the first requirement under s. 15(2) is satisfied. However, *Martin* does not stand for the principle that where the overall purpose of a statute is ameliorative, the lack of such purpose or effect in a specific provision can be disregarded: see also *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2002), 59 O.R. (3d) 481, 212 D.L.R. (4th) 633 at para. 99. Rather, despite the ameliorating purpose of the statute as a whole in *Martin*, the specific provisions at issue were held to be inconsistent with the overall purpose, supporting the Court's ultimate finding of discrimination: *Martin* at para. 102.

[23] If the discriminatory effects of specific provisions could be disregarded in light of an overall ameliorative purpose, cases like *Vriend v. Alberta*, [1998] 1 S.C.R. 493, 212 A.R. 237 ("*Vriend*"), would no longer be good law. In *Vriend*, the Government of Alberta clearly could have made a case that there was an ameliorative purpose to Alberta's human rights legislation, as it then existed. If the respondents' interpretation of s. 15(2) is correct, a finding that the Alberta Legislature's failure to provide human rights protection for homosexuals was discriminatory would have been barred. I doubt that the Supreme Court in *Kapp* intended to take the law relating to the *Charter*'s equality protection to this point. Moreover, the wording of s. 15(2), which refers to "any law, program, or activity" suggests something specific. It is more logical that the state's onus is to demonstrate that the impugned provisions themselves have as their object, "the amelioration of conditions of disadvantaged individuals or groups". If the overall ameliorative purpose of the statute is considered, the impugned program or provision must still be a rational means of achieving that purpose: *Kapp* at para. 49.

[24] The *MSA*, as a whole, does have an ameliorative purpose. It seeks to aid the enhancement and preservation of Métis culture and identity, and enable a degree of self-governance. It also seeks to preserve a Métis land base. The impugned provisions exclude the appellants, and those similarly situated (as members who have registered for Indian status after November 1, 1990), from membership in Métis settlements. In order to meet the first requirement of s. 15(2), as identified in *Kapp*, that exclusion must have a rational connection to the enhancement and preservation of Métis culture and self-governance, and to the securing of a Métis land base.

[25] At para. 204 of her reasons, the chambers judge concluded that the impugned provisions support the *MSA*'s ameliorative purpose or effect based on the authority given to the General Council to adopt policies respecting membership eligibility and termination of membership. To that effect, the respondents argue that the impugned provisions allow for self-governance and aid in preserving Métis resources by limiting settlement membership numbers and giving those who qualify for membership a greater benefit by lessening the dilution of resources available under the

*MSA* and its companion legislation. They contend that because the chambers judge accepted the evidence that there are limited resources available to Métis settlements and that, with increasing settlement membership, there would be a dilution of benefits available to all members, she was correct in finding that the ameliorative purpose of the *MSA* is supported by the impugned provisions.

[26] These arguments pose a number of problems. First, there is no evidence of any attempt by persons with Indian status who did not formerly have a substantial connection with Peavine, or some other Métis settlement, attempting to gain Métis status. Nor is there any evidence that this has been a problem historically. Rather, the history of the impugned provisions shows that they have only been invoked with respect to the appellants and that the Former Peavine Council did not have the furtherance of Métis culture or self-governance, nor the preservation of land base, in mind when relying on them to disqualify the appellants from settlement membership.

[27] Secondly, excluding members based on their Indian status, even if only acquired for the purpose of receiving benefits, is not far removed from excluding members based on their ancestry, which does not instinctively advance the purported purposes of the *MSA*, particularly when that ancestry may also function as a necessary component of membership. Métis status requires an element of aboriginal lineage together with cultural self-identification as a Métis, established by living as a Métis with recognition of that fact by other Métis. Since being Métis requires aboriginal roots, if the aboriginal roots that make an individual eligible to acquire Indian status are the same aboriginal roots that qualify him or her as Métis, removal of members because of their Indian status may be at odds with the goal of enhancing Métis culture. The evidence established that in some settlements, one third of the members also hold Indian status, yet there is no suggestion that any settlement is being overrun by status Indians or that such numbers have diminished the purported aims of the *MSA*.

[28] In the end, the effects of ss. 75 and 90 of the *MSA* are relatively arbitrary, potentially excluding Métis settlement members like the appellants, who, for a long time, have identified with and lived the Métis culture. It is difficult to imagine that such exclusion is in furtherance of the enhancement and preservation of Métis culture, identity and self-governance.

[29] Courts would not hesitate to strike down legislation that permitted a council to exclude an otherwise qualified member of its Métis community because he or she decided to change his or her religion, even if the reason for such exclusion was to limit membership, thereby making greater benefits available to unaffected members. Although such means might advance the legislative purpose, they are not rational. In this respect, I take the meaning of rational to be that of sensible, or imbued with reason. They do not advance self-governance or ensure resource allocation, but merely enable councils to pick and choose among various status Indians who have taken that status after November 1, 1990.

[30] At para. 54 of *Kapp*, the Court stated, “we would suggest laws designed to restrict or punish behaviour would not qualify for s. 15(2) protection”. In my view, this passage relates to rationality of the means chosen to advance a legislative purpose. Protection may potentially be afforded under

s. 15(2) for positive benefits, but not if the benefits are achieved by restricting or punishing behaviour. In this case, the behaviour that is restricted or punished is the active seeking and obtaining of Indian status after November 1, 1990.

[31] I conclude that the impugned provisions do not rationally advance the purported legislative purposes of the *MSA*. In consequence, s. 15(2) of the *Charter* is not a bar to consideration of s. 15(1).

### Section 15(1)

[32] No party takes issue with the chambers judge's statement of the law respecting this issue, her choice of comparator group (Métis who have not registered as Indians under the *Indian Act* and who meet the other criteria for settlement membership), her determination that ss. 75(1) and 90(1) of the *MSA* result in differential treatment between the appellants and the comparator group, nor her determination that the differential treatment is based on an analogous ground. However, the appellants do take issue with the chambers judge's finding that the differential treatment was not discriminatory under s. 15(1) of the *Charter*.

[33] In *Law*, at para. 88, part (3), the Supreme Court set out a three-stage analysis for determining if there has been a s. 15(1) violation:

(A) Does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics?

(B) Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?

and

(C) Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the claimant in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?

[34] Only the third stage of that analysis is at issue in this case, so I will restrict this discussion to the question of whether the differential treatment imposed by ss. 75 and 90 of the *MSA* is discriminatory. In *Law*, impact on human dignity was held to be central to that analysis, requiring

an assessment of contextual factors, including: pre-existing disadvantage, stereotyping, prejudice, or vulnerability; whether the impugned legislation takes into account the claimant's actual situation; the ameliorative purpose or effects of the impugned law upon a more disadvantaged person or group in society; and the nature and scope of the interest affected by the impugned law: at para. 88, part (9). More recently, in *Kapp* and in *Ermineskin Indian Band and Nation v. Canada, 2009 SCC 9* ("*Ermineskin*"), the Supreme Court clarified its reasons in *Law*, concluding that a proper analysis of whether differential treatment is discriminatory involves determining whether the distinction drawn creates a disadvantage by perpetuating prejudice or stereotyping: *Kapp* at para. 24, citing *Andrews v. Law Society of British Columbia*, [1989] 2 S.C.R. 143 ("*Andrews*"); *Ermineskin* at para. 188, citing *Andrews* at 182.

[35] The contextual factors delineated in *Law*, though still relevant, "should not be read literally as if they were legislative dispositions, but as a way of focussing on the central concern of s. 15 identified in *Andrews* – combatting discrimination, defined in terms of perpetuating disadvantage and stereotyping": *Kapp* at para. 24. Discrimination will be found when the distinction drawn "has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society": *Andrews* at 174, cited in *Kapp* at para. 18. Discrimination can be found through two avenues: decisions or laws that perpetuate the prejudice or disadvantage of a claimant, and decisions or laws that are based on inaccurate stereotypes: *Kapp* at para. 18.

### **Perpetuation of Prejudice or Disadvantage**

[36] Two of the contextual factors raised in *Law* are relevant to this analysis: the nature and scope of the interest affected (or what disadvantage has been suffered), and whether the appellants suffered any pre-existing disadvantage, stereotyping, prejudice, or vulnerability: *Kapp* at para. 23.

[37] Ameliorative purpose and effect may also be relevant to the question of whether a law perpetuates disadvantage, but is most appropriately dealt with under the s. 15(2) analysis: *Kapp* at para. 23. I have already stated that I can perceive little that is ameliorating in the purpose or effect of the impugned provisions. Historically, they have only served to permit a seemingly vindictive council to arbitrarily prevent the appellants from continuing as members of Peavine. To the extent that this contextual factor is relevant here, I conclude that it supports a finding of discrimination.

### Nature of Affected Interest

[38] As to the interest affected, when evaluating the impact of impugned legislation on claimants, courts may consider the economical, constitutional, and societal aspects of the affected interest: *Law* at para. 74. The more severe and localized the consequence, or the more significant the interest affected, the more likely that discrimination will be found: *Law* at para. 74, citing *Egan v. Canada*, [1995] 2 S.C.R. 513, 124 D.L.R. (4th) 609 at para. 63; *Corbiere* at para. 79. In this case, settlement membership not only affects the right to meaningfully participate in the community, but also affects housing and transportation services, employment, recreation, land rights, and identity. The

appellants are denied voting rights, participation in governance, and the right to maintain their cultural connection. The denial of voting and participatory rights alone is sufficient to indicate that significant interests are being affected: *Corbiere* at paras. 17-19.

[39] Although the chambers judge found the impact of the impugned legislation on the appellants was severe, given that they lost their right to meaningful participation in the Métis community, she ultimately concluded that this factor could not weigh in favour of a discrimination finding because the appellants deliberately chose to pursue alternate rights and benefits by voluntarily registering as Indians: at para. 205. That conclusion was in error. The choice to acquire an analogous ground is not relevant to the discrimination analysis: *Corbiere* at para. 19.

[40] The significance of the interests affected in this case weighs in favour of a discrimination finding: *Corbiere* at paras. 80-90; *Esquega v. Canada (Attorney General)*, 2007 FC 878, [2008] 1 F.C.R. 795 at para. 91.

#### Pre-existing Disadvantage, Stereotyping, Prejudice or Vulnerability

[41] The Supreme Court in *Lovelace*, at para. 69, held that all aboriginals experience pre-existing disadvantage. However, pre-existing disadvantage only weighs in favour of a discrimination finding where claimants are able to establish that they suffer a unique pre-existing disadvantage; if they are unable to do so, this factor is treated as neutral in the overall analysis: *Martin*, at paras. 86-88. The chambers judge held that the appellants experienced no unique disadvantages except for being excluded from settlement membership benefits. Included in settlement benefits is the right to obtain housing and land within the settlement. These benefits also encompass services and programs, including culturally-based programs. Settlement benefits are therefore an advantage to Métis who receive them and a disadvantage to those who do not. A lack of access to culturally-based programs is a unique disadvantage: *Lovelace* at para. 70.

[42] In addition, the appellants lost the ability to participate in the governance of Peavine (something they enjoyed before the passage of the *MSA*) and, hence, the ability to protect their relationship with their traditional homeland. This constitutes another unique disadvantage: *Lovelace* at para. 70.

[43] Some evidence adduced by the appellants shows that their status also results in stereotyping, as they share the undesirable trait of being status Indians and are consequently seen by some as being “less Métis”: see cross-examination of Archie Collins, Chair of the Elizabeth Settlement Council, A.B. vol. 2, p. 157, ll. 1-9. Being considered “less Métis” is analogous to the “less Aboriginal” stereotypes previously recognized in *Lovelace* at para. 71 and *Corbiere* at paras. 18 and 92. The impugned provisions perpetuate that stereotype by terminating the appellants’ settlement memberships, encouraging a wrongful presumption that because the appellants registered as Indians, they are not interested in participating in their community and identifying as Métis. In *Corbiere* at para. 18, differential treatment was found to be based on a similar presumption; namely, that choosing to live off-reserve equated to not wanting to participate meaningfully in the

community. In *Corbiere*, that wrongful presumption supported the Court's finding that the differential treatment was discriminatory.

[44] The chambers judge erred by concluding, on the sole basis that registering as Indians was voluntary, that the impugned provisions were not discriminatory, despite the severe effect on the appellants' interests. The choice element is irrelevant to the analysis and the severe effect of the impugned provisions on the appellants supports a discrimination finding.

[45] The chambers judge also erred in finding that the appellants are not uniquely disadvantaged in relation to the comparator group, that the appellants are not vulnerable to stereotyping, and that the impugned provisions do not perpetuate the disadvantage and the stereotypes. Rather, the appellants are vulnerable to both a unique disadvantage and to stereotyping, both of which are perpetuated by the impugned provisions, resulting in differential treatment and discrimination.

#### **Basis of Impugned Provisions Relative to Appellants' Actual Circumstances**

[46] Differential treatment can also result in discrimination when legislation is premised on stereotypes that do not actually correspond to claimants' circumstances. In *Andrews*, for example, non-citizens were denied the ability to practice law based on a stereotype that non-citizens are not capable of competently doing so. Where this type of discrimination is alleged, the second contextual factor from *Law*, being correspondence between the differential treatment and claimants' actual circumstances, is relevant: *Kapp* at para. 23.

[47] In determining whether the differential treatment corresponds to the actual needs, capacity, or circumstances of claimants, a court must consider whether the distinction is required due to the special circumstances of the claimants: *Law* at para. 69. Where the actual needs, capacities and circumstances of the claimants are accommodated by the legislation, it is less likely that their dignity has been negatively impacted: *Halpern v. Canada (Attorney General)* (2003), 65 O.R. (3d) 161, 25 D.L.R. (4th) 529 at para.88 (C.A.) ("*Halpern*").

[48] At para. 204 of the chambers judge's reasons, she concluded that there is a correspondence between the differential treatment and the actual need, capacity, or circumstances of the appellants. I disagree. Rather, there is a significant lack of correspondence, as the impugned provisions fail to account for the appellants' needs and circumstances in terms of belonging to a settlement and self-identifying as Métis.

[49] As the chambers judge acknowledged, through implementation of the impugned provisions, the appellants could lose their right to reside on patented lands without acquiring an analogous right of residence under the *Indian Act*: at para. 193. They have lived in the Métis community most, if not all, of their lives and continue to do so, but are also eligible for Indian status and have taken that status to acquire a health care benefit not offered by the Métis settlement. Where the impugned legislation does not take into account the actual situation of claimants, discrimination is more easily established: *Chippewas of Nawash First Nation v. Canada (Minister of Fisheries and Oceans)*,

2002 FCA 485, [2003] 3 F.C. 233 at para. 45. Moreover, in situations where the impugned legislation excludes an already vulnerable or disadvantaged claimant group from a benefit, the purported correspondence is more closely scrutinized: *Law* at para. 106.

[50] The respondents argue that this contextual factor should be examined from the perspective of both the appellants and the comparator group. However, even if the impugned legislation is associated with a valid purpose for some people, the legislation is not saved from scrutiny where it allegedly discriminates against others: *Law* at para. 70. Rather, the underlying question always relates to a claimant's human dignity and the "purpose and effects of the impugned law must at all times be viewed from the perspective of the claimant": *Halpern* at para. 91; *Cameron v. Nova Scotia (Attorney General)* (1999), 204 N.S.R. (2d) 1, 177 D.L.R. (4th) 611 at para. 203 (C.A.). Therefore, the focus in analysing this contextual factor is not on whether the legislation corresponds to the needs of those who benefit from it, but on whether it corresponds to the needs of the claimants: *Ferraiuolo v. Olson*, 2004 ABCA 281, 357 A.R. 68 at para. 108.

[51] The chambers judge erred by taking into account the correspondence to the comparator group. The differential treatment in this case is based on a stereotype that does not correspond to the needs or circumstances of the appellants. Therefore, this contextual factor also points in favour of finding discrimination.

### **Section 15 Conclusion**

[52] I conclude that the chambers judge erred in her determination that the appellants' s. 15(1) *Charter* rights have not been breached. The impugned provisions have the effect of perpetuating the appellants' pre-existing disadvantage and of imposing on them differential treatment based on a stereotype that does not correspond with their actual circumstances. Therefore, the third part of the *Law* test is met and s. 15(1) of the *Charter* has been breached. This determination is congruent with the principle that "[s]ection 15 is intended to constrain state action which uses an individual's membership in a protected group in an impermissible, exclusionary way": *Ferraiuolo* at para. 90.

[53] It may be that the appellants' underlying problem could have been dealt with by reliance on traditional judicial proceedings, such as judicial review or an action grounded on the tort of abuse of public office. It is also arguable that the appellants could have simply applied for readmission to Peavine. However, such mechanisms leave the appellants facing the prospect of repeated litigation because so long as the impugned provisions remain in force, the potential exists that another council will do to the appellants, or to others, as the Former Peavine Council did.

### **Section 2(d) of the *Charter***

[54] The issue central to the appellants' s. 2(d) *Charter* claim is whether the impugned provisions interfere with their freedom to associate with other Métis in Alberta. In *Dunmore*, at para. 13, the Supreme Court established that a s. 2(d) *Charter* analysis requires a court to make two inquiries:

- 1) Do the activities sought to be protected fall within the range of activities protected by s. 2(d) of the *Charter*?
- 2) Has the impugned legislation, either in purpose or effect, interfered with those activities?

[55] The chambers judge described the activity for which the appellants seek protection as “the right to belong to and participate in Peavine, a Métis community and corporation established by the *MSA*”: at para. 62. It therefore was found to fall within the range of activities protected by s. 2(d) of the *Charter*. The chambers judge then relied on *Baier v. Alberta*, 2006 ABCA 137, 384 A.R. 237, aff’d 2007 SCC 31, [2007] 2 S.C.R. 673 (“*Baier*”), and concluded that, under the first of the three factors, the appellants’ claim was not founded in a fundamental freedom but rather was one seeking access to a statutory regime.

[56] The difficulty with this approach is that the question posed, which emphasizes Peavine as a statutory creation, compels the answer. The question bypasses the relevant issue of whether Peavine is a pure statutory creation or whether it is merely a legislated reflection of what was in existence prior to the passage of the *MSA*: see *Dunmore* at para. 36. The *Baier* analysis applies when legislation itself gives rise to a right sought to be protected. If, however, that right existed before the legislation came into force, then its incorporation into a statutory regime only crystalizes the pre-existing right and sets standards for accessing it. The legislature may modify the scope of the right, but must respect its pre-existence as well as the pre-existing entitlement of individuals who seek to access it.

[57] A substantial body of proof was not before the chambers judge on this issue and, more troubling, at the hearing before the chambers judge this issue was only argued in the most oblique terms. In the absence of sufficient evidence and argument below, and given my conclusion in respect of s. 15(1) of the *Charter*, I decline to make a determination in this case on the basis of s. 2(d).

### **Section 7 of the *Charter***

[58] This issue involves a two-step analysis. The court must first determine whether the impugned legislation impinges the claimant's right to life, liberty, or security of the person and, if it does, the court must then determine whether the impingement is contrary to the principles of fundamental justice: *R. v. Beare*, [1988] 2 S.C.R. 387 at 401; *Malmo-Levine*, at para. 83. In this case, the chambers judge held, and the respondents concede, that the appellants are able to establish that the impugned legislation impinges on their liberty rights. Whether that finding and concession are proper is questionable. Moreover, it is not binding on this Court. With that said, given my conclusion in respect of s. 15(1) of the *Charter*, and because s. 7 operates as a final resort when dealing with legal rights, it is unnecessary to make a determination in this case based on a s. 7 analysis and I decline to do so.

## Section 1 of the *Charter*

[59] The respondents argue that regardless of any breach of the *Charter*, ss. 75(1) and 90(1) of the *MSA* are saved under s. 1 of the *Charter* because they constitute reasonable limits that are demonstrably justified in a free and democratic society. The respondents say that the impugned provisions meet the test in *R. v. Oakes*, [1986] 1 S.C.R. 103, 26 D.L.R. (4<sup>th</sup>) 200, as they are of sufficient importance to warrant overriding a constitutionally protected right or freedom (see *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 352, 18 D.L.R. (4<sup>th</sup>) 321); the means chosen pass the proportionality test; and, in any event, deference is given to the Legislature in cases where it is balancing the competing claims of different groups. The s. 1 analysis involves the balancing of competing interests and, in this case, involves consideration of factors discussed previously in these reasons.

### Pressing and Substantial Objective

[60] The respondents argue that the objectives of the impugned provisions are pressing and substantial, or sufficiently important. The purported objectives are: to prevent persons who register as Indians under the *Indian Act* after November 1, 1990 from accessing benefits and resources intended for Métis settlement members; to aid in protecting and distinguishing Métis culture from Indian/First Nation culture; and to provide Métis settlements with a means of controlling their membership.

[61] The appellants argue that the respondents have failed to fulfill their onus of demonstrating that the identified objectives constitute the actual motivation for enacting the impugned provisions. They further argue that the effects of the impugned provisions undermine any purported legislative objective to preserve and enhance Métis culture and to enable Métis self-governance. The appellants argue that, in those respects, each of the purported objectives behind the impugned provisions fails the first part of the *Oakes* test.

### **Objective #1: to prevent persons who register as Indians under the *Indian Act* after November 1, 1990 from accessing benefits and resources intended for Métis settlement members**

[62] This objective relates to the concern, articulated by the respondents, that if registered Indians are not excluded from membership, there will be a significant depletion of resources. Barring some financial crisis, “[b]udgetary considerations in and of themselves cannot normally be invoked as a free-standing pressing and substantial objective for the purposes of s. 1 of the *Charter*”: *Martin*, at para. 109, cited in *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66, [2004] 3 S.C.R. 381 at para. 64. Moreover, there was no evidence to confirm that this concern is a reality. The respondents also argue that an aspect of this concern is preventing “double dipping”. However, there is no evidence in the record showing that the appellants, or anyone else, are accessing the same or similar benefits twice because of dual status. Rather, the evidence discloses that the appellants only take advantage of a single benefit arising from their Indian status, which benefit is not offered by

membership in Peavine. In the absence of supporting evidence, the respondents fail to show that this is a pressing and substantial objective. It therefore fails the first part of the *Oakes* analysis.

**Objective #2: to aid in protecting and distinguishing Métis culture from Indian/First Nation culture**

[63] The respondents have not provided any evidence to demonstrate that the actual objectives behind enacting the impugned provisions included distinguishing Métis culture from Indian/First Nation culture. However, the overall objectives of the *MSA* include the preservation and enhancement of Métis culture and identity, which is undeniably a pressing and substantial objective. The problem is that, on the facts, the effect of the impugned provisions is to exclude individuals who identify as Métis from participating in a Métis settlement community. Arguably, doing so is antithetical to the objectives of the legislation as a whole: see *Vriend*. The fact that other members, who similarly have registered as Indians, are not excluded further undermines the legitimacy of this as a pressing and substantial objective of enacting the impugned provisions.

**Objective #3: to provide Métis settlements with a means of controlling their membership**

[64] This objective relates to the broader purpose underlying the *MSA* of enabling Métis to attain self-governance, which is also a pressing and substantial objective. However, here too, the respondents have not provided evidence to show that the impugned provisions were enacted with this specific objective in mind. Moreover, in the time those provisions have been in place, only Peavine has sought to make use of them and the Former Peavine Council hardly exercised its mandate with that objective in mind.

**Proportionality**

[65] Even if the latter two objectives meet the first part of the *Oakes* test, they fail to meet the proportionality test. It requires that the substance of the impugned provisions be rationally connected to the objectives and that the effect of the impugned provisions be minimally impairing. In other words, the limiting effects of the impugned provisions must be proportionate in the context of the sufficiently important underlying objectives.

[66] The impugned provisions lead to an absolute removal of membership and settlement rights. If the concern was to prevent persons of aboriginal lineage, who do not self-identify as Métis or who did not enjoy a long standing connection to the Métis culture, from obtaining membership, then the means chosen go well beyond what was necessary to achieve that goal. Moreover, that concern is addressed, at least in part, by the membership criteria under s. 78 of the *MSA*. If the goal was to establish a hierarchy of persons who meet Métis membership criteria, with some in a desirable category and some not in that category, it differs little from determining membership based on religion, marital status, or some other personal choice that is irrelevant to whether someone meets Métis cultural standards.

[67] The absolute exclusion of disadvantaged persons from programs calls for a close connection between the legislative goals and the need to exclude. In this case, the respondents argue that there are limited resources and a concern that the settlements will be swamped by Indian status applicants. However, what has occurred historically demonstrates that concern is unjustified. The impugned provisions have failed to achieve their purported objective due to the inaction of most councils. On the only occasion a council did act, it did so for improper purposes. Even if the provisions were applied uniformly and consistently, the consequences are drastic as they go to the heart of the issues of identity, community, and autonomy.

[68] Courts are not to choose the best of acceptable options: *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, 137 D.L.R. (4<sup>th</sup>) 142. In this case, doing so is unnecessary because the impugned provisions, like provisions based on the choice to marry, or the requirement of membership in a certain religion, are simply not acceptable.

[69] The respondents also argue that the impugned provisions permit exceptions in certain circumstances and therefore do not act as a membership bar, meaning that the appellants might once again become settlement members. However, since such re-admission is accomplished by council bylaw for those who registered before turning 18, and by General Council policy for others, it means that the membership of the appellants and of others who acquired Indian status after November 1, 1990 depends on the goodwill of subsequent councils or on having a policy enacted by the General Council. Moreover, that membership could be removed again in the future. Surely Métis membership, which incorporates a person's self image, requires greater certainty than being based on the good will of the councils.

[70] As discussed previously in these reasons, under the s. 15(2) *Charter* analysis, the impugned provisions are not rationally connected to their purported underlying objectives. Furthermore, the limits those provisions impose are not minimally impairing. I conclude that the respondents cannot make out a case for s. 1 justification of the s. 15(1) *Charter* breach.

### **Section 25 of the Charter**

[71] Section 25 of the *Charter* will only apply if a *Charter* breach is established and is not justified under s. 1: *Kapp* at para. 109, per Bastarache J., concurring. It is an issue advanced by the intervener, Elizabeth, that was not argued by the respondents in this appeal. The appellants argue that this issue lacks an evidentiary basis and, in any event, this case does not satisfy the approach outlined in Bastarache J.'s concurring reasons in *Kapp*.

[72] I do not need to deal with the question of whether the case satisfies the approach outlined in *Kapp* as I agree there is no real evidentiary basis that would enable analysis of s. 25, which is triggered when "aboriginal, [or] treaty" rights are impacted. An evidentiary basis is essential to the analysis of *Charter* issues: see *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at 366, 61 D.L.R. (4<sup>th</sup>) 385; *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 at 1099-1102, 73 D.L.R. (4<sup>th</sup>)

686. In this case, the evidence would need to establish an aboriginal right that specifically deals with exclusion of members on the basis of their Indian status: see *R. v. Van der Peet*, [1996] 2 S.C.R. 507, 137 D.L.R. (4<sup>th</sup>) 289 at paras. 44-47. No such evidence is in the record. Rather, the record discloses that persons with Indian status were able to maintain their Métis membership until passage of the *MSA*, and of course many people continue to maintain both Indian and Métis status. In addition, the evidence adduced does not show that the impugned provisions protect Métis culture. Nor does it show that there will be an influx of Indian status members or that persons with dual status will take over councils, it merely suggests a concern that this might happen.

[73] In this case, Elizabeth argues that the *MSA* and its companion legislation is of a constitutional nature and that ss. 75(1) and 90(1) of the *MSA* enhance aboriginal self government. Although s. 25 of the *Charter* applies to existing and future constitutional rights acquired by aboriginal people, including Métis, I very much doubt that protection applies to any enactment which purports to set out or enhance existing constitutional practices and rights. If that were the case, it would render sacrosanct any enactment that purports to incorporate constitutional protection for aboriginals, no matter how odious the provision at issue may be. For example, no one could challenge a provision that would restrict membership to able-bodied persons, or men or women only, or persons of a certain age. This point is supported by *Kapp*. Moreover, at para. 99 of *Kapp*, Basterache J. held that s. 25 was not intended to be used as between aboriginal groups.

[74] In my view, a new statutory enactment is open to challenge under the *Charter*, especially when it incorporates features of self governance or some other imperative that were not previously part of how the community at issue existed. I conclude that s. 25 has no application in this case.

### **Conclusion and Remedy**

[75] For the reasons given, ss. 75 and 90 of the *MSA* are unconstitutional.

[76] The appellants seek a declaration that the impugned provisions are of no force and effect, pursuant to s. 52 of the *Constitution Act, 1982*, being Sch. B to the *Canada Act 1982* (U.K.), 1982, c. 11, and argue that the *Charter* infringements are best addressed by severance.

[77] The appellants also seek a writ of mandamus, under s. 24(1) of the *Charter* compelling the Registrar to restore their names to Peavine's membership list.

[78] On the basis that the factors identified by the Supreme Court in *Canada (Attorney General) v. Hislop*, 2007 SCC 10, [2007] 1 S.C.R. 429, which would support the imposition of a limit on retroactivity are not present here, the appellants further contend that the relief granted by this Court should be fully retroactive. The respondents take no position on the issue of retroactivity.

### **Suspension of Remedy**

[79] Although it was not addressed in their factum, at the appeal hearing, counsel for the respondents suggested that if this Court decided to grant a declaration regarding the unconstitutionality and therefore invalidity of ss. 75 and 90 of the *MSA*, this Court should consider the possibility of suspending such a declaration. The appellants argue that a suspended remedy is not warranted in these cases. Alternatively, the appellants contend that if suspended relief is granted, they should receive a constitutional exemption from the impugned provisions during the suspension period.

[80] A temporary suspension of such a declaration is only warranted in limited circumstances. According to the Supreme Court in *Schacter v. Canada*, [1992] 2 S.C.R. 679 at 719, 93 D.L.R. (4<sup>th</sup>) 1, the following circumstances might warrant a temporary suspension:

- A. Striking down the legislation without enacting something in its place would pose a danger to the public;
- B. Striking down the legislation without enacting something in its place would threaten the rule of law; or
- C. The legislation was deemed unconstitutional because of underinclusiveness rather than overbreadth, and therefore striking down the legislation would result in the deprivation of benefits from deserving persons without thereby benefitting the individual whose rights have been violated.

[81] In the circumstances of this case, it is difficult to imagine how any of these justifications would apply. Only the third justification has any potential applicability.

[82] Striking out s. 75 of the *MSA* would mean that a person registered under the *Indian Act* or registered as an Inuk for the purposes of a land claims settlement would be eligible to apply for Métis settlement membership, or eligible to be recorded as a settlement member. It would not in any way alter the membership application or approval processes, pursuant to Part 3 of the *MSA*. Moreover, the General Council would maintain its authority to make policies respecting membership in settlements, pursuant to s. 222(1)(z) of the *MSA*. Striking out s. 90 would prevent the automatic termination of membership upon voluntary registration for Indian status under the *Indian Act*, or registration as an Inuk for the purpose of a land claims agreement. Neither situation, by itself, would deprive any deserving person of benefits.

[83] Consequently, I decline the respondents' request that the remedies flowing from these reasons be suspended.

Remedy

[84] This appeal is allowed and the appellants are granted the remedies they seek; namely, a declaration of constitutional invalidity of ss. 75 and 90 of the *MSA* and a direction of severance regarding those provisions, together with an order in the nature of *mandamus* directing the Registrar to restore the appellants' names to Peavine's membership list. Finally, this relief shall be retroactive to the date upon which the appellants' names were removed from that list.

Appeal heard on March 4, 2009

Reasons filed at Edmonton, Alberta  
this 26th day of June, 2009

\_\_\_\_\_  
Authorized to sign for: Ritter J.A.

I Concur: \_\_\_\_\_  
Authorized to sign for: McFadyen J.A.

I Concur: \_\_\_\_\_  
Costigan J.A.

**Appearances:**

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