COURT OF APPEAL FOR ONTARIO

CITATION: Bocchini Estate v. Canada (Attorney General), 2026 ONCA 55
DATE: 20260130
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Huscroft, Coroza, and George JJ.A.

BETWEEN

Raymond Bocchini (in his capacity as Trustee of the Estate of Sharon Bocchini)

Respondent

and

Attorney General of Canada

Appellant

Michael Beggs and Madeline Torrie, for the appellant

Lucas Lung and Miranda Brar, for the respondent

Heard: April 15, 2025

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated July 25, 2024, with reasons reported at 2024 ONSC 4181.

Huscroft and Coroza JJ.A.:

OVERVIEW

[1] This appeal concerns the respondents' longstanding attempt to be added to the Indian Register on the basis that they were the direct descendants of an "Indian". Its resolution requires the interpretation of legislation from a much earlier

time in Canada's history, when Manitoba was being settled and treaty status was the subject of election for many Métis – a time when terms like "half-breed" and "Indian" were commonly used to describe Indigenous peoples. While recognizing the offensive nature of this language, we find it necessary to use it in these reasons because they are the words that were, or continue to be, used in the relevant legislation.

[2] This appeal is a second administrative appeal from the decision of the Registrar appointed under the *Indian Act*, R.S.C. 1985, c. I-5 ("*Indian Act*, 1985"). The legislation, including the now repealed historical versions, is not challenged before us.

[3] Regrettably, both respondents died during the course of this litigation, but it continues in the name of Sharon Bocchini's son, Raymond Bocchini, in his capacity as trustee of his mother's estate.

[4] Although this dispute has generated a voluminous record, the basic question at the heart of this appeal is straightforward: did the decision of the head of a family to withdraw from treaty result in the withdrawal of dependent family members? The Registrar concluded that it did. His decision was overturned by the appeal judge, who concluded that it did not.

[5] We conclude that the appeal judge erred. Accordingly, the appeal must be allowed, and the decision of the Registrar restored.

BACKGROUND

[6] The relevant history is set out in the decision of the Supreme Court in *Manitoba Metis Federation Inc. v. Canada*, 2013 SCC 14, [2013] 1 S.C.R. 623, at paras. 19-39, and is recounted here only in brief.

[7] In the 19th century, the area that is now Manitoba experienced a significant influx of settlers, leading to Métis-led resistance and conflict. In an effort to resolve that conflict and in exchange for "the extinguishment of the Indian Title", the government granted 1.4 million acres of land to the children of the Métis. This was accomplished through s. 31 of the *Manitoba Act*, *1870*, S.C. 1870, c. 3. Although the 1.4-million-acre allotment was intended to be sufficient to provide for all Métis children, the government underestimated the number entitled to land and, as a result, 993 Métis children were mistakenly deprived of the opportunity to participate in the distribution of land. An Order-in-Council dated April 20, 1885 provided that these Métis would instead be given scrip, redeemable for $240 or 240 acres of land.

[8] The *Indian Act* was introduced in 1876, six years after the *Manitoba Act*: *The Indian Act, 1876*, S.C. 1876, c. 18. Métis, described as "half-breeds", were not regulated by the Act. In order to exclude them from its scope, the legislation made clear that "no half-breed in Manitoba who ha[d] shared in the distribution of half-breed lands shall be accounted an Indian": s. 3(3)(e). This basis for differentiating

between Métis and Indians has been carried forward to the present day: those whose ancestors “received or [were] allotted half-breed lands or money scrip” are not entitled to be registered as an Indian: *The Indian Act*, S.C. 1951, c. 29, s.12(1)(a)(ii); *Indian Act*, 1985, s. 6(1)(a).

[9] Importantly for the purposes of this appeal, by amendment to the *Indian Act* in 1879, the government allowed Métis who had previously adhered to treaty to change their status by withdrawing from treaty and taking scrip: *An Act to amend “The Indian Act, 1876”*, S.C. 1879, c. 34, s. 1.

[10] Ms. Bocchini applied for Indian status in 1998 and her mother, Bertha Isbister, applied in 2005. Their applications were considered together by the Registrar.

[11] The Registrar initially denied their applications in 2006 on the basis that Ms. Bocchini’s grandfather, St. Pierre Cook, received scrip. However, following further communications with the parties, the Registrar found that Mr. Cook was a minor at the relevant time, and thus incapable of receiving scrip. As a result, the respondents were added to the Indian Register in December 2007 and received the relevant benefits.

[12] In 2009, the Registrar reopened the investigation into the respondents’ entitlement and determined that the respondents should be removed from the Register because Mr. Cook had validly received scrip. In 2011, the respondents

formally protested the Registrar's decision under s. 14.2 of the *Indian Act*, 1985. The Registrar denied their protests in 2014.

[13] The respondents appealed the Registrar's decisions pursuant to s. 14.3 of the Act. On May 4, 2021, Brown J. made an order, on consent, setting aside the decisions and remitting them to the Registrar for reconsideration and further investigation. The Registrar was instructed to consider all documentation available to him, including the respondents' original applications for registration, all correspondence and documentation provided by the respondents, the affidavit of an historian retained by the respondents, and relevant legislative changes.

The Registrar's 2021 decision

[14] The Registrar issued a new decision on November 16, 2021. He found that Baptiste Spence Sr. (Ms. Bocchini's great-great-grandfather) withdrew himself and Mr. Cook from treaty on April 2, 1886. The Registrar concluded that Mr. Spence Sr. had the power to legally withdraw Mr. Cook as he was the head of his family and Mr. Cook was in his care. The Registrar relied on the *Indian Act* as it existed in 1888. Section 13 of that Act provided, in relevant part:

> […] any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Indian Commissioner or in his absence the Assistant Indian Commissioner, be allowed to withdraw therefrom on signifying in writing his desire so to do, — which signification in writing shall be signed by him in the presence of two witnesses, who shall certify the same on oath before some person

> authorized by law to administer the same; and such withdrawal shall include the minor unmarried children of such half-breed.

[15] The underlined portion was the product of an amendment in 1888 and is not found in the 1886 Act, which applied at the time of Mr. Cook's withdrawal: *An Act further to amend* "*The Indian Act*", S.C. 1888, c. 22, s. 1.

[16] The Registrar found that, once withdrawn, Mr. Cook was issued scrip on March 8, 1888. He calculated Mr. Cook's age as 17 on the date of withdrawal and 18 when the scrip declaration was completed.[1]

[17] The Registrar considered evidence that the respondents alleged was indicative of scrip fraud. This included a petition by several members of the Sandy Bay Band who had withdrawn from treaty and taken scrip. Mr. Spence Sr. and his family were members of the band and Mr. Spence Sr. was a signatory to the petition. The petition requested that those who had withdrawn be given the opportunity to return to treaty.

[18] As part of his review, the Registrar also considered two letters, sent after the petition, which explained the basis for the request. In one letter, members of the band complained about an Indian Agent, Mr. Martineau, and a speculator, Mr. Sifton, alleging that these men had lied to the band members and induced

[1] A scrip declaration is a document completed during the scrip application process in which the applicant declares their eligibility for scrip. Mr. Cook's scrip declaration confirmed that he was eligible as a result of his withdrawal from treaty.

them to withdraw from treaty. The second letter, sent by a school teacher, Mr. Twedell, who was also implicated in the first letter, asserted that none of the band members were deceived, and that Mr. Spence Sr., in particular, was “glad” to have taken scrip because he was his “own master now” and could go where he liked. Mr. Twedell asserted that the petition was an attempt by the band members to get the benefit of both scrip and treaty annuities. The Registrar called this second letter a “clarification” to the first.

[19] In 1891, the petition was granted, on the condition that the value of scrip the petitioners had received would be deducted from the treaty annuities that they would receive if they chose to re-enter treaty. Most members of the band elected to repay their scrip and return to treaty, but Mr. Spence Sr. and his family did not. The Registrar considered this history and concluded that it did not establish that the issuance of scrip to Mr. Spence Sr. and his family was fraudulent. He concluded that “it is evident that following receipt of scrip, the Sandy Bay Indians had wished to remain on the reserve and return to treaty” but that, merely on the correspondence between the band members and the government, it “cannot be determined whether the issuance of scrip [to Mr. Cook] was fraudulent”.

[20] Accordingly, the Registrar concluded that the respondents’ ancestors lawfully withdrew from treaty and took scrip. As a result, the respondents were not entitled to be added to the Register.

[21] The respondents appealed this decision.

The appeal judge's decision

[22] The appeal judge concluded that the Registrar erred in finding that Mr. Cook's withdrawal from treaty was in accordance with s. 13 of *The Indian Act*, R.S.C. 1886, c. 43 ("*The Indian Act*, 1886") as it existed on the date of Mr. Cook's withdrawal. She noted that s. 13 did not reference minor unmarried children until its amendment in 1888, and concluded that the Registrar wrongly relied on the 1888 Act in finding that Mr. Cook had been lawfully withdrawn along with the head of his family as a minor unmarried child.

[23] The appeal judge rejected the argument that the 1888 amendment merely codified the existing law, which Canada said permitted the adult head of the household to make legal decisions on behalf of their children. The appeal judge concluded that the presumption against tautology required meaning to be ascribed to the 1888 amendment and that, as a result, s. 13 did not permit the withdrawal of minor unmarried children until 1888.

[24] This conclusion was sufficient to dispose of the appeal, but the appeal judge went on to conclude that the Registrar also made a palpable and overriding error in miscalculating Mr. Cook's age and finding that he was 17 when his scrip declaration was completed. The appeal judge found that he was 17 when he

applied for scrip, when his application was approved, and when he sold his scrip, and that he therefore never legally received it.

[25] The appeal judge also criticized the Registrar's approach to the allegation of scrip fraud. She faulted the Registrar for starting from the premise that scrip certificates "are weighted very heavily and are relied upon as proof of receiving scrip when rendering entitlement decisions; their validity is not questionable." This approach, she stated, led the Registrar to proceed on a near total disregard of the evidence. The appeal judge concluded that "more likely than not, [Mr. Cook] and Baptiste Spence Sr. were victims of scrip fraud." She allowed the appeal, set aside the Registrar's protest decision, and made the following orders:

1) Mr. Cook would have been entitled to be registered under s. 6(1)(a) of the *Indian Act*, 1985, as a person registered or entitled to be registered immediately before April 17, 1985;

2) Ms. Isbister would have been entitled to be registered under s. 6(1)(a.1) as a person who lost entitlement to be registered due to her marriage to a non-Indian in 1936; and

3) Ms. Bocchini would therefore be entitled to be registered under s. 6(1)(a.3), as the direct descendant of a person who would have been entitled to be registered under s. 6(1)(a.1).

ISSUES

[26] There are three issues on this appeal, which were also argued before the appeal judge. Canada agreed that it must succeed on all three for this appeal to succeed. The issues are as follows:

1) Was Mr. Cook lawfully withdrawn from treaty?

2) If so, was the allotment or receipt of scrip illegal because either

    a. Mr. Cook was the victim of scrip fraud, or

    b. Mr. Cook was under the age of 18 at the relevant time?

1. WAS MR. COOK LAWFULLY WITHDRAWN FROM TREATY?

The positions of the parties

[27] Canada argues that the appeal judge erred in interpreting s. 13 of the 1886 Act as precluding withdrawal of minor children from treaty along with the head of their household. In essence, the argument is that Parliament intended to facilitate withdrawal from treaty so that Métis families could apply for s. 31 land grants or scrip. Barring minor children from withdrawing from treaty along with their families would frustrate this intention. Canada argues that the appeal judge's erroneous reliance on the 1888 amendment to the Act caused her to misconstrue the plain language of the 1886 Act and the purpose of the legislation.

[28] The respondents argue that the Registrar erroneously relied on the 1888 Act in reaching his decision. They contend that the amendment cannot properly be understood as simply codifying existing law, in part because the intention of legislation to extinguish treaty rights must be clear and plain – a hurdle they say the 1886 Act fails to clear. The respondents argue that Mr. Cook was not automatically withdrawn from treaty as a result of Mr. Spence Sr.'s withdrawal. They argue, further, that Mr. Cook could not have withdrawn personally because s. 13 did not permit the personal withdrawal of minors, and because he did not complete the steps necessary to withdraw in any event.

Discussion

[29] Before the appeal judge, Canada had argued that the withdrawal provision should be interpreted as providing for the automatic withdrawal of children along with the head of their family. In its written submissions to this court, Canada argued that minors could personally withdraw from treaty, but in oral submissions Canada returned to its original position that children were automatically withdrawn.

[30] The respondents argued that this was unfair. The short answer to this submission is that on this statutory appeal, questions of law are subject to review for correctness. The court is required to interpret the withdrawal provision correctly – that is, in accordance with Parliament's intention – regardless of how the parties chose to argue the case. No unfairness arises.

[31] Statutory interpretation is subject to review for correctness, while decisions on factual matters, including the question of fraud and the issue of Mr. Cook's age, are subject to review for palpable and overriding error: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

The correct interpretation of s. 13

[32] We are satisfied Parliament intended minor children to be automatically withdrawn from treaty when the head of their family withdrew. It follows that when Mr. Spence Sr. withdrew from treaty, Mr. Cook was legally withdrawn along with him. Thus, despite the Registrar's mistaken reliance on the 1888 version of the Act, he reached the correct interpretation of s. 13. The appeal judge erred in overturning his decision.

[33] The modern approach to statutory interpretation is well established. Legislation is to be interpreted based on its text, context, and purpose, the goal being the identification of meaning that comports with the legislation as a whole: see e.g., *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *Vavilov*, at para. 117. The "prime directive" is to give effect to legislative intent: *R. v. Wilson*, 2025 SCC 32, 507 D.L.R. (4th) 573, at para. 135, *per* Jamal J. (dissenting, but not on this point).

Text

[34] We begin with the text.

[35] The relevant portion of s. 13 of *The Indian Act*, 1886 states:

> […] any half-breed who has been admitted into a treaty shall be allowed to withdraw therefrom on signifying in writing his desire so to do—which signification in writing shall be signed by him in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same.

We will refer to this portion of s. 13 as the "withdrawal provision".

[36] The text of the withdrawal provision addresses the formalities of the withdrawal process but does not explicitly address the implications of an individual's withdrawal for the rest of their family. Those implications must be determined having regard to the context and purpose of the legislation.

Context and purpose

[37] The withdrawal provision must be understood in its historical context. This begins, in 1870, with s. 31 of the *Manitoba Act* and the setting aside of land in the new province of Manitoba for the benefit of the children of the Métis. In *Manitoba Metis Federation*, at para. 98, the Supreme Court described the purpose of s. 31 as follows:

> The broad purpose of s. 31 of the Manitoba Act was to reconcile the Métis community with the sovereignty of the Crown and to permit the creation of the province of Manitoba. This reconciliation was to be accomplished by

> a more concrete measure — the prompt and equitable transfer of the allotted public lands to the Métis children.

This purpose reflects the bargain that inheres in s. 31: in exchange for the extinguishment of the Métis' rights in the land, Canada agreed to set aside 1.4 million acres of land to be divided amongst the children of the Métis.

[38] At the time of s. 31's enactment, some Métis had already extinguished their rights in the land through adherence to treaty. In 1876, in an effort to regularize the distinction between Métis and Indians and prevent "double-dipping" in both land under s. 31 and treaty benefits, Parliament enacted s. 3(3)(e) of *The Indian Act, 1876*: *Daniels v. Canada (Indian Affairs and Northern Development)*, 2013 FC 6, 357 D.L.R. (4th) 47, at paras. 516, 521, aff'd 2016 SCC 12, [2016] 1 S.C.R. 99. This provision would later become s. 13. At the time, s. 3(3)(e) did not provide for the withdrawal from treaty. It provided that "no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian". Pursuant to this provision, those who took treaty benefits were Indians; those who took land under s. 31 were not. No one was permitted to take both.

[39] Section 3(3)(e) was criticized for causing unfairness to Métis who had not understood that taking treaty benefits would cause them to be classed as Indians and deprive them of the opportunity to participate in the allocation of land under s. 31. To address this, in 1879, Parliament amended the provision to permit the withdrawal of Métis from treaty: *An Act to amend "The Indian Act, 1876"*, s. 1.

Initially, withdrawal was contingent on the withdrawing Métis repaying the benefits they had received under treaty. However, this barrier was removed in 1884, following a recognition by Parliament that it was desirable to encourage withdrawal: *An Act further to amend "The Indian Act, 1880*", S.C. 1884, c. 27, s. 4.

[40] A bargain similar to that which inheres in s. 31 is reflected in the withdrawal provision. Under the withdrawal provision, Métis were given the opportunity to give up treaty benefits in exchange for the benefit provided for under s. 31. The government benefited by decreasing the number of Métis entitled to treaty annuities, while the Métis, at least in theory, benefitted through the receipt of land and through no longer being classed as Indians, given the restrictions on their liberty and autonomy that that classification entailed.

[41] Two purposes of the withdrawal provision flow from this understanding, each reflective of one side of the bargain. From the perspective of the Métis, the provision served to facilitate access to the benefit provided for under s. 31 of the *Manitoba Act*. From the government's perspective, the provision was designed to encourage enterprise by those capable of supporting themselves, thereby lessening the financial burden on the state.

[42] Both of these purposes are advanced by an interpretation of the withdrawal provision that permits a head of the family to withdraw their entire family with them. From the Métis' perspective, children would have to be withdrawn with their

parents for them to receive a substantial benefit from withdrawing, as it was primarily their children who were entitled to land under s. 31.[2] From the government's perspective, its goal of decreasing the financial burden on the state would not be fully achieved if Métis children remained classed as Indians and continued to be entitled to treaty annuities.

[43] The primary context in this case is discerned from the immediate words surrounding the withdrawal provision and s. 31 of the *Manitoba Act*. Guidance is also provided by administrative practice, as evidenced by the Orders-in-Council that implemented the land grants under the *Manitoba Act* and how the provision was applied in Mr. Cook's case. The withdrawal provision was set out above. Here, we set out the language in s. 13 that immediately precedes the withdrawal provision:

> No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family, except, the widow of an Indian, or a half-breed who has been admitted into treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty…

We will refer to this portion of s. 13 as the "exclusion provision".

[2] Section 31 of the *Manitoba Act* provided only for the provision of land to children. Heads of the family were, however, later permitted to apply for scrip, redeemable for $160 or 160 acres of land, under *An Act respecting the appropriation of certain Dominion Lands in Manitoba*, S.C. 1874, c. 20.

[44] As noted above, the exclusion provision was enacted to regularize the distinction between Métis and Indians. It did so based on the receipt of land under s. 31 of the *Manitoba Act*. This is clear from the reference to "the distribution of half-breed lands" in Manitoba.

[45] Two important features of the exclusion provision should be highlighted. First, it is clear that Parliament dealt with Métis in family groups. At the time of its enactment, only children were entitled to land under s. 31. Through the first part of the exclusion provision, Parliament excluded these children from the scope of the *Indian Act*. Through the second part of the exclusion provision, Parliament also excluded the heads of their families, even though they may not have personally benefitted from s. 31 land grants. This reflects the purpose of the exclusion provision: regularization of the distinction between Métis and Indians. That purpose would not be realized if some members of a family were classed as Indians while others were classed as Métis.

[46] Second, the reference to "heads of the family" – a term that is also found in the *Manitoba Act* – reflects how Parliament viewed the family structure. The use of the term indicates that Parliament assumed that one or more persons in the family were capable of making – and entitled to make – decisions for others. The treatment of families as units, with one or more members of the family in a position

of authority over the others, under the first part of s. 13 suggests that the same should be true under the withdrawal provision.

[47] Section 31 of the *Manitoba Act* similarly references the reservation of lands "for the benefit of the families of half-breed residents". Given the interrelated nature of s. 31, the exclusion provision, and the withdrawal provision, the fact that both s. 31 and the exclusion provision treated families as units suggests that the same should be true in respect of the withdrawal provision.

[48] The administrative practice, as evidenced by the Orders-in-Council that implemented s. 31 and the specific practice for withdrawal that was employed in Mr. Cook's case, also provides relevant context: see Ruth Sullivan, *The Construction of Statutes*, 7th Ed. (Toronto: LexisNexis, 2022), § 23.04; *Opetchesaht Indian Band v. Canada*, [1997] 2 S.C.R. 119, at para. 46. Initially, that practice dictated, under an Order-in-Council dated April 25, 1871, that Métis wait until they reached the age of 18 to receive s. 31 land grants. Although a subsequent Order-in-Council, dated April 26, 1875, permitted Métis to apply for land grants prior to reaching that age, the restriction on their ability to receive those grants remained. However, this changed in 1878 – one year prior to the enactment of the withdrawal provision. Pursuant to an Order-in-Council dated July 4, 1878, administrative officials were directed to issue patents to all claimants whose claims had been approved "irrespective of age or sex". The result was that, by the time

the *Indian Act* was amended in 1879 to allow for the withdrawal of Métis from treaty, there was no age restriction attaching to the receipt of land. Métis minors could both apply for and receive s. 31 land grants.

[49] This administrative practice in respect of the receipt of land supports the position that minor children could be withdrawn by the heads of their family prior to reaching the age of majority. To place an age restriction on the withdrawal provision would have the effect of re-instating an age restriction on the receipt of land in respect of all those who had adhered to treaty. If Métis could not be withdrawn from treaty prior to reaching the age of 18, then their ability to both apply for land and receive it would be similarly delayed. At the very least, an age restriction on withdrawal would create an anomalous distinction between Métis minors admitted to treaty and those who were not.

[50] Further, as Canada points out, an age restriction on withdrawal would be problematic given the rapid depletion of the land reserved under s. 31 and the deadline to apply for scrip. By 1885, the 1.4-million-acre allotment had been exhausted. Although pursuant to an Order-In-Council dated April 20, 1885, scrip was given to those who missed out on this initial allocation, the government set a deadline by which all eligible Métis had to apply for scrip. If minor children were not capable of being withdrawn from treaty, many of them would have missed out on participating in the initial allocation of land and may also have missed out on

the deadline to apply for scrip – originally set as May 1, 1886 – because they would not reach the age of majority by that date. Interpreting the withdrawal provision in this way would frustrate the legislative purpose and undermine the administrative scheme that sought to encourage and permit Métis to complete their applications and make their eligibility known to the government, such that the distribution of s. 31 lands and scrip could be completed expeditiously and on a final basis.

[51] The withdrawal process employed in Mr. Cook's case also supports an interpretation that would allow for the withdrawal of dependent children along with the head of their family. In this case, the names of both Mr. Spence Sr., and his grandson, Mr. Cook, then 17 years of age, were included on the discharge from treaty certificate. This demonstrates that the administrators of the withdrawal process understood the two to be withdrawn together.

[52] In summary, the text, context and purpose of the withdrawal provision demonstrate that Parliament intended minor children to be withdrawn from treaty along with the heads of their families. To conclude otherwise would be inconsistent with the legislative context and would frustrate Parliament's purpose in enacting the withdrawal provision.

[53] With respect, the appeal judge erred in concluding otherwise. Relying on the presumption against tautology, she assumed that the 1888 amendment had to be interpreted as changing the law – that it was remedial rather than declaratory. This

reliance was misplaced. Under the presumption against tautology “[e]very word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose”: Sullivan, § 8.03. It exists in recognition of the fact that courts should not generally “render any portion of a statute meaningless or pointless or redundant”: Sullivan, § 8.03. The presumption applies only within a statute – not between different versions of a statute. Amendment of an act does not imply a change in the law: *Interpretation Act*, R.S.C. 1985, c. I-21, s. 45(2).

[54] The appeal judge also erred in relying on a strictly textual or plain reading of the withdrawal provision in the 1886 Act. The fact that the withdrawal provision did not explicitly state that minor unmarried children were withdrawn along with the head of the household was not determinative of the analysis. The text, context, and purpose had to be considered in order to give effect to the intention of Parliament. As we have explained, that intention, including the intention to extinguish treaty rights, is clear once the legislation is considered in accordance with the modern approach to statutory interpretation. No genuine ambiguity remains that requires resolution in accordance with presumptions of statutory interpretation.

[55] Accordingly, we conclude that when, under the 1886 *Indian Act*, Mr. Spence Sr. withdrew from treaty, Mr. Cook was automatically withdrawn with him. Apart from the allegations of fraud, which are dealt with below, there are no

concerns with the validity of Mr. Spence Sr.'s withdrawal. Nor is there any dispute that Mr. Spence Sr. was the head of Mr. Cook's family. Mr. Cook was therefore lawfully withdrawn from treaty.

2. WAS THE RECEIPT OR ALLOTMENT OF SCRIP UNLAWFUL DUE TO FRAUD OR BECAUSE MR. COOK WAS UNDER THE AGE OF 18?

[56] We now turn to Canada's submission that the appeal judge erred in interfering with the Registrar's conclusion that Mr. Cook lawfully received scrip. As noted above, the appeal judge found that the Registrar made errors of fact by misapprehending Mr. Cook's age when he applied for scrip, and by disregarding evidence of scrip fraud. The appeal judge found (1) that Mr. Cook was 17 years old and, thus, too young to lawfully receive scrip; and (2) that Mr. Cook and Mr. Spence Sr. were victims of scrip fraud.

The positions of the parties

[57] Canada contends that the appeal judge failed to accord proper deference to the Registrar's findings regarding Mr. Cook's receipt of scrip. It argues that the Registrar's findings should not have been disturbed unless the appeal judge identified a palpable and overriding error, which she did not do.

[58] The respondents submit that the appeal judge properly identified palpable and overriding errors in the Registrar's decision. Because of his error in calculating Mr. Cook's age, the Registrar gave no consideration to the fact that Mr. Cook was

underage when he allegedly applied and was approved for scrip. The Registrar also failed to consider the substantial evidence of scrip fraud in the record. In light of these errors, the appeal judge was entitled to substitute her own findings of fact, which are themselves entitled to deference from this court.

Discussion

[59] We are persuaded by Canada's submission. Palpable and overriding error is a highly deferential standard of review:

> "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.
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> (*Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286, at para. 46, leave to appeal refused, [2012] S.C.C.A. No. 349; *R. v. Kruk*, 2024 SCC 7, 433 C.C.C. (3d) 301, at para. 90.)

[60] In *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at para. 113, the Supreme Court noted that an error will be palpable "if it is plainly seen and if all the evidence need not be reconsidered in order to identify it".

[61] In our view, the errors identified by the appeal judge were not palpable and overriding.

Was Mr. Cook a victim of scrip fraud?

[62] As noted above, the Registrar found that there was insufficient evidence to conclude that the issuance of scrip to Mr. Cook was fraudulent. The appeal judge found that the Registrar failed to grapple with the allegation of fraud in a meaningful way. In her view, the Registrar proceeded on a "near total disregard of evidence", and she found that it was "more likely than not" that Mr. Spence Sr. and Mr. Cook were victims of scrip fraud.

[63] We do not share the appeal judge's view that the Registrar failed to grapple in a meaningful way with the possibility of fraud or disregarded the evidence that was put before him. The Registrar considered the evidence, including the correspondence between members of the Sandy Bay Band and the government and the government's subsequent decision to allow the band members to re-enter treaty. He simply concluded that it was insufficient to establish fraud. We see no support for the claim that he committed a palpable and overriding error in reaching this conclusion.

[64] The appeal judge concluded that the Registrar ignored two pieces of evidence that, in her view, were significant: (1) the signature page from Mr. Cook's scrip declaration was missing; and (2) the scrip notes were redeemed not by Mr. Cook, but by Mr. Sifton.

[65] There is no dispute that the signature page of Mr. Cook's scrip declaration is missing from the record. But the missing signature page is not necessarily a badge of fraud. Its absence is unsurprising given how long ago these events took place.

[66] The fact that the scrip notes were redeemed by Mr. Sifton is also not a badge of fraud. The sale of scrip for cash – often for far less than the scrip was worth – was common and indeed, legal. The issue of whether these improvident sales were legal was dealt with extensively by the Supreme Court in *Manitoba Metis Federation.* There, the majority held that many eligible Métis were determined to sell their interest in their s. 31 land and that the honour of the Crown did not require that Canada prevent sales of land to speculators.

[67] As the Supreme Court majority put it at para. 114, "[u]ntil the Métis acquired their s. 31 grants, they provided no benefit to the children, and a cash offer from a speculator would appear attractive". In our view, the fact that there may have been an improvident sale of scrip by Mr. Cook does not equate to fraud.

[68] Certainly, the presence of Mr. Sifton's name on the receipt raises questions, given his name appeared in the correspondence related to the band members request for re-entry into treaty. But it was for the Registrar to answer these questions. He noted that there was other correspondence that denied any deception and indicated that Mr. Spence Sr. was satisfied to receive scrip. The

Registrar concluded that this correspondence was “clarification” to the first. Although this language may be inapt, it reflects the Registrar’s acceptance of this version of events over that provided by the band. The Registrar was entitled to so conclude. It cannot be said that the Registrar’s failure to make a finding of scrip fraud rose to the level of a palpable and overriding error.

[69] In short, the fact that many in the Sandy Bay Band regretted their choice to withdraw from treaty and take scrip does not necessarily lead to the conclusion that Mr. Spence Sr. and Mr. Cook were victims of fraud. It was open to the Registrar to conclude that fraud had not been established.

Was Mr. Cook under the age of 18 at the relevant time?

[70] Mr. Cook turned 18 on October 3, 1887. There is no dispute that Mr. Cook’s scrip declaration was completed on January 29, 1887, that a scrip note was issued in his name on February 9, 1888, and that it was redeemed by Mr. Sifton on March 8, 1888.

[71] The parties agree that Mr. Cook was not legally entitled to receive scrip at the age of 17. They also agree that the Registrar erred in calculating Mr. Cook’s age when he applied for scrip, and that he was 17 on that date. However, Canada takes the position that this error was immaterial, because the important date is not the date Mr. Cook applied for scrip, nor the date the scrip application was approved, but the date the scrip notes were issued: February 9, 1888. On that

date, Mr. Cook was 18. In the absence of an error that was overriding, the appeal judge erred by substituting her own findings of fact regarding Mr. Cook's receipt of scrip without evidence.

[72] We note, at the outset, that the basis for Canada's concession that Mr. Cook was not entitled to receive scrip before the age of 18 is not clear. Section 31 land grants could issue immediately to minors under the July 4, 1878 Order-in-Council, and there is nothing in the *Manitoba Act* nor the common law that prevented minors' receipt of property. We were not provided with any authority suggesting the rules would have been different for scrip. We are not bound by Canada's concession; however, given the lack of evidence on this issue and the fact that this concession is ultimately immaterial on the appeal, we will proceed on the basis that Mr. Cook was not entitled to scrip until he reached the age of 18.

[73] As noted above, Mr. Cook turned 18 on October 3, 1887. The question is whether he received scrip after that date.

[74] Scrip was "received", within the meaning of s. 12(1)(i) of the *Indian Act*, 1951, on the date of issuance. Before this date, scrip notes would not have been in the possession of the applicant, and any interest that they may have had in them remained subject to government officials performing certain steps. Thus, it cannot be said that the date of receipt is the date of application or the date on which the application was approved. Nor can the date of redemption be considered the date

of receipt. Money scrip is a voucher for money. It is not the money itself. In fact, upon redemption, scrip notes were cancelled to ensure that they could not be fraudulently redeemed several times. It would make little sense to conclude that scrip was only received once it was cancelled. The relevant date is the date of issuance.

[75] Two scrip notes were issued to Mr. Cook on February 9, 1888. The first, bearing the serial number 4574, entitled the holder to $160. The second, bearing the serial number 2479, entitled the holder to $80. Collectively, they entitled the holder to $240 – the amount that children were entitled to as a substitute for a s. 31 land grant. Although the scrip notes themselves do not display Mr. Cook's name, merely entitling the bearer to the stated amounts, it is clear that the scrip notes were issued to Mr. Cook from a scrip receipt created when the notes were redeemed. The receipt, dated March 8, 1888, states the following:

> Received from the Honorable the Minister of the Interior, Scrip notes nos. 4575 & 2479 Form M.S. for $240.00 issued in accordance with the terms of Orders in Council of the 20th April 1885 & 21st May 1889 St. Pierre Cook alias Peter Spence [Emphasis added.]

[76] In the absence of a finding of fraud or other evidence of inaccuracy, the scrip notes and receipt should be taken at face value. This, in our view, is what the Registrar meant when he said that "[s]crip certificates are weighted very heavily and are relied upon as proof of receiving scrip when rendering entitlement

decisions; their validity is not questionable." Again, although the language used is perhaps inapt, it simply reflects the practical reality that the Registrar must be able to rely on documentary evidence given how long ago the events at issue occurred.

[77] As noted above, the Registrar found that Mr. Cook was issued scrip on March 8, 1888. We agree with the parties that this was clearly an error. The scrip notes bear the date February 9, 1888, and the parties agree that the notes were issued on that date. It follows that Mr. Cook received scrip after his 18th birthday. The Registrar's errors in miscalculating his age and misstating the date of issuance are not overriding, and the appeal judge ought not to have interfered on this basis.

[78] Finally, we note that there does not appear to have been any evidence for the appeal judge's finding that Mr. Cook sold his scrip to Mr. Sifton while he was still 17. Indeed, the appeal judge explicitly noted that "there is no evidence of when Mr. Sifton purchased Mr. Cook's scrip". The appeal judge should not have made any finding on a complete lack of evidence.

REMEDY

[79] In sum, and with respect, the appeal judge incorrectly interpreted s. 13 of the 1886 Act and erred in interfering with the Registrar's findings of fact on the issue of fraud and the issue of whether Mr. Cook was underage when he received scrip. In the absence of an error of law or a palpable and overriding error of fact, the Registrar's decision is entitled to deference and must be restored.

[80] For these reasons, we would allow the appeal and reinstate the decision of the Registrar dated November 16, 2021.

[81] Canada does not seek costs of the appeal, and none are ordered.

“Grant Huscroft J.A.”
“S. Coroza J.A.”

George J.A. (dissenting):

[82] Individuals whose ancestors received Métis scrip (a voucher exchanged for land or money) are not eligible for registration under the *Indian Act*, R.S.C. 1985, c. I-5 ("*Indian Act*, 1985"). This appeal concerns Sharon Bocchini's eligibility to be registered as an "Indian".[3] As my colleagues have noted, the appeal turns on whether Ms. Bocchini's grandfather, St. Pierre Cook, validly received scrip.

[83] Ms. Bocchini, a descendant of the Sandy Bay Indians in Manitoba, has passed away. This litigation continues in the name of her son, Raymond Bocchini, in his capacity as trustee of his mother's estate. It holds considerable importance for Ms. Bocchini's family, because if she was entitled to be registered as an Indian, her children might be as well.[4]

[84] I have read the reasons of the majority. I agree with my colleagues that the appeal judge should not have interfered with the Registrar's findings of fact based on the record before her on the issues of scrip fraud and Mr. Cook's age. With respect, I disagree with the majority's interpretation of s. 13 of *The Indian Act*, R.S.C. 1886, c. 43 ("*The Indian Act*, 1886"), and the conclusion that Mr. Cook was

[3] I use "Indian" and "half-breed" in these reasons only because they appear in the relevant statutes and for the sake of historical accuracy.

[4] It is impossible to determine, on the record before us, whether Mr. Cook's descendants, beyond Ms. Bocchini, are entitled to be registered. Eligibility to be registered pursuant to s. 6 of the *Indian Act*, 1985, does not automatically carry forward to future generations and depends on parentage.

automatically withdrawn from treaty upon the withdrawal of his grandfather, Baptiste Spence Sr. I would therefore dismiss the appeal.

[85] I will try to not repeat the facts and arguments of the parties, which have been set out in my colleagues' reasons, but there may be some duplication. My reasons will also refer to certain additional facts and arguments as needed. I begin with a brief background to provide context for my analysis. I will then turn to the issue of the statutory interpretation of s. 13 of *The Indian Act*, 1886, and whether Mr. Cook was lawfully withdrawn from treaty.

BACKGROUND

Treaty Withdrawal under the Indian Act

[86] When the Indian Register was created in 1951, "a person who … ha[d] received or ha[d] been allotted half-breed lands or money scrip" was not entitled to be registered as an Indian; an exclusion which extended to the person's descendants: *Indian Act*, S.C. 1951, c. 29, s. 12(1)(a)(i)-(ii).

[87] In 1985, the Act was amended to allow women who had lost their status as a result of marrying a non-Indian to regain it.[5] However, no similar amendment was made in respect of those who lost their status by receiving Métis scrip.

[5] Bill C-31, *An Act to amend the Indian Act*, 1st Sess, 33rd Parl, 1985.

Consequently, individuals who took scrip, along with their descendants, remained ineligible for registration: *Indian Act*, 1985, s. 6(1)(a).[6]

[88] The parties agree that, if a Métis person was a treaty member they had to first withdraw from that treaty before applying for scrip.

[89] In 1886, the year Mr. Cook is said to have withdrawn from treaty, s. 13 of *The Indian Act*, 1886 read as follows:

> No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family, except, the widow of an Indian, or a half-breed who has been admitted into treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty; and <u>any half-breed who has been admitted into a treaty shall be allowed to withdraw therefrom on signifying in writing his desire to do so, — which signification in writing shall be signed by him in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same</u>. [Emphasis added.]

[90] As my colleagues do, I will refer to the portion of s. 13 that provides for withdrawal from treaty as the "withdrawal provision". And I will refer to the specific requirements that the person wishing to withdraw provide their signature in the presence of two witnesses and that the witnesses certify on oath before an authorized person, as the "formalities requirements".

[6] Section 6(1)(a) of the *Indian Act*, 1985 provides that those who were "entitled to be registered immediately before April 17, 1985" are eligible to be registered today.

[91] Section 13 was amended in 1888 to add that withdrawal "shall include the minor unmarried children of such half-breed": *An Act further to amend* "*The Indian Act*", S.C. 1888, c. 22, s. 1. This language does not appear in the 1886 statute.

Evidence of Mr. Cook's Withdrawal from Treaty and Receipt of Scrip

[92] Mr. Cook was born on October 3, 1869. He was raised by his grandfather, Mr. Spence Sr. They were members of the Sandy Bay Indian Band, a First Nation under Treaty No. 1.

[93] A discharge from treaty certificate dated April 2, 1886, shows, in someone's handwriting, the names of "Baptiste Spence Sr. and 1 grandchild [illegible] St. Pierre". The printed text states that "a former member" of the band had "fully complied" with the statutory requirements for withdrawing from treaty. Mr. Cook was 16 years old at the time of this discharge certificate.

[94] Mr. Cook was 17 years old when he applied for scrip and received approval from a scrip commissioner. The record contains a scrip declaration, dated 1887, in which Mr. Cook purportedly states that he was "out of" his entitlements as "an Indian" together with his grandfather. Although this declaration was signed by the scrip commissioner, Mr. Cook's signature does not appear in the document. It is missing a page that, according to Canada, would include the signatures of Mr. Cook, a witness, and a judicial officer. This missing page has never been located.

[95] The record also contains two scrip notes in the total amount of $240, both dated February 9, 1888. Mr. Cook was 18 years old at the time the scrip notes were issued.

The Manitoba Act and Métis Scrip

[96] The following is a brief history of Métis scrip, a system developed under the *Manitoba Act, 1870*, S.C. 1870, c. 3. This history provides essential context to this appeal.

[97] The influx of settlers into Rupert's Land caused the displacement of the Métis and eventually led to the Red River Rebellion. Following this resistance, Canada entered into negotiations with a Métis-led provisional government. These negotiations led to the *Manitoba Act*, which established Manitoba as a province. Section 31 of the *Manitoba Act* captured the agreement between Canada and the Métis, stipulating that Métis children would be granted 1.4 million acres of land in exchange for "the extinguishment of Indian Title":

> And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such

> conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

[98] As noted in the Supreme Court's decision in *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at paras. 104-10, Canada's implementation of s. 31 was marred by neglect and delays. The government underestimated the number of Métis entitled to land. Consequently, 993 Métis were mistakenly excluded from the 1.4-million-acre allotment.

[99] To fulfill the land promise under s. 31 of the *Manitoba Act*, Canada provided the Métis with scrip redeemable for $240 or 240 acres of land by an Order-in-Council dated April 20, 1885. The deadline for claiming scrip was initially May 1, 1886 but was extended at least four times to accommodate late applications: *Manitoba Metis Federation*, at paras. 177-78.

[100] At the same time, land speculation drove the price of the land up. As a result, those who received scrip ended up obtaining a grant equivalent to between 96 and 120 acres only. The Supreme Court in *Manitoba Metis Federation* held, at paras. 120-23, that while scrip was a reasonable mechanism to fulfill s. 31, the delayed issuance of scrip and the resulting depreciation "demonstrate[d] the persistent pattern of inattention inconsistent with the honour of the Crown that typified the s. 31 grants."

[101] The Manitoba legislature temporarily introduced measures restricting land speculation, under which Mr. Cook likely could not have lawfully sold his interest in scrip before turning 18. As the Supreme Court's reasons described, at para. 37:

> [S]peculators began acquiring the Métis children's yet-to-be granted interests in the s. 31 lands, aided by a range of legal devices. Initially, the Manitoba legislature move to block sales of the children's interests to speculators, but, in 1877, it passed legislation authorizing sales of s. 31 interests once the child obtained the age of majority, whether or not the child had received his or her allotment, or even knew of its location. In 1878, Manitoba adopted further legislation which allowed children between 18 and 21 to sell their interests, so long as the transaction was approved by a judicial officer and the children's parents.

[102] Six years after the *Manitoba Act*, Parliament introduced *An Act to amend and consolidate the laws respecting Indians*, S.C. 1876, c. 18 ("*Indian Act*, 1876"), the first iteration of the *Indian Act*. "Half-breeds" were not regulated by the Act and were excluded in the definition section, at s. 3(3)(e): "no half-breed in Manitoba who ha[d] shared in the distribution of half-breed lands shall be accounted an Indian".

MR. COOK WAS NOT LAWFULLY WITHDRAWN FROM TREATY

[103] The central plank of Canada's position is that the withdrawal provision must be interpreted to facilitate s. 31 of the *Manitoba Act*, the purpose of which was to give the "families of the Métis through their children a head start in the new country

in anticipation of the probable and expected influx of immigrants": *Manitoba Metis Federation*, at para. 102.

[104] Canada argues that Parliament intended minor children to be automatically withdrawn from treaty to facilitate their application for, and receipt of, Métis land or scrip in furtherance of the *Manitoba Act*. Additionally, Parliament had a desire to regularize the distinction between Métis and Indians meaning the provision must have comported with the *Manitoba Act*'s treatment of Métis as families, and the broader statutory context for settling Métis claims which was based on the family structure, wherein a family consisted of the "head of the family" plus "children", a term defined by lineage and not age.[7]

[105] My colleagues accept Canada's reading of the withdrawal provision in light of the historical context and administration of the *Manitoba Act*. They set aside the appeal judge's decision, which corrected the Registrar's erroneous reliance on the 1888 Act, and conclude that the appeal judge erred in her strictly textual approach.

[106] In my view, while distinguishing between Métis and Indians was a policy of the MacDonald government, the rest of Canada's submissions, especially its

[7] Neither "children" nor "head of the family" were defined in *The Indian Act*, 1886. Canada points out that *An Act to Remove doubts as to the construction of section 31 of the Act 33 Victoria chapter 3, and to amend section 108 of the Dominion Lands Act*, S.C. 1873, c. 38, s. 1 defines "children" as "all those of mixed blood, partly white and partly Indian, and who are not heads of families." The term "half-breed head of a family" in s. 13 of *The Indian Act*, 1886 also appears in s. 31 of the *Manitoba Act*. Canada points to *An Act Respecting the Appropriation of Certain Dominion Lands in Manitoba*, S.C. 1874, c. 20, s. 2, part of which states: "For the purpose of this Act the term 'half-breed heads of families' shall be held to include half-breed mothers as well as half-breed fathers, or both, as the case may be".

reliance on the *Manitoba Act*, are unpersuasive and unsustainable. There is nothing in the Hansard evidence that specifically tethers the withdrawal provision in the *Indian Act* to the *Manitoba Act*. Further, any intention on the part of the government to provide an "unconditional right" to withdraw from treaty is plainly contradicted by the formalities requirements set out in the text of the withdrawal provision.

[107] As I will explain, the withdrawal provision, as it read in 1886, did not allow minors to be withdrawn by adults; rather, it contemplated withdrawal on an individual basis by those who, by complying with the formalities requirements, demonstrated the legal capacity to voluntarily relinquish benefits under treaty. For this reason, Canada's further suggestion that minors could individually withdraw from treaty on their own must fail.

Statutory Interpretation and Standard of Review

[108] The modern approach to statutory interpretation requires us to consider the words of the withdrawal provision "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. I agree that the interpretation of the withdrawal provision is reviewed on a

standard of correctness: see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

[109] I will outline my view of the correct interpretation of s. 13 of *The Indian Act*, 1886 below.

Legislative Evolution of the Withdrawal Provision and Intention of Parliament

[110] In support of its interpretation, Canada cites Hansard evidence which it says demonstrates Parliament's intention to treat Métis as distinct from First Nations and to expand their right to withdraw from treaty. However, Canada is unable to point to specific evidence about treaty withdrawal under the *Indian Act* that refers to the receipt of land or scrip under s. 31 of the *Manitoba Act*, or describes the former as a step towards facilitating the latter. This calls for a closer examination of the evolution of s. 13 of *The Indian Act*, 1886 to ascertain the legislative intention behind the withdrawal provision.

[111] In my view, the legislative evolution and the associated Hansard evidence demonstrates that the objectives of the withdrawal provision were a moving target. Parliament had an evolving policy towards lesser monetary incentives to stay in treaty but more robust procedural control on withdrawals. An interpretation consistent with this evolution is preferable: Ruth Sullivan, *The Construction of Statutes*, 7th Ed. (Toronto: LexisNexis, 2022), § 23.02[6].

[112] When the withdrawal provision was first introduced, it did not direct that any specific procedure be followed; the permission to withdraw was simply conditioned on a refund of annuities or a reduction in future entitlements.[8] The Hansard reveals two motivations behind this: one was to recognize (according to Prime Minister MacDonald) that half-breeds wanted to be "whites" rather than "Indians", and the other (according to Member Mills) was to reduce the burden on the government by allowing those "capable of taking care of themselves" to withdraw from treaty as "it was for the interest of the country to get rid of them as wards": Debates of the House of Commons, 1st Sess, 4th Parl, Vol. VII, May 13, 1879, at pp. 2003-4. The draft provision initially only allowed withdrawal upon refunding annuities received, but Marc-Amable Girard, Senator for St. Boniface, proposed that withdrawal also be permitted on the condition of reduced future entitlements, an amendment subsequently adopted: Senate Debates, 1st Sess, 4th Parl, May 9, 1879, at p. 539.

[113] The important point here is, the withdrawal provision was, at least initially, designed to do the opposite of giving Métis children a "head start" in the new country; it was to allow "half-breeds" to become "whites", and to reduce the financial burden on the government by eliminating treaty benefits to those "capable

[8] *An Act to amend "The Indian Act, 1876"*, S.C. 1879, c. 34, s. 1 added the portion of s. 13 concerning withdrawal from treaty, stating: "And any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed as such may be entitled to receive from the Government."

of taking care of themselves". While Canada is right that the comment from Senator Girard implies that withdrawal was not intended to be cumbersome, this overlooks subsequent developments, which I turn to now.

[114] In 1884, the goal of reducing the government's financial burden became intertwined with the desire to encourage "enterprise". Consequently, as Prime Minister MacDonald explained, the requirement that annuities or future entitlements be given up was removed to avoid providing the Métis with an incentive to stay in treaty: Debates of the House of Commons, 2nd Sess, 5th Parl, Vol. XVI, April 7, 1884, at pp. 1399-1400.

[115] At the same time, however, the formalities requirements in the version that applies to this appeal were added through *An Act to further amend "The Indian Act*, *1880"*, S.C. 1884, c. 27, s. 4. This addition was not explained in the Hansard of 1884, but became a topic of debate in 1888 when further related amendments to s. 13 were proposed.[9] According to the same MacDonald government, the concern was that half-breeds would withdraw from treaty to receive scrip, waste it,

[9] Bill 106, *An Act further to amend "The Indian Act"* 2nd Sess, 6th Parl, 1888 amended the withdrawal portion of s. 13 to read: "any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Indian Commissioner or in his absence the Assistant Indian Commissioner, be allowed to withdraw therefrom on signifying in writing his desire so to do, — which signification in writing shall be signed by him in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same; and such withdrawal shall include the minor unmarried children of such half-breed."

then seek to return to treaty, and that some would even do so repeatedly to double-dip both benefits:

> James David Edgar (Member for Ontario West): It seems to me that the withdrawal is to be surrounded with a great many difficulties. He has to signify his desire in writing, and that has to be sworn to and witnessed before two men. In addition, he has got to get the consent of the Indian Commissioner. What is the object of all that?
>
> John A. MacDonald (Prime Minister): Many of the half-breeds have been accounted as Indians, because they have lived with a band for some lime. When scrip is given to the half-breeds, they all become white men in order to get it. Then they withdraw from the white men to get the advantage of the annuities, and then they want to get back into the band again. Having received their scrip as white men, and having expended it, they want to get back into the treaty again, to be considered Indians once more, and to receive their share of the annuities and supplies given to the Indians. We wish to prevent them moving from one stage to another, from being half-breeds now, then being Indians, and back again to be half-breeds, it, perhaps, being forgotten that they previously got scrip. To prevent this we provide that there shall be a consent given in writing by the Indian Commissioner. There is also, at the end of the clause, a provision that such withdrawal shall include the minor or unmarried children of such half-breeds—the children shall go with the parents.
>
> …
>
> I have little doubt that a great deal of inconvenience has been caused by the half-breeds wasting their scrip and going back to the band, and then, by-and-bye, in a year or two, leaving the band again and becoming white men, and setting up a new claim for a second grant of scrip. In

> order to prevent any fraud of this kind, this provision is inserted. I think the hon. gentleman will see it is very necessary. [Emphases added.]
>
> Debates of the House of Commons, 2nd Sess, 6th Parl, Vol. XXVI, April 26, 1888, at pp. 1007-8.

[116] The introduction of the formalities requirements therefore had nothing to do with making withdrawals from treaty unconditional and as barrier-free as possible, as Canada claims; it put in place a barrier to withdrawal.

[117] I acknowledge that, as a basic principle of statutory interpretation, amendments to a statute cannot shed light on the previous state of the law: *Interpretation Act*, R.S.C. 1985, c. I-21, s. 45(2); *R. v. Breault*, 2023 SCC 9, 481 D.L.R. (4th) 195, at para. 42. And I agree that the appeal judge should not have relied on the presumption against tautology in this regard. However, setting aside the substance of the 1888 amendment, the legislative debates in 1888 assist us in understanding the purpose of the formalities requirements in effect in 1886, and explains why they were added in the first place in 1884.

[118] The primary flaw in Canada's position is that it assumes the government of the time was coherently and single-mindedly pursuing its commitment in the *Manitoba Act* through amendments to the *Indian Act*. However, at the time of Mr. Cook's withdrawal, the objective of the withdrawal provision was to encourage enterprise by those capable of supporting themselves, lessen the financial burden

on the state, and prevent imprudent withdrawals and fraudulent returns to treaty. While Canada's interpretation of unconditional or barrier-free withdrawal may theoretically speed up the deficient and slow process criticized in *Manitoba Metis Federation*, purposive interpretation does not go so far as to help Parliament implement its policies through means that it did not enact.

[119] Another flaw in Canada's position is we are asked to speculate that restrictions on treaty withdrawal would have, in practice, created a bottleneck to fulfilling the promise under the *Manitoba Act*. There is no evidence that a significant number of people eligible for the land grants were under treaty and had to be withdrawn first.[10] Land grants under the *Manitoba Act* were expressly in exchange for "the extinguishment of the Indian Title to the lands". It is not clear that those who had joined a treaty would be considered by the Dominion government at the time to even have an interest remaining in any potential Indian Title claim. And, if they were no longer considered to have such an interest, fulfilling the promise under the *Manitoba Act* would not require granting lands to those already under treaty.

[10] Canada points to an 1870 census cited in the trial decision in *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293, 223 Man. R. (2d) 42, at para. 158, which shows that a significant portion of the Métis population in Manitoba was under the age of 20. However, this does not tell us how many of the Métis in Manitoba were under treaty; nor would it reliably reflect the situation in 1879 or 1884 (when the withdrawal provision was introduced and amended) considering the rapid demographic changes due to the influx of settlers during that period.

[120] My colleagues note that the government set a deadline by which all eligible Métis had to apply for scrip, and say an interpretation of the withdrawal provision that hindered the withdrawal of minor children before that date would frustrate the government's intention of completing s. 31 lands and scrip distribution. However, as the Supreme Court recognized, the deadline "was not strictly enforced and the late applications continued to trickle in": *Manitoba Metis Federation*, at para. 178. Furthermore, there is evidence, in an Order-in-Council dated May 21, 1887, that the Government considered it appropriate in certain circumstances to back-date applications for scrip as if their applications "had been made within the time prescribed by the Order-in-Council of the 20th of April 1885".

[121] I reject Canada's argument that because the *Manitoba Act* is a related statute, the withdrawal provision of the *Indian Act* should be presumed to advance its object. Statutes dealing with the same subject matter no doubt are presumed to be coherent in the sense that "interpretations favouring harmony among those statutes should prevail over discordant ones": *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, at para. 61. However, Canada does not allege that an age restriction on withdrawal from treaty would cause any conflict with the *Manitoba Act*. Its complaint is that an age restriction in the *Indian Act* could undermine the efficiency of the process under the *Manitoba Act*. The problem is, as discussed above, evidence on the withdrawal provision reveals both a desire to

reduce the barriers to withdrawal and to impose strict procedural controls on withdrawals, two seemingly discordant objectives. This court cannot favour one objective over another simply because doing so may help improve the efficiency of another scheme.

[122] I agree that related statutes can be used to draw inferences about legislative intent: see *Sullivan*, § 13.04[5]. For example, in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, the *Radiocommunication Act*, R.S.C. 1985, c. R-2 and the *Broadcasting Act*, S.C. 1991, c. 11, which deal with complementary aspects of the same subject matter and were introduced or substantially amended through the same omnibus bill, were treated as constituting a single regulatory scheme: paras. 44-46. This led Iacobucci J. to prefer an interpretation of a *Radiocommunication Act* provision that accords with the objectives set out in the *Broadcasting Act*: para. 49. In this appeal, however, there is no evidence that Parliament even had the *Manitoba Act* in mind when drafting or amending the withdrawal provision, and, to the contrary, Hansard shows that Parliament used the latter to pursue restrictive objectives different from the *Manitoba Act*.

[123] There is no question that the withdrawal provision affected the land grant scheme under the *Manitoba Act*. However, while the provision, like the *Copyright Act*, R.S.C. 1985, c. C-42 in *Bell ExpressVu*, may be used to assist with the

interpretation of s. 13 as a “contextual factor” that is “not in any way determinative” of its proper interpretation: at paras. 50-52.

The Text of the Withdrawal Provision

[124] The withdrawal provision in *The Indian Act*, 1886, makes it clear that “any half-breed” who has been admitted into treaty can withdraw provided that the formalities requirements are complied with. The word “any”, as Canada correctly points out, would suggest the broadest eligibility possible for withdrawals. However, this must be understood against the rest of the withdrawal provision, which required a signature, two witnesses, certification on oath by the witnesses, and the presence of someone with authority to administer withdrawals:

> [A]ny half-breed who has been admitted into a treaty shall be allowed to withdraw therefrom on signifying in writing his desire to do so, — which signification in writing shall be signed by him in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same. [Emphasis added.]

[125] I reject Canada’s position that younger children who could not sign would be automatically withdrawn by parents upon their withdrawal. The requirement that signification in writing be “signed by him” clearly refers to the same person who wanted to withdraw. I would not read in a method of withdrawal that essentially sidesteps the formalities that Parliament expressly required.

[126] In my view, to give meaningful effect to the formalities requirements, they must be read as connoting a sense of legal capacity. If anyone physically capable of scribbling something in writing could withdraw, the formalities requirements would serve no purpose other than making the process arbitrarily cumbersome, contrary to that part of the legislative objective meant to encourage those capable of supporting themselves to withdraw.

[127] The sense of legal capacity expressed in the text comports with Parliament's concern about imprudent withdrawals by those incapable of supporting themselves. The need for signatures, witnessed by multiple people, would not have been foreign to legislators in the common law tradition and frequently attached to instruments purporting to give away property. In the context of wills, for example, such requirements serve two functions, one "ritual" or "cautionary" which discourages "casual and haphazard" dispositions of property, and one "evidentiary" which prevents fraud: *George v. Daily* (1997), 115 Man. R. (2d) 27 (C.A.), at paras. 21-23, citing Ashbel G. Gulliverd and Catherine J. Tilson, "Classification of Gratuitous Transfers" (1941) 51 Yale L. J. 1. In my view, an age restriction is well-supported by the text of the withdrawal provision.

[128] Canada also argues that the phrase "head of the family" in the preceding part of the same section supports its position that both treaty withdrawal and scrip allocation operated on a family-wide basis and therefore must apply to minors:

> No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family, except, the widow of an Indian, or a half-breed who has been admitted into treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty. [Emphasis added.]

[129] I am not persuaded. This part of the section operates separately from the withdrawal provision and initially existed as part of the definition of who counted as an "Indian": see *Indian Act*, 1876, s. 3(3)(e). The reference to "head of a family" merely addresses a group not covered by the first sentence, such that the two sentences comprehensively deal with all half-breeds not currently admitted into treaty. As Canada itself recognized, everyone who was not the "head of a family" was a child, and by design of the *Manitoba Act* only these "children" could receive "distribution of half-breed lands". In other words, the reference to "head of a family" reveals very little about how "half-breeds" then under treaty could withdraw.

The Scheme and Object of the Indian Act

[130] An interpretation of the withdrawal provision must consider the other provisions within the Act and its scheme as a whole. As I will explain, an age restriction on treaty withdrawal would accord with the Act's protection of treaty entitlements for the benefit of treaty beneficiaries; and allowing those without legal capacity to withdraw, either on their own or pursuant to their parents' desires, would sit uncomfortably with the rest of the Act.

[131] It is important to remember that the *Indian Act* was an aggressively paternalistic piece of legislation. The government, primarily through this Act, but also in other ways, prevented Indians from managing their own affairs. This was part of a long-standing policy of protecting Indians from settlers and from their inability to "know what was good for them": Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back, Vol. 1 (Ottawa: The Commission, 1996), at p. 243. According to the Royal Commission, at p. 255, The *Indian Act*, 1876 represented a culmination of this policy into treating individual Indians as wards of the state:

> The transition from tribal nation in the tripartite imperial system to legal incompetent in the bilateral federal/provincial system was now complete. While protection remained a policy goal, it was no longer collective Indian tribal autonomy that was protected: it was the individual Indian recast as a dependent ward — in effect, the child of the state.

[132] Consistent with this policy, successive versions of the *Indian Act* stripped its beneficiaries of decision-making power in relation to the benefits granted under treaty. For example, while treaty status came with entitlement to reserve land, a band member could only be in lawful possession of a lot through a location ticket approved by the Superintendent-General of Indian Affairs and could not validly mortgage or lease this interest to those outside their band: *Indian Act*, 1886, s. 20. An Indian was allowed to devise property by will only to family members and close

relatives entitled to live on the same reserve, and the will was further subject to the consent of their band and approval by the Superintendent General: *The Indian Act*, 1886, s. 20. Nor were they allowed to pledge as security their real or personal property on reserve, or anything purchased with their annuities: *The Indian Act*, 1886, ss. 78, 81.

[133] Further, one aspiration of the *Indian Act* at the time, such as through the creation of separate lots on reserve and the receipt of fee simple land upon enfranchisement, was to "foster individualism": Royal Commission, at p. 257. This supports an interpretation of the formalities requirements as embedding legal capacity which permits one to make consequential decisions on their own under the common law. It recognizes that the person withdrawing was entitled to "the privileges and responsibilities of full citizenship": see Royal Commission, at p. 255.

[134] In this context, it is difficult to see how the withdrawal provision contemplated allowing minors to opt out of the entitlements and purportedly necessary protections that came with their treaty status. Nor would it make sense to allow parents, who themselves needed government protection, to make such a decision on behalf of their children.

[135] I am unpersuaded by the argument that Parliament must have intended heads of family to make this decision for children because "that was how things were done back then". I note that neither party has put in the record evidence

suggesting this was the case; nor did they argue that judicial notice was appropriate. Even taking this assumption as true, Canda's argument is undermined by the fact that withdrawals were explicitly conditioned upon the person seeking to withdraw complying with the formalities requirements, as opposed to consent by the head of their family. And in this case, the only evidence of Mr. Cook's withdrawal is as a "plus one" on his grandfather's discharge certificate, a means of withdrawal which, in my view, was not authorized by s. 13 of *The Indian Act*, 1886.

[136] The Act also provides support for the argument, and the appeal judge's finding, that the applicable age of majority for withdrawing from treaty was 21. Several sections of *The Indian Act*, 1886 used the age of 21 as the threshold after which one could be trusted with some important decisions. A surrender of land was decided by a vote among male band members who were at least 21 (*The Indian Act*, 1886, s. 39(a)); as was the election of chiefs should the Governor in Council deem an election advisable (see *The Indian Advancement Act*, R.S.C. 1886, c. 44, made applicable by *The Indian Act*, 1886, s. 75). Quite tellingly, one could pursue enfranchisement, which was the legal process for an Indian to relinquish their status under the *Indian Act*, at the age of 21: *The Indian Act*, 1886, s. 83. Accordingly, I do not accept Canada's argument that an age restriction cannot be imposed on withdrawals because the common law does not have a universal age

of majority for all purposes[11] – here, the very Act we are talking about provided a threshold age in other, related, contexts.

[137] I am aware that the *Indian Act* primarily governs “Indians”, not “half-breeds”, and Canada correctly points out that Parliament adopted different policies towards them. However, this does not dispense with the need to read the withdrawal provision in light of the scheme and object of the *Indian Act* in which it is found. It is also not clear how the difference in general policies translates into the presence or absence of an age restriction on withdrawals. I accept that, at various points, Parliament probably intended it to be easier for half-breeds to withdraw than for Indians to be enfranchised. However, as the text of the withdrawal provision demonstrates, half-breeds seeking to withdraw still faced procedural barriers. The design of these requirements reflected Parliament’s view that half-breeds would imprudently withdraw and waste their scrip and then seek to gain re-entry to treaty, a view entirely consistent with the paternalistic attitude towards Indians. I therefore do not find it helpful to focus on the difference in general policies towards half-breeds and Indians.

[11] As Mr. Cook was under the age of 18 when he is said to have applied for and received approval for scrip, I need not decide whether the appeal judge was correct in stating that “[a]t the relevant time, a minor was anyone under 21 years of age unless a statutory provision provided otherwise.” Mr. Cook was a “minor” at the relevant time irrespective of the appeal judge’s findings in this regard.

The Presumption in Favour of Indigenous Peoples

[138] While I do not find the withdrawal provision to be ambiguous, if I am wrong and it is, any ambiguity would have to be resolved in favour of the respondent.

[139] As the Supreme Court stated in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36, “statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians”. The parties agree that this principle requires rights-limiting provisions to be construed narrowly. Canada, however, argues that the withdrawal provision was not rights-limiting since it enabled one to apply for land or scrip and that this court should not, with the benefit of hindsight, treat entitlements under treaty as better than land or scrip.

[140] Canada’s argument might hold some weight if the withdrawal provision itself addressed the granting of land or scrip, but the receipt of land and scrip was handled through a separate application process and was set out in an entirely different statute. This argument again suffers from the flawed assumption that the withdrawal provision was designed to facilitate the implementation of the *Manitoba Act*. To the contrary, the effect of the withdrawal provision was to strip away entitlements under treaty. Thus, to the extent there is any ambiguity, the provision should be interpreted narrowly, which in this case favours the respondent.

CONCLUSION

[141] For these reasons, the Registrar erred in concluding that Mr. Cook as a minor could lawfully withdraw from treaty. I would therefore uphold the appeal judge's order reversing the Registrar's decision to remove Ms. Bocchini and Ms. Isbister from the Indian Register and would dismiss the appeal.

Released: January 30, 2026 "G.H."

"J. George J.A."