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	August 25, 2023 25 août 2023	
Robert Mvondo		
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FORM 301 - Rule 301

NOTICE OF APPLICATION

Court File No. _____

FEDERAL COURT

BETWEEN:

CRAIG MCCALLUM, LAURA BIRD, and LLOYD YEW

Applicants

and

CANOE LAKE CREE FIRST NATION and CANADA (INDIGENOUS SERVICES CANADA)

Respondents

APPLICATION UNDER: *FEDERAL COURTS ACT*, RSC 1985, c F-7, s. 18

Notice of Application

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicants. The relief claimed by the applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at Federal Court, Court of Queen's Bench, 520 Spadina Crescent East, Saskatoon, Saskatchewan.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATE: June 23, 2023

Issued by: _____

Registry, Regina Local Office
362 Broadway, Suite 400
Winnipeg, Manitoba R3C 3N9

TO: Canoe Lake Cree First Nation
P.O. Box 231
Canoe Narrows SK SOM OKO
Phone: (306) 829-2150

c/o Bruce Slusar
Slusar Law Office
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APPLICATION

This is an application for judicial review in respect of the Canoe Lake Cree First Nation's ("CLCFN") decision on June 2, 2023 to enact *The Canoe Lake Cree First Nation Citizenship Law* (the "**Citizenship Law**") contrary to the *Canadian Charter of Rights and Freedoms*, the *Constitution Act, 1982* and the Order of the Honourable Madam Justice Strickland rendered on June 29, 2022.

The applicants make application for:

- 1) A declaration by the Court that:
 - a. The *Citizenship Law* discriminates on the basis of sex or other analogous grounds and therefore violates s. 15 and is not justified by s. 1 of the *Canadian Charter of Rights and Freedoms*, and violates s. 35 of the *Constitution Act, 1982*, and the *Citizenship Law* is therefore unconstitutional and of no force and effect by virtue of s. 52(1) of the *Constitution Act, 1982*; and/or
 - b. The Order rendered by the Honourable Madam Justice Strickland on June 29, 2022 in *McCallum v Canoe Lake Cree First Nation*, 2022 FC 969 to ratify a constitutionally compliant membership code on or before June 29, 2023 was not complied with;
- 2) An Order that:
 - a. Chief and Council shall immediately give notice in writing to the Minister that CLCFN no longer has a membership code, and, therefore no longer meets the criteria of s. 10(1) of the *Indian Act*;
 - b. Should CLCFN fail to give such notice to the Minister within 10 business days of the date of the Order, the Department of Indigenous Services shall promptly, and no longer than 20 business days from the date of the Order, give notice to CLCFN that CLCFN no longer meets the criteria of s. 10(1) of the *Indian Act*, and therefore the Band List of CLCFN has been returned to the Department of Indigenous Services;
 - c. Control of CLCFN's Band List shall be deemed to have been returned to the Department of Indigenous Services upon the giving of that notice by either CLCFN or the Department of Indigenous Services and membership in CLCFN shall be determined and maintained by the Department of Indigenous Services pursuant to s. 11 of the *Indian Act*;

- d. CLCFN shall immediately call a new election to be held within three months of the date of the Order and CLCFN's membership for the purposes of that election shall be determined pursuant to s. 11 of the *Indian Act* and the Band List maintained by the Department of Indigenous Services.
- 3) An Order awarding the Applicants solicitor-client costs of these proceedings, payable by the Respondent, Canoe Lake Cree First Nation to the Applicants; and
- 4) Such other Order or Orders as this Honourable Court may consider and determine just and appropriate in the circumstances of this application.

The grounds for the application are:

Constitutional Provisions

- 1) Section 15 of the *Constitution Act, 1982* prohibits discrimination on the basis of sex or other analogous grounds. Section 28 of the *Constitution Act, 1982* guarantees the rights and freedoms referred to in *Canadian Charter of Rights and Freedoms* apply equally to male and female persons. Section 35(4) of the *Constitution Act, 1982* guarantees Indigenous people's Aboriginal and Treaty rights apply equally to male and female persons. Section 52 renders any law inconsistent with the *Constitution Act, 1982* of no force and effect.

The Canoe Lake Cree First Nation Membership Codes

- 1) CLCFN assumed control of band membership under s. 10 of the *Indian Act* on June 25, 1987. On June 25, 1987, CLCFN enacted the *1987 Membership Code*, simply adopting the provisions of the then existing *Indian Act*.
- 2) The provisions in the *Indian Act* adopted by CLCFN were held by the Courts in *Mclvor v The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827 and *Descheneaux c Canada (Procureur General)*, 2015 QCCS 3555 to be unconstitutional as the sex based registration scheme breached section 15 of the *Canadian Charter of Rights and Freedoms* and was not demonstrably justified in a free and democratic society under section 1.
- 3) Because the *1987 Membership Code* relied on the prior provisions in the *Indian Act*, it perpetuated the sex discrimination by refusing to recognize people constitutionally entitled to membership from being members of the band.
- 4) On June 16, 2016, CLCFN held a referendum which, at the time, was believed to have passed a new membership code, the *2016 Membership Code*. The *2016 Membership Code* entitled anyone who is a direct ancestor to the original members of Canoe Lake Cree First Nation to be a member, correcting the historic sex discrimination against members rightfully entitled to be members of

CLCFN.

- 5) On January 15, 2021, the Applicants brought an application for judicial review of the CLCFN membership codes and the election that occurred in December 2020, which was held with membership determined in accordance with the *1987 Membership Code*.
- 6) On June 29, 2022, the Honorable Justice Strickland rendered a decision in *McCallum v Canoe Lake Cree First Nation*, 2022 FC 969 finding the following. The *2016 Membership Code* was not properly enacted and therefore was not in force. The *1987 Membership Code* was unconstitutional as it unjustifiably breached section 15 of the *Canadian Charter of Rights and Freedoms* by perpetuating sex discrimination. The declaration of unconstitutionality was suspended for a period of twelve months for CLCFN to pass a new constitutionally compliant membership code. If CLCFN had not ratified a new membership code on or before June 29, 2023, then CLCFN was required to give notice to the Minister that CLCFN no longer meets the criteria of s. 10(1) of the *Indian Act*, and control of the membership list would be deemed to have been returned to the Department of Indigenous Services to be administered in accordance with s. 11 of the *Indian Act*. CLCFN was also ordered to pay costs in the amount of \$40,584.08.
- 7) CLCFN did not pay the costs ordered by the Court. Enforcement measures had to be taken by the Applicants to ensure compliance with the Court's order.
- 8) On or about April 28, 2023, CLCFN posted notice that a referendum vote was to occur on June 2, 2023 to ratify the *Citizenship Law*, a new membership code for CLCFN.
- 9) On or about June 2, 2023, CLCFN held a ratification vote on the *Citizenship Law*. The record of the ratification vote purports to set out: the number of eligible voters as 721; the number of ballots cast as 388; the number of ballots marked "YES" as 200; the number of ballots marked "NO" as 186; the number of ballots rejected as 2; and the number of ballots spoiled as 1. CLCFN has determined that the referendum vote has passed and the *Citizenship Law* was enacted.
- 10) The *Citizenship Law* discriminates on the basis of sex and/or analogous grounds and is in breach of section 15 of the *Canadian Charter of Rights and Freedoms*. The *Citizenship Law* grants automatic citizenship to those who are already on the Band List, and were therefore eligible under the discriminatory *1987 Membership Code*. But all others must apply for membership at the discretion of Chief and Council. Even if discretionary membership is granted, the person is subjected to a probationary and restrictive rights period where they are denied equal access to certain civil rights, such as: the right to run for public office; the right to housing; the right to educational funding, as well as other types of social funding. As a result, those discriminated against under the *1987 Membership Code* continue to suffer

discrimination on the basis of sex as they do not have an automatic right to membership and are subjected to a period of restricted rights. Further, descendants of those who accepted Métis scrip who are not already on the Band List are prohibited from applying for membership. However, those who are descendants of those who accepted Métis scrip who are already on the Band List are entitled to automatic membership. Whether one is already on the Band List is determined on the basis of sex or analogous grounds.

- 11) Laura Bird, (nee McCallum) is the daughter of Jerry Iron and Delia McCallum. Laura Bird was born on January 10, 1970. Jerry Iron was a status Indian and a registered member of CLCFN. Delia McCallum was a status Indian, but lost her status when she married a non-status man, Daniel McCallum. Delia McCallum regained her status in 1985 through the enactment of Bill C-31 of the *Indian Act* under s. 6(1)(c). Bill C-31 were amendments to the *Indian Act* following the enactment of *The Constitution Act, 1982*, meant to eliminate the discrimination then existing in the *Indian Act* and provide a way for people who unjustly lost their status to regain it. Laura Bird also regained her Indian status in 1985 through Bill C-31. Daniel McCallum is incorrectly listed as Laura Bird's father on her birth certificate.
- 12) Laura Bird was denied membership in CLCFN due to false information on her birth certificate and discriminatory provision on the basis of sex in the *1987 Membership Code*. Because of discriminatory provisions under the *1987 Membership Code*, Laura Bird was not registered on the Band List maintained by CLCFN under the *1987 Membership Code*. As a result, Laura Bird is not entitled to automatic membership under the *Citizenship Law*, and instead is subjected to a discretionary application process and, if granted membership, a restricted rights period. Had Delia McCallum been a man or not married Daniel McCallum, Laura Bird would have been entitled to status, and therefore membership on the CLCFN Band List from birth, and would have been entitled to automatic membership without any restricted rights period under the *Citizenship Law*.
- 13) Craig McCallum is the son of Laura Bird and Wayne Opikokew. Wayne Opikokew is a status Indian and is a member of the CLCFN. Craig McCallum was denied membership in CLCFN due to false information on Laura Bird's birth certificate and discriminatory provisions on the basis of sex in the *1987 Membership Code*. Because of the discriminatory provisions under the *1987 Membership Code*, Craig McCallum was not registered on the Band List maintained by CLCFN under the *1987 Membership Code*. As a result, Craig McCallum is not entitled to automatic membership under the *Citizenship Law*, and instead is subjected to a discretionary application process and, if granted membership, a restricted rights period. Had Delia McCallum been a man or not married Daniel McCallum, Craig McCallum would have been registered as a member on the CLCFN Band List under the *1987 Membership Code*, and would have been entitled to automatic membership without any restricted rights period under the *Citizenship Law*.

- 14) Lloyd Yew is the son of Martin Yew and Theresa McCallum. Lloyd Yew's paternal grandparents are Phillip Yew and Madeline Yew (nee Iron). Phillip Yew lost status after being adopted by Christian missionaries. Madeline Yew lost status as a result of marrying Phillip Yew. Lloyd Yew regained status in 2011 following amendments to the *Indian Act* to address prior sex discrimination following the *McIvor v Canada (Registrar of Indian and Northern Affairs)* decision.
- 15) Lloyd Yew was denied membership in CLCFN as a result of discriminatory provisions that differentiate on the basis of sex in the *1987 Membership Code*. Lloyd Yew was not registered on the Band List maintained by CLCFN under the *1987 Membership Code*. As a result, Lloyd Yew is not entitled to automatic membership under the *Citizenship Law*, and in fact, is prohibited from being a member as he is a descendant of a person who accepted Métis scrip. Had Madeline Yew been a man, Martin Yew, and therefore Lloyd Yew, would have had status, and therefore membership in CLCFN from birth; and therefore Lloyd Yew would be entitled to automatic membership under the *Citizenship Law*.
- 16) The Citizenship Law discriminates on the basis of sex against Indigenous women and descendants of Indigenous women, as Indigenous men and descendants of Indigenous men who were entitled to membership under the unconstitutional *1987 Membership Code* are entitled to automatic membership under the *Citizenship Law*. Whereas those who were unconstitutionally discriminated on the basis of sex again by the *1987 Membership Code* are subjected to a discretionary application process and a period of restricted rights under the *Citizenship Law*.
- 17) Returning the CLCFN Band List to the Department of Indigenous Services is the only practical solution in the circumstances as CLCFN was already given a period of 12 months to pass a new constitutionally compliant membership code, yet instead chose to simply pass a membership code that carries forward the discriminatory provisions and perpetuates the pre-existing discrimination.

This application will be supported by the following material:

- 1) Affidavit of the Applicant, Craig McCallum;
- 2) Affidavit of the Applicant, Laura Bird;
- 3) Affidavit of the Applicant, Lloyd Yew;
- 4) Brief of Law, to be filed;
- 5) Such other materials as counsel may advise and this Honourable Court permit.

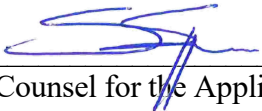
The applicants request Canoe Lake Cree First Nation Chief and Council to send a certified copy of the following material that is not in the possession of the applicants but is in the possession of the Council to the applicants and to the Registry:

- 1) The *Citizenship Law*;
- 2) The official results of the Referendum held on June 2, 2023;

- 3) A copy of the Band List for CLCFN, and for greater certainty, the Applicants seek a list of all voting members of CLCFN.
- 4) A copy of the list of the individuals registered on the Indian Registry as status Indians to CLCFN.

DATED at Regina, Saskatchewan, this 23rd day of June, 2023.

MLT Aikins LLP

Per: 
Counsel for the Applicant,
Craig McCallum, Laura Bird
and Lloyd Yew

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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