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PROPOSED CLASS PROCEEDING

Court File No. T-2789-25

FEDERAL COURT

BETWEEN:

CHARLES ARTHUR WESLEY, CHRISTOPHER ROBERT WESLEY, SHARON NICHOLAS, and NICOLE EILEEN NICHOLAS

Plaintiffs

AND

HIS MAJESTY THE KING

Defendant

SECOND AMENDED STATEMENT OF CLAIM

Pursuant to Rules 79(1)(b) and 200 of the *Federal Court Rules*

PART I - OVERVIEW OF THE CLAIM

[1] The Plaintiffs Charles Arthur Wesley, Christopher Robert Wesley, Sharon Anne Nicholas, and Nicole Eileen Nicholas bring this action for damages against His Majesty the King in Right of Canada represented by the Attorney General of Canada ("**AGC**") for being deprived of the benefits which they would have enjoyed if they had been entitled to register and/or their children and grandchildren had been entitled to register as "Indians" under the *Indian Act*, RSC 1985, c I-5.

[2] Each of the Plaintiffs has at least one direct ancestor (parent, grandparent, great-grandparent, etc.) who was "enfranchised" (*émancipé*) pursuant to an application for enfranchisement under the *Indian Act*. Throughout this statement of claim, that situation is described as a "**family history of enfranchisement**".

[3] Based on a family history of enfranchisement, the Plaintiffs Christopher Robert Wesley and Nicole Eileen Nicholas are denied eligibility for registration under the registration provisions of the *Indian Act* in effect at least between April 17, 1985 and August 18, 2025, as were their respective children and, in Christopher Robert Wesley's case, his grandchildren as well. They bring this action for damages for (1) being deprived of the benefits which they would have enjoyed had they not been denied eligibility for registration because of a family history of enfranchisement and (2) for being deprived of the benefits which they would have enjoyed had their children, and grandchildren in Christopher Robert Wesley's case, not been denied eligibility for registration because of a family history of enfranchisement.

[4] Based on a family history of enfranchisement, the Plaintiffs Charles Arthur Wesley and Sharon Anne Nicholas have children and grandchildren who were denied eligibility for registration under the registration provisions of the *Indian Act* in effect at least between April 17, 1985 and August 18, 2025. The Plaintiffs Charles Arthur Wesley and Sharon Anne Nicholas seek damages for being deprived of the benefits which they would have enjoyed if their children and grandchildren had not been denied eligibility for registration because of a family history of enfranchisement.

[5] On June 10, 2021, the Plaintiffs Sharon Anne Nicholas and Nicole Eileen Nicholas, with others, brought a challenge (the "***Nicholas* Proceeding**") in the

Supreme Court of British Columbia to the registration provisions that made Nicole Eileen Nicholas and others ineligible to register under the *Indian Act*, on the grounds that the registration provisions violated sections 7, 15 and 28 of the *Canadian Charter of Rights and Freedoms* ("***Charter***"). On January 15, 2025, the AGC conceded that those provisions infringed section 15(1) of the *Charter* on the grounds of race or ethnic origin and that this infringement did not constitute "a justifiable limit under section 1 of the *Charter*".

[6] On February 26, 2025, the plaintiffs in the *Nicholas* Proceeding applied for summary judgment with a narrow outstanding disagreement between the parties regarding the appropriate remedy. The plaintiffs in the *Nicholas* Proceeding argued that they were entitled to a declaration of unconstitutionality without further delay, while the AGC asked that the declaration be suspended, initially requesting a period of 6 months, subsequently 12 months, "to allow Parliament the opportunity to complete the legislative process" to amend the impugned provisions.

[7] The application was heard on June 3, 2025. On August 19, 2025, the Supreme Court of British Columbia rendered its judgment on the application for summary judgment in the *Nicholas* Proceeding and declared the impugned provisions of no force or effect as they unjustifiably infringed s. 15 of the *Charter*: *Nicholas v Attorney General (Canada)*, 2025 BCSC 1596. The Court suspended the declaration until April 30, 2026, while granting an exemption from the suspension of the declarations for the plaintiffs in the *Nicholas* Proceeding.

[8] The Plaintiffs seek to bring this action for damages on behalf of all persons in Subclasses A and B (described in Part V herein) who were deprived of the benefits to which they would have been entitled but for the clearly unconstitutional provisions. Those provisions also constitute a breach of Canada's obligations that flow from the honour of the Crown and its fiduciary obligations to the Plaintiffs with respect to the rights and benefits to which they are entitled as rights-holders under section 35 of the *Constitution Act, 1982*.

PART II - RELIEF SOUGHT

[9] On behalf of the members of subclasses A and B described herein, the Plaintiffs seek:

[9.1] An order condemning His Majesty the King in Right of Canada ("**Canada**") to pay an amount to each member of subclass A (described below) as compensation for damages flowing from being denied, because of a family history of enfranchisement, benefits tied to registration under the *Indian Act*, namely:

a. Pecuniary damages;

b. Non-pecuniary damages; and

c. Aggravated damages.

[10] An order condemning Canada to pay an amount to each member of subclass B (described below) as compensation for damages flowing from their children or grandchildren being denied, because of a family history of enfranchisement, benefits tied to registration under the *Indian Act*, namely:

a. Pecuniary damages;

b. Non-pecuniary damages; and

c. Aggravated damages.

[11] A further description of the damages sought by the Plaintiffs for themselves and class members is found in Part VIII herein.

PART III - THE PARTIES

[12] This statement of claim is brought by four proposed Plaintiff representatives.

Sharon Nicholas

[13] The Plaintiff Sharon Nicholas ("**Sharon**") was born in 1962.

[14] Sharon's mother, Jean Julia Cracknell née Bennett ("**Jean Julia**"), was born in 1940 and was a member of the Massett Band in Haida Gwaii, British Columbia, until she was enfranchised in 1944 by the combined effect of an Order of the

Governor in Council enfranchising her father, Wilfred Laurier Bennett (Sharon's grandfather) ("**Wilfred L.**") and of *Indian Act* provisions then in force.

[15] Sharon's recent ancestors are described below and identified in the chart attached as Schedule 1 to this Statement of Claim ("**SOC**"). (The chart is a partial family tree, including only family members who are Plaintiffs and their immediate ancestors.)

[16] In 1988, Jean Julia was registered under section 6(1)(d) of the *Indian Act* and Sharon was registered under section 6(2), and both became members of the Old Massett Village Council (as the Massett Band has been renamed).

[17] Sharon is a Haida citizen under the citizenship laws of the Haida Nation.

[18] Sharon is also a citizen of the Central Council of the Tlingit and Haida Tribes of Alaska, a federally recognized tribe in the United States of America.

Nicole Nicholas

[19] The Plaintiff Nicole Eileen Nicholas ("**Nicky**") was born in 1988 and is Sharon's daughter.

[20] In 2009 and again in 2011, Nicky applied for registration under the *Indian Act*. Those applications were both denied by the Registrar. Pursuant to section 14.2 of the *Indian Act*, Nicky protested the denial of her second application, and the Registrar denied that protest in 2015.

[21] The Registrar denied Nicky's applications and protest on the basis that the registration provisions of the *Indian Act* do not allow for her registration.

[22] Nicky is a Haida citizen under the citizenship laws of the Haida Nation.

[23] Nicky is also a citizen of the Central Council of the Tlingit and Haida Tribes of Alaska.

[24] Nicole has one child, Adrian Edward Argast, born in 2023.

Charles A. Wesley

[25] The Plaintiff Charles Arthur Wesley ("**Charles A.**") was born in 1948.

[26] Charles A.'s father, Charles Wilfred Wesley ("**Charles W.**"), was born in Missanabie, Ontario in 1914 and was a member of the Missanabie Cree First Nation, until he was enfranchised in 1947 by Order in Council.

[27] Following the legislative amendments brought by Bill C-31 in 1985, Charles A. was registered under section 6(2) of the *Indian Act*, having been born after his father was enfranchised. However, his three older sisters, Shirley Lila Jane (married surname: Chernohoby) ("**Shirley**"), Marjorie Lenore ("**Marjorie**") and Judy Gloria Rose (married surname: Shaddock) ("**Judy**") were registered under section 6(1)(d) of the *Indian Act*, having been born before their father was enfranchised.

[28] Charles A.'s recent ancestors and children are described below and identified in the chart attached as Schedule 2 to this SOC. (The chart is a partial family tree, including only family members who are Plaintiffs and their immediate ancestors.)

[29] Charles A. has three children, namely Charles J. Wesley, Christopher R. Wesley and Kevin M. Wesley.

Christopher Wesley

[30] The Plaintiff Christopher Robert Wesley ("**Christopher**") was born in 1973 and is Charles A.'s second child of three.

[31] Christopher is married to Kerry Wesley (maiden name: Samson), who is not known to have any Indigenous ancestry.

[32] Christopher has two children, Payge (married surname: Lucas), born in 1993 and Ryan, born in 1996. Payge has three children of her own, making Christopher a grandparent. Her children are Connor James Wilson Lucas, born in 2015, Emylia Audrey Lilian Lucas, born in 2017, and Eliza Francis Marie Lucas, born in 2018.

[33] Christopher applied for registration under the *Indian Act* in 1986, in 2007, in 2012, in 2014, in 2017, and in 2019. Those applications were denied.

His Majesty the King

[34] The AGC is designated by the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 23 to represent the Defendant His Majesty the King in right of Canada in proceedings taken against His Majesty.

PART IV - FACTS

1. History of Relevant Colonial and Post-Confederation Laws Governing Indian Status

1.1. Prior to 1850

[35] Prior to 1850, the status of "Indian" was not defined by the colonial laws of British North America. Indigenous peoples determined for themselves the principles and rules of membership in their own political communities.

[36] Membership in an Indigenous community could occur in various ways, including through birth, marriage, adoption, and residence.

[37] For instance, the people of Haida Gwaii governed themselves through membership in clans, each clan belonging to one of two larger exogamous groupings, Eagles and Ravens. Clan membership was traced matrilineally, that is, each individual belonged to the same clan as her or his mother.

[38] The same broad principles of Haida clan membership apply today. A significant step in the modern self-government of Haida citizenship was the adoption by the Haida Nation on May 31, 2017 of the Xaayda 'Waadluxan K'wii *Haida Citizenship Act*.

1.2. From 1850 until Confederation

[39] Prior to joining Confederation in 1871, the colonies of Vancouver Island and mainland British Columbia, and their union as British Columbia after 1866, had laws referring to "Indians" or "Aborigines", but such laws contained no explicit definitions of these terms.

[40] Definitions of "Indian" in Canadian law find their earliest roots in pre-Confederation legislation from the Province of Canada.

[41] In 1850, with devolution of control over Indigenous-settler relations from Britain to the colonies, the Province of Canada adopted *An Act for the better protection of the Lands and Property of the Indians in Lower Canada*, 13 & 14 Vict, c 42 ("***1850 Lower Canada Act***").

[42] Section V of the *1850 Lower Canada Act*, "for the purpose of determining any right of property, possession or occupation in or to any lands belonging or appropriated to any Tribe or Body of Indians in Lower Canada", identified four "classes of persons" to "be considered as Indians belonging to the Tribe or Body of Indians interested in such lands." These four classes were

a. "persons of Indian blood, reputed to belong to the particular Tribe or Body […] and their descendants";

b. "[a]ll persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons";

c. "[a]ll persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such"; and

d. "[a]ll persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants."

[43] Simultaneous with the adoption of the *1850 Lower Canada Act*, the Province of Canada adopted a related act applying to Upper Canada, *An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*, 13 & 14 Vict, c 74 ("***1850 Upper Canada Act***").

[44] While the *1850 Upper Canada Act* did not provide an explicit definition of "Indian" as in the *1850 Lower Canada Act*, it did refer repeatedly to Indians and those who may be inter-married with Indians, declaring in section X, e.g., that "it shall not be lawful for any person or persons other than Indians, and those who may be inter-married with Indians, to settle, reside upon or occupy any lands or roads or

allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada".

[45] In 1851, the Province of Canada adopted *An Act to repeal in part and to amend an Act, intituled, An Act for the better protection of the Lands and Property of the Indians in Lower Canada, 14 & 15 Vict, c 59* ("***1851 Lower Canada Act***"). This Act amended the *1850 Lower Canada Act* removing the category of persons adopted by Indians and by including as Indian only women, but not men, who married a person considered as Indian.

[46] In 1857, the Province of Canada for the first time legislated for the "enfranchisement" of Indians in *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*, 20 Vict, c 26 ("***1857 Gradual Civilization Act***"). The Act allowed for the enfranchisement of Indian men who were at least 21 years old and who met a number of criteria, including being "of good moral character".

[47] The *1857 Gradual Civilization Act*, section III explained that upon the enfranchisement of an Indian man, "enactments making any distinction between the legal rights and habilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof." Among other things, an enfranchised Indian would thereby lose, under Canadian law, the various rights to reside on Indian lands as laid out in the *1850 Upper Canada Act* and the *1850 Lower Canada Act*, as amended by the *1851 Lower Canada Act*.

[48] Under section VIII of the *1857 Gradual Civilization Act*, the "wife, widow, and lineal descendants" of an Indian man were automatically enfranchised upon his enfranchisement. The Act provided no means for reversing the legal effects of enfranchisement, except in the case of an enfranchised Indian wife or daughter who subsequently "shall marry an Indian not enfranchised", in which case she "shall no longer be held to be enfranchised under this Act."

[49] The 1996 *Report of the Royal Commission on Aboriginal Peoples* ("***RCAP Report***"), vol 1, page 249, described the *1857 Gradual Civilization Act* as

"one of the most significant events in the evolution of Canadian Indian policy. Its premise was that by eventually removing all legal distinctions between Indians and non-Indians through the process of enfranchisement, it would be possible in time to absorb Indian people fully into colonial society."

[50] The *RCAP Report*, vol 1, page 251, also highlighted the sex-based discrimination inherent in enfranchisement:

> Moreover, the *Gradual Civilization Act* continued and reinforced the sexism of the definition of Indian in the Lower Canada land act, since enfranchisement of a man automatically enfranchised his wife and children. The consequences for the wife could be devastating, since she not only lost her connection to her community, but also lost the right to regain it except by marrying another man with Indian status.

[51] While the consequences of enfranchisement could be particularly devastating for involuntarily enfranchised wives, the *RCAP Report*, vol 1, page 251, also noted that the enfranchisement policy was by its very nature an assault on Indian cultural identity, including that of any Indian man "voluntarily" opting for enfranchisement:

> Finally, the tone and goals of the *Gradual Civilization Act*, especially the enfranchisement provisions, which asserted the superiority of colonial culture and values, also set in motion a process of devaluing and undermining Indian cultural identity. Only Indians who renounced their communities, cultures and languages could gain the respect of colonial and later Canadian society. In this respect it was the beginning of a psychological assault on Indian identity that would be escalated by the later *Indian Act* prohibitions on other cultural practices such as traditional dances and costumes and by the residential school policy.

[52] As detailed below, the enfranchisement mechanism of the *1857 Gradual Civilization Act* was subsumed within federal legislation following Canadian confederation, subsequently extended to other provinces and territories, and ultimately adopted in successive versions of the *Indian Act*.

[53] It was under successive versions of this enfranchisement mechanism that Wilfred L. and Charles W. were enfranchised, and that their respective wives and minor unmarried children were thereby automatically enfranchised as well.

1.3. From Confederation until the adoption of the *Indian Act* in 1876

[54] In 1867, section 91(24) of the *British North America Act*, 1867, 30 & 31 Vict, c 3, granted the newly established Parliament of Canada "exclusive Legislative Authority" "in relation to […] Indians, and Lands reserved for the Indians."

[55] In 1868, Parliament adopted *An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, SC 1868, c 42 ("***1868 Indian Lands Act***").

[56] Section 5 of the *1868 Indian Lands Act* named the Secretary of State as "Superintendent General of Indian affairs" having the control and management of the lands and property of the Indians in Canada.

[57] For "the purpose of determining what persons are entitled to" hold interests in Indian lands, section 15 of the *1868 Indian Lands Act* adopted the same three categories of "Indian" listed in the *1851 Lower Canada Act*:

> *Firstly*. All persons of Indian blood, reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;
>
> *Secondly*. All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and the descendants of all such persons; And
>
> *Thirdly*. All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriages, and their descendants.

[58] In 1869, Parliament adopted *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, SC 1869, c 6 ("***1869 Enfranchisement Act***").

[59] Section 6 of the *1869 Enfranchisement Act* amended the categories of Indians in section 15 of the *1868 Indian Lands Act* to exclude "any Indian woman marrying any other than an Indian" as well as "the children issue from such marriage". The same section also provided that "any Indian woman marrying an Indian of any other

tribe, band or body" ceased to be a member of her former tribe, band or body and became a member of her husband's only, as did any children born of such marriage.

[60] Section 13 of the *1869 Enfranchisement Act* authorized the Governor in Council "on the report of the Superintendent General of Indian Affairs" to "order the issue of Letters Patent granting to any Indian who from the degree of civilization to which he has attained, and the character for integrity and sobriety which he bears, appears to be a safe and suitable person for becoming a proprietor of land, a life estate" on land allotted to him from the reserve land of his "tribe, band, or body" of Indians. The children of an Indian granted such letters patent could inherit the land in fee simple.

[61] Section 16 of the *1869 Enfranchisement Act* provided that "[e]very Indian shall before the issue" of such letters patent, "declare to the Superintendent General of Indian Affairs the name and surname by which he wishes to be enfranchised and thereafter known, and on his receiving such letters patent, in such name and surname, he shall be held to be also enfranchised, and he shall thereafter be known by such name and surname, and his wife and minor unmarried children, shall be held to be enfranchised".

[62] The *1869 Enfranchisement Act* thus carried forward into federal legislation the essence of the enfranchisement policy and provisions set out in the *1857 Gradual Civilization Act*.

[63] Through the *Rupert's Land and North-Western Territory Order* (UK) (reprinted in RSC 1985, App II, No 9), dated June 23rd, 1870, and pursuant to section 146 of The *British North America Act*, 1867, Rupert's Land and the North-Western Territory were annexed to Canada, effective July 15, 1870, with a portion of the annexed territory entering confederation as the Province of Manitoba on the terms set out in the *Manitoba Act*, 1870, SC 1870, c 3.

[64] By *Order of Her Majesty in Council admitting British Columbia into the Union* (UK), dated May 16th, 1871, and pursuant to section 146 of the *British North America Act, 1867*, British Columbia entered confederation and became a province of

Canada on July 20th, 1871 on the terms set out in the *British Columbia Terms of Union* (UK) (reprinted in RSC 1985, App II, No 10).

[65] By article 13 of the *British Columbia Terms of Union*, "[t]he charge of the Indians" was "assumed by the Dominion Government".

[66] In 1874, Parliament adopted *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, SC 1874, c 21 ("***1874 Act respecting Indians***").

[67] Sections 9 and 10 of the *1874 Act respecting Indians* extended the application of various legal provisions, including the enfranchisement provisions of the *1869 Enfranchisement Act*, to Manitoba and British Columbia.

[68] Section 8 of the *1874 Act respecting Indians* also affirmed the definition of "Indian" given in section 15 of the 1868 Indian Lands Act, as modified by section 6 of the *1869 Enfranchisement Act*.

[69] As of 1874, then, Canadian laws imposed a patrilineal definition of "Indian", newly applicable in Manitoba and British Columbia, with particular consequences for an Indian woman, at the time of her marriage, that varied according to the identity of her husband.

[70] In particular, an Indian woman who married a non-Indian was herself thereby deemed non-Indian under Canadian law.

[71] An Indian woman who married an Indian man who was not a member of her "tribe, body, or band" of Indians was thereby deemed no longer a member of her own "tribe, body, or band" but instead a member of her husband's.

[72] Moreover, when an Indian woman married an Indian man (whether from her own "tribe, band or body" or otherwise), she lost the right to decide whether to maintain her Indian status under Canadian law or to apply for enfranchisement. Her husband was given the sole right to make that decision on her behalf and on behalf of any of their minor unmarried children.

[73] In 1876, Parliament adopted *An Act to amend and consolidate the laws respecting Indians*, SC 1876, c 18 ("***1876 Indian Act***").

[74] Section 3 of the *1876 Indian Act* reinforced the patrilineal definition of "Indian":

> The term "Indian" means
>
> *First*. Any male person of Indian blood reputed to belong to a particular band;
>
> *Secondly*. Any child of such person;
>
> *Thirdly*. Any woman who is or was lawfully married to such person.

[75] Subsection 3(c) of the *1876 Indian Act* specified that an Indian woman marrying a non-Indian "shall cease to be an Indian", as in prior legislation.

[76] Sections 86 to 94 of the *1876 Indian Act* dealt with enfranchisement. These sections largely carried over the provisions of prior legislation, though with some notable changes and added detail, including those noted in the following paragraphs.

[77] Section 86 allowed not only for any Indian man aged 21 years or older, but also for any *unmarried* Indian woman aged 21 years or older, to apply for enfranchisement.

[78] Section 86 provided that the process of enfranchisement now depended on "the consent of the band of which he or she [i.e., the applicant] is a member".

[79] Subsection 86(1) provided that any Indian who acquired a university degree, who was admitted to practise law in a province or to be a notary public, or who became a licensed Christian minister "shall *ipso facto* become and be enfranchised under this Act."

[80] Section 88 provided that, as before, if a married Indian man became enfranchised, "his wife and minor unmarried children also shall be held to be enfranchised".

[81] Section 94 provided that sections 86 to 93 (i.e., those dealing with enfranchisement) would "not apply to any band of Indians in the Province of British Columbia, the Province of Manitoba, the North-West Territories, or the Territory of

Keewatin" unless they were "by proclamation of the Governor-General" extended to any such band of Indians. This effectively reversed, subject to proclamation of the Governor-General, the extension of statutory enfranchisement mechanisms to British Columbia and Manitoba through sections 9 and 10 of the *1874 Act respecting Indians*.

1.4. Amendments in subsequent versions of the *Indian Act* up to 1985

[82] In 1894, the *Indian Act* was amended to grant the Governor in Council the authority to "make regulations, either general or affecting the Indians of any province or of any named band, to secure the compulsory attendance of children at school": *An Act further to amend "The Indian Act"*, SC 1894, c 32, section 11.

[83] In 1920, the *Indian Act* was amended to make such attendance compulsory by statute: "Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year"; penalties were provided for any parent or guardian of an Indian child "who fails to cause such child" to attend school as required by the amendment: *An Act to amend the Indian Act*, SC 1920, c 50, section 1.

[84] Enfranchisement under the *1869 Enfranchisement Act* and later the *Indian Act* required, until 1918, the issuing of letters patent to the applicant conferring an estate in a portion of reserve land allotted to the applicant.

[85] In 1918, however, the *Indian Act* was amended to allow for the enfranchisement of "an Indian who holds no land in a reserve, does not reside in a reserve, and does not follow the Indian mode of life": *An Act to amend the Indian Act*, SC 1918, c 26, section 6. (*An Act to amend the Indian Act*, SC 1924, c 47, section 7 clarified that this 1918 addition was not repealed by *An Act to amend the Indian Act*, SC 1920, c 50, section 3, although imprecise drafting had raised the question.)

[86] This 1918 amendment provided that upon application by such Indian, "the Governor in Council may order that such Indian be enfranchised […] and from the date of such order such Indian, together with his wife and unmarried minor

children, shall be held to be enfranchised": *An Act to amend the Indian Act*, SC 1918, c 26, section 6.

[87] This alternative enfranchisement process was also available to unmarried adult Indian women and Indian widows: "Any unmarried Indian woman of the age of twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children": *An Act to amend the Indian Act*, SC 1918, c 26, section 6.

[88] This provision of an alternative enfranchisement process applied "to the Indians in any part of Canada": *An Act to amend the Indian Act*, SC 1918, c 26, section 6.

[89] This provision of an alternative enfranchisement process was inserted as section 122A of *An Act respecting Indians*, RSC 1906, c 81 ("***1906 Indian Act***").

[90] This alternative enfranchisement process was carried forward in section 114 in the 1927 consolidation, *An Act respecting Indians*, RSC 1927, c 98 ("***1927 Indian Act***").

[91] It was under section 114 of the *1927 Indian Act* that Wilfred L. was enfranchised by Order of the Governor in Council on November 29, 1944.

[92] It was under section 114 of the *1927 Indian Act* that Charles W. was enfranchised by Order of the Governor in Council on November 13, 1947.

[93] In 1920, the *Indian Act* was amended to extend the application of all its enfranchisement provisions across the country, removing the requirement that the Governor in Council extend the application of certain provisions by proclamation: *An Act to amend the Indian Act*, SC 1920, c 50, section 3.

[94] In 1924, the *Indian Act* was amended to provide that "where a wife is living apart from her husband, the enfranchisement of the husband shall not carry with it the enfranchisement of his wife except on her own written request to be so enfranchised." *An Act to amend the Indian Act*, SC 1924, c 47, section 6.

[95] The *1927 Indian Act*, section 2(d) maintained the patrilineal definition of "Indian" given in the *1876 Indian Act*. Section 14 maintained the exclusion of Indian women who married non-Indian men.

[96] The *1927 Indian Act*, section 10 maintained compulsory school attendance for "[e]very Indian child between the ages of seven and fifteen who is physically able".

[97] The *1927 Indian Act*, sections 110 to 114 carried forward provisions for enfranchisement from earlier legislation.

[98] The *Indian Act* received major amendments in 1951, consolidated in *An Act respecting Indians*, RSC 1952, c 149 ("***1951 Indian Act***").

[99] The *1951 Indian Act* established for the first time a Register of Indians, "in which shall be registered the name of every person who is entitled to be registered as an Indian": section 5.

[100] The *1951 Indian Act* defined the corresponding position of "Registrar" as the "officer […] who is in charge of the Indian Register": section 2(n).

[101] The *1951 Indian Act* formally defined "Indian" to mean "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian": section 2(g). A person who is entitled to be registered in the Indian Register is generally said to have "Indian status", though that term is not specifically defined in the *Indian Act*. (Generally speaking, and in these pleadings specifically, a person is said to have had "Indian status" at any given time prior to 1951 if that person met the criteria of "Indian" as defined in the relevant federal or colonial legislation in effect at that time. With the *1951 Indian Act*, meeting such criteria became synonymous with entitlement to registration in the Indian Register.)

[102] More concretely, the *1951 Indian Act* provided that "[u]pon the coming into force of this Act, the band lists then in existence in the Department [of Citizenship and Immigration] shall constitute the Indian Register": section 8.

[103] Sections 11 and 12 of the *1951 Indian Act* then provided criteria for categories of further individuals who were entitled to be registered.

[104] Subsections 11(a) and 11(b) provided that a person was entitled to be registered if that person belonged to an Indian band, tribe, or body recognized by Canada.

[105] Subsection 11(c) provided that "a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b)" is entitled to be registered. That is, this subsection recognized the Indian status of any patrilineal male descendant of an Indian man.

[106] Subsection 11(d) provided that the legitimate child of any male person described in subsections 11(a), (b), or (c) was entitled to be registered. In particular, then, any child born of a marriage between an Indian man and a non-Indian woman was granted Indian status.

[107] Subsection 11(e) provided that the illegitimate child of an Indian woman was entitled to be registered "unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered".

[108] By subsection 11(f), any woman married to (or widowed by) an Indian man also had Indian status.

[109] Section 11 of the *1951 Indian Act* was, however, subject to section 12, which provided categories of individuals who were specifically not entitled to be registered.

[110] In particular, subsection 12(1)(a)(iii) provided that a person who was enfranchised was not entitled to be registered. That is, a person was stripped of Indian status upon being enfranchised, as in prior legislation.

[111] Subsection 12(1)(a)(iv) introduced what came to be known as "the double-mother rule". This rule provided that a person was not entitled to be registered if that person is "born of a marriage entered into after the 4th day of September, 1951, and has attained the age of twenty-one years, whose mother and whose father's mother" were not entitled to be registered prior to marrying an Indian. In other words, after two successive generations of non-Indian women gaining Indian status by "marrying

in", the children of the second-generation marriage would lose Indian status at age 21.

[112] Subsection 12(1)(b) provided that a woman married to a non-Indian was not entitled to be registered. Thus, an Indian woman was stripped of Indian status upon marrying a non-Indian.

[113] The two processes of applying for enfranchisement under earlier iterations of the *Indian Act* described above (the older process for Indians living on-reserve and the alternative process for those living off-reserve) were amalgamated in subsection 108(1) the *1951 Indian Act*, which continued to allow for application by an Indian male aged 21 years or older.

[114] If the Minister responsible was satisfied that an applicant met the conditions listed in subsection 108(1), the Governor in Council could "by order declare that the Indian and his wife and minor unmarried children are enfranchised."

[115] Subsection 108(3) made an exception in the case of an Indian wife living apart from her husband; in such circumstances, her name and the names of any of their minor children living with her were not to appear on an order under subsection 108(1) unless she had herself applied for enfranchisement.

[116] Subsection 108(2) allowed the Governor in Council to order the enfranchisement of an Indian woman who had married a non-Indian. (Under subsection 12(1)(b), an Indian woman automatically lost her Indian status upon marrying a non-Indian; an order under subsection 108(2) may have been required for the full legal consequences of enfranchisement to follow or simply as an official confirmation that the woman was no longer "Indian" under Canadian law.)

[117] Because enfranchisement orders under subsection 108(1), or under related provisions in previous versions of the *Indian Act* or earlier statutes, were made pursuant to an application for enfranchisement, this process has often been referred to as "voluntary enfranchisement". By contrast, orders under subsection 108(2), or under related provisions in previous versions of the *Indian Act* or earlier statutes, are typically characterized as a form of "involuntary enfranchisement", because they

were made without application from those enfranchised (i.e., Indian women who "married out" and any unmarried minor children they might have had at the time).

[118] Reference to "voluntary enfranchisement" is misleading for at least two reasons. First, those applying for enfranchisement often did so under considerable duress, from the very nature of the decision whether to retain Indian status or instead to seek the rights and privileges of Canadian citizenship, including freedom from residential schooling for their children. Second, the process was not "voluntary" in the case of wives and minor unmarried children who were automatically enfranchised pursuant to an application made by a husband or father.

[119] Both "voluntary enfranchisement" and "involuntary enfranchisement" involved sex-based discrimination. Notably, whereas an Indian woman who married a non-Indian was thereby stripped of Indian status, an Indian woman who married an Indian man was thereby stripped of the right to decide whether to keep her Indian status. The husband alone had the legal authority to make that decision. While the husband's decision may have been constrained by circumstances, and sometimes made under duress, the wife was entirely stripped of any legal right to decide.

1.5. The post-*Charter* amendments to the *Indian Act*

[120] With the adoption of the *Charter* in 1982, providing for the entry into force of section 15 on April 17, 1985, there was a clear constitutional imperative to address the sex-based inequities in the *Indian Act*'s registration provisions.

[121] In 1985, the Minister of Indian Affairs and Northern Development presented Bill C- 31: *An Act to Amend the Indian Act* to Parliament with the stated intentions, notably, of removing sex-based discrimination from the *Indian Act* and of restoring Indian status and band membership to those whose status and band membership were lost as a result of discrimination in the *Indian Act*.

[122] Bill C-31 was enacted as *An Act to Amend the Indian Act*, SC 1985, c 27 on June 28, 1985, with retroactive effect to April 17, 1985, amending *An Act respecting Indians*, RSC 1985, c I-5 ("***1985 Indian Act***").

[123] Bill C-31 amended the provisions for Indian status according to the following key purposes or effects:

a. preserving all "acquired rights" to registration existing prior to April 17, 1985, such that everyone registered or entitled to be registered in the Indian Register immediately prior to that date was entitled to be registered after Bill C-31 came into force;

b. eliminating the gain or loss of Indian status through marriage;

c. reinstating the entitlement to be registered in the Indian Register for individuals born with such entitlement but having lost it under various earlier provisions of the *Indian Act*, notably through marrying out or being enfranchised;

d. enhancing the entitlement to be registered in the Indian Register for those individuals previously subject to the "double-mother rule" by removing their loss of entitlement at age 21.

[124] Section 4 of Bill C-31 amended section 6 of the *1985 Indian Act* to provide two categories of individuals with Indian status:

a. "6(1) status" for an individual both of whose parents are entitled to be registered in the Indian Register; and

b. "6(2) status" for an individual with one parent having 6(1) status and the other parent not entitled to be registered in the Indian Register.

[125] Individuals with 6(1) status are able to transmit Indian status to their children. That is, the children of such an individual themselves have Indian status.

[126] Individuals with 6(2) status are unable to transmit Indian status to their children. That is, the children of an individual with 6(2) status will not have Indian status unless their other parent also has Indian status (either 6(1) or 6(2) status).

[127] Section 6(1)(a) provided that everyone who was registered or entitled to be registered immediately prior to April 17, 1985 was entitled to 6(1) status following the adoption of Bill C-31.

[128] Under section 6(1)(c), every woman who had lost Indian status upon marrying a non-Indian, or upon being enfranchised due to her marriage to a non-Indian, was entitled to 6(1) status (with the exception of women who had first acquired Indian status through marriage and then lost that status through a subsequent marriage to a non-Indian: section 7(1)(a) of the *1985 Indian Act*, as modified by Bill C-31).

[129] Also under section 6(1)(c), every person who had lost Indian status due to the double-mother rule was entitled to 6(1) status. Bill C-31 also eliminated the double-mother rule such that no individual would henceforth lose status under that rule.

[130] Under section 6(1)(d) every person who had lost Indian status through order of the Governor in Council pursuant to an application for enfranchisement was entitled to 6(1) status (with the exception of (i) women who had first acquired Indian status through marriage and (ii) individuals who first acquired Indian status through the marriage of their mother to an Indian: sections 7(1)(a) and 7(1)(b) of the *1985 Indian Act*, as modified by Bill C-31).

[131] Section 6(1)(f) granted 6(1) status to every person "both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section", i.e. under section 6 (with either 6(1) or 6(2) status).

[132] Section 6(3)(b) clarified that for the purposes of sections 6(1)(f) and 6(2), "a person described in paragraph (1)(c), (d) or (e) who was no longer living on April 17, 1985 shall be deemed to be entitled to register under that paragraph."

[133] It was under section 6(1)(d) of the *1985 Indian Act*, as modified by Bill C-31 and as it remained in effect until at least August 18, 2025, that Jean Julia was registered in the Indian Register, and thereby regained membership in the Old Massett Village Council.

[134] As a result, Jean Julia's daughter Sharon was registered in the Indian Register under section 6(2), having one parent with 6(1) status. Sharon thereby gained membership in the Old Massett Village Council.

[135] It was under section 6(1)(d) of the *1985 Indian Act*, as modified by Bill C-31 and as it remained in effect until at least August 18, 2025, that Charles W. was

registered in the Indian Register, and thereby regained membership in the Missinabie Cree First Nation.

[136] As a result, Charles W.'s son, Charles A., was registered in the Indian Register under section 6(2), having one parent with 6(1) status. Charles A. thereby gained membership in the Missinabie Cree First Nation.

[137] Section 19 of Bill C-31 repealed the enfranchisement provisions of the *Indian Act*. There no longer exists an enfranchisement process under the Act.

[138] Finally, section 22 of Bill C-31 provided that within two years of its enactment the Minister of Indian Affairs would present a report to each Chamber of Parliament on the implementation of the Act and that this report would be examined by a designated committee of Parliament.

[139] The Standing Committee on Aboriginal Affairs and Northern Development examined this report in 1988. The Committee noted that Bill C-31 amended the registration provisions of the *Indian Act* in order to ensure compliance with international human rights standards and the equality provisions of the *Charter*. The Committee observed that there remained discriminatory provisions in the rules governing registration in the Indian Register following the adoption of Bill C-31.

[140] Nonetheless, Parliament did not bring any further changes to the registration provisions until 2010, subsequent to the British Columbia Court of Appeal's decision in *McIvor v Canada (Registrar of Indian and Northern Affairs Canada)*, 2009 BCCA 153.

[141] The Court of Appeal in *McIvor* found that the registration provisions, as amended by Bill C-31, violated section 15 of the *Charter* by perpetuating sex-based discrimination. Notably, under Bill C-31, children born of a marriage between an Indian and a non-Indian entered into prior to April 17, 1985 would acquire 6(1) status if their father was Indian but only 6(2) status if their mother was Indian.

[142] The Court of Appeal in *McIvor* declared sections 6(1)(a) and 6(1)(c) of the *Indian Act*, as they then read, of no force or effect, but suspended the effect of that declaration to allow Parliament time to remedy the Act.

[143] In March 2010, the government presented to Parliament the Bill that would ultimately be adopted into law as the *Gender Equity in Indian Registration Act*, SC 2010, c 18 ("**Bill C-3**").

[144] Bill C-3 proposed only a narrow amendment of the existing registration provisions, to allow, in certain circumstances, the children of an Indian woman who had lost status through marriage to a non-Indian man to obtain 6(1) status, and thus to be able to transmit Indian status to their own children, i.e., to the grand-children of the Indian woman who had lost status by marrying out.

[145] More specifically, Bill C-3 proposed a new provision, subsection 6(1)(c.1), through which 6(1) status would be granted to individuals:

a. who were born to an Indian mother and non-Indian father;

b. whose mother had lost Indian status through marriage to a non-Indian prior to April 17, 1985;

c. who were born on or after the date of the marriage that caused their mother's loss of Indian status; and

d. who themselves had or adopted a child on or after September 4, 1951 (when the "double-mother rule" took effect) with a person not entitled to be registered in the Indian Register at the time of that child's birth or adoption.

[146] The children of individuals registered under subsection 6(1)(c.1) would thus be entitled to register under subsection 6(2) but would not be able to pass Indian status on to their own children, unless they parent with another individual who has Indian status (either 6(1) or 6(2) status).

[147] During parliamentary debate on Bill C-3, members in both the Senate and House of Commons expressed concerns that the Bill left clearly discriminatory provisions in place.

[148] Nonetheless, Bill C-3 was adopted by the House of Commons on November 22, 2010 and by the Senate on December 9, 2010 without amendment to address the forms of discrimination identified during parliamentary debates on the Bill.

[149] Bill C-3 received Royal Assent on December 15, 2010 and entered into force on January 31, 2011.

[150] On August 3, 2015, the Superior Court of Quebec issued its judgment in *Descheneaux c Canada*, 2015 QCCS 3555, addressing forms of discrimination remaining in the registration provisions, including forms identified during the parliamentary debates on Bill C-3.

[151] Notably, the *Indian Act* as amended by Bill C-3 continued to discriminate against individuals who had a single Indian grandparent who was female and had lost Indian status through marriage. As a category, such individuals had lesser entitlement to registration than individuals similarly situated except for having a male rather than a female Indian grandparent.

[152] Finding that this and other forms of discrimination violated section 15 of the *Charter*, the Court in *Descheneaux* declared sections 6(1)(a), (c), and (f) and 6(2) of the *Indian Act*, as they then read, to be of no force or effect, suspending the effect of that declaration for 18 months to allow Parliament time to adopt remedial legislation.

[153] In its concluding remarks, notably paragraphs 235 to 243, the Court in *Descheneaux* urged Parliament not to limit itself to remedying only the instances of discrimination identified in that case, stating at paragraph 243 that "Parliament should not interpret this judgment as strictly as it did the BCCA's judgment in *McIvor*."

[154] On January 20, 2017, the Superior Court of Quebec extended until July 3, 2017 the suspension of the effect of its declaration of constitutional invalidity.

[155] On August 18, 2017, the Court of Appeal of Quebec, overturning a decision of the Superior Court of Quebec, granted a further extension of the suspension, which was thus extended until December 22, 2017: 2017 QCCA 1238.

[156] Meanwhile, Bill S-3, *An act to amend the Indian Act (elimination of sex-based inequities in registration)*, had been introduced and given First Reading in the Senate on October 25, 2016.

[157] Bill S-3 was narrowly tailored to address the categories of discrimination specifically identified by the Superior Court of Quebec in *Descheneaux*.

[158] During parliamentary debates and committee hearings on Bill S-3, concerns were once again raised about forms of discrimination in the registration provisions that would not be remedied by the Bill.

[159] Nonetheless, Bill S-3 received Royal Assent on December 12, 2017 and was adopted into law as *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c Canada (Procureur général)*, SC 2017, c 25.

[160] Bill S-3 did not amend or address the registration provisions, notably sections 6(1)(d), 6(1)(f), and 6(2), that applied, at least until August 18, 2025, to individuals who were enfranchised pursuant to applications for enfranchisement and to their descendants.

[161] Bill C-3 and Bill S-3 have remedied certain discriminatory effects of enfranchisement that Bill C-31 imposed on women who regained status under section 6(1)(c) of the *1985 Indian Act*, as modified by Bill C-31, and on the descendants of such women.

[162] Certain provisions of Bill S-3 did not come into force until August 2019. Among other things, these delayed provisions replaced the various provisions under section 6(1)(c) with new provisions under 6(1)(a) and granted Indian status to all descendants of women who had previously regained entitlement under section 6(1)(c), on equal footing with similarly placed descendants of Indian men.

[163] That is, the registration provisions currently in force grant status to any direct descendant of an Indian woman who lost status due to marrying a non-Indian, so long as that direct descendant either (i) was born before April 17, 1985 or (ii) was born after April 16, 1985 and their parents were married before April 17, 1985: *Indian Act*, sections 6(1)(a.1) and 6(1)(a.3).

[164] However, neither Bill C-3 nor Bill S-3 addressed the discriminatory effects of enfranchisement that Bill C-31 imposed on individuals who regained status under section 6(1)(d) of the *1985 Indian Act* and on the descendants of such individuals. The Plaintiffs are all descendants of individuals who have regained status under section 6(1)(d).

[165] As required by Bill S-3, the federal government launched a consultation process to address forms of discrimination still remaining in the registration provisions of the *Indian Act* following the adoption of that Bill.

[166] As also required by Bill S-3, the federal government tabled a Report to Parliament in June 2019 following the conclusion of that consultation process.

[167] The Report to Parliament does not propose any action to address the situation of the Plaintiffs, who continue to endure the discriminatory effects of enfranchisement imposed by section 6(1)(d) of the registration provisions as were in effect until at least August 18, 2025.

[168] The Report to Parliament nonetheless claims that Bill S-3 eliminated all sex-based discrimination from the registration provisions in the *Indian Act*.

[169] The Report to Parliament does, however, recognize that there exist "remaining inequities" suffered by the descendants of individuals who were enfranchised for reasons other than marriage to a non-Indian. Notably, the Report, at page 27 of Appendix B, acknowledges:

> The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the *Indian Act* continue to have an impact.

[170] The Registration provisions currently in force are those of the *1985 Indian Act* as amended by Bill C-31, Bill C-3, and Bill S-3 and as impacted by the declarations made by the Supreme Court of British Columbia in *Nicholas v Attorney General (Canada)*, 2025 BCSC 1596.

2. CLAIM OF THE PROPOSED REPRESENTATIVE PLAINTIFFS

Nicole Nicholas

[171] The Plaintiff Nicky was born in 1988. She is the daughter of Sharon, who was born in 1962.

[172] Sharon's mother, Jean Julia was born in 1940 and was a member of the Massett Band in Haida Gwaii, British Columbia, until she was enfranchised in 1944 by the combined effect of an Order of the Governor in Council enfranchising her father (Sharon's grandfather) and of *Indian Act* provisions then in force.

[173] In 2009 and again in 2011, Nicky applied for registration under the *Indian Act*. Those applications were both denied by the Indian Registrar ("**the Registrar**"). Pursuant to section 14.2 of the *Indian Act*, Nicky protested the denial of her second application, and the Registrar denied that protest in 2015.

[174] Nicky's recent ancestors are described below and identified in the chart attached as Schedule 1 to this SOC. (The chart is a partial family tree, including only family members who are Plaintiffs and their immediate ancestors.)

[175] In 1988, Jean Julia was registered under section 6(1)(d) of the *Indian Act* and Sharon was registered under section 6(2), and both became members of the Old Massett Village Council (as the Massett Band has been renamed).

[176] The Registrar denied Nicky's applications and protest on the basis that the registration provisions of the *Indian Act* did not allow for her registration.

[177] Nicky is a Haida citizen under the citizenship laws of the Haida Nation.

[178] Nicky is also a citizen of the Central Council of the Tlingit and Haida Tribes of Alaska, a federally recognized tribe in the United States of America.

The Bennett and Edenshaw Family (see chart attached as Schedule 1 to this SOC)

[179] Martha Edenshaw née Duncan ("**Martha**") was born around 1869 in Alaska. Her Haida name was dlagwa t'aawaa and her father was Duncan Ginaawaan

("**Duncan**") (d. 1876), an Alaskan Haida carver and bracelet maker. Martha died around 1948.

[180] Henry Edenshaw ("**Henry**") was born around 1868 at Massett Reserve on Haida Gwaii. He died in 1935.

[181] Henry and Martha were married in or before 1890. Their children were born between 1890 and 1914 and raised in Massett.

[182] Henry, Martha, and all nine of their surviving children are listed as members of the Massett Band on band censuses from the early 20th century. (Two children who died in infancy are not listed.)

[183] Ivy Constance Octavia Edenshaw ("**Ivy**"), the youngest child of Martha and Henry, was born in 1914. She died in 1973.

[184] On January 6, 1938, Ivy married Wilfred L. at Massett Reserve, where they both lived.

[185] Wilfred L. was born on November 7, 1915. He was adopted as an infant by Robert Bennett ("**Robert**") and Julia Bennett ("**Julia**"), and is listed as their adoptive son on the 1918 census of the Massett Band. Wilfred L. died in 1983.

[186] Robert was born around 1876 and died in 1941.

[187] Julia was born around 1879 and died in 1945.

[188] Robert, Julia, and Wilfred L. were members of the Massett Band.

[189] Wilfred L.'s biological mother was Lillian Nelson, who was born around 1894 and was also a member of the Massett Band. Lillian died in 1918.

[190] Ivy and Wilfred L. had ten children, seven born prior to the family's enfranchisement in 1944 and three born after. The eldest child, Lillian, was born on February 14, 1938. Twin sisters Jean Julia and Joan were born on October 22, 1940.

[191] Prior to November 29, 1944, Ivy, Wilfred L., and six of their children are listed together on census records as members of the Massett Band. (The seventh child was adopted by Ivy's sister.)

[192] By Order of the Governor in Council dated November 29, 1944, and pursuant to what was then section 114 of the *Indian Act*, Wilfred L. was "declared enfranchised".

[193] Under section 114 of the *Indian Act* then in force, Wilfred L.'s "wife and unmarried minor children" were also "held to be enfranchised" as of November 29, 1944.

[194] On August 16, 1958, Jean Julia married Robert Blair Cracknell. Robert is not known to have any Indigenous ancestry.

[195] Sharon was born of the marriage of Jean Julia and Robert Blair Cracknell.

[196] On August 21, 1982, Sharon married Edward William Nicholas ("**Edward**"). Edward is not known to have any Indigenous ancestry.

[197] Terra Nicholas, Nicky, and James Nicholas were born of the marriage of Sharon and Edward William Nicholas.

The Wesley and Atkinson Family (see chart attached as Schedule 2 to this SOC)

[198] Waapan Pehtam was born in Moose Factory, Ontario. His name was changed to John Wesley ("**John**") in 1840 by the Canadian Government Indian Agent.

[199] John married Iskweshesh who was also born in Moose Factory and whose name was changed in 1840 to Susanna Wesley ("**Susanna**").

[199.1] John and Susanna Wesley's son, William John Wesley ("**William J.**"), was born in Moose Factory, Ontario in 1856, and married Jane Matilda Atkinson ("**Jane M.**"), who was born in 1886, in Fort George, Rupert's Land (now within the Province of Québec).

[200] William J. and Jane M. moved from Moose Factory to Missanabie, Ontario in 1905. They had four children, the last one being Charles W., born in Missanabie in 1914. Starting at the age of five, Charles W. attended St. John's Indian Residential School in Chapleau, Ontario along with his siblings, where he was physically, emotionally and sexually abused.

[201] Charles W. married Lenore Dampier ("**Lenore**") in 1938, who is not known to have any Indigenous ancestry.

[202] He was enfranchised by Order in Council in 1947, along with his three children, namely Shirley, Marjorie and Judy.

[203] After Charles W. was enfranchised, he and Lenore had two more children, namely the Plaintiff Charles A. who was born in 1948, only three months after his father was enfranchised, and Katherine Dawn Wesley, born in 1956.

[204] Following the legislative amendments brought by Bill C-31 in 1985, Charles A. was registered under section 6(2) of the *Indian Act*, having been born after his father was enfranchised. His three older sisters, Shirley, Marjorie and Judy, were registered under section 6(1)(d) of the *Indian Act*, having been born before their father was enfranchised and therefore having lost at the moment their father was enfranchised (which brings them within the scope of section 6(1)(d) as it remained in effect until at least August 18, 2025).

[205] Charles A. has three children, namely Charles J. Wesley, Christopher R. Wesley and Kevin M. Wesley.

[206] All three of his children, including the Plaintiff Christopher, have applied for and were denied Indian status.

[207] In particular, Christopher applied for registration under the *Indian Act* in 1986, in 2007, in 2012, in 2014, in 2017 and in 2019. Those applications were denied.

PART V - THE PROPOSED SUBCLASSES

[208] The proposed subclasses A and B in this class proceeding are defined as:

> ***Subclass A.***
>
> *Every person*
>
> i) *with at least one direct ancestor (parent, grandparent, great-grandparent, etc.) who was "enfranchised" pursuant to an application for enfranchisement under the Indian Act (such that*

that ancestor was entitled or deemed entitled to registration pursuant to paragraph 6(1)(d) of the Indian Act, as it read on August 18, 2025); and

ii) *who, at any time after April 16, 1985, was denied the benefits of registration under the Indian Act because of the enfranchisement of their direct ancestor;*

And the heirs of such a person, if that person died after April 16, 1985.

And

Subclass B.

Every person who is a parent or grandparent of one or more persons described in Subclass A;

And the heirs of such a person, if that person died after April 16, 1985.

PART VI - PROCEEDINGS RELATED TO THE CONSTITUTIONAL CHALLENGE OF THE DISCRIMINATORY PROVISIONS

[209] On June 10, 2021, sixteen plaintiffs (including the Plaintiffs in this matter Sharon and Nicky) filed a Notice of Civil Claim initiating the *Nicholas* Proceeding and seeking the following declarations, among others:

> 306. A declaration that sections 6(1)(a), 6(1)(d), 6(1)(f), and 6(2) of the *Indian Act* violate section 15 of the *Charter* in their application to the Plaintiffs, and are not saved under section 1 of the *Charter*.
>
> 307. A declaration that sections 6(1)(a), 6(1)(d), 6(1)(f), and 6(2) of the *Indian Act* violate section 7 of the *Charter* in their application to the Plaintiffs, and are not saved under section 1 of the *Charter*
>
> 308. A declaration that, in order to remedy these constitutional violations, the words "pursuant to an order made under subsection 109(2)" be struck from section 6(1)(a.1) of the *Indian Act* and that section 6(1)(d) of the *Indian Act* be struck in its entirety. (The effect of such declaration would be to grant 6(1) status to every direct descendant of an individual who was enfranchised pursuant to an application for enfranchisement if that direct descendant either

> (i) was born before April 17, 1985 or (ii) was born after April 16, 1985 and their parents were married before April 17, 1985.)
>
> 309. A declaration that Sharon Nicholas is entitled to be registered in the Indian Register pursuant to section 6(1)(a.3) of the *Indian Act*.
>
> 310. A declaration that Nicole Eileen Nicholas is entitled to be registered in the Indian Register pursuant to section 6(1)(a.3) of the *Indian Act*. (…)

[210] The plaintiffs in the *Nicholas* Proceeding relied on the *Charter*, and in particular sections 7, 15, and 28, to challenge the impugned provisions of the *Indian Act*.

[211] The plaintiffs' claim in the *Nicholas* Proceeding was based on them being deprived of the benefits of the law due to discrimination based on sex, on marital status, race and national or ethnic origin, and on family history of Indian enfranchisement, in violation of their rights under section 15 of the *Charter*.

[212] On January 15, 2025, the AGC conceded that the impugned provisions of the *Indian Act* infringed section 15(1) of the *Charter* on the grounds of race or ethnic origin and that this infringement did not constitute "a justifiable limit under section 1 of the *Charter*".

[213] On February 26, 2025, the plaintiffs in the *Nicholas* Proceeding applied for summary judgment with a narrow outstanding disagreement between the parties regarding the appropriate remedy. The plaintiffs in the *Nicholas* Proceeding argued that they were entitled to a declaration of unconstitutionality without further delay, while the AGC asked that the declaration be suspended, initially requesting a period of 6 months, subsequently increased to 12 months, "to allow Parliament the opportunity to complete the legislative process" to amend the impugned provisions.

[214] The application for summary judgment was heard on June 3, 2025. On August 19, 2025, the Supreme Court of British Columbia rendered its judgment on the plaintiffs' application for summary judgment and issued the following declaration:

a) I declare that:

i. The words "pursuant to an order made under subsection 109(2)" in paragraph 6(1)(a.1) of the *Indian Act* and the entire paragraph 6(1)(d) of the *Indian Act* unjustifiably infringe s. 15 of the *Canadian Charter of Rights and Freedoms*; and

ii. The words "pursuant to an order made under subsection 109(2)" in paragraph 6(1)(a.1) of the *Indian Act* and the entire paragraph 6(1)(d) of the *Indian Act* are of no force or effect;

b) The declarations in a) above do not apply to individuals who were members of a band, as defined in the *Indian Act*, that enfranchised under s. 112 of the 1970 *Indian Act*, including any former provision relating to the same subject-matter;

c) The above declaratory relief is suspended for a period ending April 30, 2026;

d) I will remain seized of this matter and retain the power to vary the period of suspension, if any further application is required;

e) Pursuant to s. 24(1) of the *Charter*, the plaintiffs are granted a constitutional exemption from the suspension of the declarations in a) above;

PART VII - NATURE OF THE ACTION

[215] Canada deprived the Plaintiffs of benefits tied to registration under the *Indian Act* in violation of the Plaintiffs' *Charter* rights and in breach of […] Canada's obligations that flow from the honour of the Crown and its fiduciary obligations to the Plaintiffs […] with respect to the rights and benefits to which they are entitled as rights-holders under section 35 of the *Constitution Act, 1982*. […] Canada's actions directly violated the Plaintiffs' rights to their Indigenous culture and identity. Canada's actions are also […] contrary to international conventions and covenants and other international law.

[216] The current registration provisions are clearly unconstitutional in violating the Plaintiffs' rights under section 15 of the *Charter* by denying the Plaintiffs benefits tied to registration because of a family history of enfranchisement. In this respect, the clearly unconstitutional nature of the current registration provisions is notably underscored by the fact that Canada conceded the violation of the Plaintiffs' section 15 rights without advancing any defence in the *Nicholas* Proceeding.

[217] Each of the class members also holds Aboriginal and/or Treaty rights pursuant to section 35 of the *Constitution Act, 1982*. […] The process of enfranchisement, and the consequences of a family history of enfranchisement imposed by Canada on the Plaintiffs (notably, through the registration provisions of the *Indian Act*), deprived the Plaintiffs of the meaningful exercise of their section 35 rights, including to their Indigenous culture and identity.

[217.1] Canada's imposition of a family history of enfranchisement on the Plaintiffs has violated their rights protected by section 35 of the *Constitution Act, 1982* to their Indigenous culture and identity.

[217.2] In the course of assuming discretionary control over membership in First Nations, notably through the *Indian Act*, Canada erected strict legal barriers to the Plaintiffs' participation and membership in their respective First Nations communities, thus denying the Plaintiffs any meaningful exercise of the section 35 rights held collectively by their respective First Nations. Canada thereby violated the fiduciary obligations it owes to the Plaintiffs as section 35 right-holders. Further, through the *Royal Proclamation of 1763*, the *Indian Act*, and other instruments, the Crown undertook to manage Indigenous lands, notably reserve lands, and other interests, in the best interests of Indigenous peoples. Canada violated the fiduciary obligations it owed to the Plaintiffs by then restricting their access to and benefit of such lands through the consequences of a family history of enfranchisement.

[217.3] Moreover, the honour of the Crown is engaged in Canada's management and determination of Indian status. Canada has also failed to act in a manner that is consistent with the honour of the Crown and has failed to uphold a "high standard of honourable dealing" in the exercise of its powers, including its legislative powers

pursuant to s. 91(24) of the *Constitution Act, 1867*. These denials have unjustifiably infringed the section 35 rights of class members and their ability to exercise those rights, including to their Indigenous culture and identity.

[218] Canada's actions are also contrary to class members' rights recognized in the *United Nations Declaration on the Rights of Indigenous Peoples*, notably article 8 (right not to be forced to assimilation or destruction of their culture), article 9 (right to belong to an Indigenous community or nation) and article 28 (right to redress for confiscated, taken, occupied, used or damaged lands, territories and resources).

PART VIII - DAMAGES SUFFERED BY CLASS MEMBERS

[219] As a result of their ineligibility to register under the *Indian Act* because of a family history of enfranchisement, Plaintiffs Nicky and Christopher (and Subclass A members) have been deprived, and continue to be deprived, of the benefits of the law due to the perpetuation of the effects of enfranchisement and the discriminatory treatment that flows from the registration provisions of the *Indian Act* that remained in effect until at least August 18, 2025, including:

a. The recognition of identity and socio-cultural belonging and the possibility of living within the community as a status Indian with a shared and recognized sense of identity, values, customs, and traditions with other members of the community.

b. The ability to transmit Indian status to their children, grandchildren, and offspring more broadly, including the transmission of identity and cultural heritage. The ability to transmit Indian status to one's offspring is of significant spiritual and cultural value.

[220] For the same reasons, the Plaintiffs Nicky and Christopher (and Subclass A members) have been deprived, and continue to be deprived of the tangible economic, educational, and health benefits of Indian status, notably:

a. the right to share in the capital accounts and revenue of the Band; the right to benefit from financial aid in the construction or renovation of a home; tax exemptions, and the protection of goods located on reserve from seizure;

elementary and secondary educational services; post-secondary education financial assistance; additional support in accessing medical services such as dental care, prescription drugs, prosthetics, and medical transport; social assistance; and opportunities for federal government loans.

[221] For the same reasons, the Plaintiffs Nicky and Christopher (and Subclass A members) have been deprived, and continue to be deprived of the tangible socio-political and cultural benefits of Indian status linked with band membership, including: the right to reside on Band reserve lands; the right to vote and be a candidate in Band Council elections; the right to participate and vote in Band referendums; the right to possess, transmit, and inherit property on reserve lands; the right to be buried on reserve; and special hunting, fishing, and trapping rights.

[222] In some cases, Subclass A members were deprived of payments tied to treaty settlements between the Crown and the First Nation of which they would be recognized members if they had not been denied registration. In 2020, for instance, the Missanabie Cree First Nation reached a settlement with the Government of Canada over a land claim. Having been denied registration, Christopher did not receive the settlement payments to which he would have been entitled if he had been granted registration under the *Indian Act*.

[223] As a result of the ineligibility for their children or grandchildren to register under the *Indian Act* because of a family history of enfranchisement, Plaintiffs Sharon, Nicky, Charles A., and Christopher (and Subclass B members) have been deprived of benefits as persons who are responsible for the care, education, and support of the children and grandchildren whose Indian status is at issue, including: support for certain medical and dental needs, for post-secondary education, and for extracurricular programs; and certain tax exemptions.

PART IX - LEGISLATION

[224] The Plaintiffs notably plead and rely upon various statutes and regulations, including not limited to:

a. *Constitution Act*, 1867, 30 & 31 Victoria, c 3 (UK);

b. *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c 11;

c. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

d. *Federal Courts Act*, RSC 1985, c F-7;

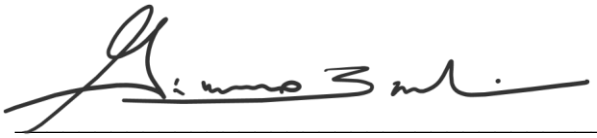
e. *Federal Courts Rules*, SOR/98-107;

f. *Indian Act*, RSC 1985, c I-5;

PART X - LOCATION OF TRIAL

[225] The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: November 14, 2025



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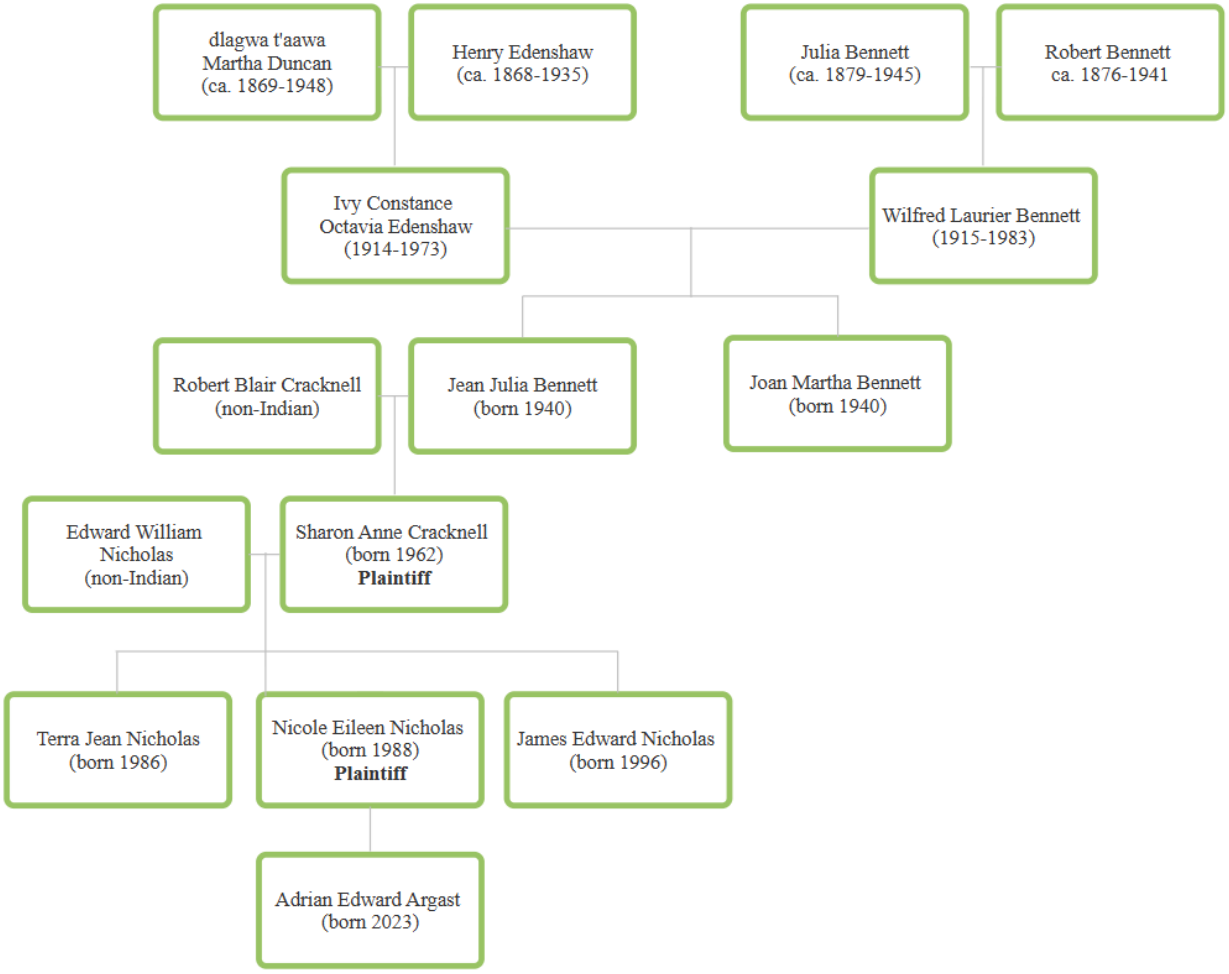
Schedule 1 – Partial Family Tree for the Bennett and Edenshaw Family



Schedule 2 – Partial Family Tree for the Wesley Family

