

# IN THE MATTER OF THE MEMBERSHIP OF WILL YUZICAPPI AND OF WILLIAM DUMONT IN THE OKANESE BAND

(1956), previously unreported

Saskatchewan District Court, McFadden J., 13 December 1956

MCFADDEN J.: This is a Reference by the Registrar under the *Indian Act* [R.S.C. 1952, c.149] for a review of his decision by which, after investigation, he found that Will Yuzicappi and William Dumont were entitled to be registered as Indians in the Okanese Band. The reasons given by the Registrar for arriving at his decision in the Yuzicappi case were as follows:

Indian Status not questioned. The records disclose that he was transferred from Peepeekeesis to Okanese Band in 1932 with the approval of the Band and the Department;

and the reasons given for his decision in the Dumont case were as follows:

The records disclose that he was transferred from One Arrow's Band to Okanese Band in 1896. The records and other evidence do not disclose exactly how he was transferred to Okanese Band but it has not been established that the requirements of the Indian Act were not complied with.

It is quite apparent from the evidence that the Registrar intended to say that Francis Dumont, the father of William Dumont and not William Dumont himself, was transferred to Okanese Band in 1896, but that slight error does not affect the decision proper.

This review or hearing was held on October 9, 1956, and was adjourned until now, December 13, 1956, for the purpose of enabling me to prepare this my decision which I am now reading at this hearing as so adjourned.

I wish to say at the outset that both Mr. Lavery and Mr. Tallant presented the cases of their respective clients in a very capable manner which was most helpful to me. I was very pleased to hear Mr. Lavery state (as his partner Dr. M.C. Shumiatcher, Q. C., appears to have said on the Investigation before the Commissioner) that his clients, the protestors, took their original action without any ill feeling towards the parties whose names have been protested but solely to settle the matter of membership once and for all. With that foundation of good feeling between all parties a decision based on the merits and on the law applicable to the matters in dispute can be reached more easily.

I find that the Registrar is right in his decisions that both these men are entitled to be registered as Indians in the Okanese Band. Dealing first with the case of Will Yuzicappi there is on file and before me a document marked herein as Exhibit "9 JHM" which reads as follows:

Consent of Band to Transfer of Will Yuzicapi  
No. 123 of Peepeekeesis Band to No. -- of Okanese Band  
Okanese Indian Reserve  
File Hills Agency  
March 2nd 1932

We, the undersigned Chief and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 4 and known as "Okanese Reserve," do, by these presents, certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose, according to the rules of the Band, and held in the presence of the Indian Agent for the locality on the 2nd day of March 1932 granted leave to Willie Yuzicapi to join our said Band, and as a member thereof to share in all land and other privileges of the Band, to which admission we, the undersigned, also give full consent.

Chief \_\_\_\_\_  
Councillor X Flag His Mark  
Councillor X Day Walker  
His Mark  
Councillor X Moostatik  
His Mark

Certified correct,  
George A. Dodds  
Indian Agent

The provision as to transfer of an Indian from one band to another was at that time s.17 of Chapter 98 R.S.C. 1927 which provided for a majority vote of a band or the council of a band. There was no provision that all voting members present were to sign the Consent to Transfer. The Consent on file does indicate that Yuzicappi was voted into the Okanese Band by a majority of its voting members present at a meeting summoned for that purpose according to the rules of the Band and held in the presence of the Indian Agent. There is on file too a letter dated March 22, 1932, from the Indian Agent, George A. Dodds, to the Secretary, Department of Indian Affairs, Ottawa, stating among other things, that a meeting of the Okanese Band had been held on March 2, 1932, which he, the Indian Agent, had attended and at which Yuzicappi had been voted into the Okanese Band. He further stated that Yuzicappi had been on the Okanese Reserve for a number of years and recommended that he be admitted to such Band. There is also on file under date of May 25, 1932, a letter from the Secretary of the Department approving of the resolution passed by the Okanese Band agreeing to the transfer of Yuzicappi, his wife and three boys from the Peepeekeesis Band to the Okanese Band and stating that the capital shares of such Indians had been transferred from the Peepeekeesis account to the credit of the Okanese Band. It appears to me that Yuzicappi was admitted properly to the Okanese Band and I so find and that he is entitled to have his name included (remain) in the Indian Register as a member of the Okanese Band. In so finding I am not overlooking a most interesting argument by Mr. Lavery that Yuzicappi being a Sioux Indian (an American Band, it seems) was not entitled under any circumstances to become a member of the Okanese, a Canadian band. The argument on that point in itself indicated to me that both counsel had given a great deal of attention and study to these cases. After due consideration I have come to the conclusion that being a Sioux Indian was not a barrier to Yuzicappi being taken into the Okanese Band. It should be noted too that Yuzicappi before being taken into the Okanese Band had become a member of the Peepeekeesis Band as shown by its Pay List of 1922 as No. 123 and actually was transferred from the Peepeekeesis Band into that of the Okanese. In the 1932 Pay List of the Peepeekeesis Band his name appears under No. 123 and in that Pay List under heading "remarks" is a notation that he was transferred to the Okanese Band in 1932 and, it seems, has been a member of the Okanese Band since that time. He was born in Saskatchewan in 1900 his parents being members of the Standing Buffalo Reserve which apparently was and is a Reserve set aside for the Sioux Indians but who apparently are not paid Treaty money as are the members of the Okanese Band. Notwithstanding the fact that the Sioux Indians are not paid Treaty money they appear to come within the definition of "band" both under the Act as it stood in 1932 and under the Act as it now stands. I cannot read the Act as depriving a member of the Standing Buffalo Reserve from being taken by the members of the Okanese Reserve into its membership.

Dealing next with the case of William Dumont, it appears from Exhibit "2 JHM", Departmental Record which was filed with me at the hearing but which apparently was not filed on the Investigation by the Commissioner, that Francis Dumont, father of William Dumont, became a member of the Okanese Band in 1896 having been transferred from Duck Lake Agency. The 1895 amendment to the *Indian Act* made provision for such transfers or contained what possibly was a right existing before that time but which was not specifically set out in the Act. The name of Francis Dumont appears as No. 40 on the Okanese Pay List of October 28, 1896. Reference is made also on the Departmental Pay List to an 1896 letter concerning this transfer and the funded Annuities of one boy and two girls, pupils of I.S. Qu'Appelle but Mr. McCrimmon states that he has been unable to locate that letter. It is clear, however, that Francis Dumont was on the Okanese Pay List as far back as 1896 and there is no evidence of sufficient value before me to conclude that Francis Dumont did not properly become a member of the Okanese Band. I do not for a moment question the good faith of Mrs. Moostatic (now deceased) in making her statement in 1952 to John Walker (now deceased) and to the others referred to in the evidence but it must be remembered that when she gave her statement she was nearly eighty years old and was referring to something that had happened, or that she then thought had happened, about fifty-seven years before that time. To say the least, it would be very dangerous to accept her statement as against the documentary evidence as to the proper admission of Francis Dumont to the Okanese Band. In that regard too it is worthy of note that John Walker stated that his father Pimotat and Francis Dumont had been old chums from the time that Francis Dumont arrived at the Okanese Reserve in 1895 and that he, John Walker, had never heard his father Pimotat say anything or question the status of Francis Dumont. I find that the weight of evidence supports the conclusion that Francis Dumont was admitted properly to the Okanese Band. William Dumont, his son, whose case is now under consideration, was born on and has always lived on the Okanese Reserve. I find that he is entitled to have his name included (remain) in the Indian Register as a member of the Okanese Band.

I should mention too that both Will Yuzicappi and William Dumont are entitled to have their names included in the Indian Register as members of the Okanese Band, coming as they do within the provisions of s.11 of the Act. They are both members of the Okanese Band, "member of a band" being defined by section 2(1)(j) of the Act as "a person whose name appears on a Band List...". Both their names appear on the Band List of the Okanese. The very clear and able decision of Buchanan C.J.D.C. in the *Wilson* case, [*Re the Indian Act; Re Wilson*] (1954), 12 W.W.R. (N.S.) 676 at 684 and following pages is, under that particular s.11, right to the point insofar as these two cases before me are concerned. To quote one brief remark from page 686 of the report:

. . . let membership once be established and the status of "the member" is beyond challenge.

In a decision concerning the questioned membership of twenty-five members of the Peepeekeesis Band, which I am about to hand down today, I have dealt quite fully with that aspect of the Buchanan decision. In that decision I also have dealt to some extent with the *Limitation of Actions Act* of the Province of Saskatchewan. It seems unnecessary that I repeat herein what is said in the Peepeekeesis decision. However, in conclusion I wish to say that for the reasons as first mentioned and as well for the reason that both Will Yuzicappi and William Dumont come within the provisions of s.11 of the Act, I find that they are entitled to have their names included (remain) in the Indian Register as members of the Okanese Band.