

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

Terrence Scheffen, Carl Jonas,  
Loretta Warnsby and Katherine Wedge

Plaintiffs

AND:

Bonnie Barber, Isaac Juneby, Georgette McLeod, Bev Mitchell,  
Juanita Nakashima, John Wierda, Clara Van Bibber,  
Edith Fraser, Jenny Christianson, Art Christiansen and  
Chief Isaac Incorporated

Defendants

AND:

Stephen Taylor

Third Party

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**REASONS FOR JUDGMENT OF  
MR. JUSTICE VEALE**

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**INTRODUCTION**

[1] The plaintiffs are citizens of Tr'ondëk Hwëch'in, formerly known as the Dawson First Nation, who claim to be the directors of Chief Isaac Inc., the development company of the First Nation. The defendants are the elected Council of the Tr'ondëk Hwëch'in who dispute the plaintiffs' claim and have elected their own directors of Chief Isaac Inc.

[2] The defendants are applying to have the plaintiffs' claim struck out under Rules 19(24)(a), (b) and (d) as being frivolous or disclosing no reasonable claim. They also apply to have the plaintiffs' claim dismissed under Rules 18 and 18A. As the plaintiffs have a reasonable claim to be heard, I am proceeding to decide this application as a summary trial under Rule 18A. An Agreed Statement of Facts has been filed. The defendants also apply for an order transferring the share of Chief Isaac Inc., held by Stephen Taylor, to the Tr'ondëk Hwëch'in.

[3] The general issue to be determined is whether the plaintiffs are the valid directors of Chief Isaac Inc. or whether the Tr'ondëk Hwëch'in Council has validly elected the directors.

## **ISSUES**

[4] The specific issues are:

1. What direction did the Tr'ondëk Hwëch'in General Assembly give to the Tr'ondëk Hwëch'in Council concerning Chief Isaac Inc.?
2. To whom should the share of Stephen Taylor in Chief Isaac Inc. be transferred and when?
3. Who are the validly elected Board of Directors of Chief Isaac Inc.?

## **THE FACTS**

[5] The following facts are not in dispute:

1. Chief Isaac Inc. was incorporated on June 8, 1984. There is only one issued share (the "Share").
2. On June 7, 1992, a share certificate for the Share was issued to Stephen Taylor, in trust for Dawson First Nation.
3. Stephen Taylor held the Share subject to a Declaration of Trust executed by Stephen Taylor on July 7, 1992, in favour of the Dawson First Nation. The Declaration of Trust states:

I, Stephen Taylor, of the City of Dawson, in the Yukon Territory,

DECLARE AND ACKNOWLEDGE:

1. I am the registered holder of one (1) Common share (the "Share") of Chief Isaac Incorporated, a body corporate duly incorporated under the laws of the Yukon Territory (the "Corporation"), in trust for and on behalf of Dawson First Nation (the "Owner");
2. I have no beneficial ownership in the Share whatsoever;
3. The Share was purchased with the Owner's money;
4. All dividends and advantages accruing on the Share are and shall be held by me and my representatives for the use, benefit and advantage of the Owner;
5. I shall at the request of the Owner attend all meetings of the shareholders of the Corporation and will vote at such meetings in such manner as the Owner shall have previously directed me; and
6. On demand I shall transfer the Share to the Owner or its nominees and account to it for all dividends and profits received by me from the Share.

Dated as of July 7, 1992.

4. On July 16, 1998, the Tr'ondëk Hwëch'in First Nation signed a Self-Government Agreement with the Government of Canada and the Government of the Yukon ("The Self-Government Agreement"). The sections of the Self-Government Agreement on the legal status and legislative powers of the Tr'ondëk Hwëch'in are set out in Endnote A<sup>1</sup>.

5. The Tr'ondëk Hwëch'in Constitution has been a law of the Tr'ondëk Hwëch'in since August 22, 1998. The relevant provisions are found in Endnote B<sup>2</sup>.
6. On July 31 and August 1, 1999, the Tr'ondëk Hwëch'in First Nation held its Annual General Assembly, at which the following General Assembly resolution was passed concerning Chief Isaac Inc.:

Resolution: 01/08/99-2

Forwarded by Angie Joseph-Rear, seconded by James Roberts

**WHEREAS** CII and it's subsidiaries (ie: Han Construction, etc.) Currently operate under the Corporations Act, and as such, are accountable to their Shareholders; and

**WHEREAS** TH Citizens are the ultimate Shareholders of CII Inc.;

**THEREFORE BE IT RESOLVED THAT** direction is given to TH Chief and Council to make arrangements to have CII call a special Shareholders Meeting as soon as possible to allow TH shareholders an opportunity to put forth their concerns and provide input and direction to CII.

**Passed by consensus** (the General Assembly resolution).

CII is an abbreviation for Chief Isaac Inc.

7. The minutes of the Annual General Assembly reflect the fact that Stephen Taylor, in discussion prior to the passage of this resolution, made reference to the Tr'ondëk Hwëch'in citizens as "the overall shareholders of Chief Isaac".
8. On October 14, 1999, a meeting concerning the direction of the Corporation was held at the Cho Chu Tin Heritage Hall in Dawson City, Yukon, at which those citizens present voted on and passed the following resolution:

All shares of Chief Isaac Incorporated be transferred from the current shareholder of record, Steve Taylor in trust for Tr'ondëk Hwëch'in, to Tr'ondëk Hwëch'in (in trust).

It should be noted that the agenda of this meeting was entitled "Shareholder Meeting" and included the following agenda items:

3. Determining ownership of shares
- ...
5. Determining Board of Directors
  - d) (Set date for) Election of directors (by either the citizens- by ballot - or C & C)
9. There has been no evidence presented on whether the existing shareholder, Stephen Taylor, was either given notice or present for the October 14, 1999, Shareholder Meeting.
10. On November 16, 1999, Tr'ondëk Hwëch'in Council passed a resolution directing that Stephen Taylor transfer the Share in Chief Isaac Inc. to Tr'ondëk Hwëch'in, pursuant to the Declaration of Trust. The resolution of the Council did not include the words "in Trust".
11. Tr'ondëk Hwëch'in Council wrote to Stephen Taylor on November 16 and December 16, 1999, requesting that he execute the transfer of the Share.
12. Stephen Taylor never complied with that request.
13. Tr'ondëk Hwëch'in Council directed Chief Isaac Inc. to cancel the Share issued to Stephen Taylor and issue a new share certificate to Tr'ondëk Hwëch'in. On April 25, 2000, Chief Isaac Inc. cancelled share certificate number C-3 in the name of Stephen Taylor and issued share certificate number C-4 in the name of Tr'ondëk Hwëch'in without any trust designation.
14. A Tr'ondëk Hwëch'in Periodical entitled: *The Business Beat Newsletter* was published in June 2000 under the Chief Isaac Inc. logo. It contained the following notice:

### **Special Shareholders Meeting**

Directors have resigned! Voting for new board of directors on Tuesday, June 13, 2000 @ 7 - 9 pm.

15. The *Business Beat Newsletter* contained several letters of resignation of directors referring to the separation of corporate operations and government operations. It also contained the following statements:

## **CORPORATE ORGANIZATION**

- Sole share of Chief Isaac Incorporated is held by Tr'ondëk Hwëch'in, in trust (for Tr'ondëk Hwëch'in citizens).

...

## **SEPARATION OF GOVERNMENT FROM BUSINESS**

- Separation of politics and business widely recognized as being necessary.
  - Other governments set up crown corporations to do this; Chief Isaac could be like a crown corporation.
16. On June 13, 2000, Chief Isaac held the meeting concerning the direction of Chief Isaac Inc. As of that date, all the directors resigned and the citizens of Tr'ondëk Hwëch'in voted upon and elected the following as directors:
- Terrence Scheffen
  - Carl Jonas
  - Loretta Warnsby
  - Darren Taylor
  - Terry Taylor
  - Isaac Juneby, and
  - Leslie Johns
17. Terry Taylor declined to act as a director. Isaac Juneby resigned September 19, 2000, and was replaced by Kathy Wedge. Darren Taylor resigned January 9, 2001. With these changes, those persons acted as the directors of Chief Isaac Inc. from June 13, 2000, to their purported removal on April 9, 2001.
18. At a meeting on April 9, 2001, the Tr'ondëk Hwëch'in Council voted to remove the directors of Chief Isaac Inc. and appointed the following:
- Bonnie Barber
  - Isaac Juneby
  - Georgette McLeod
  - Bev Mitchell
  - Juanita Nakashima, and
  - John Weirda
19. The minutes of the April 9, 2001 meeting were entitled "Special Meeting of the Shareholder of Chief Isaac Incorporated". Four councillors of Tr'ondëk

Hwëch'in were present as "the authorized representatives of the Shareholder". The sole shareholder, Stephen Taylor, was not present.

20. On November 30 to December 3, 2001, the Tr'ondëk Hwëch'in held a General Assembly. No resolution was passed at that General Assembly concerning the affairs of Chief Isaac Inc., its administration, control by the citizens or council or the election of its directors.

## ANALYSIS

[6] This dispute is between certain citizens of the Tr'ondëk Hwëch'in and the Tr'ondëk Hwëch'in Council. The question is who should control the election of directors for Chief Isaac Inc., a company created by the Dawson First Nation. The Dawson First Nation was the name of the Dawson Indian Band, which operated under the *Indian Act*, R.S.C. 1985, c. I-5, as amended. The Dawson First Nation has now been replaced by the Tr'ondëk Hwëch'in, a legal entity comprising of the Tr'ondëk Hwëch'in citizens, whose power derives from the Tr'ondëk Hwëch'in Self-Government Agreement and the Tr'ondëk Hwëch'in Constitution, not the *Indian Act*, *supra*.

[7] Under the *Indian Act*, *supra*, a Band had limited powers to govern its members by means of an elected Chief and Council. The legal status of the Chief and Council was not well suited to modern day business relationships. There was always doubt that an Indian Band had the legal capacity of a natural person in order to hold corporate shares. As a result, in the Yukon, when an Indian Band created a corporation, it was a common practice to have the controlling share of that corporation held by the Chief, in trust for the Indian Band, in this case, the Dawson First Nation. Thus, on July 7, 1992, Stephen Taylor, then Chief of the Dawson First Nation, entered into a Declaration of Trust thereby becoming the registered holder of the one common share of Chief Isaac

Inc. “in trust and on behalf of Dawson First Nation”. Stephen Taylor had no beneficial or personal ownership of the Share and was required to transfer the Share to the Dawson First Nation or its nominees on demand.

[8] However, before any demand for transfer was made, the Umbrella Final Agreement between the Council for Yukon Indians, Canada and the Yukon was concluded on May 29, 1993. The Umbrella Final Agreement contemplated that each First Nation in the Yukon would enter into a Final Agreement with Canada and the Yukon recognizing the inherent right of self-government for the First Nation. To this end, the Tr’ondëk Hwëch’in Self-Government Agreement was signed on July 16, 1998. The terms of the agreement became effective on September 15, 1998.

[9] The self-government legislation created a new relationship between the Tr’ondëk Hwëch’in and the governments of Canada and the Yukon. The Tr’ondëk Hwëch’in replaced the Dawson Indian Band and received all the rights and interests of the Band. Specifically, the Tr’ondëk Hwëch’in became a legal entity with all the powers and privileges of a natural person (s. 9 Tr’ondëk Hwëch’in Self-Government Agreement). The Tr’ondëk Hwëch’in received legislative powers from both Canada and the Yukon, creating a new order of government in Canada. (Endnote A) The exercise of those powers is governed by the Tr’ondëk Hwëch’in Constitution dated August 22, 1998. This case does not raise an issue between the Tr’ondëk Hwëch’in and Canada or the Yukon but rather raises issues about the internal governance of the Tr’ondëk Hwëch’in by their own Constitution.



[10] Section 7 of the Tr'ondëk Hwëch'in Constitution divides the powers of government into three branches: the General Assembly, the Tr'ondëk Hwëch'in Council and the Tr'ondëk Hwëch'in Courts. (Endnote B)

[11] The internal governance of the Tr'ondëk Hwëch'in is unique in our democratic society as legislative powers are exercised by the citizens directly. The General Assembly is the supreme body and is composed of all citizens, with the right to vote being held by citizens eighteen years of age or older (s. 8 Tr'ondëk Hwëch'in Constitution). The General Assembly meets twice a year and has the duty, among others, to enact and repeal Tr'ondëk Hwëch'in laws and to provide direction to Chief and Council by way of resolution. There is no doubt that the General Assembly is the supreme branch of government of the Tr'ondëk Hwëch'in. There is no equivalent for it in the Yukon Territory constitutional structure which is governed by an elected Legislative Assembly. Whereas the laws of the Yukon are passed by our elected representatives, the laws of the Tr'ondëk Hwëch'in are passed by all its citizens.

[12] The second branch of the Tr'ondëk Hwëch'in government is the Tr'ondëk Hwëch'in Council. Although it has a similar name to the former *Indian Act* Chief and Council, its powers are dramatically different. Under s. 9 of the Constitution, the Tr'ondëk Hwëch'in Council is made up of a Chief, four councillors, one ex-officio elder councillor and one ex-officio youth councillor who are elected for a term of three years. The primary duty of the Tr'ondëk Hwëch'in Council is to implement the directives of the General Assembly. However, the Tr'ondëk Hwëch'in Council has other powers "subject to the direction of the General Assembly," such as the general power and responsibility

to manage and represent the interests and affairs of the Tr'ondëk Hwëch'in and specifically to hold property (s.10 Tr'ondëk Hwëch'in Constitution).

[13] Section 10 of the Tr'ondëk Hwëch'in Constitution sets out numerous powers that may be exercised by the Tr'ondëk Hwëch'in Council. These are in many ways similar to and greater than the powers of the former *Indian Act* Chief and Council with one major distinction: the Tr'ondëk Hwëch'in Council is always subject to the direction of the General Assembly.

[14] The third branch of Tr'ondëk Hwëch'in government is the Tr'ondëk Hwëch'in Courts, whose jurisdiction is yet to be created by the Tr'ondëk Hwëch'in.

[15] To summarize, the Tr'ondëk Hwëch'in have moved from the jurisdiction of the *Indian Act, supra*, to their own self-governing institutions governed by the Tr'ondëk Hwëch'in Constitution. This case deals with the relationship between the Tr'ondëk Hwëch'in General Assembly and the Tr'ondëk Hwëch'in Council and how the General Assembly directs the Council. It also deals with the complexity of organizing the affairs of a development corporation with a share structure.

[16] I turn now to the specific issues of this case.

**Issue 1: What direction did the Tr'ondëk Hwëch'in General Assembly give to the Tr'ondëk Hwëch'in Council concerning Chief Isaac Inc.?**

[17] The concept of a General Assembly of First Nation citizens providing direction to the elected Council of the First Nation has been a hallmark of Yukon First Nation society for many years. Prior to the Self-Government Agreements that now prevail, the calling

of an Annual General Assembly of First Nation citizens was a common practice. It provided an opportunity for First Nation citizens to review the past performance of Chief and Council under the *Indian Act* model and to provide direction and input for the future actions of the Chief and Council. The Annual General Assembly was also a cultural event attended by youth and elders alike.

[18] The creation of the Tr'ondëk Hwëch'in Constitution on August 22, 1998, formalized the relationships between the General Assembly and the Council. Although it is always possible to consider the spirit as well as the letter of a direction given by the General Assembly, it will always be the letter or actual wording that is analyzed to determine the intent of a particular direction and whether the Council has followed it.

[19] I pause here to interject that there is no constitutional mechanism to enforce the direction of the General Assembly on the Council, except by way of court applications. Ultimately, the Council will be subject to an election and will be accountable for its actions. I raise this not because it suggests a weakness in the constitutional structure of the First Nation but, rather, to highlight the requirement for carefully drafted resolutions from the General Assembly.

[20] In this case, the minutes of the General Assembly indicate that a general discussion preceded the General Assembly resolution concerning the status of Chief Isaac Inc. Chief Stephen Taylor, who held the one common share that controlled the corporation, stated that as far as he was concerned the citizens of Tr'ondëk Hwëch'in were "the ultimate shareholders of Chief Isaac Inc". While this may not have correctly stated the legal status of the share structure at that moment, it was clearly intended to

empower the citizens of Tr'ondëk Hwëch'in in a discussion about how the First Nation should organize and manage Chief Isaac Inc. That discussion concluded with a direction to Chief and Council "... to make arrangements to have CII call a special Shareholders Meeting as soon as possible to allow TH shareholders an opportunity to put forth their concerns and provide input and direction to CII."

[21] The intent of this resolution is obvious to any citizen of the Tr'ondëk Hwëch'in First Nation. It was designed to allow citizens to give their input and direction to Chief Isaac Inc.

[22] However, it must be remembered that the citizens of Tr'ondëk Hwëch'in were not the actual shareholders of Chief Isaac Inc. That share was still held by Chief Stephen Taylor "in trust for and on behalf of Dawson First Nation". Since he had expressed the view that the citizens were the "ultimate shareholders", the direction given at such a meeting could be implemented by the Chief as shareholder.

[23] It should also be noted that only the General Assembly can give direction to Council by resolution. The direction given in the General Assembly resolution is clear but very limited. It is a direction to Chief and Council to make arrangements to have a meeting of Chief Isaac Inc. for input and direction from Tr'ondëk Hwëch'in citizens. It was not a direction to Chief and Council that the citizens of Tr'ondëk Hwëch'in were to elect the directors of Chief Isaac Inc. Such a direction was not given as a direction of the Tr'ondëk Hwëch'in General Assembly to the Tr'ondëk Hwëch'in Council, thereby giving it the same legal force as the original resolution. In other words, the meetings and directions that arose out of the special Shareholders Meeting or any other meetings

held concerning Chief Isaac Inc., were not meetings of the Tr'ondëk Hwëch'in General Assembly.

[24] While it may have been assumed by the plaintiffs that the directions given in shareholders meetings were binding upon Chief and Council, that is not the case. Specific directions would still be required to be brought back to the General Assembly to be put into resolutions and passed by the Assembly.

[25] Finally, it is significant to note that the General Assembly contemplated that Chief and Council would continue to have a role in the administration of Chief Isaac Inc. The General Assembly resolution did not direct that the citizens of Tr'ondëk Hwëch'in would have the direct responsibility to elect the directors of Chief Isaac Inc. while in a General Assembly.

**Issue 2: To whom should the share of Stephen Taylor in Chief Isaac Inc. be transferred and when?**

[26] Before and after the passage of the General Assembly resolution, the sole Share outstanding in Chief Isaac Inc. remained in the name of Stephen Taylor, subject to the Trust Declaration. The Tr'ondëk Hwëch'in set out to remedy this situation.

[27] Section 9.1 of the Tr'ondëk Hwëch'in Self-Government Agreement provides the following:

Upon the Effective Date, the Indian Act (Canada) Dawson Indian Band shall cease to exist and its rights, titles, interests, assets, obligations and liabilities, including those of its band council, shall vest in the Tr'ondëk Hwëch'in.

[28] The effect of s. 9.1 is that the words “Dawson First Nation” in the Trust Declaration should now read “Tr’ondëk Hwëch’in”. All that was required to formally transfer the Share from Stephen Taylor to Tr’ondëk Hwëch’in was a demand from the Tr’ondëk Hwëch’in to Stephen Taylor. This could have been accomplished by a resolution of the General Assembly or by demand made by the Tr’ondëk Hwëch’in Council pursuant to its duty under s. 10.1.2.8 of the Tr’ondëk Hwëch’in Constitution to manage “Tr’ondëk Hwëch’in monies, resources and assets”.

[29] The Tr’ondëk Hwëch’in Council was spurred on by a resolution passed at a so-called Shareholders Meeting of Chief Isaac Inc. on October 14, 1999. This was probably not a valid shareholders meeting of Chief Isaac Inc. as there is no indication that Stephen Taylor was present along with the many citizens of the First Nation that attended the meeting. This is of little consequence, however, in light of the clear line of title from the Dawson First Nation to the Tr’ondëk Hwëch’in provided in s. 9.1 of the Constitution.

[30] In any event, the Tr’ondëk Hwëch’in Council demanded by resolution dated November 16, 1999, and a letter dated December 16, 1999, that Stephen Taylor transfer the Share of Chief Isaac Inc. to the Tr’ondëk Hwëch’in. To this date, Stephen Taylor has declined to do so.

[31] Wishing to move on with the management of Chief Isaac Inc., the Tr’ondëk Hwëch’in Council directed Chief Isaac Inc. to cancel the Share of Stephen Taylor and issue a new Share certificate in the name of Tr’ondëk Hwëch’in. There is no authority

for such action to be taken by Chief Isaac Inc. under its by-laws or the *Business Corporations Act*, R.S.Y. 1986, c.15, as amended.

[32] The defendants submit that this court should order the Share to be transferred. This submission is not opposed by the plaintiffs so long as the Share is held by Tr'ondëk Hwëch'in in trust as stated in the October 14, 1999 resolution of the citizens at the so-called shareholders meeting. In my view, the words "in trust" are really surplus and unnecessary as s. 9.1 clearly vests the ownership of the Share in Tr'ondëk Hwëch'in which is the legal entity that acts either through its citizens in General Assembly or by its elected Chief and Council in the Tr'ondëk Hwëch'in Council. I therefore order that Stephen Taylor's Share in Chief Isaac Inc. be transferred to Tr'ondëk Hwëch'in.

[33] The effective date of the Share transfer remains to be decided. The case of *Re B.C. Aircraft Propeller & Engine Co. Ltd.* (1968), 66 D.L.R. (2<sup>nd</sup>) 628 (B.C.S.C.) is authority for backdating the effective date of the Share transfer. I am of the view that Stephen Taylor had no authority or excuse for refusing to transfer his Share as directed by the Tr'ondëk Hwëch'in Council on November 14, 1999. I order that the effective date of the transfer of the Share of Stephen Taylor to Tr'ondëk Hwëch'in is November 14, 1999. Section 245 of the *Business Corporations Act*, *supra*, has no application to this issue.

[34] I now turn to the fundamental question being posed by the parties.

**Issue 3: Who are the validly elected Board of Directors of Chief Isaac Inc.?**

[35] The mere fact that the one Share of Chief Isaac Inc. is now in the name of Tr'ondëk Hwëch'in, effective November 14, 1999, does not resolve the issue of which branch of the Tr'ondëk Hwëch'in government has the power to vote the Share and elect the board of directors.

[36] While the Tr'ondëk Hwëch'in Constitution would clearly permit the Share to be under the direction of the Tr'ondëk Hwëch'in citizens in General Assembly, the General Assembly has not made such a decision, either by way of resolution or by a vote for the election of the directors of Chief Isaac Inc. While it might be argued that this was the spirit of the General Assembly resolution, it has not been done in sufficiently clear wording to give it the force of law.

[37] This leaves the power to manage the Chief Isaac Inc. Share of Tr'ondëk Hwëch'in in the hands of the Tr'ondëk Hwëch'in Council pursuant to s. 10.1.2.8 of the Tr'ondëk Hwëch'in Constitution. This power is subject to the direction of the General Assembly which has not been given to date.

[38] The result is that the Tr'ondëk Hwëch'in Council has the power to vote the Share of the Tr'ondëk Hwëch'in in Chief Isaac Inc. In complying with the direction of the General Assembly resolution, the Tr'ondëk Hwëch'in Council held a special shareholders meeting on June 13, 2000, at which the plaintiffs were elected as directors. The defendants have not at any time in the past, and do not now challenge the validity of the election of the plaintiffs as directors on June 13, 2000. However, on April 9, 2001, at a special meeting of the shareholders of Chief Isaac Inc., the Tr'ondëk



Hwëch'in Council removed the plaintiffs as directors and installed a new board of directors. The plaintiffs challenge the validity of this action.

[39] I find that the Tr'ondëk Hwëch'in Council followed the direction in the General Assembly resolution and sought the input and direction of the citizens of Tr'ondëk Hwëch'in. This resulted in the election of the plaintiffs as directors on June 13, 2000. However, the fact that this board was apparently proposed by the citizens present on June 13, 2000, does not require the Council to elect every board of directors in that manner. The Council was clearly following the spirit of the General Assembly resolution, but it was not required to do so. Nor has it been directed to elect every board of directors in that manner by the General Assembly. In the face of no specific direction from the General Assembly on how the board of directors should be elected, the Council has simply exercised its duty and responsibility under s. 10.1.2.8 of the Tr'ondëk Hwëch'in Constitution. There is no doubt that there was an expectation on the part of the plaintiffs that the procedure of their election would be repeated. However, I find that the Tr'ondëk Hwëch'in Council validly exercised its authority to elect a new board of directors and can continue to do so until the General Assembly directs otherwise in a clearly worded resolution.

[40] Given the fact that this is a novel situation and an internal matter for the Tr'ondëk Hwëch'in, I make no order for costs.

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Veale J.

Counsel for the Defendants

Daniel S. Shier

Counsel for the Plaintiffs

Grant Macdonald, Q.C.

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<sup>1</sup> **Endnote A**

**9.0 LEGAL STATUS OF THE TR'ONDĚK HWĚCH'IN**

9.1 Upon the Effective Date, the Indian Act (Canada) Dawson Indian Band shall cease to exist and its rights, titles, interest, assets, obligations and liabilities, including those of its band council, shall vest in the Tr'ondĚk HwĚch'in.

9.2 The Tr'ondĚk HwĚch'in is a legal entity and has the capacity, rights, powers and privileges of a natural person and, without restricting the generality of the foregoing, may:

- 9.2.1 enter into contracts or agreements;
- 9.2.2 acquire and hold property or any interest therein, and sell or otherwise dispose of property or any interest therein;
- 9.2.3 raise, invest, expend and borrow money;
- 9.2.4 sue or be sued;
- 9.2.5 form corporations or other legal entities; and
- 9.2.6 do such other things as may be conducive to the exercise of its rights, powers and privileges.

9.3 The act of acquiring or the holding of any rights, liability or obligations by the Tr'ondĚk HwĚch'in or by any entity described in 9.2.5, shall not be construed to affect any aboriginal right, title or interest of the Tr'ondĚk HwĚch'in, its Citizens or their heirs, descendants or successors.

**13.0 LEGISLATIVE POWERS**

13.1 The Tr'ondĚk HwĚch'in shall have the exclusive power to enact laws in relation to the following matters:

- 13.1.1 administration of Tr'ondĚk HwĚch'in affairs and operation and internal management of the Tr'ondĚk HwĚch'in;
- 13.1.2 management and administration of rights or benefits which are realized pursuant to the Final Agreement by persons enrolled under the Final Agreement, and which are to be controlled by the Tr'ondĚk HwĚch'in; and
- 13.1.3 matters ancillary to the foregoing.

13.2 The Tr'ondĚk HwĚch'in shall have the power to enact laws in relation to the following matters in the Yukon:

- 13.2.1 provision of programs and services for Citizens in relation to their spiritual and cultural beliefs and practices;
- 13.2.2 provision of programs and services for Citizens in relation to the Han Language;

- 13.2.3 provision of health care and services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.4 provision of social and welfare services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.5 provision of training programs for Citizens, subject to Government certification requirements where applicable;
  - 13.2.6 adoption by and of Citizens;
  - 13.2.7 guardianship, custody, care and placement of Tr'ondëk Hwëch'in children, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.8 provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.9 inheritance, wills, intestacy and administration of estates of Citizens, including rights and interests in Settlement Land;
  - 13.2.10 procedures consistent with the principles of natural justice for determining the mental competency or ability of Citizens, including administration of the rights and interest of those found incapable of responsibility for their own affairs;
  - 13.2.11 provision of services to Citizens for resolution of disputes outside the courts;
  - 13.2.12 solemnization of marriage of Citizens;
  - 13.2.13 licences in respect of matters enumerated in 13.1, 13.2 and 13.3 in order to raise revenue for Tr'ondëk Hwëch'in purposes;
  - 13.2.14 matters necessary to enable the Tr'ondëk Hwëch'in to fulfill its responsibilities under the Final Agreement or this Agreement; and
  - 13.2.15 matters ancillary to the foregoing.
- 13.3 The Tr'ondëk Hwëch'in shall have the power to enact laws of a local or private nature on Settlement Land in relation to the following matters:
- 13.3.1 use, management, administration, control and protection of Settlement Land;
  - 13.3.2 allocation or disposition of rights and interests in and to Settlement Land, including expropriation by the Tr'ondëk Hwëch'in for Tr'ondëk Hwëch'in purposes;
  - 13.3.3 use, management, administration and protection of natural resources under the ownership, control or jurisdiction of the Tr'ondëk Hwëch'in;
  - 13.3.4 gathering, hunting, trapping or fishing and the protection of fish, wildlife and habitat;
  - 13.3.5 control or prohibition of the erection and placement of posters, advertising signs, and billboards;

- 13.3.6 licensing and regulation of any person or entity carrying on any business, trade, profession or other occupation;
- 13.3.7 control or prohibition of public games, sports, races, athletic contests and other amusements;
- 13.3.8 control of the construction, maintenance, repair and demolition of buildings or other structures;
- 13.3.9 prevention of overcrowding of residences or other buildings or structures;
- 13.3.10 control of the sanitary condition of buildings or property;
- 13.3.11 planning, zoning and land development;
- 13.3.12 curfews, prevention of disorderly conduct and control or prohibition of nuisances;
- 13.3.13 control or prohibition of the operation and use of vehicles;
- 13.3.14 control or prohibition of the transport, sale, exchange, manufacture, supply, possession or consumption of intoxicants;
- 13.3.15 establishment, maintenance, provision, operation or regulation of local services and facilities;
- 13.3.16 caring and keeping of livestock, poultry, pets and other birds and animals, and impoundment and disposal of any bird or animal maltreated or improperly at-large, but the caring and keeping of livestock does not include game farming or game ranching;
- 13.3.17 administration of justice;
- 13.3.18 control or prohibition of any actions, activities or undertakings that constitute, or may constitute, a threat to public order, peace or safety;
- 13.3.19 control or prohibition of any activities, conditions or undertakings that constitute, or may constitute, a danger to public health;
- 13.3.20 control or prevention of pollution and protection of the environment;
- 13.3.21 control or prohibition of the possession or use of firearms, other weapons and explosives;
- 13.3.22 control or prohibition of the transport of dangerous substance; and
- 13.3.23 matters coming within the good government of Citizens on Settlement Land.

#### **13.4.0 Emergency Powers**

- 13.4.1 Off Settlement Land, in relation to those matters enumerated in 13.2, in any situation that poses an Emergency to a Citizen, Government may exercise power conferred by Laws of General Application to relieve the Emergency, notwithstanding that laws enacted by the Tr'ondëk Hwëch'in may apply to the Emergency.

- 13.4.2 A person acting pursuant to 13.4.1 shall, as soon as practicable after determining that a person in an Emergency is a Citizen, notify the Tr'ondëk Hwëch'in of the action taken and transfer the matter to the responsible Tr'ondëk Hwëch'in authority, at which time the authority of the Government to act pursuant to 13.4.1 shall cease.
- 13.4.3 A person acting pursuant to 13.4.1 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an Emergency.
- 13.4.4 On Settlement Land, in relation to those matters enumerated in 13.2, in any situation that poses an Emergency to a person who is not a Citizen, the Tr'ondëk Hwëch'in may exercise power conferred by laws enacted by the Tr'ondëk Hwëch'in to relieve the Emergency, notwithstanding that Laws of General Application may apply to the Emergency.
- 13.4.5 A person acting pursuant to 13.4.4 shall, as soon as practicable after determining that a person in an Emergency is not a Citizen, notify Government or, where the person in an Emergency is a citizen of another Yukon First Nation, that Yukon First Nation, of the action taken and transfer the matter to the responsible authority, at which time the authority of the Tr'ondëk Hwëch'in to act pursuant to 13.4.4. shall cease.
- 13.4.6 A person acting pursuant to 13.4.4 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an Emergency.
- 13.4.7 Notwithstanding 13.5.0, in relation to powers enumerated in 13.3, Laws of General Application shall apply with respect to an Emergency arising on Settlement Land which has or is likely to have an effect off Settlement Land.

<sup>2</sup> **Endnote B**

**7.0 ORGANIZATION OF THE TR'ONDĚK HWĚCH'IN**

7.1 The powers of government of the Tr'ondĚk HwĚch'in shall be divided into three branches:

- 7.1.1 the General Assembly;
- 7.1.2 the Tr'ondĚk HwĚch'in Council; and
- 7.1.3 Tr'ondĚk HwĚch'in Courts.

**8.0 THE TR'ONDĚK HWĚCH'IN GENERAL ASSEMBLY**

8.11 Duties of the General Assembly shall include:

...

- 8.11.2. providing direction to Chief and Council by way of resolution;

**10.0 THE TR'ONDĚK HWĚCH'IN COUNCIL POWERS AND DUTIES**

10.1 The Tr'ondĚk HwĚch'in Council shall implement the directives of the General Assembly. Unless otherwise provided in this Constitution, and subject to the direction of the General Assembly:

10.1.1 the Tr'ondĚk HwĚch'in Council shall have the power and responsibility to manage and represent the interests and affairs of the Tr'ondĚk HwĚch'in, as well as all subjects, persons, property, and activities within the jurisdiction of the Tr'ondĚk HwĚch'in; and, without limiting the generality of the foregoing, the Tr'ondĚk HwĚch'in Council may:

- 10.1.1.2 enter into contracts or agreements;
- 10.1.1.3 acquire, hold or dispose of property or any interest therein;

...

10.1.2 Unless otherwise provided in this Constitution, and subject to the direction of the General Assembly, the duties and responsibilities of the Tr'ondĚk HwĚch'in Council shall include:

...

- 10.1.2.8 managing Tr'ondĚk HwĚch'in monies, resources, and assets;