

Off-Reserve Gain Right to Participate in Band Governance

By Beverley O'Neil, Ktunaxa Nation

The *Corbiere vs. Canada* (and the Batchewana Indian Band) is a case that affects all First Nations and their people in Canada regardless of where they live. This landmark decision can be seen as an internal battle – Nation pitted against Citizen.

Batchewana is not unlike many other Indian Bands in Canada. It's 958 off-reserve members represent almost 70 percent of the 1426 members who were registered in 1991 (when the case started). The Band's land base is a fraction of the 246 square miles it had in 1859, and the traditional land base it once governed. Today the Batchewana has 15 acres of land comprised of three reserves near the city of Sault Ste. Marie, Ontario (Rankin, Goulais Bay, and Obadjiwan reserves)... an example of many broken and unfulfilled promises. Considering these points, Batchewana could be almost any Band in Canada struggling to rebuild sustainability and its identity.

Although the size of the Band's land base is important, this case is about intra-group discrimination... discrimination against one's own. It is a sad state of affairs when a Nation is pitted against its citizens to battle over meager resources given to it by its fiduciary captors, the Federal Government. This case involved the governance and rights of Band, their Nations, communities and individuals by challenging the rights granted to the Band under the Indian Act S.77(1) relating to Band Voting on the basis of the Band's residency requirement being discriminatory. The individuals challenging the Band were 4 Appellants (one being John Corbiere) with other interveners – the Aboriginal Legal Services of Toronto Inc., Lesser Slave Lake Indian Regional Council, Native Women's Association of Canada, United Native Nations Society of British Columbia, and the Congress of Aboriginal Peoples.

On October 13, 1999, the Supreme Court of Canada ruled that the Band's voting restrictions relating to residency of its members were in fact

discriminatory. In layman's terms, it was discriminatory on the basis that residency is a personal characteristic of an Indian (very much like religion) whereas for the average Canadian residency is not. Furthermore, although and Indian can change their residency forcing the Indian individual to change residency to exercise their rights was unfair requirement.

The Courts also said the existing situation “perpetuates the historic disadvantage experienced by off-reserve Band members by denying them the right to vote and participate in their band's governance.” A key and influencing factor *Corbiere* and the 3 other individual interests in pursuing the right to vote and participate in the Band's decisions is, as the Court said “Off-reserve band members have important interests in band governance which the distinction denies. They are co-owners of the band's assets. The reserve, whether they live on or off it, is their and their children's land. The band council represents them as band members to the community at large, in negotiations with the government, and within Aboriginal organizations.” Certainly the fact that First Nations are re-developing their nations, at present Band Council responsibilities transcend over Nation and community issues unfortunately confined within the geographic boundaries of the Indian reserves. This adds to the dilemma. The decision recognized that “Although there are some matters of purely local interest,” for example community planning matters, “which do not as directly affect the interests of off-reserve band members, the complete denial to off-reserve members of the right to vote and participate in band governance treats them as less worthy and entitled, not on the merits of their situation, but simply because they live off-reserve.”

Many Bands across Canada if not most have similar voting restrictions based on residency. I understand that often a part of the

rationale has been the concern of the individual's lack of knowledge of the community environment. This is a fair assumption in itself where the governance decisions are solely those decisions that are only community based and do not affect off-reserve Band members. However, as the Supreme Court stated the decisions are broader. Band governments have the responsibility of more than what can be compared to those of a municipality, they include matters such as land and natural resources, health, education, employment, culture, religion, citizenship, taxation, justice, finance, and more... therefore, the off-reserve member has an interest. Sadly too many Bands can not welcome their members home for lack of land for housing, resources for community infrastructure and services, and economic opportunities.

Perhaps this decision will lead to the Department of Indian Affairs and Northern Development to review their administrative practices of formula based funding based on "on-reserve residency"? One can only also hope that Revenue Canada will do the same, but this wish probably has less chance of happening than one has of being struck by lightning.

Community forums are underway in BC, jointly hosted by the United Native Nations and the BC Association of Friendship Centers, to explain and discuss the impact of this decision. Contact your local Friendship Centre or the UNN for further information. The decision is also available on-line through the Indigenous Business Association web site.

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