

FEDERAL COURT OF CANADA

FEDERAL COURT COUR FÉDÉRALE	
FILED	AOUT 31 2018 AUG 31 2018
JULIE VINCENT	
WINNIPEG, MB	- -

BETWEEN:

**CHIEF JOHN STAGG,
COUNCILLOR LEONARD SUMNER, COUNCILLOR
OWEN STAGG in their personal capacity and as representatives of the
DAUPHIN RIVER FIRST NATION, and the said DAUPHIN RIVER FIRST NATION as
representatives for all its members**

SM

Applicants,

-and -

**THE ATTORNEY GENERAL OF CANADA, THE HONOURABLE RALPH GOODALE
MINISTER OF PUBLIC SAFETY, THE HONOURABLE JANE PHILPOTT, MINISTER
OF INDIGENOUS SERVICES CANADA,) THE HONOURABLE CAROLYN BENNETT
MINISTER OF CROWN-INDIGENOUS RELATIONS AND NORTHERN AFFAIRS,**

Respondents

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

**NOTICE OF APPLICATION
(Judicial Review and Representative Proceeding)**

**DUBOFF EDWARDS HAIGHT & SCHACHTER Law Corp.
1900 – 155 Carlton Street
Winnipeg, Manitoba R3C 3H8**

**Harley I. Schachter
Phone: 942-3361
Fax: 942-3362**

FEDERAL COURT OF CANADA

BETWEEN:

**CHIEF JOHN STAGG,
COUNCILLOR LEONARD SUMNER, COUNCILLOR
OWEN STAGG in their personal capacity and as Chief and council of the
DAUPHIN RIVER FIRST NATION representing the interests of the DAUPHIN RIVER
FIRST NATION and its members,**

Applicants,

-and -

**THE ATTORNEY GENERAL OF CANADA, THE HONOURABLE RALPH GOODALE
MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, THE
HONOURABLE JANE PHILPOTT, MINISTER OF INDIGENOUS SERVICES
CANADA,) and THE HONOURABLE CAROLYN BENNETT MINISTER OF
CROWN-INDIGENOUS RELATIONS AND NORTHERN AFFAIRS,**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and

serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

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

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

August 31, 2018

ORIGINAL SIGNED BY
JULIE VINCENT
REGISTRY OFFICER

Issued by: _____ (Registry Officer)

Federal Court of Canada
363 Broadway, 4th Floor
Winnipeg, Manitoba R3C 3N9
Tel (800) 663-2096

Winnipeg Local Office Bureau local de Winnipeg
400 - 363 Broadway 400 - 363, Broadway
Winnipeg, Manitoba Winnipeg (Manitoba)
R3C 3N9 R3C 3N9

TO: REGISTRY
Trial Division, Federal Court of Canada
363 Broadway, 4th Floor
Winnipeg, Manitoba R3C 3N9
Tel (800) 663-2096

AND TO: ATTORNEY GENERAL OF CANADA
Department of Justice
301-310 Broadway
Winnipeg, Manitoba
R3C 0S6

AND TO: THE HONOURABLE RALPH GOODALE, MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
c/o Department of Justice
301-310 Broadway
Winnipeg, Manitoba
R3C 0S6

AND TO: THE HONOURABLE JANE PHILPOTT, MINISTER OF INDIGENOUS SERVICES CANADA.
c/o Department of Justice
301-310 Broadway
Winnipeg, Manitoba
R3C 0S6

AND TO: **THE HONOURABLE CAROLYN BENNETT MINISTER OF
CROWN-INDIGENOUS RELATIONS AND NORTHERN AFFAIRS**
c/o Department of Justice
301-310 Broadway
Winnipeg, Manitoba

APPLICATION

THIS IS AN APPLICATION for Judicial Review in respect of what the Applicants believe to be the joint decisions of the Hon. Ralph Goodale, Minister of Public Safety and Emergency Preparedness, the Hon. Jane Philpott, Minister Of Indigenous Services Canada, and The Hon. Carolyn Bennett, Minister Of Crown-Indigenous Relations And Northern Affairs, dated August 23, 2018 in writing, and an oral decision communicated August 28, 2018. Those decisions provided that:

- a. Dauphin River First Nation evacuees who have a finished home on Reserve that is ready for occupancy by them, would have their Red Cross evacuee benefits terminated as of August 31, 2018; and
- b. Dauphin River First Nation evacuees whose homes on Reserve are not ready for occupancy, but where construction or renovation has already commenced, would not have their Red Cross benefits terminated until those homes were ready for occupancy; but that
- c. All other Dauphin River First Nation evacuees would have their Red Cross evacuee benefits terminated as at August 31, 2018 even if they have no home to return to.**

(Bolding for emphasis)

THE APPLICANT MAKES APPLICATION FOR:

1. An order that the application be heard on an expedited and urgent basis;
2. An Order of this Court that the Application be permitted to go beyond the usual single order in respect of which relief is sought, namely in respect of the above-mentioned collective, similar or joint decisions, all of them being inextricably linked;
3. An Order setting aside or quashing that part of the decisions that terminates evacuee benefits where the evacuee has no home on Reserve to go back to, or staying the operation of that decision until a home on reserve is made available to them, or where, for other

reasonable cause, based on individual circumstances, it would not be reasonable for the individual band member to be taken off the evacuee list¹.

4. A declaration that in making the decisions of August 23 and 28, 2018, the Ministers failed or refused to consider all relevant factors touching upon the exercise of their discretion;
5. A declaration that the Minister(s) erred in law and violated principles of natural justice and procedural fairness, in making the decisions they did;
6. A declaration that before deciding to terminate the Red Cross evacuee benefits of any individual, the personal circumstances of the individual must be fairly and honourably considered by the Minister.
7. A declaration that the Minister(s) failed to adequately, or at all, consult and accommodate the Applicants in accordance with the crown's duty to consult and accommodate.
8. A declaration that the decisions of the Ministers under review are unreasonable, and inconsistent with both the Honour of the Crown, and honourable reconciliation.
9. An injunction preventing the Ministers or their designates from terminating Red Cross evacuee benefits unless and until a home on Reserve is ready for each Dauphin River First Nation evacuee, or until a comprehensive settlement agreement is finalized and implemented, whichever first occurs.
10. Alternatively, an order referring the decision(s) back to the Ministers for reconsideration in accordance with any directions that the Court considers appropriate;
11. Further, if the court were to decide that there is a decision to be reviewed which was taken prior to 30 days prior to filing of this Application, then the Applicants seek:
 - a. A determination that such decisions were rescinded and made of no force and effect on or about July 18, 2018; or

¹ An obvious and actual example is a band member who is 8 ½ months pregnant and who needs immediate stability and ongoing medical care for their child's impending birth.

b. In the alternative, an order, under section 18.1(2), extending the 30 day time limit to seek judicial review.

12. The costs of the Applicants in this Application on a solicitor and client basis; and
13. Such other and further relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

1. The *Federal Courts Act*, RSC 1985, c F-7, including ss. 18, 18.1, 1 and 44.
2. The *Federal Court rules* including rules 3, 8(1), 8(2), 35(2), 55, 56,101, 114, 302,317,318, 362(2), 372, 373, 383, 385,386, and 387.
3. In 2011, and in order to save a number of cities in Manitoba and their residents, (including Winnipeg) from the consequences of an impending flood disaster, Canada and Manitoba agreed that flood waters would be diverted into the Interlake area, (including onto the Dauphin River First Nation Reserve) with the knowledge that to protect the lives and property of many, the lives and property of others, including those of the Dauphin River First Nation people would be sacrificed. It was known that the Dauphin River reserve and its housing and infrastructure would be significantly damaged or destroyed, and that the band members would have to be evacuated.
4. Band members were evacuated and placed on evacuee benefits, where many remain.
5. The Dauphin River reserve is in the process of being rebuilt, but it is not finished yet, and there are not enough homes for all evacuees to return home to. Many band members remain evacuated and in need of evacuee benefits.
6. The Red Cross evacuee benefits, which include accommodation costs and a daily living allowances, are administered under the *Emergency Management Act*, S.C. 2007, c. 15 and regulations thereunder or some other authority presently unknown to the Applicants.

7. The minister responsible under the *Emergency Management Act* is the minister of Public Safety and Emergency Preparedness, Ralph Goodale. Minister Goodale, in collaboration with one or both of the Minister of Indigenous Services Canada, and the Minister of Crown-Indigenous Relations And Northern Affairs, have collective responsible for making decisions about the payment of those Red Cross Evacuee benefits.
8. No later than 2017, Canada, Manitoba and Dauphin River First Nation agreed that:
 - a. Until a home on Reserve is made available for each Dauphin River First Nation evacuee by Canada or Manitoba, and until that home is ready for occupancy, the Red Cross Evacuee benefits would not end for that person;
 - b. Evacuees would be considered evacuees until such a home had been offered to them;
 - c. Once such a home had been offered to them, then following a minimum of 60 days' notice, the evacuee's Red Cross benefits would end. (Assuming that the home would be completed and ready for occupancy prior to the 60 day notice expiring).
9. It was further agreed that the homes to be made available for occupancy would provide for occupancy standards that meet or exceed National Occupancy Standards.
10. As of the present date:
 - a. A number of Dauphin River First Nation evacuees have not had a home on reserve offered to them, and
 - b. For a number of Dauphin River First Nation evacuees who have had homes offered to them, the homes are not ready for occupancy. (Whether the National Occupancy Standards have been met or not in respect of each home is an additional issue).
11. Canada, Manitoba and the Dauphin River First Nation have been engaged in attempts at concluding terms of a Comprehensive Settlement Agreement to resolve all issues relating to the 2011 flood. That comprehensive settlement, if made and implemented, would include provisions identifying the timing of terminating evacuee benefits for all band members.

However, those negotiations have not yet resulted in any comprehensive Settlement Agreement.

12. In late May 2018, the Regional director General of Indigenous Services Canada unilaterally sent out notices, which were received by some evacuees, declaring that “all new housing to address the impacts of flooding should be completed by June 30, 2018”, and that as a result, [Red Cross] evacuee benefits would end on July 31, 2018. However whatever persons may have genuinely believed, that information was false. All new housing to address the impacts of flooding would not be completed by June 30, 2018, and has not been completed.
13. Realizing this factual error, Dauphin River Chief and Council sent a letter dated June 15, 2018 to Jane Philpott, (Minister Of Indigenous Services Canada) advising of the unfinished business, and advising, among other matters that “Dauphin River needs an additional 45 homes in order for evacuees to return home”.
14. No written response to that letter was received.
15. However on July 18, 2018, and following consultation with the Dauphin River Chief, the Regional Director General advised, (on behalf of the Ministers), that the termination of benefits notice would not be acted upon, and that evacuee benefits would continue to be provided.
16. On July 18, 2018, there was no agreement on how long the evacuee benefits should stay in place after July 31, 2018. The Regional Director General expressed the view that the deadline should be August 31, 2018. The Chief claimed that the benefits should continue until, as promised and agreed, each evacuee had a home at the reserve ready for them.
17. After the rescission of the May 2018 notice, and prior to August 23, 2018, no new decision was provided taking the position that the evacuation benefits were being terminated.
18. By letter dated August 23, 2018, (first received and reviewed by Chief and Council on August 28, 2018), Chief and council were advised that “No further financial support will be provided through the Canadian Red Cross [beyond August 31, 2018].

19. Notice of such termination of benefits was not provided to the evacuees.
20. Prior to receiving or reviewing the above mentioned letter of August 23, 2018, , and on that day, (August 23, 2018) since not all evacuees had homes to go to, the Chief and council once again advised the Crown that benefits should not be terminated on August 31, 2018.
21. The August 23, 2018 request from chief and Council was then followed up by a written request of August 24, 2018. That written request included advice that new information about the housing situation on Reserve would be provided to Canada on August 27, 2018.
22. The Ministers' representatives agreed that government representatives would attend at the reserve to review the situation in advance of a new decision being made about how long evacuee benefits should remain in effect.
23. Following the attendance of the government officials on August 27, 2018, and on August 28, 2018, a decision was verbally communicated to the chief and council, on behalf of the ministers, that:
 - a. The 21 families whose houses were not ready and not suitable for occupancy would not have their Red Cross benefits terminated until those units were ready for occupancy; and
 - b. All evacuees who had no home in the process of being constructed for them, would, in accordance with the initial August 23, 2018 written decision, receive no further evacuee benefits following august 31, 2018.
 - c. The individual circumstances of each evacuee was an irrelevant consideration to the decision. (Such persons would be cut off from benefits whether they had a place to live or not).
24. The practical result of terminating evacuee benefits will be to cause evacuees without a home to go to on Reserve to become homeless, and without sufficient funds to buy food and other necessities of life.

25. The Ministers failed to exercise their discretions in accordance with the law and their decisions are unreasonable.
26. The decisions should be set aside or quashed because:
- a. The evacuees were not give any, or any proper notice of the decisions to end evacuee benefits;
 - b. The Ministers erred in law by failing to consider all relevant evidence before arriving at the decision to terminate evacuee benefits or to refuse to extend or reinstate evacuee benefits.
 - c. the Applicants were not afforded fairness in the process, and this is an error of law.
 - d. Under all the circumstances the Ministers' decisions were not reasonable ones.
 - e. The Ministers acted in a manner that was contrary to law, including being inconsistent with the honour of the Crown and reconciliation.
27. In respect of the injunctive relief sought:
- a. the matter is urgent;
 - b. there are serious issues to be tried;
 - c. Irreparable harm will be suffered;
 - d. The balance of convenience favours the granting of the injunctive relief; and
 - e. It is just and equitable for the relief sought to be granted;
28. Such further and other grounds as counsel may advise and this Honourable Court may allow.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. The material filed or to be filed in any interim or interlocutory proceedings;

- 2. Affidavits to be filed; and
- 3. Such further and other documentary evidence as counsel may advise and this Honourable Court may allow.

REQUEST FOR MATERIAL RELEVANT TO THE APPLICATION

Pursuant to Rules 317 and 318 of the Federal Court Rules, the Applicants request that within twenty days from the date of service of this Application, the Respondents provide the Applicant with all of the material that was before the Ministers when the decisions were taken to terminate evacuee benefits no matter when it is claimed that decision was made, including, without limitation:

- a) any and all evidence of analysis and recommendations of the issues that were forwarded to the Minister or his designate for his or her consideration;
- b) Any other notes, documents, memoranda or correspondence (electronic or otherwise) on which the Ministers relied.

August 31, 2018

**DUBOFF EDWARDS HAIGHT &
SCHACHTER LAW CORP.
1900 – 155 Carlton Street
Winnipeg, Manitoba R3C 3H8**

HS

 Harley Schachter
 Solicitor for the Applicants

I HEREBY CERTIFY that the above document is a true copy of
 the original issued out of / filed in the Court on / and dated

AOUT
 AUG 31 2018

 Julie Vincent/Registry Officer

Julie Vincent

ABSTRACT OF HEARING
RÉSUMÉ DE L'AUDITION

ENTERED ENTRÉ Minutes of Hearing Procès - verbaux VOL. : 1004 PAGE : 255 - 258

LANGUAGE OF HEARING: English

This 31st day of August 2018 at Ottawa, Ontario

Present:
The Honourable Mr. Justice Grammond

File Number: T-1600-18

Between:
CHIEF JOHN STAGG et al v. AGC et al

Counsel:
Harley Schacter 204.594.1311 representing Applicant
Alexander Menticoglou 204.984.6891 representing Respondent

Time and Duration, Courtroom and Court Registrar:
held by way of Conference Call in chambers 31-AUG-2018 from 14:00 to 14:50
Judge's Chambers - Ottawa
Marc Cossette

Total Duration: 50m

Before the Court --> Result:

Meeting to discuss the correspondence received on this file.
-->Counsel for the Applicant undertakes to have the Notice of Application
-->issued without delay. Counsel for the Respondent has instructions for a
-->one month reprieve of the benefits. An oral Direction allowing electronic
-->service was issued. Mr. Schacter intends to bring a motion for injunction
-->which will be heard on Sept. 26, 2018. The Applicant to serve and file his
-->material by Sept. 7/18; Respondent to serve his affidavits by Sept. 19/18
-->and his full motion record by Sept. 21/18. Cross-examinations on affidavits

ABSTRACT OF HEARING
RÉSUMÉ DE L'AUDITION

-->to be completed as soon as possible. Next CMC at 3:00 p.m. E.S.T on Tuesday,
-->Sept. 4/18.
-->No recording was made due to battery problem with the backup recorder.