

The following submission was made by M. Lamothe in relation Ancestor Hannah Mannell

**IN THE MATTER OF** a Preliminary Draft Comprehensive Land Claim Agreement-In-Principle among the Algonquins of Ontario; the Province of Ontario; and the Government of Canada

**AND IN THE MATTER OF** an application to add Hannah Mannell (also spelled Mannall) to the Preliminary List of Algonquin Ancestors

**AND IN THE MATTER OF** a hearing being conducted pursuant to Schedule 15.5 of the Preliminary Draft Agreement-in-Principle

**AND IN THE MATTER OF** a hearing held at Pembroke, Ontario, on February 5, 2013

**APPEARANCES:**

Ben Mills, counsel to The Honourable James B. Chadwick, Q.C.

Joan Holmes, Enrolment Officer

Gilles Dupuis, on behalf of the Applicants

Ron Nicholas, on behalf of the Applicants

Lynn Thomas Hanley, on behalf of the Applicants

Jill L. Thompson, on behalf of the Applicants

Ron Menard, Councilor to the Algonquins of Pikwakanagan, responding to the Application

Joann McCann, on behalf of the Algonquins of Pikwakanagan, responding to the Application

**BEFORE:** The Honourable James B. Chadwick, Q.C, Designate Appointed Pursuant to the Protocol for Consideration of Potential Additions to the Schedule of Algonquin Ancestors

**DECISION**

**PREAMBLE**

[1] I appreciate how sensitive these matters are for the applicants and their families. They are all very proud of their native heritage.

[2] These hearings are conducted by me as the designated appointed pursuant to the Protocol for Consideration of Potential Additions to the Schedule of Algonquin Ancestors.

[3] With reference to applications to add a person as an Algonquin Ancestor schedule 15.5 sets forth my jurisdiction. In order to be added as an Algonquin Ancestor, chapter 1 provides:

“Algonquin Ancestor” means a person who was born on or before July 15, 1897 and identified in an historic record or document dated on or before December 31, 1911, in such a way that it would be reasonable to conclude that the person was considered to be an Algonquin or Nipissing, or a full sibling of such a person.

A preliminary list of Algonquin Ancestors agreed to by the Parties is included in Appendix 3.1. In this definition, a “full sibling” of a person is a sibling having the same natural mother and natural father as that person.

[4] I have no jurisdiction or discretion outside of the provisions of the Preliminary Draft Agreement-in-Principle.

[5] This Application was made pursuant to the Protocol for the Consideration of Potential Additions to Schedule of Algonquin Ancestors (the “Protocol”). The Protocol was adopted by the Algonquin Negotiation Representatives (the “ANRs”) as a means of considering potential additions to the Preliminary List of Algonquin Ancestors. The Protocol requires applicants to apply to the ANRs and put before the ANRs what information they have to support their claim that the ancestor under consideration meets to the requirements of being an “Algonquin Ancestor” as defined in the Draft Agreement in Principal (the “AIP”).

[6] The application to add Hannah Mannell to the Preliminary List of Algonquin Ancestors has been referred to me pursuant to Article 8 of the Protocol, which is included in the Draft Agreement-in-Principle as Schedule 15.5.

[7] The Algonquin Community was given notice the Application to add Hannah Mannell to the Preliminary List of Algonquin Ancestors by way of a Public Notice being posted with the Voters List (UPDATED) at the various offices and public locations as set out the Public Notices. The Public Notices were posted on or about June 20, 2012. The Public Notices stated that the hearing of the Application was to occur on September 12, 2012. However, the hearing date was rescheduled to February 8, 2013 and a revised Public Notice indicating the same was posted.

[8] In considering this matter, it is important to note that my decision binds the Algonquins of Ontario with respect to the issue of whether or not Hannah Mannell should be considered by the Algonquins of Ontario as meeting the definition of “Algonquin Ancestor”. However, for an ancestor to be added to the Preliminary List of Algonquin Ancestors, the Governments of Ontario and Canada must also agree.

## **HISTORY OF PROCEEDINGS**

[9] Joan Holmes in her August 26, 2010 report sets out the history of the proceeding, as follows.

[10] The applicants applied to have Hannah Mannell added to the schedule of Algonquin Ancestors in May of 2000. An Enrolment Board heard the applicant’s application on September 9, 2001. The Application was accepted by the Enrolment Board and the Enrolment Board provided written reasons as follows:

Since it was proven that Hannah Mannall was identify [identified] as Indian who lived & died at Golden Lake.

Primary source info is Hudson Bay records.

Secondary source info is documented research.

It is the consensus of the Board Members that there is enough primary info to accept this application. It is determined that Ronald Nicholas has a blood quantum of 25% according to Algonquin Law 3.2b.

[11] In the fall of 2010 a protest was raised against the inclusion of Thomas and Mannell ancestors on the schedule of ancestors. The ANRs constituted a Special Board of the Enrolment Review Committee to hear the protest. The protest was heard on September 29, 30, October 1 and November 22, 2010. There was a full hearing with applicants making submissions, along with their legal counsel.

[12] The 2010 Review Committee gave a decision on November 23, 2010 dismissing the appeal/protest as it was determined the applicants were properly enrolled at the time based on the decision of the 2001 Enrolment Board and were not protested according to the provisions in place at that time. However, the 2010 Review Committee found that on the balance of probabilities the ancestors were Cree, not Algonquin, and placed a moratorium on further enrollment of applicants who descended from these ancestors. The 2010 Review Committee further recommended that all board enrolment decisions be reviewed and that the ANRs determine how to effectively administer this issue in order to achieve an accurate list of Algonquin based on common criteria.

[13] The ANRs responded by removing Margaret Thomas, Charles Thomas, Elmer Thomas Foy, Charles Thomas Spence, and Hannah Mannell from the schedule of ancestor.

[14] The current Application by Lynne Hanley, Ron Nicholas, Jill Thompson, Anthony Jeffery and others is an Application to have Hannah Mannell added to the schedule of Algonquin's based upon the evidence they are putting forward.

## **CHARTER**

[15] Chris Reid is counsel to a group of non-status aboriginals. In a telephone conference, prior to this hearing, he raised with me the possibility of a Charter Application. I expressed my doubts that I had jurisdiction to entertain such an application. He was to consider the matter and get back to me. He was to appear at this hearing, but due to weather conditions could not attend. I invited him to make written submissions. On February 8 he wrote me and advised he was contemplating a Charter Application based on discrimination against non-status aboriginals. He also agreed that these hearings are not the proper forum in which to raise this issue.

## ISSUES

[16] There is no issue with the fact that Hannah Mannell was an aboriginal, the issue is whether she was Algonquin, Cree or Ojibwa.

[17] In order to address this issue all parties have reviewed a great number of historical documents, including the journals of the Hudson Bay Company and in particular the journals of John Mannell. It appears that John Mannell arrived from England in 1786 and joined the Hudson Bay Company as a writer. He was stationed at Moose factory, in Hudson Bay, which was Cree territory.

[18] In the summer of 1794 John Mannell established a post at Kenogamissi. This is a lake at the head of the south branch of the Moose River. This is Algonquin territory.

[19] There is no issue that John Mannell took an aboriginal woman as his wife. There is no reference to her parents. The applicants suggest her father was a local Chief. Hannah Mannell was their daughter and was born in August 1795. The question is where was she born? Her father, John Mannell, was returning to England on leave after a 7 years posting. Did his wife travel with him to Moose Factory or did she remain at Kenogamissi, to give birth to their daughter? The applicants say the historical documents support their position that she stayed with her family at Kenogamissi and, as such, she was an Algonquin.

[20] Joann McCann is a historian and has done extensive research into the history of the Algonquins. She was retained by the Algonquins of Pikwakanagan. She concludes, based on many of the same historical documents and other sources, that Hannah Mannell was probably Cree.

[21] Joan Holmes, the enrollment officer, also reviewed all the documents submitted in support of the application. Her role is not to draw conclusions but to review the documents. She notes that John Mannell was also stationed at Frederick House. This was Ojibwa territory, bordering on Algonquin territory at Lake Abitibi. She concludes Kenogamissi is Ojibwa territory.

[22] Ron Nicholas made submissions on behalf of the applicants. He was very much focused and addressed the issue as to where Hannah Mannell had likely been born, thus identifying her most likely ethnicity. In his presentation he relied upon the daily journals kept by the Hudson Bay Company managers and a report of a genealogist. He takes issue with Joan Holmes July 2012 report, where she concludes that Hannah Mannell was probably born at Frederick House. He admits she could have been born at Kenogamissi, but this is not likely. Both Frederick House and Kenogamissi were located in Ojibwa territory, according to Joan Holmes. Ron Nicholas takes issue with this conclusion.

[23] Ron Nicholas reviewed the geography of the various Hudson Bay trading post, and in particular the relationship of Frederick House to the Abitibi River and Abitibi Lake. As Abitibi is historically Algonquin territory, he concludes that Frederick House was most likely Algonquin

and not Ojibaway territory. It is also too far south to be Cree territory. He took issue with the reports of Joan Holmes and Joann McCann. It is evident that it is difficult to make an accurate determination where Hannah Mannell was born.

[24] After the hearing I also received a 3 page written submission by Theresa Stokman, the sister of Ron Nicholas. Attached to that document was a map of the Moose Valley. In her submission she raises many questions. She also refers to the opinion of Dr. John Pollock. Lynne Hanley had also referred to this opinion. Unfortunately I had no written report or opinion from Dr. Pollock, only third hand references of his opinion.

[25] There was a lengthy hearing before the Review Committee. As there is no record of proceedings, it is difficult to determine on what evidence they based their decision. Likewise their reasons for their decision are quite brief.

[27] The applicants are seeking to have Hannah Mannell (Mannall) added to the Preliminary Voters list as an Algonquin ancestor. The Applicants have the onus of establishing on the balance of probabilities that Hannah Mannell meets the definition of Algonquin ancestor.

[28] Based upon the evidence and submissions, I am satisfied that the applicants have established, on a balance of probabilities, that Hannah Mannell meets the definition of Algonquin Ancestor as the records suggest on the balance of probabilities that her mother was from Algonquin territory.

**Dated** at Ottawa this 2<sup>nd</sup> day of May, 2013

*James B. Chadwick, Q.C.*

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**DECISION**

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**The Honourable James B. Chadwick, Q.C.  
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**DATED:** May 2, 2013