

IN THE COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN

(Respondent) Applicant

- and -

CREEKSIDE HIDEAWAY MOTEL LTD.

(Appellant) Respondent

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AFFIDAVIT OF SYDNEY BRYAN GARRIOCH  
SWORN THE ~~20<sup>th</sup>~~ DAY OF OCTOBER, 2006

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23rd

**P. MICHAEL JERCH LAW OFFICE**

586 Broadway Avenue  
Winnipeg, MB R3C 0W5  
Telephone (204) 774-8301  
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**P. MICHAEL JERCH  
LOUIS E. HARPER  
DENNIS G.A. VALDRON**

Canada by exempting the Act from applying "on lands reserved for the Indians" is not discriminatory as against the general advantaged population of Canada. The provincial government has recognized the role the federal Crown and federal law in respect of First Nations by the application of section 91(24) of the *Constitution Act, 1867* and the statutes dealing with Indians such as the *Indian Act*;

- the history of First Nations in Canada shows that smoking tobacco has a social, cultural and spiritual significance that are customs, traditions and practices protected by sections 25 and 35 of the *Constitution Act, 1982*. I understand that in this case the court did not hear any evidence of the regulation of smoking on reserves by the practices, customs and policies of First Nations.

The MKIO submits that if it is provided with an opportunity to address the above issues they will be helpful in the ultimate determination of this appeal.

9. The decision of the Honourable Court of Queen's Bench Judge in the case at bar will have a significant impact on the application of the impugned legislation, and other existing and future legislation, and our future discussions and efforts to create an operational space for self-government for First Nations in order to achieve the object of reconciliation which has been the subject of the Royal Commission on Aboriginal Peoples and various Supreme Court of Canada court decisions. The MKIO wishes to assist this Honourable Court with sharing its insights and observations regarding First Nations perspectives on these issues to assist the Court in its decision.

10. I make this affidavit bone fide in support of the MKIO's motion to intervene.

SWORN BEFORE ME at the City )  
of Winnipeg, in the Province of )  
Manitoba, this 23<sup>th</sup>, day of October )

  
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SYDNEY BRYAN GARRIOCH

  
\_\_\_\_\_  
A Barrister and Solicitor in and for the Province of Manitoba

**File No. AR06-30-06505**

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**AFFIDAVIT OF SYDNEY BRYAN GARRIOCH**

I, SYDNEY BRYAN GARRIOCH, of the City of Winnipeg, in the Province of Manitoba,

**MAKE OATH AND SAY THAT:**

1. I am the Grand Chief of the Manitoba Keewatinook Ininew Okimowin (hereinafter the "MKIO") and as such have personal knowledge of matters hereinafter deposed to by me except where same are stated to be based on information and belief.
2. The MKIO is a political office established in 1981 by the Cree, Dene, and Oji-Cree First Nations of northern Manitoba. The MKIO serves thirty (30) First Nations, as represented by the Chiefs, and is the regional political and territorial organization dedicated to the advocacy of the rights and interests of First Nations in northern Manitoba. The home page of our website "mkonorth.com" includes a list of the

Chiefs and different First Nations which are members of the MKIO.

3. The MKIO was incorporated as the Manitoba Keewatinowi Okimakanak Inc. in 1981, based on the Cree words for “northern Chiefs”. It was established because the Chiefs of First Nations in northern Manitoba determined that northern First Nations interests, particularly those relating to northern resources development, northern economies, and the divide between the interests of southern urban centers and the north which is primarily occupied by First Nations people. The new name of “Manitoba Keewatinook Ininew Okimowin” refers to our objective to create and implement a First Nations legislative government in the north. The MKIO has represented the interests of the MKIO in various Court proceedings, including as an intervener before the Supreme Court of Canada.
4. The MKIO conducts meetings of the Chiefs in Assembly in order to achieve unity among First Nations, and is governed by an Assembly of the Chiefs of the 30 First Nations in northern Manitoba and by an Executive Council of Chiefs from 8 of those First Nations. The duties of the Grand Chief of the MKO includes meeting with various provincial and federal government departments as required in order to develop appropriate new programs and strategies that will advance the development and future interests of the First Nations, and to advocate on behalf of its member First Nations. The MKIO is experienced in accomplishing these objectives in areas of housing, education, economic development, self-government, social services, justice, probation services, child and family matters and residential schools.
5. The MKIO is the regional political organization that represents the First Nations of northern Manitoba. The MKIO has participated with the Province of Manitoba and other aboriginal organizations in the drafting of the recently enacted and proclaimed *First Nations Child and Family Services Authorities Act* which was developed in order for First Nations child caring agencies in Manitoba to regain administrative control and authority over the caring of aboriginal children both on and off the

reserve, including in urban centers. The MKIO has also been involved in self-government negotiations with the Government of Canada regarding child and family matters and other aspects of self-government, and regularly is in discussions with federal and provincial governments regarding the enactment and amendment of federal and provincial legislation which impacts upon First Nations and federal jurisdiction over "Indians and Lands reserved for the Indians".

6. In the case at bar, the MKIO is uniquely positioned to bring a new perspective before the Court in representing the political interests of the First Nations of northern Manitoba which will be affected by the judgment of this Court if leave to appeal is granted. By lease contracts similar to those in rural and urban areas, the First Nations of the MKIO operate and permit to be operated on their reserve lands enterprises and businesses both owned by the First Nation, owned by First Nation business people, and owned and operated by both aboriginal and non-aboriginal business people on Indian reserve lands. These businesses range from hotels, retail stores and services, gas stations, shopping centres, casinos and video lottery terminal centres.
  
7. The MKIO represents First Nations that are signatory to Treaties Nos. 4, 5, 6 and 10 in northern Manitoba and whose affairs are governed to a large extent by section 91(24) of the *Constitution Act, 1867*, section 35 of the *Constitution Act, 1982*, and by the *Indian Act*. Many of the MKIO First Nations regularly deal with federal and provincial inter-jurisdiction issues regarding the application of labour laws, occupational health and safety and workers' compensation and other provincial laws as they apply to First Nations government/band offices and operated entities, shopping centres, retail and services, casinos and other entities whose premises are located on reserve lands. The MKIO is also familiar with the myriad of laws applicable to leasehold interests on reserve as many of our members First Nations have various complexities of First Nations and non-aboriginal commercial structures on both designated and non-designated reserve lands. The MKIO also services its member First Nations by providing advice and assistance with respect to the

drafting of First Nations by-laws and policies and assisting First Nations with discussions with provincial and federal Ministers with respect to the implementation and operation of First Nations by-laws and policies.

8. This case raises issues which will be serious concern and interest to the First Nations of the MKIO, and will affect the governance and self-government aspirations of First Nations including their negotiations and discussions with federal and provincial levels of government in Canada. The MKIO submits that it would be beneficial to the Court to have a First Nations organization represented before the Court given the nature of the issues pertaining to the application of provincial laws to Indian reserve lands. The MKIO would propose to make submissions to the Court including on the following issues:

- section 28(2) of the *Indian Act* does permit both aboriginal and non-aboriginal businesses to locate their businesses on reserve by holding leases on approval of the Minister and First Nation band council, contrary to the finding of the court in this case;
- section 15 of the Charter and the analogous ground of Aboriginal band members residing off-reserve is restricted to the historically disadvantaged position of First Nations in Canadian society and their experience with the *Indian Act*;
- the impact the judgment may have on the jurisdictional issues and discussions and negotiations First Nations are engaged in with provincial and federal governments, including special programs and policies of an ameliorative measure including gaming on Indian reserves, and the impact on the reconciliation of First Nations Aboriginal and Treaty rights with that of Canadian society and the Charter of Rights and Freedoms;
- the creation of a space for the operation of self-government and ameliorative measures which recognize the special position First Nations occupy in

Canada by exempting the Act from applying “on lands reserved for the Indians” is not discriminatory as against the general advantaged population of Canada. The provincial government has recognized the role the federal Crown and federal law in respect of First Nations by the application of section 91(24) of the *Constitution Act, 1867* and the statutes dealing with Indians such as the *Indian Act*;

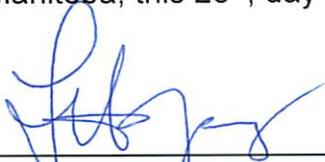
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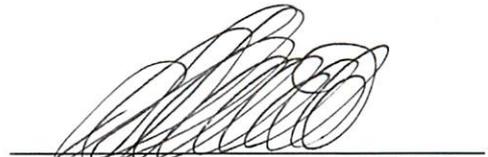
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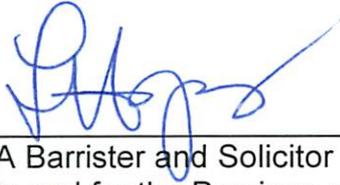
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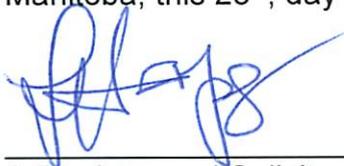
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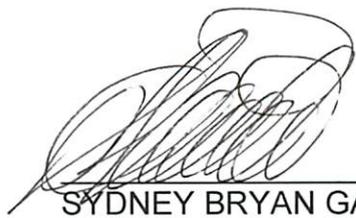
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