

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 61/07; Petition 543-01
Session: Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause: Charles Toodlican v. Canada
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez.
Dated: 27 July 2007
Citation: Toodlican v. Canada, Petition 543-01, Inter-Am. C.H.R., Report No. 61/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: Paul Lagace
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I. SUMMARY

1. On August 13, 2001, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a petition from Mr. Paul Lagace on behalf of Charles Toodlican against the State of Canada (hereinafter “Canada” or “the State”).

2. Charles Toodlican (hereinafter referred to as "the Petitioner" or "Mr. Toodlican" or "Toodlican" is a Canadian national and a native Canadian Indian. At different times, he has held membership in the two different bands of First Nations' People located in British Columbia, Canada. These bands are the Lower Nicola Band and the Cook's Ferry Band.

3. The petitioner’s complaint revolves around his membership in the Lower Nicola Band and succession to his late mother’s estate. Generally, he complains that he had been unlawfully prevented from exercising his right to be a member of the Lower Nicola Band and to live on the Lower Nicola Band Reserve and (b) unlawfully prevented from inheriting land on the Lower Nicola Reserve that belonged to his mother, Gertie Toodlican, prior to her death. Accordingly, he contends that the State has, inter alia, violated his rights to juridical personality and property in breach of the American Declaration on the Rights and Duties of Man, and the American Convention on Human Rights.

4. The State contends that the petition is inadmissible *ratione materiae* and *ratione temporis*. In respect of the ground of *ratione materiae*, the State asserts that Canada is not a signatory to the American Convention, and therefore the Commission has no jurisdiction over the claims made by the Petitioner thereunder. In respect of the ground of *ratione temporis*, the State contends that

the alleged violations occurred prior to Canada's accession to the Charter of the OAS. In the alternative, the State argues that the petition is inadmissible for failure to exhaust domestic remedies.

5. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to declare the petition inadmissible *ratione temporis*.

II. PROCESSING BY THE COMMISSION

6. On August 21, 2001, the Commission acknowledged receipt of the Petitioner's petition dated August 07, 2001. By letter of September 05, 2001, the Petitioner submitted additional information to the Commission. By communication of October 01, 2001, the Commission acknowledged receipt of this letter.

7. By note of November 13, 2001, the Commission transmitted the pertinent parts of the Petitioner's petition to the State and requested the State to respond within two months. By letter of the same date, the Commission informed the Petitioner accordingly.

8. By communication of February 08, 2002, the State requested an extension to May 13, 2002 to prepare and transmit a response to the Petitioner's petition. By response of February 22, 2002, the Commission granted an extension to March 12, 2002.

9. By letter of May 23, 2002, the Petitioner submitted additional information that was acknowledged by the Commission by letter of July 02, 2002.

10. By note of July 30, 2002, the State submitted its response to the Petitioner's petition, the pertinent parts of which were transmitted to the Petitioner by communication of August 27, 2002. By letter of September 30, 2002, the Petitioner replied, and by communications to the parties of November 04, 2002, the Commission acknowledged receipt of the Petitioner's letter and transmitted the pertinent parts thereof to the State. By note of November 12, 2002, the State requested copies of all documents referred to in the Petitioner's observations of September 30, 2002. By note of January 09, 2003, the Commission acceded to the request of the State, and asked the State to respond in 30 days with further observations.

11. By letter of April 07, 2003, the Petitioner submitted further information to the Commission, which was duly acknowledged by letter of June 04, 2003. By note of May 12, 2003, the State submitted its second reply to the Petitioner's petition, the pertinent parts of which were transmitted to the Petitioner by letter of June 03, 2003. By letter of June 27, 2003, the Petitioner responded to the second reply of the State, and by letters of October 27, 2003 and January 27, 2004 submitted additional information to the Commission.

12. By notes of February 19, 2004 and March 31, 2004, the Commission transmitted the pertinent parts of the Petitioner's most recent observations. By letters of May 27, 2004 and December 09, 2004, the Petitioner submitted further observations, the pertinent parts of which were transmitted to the State by note of March 21, 2005. By note of October 03, 2005, the State

transmitted its third reply to the petition, the pertinent parts of which were transmitted to the Petitioner by letter of April 13, 2007.

13. By letter of April 14, 2007, the Petitioner requested the Commission to conduct an onsite visit to Mr. Toodlican's community in Canada. By letter of May 02, 2007, the Petitioner submitted additional information, which was acknowledged by the Commission by letter of May 29, 2007.

III. POSITIONS OF THE PARTIES

A. The Petitioner

- Background

14. In 1948, Charles Toodlican was born out of wedlock to Gertie Toodlican a member of the Lower Nicola Band. The name of his father was not recorded on his birth certificate, and appears to be known. By law (the Indian Act of 1927), Mr. Toodlican derived membership of the Lower Nicola Band through his mother at birth. In 1949, Mr. Toodlican's mother married Charles Walkem, a member of the Cook's Ferry Band. Upon marrying Mr. Walkem, Gertie Toodlican's membership of the Lower Nicola Band was automatically transferred to her husband's band, pursuant to the Indian Act of 1927. Mr. Toodlican's membership of the Lower Nicola Band was also concurrently transferred to the Cook's Ferry Band.

15. As prescribed by the Indian Act of 1927, the transfer of membership terminated the right of Gertie Toodlican and Charles Toodlican to reside, occupy or use the Lower Nicola Reserve. The Petitioner contends that this transfer of membership from Lower Nicola Reserve to Cook's Ferry Band was done without the approval of his mother; and that as an "illegitimate child", there was no legal basis for his concurrent transfer to Cook's Ferry Band upon his mother's marriage to Mr. Walkem.

16. Upon attaining the age of 21, Mr. Toodlican was granted membership in the Cook's Ferry Band in his own right. In or about 1999, he attempted to return to live in the Lower Nicola Band Reserve, relying on his pre-existing membership, which he claims was unaffected by his mother's marriage to Mr. Walkem. However, Mr. Toodlican was prevented from doing so because the Council of the Lower Nicola Band no longer considered him a member. Mr. Toodlican alleges that he is homeless as a result.

17. Under the prevailing Indian Act of 1985, the Petitioner was required to obtain a resolution (permission) of the Lower Nicola Band to transfer his membership from Cook's Ferry Band to the Lower Nicola Band. Up to the time of his petition, CT complained that the Council of the Lower Nicola Reserve Band had failed to transfer his membership back to the Lower Nicola Band[FN1].

[FN1] However both parties confirm that this transfer was ultimately effected in 2002 (a year after the petition was presented). See State's observations of May 12, 2003 and the Petitioner's observations of June 27, 2003.

18. Gertie Toodlican died in 1964. Prior to her death, she had inherited a parcel of land from her father (George Toodlican). This land was part of the Lower Nicola Band Reserve. However her father died after she married Mr. Walkem. Accordingly, under the then prevailing Indian Act of 1951, she was not entitled to possession of the land, but only proceeds from the sale thereof.

19. The proceeds of sale formed part of her estate when she died in 1964, survived by her husband and eight children, including the petitioner. Under section 48 (1) of the Indian Act of 1951 any estate not exceeding Can\$2000 devolved entirely to the surviving spouse of the deceased. Gertie Toodlican's estate, (including the value of the parcel of land) being under \$2000 in value, went entirely to her surviving husband. Mr. Walkem later sold this parcel of land in 1972 to Rene Maynard Joe, a member of the Lower Nicola Band, for the sum of \$1500.

20. The Petitioner contends that his mother remained in possession of the land even after her membership had been transferred to the Cook Ferry Band. He further contends that the disposition of her estate was governed by section 48 (13) of the 1951 Indian Act:

Illegitimate children and their issue shall inherit from their mother as if the children were legitimate and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person.

21. The Petitioner contends that as bona fide member of the Lower Nicola Band and the son of Gertie Toodlican, he was entitled to succeed to her estate.

22. In response to the State's contention that he failed to exhaust domestic remedies, Mr. Toodlican claims that he has been unable to exhaust domestic remedies primarily because of indigence. The Petitioner further argues that he requested legal representation from the Department of Indian and Northern Affairs, but was declined. The Petitioner also claims that he petitioned the Canadian Human Rights Commission, but that on March 22, 2001, it declined to consider his complaint primarily on jurisdictional grounds. In this regard, he contends that that relief under Canada's Human Rights Act is unavailable because section 67 of the Act[FN2] expressly excludes the Indian Act from its ambit. In this respect, the Petitioner complains that the Indian Act and the Canadian Human Rights Act discriminate against him on the basis of race.

[FN2] Section 67 of the Canadian Human Rights Act provides that "Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act..."

23. With respect to his transferring his membership of the Cook's Ferry Band back to the Lower Nicola Band, the Petitioner acknowledges that this was finally done in January 2003[FN3].

[FN3] See Petitioner's submission of June 27, 2003.

24. As a result of the foregoing, the petitioner contends that the State has violated his rights under the American Declaration[FN4] and the American Convention[FN5] to the following rights:

- right to juridical personality
- right to property
- right to freedom of movement and residence
- right to participate in government
- right to equal protection of the law
- right to judicial protection

[FN4] The Petitioner did not cite any specific Articles.

[FN5] The Petitioner did not cite any specific Articles.

B. The State

25. The State contends that the petition is inadmissible *ratione materiae*, and *ratione temporis*. Alternatively, the State contends that the petition is inadmissible for failure to exhaust domestic remedies.

26. With respect to the issue of *ratione materiae*, the State submits that Canada is not a signatory to the American Convention. Accordingly, the Commission lacks the jurisdiction to entertain any claims made by the Petitioner under the Convention. The State however acknowledges that the Commission may exercise jurisdiction *ratione materiae*, with respect to any claims made under the American Declaration.

27. With respect to the issue of *ratione temporis*, the State posits that Canada acceded to the OAS Charter in 1990 and that the alleged violations occurred prior to this date. More particularly, the State contends that the Petitioner's membership of the Lower Nicola Band was transferred together with his mother's upon the latter's marriage to Francis Walkem in 1949; and that Mr. Toodlican attained membership in his own right upon attaining the age of majority in 1970. Further the State asserts that Gertie Toodlican's estate was distributed after her death in 1964, with the sale of her land being completed in 1972. The State affirms that it was "not a member of the OAS at any of these times, and hence was not bound by the human rights obligations in the OAS Charter, as defined by the American Declaration"[FN6]. The State

concludes that “allegations of violations concerning the transfer of Mr. Toodlican’s membership and the distribution of his mother’s estate are inadmissible” *ratione temporis*.

[FN6] State’s first official response of July 19, 2002; para. 58.

28. With respect to exhaustion of domestic remedies, the State argues that if the Commission finds any alleged violations of the American Declaration (concerning the transfer of the Petitioner’s membership and the distribution of his mother’s estate) occurred or have continued after Canada’s accession to the OAS Charter, that then these allegations are inadmissible because of failure to exhaust domestic remedies.

29. Concerning the claim regarding Mr. Toodlican’s membership, the State contends that on January 26, 2000, the Registrar of Indian and Northern Affairs informed Mr. Toodlican that he could not be transferred to the Lower Nicola Band without a Band Council Resolution stating that the Band had accepted him into their membership. The State contends that under section 14 (2) of the 1985 Indian Act, Mr. Toodlican was entitled to file a protest within three years (following refusal to transfer). According to the State where a protest is made, the Registrar must investigate the protest and make a decision. According to the State, if Mr. Toodlican was aggrieved by such a decision, he had a right to appeal to the Supreme Court of British Columbia. In the premises, the State alleges that Mr. Toodlican failed to file a protest, much less initiate any remedies in the Supreme Court of British Columbia.

30. Additionally, the State argues that the actions and decisions of the Registrar of Indian and Northern Affairs, the Canadian Human Rights Commission, and the Lower Nicola Band Council are amenable to judicial review by the Federal Court of Canada. In this respect, the State contends that Mr. Toodlican failed to apply for judicial review concerning (a) the letter of January 26, 2000 of the Registrar of Indian and Northern Affairs of Canada; (b) the March 22, 2001 decision of the Canadian Human Rights Commission to accept Mr. Toodlican’s complaint under the Canadian Human Rights Act; and (c) decisions or actions of the Lower Nicola Indian Band with respect to the Petitioner’s membership.

31. In relation to the Petitioner’s claims that the Indian Act and the Canadian Human Rights Act discriminate against the Petitioner (on the basis of race), the State argues that Mr. Toodlican could have pursued an action before the Federal Court of Canada or the Supreme Court of British Columbia for a declaration that the impugned legislation is discriminatory and inconsistent with the Canadian Charter of Rights and Freedoms[FN7] (“the Charter”). The State contends that the Petitioner failed to avail himself of this possible remedy. The State indicates that the Charter came into force in 1985 and is not retroactively applicable to events that occurred prior to 1985. However, the State contends that if the laws impose “an ongoing discriminatory status or condition”[FN8], then the laws would be susceptible to challenge under the Charter.

[FN7] Section 15 (1) of the Canadian Charter on Rights and Freedoms provides that “Every individual is equal before and under the law and has the right to equal protection and equal

benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.”

[FN8] State’s first reply of July 19, 2002; para. 79.

32. With respect to the Petitioner’s allegations of indigence (regarding his access to legal counsel and domestic remedies), the State relies on Advisory Opinion 11/90[FN9] of the Inter-American Court to rebut the Petitioner’s allegations. More particularly, the State contends that the Petitioner has failed to provide evidence to satisfy his burden of proof that his indigence prevented him from invoking and exhausting domestic remedies. The State points out that the Petitioner had the assistance of legal counsel in pursuing his complaint with the Department of Indian Affairs and Northern Development[FN10]. The State asserts that if legal aid is no longer available to the Petitioner, that there are community legal assistance groups[FN11] that assist those with low income in making legal challenges.

[FN9] I/A Court H.R., Advisory Opinion OC-11/90, Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2) (a) and 46(2) (b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No.11, particularly paragraph 41:

“Under Article 46(1)(a) of the Convention and in accordance with general principles of international law, it is for the state asserting non-exhaustion of domestic remedies to prove that such remedies in fact exist and that they have not been exhausted (Velásquez Rodríguez Case, Preliminary Objections, supra 39, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra 39, para. 87, and Godínez Cruz Case, Preliminary Objections, supra 39, para. 90). Once a State Party has shown the existence of domestic remedies for the enforcement of a particular right guaranteed by the Convention, the burden of proof shifts to the complainant, who must then demonstrate that the exceptions provided for in Article 46(2) are applicable, whether as a result of indigence or because of a generalized fear to take the case among the legal community or any other applicable circumstance. Of course, it must also be shown that the rights in question are guaranteed in the Convention and that legal representation is necessary to assert or enjoy those rights.”

[FN10] The State refers to a letter dated February 19, 2001 from the Registrar of Indian and Northern Affairs to Brenda Muliner, Barrister & Solicitor, Legal Services Society of British Columbia; this letter was submitted to the Commission by the Petitioner as one of the annexes to his petition.

[FN11] The State cites as an examples: the Vancouver Community Legal Assistance Society; legal aid clinics run by the University of British Columbia, including a specialized First Nations Legal Aid Clinic in Vancouver.

33. With respect to the Petitioner’s substantive claim regarding the inheritance of his mother’s estate, the State argues that the Petitioner has misinterpreted the law governing the devolution of his mother’s estate. According to the State, the law governing the succession to, and distribution of Gertie Toodlican’s estate was the 1951 Indian Act; under this Act, the sole successor to Gertie Toodlican’s estate was her widow, Charles Walkem, and not Charles

Toodlican (or any other persons). In this regard, the State makes the following submissions[FN12]:

[FN12] See paragraphs 29 to 37 of the State's first reply of July 19, 2002; see also para. 25 of State's second reply of May 12, 2003.

34. Gertie Toodlican inherited a parcel of land from her father (located in the Lower Nicola Reserve) upon his death. At the time of her father's death, she was married to Charles Walkem and a member of the Cooks Ferry Band. Pursuant to the 1951 Indian Act, her membership in the Cooks Ferry Band disqualified her from exercising any rights of possession over the land or devising the land by will to a beneficiary. Under the Act, Gertie Toodlican was only entitled to the proceeds of sale, should the land be sold (section 50 of the 1951 Indian Act). The land was not sold during Gertie Toodlican's lifetime.

35. Gertie Toodlican died on December 21, 1964, survived by her husband Charles Walkem and eight children, including Charles Toodlican. At her death, the right to possession did not form part of her estate; only the right to proceeds of sale thereof. Upon her death, the value of Gertie Toodlican's estate was less than Can\$2000.

36. Under section 48(1) of the 1951 Indian Act, where an estate was worth less than Can. \$2000, the entire estate went to the widow of the deceased, which in this case, was Charles Walkem. The State emphasizes that none of Gertie Toodlican's children, including Charles Toodlican were entitled to succeed to the estate.

37. In response to the Petitioner's assertion that section 48(13) should have governed the distribution of his mother's estate; the State contends that the Petitioner's interpretation of this provision is incorrect. The State asserts that "The phrase 'Illegitimate children ...shall inherit from the mother as if the children were legitimate', does not give illegitimate children the right to inherit exclusive of all other siblings." (emphases supplied by the State)[FN13]. The State argues that this provision merely places illegitimate children in the same place to inherit as legitimate children; in the case of Gertie Toodlican, she bore several children in her marriage to Charles Walkem, seven of whom survived her at death. In the State's view, section 48 (13) would only have had the same right to inherit as those other surviving (legitimate) children of Gertie Toodlican.

[FN13] State's first reply of July 19, 2002; para. 36.

38. If Gertie Toodlican's estate had been valued at more than Can\$2000, her surviving children (including Mr. Toodlican) would have been entitled to a per stirpes share of 2/3 of her estate, after her widow received the first Can\$2000.[FN14]

[FN14] Sections 48 (2) and (4) of the 1951 Indian Act.

39. The State confirms that Charles Walkem ultimately sold the parcel of land in July 1972 for the sum of Can\$1500, which completed the distribution of Gertie Walkem's estate in accordance with the 1951 Indian Act.

40. With respect to the Petitioner's complaints about membership in the Lower Nicola Band, the State indicates that this matter has been resolved, given the Petitioner's acknowledgement that he was readmitted into the Lower Nicola Band in January 2003[FN15].

[FN15] See Petitioner's submission of June 27, 2003.

IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

41. The Petitioner claims that the State violated his rights under the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. The State is a Member of the Organization of American States but is not a party to the American Convention on Human Rights. The Declaration became the source of legal norms for application by the Commission[FN16] upon Canada becoming a member State of the Organization of American States January 8, 1990.[FN17] In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute[FN18], and the Commission's Rules of Procedure to entertain the alleged violations of the Declaration raised by the Petitioner against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States.

[FN16] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[FN17] The Inter-American Court and the Commission have previously determined that the American Declaration of the Rights and Duties of Man is a source of international obligation for the OAS Member States that are not parties to the American Convention on Human Rights, as a consequence of Articles 3, 16, 112 and 150 of the OAS Charter. See Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Statute of the Inter-American Commission on Human Rights, Arts. 1, 20; Rules of Procedure of the Inter-American Commission on Human Rights, Arts. 23, 27, 28-43, 45-47, 49-50; I/A Court H.R., Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights", July 14, 1989, Ser. A No. 19 (1989), paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, IACHR ANNUAL REPORT 1986-1987, paras. 46-49.

[FN18] Article 20 of the Commission's Statute provides as follows:

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
 - (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
 - (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.
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1. Ratione personae

42. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. In accordance with the terms of Article 23 of the Commission's Rules of Procedure, the Petitioner is authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. Mr. Toodlican is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure.

2. Ratione materia

43. Inasmuch as the Petitioner has filed complaints alleging violations of the American Declaration, the Commission is competent *ratione materiae* to examine the substance of the complaints. However, inasmuch as the Petitioner has filed complaints alleging violations of the American Convention, the Commission lacks competence to examine the substance of these complaints, *ratione materiae*, given that the State is not a signatory to this Convention.

3. Ratione loci

44. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man that have taken place in the territory of a State Party, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

4. Ratione temporis

45. The State contends that the Commission lacks competence *ratione temporis* to examine this matter, because the petition is based on facts alleged to have occurred prior to the State's accession to the Charter of the OAS in 1990, and its concomitant assumption of obligations

under the American Declaration. The Petitioner has not expressly addressed this issue, except to assert that he has been left homeless as a result of being unable to succeed to his mother's estate.

46. It is a generally recognized principle of international law that international instruments are not retrospective in effect. The Vienna Convention on the law of treaties codifies this principle in Article 28 which provides that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

47. In keeping with international law, the inter-American human rights system recognizes that States may be liable for violations that originated prior to a State's ratification of a treaty or other international instrument, but continue thereafter[FN19].

[FN19] I/A Court H.R., Case of Blake v. Guatemala. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27; I/A Court H.R., Case of Cantos v. Argentina. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85; I/A Court H.R., Case of Alfonso Martín del Campo-Dodd v. Mexico. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113; I/A Court H.R., Case of Almonacid-Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154; IACHR Report N° 74/90 Case 9850, Hector Geronimo Lopez Aurelli, Argentina, October 4, 1990.

48. With respect to the instruments under consideration, the Commission notes that there is palpably nothing in either the OAS Charter or the American Declaration that evinces any intention on the part of the State to be bound in relation to acts or facts that occurred and ceased to exist prior to acceding to the OAS Charter. There is no disagreement between the parties on the chronology of events that led to Mr. Toodlican's petition. Specifically, the record clearly demonstrates that (a) the Petitioner's membership of the Lower Nicola Band was transferred together with his mother's upon the latter's marriage to Francis Walkem in 1949; and that Mr. Toodlican attained membership in his own right upon attaining the age of majority in 1970; (b) that Gertie Toodlican's estate was distributed after her death in 1964, with the sale of her land being completed in 1972. Assuming that these events represented prima facie violations of the American Declaration, they clearly originated prior to the State's accession to the OAS Charter.

49. The Commission must determine whether the alleged violations have already been consummated prior to the State's accession to the OAS Charter or are continuing. In the case of Jacobo Arbenz Guzman[FN20], the family of a deposed Guatemalan president petitioned the Commission under the American Convention with respect to the unlawful confiscation of his property, by decrees of his de facto successor. This confiscation occurred in 1954, more than 20 years before Guatemala became a signatory to the American Convention. However, in September 1996, the Constitutional Court of Guatemala ruled the decrees to be unconstitutional (with effect from the day of the publication of its ruling in the Official Gazette which occurred on October 04, 1996). After failed attempts to have the court's ruling enforced, the petitioners

resorted to the Commission. The State contended that the petition was inadmissible, *ratione temporis*, given that the confiscation of property occurred prior to Guatemala's accession to the American Convention. However, the Commission found that the petition "referred to the consequences of the confiscation of the property" and that "considering that the Convention was in force in Guatemala when the ruling of the Constitutional Court was issued in 1996, the Commission considers that it has competence over this petition in order to analyze such ruling as well as the actions and omissions of the State after the ruling".[FN21]

[FN20] IACHR Report N° 27/06, Petition 569-99, Admissibility, Jacobo Arbenz Guzman, Guatemala, March 14, 2006.

[FN21] *Id.* Paras. 44, 45.

50. Having regard for Mr. Toodlican's petition, the only post-1990[FN22] events that appear in any way relevant to his claim are his attempts, starting in 1999, via various State agencies to be readmitted into the Lower Nicola Band. As both parties acknowledge, Mr. Toodlican was successfully readmitted in 2003. Unlike the Arbenz case, Mr. Toodlican has concededly taken no legal steps after 1990 to address his core complaint: the devolution of his mother's estate to his stepfather instead of himself.

[FN22] Canada acceded to the OAS Charter on January 08, 1990.

51. Based on the record before it, the Commission considers that the key chronology surrounding the transfer of Mr. Toodlican's membership and the distribution of his mother's estate represents discrete and consummated events that occurred prior to the State's accession to the OAS Charter. The Commission notes that almost 30 years elapsed between the distribution of Gertie Toodlican's estate and the Petitioner's attempts to be readmitted to the Lower Nicola Band as a preliminary step to asserting his right to his mother's estate. While there is an obvious historical nexus between the pre- and post-1990 events, such a nexus does not in the Commission's view, a continuation, such as would enable the Commission to exercise jurisdiction *ratione temporis*. Accordingly, the Commission finds that the issue surrounding the transfer of Mr. Toodlican's membership and the distribution of his mother's estate are inadmissible *ratione temporis*.

52. Based on the foregoing, the Commission finds it unnecessary to consider any other grounds of admissibility.

53. Based on the arguments of fact and of law set out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition under consideration inadmissible *ratione temporis*.
2. To transmit this Report to the State of Canada and to the Petitioners.
3. To publish this decision and to include it in the annual report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 27 day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts and Freddy Gutiérrez, Commissioners.