

DECISION NO. 2009-WIL-024(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN:	Virginia Capot-Blanc	APPELLANT																						
AND:	Regional Manager	RESPONDENT																						
AND:	Marilyn Michel, Violet Markin and Kathryn Capot-Blanc	THIRD PARTY GROUP																						
AND:	Rose Capot-Blanc, Nora Elsie Duntra and Emma Williscroft	THIRD PARTY GROUP																						
AND:	Georgina Ross	THIRD PARTY																						
AND:	Robert Capot-Blanc	THIRD PARTY																						
AND:	Gilbert Capot-Blanc	THIRD PARTY																						
BEFORE:	A Panel of the Environmental Appeal Board David H Searle, CM, QC, Panel Chair																							
DATE:	January 25 to 29, 2010																							
PLACE:	Fort Nelson, BC																							
APPEARING:	<table border="0"> <tr> <td>For the Appellant:</td> <td>Carly K. Chunick, Counsel</td> </tr> <tr> <td>For the Respondent:</td> <td>Maurice Lirette</td> </tr> <tr> <td>For the Third Party Group</td> <td></td> </tr> <tr> <td> Marilyn Michel, Violet Markin</td> <td></td> </tr> <tr> <td> Kathryn Capot-Blanc:</td> <td>William Capot-Blanc, Jr.</td> </tr> <tr> <td>For the Third Party Group</td> <td></td> </tr> <tr> <td> Rose Capot-Blanc, Nora Elsie</td> <td></td> </tr> <tr> <td> Duntra, Emma Williscroft:</td> <td>Carly K. Chunick, Counsel</td> </tr> <tr> <td>For Third Party Georgina Ross:</td> <td>Georgina Ross</td> </tr> <tr> <td>For Third Party Robert Capot-Blanc:</td> <td>Robert Capot-Blanc</td> </tr> <tr> <td>For Third Party Gilbert Capot-Blanc:</td> <td>Gilbert Capot-Blanc</td> </tr> </table>		For the Appellant:	Carly K. Chunick, Counsel	For the Respondent:	Maurice Lirette	For the Third Party Group		Marilyn Michel, Violet Markin		Kathryn Capot-Blanc:	William Capot-Blanc, Jr.	For the Third Party Group		Rose Capot-Blanc, Nora Elsie		Duntra, Emma Williscroft:	Carly K. Chunick, Counsel	For Third Party Georgina Ross:	Georgina Ross	For Third Party Robert Capot-Blanc:	Robert Capot-Blanc	For Third Party Gilbert Capot-Blanc:	Gilbert Capot-Blanc
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APPEAL

[1] The Appellant, Virginia Capot-Blanc, is supported in this appeal by her three daughters, Emma Williscroft, Nora Elsie Duntra and Rose Capot-Blanc, all three of whom have Third Party status in these proceedings ("Third Parties in Support of the

Appellant"). The Appeal is in respect of a decision of the Respondent, Maurice Lirette, Regional Manager, Environmental Stewardship, Peace Region, Ministry of Environment, Province of British Columbia, dated March 23, 2009, made in respect of trapline 755T009 (the "Trapline") located near Fort Nelson in northeast British Columbia.

[2] The decision of the Respondent is that, relying on the October 18, 1961, registry of traplines showing "Samuel Capot-Blanc & Family" as registered on the Trapline, his interpretation of "family" includes nephews and nieces of Sam Capot-Blanc alive in 1961. Consequently, the Respondent confirmed Sam Capot-Blanc's nieces, Marilyn Louise Michel, Kathryn Laura Capot-Blanc, Violet Karen Markin and nephew Gilbert Neil Capot-Blanc (the "Other Third Parties") as being properly registered on the Trapline.

[3] The Appellant, who is the grandmother of the Other Third Parties, would exclude the Other Third Parties on the basis that the Respondent's interpretation of "family" is too broad and should be restricted to herself, her daughters who are the "Third Parties in Support of the Appellant" and Robert Capot-Blanc, in reality a grandson born to Emma Williscroft, but raised by the Appellant as if he were her son.

[4] The Environmental Appeal Board by virtue of section 93 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act* has jurisdiction to hear this appeal. Section 101.1(5) of the *Wildlife Act* provides that the Panel may:

- (a) send the matter back to the regional manager or director, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

[5] The Appellant and the Third Parties in Support of the Appellant seek to reverse the Respondent's decision of March 23, 2009, so as to delete the Other Third Parties from the Trapline. Initially, they also asked the Board to make an order of costs against the Other Third Parties, but did not pursue this request at the hearing.

BACKGROUND

[6] The patriarch of the family, Narcisse Capot-Blanc, was born in July, 1897, and was a member of the Ambroise Tete Noir Band, Fort Vermillion, Alberta, until he and his family officially transferred to the Fort Nelson Indian Band in July, 1947. However, the records before the Panel show that he moved to Fort Nelson in September, 1937, 10 years earlier, and engaged in trapping in the Fort Nelson area since that earlier time. It is unclear from the records exactly when he acquired the Trapline in the name of "Narcisse Capot-Blanc(Sr)Family".

[7] While there is some uncertainty, the records before the Panel show that the Appellant was born June 24, 1913, which would make her 97 as of this writing. She married Narcisse on August 10, 1930, in Fort Vermillion. Together they had five sons (one died shortly after birth) and four daughters: Harry born June 10, 1932; William born May 15, 1936; Adolphus born December 10, 1938; Emma born December 8, 1941; Samuel born April 11, 1944; Nora born May 8, 1947; Rose born August 5, 1950; George born May 11, 1953 and died May 25, 1953; and Georgina, also born May 11, 1953.

[8] The Other Third Parties in these proceedings are the children of William, the second oldest son, who is often referred to throughout the records as Willie. Willie married Lucy Michel on November 1, 1957. She had been Harry's girlfriend (Willie's older brother) before Willie "stole her heart", seemingly a cause of great alarm within the family, leading to Willie's banishment, according to the Appellant, his mother. Willie and Lucy had eight children, one of whom (Joseph) died at birth. Of the seven remaining, the four Other Third Parties were alive in 1961; the remainder were not yet born.

[9] Harry, Narcisse's oldest son, died in 1961. Also in 1961, the Trapline registry was changed to "Samuel Capot-Blanc & Family".

[10] Narcisse died in a house fire in 1971. William died in 1993 and his wife, Lucy, died in 2001. Samuel died in 2007, raising the issue of, in whose name should the Trapline now appear?

[11] The Respondent relied on the 1961 Trapline register when he determined that the Other Third Parties were properly included in the "& Family" part of the 1961 registration: "Samuel Capot-Blanc & Family". The registration purports to be issued under the *Game Act*, the predecessor legislation to the current *Wildlife Act*. Before including the Other Third Parties to the register, the Respondent consulted the November 19, 1985 Ministry Policy titled "Granting Trapping Privileges", wherein a definition of "immediate family member" was given, and included nephews and nieces.

ISSUE

[12] The only issue in this matter is whether the Respondent correctly interpreted "Samuel Capot-Blanc & Family" to include Samuel's nephews and nieces (Willie's children) who were alive in 1961.

RELEVANT LEGISLATION, REGULATION AND POLICY

Game Act, R.S. 1948, c. 135

Interpretation

2 In this Act, unless the context otherwise requires,

"trap-line" means the area or location defined and registered under this Act for the taking of fur-bearing animals thereon by a licensed trapper, and includes any line of traps laid out or set by the licensed trapper on the area or location so defined and registered;

- 42 (1) Without thereby limiting the generality of the provisions contained in section 69, it is declared that the power of the Lieutenant-Governor in Council to make regulations under clauses (g), (h) and (i) of that section extends to providing for the granting of registration, with or without a special annual registration fee.

...

- (3) Registration of trap-lines and the rights of licensed trappers thereunder are subject to and shall be governed by the regulations in force from time to time and the following further provisions: –

(a) No person shall by reason of the registration of a trap-line acquire any estate or title in any land or property within the area comprised in the trap-line; but where a trap-line has been conducted with due observance of the provisions of this Act and the regulations, and where the fur-bearing animals thereon have been conserved to the satisfaction of the Game Commission, the registered holder of the trap-line who has become incapacitated by illness or is otherwise unable to carry on trapping operations, or the personal representatives of a deceased registered holder, may, subject to such conditions as are prescribed by the regulations, and subject to the approval of the Game Commission, nominate by writing filed with the Game Commission a licensed trapper, who shall within the period fixed by the regulations have a prior and exclusive right to become the registered holder of the trap-line under this Act:

(b) Registration of a trap-line shall cease and become void if the registered holder ceases to be the holder of a trapper's licence under this Act:

(c) The granting of a lay-over under subsection (2) in respect of any trap-line shall not relieve the registered holder of the trap-line from the payment of any fee otherwise payable under this Act or the regulations:

(d) Registration of a trap-line may be cancelled by the Game Commission at any time upon proof to its satisfaction that trapping is not being engaged in thereon in accordance with the provisions of this Act and the regulations, or that the registered holder is guilty of an offence against or a violation of any provision of this Act or the regulations.

Wildlife Act, 1966 (B.C.), c. 55

- 3 (4) Subsections (1), (2) and (3) do not apply to an Indian residing in the Province.

Wildlife Act, R.S.B.C 1996, c. 488

Registration of traplines

- 42 (1) A regional manager, or a person authorized by the regional manager, may grant registration of a trapline on Crown land to a person who is, or to a group of persons each of whom is,

- (a) 19 years of age or older, and
 - (b) a citizen of Canada or a permanent resident of Canada.
- (2) A person or group of persons must not be granted registration of more than one trapline unless
- (a) the traplines are contiguous,
 - (b) the person or group of persons has submitted to the regional manager a fur management plan, and
 - (c) the regional manager has approved the fur management plan.
- (3) Registration of a trapline or traplines in the name of more than one person creates a tenancy in common.
- (4) If a holder of the traplines for which a fur management plan was submitted does not observe the undertakings given in the plan, the regional manager may take action under section 61.
- (5) Registration of a trapline does not
- (a) give the holder of the trapline any proprietary rights in wildlife, or
 - (b) restrict the rights of another person
 - (i) to hunt, or
 - (ii) to capture wildlife if authorized by the regulations or a permit.

Use of trapline

- 43** (1) A person must not hold a registered trapline unless the person complies with the regulations and the conditions of his or her licence.
- (2) Despite a regulation or a condition of a licence requiring the holder of a trapline to carry on active trapping, the regional manager may authorize the holder of a registered trapline to temporarily discontinue the use or part of the use of the trapline for a period not exceeding 2 years.

Disputes

- 45** If a dispute arises as to priority of rights respecting any trapline, the matter must, at the request of a party to the dispute, be determined by the regional manager, who may alter, eliminate or reassign part or all of a trapline.

Commercial Activities Regulation, B.C. Reg. 338/82

Abandonment of trapline

- 3.14**(1) No person shall continue to hold a registered trapline unless he or she
- (a) renews his or her licence,

- (b) carries on active trapping on his or her registered trapline to the satisfaction of the regional manager,
- (c) obtains permission from the regional manager to temporarily discontinue the use of his or her registered trapline for a period not exceeding 2 years, or
- (d) uses or causes the use of his or her trapline by a licensed trapper or a person exempted from holding a licence.

(2) Where a person fails to comply with subsection (1), the regional manager shall cancel the registration of his or her trapline

Use of trapline

3.15 For section 3.14, a person fails to use his trapline where within a year he fails to take from the trapline

- (a) fur bearing animals of a value of \$200, or
- (b) 50 pelts,

except where it is unreasonable to expect that value of animals or pelts to be harvested from the trapline.

Ministry of Environment Policy, 4-7-03.03.1 Granting Trapping Privileges, Effective Date: November 19, 1985.

"Immediate family member" – means the father, brother, son, uncle, nephew, grandfather, grandson, mother, sister, daughter, aunt, niece, grandmother, granddaughter, spouse, common law spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, or sister-in-law of a person.

DISCUSSION AND ANALYSIS

The Parties' Positions

[13] In the opening statements of the parties, their views of the issue of who should be included as "Samuel Capot-Blanc & Family" were stated clearly. The Appellant's view, and the view of the Third Parties in Support of the Appellant, is that "family" should include the Appellant, her children currently alive (minus Adolphus who has his own trapline), plus Robert.

[14] The Respondent looked at the registry, chose 1961 as the date of the last registration, and applied the definition of "immediate family member" set out in the Ministry's Policy to those family members alive in 1961.

[15] The Other Third Parties, represented at the hearing by Gilbert and William Capot-Blanc, Jr., while supporting the decision of the Respondent that the Other Third Parties should be registered on the Trapline, felt that the Respondent should have gone further and included *all* of their siblings, not just those born before 1961.

The Appellant's Evidence

[16] The case on behalf of the Appellant consists of evidence from five witnesses. The Appellant, due to her age and frail condition, did not appear. Nothing turns on her nonappearance as her views were fully stated by her daughters, the Third Parties in Support of the Appellant. There was also adequate opportunity to question those views as each of the Third Parties in Support of the Appellant stated them.

[17] The first witness for the Appellant was the Appellant's eldest daughter, Emma Williscroft, one of the Third Parties in Support of the Appellant. She is 68 years of age, a diabetic and uses a cane to get around. Emma admitted that she does not trap the Trapline and has no intention of doing so. She and her husband are thinking of putting a cabin on the Trapline, not to trap, but just so that they can "get out of town".

[18] Emma's memory of life on the Trapline was that it was cold and that, as a very young girl of about 10 years of age, she trapped for squirrels and weasels; she has done no trapping since then. Emma admitted that the benefit of being named on the Trapline register is that, from time to time, she has received cheques by way of compensation for oil and gas companies' use/damage to the Trapline, the latest was \$700. Her reason for resisting the addition of Narcisse's grandchildren to the Trapline registry (Samuel's nieces and nephews) is that her father, Narcisse, "never said they should be added".

[19] Emma also read into the record Exhibit 2-1, a letter signed by the Appellant, which read, in part:

At the time Harry was engaged to Lucy Michel, our second son Willie Capot-Blanc Sr. interfered in that engagement and stole Harry's girl friend away. Willie married her. Because this happened Willie was banished from our trapline. He had disobeyed and went against our immediate family's traditional values.

[20] Emma also admitted that Robert "Boots" Capot-Blanc is her son, though he was raised by her mother, the Appellant, because Emma was unable to do so at the time. The Appellant, as well as the Third Parties in Support of the Appellant, all support the inclusion of Robert on the Trapline, notwithstanding that he is, in fact, a grandson of the Appellant.

[21] Emma explained the 1961 registry of the Trapline in the name of "Samuel Capot-Blanc & Family". She said that Samuel was Narcisse's choice for the Trapline because, even though Samuel was only 17 years old, and a much younger brother to Willie, Samuel could read and write English.

[22] Elsie (Nora) Duntra was the second witness called on behalf of the Appellant. As with her older sister Emma, Elsie is one of the Third Parties in Support of her mother, the Appellant. Elsie, at 62, was born in May of 1947 and currently resides on the reserve at Fort Nelson. In 1961, she was 14 years old and remembers life on the Trapline. She remembers other members of the family being there but not her brother Willie or his family. According to Elsie, Willie and his wife, Lucy, trapped on an adjacent trapline (755T010) but sometimes trapped on both.

[23] Elsie admits that no one traps the Trapline now, and that she would use the cabin that she plans to locate on the Trapline just to "get away" and "to pick berries". She also hopes that her grandchildren would use the Trapline. Asked who the spokesperson for the Trapline has been since Samuel passed away, she responded "Rose and I, mainly Rose".

[24] On questioning from the Respondent, Elsie admitted that, while she has not trapped since 1961, her brother Samuel did until his death in 2007. On questioning by the Panel as to her future intentions, she indicated that she does intend to trap the Trapline. This is at odds with her earlier evidence which was that she would go there "to get away" and to "pick berries".

[25] Elsie admitted to receiving compensation from oil and gas companies in the amount of \$1,200, which she says was split six ways. It is worthy to note that while payment of compensation is admitted, none of the money seems to have been used to restore or renovate the cabins that had been located on the Trapline. She also makes the distinction that, while she agrees to the use of the Trapline by grandchildren, they would not be registered.

[26] The third witness for the Appellant was Rose Capot-Blanc who, at 60 years of age, says that she still uses the Trapline. She claims to have shot two lynx at or near the Trapline in 2009. She said that she drives around and shoots what she can. That would not, in the Panel's view, constitute trapping the Trapline.

[27] As to use of the Trapline by grandchildren, Rose said that "anyone in the family who wants to trap need only ask one of the sisters, they then consult and would likely consent to such a use." She agrees with her sister Elsie that grandchildren may use the Trapline, but not be registered as owners. She said that she feared Gilbert Capot-Blanc, and that if he and the Other Third Parties remained on the register, that "will open up a whole new can of worms." In response to the Panel's question, she said that she plans to trap the Trapline in the future.

[28] The fourth witness for the Appellant was Robert Capot-Blanc who, having been born in 1957 to Emma, but raised by the Appellant as her son, is now 53 years of age. He stated that he currently lives with and cares for the Appellant but that he was raised on the Trapline, having trapped with both of his uncles, Adolphus and Willie. He estimated that he last trapped on the Trapline some five years ago, and admitted that no one traps the Trapline today. He is a heavy duty equipment operator and makes a better living doing that. He stated that he was employed as such by the oil and gas companies operating on the family Trapline, and expressed the view that such activity has adversely affected the Trapline by destroying habitat and causing the animals to move elsewhere. He also said that the ponds are polluted. Robert said that he has received compensation from oil and gas companies for their use of the Trapline over the years.

[29] On questioning by the Panel, Robert said that it is his intention to trap the Trapline in the future but that there is no money in it now, especially "with all the animals chased away". He doesn't know of other grandchildren who want to trap the Trapline, and is not opposed to them doing so, but would want to be there with them.

[30] The fifth witness for the Appellant was Lucy Capot-Blanc, Samuel's wife. She recounted how her husband trapped the Trapline and how, in 1988, they stopped

going to the Trapline. She said that Willie (her brother-in-law and the father of the Other Third Parties) did not build a cabin on the Trapline nor did she know where Willie trapped. She did remember that in the 1990s Willie set traps on the Trapline, but did not pick them up.

[31] The final piece of evidence on behalf of the Appellant was an affidavit of Georgina Ross, a daughter of the Appellant. This was made an Exhibit with the consent of the Other Third Parties based on the statement contained therein that "Due to a disability, I am unable to attend the hearing...." However, the content of the Affidavit is at odds with the evidence of other witnesses who attended the hearing and were subject to cross-examination. Therefore, the Panel has placed no weight on the Affidavit where its contents conflict with the other evidence.

The Respondent's Evidence

[32] Maurice Lirette testified that he became Regional Manager in 2007. It is his decision dated March 23, 2009, that is the subject of this appeal. He described how this matter first arose and the enquiries he made. He also provided the documents that he relied upon which, after some discussion with the Panel, were put together, properly numbered, reproduced in sufficient copies, distributed to the parties, and filed in these proceedings.

[33] Mr. Lirette's review of the file indicated that the 1961 register of the Trapline to "Samuel Capot-Blanc & Family" should be relied upon because that register shows fees paid, a valid signature of an official approving the registration and various official stamps. As well, since 1961, there have been no other registrations. Also, on the back of the registration, annual renewals from 1961 to 1964 are shown.

[34] The registered Application describes the location of the Trapline in degrees and minutes, longitude and latitude, and metes and bounds. It also describes the size and shape of the Trapline. The back of the registration contains an extensive list of family members, including some born after 1961. This indicates that the register was updated from time to time as births were reported. There also seems to be an attempt to delete names as deaths came to the attention of officials; Harry Capot-Blanc's name is crossed out with the date (Dec./64) beside it. Harry died in 1961, so the date must be when the notation was made.

[35] Relevant to the decision of the Respondent, and included on the back of the registration in the following order, are the names of William, his wife Lucy, Narcisse, Virginia (the Appellant), Adolphus, Samuel, Kathryn, Marlin Michel, Violet, Gilbert, Nora, Rosemary, Georgina and seven others. The Respondent asked for birth certificates to determine which of William and Lucy's children were alive in 1961. He determined that those were the Other Third Parties, so he confirmed their right to be on the register.

[36] Mr. Lirette testified that, to be entitled to be registered, one had to be born prior to October 18, 1961, being the date of the application. The Panel notes, however, that some of the names on the back of the registration are of persons born well after that date, for example: William N J Capot-Blanc, born May 23, 1963.

[37] For guidance in making his decision, Mr. Lirette reviewed the Ministry's Policy titled "Granting Trapping Privileges", effective November 19, 1985, wherein a

definition of "immediate family members" is given and includes nephews and nieces. Thus, in answering the question, "who are 'Samuel Capot-Blanc & Family'", Mr. Lirette's decision was that the Other Third Parties, who are nieces and nephews of Samuel, are included if they were born as of 1961.

[38] Mr. Lirette was asked whether, with the benefit of all that he had heard in this hearing, he would make the same decision again. He responded that he would not. He explained that, in reviewing the 1966 *Wildlife Act*, specifically the definition of "trap-line" and the section 3(4) exemption of Indians from the requirement to hold a trapping licence, he would interpret the legislation applicable at the time to require only that there be a trapper on the registration. Provided that the trapper is an Indian, he or she is not required to hold a trappers licence. Looking at who was alive in 1961, and is still alive, and considering what has been said about their intentions to trap, Mr. Lirette believes that only the Appellant meets the requirements.

[39] Mr. Lirette further pointed out the requirements of section 3.14 of the *Commercial Activities Regulation* quoted above. He pointed out that the Appellant is not required to carry on active trapping herself, so long as she causes the use of the Trapline by a qualified trapper (i.e., another First Nations person).

[40] While an interesting turn of events, the appeal to be determined by this Panel is in respect of the decision that was made and dated March 23, 2009, not a decision that, on reflection, might have been made differently. Nor is the Panel required to make the same decision that the Respondent would now have made.

Evidence of the Other Third Parties

[41] The first witness of the other Third Parties was Duane Lowe who recalled being with Willie and Lucy in April of 1993, when Willie talked about his trapline and how his interest in it was going to his oldest boy, Gilbert Capot-Blanc. On cross-examination, the witness admitted that when Willie referred to "his trapline", he did not refer to it by number.

[42] William Whitehead was the second witness called by the Other Third Parties. His evidence was that Willie trapped with his brother Harry and his father Narcisse until 1961.

[43] The third witness was Leo Courtoreille whose evidence was that he trapped with Willie four times, at Goat in 1981/82, at 60 Mile Hill around 1983/84 (both located on the Trapline) and again in 1988/89. He recalled how Willie discussed his trapping with his wife Lucy at 60 Mile Hill and how Willie spoke of his 50/50 interest in the Trapline with Samuel.

[44] The fourth witness was Jessie James Capot-Blanc, one of Willie's youngest sons. He testified that he trapped on the Trapline with his father at 60 Mile Hill then up to Goat and back on a skidoo from 1980 to 1986/87. The main cabin was at Goat, on top of the hill. In 1980, Jessie was 10 years of age. He would sooner drive skidoos and trap than go to school. After 1987, Jessie went slashing and then ran heavy duty equipment while Willie remained trapping beaver for Adolphus on Adolphus' trapline for the next two years. In the 90s Willie spent time at Prophet River but would return from time to time to Lucy and the family.

[45] The fifth witness was William Capot-Blanc, Jr., Willie's second oldest son, his name sake and his favorite. Though not born until after 1961, and therefore not one of the Other Third Parties, William was none the less anxious to support the addition of his siblings to the registry of the Trapline. He recalls being on the Trapline with his father at age 5 or 6. He testified that he personally trapped the Trapline in the early 1990s, from 1992 to 1993, but quit trapping in 1994 due to squabbling with his aunts after his father, Willie, passed away in 1993. Pictures entered as Exhibits show Willie and Lucy in a cabin with William, Jr., skinning a beaver. Jessie is identified in another picture. William, Jr., says that his father was adamant that his children and grandchildren should learn the ways of the land. He testified that his father built a cabin at 60 Mile Hill on the Trapline, and that no one ever disputed Willie's right to trap the line until after Willie died in 1993.

[46] The sixth witness was Gilbert Capot-Blanc, the eldest of Willie's sons, and one of the Other Third Parties. He entered as an Exhibit 460 pages of research which he titled "Capot-Blanc Family Historical Genealogical Study December 2009". Although he did not refer to it in his evidence, this document provided much valuable information to the Panel in understanding the historical context of the Capot-Blanc family, particularly the patriarch, Narcisse Capot-Blanc. This information came from the federal records centre in Burnaby and from the national archives in Ottawa. It speaks to Narcisse's establishment of the Trapline in 1935 and his family's transfer in 1947 from the Ambrose Tete Noir Band in Vermillion, Alberta, to the Fort Nelson Band in British Columbia. Gilbert speaks of his grandfather as a kind man upon whose death "the life went out of our family". Gilbert also remembered his father, Willie, as a successful trapper; in one season he earned \$10,000. He remembers his father trapping in the 1960s and 70s. Gilbert recalls asking his father if he ever transferred his interest in the Trapline to his brother Samuel. Willie told Gilbert that he had not.

The Parties' Final Arguments

[47] On behalf of the Appellant and the Third Parties in Support of the Appellant, counsel argued that the Respondent should not have relied upon the definition of "immediate family member" found in the Ministry's Policy correctly pointing out that policy is not law. While acknowledging that there is no definition of "family" to be found in the *Wildlife Act* or its predecessor legislation, counsel referred the Panel to definitions found in other provincial legislation, such as the *Business Corporations Act* which defines "immediate family", the *Family Maintenance Enforcement Act* which defines "immediate family member", the *Residential Tenancy Act* which defines "close family member", and the *Workers Compensation Act* which defines "member of family". Counsel also cited section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which states:

Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[48] The view of the Appellant is that the definition adopted by the Respondent is too broad and is inconsistent with the grammatical and ordinary sense of the word, citing the usual principles of statutory interpretation as authority for that proposition. Counsel for the Appellant also referred to *Covert v. Nova Scotia (Minister of Finance)*, [1980] 2 S.C.R. 774, wherein it is stated:

A court should ask – what would the words of a statute be reasonably understood to mean by those governed by the statute?

[49] On behalf of the Other Third Parties, both Gilbert and Willie summarized their views, with Gilbert saying “Aboriginal peoples have a broad view of ‘family’.”

[50] The Respondent made no closing argument.

The Panel's Analysis and Findings

[51] While much of the evidence had nothing to do with the issue, it had everything to do with “family”, a family in conflict ever since Willie married Lucy Michel on 1 November 1957. According to the evidence, Willie stole his older brother’s girl friend, Lucy. “Because this happened Willie was banished from the Trapline” says the Appellant. Notwithstanding that statement, however, the evidence is that Willie, his wife Lucy, and their children spent much of their lives on the Trapline, though by no means exclusively so or even exclusively on the family Trapline. As well, their names have remained on the Trapline, and rightly so.

[52] Thus, the practical effect of Willie’s so called “banishment” was minimal at best. Because one’s interest in a trapline, by virtue of section 42(3) of the *Act*, is a “tenancy in common”, that interest cannot be diminished or lost except by death, abandonment, or through action taken by the Regional Manager for some breach of the law. Put simply, the law does not recognize “banishment” from one’s trapline.

[53] From the evidence summarized above, it is clear that the Trapline is not used as such today. The evidence is clear that no one is trapping the line. There are vague expressions of some future use, mostly recreational “to get away”, to “pick berries”, or to train grandchildren. Presently, the main benefit of the Trapline to the Appellant and Third Parties in Support of the Appellant is the compensation payments from oil and gas companies. There is no indication from the evidence that this money is going back into the Trapline to repair or rebuild the cabins.

[54] Based on this evidence, the Panel has considered directing that the Trapline be cancelled due to lack of use. However, the Panel has decided that this would not be a proper use of the Panel’s powers in this case. For one reason, prior to cancelling a trapline there is a procedure that must be followed and this Panel has not followed it. That procedure is set out in Ministry Policy 4-7-03.03.2, titled “Cancellation of Trapping Privileges on Crown Land For inactivity”. As to whether or not such action should be taken, this is left to the Regional Manager to determine.

[55] Although there was a substantial amount of evidence from the Appellant’s witnesses about their issues with Willie, the Panel is not going to get into the minutia of who is right and wrong. The Panel does find, however, that the rights of the Other Third Parties’ father, Willie, to trap on the Trapline remained undiminished until his death.

[56] Turning now to the only issue of relevance in this appeal; namely, the definition of “family” in the context of the 1961 registry of the Trapline. It is the view of the Panel that the definitions found in other provincial legislation provided by the Appellant were not helpful or persuasive. What is helpful is the provision of the *Interpretation Act* which requires a “fair, large and liberal construction” (emphasis added), and the *Covert v. Nova Scotia* case which focused on how those

affected might interpret the words. On the latter point, there was much conflict in the evidence.

[57] What is determinative to the Panel is the registry itself. The registration of "Samuel Capot-Blanc & Family" originated in 1961, but clearly shows additions and deletions of family members after that date. While the recording of names understandably lags the events of births and deaths, that is a function of information availability.

[58] Where the Panel parts company with the Regional Manager is that the Panel would not set entitlement based on who was alive as of 1961, but rather, the "family" of Samuel who were alive prior to his death. After all, Samuel did not die until December 27, 2007, so those who can be properly added to the register prior to his date of death should be considered *prima facie* his family. The Panel says *prima facie* because the test to be applied is whether the family members so added fall with the definition of "Samuel Capot-Blanc & Family". Of note, the wording is not "Samuel Capot-Blanc's Family", which, in the view of the Panel, would have required quite a narrow interpretation.

[59] The finding of the Panel is that, based on all the evidence, the *Interpretation Act* and the case law referred to, the Regional Manager was correct in relying on the Ministry's Policy which broadly interprets family to include nephews and nieces. Because the issue before the Panel was limited to whether the Other Third Parties should be registered on the Trapline, those additional family members who were born before Samuel's death, and who believe they should be added to the register, should apply to the Regional Manager.

DECISION

[60] The Panel has carefully considered all the evidence before it, and the submissions of the parties, whether or not specifically reiterated herein.

[61] For the reasons set out above, the Panel has decided, pursuant to section 101.1(5)(b) of the *Wildlife Act*, to confirm the Regional Manager's March 23, 2009, decision. However, family members alive before the death of Samuel Capot-Blanc should apply to the Regional Manager to be added to the Trapline if they feel so inclined.

[62] The appeal is dismissed.

"David H. Searle"

David H. Searle, CM, QC, Panel Chair
Environmental Appeal Board

February 18, 2010