

Federal Court



Cour fédérale

Ottawa, November 25, 2020 – A decision was issued today by Justice Sébastien Grammond of the Federal Court in file T-892-20:

**BETWEEN: MICHAEL
LINKLATER Applicant**

**TASTAW: MICHAEL LINKLATER
Mawinêhikêw**

and

êkwa

**THUNDERCHILD FIRST
NATION GOVERNMENT,
CHERYL THUNDER,
JONATHON JIMMY Respondents**

**KA-PITIKONÂHK NISTAM-
IYINIWAK OKIMÂNÂHK, CHERYL
THUNDER, JONATHON JIMMY
Naskwêhamâkêwak**

Translation of Summary into Plains Cree

The Federal Court is committed to being more accessible to Indigenous people when they wish to bring legal disputes for resolution by the Court. For example, many Court hearings are held directly in the Indigenous community or via webcast from a Courthouse; and where appropriate, Court procedure is adapted to make additional space for Indigenous protocols and legal traditions. In selected cases, the Court also makes its decisions more accessible by having a summary prepared and recorded in the relevant Indigenous language. The Court thanks the language keeper who assisted with preparation of this summary in Plains Cree.

Summary of Judgment:

[1] Mr. Linklater was elected Headman (or councillor) of the Thunderchild First Nation [Thunderchild] in October 2018. In July 2020, however, the Thunderchild Appeal Tribunal removed him from council, as he had failed to establish his residence on Thunderchild lands after his election, as required by section 3.02 of the Thunderchild First Nation Election Act [Election Act]. In reaching this decision, the Appeal Tribunal dismissed Mr. Linklater's argument that the residency requirement is of no force or effect, as it discriminates between First Nation members based on residence, contrary to section 15 of the Canadian Charter of Rights and Freedoms [the Charter]. The Appeal Tribunal held

Kiskinwahikêwin:

[1] Mr. Linklater kî-nawasônaw Okimâhkân (ahpô opîkiskwêstamâkêw) ohci Ka-Pitikonâhk Nistam-Iyiniwak [Ka-Pitikonâhk] ispîhk Pimihamowi-Pîsim 2018. Maka, ispîhk Opaskowi-Pîsim 2020, ôma Ka-Pitikonâhk Appeal Tribunal kî-pakitinêwak ohci mâmawihitowin, ayis namôya ê-kî-wîkit ita Ka-Pitikonâhk askiy mwêstas ispîhk ka-kî-nawasonihk, ka-isi nitawêyihcikâtêk ohci section 3.02 ohci ôma Ka-Pitikonâhk Nistam-Iyiniwak Pimipahtâwin Pimohtêstamâkêwin [Pimipahtâwin Pimohtêstamâkêwin]. Ka-kisihcikâtêk ôma itasiwêwin, ôma Appeal Tribunal ânwêhtam Mr. Linklater ô-kîhkâhtowin isi êkwânima ita ka-wîkîhk nitawêyihcikâtêwin namôya

that it had jurisdiction to apply only Thunderchild laws, not Canadian laws such as the Charter.

[2] Mr. Linklater asks the Court to find that the Appeal Tribunal has jurisdiction to decide whether the residency requirement is contrary to the Charter. He also asks the Court itself to make that decision on judicial review or, in other words, to declare the residency requirement invalid. Lastly, Mr. Linklater seeks an order that a referendum be held to amend the Election Act, and to “set parameters” for that referendum.

[3] The Court decided that the Charter applies to Thunderchild’s Election Act and that the Appeal Tribunal has jurisdiction to apply the Charter. The Court noted that this conclusion flows from previous decisions of the Federal Court of Appeal.

[4] The Court also considered the Appeal Tribunal’s opinion that it could apply only Thunderchild laws, not Canadian laws such as the Charter. The Court noted, however, that there are many common values and contact points between Thunderchild law and Canadian law. After analyzing these links, the Court concluded that Thunderchild wanted its Appeal Tribunal to be able to apply the Charter to the Election Act.

sôhkêyhtâkwân ahpô nakinamâkêwin, ayis êkwânima âtawêyhtakwan tastaw Nistam-Iyiniwak tipêyhtâkosiwin ohcipayiwîn ita ka-wîkîhk ohci, asâwâc ohci section 15 ôma Nahêyhtowin ohci Miyikosiwin êkwa mîna Tipêyimisowin [ôma Nahêyhtowin]. Ôma Appeal Tribunal ka-miciminikâtêk êkwânima ê-ayâw tipêyihcikêwin ta-pihkohtât piko Ka-Pitikonâhk itasiwêwina, namôya Canadian itasiwêwina tâpiskôc ôma Nahêyhtowin.

[2] Mr. Linklater kakwêcihkêmw Wiyasiwêwinohk ta-miskikâtêk ôma Appeal Tribunal ayâw tipêyihcikêwin ta-wiyasiwatahk mahti oma ita ka-wîkîhk kî-nitaweyihcikâtêk êkwânima asâwâc isi oma Nahêyhtowin. Kakwêcihkêmw mîna Wiyasiwêwinohk piko ta-osihtat êkwânima itasiwêwin isi wiyasiwêwinihk kanawâpahcikâtêwin ahpô, pitos isi itwêwin, ta-wîhta ôma ita ka-wîkîhk ka-nitaweyihcikâtêk namôya tapwêyhtakwan. Piyisk, Mr. Linklater natonam sîhkihkêmwîn êkwânima pimipahtâwin ta-ihtako ta-kwêskastâhk ôma Pimipahtâwin Pimohtêstamâkêwin, êkwa ta- “ascikâtêkihk nitawêyihcikêwina” kiki êkwânima pimipahtâwin.

[3] Ôma Wiyasiwêwinohk itasiwêw êkwânima ôma Nahêyhtowin âpacihihkâtêw isi Ka-Pitikonâhk Pimipahtâwin Pimohtêstamâkêwin êkwa ôma Appeal Tribunal ayâw tipêyihcikêwin ta-astat ôma Nahêyhtowin. Ôma Wiyasiwêwinohk wîhtamâkêw êkwânima ôma kîsihtâwin pimakotêw kayakhtê itasiwêwina ohci Okimânâhk Wiyasiwêwinohk ohci Appeal.

[4] Ôma Wiyasiwêwinohk mîna mamitonêyhtam êkwânima Appeal Tribunal otêyhtamowin ta-kiî-ascikâtêw piko Ka-Pitikonâhk wiyasiwêwina, namôya Canadian wiyasiwêwina tâpiskôc ôma Nahêyhtowin. Ôma Wiyasiwêwinohk wîhtamâkêw, maka, ata ihtakon miscahis pêyakwan nîsôhkamâkêwin kistêyihcikatewina êkwa âniskômohcikan nâkatohkêwina tastaw Ka-Pitikonâhk wiyasiwêwin êkwa Canadian wiyasiwêwin. Ispîhk ka-wapahcîkatekihk ohi âniskômohcîkana, ôma Wiyasiwêwinohk kîsihtâw êkwânima Ka-Pitikonâhk kî-nitawêyhtam Appeal Tribunal ta-

kaskihocik ta-ascikâtek ôma Nahêyihowin isi Pimipahtâwin Pimohtêstamâkêwin.

[5] As a result, the Court declared that Mr. Linklater's removal from Council was invalid. It sent the matter back for the Appeal Tribunal to decide whether the residency requirement in the Election Act is contrary to the Charter. The Court declined Mr. Linklater's invitation to decide the matter itself, because the Appeal Tribunal would be in a better position to consider the relevance of Cree culture and Thunderchild political institutions to the application of the Charter. The Court declined to order the holding of a referendum, as such an order would interfere in Thunderchild's political process.

[5] Kî-itôtamâkan, ôma Wiyasiwêwinohk wîhtam êkwânima Mr. Linklater ka-pakitinihk ohci Mâmawihitowin kî-tapwêyihakwan. Kawî itisahikâtek isi Appeal Tribunal ta-wiyasiwatahk mahti ôma ita ka-wîkikh nitawêyihcikâtekwin pîhci ôma Pimipahtâwin Pimohtêstamâkêwin kâyiwêhk asâwâc isi oma Nahêyihowin. Ôma Wiyasiwêwinohk asêpayihow Mr. Linklater ô-natotamawin ta-wiyasiwatahk ôma âyimihowin, ayis ohci Appeal Tribunal nawac ta-kî-nahipayin ka-mamitonêyihcikâtek ôma kwayaskwêyihcikêwin ohci Nehiyaw isihcikêwina êkwa Ka-Pitikonâhk okimânâhk tasihkêwina isi ôma masinahikan ohci Nahêyihowin. Ôma Wiyasiwêwinohk asêpayihow ta-miciminahk kihci itasiwêwin, ayis sîhkikhêmowin ta-kî-âyimipayin pîhci Ka-Pitikonâhk okimânâhk paminikêwin.

A copy of the decision can be obtained via the Web site of the Federal Court: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/489045/index.do>

An audio recording of this summary in Plains Cree is available on the Court website at: <https://www.fct-cf.gc.ca/en/pages/media/webcast>

KISKINWAHIKÊWIN - <https://www.fct-cf.gc.ca/fr/pages/medias/webemission#cont>