

Court File No.

FEDERAL COURT

B E T W E E N:



MARLEN HORSE, ANDREA BEAR, JONAS THUNDERCHILD,
DERRICK HORSE, MICHAEL LINKLATER, WALLY AWASIS,
TAYLOR LINKLATER, CHRIS MOYAH, BRANDON BEAR,
VIRGIL AWASIS, WILLIAM WEEKUSK, NOREEN MEETOOS,
JAVEN JIMMY, SHAYNE ARMSTRONG, DRAYTON ANGUS,
GLORIA BADGER, YVETTE MCCALLUM, DONNA WAPASS,
KEN AWASIS and SHELLEY ANGUS

Applicants

and

THUNDERCHILD FIRST NATION,
as represented by its Chief and Headmen

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Regina, Saskatchewan.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date April 15, 2024 Issued by Jonathan Macéna
(Registry Officer)

Address of
local office: The Court House
2425 Victoria Avenue
Regina SK S4P 4W6

TO: **THUNDERCHILD FIRST NATION, as represented by its Chief
and Headmen**

Attention: Steve Carey and Logan Newlove Bains
Maurice Law Barristers & Solicitors
Saskatoon Office
209 2nd Ave N
Saskatoon, SK S7K 2B6
Telephone: 306.914.2600
Email: LNewlove@mauricelaw.com
(pursuant to Rule 304(1)(b)(ii))

AND TO: **The Attorney General of Canada**

Department of Justice Canada
Prairie Regional Office - Saskatoon
Saskatoon Square
410 - 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Deputy Regional Director General
Telephone: 306-518-0800
Fax: 306-975-4030
Email: AGC_PGC_SASKATOON@JUSTICE.GC.CA
(pursuant to Rule 304(1)(b)(iii))

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée
À l'original déposé au dossier de la Cour fédérale.

Filing Date
Date de dépôt : 12-APR-2024

Dated
Fait le : 15-APR-2024

APPLICATION

1. This is an application for judicial review under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, of a decision by the Thunderchild First Nation Appeal Tribunal (the “**Tribunal**”) on or about March 15, 2024 (the “**March 15 Decision**”) to deny the Applicants access to the Tribunal to review:

(a) a decision by Thunderchild First Nation (“**TCFN**”), as represented by its Chief and Councillors, who are also referred to as Headmen (the “**Government**” or “**Respondent**”) on or about January 8, 2024 (the “**January 8 Decision**”) to:

- (i) unilaterally fix low *per capita* distributions to TCFN Citizens arising from the Treaty 6 Agricultural Benefits Settlement (“**Settlement**”) funds (the “**Funds**”);
 - (ii) enter into the Agreement between His Majesty the King in Right of Canada and TCFN and the Thunderchild First Nation Legacy Trust (the “**Trust Agreement**”);
 - (iii) take a loan in respect of the Funds (the “**Loan**”); and
 - (iv) authorize future borrowing in respect of the Funds; and
- to do so without broad community consensus by the Citizenship of TCFN and in violation of the TCFN Legislation governing due process;

(b) the unlawful enforcement of the January 8 Decision;

(c) the Respondent’s ongoing acts and omissions in violation of TCFN Legislation governing the Government’s obligations of financial transparency and reporting to Citizens; and

- (d) the Respondent’s ongoing acts and omissions which unlawfully deny TCFN Citizens access to justice.

THE APPLICANTS MAKE APPLICATION FOR:

2. an Order, in the nature of *mandamus*, directing the Tribunal to comply with its public legal duty to fulfil the requirements under the *Thunderchild First Nation Appeal Tribunal Act* (“*Appeal Tribunal Act*”) to hear an application by the Applicants and others seeking an Order:

- (a) quashing and setting aside the January 8 Decision as being unreasonable and in violation of TCFN Legislation and requirements of procedural fairness and referring the January 8 Decision back to the Government for determination in accordance with the *Thunderchild First Nation Constitution* (“*TCFN Constitution*”) and requirements of procedural fairness; and
- (b) declaring that:
 - (i) the January 8 Decision was made unlawfully;
 - (ii) TCFN Citizens, as beneficiaries of the Funds, are entitled to receive a full and accurate copy of the Settlement and notice of a referendum, hand delivered or sent by mail, at least 30 days before exercising the Citizens’ communal right to vote on ratification of the Settlement, as set out in subsection 8.06(b)(iii) of the *TCFN Constitution*;
 - (iii) TCFN Citizens, as beneficiaries of the Funds, are entitled to receive a full and accurate copy of the Trust Agreement and notice of a referendum, hand delivered or sent by mail, at least 30 days before exercising the Citizens’ communal right to vote

on ratification of the Trust Agreement, as set out in subsection 8.06(b)(iii) of the *TCFN Constitution*;

- (iv) TCFN Citizens, as beneficiaries of the Funds, are entitled to deliberate upon *per capita* distributions prior to exercising the Citizens' communal right to decide the time and amount of Settlement *per capita* distributions by means of a ratification vote;
- (v) the Government has a public legal duty to administer a sufficiently robust and procedurally fair process, culminating in a ratification vote for the time and amount of Settlement *per capita* distributions, to meet the requirements of the *TCFN Constitution* and the common law;
- (vi) the Government's public legal duty to administer a sufficiently robust and procedurally fair process includes the obligation to provide TCFN Citizens with reasons for any decisions in respect of the amount of *per capita* distributions to be paid from funds of which TCFN Citizens are beneficiaries;
- (vii) the January 8 Decision was unconstitutional for having disenfranchised the Applicants and other TCFN Citizens of their fundamental freedoms, democratic and Aboriginal rights enshrined in *The Constitution Act, 1982*, (the "**Canadian Constitution**");
- (viii) the Government breached its duty of fairness to the Applicants and other TCFN Citizens by giving no or inadequate reasons supporting the January 8 Decision, and by depriving the Applicants and other TCFN Citizens of their rights to be heard and knowing the case to meet relative to the January 8 Decision;
- (ix) the Government failed to fulfill its obligations under section 15.05 of the *Appeal Tribunal Act*;
- (x) the Government obstructed or failed to provide TCFN Citizens access to Tribunal;
- (xi) the Government has breached its obligations under section 11.01 of the *TCFN Constitution* and under subsections 31(1), 31(2), 31(3), 80(2), 81(3)(a) and 81(4) of the *Thunderchild First Nation Financial Administration Act, 2019* ("**Financial Administration Act**"); and
- (xii) the Government breached its obligations to be governed by the Rule of Law so as to ensure fairness and security for all TCFN

Citizens and persons dealing with TCFN, as set out in section 8.02 of the *TCFN Constitution*, and so acted outside of its jurisdiction under section 8.04 of the *TCFN Constitution*;

- (c) directing the Government to:
 - (i) present annual audited financial reports for TCFN and its empowered entities (including the Trusts) at a General Band Meeting, as is required by section 11.01 of the *TCFN Constitution*;
 - (ii) make audited annual financial statements available for inspection by Citizens as required by subsection 80(2) of the *Financial Administration Act*;
 - (iii) provide annual reports on the operations and financial performance of TCFN to Citizens on request as required by subsection 81(3)(a) of the *Financial Administration Act*;
 - (iv) provide notice of meetings at which any of (a) the multi-year financial plan; (b) the annual budget; and (c) an amendment to the annual budget is to be presented for approval, as required by subsection 31(2) of the *Financial Administration Act*;
 - (v) facilitate TCFN Citizens' access to the part of any meeting at which any of (a) the multi-year financial plan; (b) the annual budget; and (c) an amendment to the annual budget is to be presented for approval, as required by subsection 31(3) of the *Financial Administration Act*;
 - (vi) establish policies or procedures, or give directions, as required in subsections 31(1), 68(2) and 81(4) of the *Financial Administration Act*; and
 - (vii) make contact information for the Tribunal and for the Tribunal Registrar available on a bulletin board or in another conspicuous location in TCFN's main administrative office and when requested by any person, as required in section 15.05 of the *Appeal Tribunal Act*;
- (d) for their costs of that application; and
- (e) for such further and other relief as the Tribunal may deem just; and

3. the costs of this Application; and
4. for such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

A. THE PARTIES

5. The Applicants, Marlen Horse, Andrea Bear, Jonas Thunderchild, Derrick Horse, Michael Linklater, Wally Awasis, Taylor Linklater, Chris Moyah, Brandon Bear, Virgil Awasis, William Weekusk, Noreen Meetoos, Javen Jimmy, Shayne Armstrong, Drayton Angus, Gloria Badger, Yvette Mccallum, Donna Wapass, Ken Awasis and Shelley Angus are Citizens of TCFN and are also Aboriginal persons within the meaning of section 35 of the *Constitution Act, 1982*.

6. The Applicants apply to the Court in their capacity as Citizens directly and adversely impacted by the March 15 Decision, the January 8 Decision, the enforcement of the January 8 Decision and by the Government's ongoing violation of TCFN Legislation respecting financial transparency and reporting to Citizens. Further, the Applicants bring this Application to the Court with the knowledge and support of numerous TCFN Citizens who were inadequately consulted and disenfranchised of their right to vote on the Fund distribution, and who are also directly and adversely impacted by the Government's ongoing violation of TCFN Legislation. The Applicants assert private and public interest standing in the Court.

7. The Respondent is a band as defined in the *Indian Act*, R.S.C. 1985, c. I-5. TCFN is located in Turtleford, Saskatchewan, Canada, in Treaty 6 territory.

8. The Government is comprised of Chief Delbert Wapass and Councillors Katrina Frank, Walter Jimmy, John Noon, Gerald Okanee Sr., Leonard Sapp, Melvin Thunderchild and Billy Yellowhead.

9. The *TCFN Constitution* and *Appeal Tribunal Act* create the Tribunal and confer the Tribunal's jurisdiction to hear and resolve any conflicts relating to all matters within TCFN territory and jurisdiction in accordance with the *TCFN Constitution* and TCFN Legislation. The Tribunal is the federal board, commission, or other tribunal in this application, within the meaning of section 2 of the *Federal Courts Act*.

10. At all material times, the Government and the Tribunal were subject to the *Canadian Constitution*, the *Indian Act*, the *TCFN Constitution*, TCFN Legislation and common law when exercising their powers and authorities of public office.

11. TCFN has approximately 3,000 Registered band members, of which approximately 2000 are over 18 years old. Over 75% of TCFN Citizens live off reserve.

B. BACKGROUND TO THE UNDERLYING APPLICATION

(a) The Meetings

12. On October 29, 2023, there was an initial meeting held on the TCFN reserve regarding the Settlement Funds and the Trust Agreement (the "**Initial Meeting**"). There were also three additional meetings, characterized by the Government as

information sessions, held in Saskatoon, Edmonton and on TCFN reserve regarding the Settlement Funds and the Trust Agreement held on December 19, 20 and 21, respectively (collectively with the Initial Meeting, the “**Meetings**”).

13. The Government provided three days’ notice of the Initial Meeting via the TCFN mobile application. There was approximately 30 days of notice provided to TCFN Citizens in advance of the additional Meetings. In the case of all Meetings, notice was not provided to all TCFN Citizens, and the notice that was provided was inconsistent. For example, only some TCFN Citizens received an information package from the Government regarding the Settlement and the Trust Agreement and the upcoming Vote (defined below) and some TCFN Citizens received incomplete versions of the information package. Some TCFN Citizens only received such information packages days prior to the Vote. Some TCFN Citizens received no notice at all.

14. At the Meetings, TCFN Citizens in attendance expressed a desire that all Funds be subject to a *per capita* distribution and not be invested in trust. TCFN Citizens also requested a forensic audit of existing TCFN trusts and debt prior to the Funds being put in trust. The Government did not address these requests at any time during or following the Meetings. On November 10, 2023, hundreds of TCFN Citizens signed a petition for a full payout of the Settlement Funds, rather than investment in trust. The Government did not respond to this petition at any time.

15. The Applicants were not consulted in the conduct of the Meetings. To their knowledge, the majority of TCFN Citizens wanted to vote upon how to distribute the

Funds, or otherwise be consulted about the distribution in question. To the Applicants' knowledge, many TCFN members were not given advance notice of the Meetings or consulted in the conduct of the Meetings.

16. To the Applicants' knowledge, at the Meetings:

- (a) the Government expressed no questions that were clear and otherwise unassailable to be voted upon;
- (b) the Government refused, neglected or failed to explain the purpose of a vote and the consequence arising from an affirmative or negative vote and, in fact, pressured TCFN Citizens to vote in favour;
- (c) the Government failed to permit all TCFN Citizens to debate the merits of the ballot questions; and
- (d) the Government refused, neglected or failed to permit all eligible TCFN Citizens to vote on a question to distribute the Funds.

17. The Government also failed to share certain information regarding related loans or the management of TCFN finances.

(b) The Vote

18. The vote on the Settlement, the Funds and the Trust Agreement (the "Vote") took place during a period ending on January 8, 2024.

19. The Vote was conducted in person and by electronic ballots, using onefeather.ca, which is not authorized by TCFN Legislation. The Government did not consult the TCFN Citizens or hold a vote to decide whether to use electronic voting.

20. The questions on the ballots only allowed for yes / no responses and required TCFN Citizens to both agree to the terms of the Settlement and authorize and direct the Government to sign all documents and do everything necessary to give effect to the Settlement and Trust Agreement. There was no option for TCFN Citizens to approve the Settlement without approving the Trust Agreement, or to receive *per capita* distributions without agreeing to both portions of the double-barreled ballot question.

21. There were approximately 2000 eligible voters and TCFN reported 450 electronic ballots and a low number of in-person votes. The Applicants understand that certain of their deceased relatives were recorded on the voting list.

22. Following the Vote, the Government announced that the members of TCFN had voted to approve the Settlement and the Trust Agreement and as such, TCFN had completed all necessary steps to ratify the Settlement. Pursuant to the January 8 Decision, TCFN adult Citizens are entitled to receive a \$25,000 distribution, and TCFN minors are entitled to receive a \$5,000 distribution, with the remainder to be held in trust.

(c) The Loan

23. It is the Applicants' understanding that the Government has secured or has taken steps to secure a bridge loan with CIBC to provide the *per capita* distribution to

TCFN Citizens. The Applicants and other TCFN Citizens were not consulted, nor did they vote, on the Government's decision to secure the Loan.

24. TCFN Citizens have not been provided access to TCFN's financial statements from 2021 to present and these financial statements are not posted online. The Government has not shared the financial statements at TCFN meetings, nor have they shared the information with any TCFN Citizens, to the Applicants' knowledge, including some of the Applicants who have requested this information, contrary to the Government's obligations under TCFN law.

(d) The Release

25. Following the January 8 Decision, contrary to TCFN law, the Government has circulated an agreement providing for the release of the Funds to TCFN Citizens in exchange for granting a "complete discharge and indemnity" to CIBC Trust Corporation and Thunderchild First Nation in respect of the *per capita* distribution (the "**Release**"). The Release does not include a date or dollar amount.

26. The Government has not provided TCFN Citizens with an explanation of the purpose of the Release. However, TCFN Citizens understand they are required to sign the Release in order to receive their *per capita* distribution and some have, in fact, signed the Release.

27. The Release has been provided by mail and in person on reserve and is also available via the TCFN mobile application but has not been sent by mail to off-reserve TCFN Citizens.

28. On March 25, 2024, the Government began paying *per capita* distributions only to those TCFN Citizens who have signed the Release.

(e) Application to the Tribunal

29. An application to the Tribunal for review of a government decision relating to matters within TCFN territory and jurisdiction, in accordance with the *TCFN Constitution* and TCFN Legislation, must be made within 60 days of the subject decision, and is commenced by submitting a Notice of Application to the Registrar of the Tribunal, or alternatively to any member of the Tribunal.

30. In March of 2024, the Applicants attempted to commence an application with the Tribunal concerning deficiencies in the Vote and in the Government's compliance with financial transparency requirements set out in TCFN Legislation.

31. Pursuant to section 15.05 of the *Appeal Tribunal Act*, TCFN's Senior Administrative Officer is required to make names and contact information for the Tribunal members and for the Tribunal Registrar available on a bulletin board or in another conspicuous location in TCFN's main administrative office and provide this information to any person who requests the same.

32. However, contact information for the Tribunal is not publicly available. Therefore, in order to commence their application by submitting their Notice of Application to the Tribunal, the Applicants sought to obtain contact information for the Registrar of the Tribunal as follows:

- (a) On February 29, 2024, counsel for the Applicants requested the information from Melvina Jimmy, front desk reception for TCFN, who stated that she did not have the Tribunal's contact information and suggested that counsel for the Applicants speak with Curtis Heide, Director of Operations for TCFN;
- (b) On February 29, 2024, counsel for the Applicants left a voicemail message at Curtis Heide's cell phone number requesting that he provide the Tribunal's contact information;
- (c) On February 29, 2024, counsel for the Applicants attempted to leave a voicemail at Curtis Heide's office number but were unable to do so because the voicemail box was full;
- (d) On March 1, 2024, counsel for the Applicants spoke with Melvina Jimmy and again requested the Tribunal's contact information and that Melvina Jimmy pass the request along to anyone who may have the information;
- (e) On March 4, 2024, counsel for the Applicants spoke with Steve Carey, external counsel for the Respondent, explained the nature of the Applicants' application to the Tribunal and previous attempts to obtain the Tribunal's contact information, and requested that Mr. Carey provide the Tribunal's contact information to enable the Applicants to

submit their Notice of Application; Mr. Carey stated he would follow up with the Respondent to provide contact information for the Tribunal;

- (f) On March 5, 2024, counsel for the Applicants sent an email to Steve Carey again requesting the Tribunal's contact information;
- (g) On March 8, 2024, counsel for the Applicants sent a further email to Steve Carey requesting a response to the request for the Tribunal's contact information and received a response declining to provide this information;
- (h) On March 8, 2024, counsel for the Applicants spoke with Curtis Heide who refused to provide any contact information for the Tribunal; and
- (i) On March 8, 2024, counsel for the Applicants spoke with Phyllis Paddy, who they understand is Executive Director for TCFN, and who said she would provide contact information for the Tribunal but did not follow up to provide that information.

33. In light of TCFN's refusals to provide the Tribunal contact information necessary to submit a Notice of Application to the Tribunal, on March 8, 2024, the Applicants served their Notice of Application on the Respondent by way of email, fax and mail. The Applicants copied external counsel for TCFN on their service of the Notice of Application by email and by registered mail.

34. The Applicants also included a cover letter with their Notice of Application, signed by their counsel, which explained that the Applicants had been unable to obtain the information necessary to submit the Notice of Application to the Tribunal and would comply with other submission requirements set out in TCFN Legislation as soon as the Tribunal information was provided enabling the Applicants to do so, including posting security for costs.

35. On March 15, 2024, counsel to the Applicants received a letter from the Respondent stating the Government's position on the Applicants' Notice of Application, including that the Applicants' Notice of Application and security for costs had not been submitted to the Tribunal and that the application could therefore not proceed. This letter contained no response to the Applicants' repeated requests for the Tribunal's contact information.

36. On March 22, 2024, counsel to the Applicants sent a responding letter to counsel for the Respondent, reiterating the Applicants' position in its Notice of Application addressed to the Tribunal and advising that without the Tribunal's contact information, the Applicants would proceed to bring an Application before this Court.

C. THE TRIBUNAL WAS UNDER A PUBLIC DUTY TO ACT

37. The Tribunal was under a public legal duty to act in this case, which was owed to the Applicants.

38. The grounds for review of the January 8 Decision, and related actions taken by the Government, advanced by the Applicants before the Tribunal fall within the Tribunal's authority and the remedies sought are properly sought before the Tribunal.

(a) TCFN Laws

39. The Government is responsible for enforcing the *TCFN Constitution* and all TCFN Legislation, and all TCFN Citizens and other people dealing with TCFN have the right to seek remedies from the Tribunal for violations of the *TCFN Constitution* and TCFN Legislation (section 8.07).

40. The *TCFN Constitution* creates a legal and political system based on the Rule of Law (section 8.02) and constitutional supremacy (section 8.03). It sets limits on the Government's powers (section 8.04) and enshrines general rights of all TCFN Citizens (section 2.01), including rights to equality, due process and freedom of speech.

41. The *TCFN Constitution* also prescribes specific rules of procedure for referenda (section 8.06). TCFN custom requires that these rules of procedure be followed in the referendum for ratification of the Settlement Agreement and Trust Agreement.

42. Further, the *TCFN Constitution* requires that the Government call at least two General Band Meetings of eligible voters in each fiscal year, one of which must be an open agenda meeting for TCFN Citizens (section 9.01) and requires that the Government present the annual audited financial reports of TCFN to Citizens at a General Meeting (section 11.01).

43. The *Financial Administration Act* governs the financial administration of TCFN (section 7) and provides that the Government is responsible for all matters relating to TCFN's financial administration even if those matters have been delegated (subsection 8(1)).

(b) Constitutional Law

44. Any violations of the Applicants' constitutional rights by the Government in its January 8 Decision and its related actions under review are properly considered by the Tribunal. The Tribunal may determine any question of law that arises in an application and has jurisdiction to apply the *Canadian Constitution*.

45. The January 8 Decision deprived the Applicants and every other disenfranchised TCFN Citizen of their right to play a meaningful role in the distribution of the Funds in which they hold communal beneficial interests.

46. The January 8 Decision was made without a proper referendum to authorize the Government to decide how to distribute the Funds. The Respondent's failure to hold a proper referendum, to notify or meaningfully include the Applicants in the Meetings, and to notify Meeting participants of the legal consequence of their answers on a vote, deprived the Applicants and the collective TCFN Citizens of their right to vote in an informed manner.

47. Further, the January 8 Decision altogether disenfranchised many or all TCFN Citizens of their right to vote on the distribution of Funds. The right to vote is

supremely protected under the *Canadian Constitution*, just as it is a protected aboriginal right under TCFN law.

48. In particular, the Applicants' voting activities fall within the freedom of expression enshrined in paragraph 2(b) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**"). The January 8 Decision denied TCFN Citizens the opportunity to exercise these voting rights. The purpose and effect of the January 8 Decision was to restrict the TCFN Citizens' freedom of expression.

49. To meaningfully vindicate the Applicants' fundamental freedom of expression, remedies under section 24 of the *Charter* are properly sought before the Tribunal.

(c) Administrative Law Grounds

50. The Respondent also breached its duty of procedural fairness to the Applicants by providing no, or inadequate, reasons in support of the January 8 Decision. Such administrative law grounds are also properly considered by the Tribunal.

51. The notice provided to the TCFN Citizens in advance of both the Meetings and the January 8 Decision does not fulfill the purposes of fairness to the Applicants or justification, transparency and intelligibility.

52. Due to the importance of the January 8 Decision, the Respondent was obliged to give reasons in support of its Decision. However, none were given or communicated to the Applicants or, to their knowledge, to other TCFN Citizens.

53. The January 8 Decision was made without hearing from the Applicants and without disclosing to them or the other TCFN Citizens any factors which the Respondent considered relevant to the Decision so that the Applicants or the other TCFN Citizens could meaningfully make submissions or lead evidence before the Government made its Decision.

(d) The *Indian Act*

54. The Tribunal has jurisdiction to consider the legal effect of the *Indian Act* on the January 8 Decision. In this case, the January 8 Decision is *ultra vires* the *Indian Act*.

55. The January 8 Decision was not made pursuant to the consent of a majority of the electors of the TCFN Citizens. Accordingly, pursuant to subsection 2(3)(a) of the *Indian Act*, the Decision is deemed not to have exercised a power conferred on the Government and is of no legal force.

56. Further, the Meetings were not duly convened in accordance with TCFN law and custom. Accordingly, pursuant to subsection 2(3)(b) of the *Indian Act*, the January 8 Decision is deemed not to have exercised a power conferred on the Government and is of no legal force.

D. CLEAR RIGHT TO THE PERFORMANCE OF THE DUTY

57. The Applicants have a clear right to the performance of the Tribunal's public legal duty. They have demanded performance of the duty and provided a reasonable

amount of time for the Tribunal to comply with the demand. The Tribunal's refusal to comply is implied based on the Government's responses to the Applicants.

58. To date, the Respondent has failed to provide contact information for the Tribunal and this information is not publicly available. The Applicants are therefore unable to commence an application with the Tribunal. This constitutes the March 15 Decision to make the Tribunal process unavailable to the Applicants.

E. OTHER GROUNDS OF REVIEW

59. The Applicants will rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

60. An affidavit or affidavits in support of the Application; and

61. Such further and other materials as counsel may advise and this Honourable Court may permit.

THE APPLICANTS REQUEST THAT THE RESPONDENT SEND A CERTIFIED COPY OF THE FOLLOWING MATERIAL THAT IS NOT IN

**THE POSSESSION OF THE APPLICANTS BUT IS IN THE POSSESSION OF
THE RESPONDENT TO THE APPLICANTS AND TO THE REGISTRY:**

62. Records and documents related to the March 15 Decision, including the contact information for the Tribunal.

63. The Applicants respectfully request that the Respondent tabs its Rule 317 production for ease of reference.

DATED at Toronto, Ontario this 12th day of April, 2024.

OSLER, HOSKIN & HARCOURT LLP

Per: _____



Marleigh Dick

April 12, 2024

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