

**IN THE MATTER OF THE REQUEST FOR THE THUNDERCHILD FIRST NATION
APPEALS TRIBUNAL TO QUASH AND SET ASIDE THE APPOINTMENT OF THE
CHIEF ELECTORAL OFFICER AND DEPUTY ELECTORAL OFFICER**

DECISION

September 16, 2026

BACKGROUND:

- 1) The Thunderchild First Nation General Election conducted pursuant to the *Thunderchild First Nation Election Act*, passed by referendum vote on January 8, 2024 (the “Election Act”) is scheduled to be held on October 19, 2026.
- 2) The *Election Act* provides for the selection and appointment of the Chief Electoral Officer and Deputy Electoral Officers. A meeting of the electors was held on August 18, 2026 for the purpose of electing the Chief Electoral Officer and two (2) Deputy Electoral Officers. During the said meeting, Ms. Shelley Angus was nominated for the Chief Electoral Officer position and received the most votes, being 103 votes in her favour. Ms. Audrey Armstrong and Mr. Gary Frenchman received 129 and 103 votes, respectively, which represented the highest number of votes for the Deputy Electoral Officer role and were both appointed as such. No issues were raised as to the validity of the electoral officer meeting, selection process and subsequent appointments and the Appeals Tribunal (Tribunal) accepts the appointment process as valid and enforceable.
- 3) The Tribunal received correspondence dated September 10, 2026 submitted on behalf of Chief Delbert Wapass concerning the Thunderchild First Nation General Election.

4) The correspondence raised a number of errors in the administration of the Thunderchild First Nation General Election.

5) The errors are summarized as follow:

a) Failure to Follow the Current Election Act:

The Chief Electoral Officer (CEO), Shelley Angus, and Deputy Electoral Officer (DEO), Andrea Armstrong, are alleged to have disregarded the amendments to the *Thunderchild First Nation Election Act* passed in 2024 and are instead following procedures under the previous Election Act. These significant amendments relate to:

- i) The current Election Act does not allow mail in ballots; and
- ii) The current Election Act provides for electronic voting

b) Conflicting Election Notices:

The CEO issued two conflicting Election Notices. The first Election Notice identified October 5, 2026 as the Nomination Day, while the second Election Notice identified September 18, 2026 as the Nomination Day. Chief Wapass alleges that this has caused confusion regarding the proper election process and correct dates.

c) Prior Allegations Against Chief Wapass:

Chief Wapass raises concerns regarding the DEO, Andrea Armstrong, arising from allegations she made against him during the previous general election in an attempt to have him disqualified as a candidate. The letter states that those allegations were dismissed. The Tribunal has received supporting documentation evidencing the dismissal of the allegation.

d) Federal Court Litigation Involving the CEO:

Shelley Angus is a litigant in two active Federal Court matters in which Thunderchild First Nation is adverse in interest to her. Chief Wapass alleges that

Ms. Angus' participation in the Federal Court proceedings against Thunderchild First Nation places her in an actual conflict of interest in serving as CEO for the upcoming election.

- e) Reasonable Apprehension of Bias: Based on the circumstances identified in the letter, Chief Wapass takes the position that neither the CEO nor DEO can faithfully discharge their duties with the fairness and impartiality required by the Election Act and that there is a reasonable apprehension of bias.
- 6) The Tribunal has been asked to quash and set aside the appointments of Ms. Angus and Ms. Armstrong and appoint Dolly Fox and Melissa Thunderchild-Bergen in their places. Alternatively, the correspondence asks the Tribunal to select a new CEO and DEO or establish a process for determining the application.

DECISION:

Failure to Follow the Current Election Act

- 7) The Tribunal recognizes that the CEO has made a number of administrative errors in the administration of the Thunderchild First Nation General Election held pursuant to the *Election Act*.
- 8) The Tribunal confirms and determines that the *Thunderchild First Nation Election Act* passed and ratified by referendum vote on January 8, 2024 is the legislation presently in force and effect. The Tribunal is aware that differing opinions have been expressed within the community regarding which version of the *Election Act* applies. The Tribunal resolves this issue for the purposes of the current General Election: **the 2024 ratified Election Act is the governing Act and must be adhered to throughout every stage of the election process.** No prior version of the Election Act is to be applied or relied upon in administering the current Thunderchild First Nation General Election.

- 9) The Tribunal recognizes that compliance with the *Election Act* is required and does not minimize the administrative errors that have occurred. However, not every administrative error or instance of non-compliance necessarily requires an election to be suspended, restarted or declared invalid. Saskatchewan election jurisprudence distinguishes between the existence of an irregularity and the effect or consequence of that irregularity.
- 10) In *Reaburn v. Lorje*, 2000 SKQB 81, the Court declined to invalidate an election where the irregularities and incidents of non-compliance with the election act did not affect the outcome. Similarly, in *Miller v. Boxall*, 2005 SKQB 122, an error by an election official was found to have no consequence and did not warrant setting aside the election.
- 11) The Supreme Court of Canada in *Opitz v. Wrzesnewskyj*, 2012 SCC 55 has similarly cautioned that administrative mistakes will inevitably occur in the administration of elections and that an election should not readily be annulled solely because administrative errors have occurred. The appropriate inquiry includes consideration of the nature of the irregularity and its actual effect upon the electoral process. The court held that irregularities in an election must be interpreted in light of the right to vote.
- 12) The errors identified to date relate primarily to the form and content of the Election Notices and the administration of the election process generally. While those errors are significant and require correction, the Tribunal is not satisfied that they have, at this stage, affected the right to vote or the substantive rights of any potential candidate or created an unfair electoral advantage.

Conflicting Election Notices

- 13) The Tribunal finds that errors have occurred, particularly in the issuance of conflicting Election Notices. This created unnecessary uncertainty and confusion for Electors and potential candidates. An Election Notice is intended to provide clear and reliable information regarding the electoral process, including important dates and deadlines. Where two notices are issued identifying different dates for the same electoral event,

Electors and potential candidates cannot reasonably be expected to know which notice governs.

14) The Tribunal has reviewed each Election Notice and takes note that a telephone number is not provided, and the email listed is not valid. The Electoral Officer's telephone number and email are both required on Form 2 of the *Election Act*. The Tribunal emphasizes that accessibility and availability of the Chief Electoral Officer is imperative to the fair and effective administration of an election. Electors and potential candidates must have a reasonable means of contacting the Chief Electoral Officer to obtain information, seek clarification, request required forms, and address questions about the electoral process. The absence of a telephone number on the Election Notice, together with the inclusion of an email address that is not operational or valid, creates an unnecessary barrier to communication and may undermine confidence in the administration of the election.

15) Additionally, the Tribunal notes that responses from the Chief Electoral Officer were received by only some members of the Tribunal and that the information provided only partially addressed the Tribunal's requests for documentation and clarification. The Tribunal is concerned that timely, complete, and consistent communication has not been maintained with the Tribunal as a whole. The Tribunal therefore directs the Chief Electoral Officer to ensure they are accessible and responsive throughout the election period. A telephone number and functional email address must be provided to both the Electors and the Tribunal, and all communications and responses to requests from the Tribunal must be provided in a timely manner and distributed to all members of the Tribunal.

16) The Tribunal acknowledges that the errors identified raise concerns regarding the electoral officers' familiarity with, and application of, the Election Act. To the Tribunal's knowledge, neither the Chief Electoral Officer nor the Deputy Electoral Officers are certified electoral officers through Indigenous Services Canada. However, the Election Act does not prescribe training, certification, or prior experience as a prerequisite to

appointment as Chief Electoral Officer or Deputy Electoral Officer. The omission of such a requirement appears intentional and reflects that the Act contemplates that minor administrative errors may occur. Such errors must be promptly corrected, but do not, without evidence of prejudice, unfairness, bad faith, or an effect on the election, establish sufficient grounds to remove an electoral officer or invalidate the election process.

17) The Nomination Day has not yet occurred. No individual has yet been excluded from seeking nomination as a result of the conflicting notices, and there is no evidence before the Tribunal that any potential candidate has been prevented from obtaining nomination materials, preparing for nomination, or otherwise participating in the nomination process.

18) There is presently no evidence that any of the errors have had an actual effect on the outcome of the election. The Tribunal finds that the errors appear to have resulted from human error in the administration of the election. This finding does not excuse non-compliance with the Election Act and is subject to reconsideration if further evidence demonstrates bad faith, actual prejudice, or a material effect on the election process. Errors, actions and omissions are not viewed in isolation from one another but, rather, based on the aggregate and compounding impacts of all instances of non-compliance with the Election Act.

19) Similarly, there is no evidence that any potential candidate has received a benefit that has not been equally available to others. The conflicting notices were issued to the community generally and did not provide preferential information, additional time, or a procedural advantage to any particular potential candidate of which the Tribunal is aware of.

Prior Allegations Against Chief Wapass

20) The Tribunal acknowledges that allegations concerning prior criminal complaints have been raised. However, the Tribunal finds that the underlying merits, validity, or disposition of those alleged complaints fall outside the scope of the matters presently before the Tribunal. The Tribunal's role in this proceeding is to determine the issues

arising under the Election Act and the administration of the current General Election. Accordingly, the allegations have had no bearing on the Tribunal's decision.

Federal Court Litigation Involving the CEO

- 21) The Tribunal has been made aware of existing Federal Court claims in which members of the current Council and the CEO and DEO may support opposing positions. Based on the information presently before it, the Tribunal understands that the proceedings do not appear to seek relief against any person in a personal capacity, but instead concern the parties' respective positions regarding the interests of Thunderchild First Nation and differing contractual and governance views. The mere existence of those proceedings, or a person's support for a position advanced in them, does not by itself establish an actual conflict of interest or a reasonable apprehension of bias in the administration of this election.
- 22) On the facts presently before it, the Tribunal does not consider the Federal Court claims to constitute a conflict of interest that, in and of itself, precludes a Citizen of Thunderchild First Nation from seeking election as a candidate or from being appointed or continuing to serve as an electoral officer. Any allegation of conflict or bias must be assessed on evidence demonstrating that the person's interests, conduct, or role in the proceedings materially impairs, or gives rise to a reasonable apprehension that it materially impairs, the person's ability to discharge his or her duties under the Election Act fairly and impartially.
- 23) The existence of Federal Court proceedings, or a person's support for a position advanced in those proceedings, does not by itself establish an actual conflict of interest in the administration of the current General Election without evidence that the person's private interests or litigation position materially interfere with the fair and impartial performance of duties under the Election Act.

Reasonable Apprehension of Bias

- 24) The Tribunal is not satisfied, on the information presently before it, that the circumstances identified establish a reasonable apprehension of bias sufficient to remove

the Chief Electoral Officer or Deputy Electoral Officers. The applicable question is whether the evidence demonstrates that the electoral officer's interests, conduct, or role would materially impair, or would reasonably appear to materially impair, the ability to discharge duties under the Election Act fairly and impartially. On the present record, that threshold has not been met.

25) The Tribunal is not satisfied that there are sufficient grounds to quash the appointments of the Chief Electoral Officer or Deputy Electoral Officer or to appoint replacement electoral officers.

26) The Tribunal believes that the integrity of the election and nomination process can be preserved through corrective measures.

27) Having considered the matters raised, the Tribunal determines as follows:

- i. The General Election will proceed.
- ii. The Chief Electoral Officer must immediately make the corrective measures outlined in the section: DIRECTION TO CHIEF ELECTORAL OFFICER.
- iii. Failure to implement these measures within the time and manner directed by the Tribunal will result in the termination of the appointments of Shelley Angus, Andrea Armstrong and Gary Frenchman, pursuant to Section 4.08 of the *Election Act*. In that event, the Tribunal will direct that the positions be filled by the next highest-voted eligible individuals from the selection process conducted for the Chief Electoral Officer and Deputy Electoral Officer positions:
 - Dolly Fox – Chief Electoral Officer
 - Melissa Thunderchild Bergen – Deputy Electoral Officer
 - Tessa Marie Weekusk – Deputy Electoral Officer

This appointment, if required, will help ensure the continued and orderly administration of the General Election. The newly appointed Chief Electoral Officer (CEO) and Deputy Electoral Officers (DEOs) will be compensated at the same fee and expense rates currently applicable to the existing CEO and DEOs.

28) Accordingly, the relief requested in the September 10, 2026 correspondence to remove and replace the Chief Electoral Officer and Deputy Electoral Officer is denied. The election shall continue in accordance with this decision.

29) This determination is based on the circumstances and evidence presently before the Tribunal and does not preclude consideration of any subsequent material breach of the Election Act or evidence of actual prejudice arising later in the election process.

DIRECTION TO CHIEF ELECTORAL OFFICER:

30) To ensure clarity for electors and potential candidates and to ensure that the election proceeds in accordance with the proper *Election Act*, the Tribunal directs the Chief Electoral Officer to retract the two previously issued Election Notices and issue a new Election Notice immediately.

31) The re-issued Election Notice must:

- i. Expressly label the notice as “**AMENDED ELECTION NOTICE**”
- ii. Expressly state that both previously issued Election Notices are retracted and are no longer in effect, and that the newly issued Amended Election Notice replaces them in entirety;
- iii. Confirm that Nomination Day is October 5, 2026, and clearly set out all other required election dates, times, locations and information;
- iv. Be issued in accordance with *Form 2* of the *Election Act*, (2024) and shall not refer to or rely upon any prior version of the Election Act;
- v. Clearly advise electors that there is no voting by regular mail under the current *Election Act*. Any information contained in a previous notice suggesting that ballots may be cast by regular mail is retracted and shall not be relied upon;

- vi. Clearly advise electors that electors who are unable to attend to vote on Election Day at an Advance Poll may contact the Chief or Deputy Electoral Officer to make arrangements for voting electronically; and
- vii. Include the Chief Electoral Officer's telephone number and a valid email address.

32) The Tribunal further directs that the re-issued Amended Election Notice be communicated and posted in a manner sufficient to ensure that Electors and potential candidates are made aware that all previous Election Notices have been retracted and replaced. Without limiting the requirements of section 4.14 of the Election Act, the Amended Election Notice must be posted in one or more conspicuous places in one or more community buildings located on Thunderchild First Nation Territory, including at the location of the Nomination Meeting, and any other conspicuous locations or through such other means as the Chief Electoral Officer considers appropriate. In addition, the Amended Election Notice must be sent by regular mail to the last known address of each Elector and to all eligible voting Citizens at their current known mailing address.

33) Because time is of the essence, the reissued Election Notice must be physically posted by September 18, 2026. The re-issued Amended Election Notice must be mailed to each known address of each Elector on or before September 21, 2026.

34) The reissued Election Notice must be posted to the Chief James Okanee Gymnasium on September 18, 2026 to ensure potential Candidates and Nominators are aware of the date change.

35) Arrangements must be made to ensure electronic voting is made available pursuant to sections 6.08 – 6.12 of the *Election Act*.

36) The Chief Electoral Officer and Deputy Electoral Officers are directed, from this point forward, to conduct every aspect of the current General Election strictly in accordance with the *Thunderchild First Nation Election Act* passed and ratified by referendum vote

on January 8, 2024. That Act is in force and effect and is the only Election Act to be adhered to or relied upon during the current election process.

ADDITIONAL OBSERVATIONS OF THE TRIBUNAL:

37) For future elections, Council may wish to consider arranging non-mandatory orientation or training for appointed electoral officers on the governing *Election Act*, establishing a documented pre-election review of all notices and forms, and maintaining a current consolidated copy of the ratified Election Act for use by electoral officers and Citizens. These measures would reduce uncertainty and administrative error without adding eligibility requirements that the Election Act does not presently impose.

Dated this September 16, 2026 in the city of Saskatoon, in the province of Saskatchewan.



Chairperson

Co-Chair