

March 15, 2024

“WITHOUT PREJUDICE”

Osler, Hoskin & Harcourt LLP
Suite 2700, Brookfield Place
225 – 6th Avenue S. W.
Calgary, Alberta, Canada | T2P 1N2
Attn: Marleigh Dick

Dear Ms. Dick,

RE: Notice of Application to Thunderchild First Nation Appeal Tribunal

On March 8, 2024, you attempted to file a letter and Notice of Application with the Thunderchild First Nation Appeal Tribunal (“Appeal Tribunal”) by emailing a copy of the same to Thunderchild First Nation Chief and Council.

The *Thunderchild First Nation Appeal Tribunal Act* (“*Tribunal Act*”) does not authorize Chief and Council to accept service on behalf of the Appeal Tribunal, and, as acknowledged in your letter, the Applicants have not satisfied s. 11.06 of the *Tribunal Act* by posting security for costs. As such, we are not able to proceed as you request in your letter.

As a courtesy and to avoid the unnecessary time and costs associated with your attempted course of action, we are writing to advise that, in our view, the complaints contained within the Notice of Application are entirely without merit and do not fall within the adjudicative jurisdiction of the Appeal Tribunal.

Summary

The Applicants are in the wrong place and are out of time.

The Application is without merit, is at odds with the principles of democracy, and misrepresents the law of fiduciary duty as it relates to the obligations of Chief and Council as the elected government of the Thunderchild First Nation.

Context

The Treaty 6 Agricultural Benefits Settlement Agreement (“Settlement Agreement”) and the Thunderchild First Nation Legacy Trust Agreement (“Trust Agreement”) are contracts. Neither of these agreements seek to enact, amend, or repeal any laws of Thunderchild. As such, the procedural requirements contained within the *Thunderchild First Nation Constitution* (“*Constitution*”) do not apply.

Ultimately, Thunderchild members voted overwhelmingly to approve the proposed terms of the Settlement Agreement and Trust Agreement in a ratification vote. As a result Members’ approval, Chief and Council have been directed and are obliged to take all necessary steps to finalize and execute both agreements.

Thunderchild conducted the Ratification Vote fairly and in accordance with the voting guidelines. The voting guidelines were scheduled to the Settlement Agreement and were available for review during the entire Ratification Vote period. The voting guidelines clearly set out the process for Thunderchild Members to request a review of the Ratification Vote. These guidelines clearly state that any such review must be filed within 7 days of voting day. No applications for review were ever filed.

As such, the Notice Application is out of time and appears to be an abuse of process intended to circumvent the voting guidelines and undermine the decision of the majority of Thunderchild Members who voted for the best interests of our Nation and our future generations.

The Application Was Not and Is Not Filed

In your letter, you state that you “trust that this Notice of Application will be treated as filed with the Appeal Tribunal, effective on today’s date.”

Subsections 8.01 and 8.04 of the *Tribunal Act* set out how an Applicant serves a Notice of Application on the Appeal Tribunal. Neither of these sections, nor any sections in the *Tribunal Act*, authorize Chief and Council to accept service on the Appeal Tribunal’s behalf.

Further, subsection 11.06 of the *Tribunal Act* requires an Applicant to post security for costs “at the same time of filing an Application.” As acknowledged in your letter, the Applicants have not satisfied this requirement.

The Procedural Requirements Contained within the Constitution Do Not Apply

On its face, the Notice of Application challenges Chief and Council’s “decision” to “unilaterally fix low *per capita* distributions” arising from the Settlement Agreement without “broad community consensus” and “in violation of TCFN Legislation governing due process.” Specifically, the Application asserts that the Ratification Vote breached subsection 8.06 of the *Constitution*.

The Applicants’ reliance on the *Constitution* to impugn the Ratification Vote is misplaced. A detailed reading of Section 8 clearly demonstrates that subsection 8.06 only applies to referenda to enact, amend, or repeal a law of Thunderchild First Nation:

8.05 Except for The Thunderchild First Nation Constitution, all laws of Thunderchild First Nation are enacted, amended or repealed by referendum passed by a simple majority of those Citizens who are eligible voters who voted in the referendum and such legislation shall be initiated by a Resolution of Council.

8.06 A Thunderchild First Nation referendum is conducted in accordance with legislation of Thunderchild First Nation governing referenda and until such legislation is passed the following rules of procedure shall apply to carry out such referenda...¹

The Ratification Vote did not seek to enact, amend, or repeal the law of Thunderchild First Nation. Rather, at the Ratification Vote members were asked to vote for or against directing Chief and

¹ *Thunderchild First Nation Constitution (“Constitution”)*, ss. 8.05, 8.06.

Council to enter into the Settlement Agreement and Trust Agreement on behalf of the Nation. These agreements are not new laws. They are *contracts*. Chief and Council negotiated these agreements pursuant to their “exclusive executive powers” as the Government of Thunderchild First Nation.²

The Applicants’ position that the duly elected Chief and Council must hold a referendum to approve each and every contract entered into between the Nation and any other party is clearly absurd and would, if true, fundamentally undermine the concept of representative governance.

Voting Guidelines and Abuse of Process

The Ratification Vote was conducted fairly and in accordance with the Settlement Agreement and the voting guidelines.

To ensure meaningful participation of Thunderchild Members, the Thunderchild First Nation:

1. Made information packages regarding the Settlement Agreement and Trust Agreement available to members. These information packages also contained summaries, answers to frequently asked questions, analysis, and complete copies of the proposed Agreements.
2. Hosted several information meetings for Thunderchild Members. These information meetings were also attended by independent legal counsel and financial advisors who answered members’ questions, including questions regarding 100% *per capita* distribution of the Settlement Funds.
3. Used all possible means to empower Thunderchild Members to vote and make voting as accessible as possible. This included advanced polls, electronic voting, and in-person voting.

The voting guidelines provide a 7-day review period in which any citizen of Thunderchild First Nation can challenge the results of the Ratification Vote. This never occurred. As such, this Application is an abuse of process in that it is a plain and obvious attempt to circumvent the clear rules and procedures set out in the voting guidelines.

Thunderchild Members Voted For A Better Future For Our Nation

The underlying intention of the Applicants is clear: a minority of Thunderchild citizens are seeking to orchestrate the immediate and complete dissipation of all settlement proceeds to individuals so that none of the compensation can be preserved for the use and benefit of future generations.

This is improper, at odds with Treaty, contrary to Chief and Council’s legal obligations, and anti-democratic.

We Are A Nation

² *The Constitution*, ss. 6.01.

Thunderchild First Nation is a Nation. Our Nation is far more than the individuals who happen to appear on the "Band List" at any given moment in time. The Nation existed and signed Treaty 6 long before any of the members alive today were born, and it will remain a Nation long after all of the members alive today are gone.

Treaty Rights Are Collective Rights

This Claim relates to Canada's failure to fulfil the Treaty rights of the Thunderchild First Nation. Treaty rights are inherently collective rights. We are advised by our legal counsel that the collective nature of Treaty rights has already been conclusively determined by the Courts.

The Treaty right in issue in this Claim is the right to agricultural benefits and assistance. Treaty 6 was signed by Chiefs and Headmen on behalf of their Nations as collectives. The text of the Treaty clearly states that the agricultural implements were provided to "Bands," and the formula to determine the implements that were owing is calculated by reference to "families," "every three families," the "Band," and "for each Chief for the use of his Band."

The agricultural benefits provisions of Treaty 6 were specifically and extensively negotiated by our ancestors as the means to establish a long-term and sustainable economic base for the signatory Nations and future generations. It is therefore appropriate and necessary that compensation for Canada's breach of Treaty in this claim be similarly safeguarded and protected so it can provide opportunities for our Nation as it exists today, and as it will exist for generations into the future.

Further, individuals are not entitled to file specific claims or entitled to be paid compensation under the Specific Claims Policy.

Chief and Council Are Responsible For The Nation

Chief and Council have an obligation to act as prudent stewards of the Nation's rights and interests. As the duly elected representatives of the Nation, the Chief and Council have a responsibility to consider the best interests of *all* members, including future generations. These are the foundational principles that underpinned the Settlement Agreement, the Trust Agreement, and the Ratification Vote.

The distribution of 100% of the compensation today to appease a handful of members under the guise of "equality" or "consultation" is not prudent and is not in the long-term interests of our Nation. Indeed, that type of short-sighted mismanagement of a once in a generation opportunity would completely undermine our Nation's sovereignty by deepening our dependence on Government of Canada funding. It would also run afoul of the representations and warranties Thunderchild was required to make under the terms of the Settlement Agreement.

The Nation Has Spoken

Over 70% of voters voted in favour of the Settlement Agreement and Trust Agreement. The results of the Ratification Vote *require* Chief and Council to execute the Agreements in question. There is nothing left for the Applicants to challenge.

As such, pursuant to the overwhelming will of the majority, the proceeds of settlement will be paid into the Trust and invested for the long-term use and sustainable benefit of our Nation.

Allegations Regarding Financial Transparency

As a final matter, the Notice of Application also alleges a failure to maintain financial transparency and seeks the disclosure of a number of audited financial documents. This portion of the Application is moot, as Chief and Council are already engaged in the process of obtaining the necessary audits and reports with the intention of sharing the same with membership at the earliest opportunity.

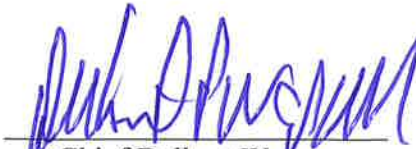
Should you have any further questions or concerns, please do not hesitate to contact Chief and Council.



Councillor Katrina Frank



Councillor Gerald Okanee



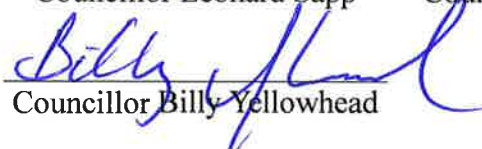
Chief Delbert Wapass



Vice Chief Walter Jimmy



Councillor Leonard Sapp



Councillor Billy Yellowhead



Councillor John Noon



Councillor Melvin Thunderchild