

Cour fédérale



Federal Court

Ottawa, April 23, 2021 – A decision was issued today by Justice Sébastien Grammond of the Federal Court in file T- T-336-19:

IN THE MATTER OF Treaty Land Entitlement Committee inc v. Her Majesty the Queen
Translations of Summary into Ojibwe, Oji-Cree and 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 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 Indigenous language of the parties. The Court thanks the language keepers who assisted with preparation of this summary in Ojibwe, Oji-Cree and Cree.

English

T-336-19 – *Treaty Land Entitlement Committee inc et al v Her Majesty the Queen*

Summary

[1] The historic treaties between the First Nations and the Crown contain a promise to set aside reserves. To settle long-standing disputes concerning the implementation of this promise, Canada, Manitoba and the applicants have entered into the Manitoba Framework Agreement, which provides for the addition of more than 1,000,000 acres of land to the First Nations' reserves, over a certain period of time. The Agreement also contains releases in favour of Canada, that is,

Ojibwe

T-336-19- Agwade Aki Tibakiing
Gamawahbiwaadt v Gichii Ogimaa Ikwe

Ga 'ozhiibiigadek

[1] Me'Izhaa Anishinabek tagaa Gichii'Ogimaak Gii ashoodamagem Agwadii Aki chii'Ishkonamoint Ishkosek aki. Chi'Onashewing anii geizhe anokadamang tagaa chii pagodamang ginesh gagii'ashodamagwaang chiimajii'dagwatekg, Kanada, Manitobaang Tagaa ga nonde ozhiibiigadek mazinegaaning gii biidigiidigiyooogk Manitobaang GaOakonigwin, giitwaam minik aki 1,000,000 aginjigade Anishinabek' ishkoonaan, niigan

Oji-Cree

T-336-19 – D⁷dLΔa⁷ a dCL 9Δ⁷ <"/P
Γσd'Δ⁷ ΔCΔCL 9¹ A_JR9Δσ¹ ∇b.
PΓD>dLΔσ¹ <∇>dL 9.

<P ΔCL9Δa⁷

[1] b⁷v a dCL 9Δa⁷ ΔL <σ"ΔσσΔ
D>dLΔa⁷ ∇b. D>dL 9 >dLΔa¹ PCb.·⁷
<~CL9Δa⁷ r<∇a"r bUP⁷ Δ⁷dσb⁷x
9Δr <∇a"r bUP⁷ P a:b⁷ LrΔrΔDΔa⁷ Δ∇
Df C⁷·⁷P⁷r bU⁷ <~CL9Δ⁷, b⁷C, LΔD<
∇b. D>J⁷P⁷A"Δ⁷ <~ PΔ⁷C·⁷ ΔL Lσ⁷<
<∇a"r 9Δσ¹ a DCL 9Δσ¹, ∇Δf
b⁷UaL⁷b⁷D⁷ <σ⁷σσ<^><^>J⁷V⁷
Γ≤Δ⁷ >rP⁷Δ⁷ Δ⁷dσb⁷ <"/Pσ, <σΛΓ⁷σ¹
9ΔJ <∇a"r bUσ¹ σbσ⁷x a DCL 9Δ⁷ >∇

Cree

T-336-19 – *Iskonikan Askiy Kaskihtamâsowin Opaminikêwak inc et al v Ô-Sôhkâtisiwin Kihci-Okimâskwêw*

Kiskinwahikêwin

[1] Ôhi kayâsêskamik ostêsimâwoyasiwêwin âyîtawâyiik Nistam-Iyiniwak êkwa Kihci-Wiyasiwêwin miciminikâtêw asotamâkêwin ta-îkatêhtatât iskonikana. Ta-pakitêyihtahk kinwês-itastêw mawinêskâkêwin ka-pimohtêmakahk ohci ôma asotamâkêwin, Kânata, Manitoba êkwa ôki natotamâkêwak kî-pihtikwêwak isi ôma Manitoba Wiyastêwin Nahêyihtowin, êkwânimia pakitinamâkêw kiki âniskos cikêwin ohci ayiwâk mâwaci-kihci-

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the First Nations agree not to sue Canada with respect to the failure to comply with the provisions of the treaties regarding the creation of reserves.

izhisek.niigaan azhaa Onakonigade Kanada, me ‘iwe, ozhibiigade onakoonigewin gawiin chii nakwenawing Kanada gagii biigonamwaad agwiidii’inaan nitaam gagii majitwaad.

[2] While the implementation of the Agreement was well underway, Canada realized that it has a duty to consult with other Indigenous groups, most importantly the Métis, before adding land to the applicant First Nations’ reserves. Consulting with the Métis, however, caused significant delays in the reserve creation process.

[Niish] Megwaa oakanigewaad, Kanada giimamikweisiwagk chii ganonawaadt Anishishinabe gamamobing, Abita’igoshaan, chibwaa pakwenimogaswaad giiozhiibiiyanawa muzineganaan anishinabegk’ ishkoonigaan. Chii gawedjimwaadt Abita’igoshaan, ayii daash, Gii bapejisek chii ozhichigadegin megwaa Ishkoniganaan.

[3] Unsatisfied with this, the applicant First Nations resorted to the Agreement’s dispute resolution process. An adjudicator heard the matter and decided that Canada had breached the Agreement. Among other

[Niswe] gawiin gii’bagosendagosinoon, Gii nagakamiiyogk Anishinabek ozaam gawiin anakonigewin gwewik izhisesinoon. Gitchii Onakonige’inne ogii waabadaan Kanada giiga’wezhibiidegk. Minwaa kegoo,

Ȼb̄o ΔL <ρoσ-ɬΔo> bəC, ɬσ-ɬσ-Δ
▷dLΔo> ᶧb rLΓSL<- bəC Δvσ ▷r ᶧb
bPΔr ɬCJ<ɬr bPj <ɬvσ-ɬvσ-ΔP<-
adCLɬΔσ- bPj <ɬvσ-ɬvUb<- Δvσ-ɬb̄o>x

[2] ɬb̄- bɬ-ɬ"ρYvUb<- Δv adCLɬΔo>
bΔJ ɬΓYp<-, bəC ▷ρσ-ɬCΔo-ɬ<-
vΔvYσ- ɬCJ-ɬ<ɬr <ɬvσ-ɬvσ-Δ-
Δvσ-ɬ- L<- bɬ ΔvduΔσ-ɬ-
aPσ-ɬUb<- ɬ"ρ- bΔJ aCv-ɬvUb<-
<ɬvσ-ɬvσ-Δ- Δvσ-ɬb̄o>x C-ɬCL-ɬ-ɬ-
ΔvduΔσ-ɬ-
ΔvduΔσ-ɬ-
b<ɬvσ-ɬvUb<- Δvσ-ɬ- Δvσ-ɬb̄o>
bΔJ
ɬΓY-
x

[3] ᶧb bə"v-ɬvUb<- Δv, bPj-ɬv-ɬ"Δv-
ɬσ-ɬσ-Δ- ▷dLΔo> ▷P <ɬv-ɬ-
adCLɬΔσ- bΔJ-ɬY- LΓ-ɬσ-ɬΔσ-
ɬ-ɬv-ɬσ-ɬ- ▷CΔo-ɬσ-ɬΔσ-ɬ- ▷P-ɬ-
C-
x

mitâtahtomitanaw kâhkatikwanâskiy isi Nistam-Iyiniwak iskonikana, pâsci kinwêwsîs iskoyikohk. Ôma nahêyihtowin mîna miciminikâtêw pakitêyihcikatêwin ta-miyo-kanawâpamow Kânata, êwako ôma, Nistam-Iyiniwak têpakêyimow namôya ta-atâmimêw Kânata asici nisitohcikâtêwin ohci ôma ka-sâkôcihikot ta-pimitisaha asici ôma ostêsimâwoyasiwêwin ohci ka-osihcikâtêkihk ôhi iskonikana.

[2] Ata ôma ka-pimohtêmakahk nahêyihtowin ka-kî-mâcihtâhk, Kânata miskwêyihtam êkwânimâ ê-kî-ayâw nâkatêyihtamowin ta-pîkiskwacikêt asici kotak Nêhiyaw mâmawohkamâkêwa, mâwaci âsônê Âpihtawikosisânak, pâmwayêts ta-âniskoscikâtêk askiy isi natotamâkêw Nistam-Iyiniwak iskonikana. Pîkiskwacikêwin asici Âpihtawikosisânak, mâka, itocikêmakan mitoni êyikohk otamiyowin pîhci ôma iskonikan ka-osihcikâtêkihk paminikêwin.

[3] Âtawêyihtamowin asici ôma, awa natotamâkêw Nistam-Iyiniwak âpacïhtaw ôma nahêyihtowin mawinêskâkêwin sôhkêyihtamowin paminikêwin. Owiyasiwêw pêhtam ôma nâkatohkêwin mîna kîsêyihtam

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reasons, the adjudicator found that Canada had inserted an additional step, not contemplated by the Agreement, in the reserve creation process, without first obtaining the consent of the other parties. According to the adjudicator, this constitutes an “event of default.”

Ogiimikaan Onakonige’inine Kanada
ogii’tagotonaa minaa pakaan kegoo, gawiin
gii’tagotesinoon, mega ozhii
onakonigadegwin ishkoonigaan, Gawiin
ogii’wiidamasi. Ikidaa gitchii
Onakonige’inine, me ‘we shigaa “gawiin
onatesinoon.”

[4] Where an event of default continues for more than 180 days, the Agreement gives the First Nations the right to apply to a Court to have the releases declared void. This is what the applicant First Nations are seeking in the present proceeding. Canada acknowledges that they are entitled to make such a request. It argues, however, that the Court's power to issue such a declaration is discretionary and that the Court should decline to void the releases.

[Niwin] Iishpin onatesinoogk giitwaam
midaswe'izhi nishwasimidanah giizhigaak,
Anishinabek ta anikebiigiiwaagk chii'
bagidinamwaad. Me iwe naandwedagwaad
Anishinabek giitwaam ga'onashayaag.
Kanada giinakwetamoog. Omiigadanwa,
Mino ikidong, Kitchii Onakonige'igamigk
nagakamiin ate imma.

▷▽σ bP Δr'σP▷▽b. ▷P ▷σC▷bAC
▽PΛdσ adCL9Δσσx dCPb▷b4 9dσ,
◀▽▷CΔdσ9Δσσ ▷PΓ"b▷bAC ▽P ▷P
◀JnσJ◀- adPJCJΔσσ, ▽b ▽PΔf
◀JnσbUP< ΔL adCL9Δσ', ΔL
◀▽a"bUP▷ Δ"dσbσ▷ ΛJ9Δσ', ▽b ΛaL
▽Pσ UVCJ◀- Δ▽σ dCPb▷bP ▹JrY◀-x
PΔPn C" ▹▽▷CΔdσ9Δσσ, ▷P PΔf
Δr'Δ▽ "r aΛaL.b.σ◀- Δ9σ◀- bP
ΔσJCJb.σ◀-x"

êkwânimâ Kânata kî-pîkonam ôma
nahêyihtowin. Tastaw kotaka kîkway ka-
tôcikêmakahk, awa owiyasiwêw miskam
êkwânimâ Kânata kî-pohtastaw ayiwâk
yahkohtêwin, namôya wâh-wâpahcikatew
ohci nahêyihtowin, pîhci ôma iskonikan ka-
osihcikâtêkihk paminikêwin, êka nistam kî-
ohci kâhcitinikatêw têpakêyimowin ohci
kotak mawinêhikewak. Itêyihtâkwan isi
owyasiwêw, ôma kî-itocikêmakan
“patâpahcikêwin.”

[4] Ita ispîhk patâpahcikewin ka-ahkami
kiki ayiwâk mitâhtahtomitanaw
ayinânêwomitanaw kîsikâw, ôma
nahêyihtowin mîyâwak Nistam-Iyiniwak
miyikosiwin ta-natota isi Wiyasiwêwinohk
ôhi pakitêyih Tamowina ta-nakinikâtêk. Èwako
ôma natotamâkêw Nistam-Iyiniwak ka-
natonahkik pîhci ôma mîkwâc wiyasiwêwin.
Kânata nisitawinam êkwânimâ
kaskihtamasowak ta-natohtahkik êkwânimâ.
Kîhkâhtotam, mâka, êkwânimâ ôma
Wiyasiwêwinohk ô-sôhkâtisiwin ta-mêkit
itowahk wîhtamâkêwin êkwânimâ sêhkê ô-
têyihtamowin êkwa Wiyasiwêwinohk ta-kî-

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[5] In this regard, Canada argues that there has been significant implementation of the Agreement and that voiding the releases would be a disproportionate sanction depriving it of the totality of the consideration it obtained for the Agreement. Canada also says that it cannot remedy the default alone and that the applicant First Nations are taking advantage of the situation to ask for a wholesale renegotiation of the Agreement.

[6] The Court did not find these arguments persuasive. Canada minimizes the scope of its default. If it wishes to add unilaterally a new step to the reserve creation process provided in the original Agreement, it cannot blame the applicant First Nations for seeking to renegotiate other aspects of the Agreement. Nor can it complain about the consequences

[Nanaan] mizhigwaa, Kanada gii ikidwaagk niibwaa azhaa ndo'nakonigemin chii nakwebiigadegk ozhiibiigadek iishpin gawiin onistodaziinawah. Kanada ikidwaagk gawiin dagashkitosiimin chii anjibiigen pezhgomagaak mizhigwaa inate Anishinabek chii Onshwewaad minwaa.

[Ngodwase] Gawiin Onakonige'igamigk
gi'ninamiziyook. Kanada odagaswabandanaa
gagiioshibijigadehk. Iishpin nonde oshkii
ozhitwaad wiina oshkiinakonigaan
ishkooniganing, Gawiin Anishinabek chii
anabimindwaa. Gawiin ge chii gichii gii
gidwaadt mewe chii izhisek aniiñ kyizhe
debwonigwaang.

▷ $\sigma \Delta b \Gamma \vdash b : P \wedge Q \rightarrow A$ ▷ $\sigma \Delta b x$

[6] ▷ adσ- qΔbΓd' bΔ³ ΓΔf Γ"b_⊥Δ-
ΔqσΔ³ ΔP▷Δa³ ▷ usdγΓΔLbP³x bαC
▷ bq <kb'ad▷aΔ- Δ∇σ- bLAlσ'
Lσ▷CCLΔσσx P^uA³! ΔaPα_Δ- LL▷ Δ∇σ-
▷ uP▷CCLΔσσ ΔL Δ^udσbα³ <Δa"ΓqΔσ'
bΔJΔΓ"σ' bLUsqΔa³ ΔL σ^uC'
adCLqΔσ', bΔ³ CP LUσLb_αrΔ'
bP▷uP-Δ"ΔqΔ- <ΔσJσσΔ▷dLΔa³ bΔf'

asêpayihot ta-nakinikâtêk ôhi
pakitêyïhtamowina.

[5] Pihci oma paminikêwin, Kânata
kîhkâhtotam ê-kî-astêk mitoni iyikohk ka-
pimohtêmakahk ohci nahêyihtowin êkwa
êkwânimâ ta-nakinikâtêkihk ôhi
pakitêyihtamowina ta-kî-kakêpâtan
pakitêyihcikatêwin ânwêyihcikêwin isi ohci
kahkiyaw ôma têpakêyimowin ka-kî-
kâhcitinikatêk kiki ôma nahêyihtowin. Kânata
mîna itwêw namôya kî-nânapâcihtaw ôma
patâpahcikêwin ka-pêyakohk êkwa
natotamâkêw Nistam-Iyiniwak âpacïhtaw ôma
âyimihowin ta-kakwêcihkêmot kiki
kahkiyaw kâwî mâmiskôcikâtêwin ohci
nahêyihtowin.

[6] Wiyasiwêwinohk namôya miskam ôhi kîhkâhtowina ta-sâkocihtahk. Kânata âciwinam pîsâkosiwin ohci ô-patâpahcikêwin. Kîspin makâ ta-akihtahk pêyakohtawin oskayi yahkohtêwin isi iskonikan ka-osihcikâtêkihk paminikêwin ka-mêkâték pîhci ka-nistamêyimâkahk nahêyihtowin, namôya ta-kî-âtamêyimêw ôhi natotamâkêw Nistam-Iyiniwak kiki ka-natonahkik

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of a dispute resolution process that it bargained for.

[7] The Court therefore issued a declaration that the releases given to Canada by the applicant First Nations are void and ineffective.

[Nishwase] Gitchii Onakoonigek ogii ozhiibiyanawaa ogii mina waan Kanada gawiin egoo izhi minosesinoon.

ba-**À**À**C**À**R**À qR Às à**A**À**C**À**L**À**q**À**s**À**À**
À**<**bÀ**À**À**d**À**C**À**L**À**q**À**d**À**s**À**x** bÀ**À** CPÀ**R** à**À**À**C**
À**R**À**À**À**d**À**À**À**N**À**s**À**À** qdÀ**À**À**À** qdÀ**R** À**R**À**À**À**y**À**R**À**À** À**L**À**L**À**N**À**s**À**x**
À**G**À**m**À**s**À**À**À**d**À**s**À**x** bÀ**A**À**L**À**G**À**Y**À**x** bRÀ**J** bqÀ**N**À**V**À**d**À**s**À**x**

[7] ►a**d**À**s**À**À**À**d**À**b**À**G**À**d**À**À**À**R**À**<**RÀ**À**À**a**À**a**À**d**À**s**À**À**
À**a**À**N**À**d**À**s**À**s**À**À** À**q**À**s**À**d**À**À** <RÀ**À**À**s**À**À**À**d**À**s**À**x** bR
À**q**À**d**À**-** bÀ**C** À**q**À**s**À**d**À**À** À**R** bRÀ**J**À**À**À**L**À**N**À**s**À**x**
À**s**À**M**À**s**À**À**À**d**À**L**À**A**À**d**À**s**À**x** CPÀ**R**À**N**À**d**À**s**À**x** À**b**À**b**À**d**À**s**À**x**
CÀ**À**À**m**À**P**À**Y**À**d**À**s**À**x**

An audio recording of this summary in the Cree language is available on the Court website at: <https://www.fct-cf.gc.ca/en/pages/media/webcast>. An audio recording in Ojibwe will be posted as soon as possible.

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/495987/index.do>.

mâmiskôcikâtêwin ohci kotak itapisiniwin isi ôma nahêyihtowin. Namôya mîna ta-kî-wiyotam ohci mâkohtâwin ôma mawinêskâkêwin sôhkêyihtamowin paminikêwin ka-pakosêyimot.

[7] Wiyasiwêwinohk êyiwêhk mëkiw wîhtamâkêwin êkwânihi pakitêyihtamowina ka-mêkihk isi Kânata ohci natotamâkêw Nistam-Iyiniwak êkwânihi ê-nakinikâtêk mina namôy âpatan.