

FEDERAL COURT

B E T W E E N:

TERRY WAYNE FRANCOIS

Applicant/Moving Party

-and-

NISICHAWAYASIIHK CREE NATION

Respondent/Responding Party

**(APPLICATION UNDER SECTIONS 18(1) AND 18.1 OF THE
FEDERAL COURTS ACT, R.S.C. 1985, c. F-7)**

MOTION RECORD OF THE MOVING PARTY

MOORE JUSTICE LAW

[REDACTED]
[REDACTED]

**Marty Moore
Phil Dunlop (Student-at-Law)**

[REDACTED]
[REDACTED]

CHARTER ADVOCATES CANADA

[REDACTED]
[REDACTED]

James Manson

[REDACTED]
[REDACTED]

Counsel for the Applicant/Moving Party

COCHRANE SINCLAIR LLP

[REDACTED]
[REDACTED]

**Greg Johnson
Aaron Christoff**

[REDACTED]
[REDACTED]
[REDACTED]

**Counsel for the Respondent/Responding
Party**

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FEDERAL COURT

B E T W E E N:

TERRY WAYNE FRANCOIS

Applicant

and

NISICHAWAYASIIHK CREE NATION

Respondent

(APPLICATION UNDER SECTION 18(1) AND 18.1 OF THE
FEDERAL COURTS ACT, R.S.C. 1985, c. F-7)

NOTICE OF MOTION

TAKE NOTICE THAT the applicant will make a motion to the Court to be heard on TBD, or as soon thereafter as the motion can be heard, at Winnipeg.

THE MOTION IS FOR:

- a) an injunction, pursuant to Rule 373(1) of the *Federal Courts Rules*, restraining and enjoining the respondent, Nisichawayasihk Cree Nation (“**NCN**”), from taking any steps whatsoever, directly or indirectly, to:
 - i. enforce the Banishment Decision (as that term is defined in the Notice of Application filed in this proceeding);
 - ii. remove Mr. Francois from NCN lands, including Mr. Francois’s Home (as that term is defined below); or

- iii. prevent Mr. Francois from accessing NCN lands, including Mr. Francois's Home,

until further order of this Court;

- b) leave to amend the Notice of Application, as indicated by counsel;
- c) costs of this motion; and
- d) such further and other relief as counsel may request and this Court considers appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. the applicant, Terry Wayne Francois, is a Cree man and a member of the respondent, Nisichawayasihk Cree Nation ("NCN");
2. over ten years ago, Mr. Francois decided, along with his spouse at the time, to move back to Nelson House with his family. Nelson House is a town of about 3,000 people located in Northern Manitoba on NCN lands;
3. for about a decade since then, Mr. Francois has lived with his family at [REDACTED] (the "Home"). Three of Mr. Francois's five daughters (aged 16, 18 and 22) presently reside at the Home;
4. Mr. Francois is the primary caregiver and provider for his three daughters living at the Home. It is critical for him to be at Home to support them financially and emotionally. Mr. Francois's current spouse, who is the mother of his three daughters living at the Home, struggles with alcoholism and cannot provide or care for them;
5. Mr. Francois's Home is located in a rough and dangerous area of Nelson House where people often get beat up and even stabbed. Mr. Francois is concerned for the safety of his daughters. It is common knowledge among NCN members that there has been significant violence

on NCN reserve lands, including random violence. Young women are also at risk of sexual assault on NCN reserve lands;

6. on December 30, 2024, Mr. Francois was driving to his Home from Thompson with one of his daughters. He stopped at the NCN checkstop at the entrance to NCN lands, as he had done numerous times in the past;

7. on that occasion, Mr. Francois consented to a search of his vehicle, as he done many times before. However, for the first time in his experience, a dog was then brought forward to search Mr. Francois's vehicle. Mr. Francois refused to consent to a search of his vehicle by the dog. He continued on his way Home;

8. the following day, Mr. Francois was arrested by the RCMP for "assault with a weapon" and other charges related to the previous evening's incident at the NCN checkstop. He was eventually released but was told that he was not allowed to return Home or remain on NC lands while his trial was pending. He was forced to relocate to Thompson, Manitoba;

9. on May 21, 2025, Mr. Francois pleaded guilty to two counts of resisting a peace officer, and was fined a total of \$600. He has paid those fines. The other charged arising from the incident at thr NC checkstop were stayed;

10. on or about May 22, 2025, Mr. Francois attempted to return to his Home. At the NCN checkstop, he discovered for the first time that he had been banished from NCN lands;

11. subsequently, Mr. Francois attempted to ascertain the basis for his banishment. He received a call from Terry B. Linklater, NCN's Director of Justice, who advised Mr. Francois that he had made the decision to banish Mr. Francois. Mr. Linklater did not offer an explanation or give Mr. Francois a chance to speak to the matter substantively;

12. Mr. Francois was permitted to return briefly to NCN lands to attend his daughters'

graduation ceremonies. While he was there, he was given a letter signed by Mr. Linklater. The letter referred to a previous “conditional banishment” allegedly imposed on Mr. Francois on May 5, 2022. Mr. Francois never had any notice of any such conditional banishment being imposed on him, and still is unaware of the basis for his conditional banishment;

13. the letter went on to advise Mr. Francois that his “conditional banishment” had been upgraded to a “full banishment”, effective December 30, 2024;

14. the letter alleged that Mr. Francois had been involved in an incident where his “actions jeopardized the safety of our First Nations Security Officers”. Mr. Francois is unaware of what is being referred to in the letter;

15. the letter also alleged that Mr. Francois was convicted of assaulting a police officer by striking FNSO Kobliski at the NCN checkstop on December 30, 2024. However, this is false;

16. the letter also alleged that Mr. Francois “fought” with RCMP officers at his Home on December 31, 2024. This is also false;

17. Mr. Francois then attempted to challenge his banishment but was unsuccessful. NCN’s Chief and Council did nothing to assist Mr. Francois;

18. Mr. Francois does not pose a threat to anyone’s health, safety or well-being;

19. Mr. Francois is committed to complying with NCN laws, including FNSO directions;

20. Mr. Francois feels anxious and sick about not being Home or even able to enter NCN reserve lands and be there to protect his daughters;

21. Mr. Francois also has a granddaughter who is now two years old. She resides on NCN reserve lands with her father and mother (who is another of Mr. Francois’s daughters). He and his granddaughter have developed a special bond, as she lived in Mr. Francois’s Home until her father and mother got assigned their own home in Nelson House;

22. that bond, however, has been significantly weakened by Mr. Francois's removal from NCN and now by his banishment, as discussed further below. Nowadays, he only gets to see her if her parents take her on the hour-long trip to Thompson, where he currently resides, when he is free on days off work. Mr. Franocis fears that his bond with his granddaughter will be irretrievably lost if he remains banished from NCN reserve lands and thus cannot see her as often as he otherwise would be able to if he were living at his Home;

23. Mr. Francois would find it unbearable to be separated from his family and community for a lengthy period of time. He lives for his girls and his granddaughter, and believes that he has an important role to play as a father and grandfather;

24. Mr. Francois also has a strong desire to be a positive role model in his community, which he cannot do effectively if he is forced to live away from NCN;

25. Mr. Francois undertakes to abide by any order concerning damages that this Court may make if it ultimately appears that the granting of an injunction in his favour has caused damage to NCN, for which he ought to compensate NCN;

26. Mr. Francois contends that the decision to banish him – both conditionally and permanently - was procedurally unfair. He received no procedural fairness whatsoever from NCN authorities before any decision was made to banish him;

27. Mr. Francois also contends that Mr. Linklater was biased, or is reasonably apprehended to be biased, against him in making the decision to banish him;

28. Mr. Francois also contends that NCN's Chief and Council fettered their discretion by not interfering with Mr. Linklater's unilateral decision to banish Mr. Francois;

29. Mr. Francois also contends that the decisions to banish him were unreasonable;

30. Mr. Francois also contends that the decisions to banish him did not consider and/or

unreasonably limited his *Charter* rights;

31. Mr. Francois also contends that the NCN law authorizing banishment for a minimum of 5 years is *ultra vires* NCN's authority; Mr. Francois also contends that the NCN law authorizing banishment for a minimum of 5 years violates sections 7 and 12 of the *Charter* and cannot be saved by s. 1;

32. Mr. Francois also contends that the NCN law authorizing searches at the NCN checkstop violated sections 7, 8, 9 of the *Charter* and cannot be saved by s. 1;

33. in all of the circumstances, Mr. Francois meets the common law test, as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)* and subsequent jurisprudence, for the granting of an interlocutory injunction in this matter, because:

- a) this application raises serious issues to be determined by the Court;
- b) the applicant will suffer irreparable harm if the requested injunction is not granted in this proceeding; and/or
- c) as between both parties in this proceeding, the applicant would suffer more harm from a refusal to grant the requested injunction than the respondent would if it were granted. The balance of convenience thus favours granting the requested injunction; and

34. Rules 358-368 (or 385) and 373 of the *Federal Courts Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) the Affidavit of Terry Wayne Francois, sworn August 21, 2025.

Date: September 11, 2025

MOORE JUSTICE LAW

Marty Moore
Phil Dunlop (Student-at-Law)

CHARTER ADVOCATES CANADA

James Manson

Counsel for the Applicant

TO: **COCHRANE SINCLAIR LLP**

Greg Johnson
Aaron Christoff

Counsel for the Respondent

FEDERAL COURT

B E T W E E N:

TERRY WAYNE FRANCOIS

Applicant

-and-

NISICHAWAYASIIHK CREE NATION

Respondent

**AFFIDAVIT OF TERRY WAYNE FRANCOIS
SWORN ON AUGUST 21, 2025**

I, TERRY WAYNE FRANCOIS, of the Town of Nelson House, on the Nisichawayasihk Cree Nation in the Province of Manitoba, **MAKE OATH AND SAY:**

1. I am the applicant in this proceeding. I am a Cree man, a father, a grandfather and a member of the Nisichawayasihk Cree Nation ("NCN"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where my knowledge with respect to such matters is based on information and belief, I have set out the source of the information and believe it to be true.
2. I was born on [REDACTED] to John Keeper Francois, a member of NCN, and Marie Lintha Ballantyne (nee Dumas) from Pukawagan, Mathias Colomb Cree Nation Pukawagan.
3. Nelson House, Manitoba is a town of about 3,000 people located on NCN lands. I grew up in the old part of Nelson House called Wasahsihk.
4. When I was seven years old, I moved to Thompson but returned to NCN lands every weekend to spend time with family and relatives. I moved back to Nelson House to attend high

school in Grade 10 but then graduated from high school in Thompson.

5. I have lived on and off NCN lands, but have always considered NCN home. My mother lived in Nelson House for years and worked as an addiction counselor for 25 years at the Nelson House Medicine Lodge. Two of my siblings and their families continue to live on NCN lands. Further, I am related to a significant percentage of NCN members.

6. I have worked both on and off NCN lands. As a young man, I worked as an NCN band constable for approximately 5 years. I currently work as an underground mining contractor for Hudbay Minerals, Inc. at their mining operations in Snow Lake.

My Home at Nelson House

7. More than ten years ago, I decided, along with my spouse at the time, to move back to Nelson House with my daughters. Nelson House has always been home, and I wanted my girls to experience that connection as well.

8. For roughly a decade since then, until December 31, 2024, I have lived with my family at [REDACTED] on NCN reserve lands (hereinafter referred to as my "**Home**"). My Home address is listed on my Manitoba Driver's License, a copy of which it attached as **Exhibit "A"** to this affidavit.

9. I have five daughters, four of whom, along with my granddaughter, live on NCN reserve lands. A picture of my immediate family, including me, my five daughters and my granddaughter, taken before Christmas 2024, is attached as **Exhibit "B"** to this affidavit. Three of my daughters presently reside at our Home. Their ages are 16, 18 and 22.

10. I am the primary caregiver and provider for my three daughters who live in my Home. I believe it is critical for me to be there for them and support them financially and emotionally, as their dad. Unfortunately, their mother battles alcoholism, and is not able to be there for them. She

lives in housing on NCN for people who are in such situations. Since I have not been able to go Home, I drive to the NCN checkstop at least once a month to deliver groceries for my family.

11. The area where our Home is located is known to be a rough and dangerous area of Nelson House, where people often get beat up and even stabbed. I am concerned for the safety of my daughters, especially since I have been banished and am not there to protect them. It is common knowledge among NCN members that there has been significant violence on NCN reserve lands, including random violence. Young women are also at risk of sexual assault on NCN reserve lands.

12. I feel anxious and sick about not being Home or even able to enter NCN reserve lands and be there to protect my girls.

13. As I mentioned, I have one granddaughter who is now two years old. She resides on NCN reserve lands with her father and mother (my daughter). My granddaughter and I have developed a special bond, as she lived in our Home until her father and mother got assigned their own home in Nelson House.

14. The bond I have formed with my granddaughter, however, has been significantly broken by my removal from NCN and now by my banishment. Nowadays, I only get to see her if her parents take her on the hour-long trip to Thompson, when I am free on days off work. I fear that my bond with my granddaughter will be irretrievably lost if I continue to be banished from NCN reserve lands and thus cannot see her as often as I otherwise would be able to if I were living at Home.

December 2024 Incident

15. On December 30, 2024, I was driving Home from Thompson with one of my daughters with an order of takeout pizza in my vehicle for the rest of the family.

16. I stopped at the NCN checkstop as I had done countless times before. I have no problem in

general with stopping at the checkstop. I grew concerned, however, when a person who was not an NCN First Nations Safety Officer (“FNSO”) came to search my vehicle. A couple of FNSOs then did come over. I was prepared to consent to a search of my vehicle by FNSOs as I have done numerous times before without incident. When yet another person, who was also not an FNSO, brought over a dog to search my vehicle, I refused to consent to the search of my vehicle by the dog.

17. A heated verbal disagreement ensued. I strenuously disagreed with the demands being made of me, as I didn’t believe there was a legal basis to allow either non-FNSOs or a dog to search my vehicle. I further did not want a dog near the food I was bringing home to my family.

18. I found it very unreasonable and frustrating to accept what I believe were illegal demands or be barred from my Home and family, just before New Years. I ended the conversation at the checkstop by saying, **“I am from this reserve. I don’t have to leave”**. I then proceeded to drive forward, over a traffic cone, and continued on my way Home without submitting to what I viewed as an illegal search. A 21 second video recording my daughter took of the end of this interaction is attached as **Exhibit “C”** to this affidavit. As this video shows, FNSO Kobliski is standing by the driver’s side of my vehicle. When I drive away, I turn toward the right to move my vehicle further away from her. The video recording captures the sound of my vehicle hitting and driving over a pylon, which jammed under my vehicle.

19. Prior to arriving Home, I was stopped by RCMP officers and questioned about the incident at the checkstop. I answered the officers’ questions, explained my position and was permitted to continue Home.

20. The following day, however, three RCMP officers came to my Home to arrest me for “assault with a weapon” and other charges. I recoiled and told the officers that the charges were

bogus. I protested my innocence and refused to consent to be taken from my Home. The officers however, lunged forward quickly and grabbed me. My reaction was to pull away. I did not fight with the police, and in short order, I verbally confirmed to the officers that I would go with them and allowed them to arrest me.

21. Nonetheless, I was taken to the RCMP station and charged. I was then released, but was told that I was not allowed to go Home or remain on NCN lands while my trial was pending. I was forced to relocate to Thompson, renting a room there at my own expense.

Resolution of Charges

22. On May 21, 2025, I pled guilty to two counts of resisting a peace officer, and was fined a total of \$600. I have paid those fines in full.

23. The remaining charges arising from the events of December 30-31, 2024 were stayed.

Banishment from NCN Lands

24. I believed that the resolution of my charges meant that I could return Home. On or around May 28, 2025, I attempted to return to my Home at Nelson House. At the checkstop, I was prevented from entering NCN lands. I was astonished to be told by an FNSO that I was banished.

25. I immediately called Carol Kobliski, NCN's Chief of Law Enforcement, and asked what this banishment was about. Ms. Kobliski refused to tell me why, and told me to call Bonnie Campbell, who works in NCN's Justice department. I called Ms. Campbell several times, to try and get an explanation for this banishment, but only got Ms. Campbell's voicemail. I texted Ms. Campbell asking her to "[c]all me plz" and indicating that I "[n]eed answers". I received no response. My text message history with Ms. Campbell's cell phone number is attached as **Exhibit "D"** to this affidavit.

26. Despite not having any explanation for my alleged banishment, I complied with the

FNSO's order not to enter NCN lands and drove to Thompson.

27. I then reached out to the NCN band office, who told me to contact Curtis McDonald in NCN Justice. I called Mr. McDonald, but he did not give me any explanation for the banishment. I left my number with Mr. McDonald.

28. One morning at the end of May or in early June 2025, after having worked a night shift, I received a call from Terry B. Linklater, the NCN Director of Justice, who stated that he had made the decision to banish me. Mr. Linklater told me that I was not allowed on to NCN reserve lands and that I was banished. Mr. Linklater mentioned a situation in 2022, but when I told him I had no idea what that was about, he did not explain. He also mentioned the December 2024 incident at the checkstop. I told Mr. Linklater that he was not the right person to be making this decision against, me, because there was animosity between us. I told him that the decision should be made by Chief and Council. Mr. Linklater was clear in stating that his decision was final, and that there was nothing I could say to change it. I told Mr. Linklater that I had not received any letter of banishment, and Mr. Linklater said that NCN would be getting me paperwork for the banishment.

29. I informed Mr. Linklater that two of my daughters were graduating in June 2025, and he said that I would only be allowed on to NCN lands to attend the ceremonies, but that was it. My daughters' graduation ceremonies took place on June 24 and June 27, respectively. When I attended these graduation ceremonies, I was treated like a criminal by NCN representatives, with an FNSO following me around at the graduation ceremony, and escorting me off of the NCN reserve lands directly after the ceremony. Consequently, I was not able to attend the family and community gatherings (a supper and barbecue) that followed the graduation ceremonies, where graduates, including my daughters, were celebrated.

30. When I attended my daughter's graduation on June 24, 2025, I was met at the checkstop

by an FNSO who gave me a letter from Terry Linklater, dated June 10, 2025. A copy of the letter is attached as **Exhibit "E"** to this Affidavit.

31. This was the first time I was informed that, among other things, I had ostensibly been placed on a "conditional banishment" on May 5, 2022, and that this "conditional banishment" had been upgraded to a full banishment effective December 30, 2024.

32. Prior to December 31, 2024, I had resided on NCN lands continuously, with my family in our Home on Tamarack Crescent, for roughly a decade. This would include the entire time that I was supposedly under "conditional banishment".

33. The letter I received on June 24, 2025 (the "**June 24 Letter**") outlined the alleged conditions of the "conditional banishment," which I had never been notified of before. These conditions outlined in the conditional banishment included the following:

1. TERRY WAYNE FRANCOIS [REDACTED] be permitted to reside in NCN subject to the following conditions:

- a. That he acknowledges and pay for any outstanding fines issued under Nisichawayasihk Cree Laws
- b. That he apologizes to the First Nations Safety Officer in writing for any inappropriate conduct directed towards FNSO.
- c. That if he violates Community Protection Law Sections:
 4. *Unauthorized manufacture or sale of alcohol, drugs, prescription drugs or intoxicants except as authorized by permit under this Law, no person shall manufacture, produce, grow or sell alcohol, cannabis, drugs, prescription drugs or intoxicants on NCN Lands.*
 5. *Unlawful purchase of alcohol, drugs, prescription drugs or intoxicants A person must not purchase alcohol, cannabis, drugs, prescription drugs or intoxicants from a person who is not authorized to sell such substances.*
 6. *Prohibition on buying or selling drugs No person shall buy, sell or transport alcohol, cannabis, drugs, intoxicants or prescription drugs without a valid prescription on NCN Lands without a permit.*
- d. That he keeps the peace and be of good behavior.

2. Any violations by TERRY WAYNE FRANCOIS of the conditions set out in Paragraph 1 may result in Chief and Council authorizing the FIRST NATIONS SAFETY OFFICER/NCN RCMP to escort TERRY WAYNE FRANCOIS off the Nisichawayasihk Cree Nation reserve boundary.

BE IT FURTHER RESOLVED THAT: any actions pertaining to violence will result in banishment, including if TERRY WAYNE FRANCOIS returns to Nisichawayasihk Cree Nation and its traditional territory, that he/she be charged with trespassing.

34. In regard to the alleged condition “a.”, above, I am not aware of any alleged “*outstanding fines*” I was apparently supposed to acknowledge and pay.

35. In regard to the alleged condition “b.”, above, I am not aware of any “*inappropriate conduct*” for which I was apparently supposed to apologize in writing.

36. In regard to condition “c.”, above, I do not do drugs or sell drugs. I rarely drink alcohol. I am not aware of any NCN accusations in 2022, or subsequently, that I was involved in any of these banned activities.

37. I am *still* unaware of the basis for any alleged conditional banishment against me in 2022, or even whether I was in fact conditionally banished. Because June 24, 2025 was the first I ever heard of being “*conditionally banished*” as of May 5, 2022, I had no way of challenging or otherwise responding to that alleged “*conditional banishment*”.

38. The second page of the June 24 Letter implies that I was involved in an earlier “*incident, on record*” where my “*actions jeopardized the safety of our First Nations Safety Officers.*” I am unaware of what the June 24 Letter is referring to in making this allegation.

39. The June 24 Letter then advises that I was convicted of assaulting a peace officer with a weapon by allegedly striking FNSO Carol Kobliski with my vehicle. This is totally false. I attach as **Exhibit “F”** to my affidavit a copy of my disposition sheets related to the December 2024 incident, showing that I pled guilty to a charge of resisting FNSO Kobliski, not to assaulting her.

40. The June 24 Letter goes on to allege that I “fought” with RCMP officers at my Home on

December 31, 2024, which is also false. I admit that I recoiled from RCMP officers and acknowledge that I pulled away from them, but shortly after that I allowed the officers to arrest me.

41. After learning of my banishment, I wanted to challenge it. I thus reached out to NCN Councillors to do this. First, I called Councillor Cheryl Moore, to ask what was going on with my banishment. She indicated that she didn't want to get involved. She indicated I could call Councillor Kim Linklater.

42. I called Councillor Linklater and asked her what was going on with the banishment. She stated that Chief and Council try to stay out of banishment decisions. Councillor Linklater told me that Chief and Council had no choice but to sign off on Terry Linklater's decision to banish me. I told Councillor Linklater that Terry Linklater had animosity toward me. I argued that Chief and Council should make the decision on my banishment. Councillor Linklater stated that Chief and Council had already decided to delegate banishment decisions and affirmed that Chief and Council were "*not getting involved*" in my banishment.

43. Both Councillor Moore and Councillor Linklater indicated that there was nothing they could do to help me or to allow me to challenge the decision.

44. I understand that the decision to banish me was not made by Chief and Council. Rather, I believe that this decision was made by Terry Linklater, as the Director of Justice, with the input of FNSO Carol Kobliski, Chief of Law Enforcement, and Bonnie Linklater, who works in the NCN Justice Department.

45. I believe that Terry Linklater's decision was biased against me. Terry Linklater is the brother-in-law of Carol Kobliski who had made the accusation against me that I had committed assault against her with a deadly weapon, for driving through the checkstop on December 30, 2024.

Further, in late 2024, there had been a serious allegation against one of Terry Linklater's grandsons, who is also a son of Bonnie Linklater, and a nephew of Carol Kobliski, in regard to one of my daughters. Further, shortly after the RCMP issued a news release about the December 2024 incident on January 2, 2025, Bonnie Linklater made public and serious allegations against me on her public Facebook page, stating that "*Luckily, he hasn't killed anyone yet*" and saying that it is "*Scary to live in a community with a mentally unwell person with rage.*"

46. Finally, when I spoke to Terry Linklater in or about June 2025 about being banished, it was clear that his mind was made up and that the decision to banish me was already final and irrevocable regardless of what I could say.

Conclusion

47. I do not pose a threat to anyone's health, safety or wellbeing. In fact, I try to foster these things. For example, for about ten years, I have assisted the NCN Wellness Centre in transporting people in need to various locations in Manitoba and Saskatchewan. I have made numerous trips to transport children—ranging from infants in car seats to teens—to Winnipeg and other places. Sometimes I have the accompaniment of one of my daughters on these trips.

48. However, now, since I have not been permitted to return to Nelson House in 2025, people coming from Nelson House for these trips now have to be driven out of NCN reserve lands before I can pick them up, which makes little sense to me.

49. I have made two or three trips transporting people for the NCN Wellness Centre so far this year, including one in July, transporting two NCN women from Regina to more suitable housing in Winnipeg.

50. I believe that I have taken responsibility for my actions in driving away from the NCN checkstop, by pleading guilty to resisting a FNSO, and by paying the resulting fine. Likewise, I

pleaded guilty to resisting RCMP officers arresting me, and I also paid that fine.

51. I am committed to complying with NCN laws, including directions of FNSOs that are authorized by NCN laws, even while I take what I believe to be appropriate steps through this case to challenge NCN laws and actions that I believe violate my legal and constitutional rights.

52. I am informed by my legal counsel, Marty Moore, that it can take many months or even years to get a determination of a constitutional and legal challenge similar to the one I am bringing against NCN. I have been referred to *McCarthy v. Whitefish Lake First Nation #128*, 2023 FC 220.

53. I would find it unbearable to be separated from my family and community for such a period of time. I live for my girls and my granddaughter, and I believe I have an important role to play as a father and grandfather, providing support, care, protection and love. There is no way that irregular visits in Thompson can replace living together in our Home, or in the same community.

54. I have a strong desire to be a positive role model in my community, showing the next generations that there is a better way than alcohol, drugs and incarceration. I promote getting a job, working hard and fitness. By way of example, for the last few months, I have been coordinating with the school at Nelson House and Hudbay Minerals to bring high school students from Nelson House to tour my workplace in Snow Lake. While I will continue to try and make a positive impact in my community, being prohibited from being in my community is going to severely minimize my ability to be a positive influence on those in my community, whether through organized events or simply by connecting with younger guys at the gym in Nelson House.


55. As NCN members, our connection to our land and community is strong, and banishment destroys that physical, emotional and even spiritual connection. I already feel this heavy weight on my soul.

56. I believe that there are 50 or more NCN members also prohibited by NCN from being on

57. Finally, I undertake to abide by any order concerning damages that this Court may make if it ultimately appears that the granting of an injunction in my favour has caused damage to NCN, for which I ought to compensate NCN.

My commission expires: MAR 12/26

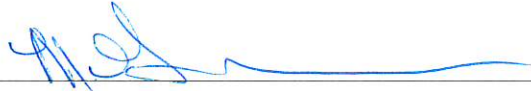
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TERRY WAYNE FRANCOIS

MARCH 12, 2026

This is Exhibit "A" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MB, in the
Province of Manitoba this 21ST day of August, 2025



Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.
MY COMMISSION EXPIRES:**
MARCH 12, 2026

Manitoba

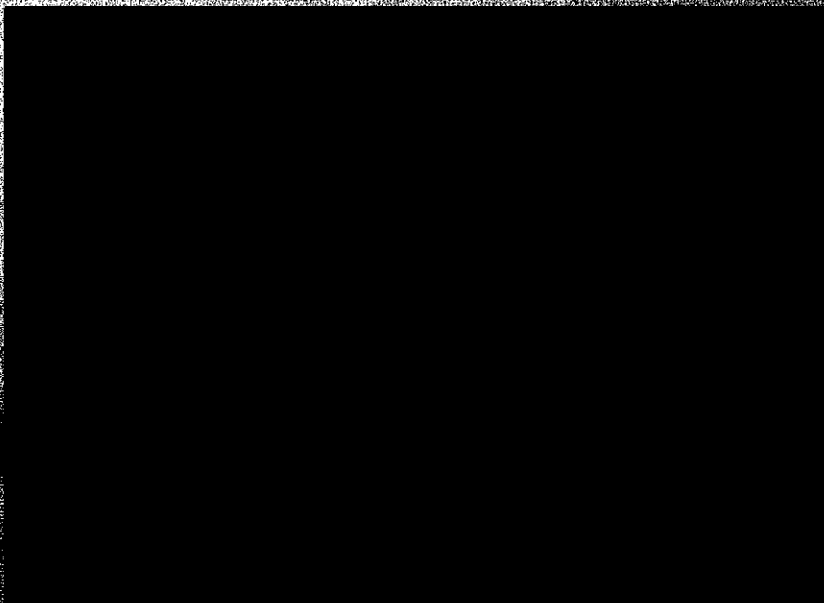


DRIVER'S LICENCE
PERMIS DE CONDUIRE

ALPA INSURANCE CERTIFICATE
CERTIFICAT D'ASSURANCE DE LA SAAH

MR
CAN

1.2 FRANCOIS
TERRY WAYNE



[Handwritten signature]



- 9 (F) Full Stage / Etape finale
- 9A (N) Air Brake Not Auth / Non autorise - Fessons & air
- 12 (I) Corrective lenses / Verres correcteurs

This is Exhibit "B" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MB, in the
Province of Manitoba this 21st day of August, 2025



Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.
MY COMMISSION EXPIRES:**
MARCH 12, 2026



This is Exhibit "C" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MANITOBA, in the
Province of Manitoba this 21ST day of August, 2025



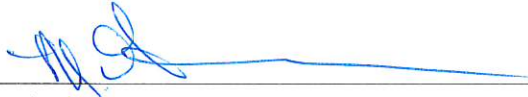
Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.
MY COMMISSION EXPIRES:**

MARCH 12, 2026

This is Exhibit "D" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MANITOBA, in the
Province of Manitoba this 21st day of August, 2025



Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.
MY COMMISSION EXPIRES:
MARCH 12, 2026**



Wednesday, May 28 • 5:18 p.m.

Texting with [REDACTED] (SMS/MMS)

Call me plz

Need answers

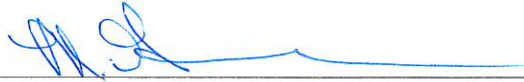
5:18 p.m. SMS



Text message



This is Exhibit "E" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MANITOBA, in the
Province of Manitoba this 21ST day of August, 2025



Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.**

MY COMMISSION EXPIRES:

MARCH 12, 2026



Nisichawayasihk Cree Nation

June 10, 2025

Dear Terry Wayne Francois

Re: Banishment

This letter is to inform you that on, May 5, 2022 Chief and Council passed a motion to place you on a conditional banishment. This has since been upgraded to a full banishment effective December 30, 2024.

These conditions outlined in the conditional banishment included the following:

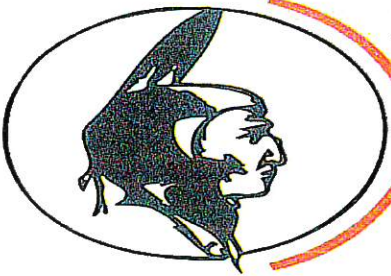
1. TERRY WAYNE FRANCOIS [REDACTED] be permitted to reside in NCN subject to the following conditions:
 - a. That he acknowledges and pay for any outstanding fines issued under Nisichawayasihk Cree Laws
 - b. That he apologizes to the First Nations Safety Officer in writing for any inappropriate conduct directed towards FNSO.
 - c. That if he violates Community Protection Law Sections:

4. Unauthorized manufacture or sale of alcohol, drugs, prescription drugs or intoxicants except as authorized by permit under this Law, no person shall manufacture, produce, grow or sell alcohol, cannabis, drugs, prescription drugs or intoxicants on NCN Lands.

5. Unlawful purchase of alcohol, drugs, prescription drugs or intoxicants A person must not purchase alcohol, cannabis, drugs, prescription drugs or intoxicants from a person who is not authorized to sell such substances.

6. Prohibition on buying or selling drugs No person shall buy, sell or transport alcohol, cannabis, drugs, intoxicants or prescription drugs without a valid prescription on NCN Lands without a permit.

- d. That he keeps the peace and be of good behavior.



Nisichawayasihk Cree Nation

NELSON HOUSE, MANITOBA, R0B 1A0
Telephone (204) 484-2332 Fax (204) 484-2392

2. Any violations by TERRY WAYNE FRANCOIS of the conditions set out in Paragraph 1 may result in Chief and Council authorizing the FIRST NATIONS SAFETY OFFICER/NCN RCMP to escort TERRY WAYNE FRANCOIS off the Nisichawayasihk Cree Nation reserve boundary.

BE IT FURTHER RESOLVED THAT: **any actions pertaining to violence will result in banishment**, including if TERRY WAYNE FRANCOIS returns to Nisichawayasihk Cree Nation and its traditional territory, that he/she be charged with trespassing.

On December 30, 2024, you intentionally violated NCN laws and put our First Nations Safety Officers lives in danger by recklessly driving through the NCN Check stop and NCN Chief of Law Enforcement was injured by your actions. This is the second incident, on record, where your actions jeopardized the safety of our First Nations Safety Officers.

The community protection law states:

17 (4) Any person who is banished from NCN Lands may, as part of restorative justice, request a hearing before the Peacekeepers Tribunal no earlier than five (5) years from the date of the banishment order or if the person has been sentenced to jail, no earlier than five (5) years from the date the person is released from jail, to request that the banishment order be rescinded.

Your banishment came into effect **December 30, 2024** which means you may request a hearing no earlier than **December 30, 2029**.

We have received information that you were convicted of:

- Assault on peace officer with a weapon (striking Carol with your vehicle)
- Resisting arrest by fighting with RCMP members.

For this reason, your conditional banishment will be upgraded to a full banishment as of December 30, 2024.

The purpose of banishment as per the Banishment Regulation Peacekeepers Tribunal Law, 2022, c. P-1:

2. A person may be banished from NCN Lands to:

- (a) maintain public safety, peace and harmony in the community.



Nisichawayasihk Cree Nation

- (b) encourage individual rehabilitation by giving the person banished the opportunity to take responsibility by reflecting on their behavior, reconnecting with their roots, showing respect for their culture and heritage and making changes to how they live; and provide a process for re-integration into the community as a productive citizen

It is unfortunate this action had to be taken, and we hope that you will spend your time wisely so that if you apply to the Peacekeepers Tribunal for re-entry to NCN Lands in the future that you can demonstrate how you have changed.

Also please note the following: Subsection 17 (8) of the Community Protection Law, 2019, c. P-1 states:

Trespass

Any person who

- (a) is the subject of a banishment order that has not been rescinded and enters upon NCN Lands; shall be guilty of trespassing and may be removed by a peace officer.

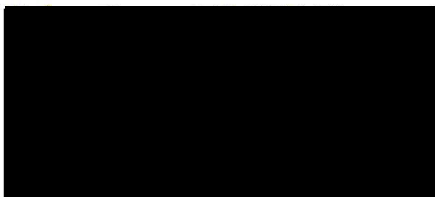
If you enter the community without authorization, you will be in breach of your banishment order and may be charged with trespassing. This will be added to your file and will be taken into consideration by the Peacekeepers Tribunal when reviewing your application, so it is within your best interest that you abide by NCN law. The NCN Laws are available for review on the NCNCREE website.

If you have any questions or concerns, feel free to contact Terry B Linklater, Director of Justice at [REDACTED] or Bonnie Campbell, Nisichawayasi Court Administrator at [REDACTED]

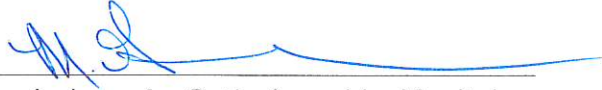
Sincerely,


Terry B. Linklater

Director of Justice and Public Safety
Nisichawayasihk Cree Nation



This is Exhibit "F" referred to in the Affidavit
of TERRY WAYNE FRANCOIS Sworn/Affirmed before me
at THOMPSON, MANITOBA, in the
Province of Manitoba this 21st day of August, 2025



Commissioner for Oaths in and for Manitoba

My Commission expires: MAR 12/26

**A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE
OF MANITOBA.
MY COMMISSION EXPIRES:
MARCH 12, 2026**

DISPOSITION

LAST NAME FRANCOIS	FIRST NAME Terry	INITIAL W	DATE OF BIRTH [REDACTED]
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Hereinafter called the accused appeared before this court on the information/indictment for the following adjudication.

DATE May 21/25	Proceedings <input checked="" type="checkbox"/> Summary <input type="checkbox"/> Deemed Election <input type="checkbox"/> Prosecution <input type="checkbox"/> Provincial Judge <input type="checkbox"/> Appearance waived for assignment court	<input type="checkbox"/> Indictment <input type="checkbox"/> Provincial Judge <input type="checkbox"/> Defence <input type="checkbox"/> KB Judge <input type="checkbox"/> Judge and Jury	<input type="checkbox"/> No election by Crown <input type="checkbox"/> KB Judge <input type="checkbox"/> Judge and Jury
--------------------------	--	--	---

DATE OF PLEA/VERDICT	COUNT/OFFENCE	Stay of Proceedings	guilty	not guilty	PLEA not guilty/ guilty included/ related offence of	indicted to stand trial	guilty	not guilty	VERDICT guilt NCR	not guilty as charged but guilty/ordered to stand trial to included/related offence	JUDGE / JUSTICE
May 21/25	1-5	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	as amended	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		Mr. Briscoe
1	2-4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

☐ Other:

The accused/offender received the following disposition:

<input type="checkbox"/> Acquitted	<input type="checkbox"/> Charge dismissed	<input type="checkbox"/> Absolute discharge	<input type="checkbox"/> Conditional discharge	<input type="checkbox"/> Suspended sentence
<input type="checkbox"/> Conditional Sentence Order	Duration			
<input checked="" type="checkbox"/> Fine (see attached Fine Order)	<input type="checkbox"/> surcharge (see attached Fine Order)	<input checked="" type="checkbox"/> surcharge waived		
<input type="checkbox"/> Prohibition from operating for a period of	<input type="checkbox"/> motor vehicle	<input type="checkbox"/> other (specify)		
<input type="checkbox"/> Ignition Interlock after	<input type="checkbox"/> 3 months	<input type="checkbox"/> 6 months	<input type="checkbox"/> 12 months	<input type="checkbox"/> HTA Suspension
<input type="checkbox"/> Prohibit possession of firearms and weapons	<input type="checkbox"/> under s.109(2)(a) of the Criminal Code for	<input type="checkbox"/> years and s.109(2)(b) for life		
	<input type="checkbox"/> under s.110 of the Criminal Code for	<input type="checkbox"/> years on		
<input type="checkbox"/> Order of Forfeiture	<input type="checkbox"/> return items seized	(Not weapons)		
<input type="checkbox"/> DNA Order	<input type="checkbox"/> Primary (Mandatory)	<input type="checkbox"/> Secondary (Discretionary)	<input type="checkbox"/> Order to a Person	<input type="checkbox"/> No DNA ordered
<input type="checkbox"/> SOIRA Order	<input type="checkbox"/> 10 years	<input type="checkbox"/> 20 years	<input type="checkbox"/> life	Designated Offence(s) (specify section number(s))
<input type="checkbox"/> Restitution (in accordance with the restitution order) in the amount of	to be paid to the Court by			
<input type="checkbox"/> \$ 510 Peace Bond \$	Duration			
<input type="checkbox"/> Other				

COMMITTAL	Count/Offence	Sentence Imposed	Concurrent to count	Consecutive to count
	Total sentence imposed			
	Time in custody			
	Less credit x			
	Balance of sentence to be served =			
	<input type="checkbox"/> non-communication order issued re:			
	<input type="checkbox"/> See Warrant of Committal on Conviction MG5801 (attached)			
	<input type="checkbox"/> intermittent (see reverse)			
	<input type="checkbox"/> offender requests to serve time			

<input type="checkbox"/> enter into a Probation Order	<input type="checkbox"/> supervised	<input type="checkbox"/> unsupervised	For a period of	from	<input type="checkbox"/> the date of this Order
<input type="checkbox"/> the expiration of term of imprisonment or Conditional Sentence Order, upon the conditions:					
<input type="checkbox"/> following <input type="checkbox"/> concurrently imposed this day					

Further conditions of	<input type="checkbox"/> PO Probation Order	<input type="checkbox"/> CO Conditional Sentence	<input type="checkbox"/> PS Peace Bond	<input type="checkbox"/> see attached appendix	<input type="checkbox"/> see attached order
-----------------------	---	--	--	--	---

<input type="checkbox"/> report to a Probation Officer	<input type="checkbox"/> abstain absolutely from the consumption or possession of	<input type="checkbox"/> alcohol	<input type="checkbox"/> non-prescription drugs	<input type="checkbox"/> other intoxicants
<input type="checkbox"/> abstain from owning, possessing, or carrying a weapon				

<input type="checkbox"/> perform	hours of community service work, as directed and supervised by your Probation Officer and to be completed
<input type="checkbox"/> within probation period	

<input type="checkbox"/> attend, participate and complete	<input type="checkbox"/> addictions assessment and/or	<input type="checkbox"/> domestic violence	<input type="checkbox"/> sexual offender	<input type="checkbox"/> substance abuse
---	---	--	--	--

<input type="checkbox"/> anger management	<input type="checkbox"/> counseling as directed and supervised by your Probation Officer
---	--

<input type="checkbox"/> no contact or communication directly or indirectly with	
--	--

<input type="checkbox"/> not to attend within	
---	--

<input type="checkbox"/> pay restitution in accordance with the Restitution Order	
---	--

<input type="checkbox"/> to reside	
------------------------------------	--

<input type="checkbox"/> observe a curfew	
---	--

<input type="checkbox"/> except	
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<input type="checkbox"/> present yourself at the door of your residence, and/or answer the telephone at your residence, in compliance with any authorized curfew checks	
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<input type="checkbox"/>	
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<input type="checkbox"/>	
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<input type="checkbox"/>	
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<input type="checkbox"/>	
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P. Briscoe
Judge/JudgeMay 21/25
DateNelson Place MB
LocationN. P. Briscoe
Clerk of the CourtCourt File No.: **559-05895**

Domestic Violence/Violence familiale:

☐ Yes/Oui☒ No/Non

Original - Court Copies distributed as follows:

☐ Police Agency/Report No.: **20241887210 Nelson House RCMP**☐ Other (stakeholders):☐ Corrections (Warrant of Committal)

Date:

Initials:

MG 10884E (Rev. 09/2022)

MR033

2

3

4

LAST NAME / NOM DE FAMILLE FRANCOIS										FIRST NAME / PRENOM Terry										INITIAL / INITIALES W																																																	
CURRENT ADDRESS / ADRESSE ACTUELLE [REDACTED]																				CITY / VILLE [REDACTED]										PROVINCE [REDACTED]										POSTAL CODE / CODE POSTAL [REDACTED]																													
DRIVERS LICENCE NO. / N° DE PERMIS DE CONDUIRE [REDACTED]																				PROVINCE [REDACTED]										DATE OF BIRTH DATE DE NAISSANCE [REDACTED]										DAY / JOUR [REDACTED]										MO / MOIS [REDACTED]										YEAR / ANNÉE [REDACTED]									
PHONE NUMBER / NUMÉRO DE TÉLÉPHONE [REDACTED]																				PLACE OF EMPLOYMENT / LIEU DE TRAVAIL [REDACTED]																																																	
DATE OF ORDER DATE DE L'ORDONNANCE DAY / JOUR 21										MO / MOIS May										YEAR / ANNÉE 2025										COURT LOCATION ADRESSE DU TRIBUNAL Thompson - Court Office, 69 Elizabeth Dr., Box 34, Thompson, MB R8N 1X4 Nelson House, MB																																							
																				Provincial Court Cour provinciale										<input checked="" type="radio"/>										<input type="radio"/>																													

VOUS, avez été déclaré coupable de l'infraction (des infractions) suivante(s).
Le tribunal a imposé l'amende (les amendes) suivante(s):

COURT FILE NO. 6	COUNT	CHARGE ACCUSATION	FINE AMENDE	COSTS FRAIS	SURCHARGE / SURAMENDE*				TOTAL \$
					TYPE TYPE	AMOUNT MONTANT	TYPE TYPE	AMOUNT MONTANT	
1	1	OBSTRUCT/RESIST PO	\$500	/	/	/	/	/	\$500
1	5	OBSTRUCT/RESIST PO	\$100	/	/	/	/	/	\$100
You must pay the Total Amount of / Vous devez payer le montant total de									\$600

P.	refers to a surcharge pursuant to <i>The Victims' Bill of Rights</i> / fait référence à une amende supplémentaire en vertu de la <i>Déclaration des droits des victimes</i>	\$600
F.	refers to a victim surcharge pursuant to the Criminal Code or the Controlled Drugs and Substances Act / fait référence à une surtaxe compensatoire en vertu du Code criminel ou de la Loi réglementant certaines drogues et autres substances	
J.	refers to a justice services surcharge pursuant to <i>The Provincial Offences Act</i> / fait référence à une amende supplémentaire relative aux services judiciaires en vertu de la Loi sur les infractions provinciales	

Vous devez observer les modalités de paiement suivantes :

- ☒ 1. Pay the total amount by / payer la somme au complet au plus tard le 60 days (Due July 20, 2025)
(due date / date d'échéance)
- ☐ 2. Pay at the rate of / payer _____ per month / par mois
(amount / montant)
on the / le _____ day of each month / jour de chaque mois,
(due date / date d'échéance)
starting on the / à partir du _____ day of / jour d/de _____
(month / mois) (year / année)
the entire amount to be paid by / la totalité de cette somme devant être payée au plus tard le _____
(day / jour) (month / mois) (year / année)
or until paid in full / ou jusqu'à ce que cette somme ait été entièrement payée.
- ☐ 3. _____

Thompson Court Office
69 Elizabeth Drive
Box 34
Thompson MB R8N 1X4

Greffier de Thompson
69, chemin Elizabeth
C.P. 34
Thompson (Manitoba) R8N 1X4

If paying by cheque or money order make payable to "Minister of Finance". See reverse for more information.
Si vous payez par chèque ou par mandat, veuillez le libeller à l'ordre du Ministre des Finances. Pour en savoir plus, voir au verso.

For more information see the reverse of this form or call / Pour plus de renseignements, voir au verso ou composer la **204-677-6767**

Je comprends la nature de la présente ordonnance et j'ai eu la possibilité de me la faire expliquer.

Une copie de l'ordonnance m'a été remise.

Nelson House **Manitoba / au Manitoba**

Offender/Defendant/ Delinquent/ Défendeur

NOTE AU DÉLINQUANT/DÉFENDEUR : Vous devez lire la section Avis et renseignements importants au verso du présent formulaire. Celle-ci énonce les renseignements ayant trait à votre amende ou à votre suramende et les conséquences si vous omettez de les payer.

CANADA
Province of Manitoba
Province du Manitoba

TREAT AS ORIGINAL

559-05895

INFORMATION

This is the information of

Constable Alexander Vujanovic

Of the Royal Canadian Mounted Police

(force/peace officer/corps de police)

DÉNONCIATION

Les présentes constituent la dénonciation de

"On Behalf of His Majesty the King"

In Nelson House, MB

(location/lieu)

hereinafter called the informant.

The informant says that he/she has reasonable and probable grounds to believe and does believe:

THAT/QUE :

ci-après appelé(e) le dénonciateur.

Le dénonciateur déclare qu'il/elle a des motifs raisonnables et probables de croire et croit effectivement:

(1) TERRY WAYNE FRANCOIS on or about the 30th day of December, in the year 2024 at the Settlement of Nelson House in the Province of Manitoba did in committing an assault on First Nations Safety Officer CAROL LOU DOLLY KOBLISKI, a peace officer in the Province of Manitoba engaged in the lawful execution of her duties did use a weapon to wit a 2015 Dodge Durango contrary to section 270.01 of the Criminal Code.

(2) TERRY WAYNE FRANCOIS on or about the 30th day of December, in the year 2024 at the Settlement of Nelson House in the Province of Manitoba did in committing an assault on First Nations Safety Officer ROB RUSSELL CASTEL, a peace officer in the Province of Manitoba engaged in the lawful execution of his duties did use a weapon to wit a 2015 Dodge Durango contrary to section 270.01 of the Criminal Code.

(3) TERRY WAYNE FRANCOIS on or about the 30th day of December in the year 2024 at the Settlement of Nelson House in the Province of Manitoba, did operate a conveyance in a manner that was dangerous to the public and thereby caused bodily harm to CAROL LOU DOLLY KOBLISKI contrary to Section 320.13(2) of the Criminal Code.

(4) TERRY WAYNE FRANCOIS on or about the 30th day of December in the year 2024 at the Settlement of Nelson House in the Province of Manitoba, did operate a conveyance in a manner that was dangerous to the public contrary to Section 320.13(1) of the Criminal Code.

(5) TERRY WAYNE FRANCOIS on or about the 31st day of December in the year 2024 at the Settlement of Nelson House in the Province of Manitoba, did resist Special Constable RYAN WRIGHTSON, Constable ALEXANDER VUJANOVIC and Sergeant ANDREW PANSON, peace officers of the Royal Canadian Mounted Police engaged in the execution of his duty of effecting the lawful arrest of TERRY WAYNE FRANCOIS by pulling away contrary to Section 129(a) of the Criminal Code.

Amended May 21/25 RD
CR: P. Morin PLS Bridge

SWORN/AFFIRMED before me this/DÉCLARÉ SOUS SERMENT OU AFFIRMÉ SOLENNELLEMENT devant moi le

(day/jour) (month/mois) (year/année) at/à , Manitoba/au Manitoba.

Provincial Court Judge or Justice of the Peace
Juge ou juge de paix

Informant/Dénonciateur

(To be completed if sent by telecommunications)
I solemnly declare that all matters contained in the information are true to the best of my knowledge and belief. I understand that this statement is of the same force and effect as if made under oath.

(À remplir dans le cas d'un envoi par télécommunications)
Je déclare solennellement que les faits énoncés dans la dénonciation sont exacts autant que je sache. Je comprends que la présente déclaration a la même valeur et le même effet que si elle était faite sous serment.

Dated this/Le 31 December 2024

at/à Nelson House, Manitoba/au Manitoba.

Provincial Court Judge or Justice of the Peace
Juge ou juge de paix

Vujanovic, Alexander
Nikola: 000345351

Digitally signed by Vujanovic, Alexander
Nikola: 000345351
Date: 2025.05.21 10:00:00 -0500

Informant/Dénonciateur

DOB/NÉ(E) LE: Gender/Sex: ☒ male/homme ☐ female/femme DL#P/C#:

PR#/R. P. #:

Police Agency/Détachement/Service ou détachement de police: RCMP NELSON HOUSE DETACHMENT

<input checked="" type="checkbox"/> Vehicle-related offence / Infraction liée à un véhicule: Vehicle Plate No. / N° de plaque: Vehicle Type / Type de véhicule: <input checked="" type="checkbox"/> Motor Vehicle / Véhicule automobile <input type="checkbox"/> Motorcycle / Motocyclette <input type="checkbox"/> ATV / VTR <input type="checkbox"/> Snowmobile / Motoneige <input type="checkbox"/> Implement of husbandry/special mobile machine/tractor / Matériel agricole/machine mobile spéciale/tracteur <input type="checkbox"/> Other, specify / Autre, préciser: <input type="checkbox"/> Child passenger under 16/passager de moins de 16 ans National Safety Code No. / Numéro du Code national de sécurité:	
--	--

Domestic Violence / Violence familiale ☐ Yes / Oui ☒ No / Non
Police Agency/Détachement/Service ou détachement de police responsable de l'entrée des données au CIPC: Nelson House RCMP

MG-10615 (Rev. 12/2019)

MR035

FEDERAL COURT

BETWEEN:

TERRY WAYNE FRANCOIS

Applicant/Moving Party

and

NISICHAWAYASIIHK CREE NATION

Respondent/Responding Party

(APPLICATION UNDER SECTIONS 18(1) AND 18.1 OF THE
FEDERAL COURTS ACT, R.S.C. 1985, c. F-7)

**AFFIDAVIT OF ASHLEY SEXTON
SWORN SEPTEMBER 18, 2025**

I, ASHLEY SEXTON, of the City of [REDACTED] in the Province of [REDACTED] SWEAR THAT:

1. I am a paralegal assisting counsel for the Applicant/Moving Party in this matter. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where my knowledge with respect to such matters is based on information and belief, I have set out the source of the information and believe it to be true.
2. Attached hereto and marked as **Exhibit "A"** is a copy of the Nisichawayasihk Cree Nation *Community Protection Law* referred to in the Applicant's/Moving party's Memorandum of Fact and Law, and which I have viewed on the Nisichawayasihk Cree Nation website on available at the following link: <https://www.ncncree.com/government-and-laws/laws-and-governance/>.
3. Attached hereto and marked as **Exhibit "B"** is a copy of the Government of Canada webpage which lists the Nisichawayasihk Cree Nation as a Section 10 Band, which I have viewed on the webpage available at the following link: https://fnp-ppn.aadnc-aandc.gc.ca/fnp/Main/Search/FNGovernance.aspx?BAND_NUMBER=313&lang=eng.

4. I make this Affidavit in support of the Applicant's/Moving Party's Notice of Motion for an injunction dated September 11, 2025.

SWORN BEFORE ME in the City of [REDACTED])
in the Province of [REDACTED])
this 18th day of September, 2025.)



A Commissioner of Oaths in and for the
Province of [REDACTED]



ASHLEY SEXTON

Marty Moore
Barrister & Solicitor

THIS IS EXHIBIT " A "
referred to in the Affidavit of
Ashley Sexton
Sworn before me this 18
day of Sept A.D. 20 25
[Signature]

Marty Moore
Barrister & Solicitor

NISICHAWAYASI NEHETHOWUK LAWS

2019

LAW 2019-1

A Law to enact a Community Protection Law 2019, c. C-1

Proposal: May 1, 2018

First Reading: October 2018

General Assembly: March 14, 2019

Adopted: July 10, 2019

Approved: August 22, 2019

CCLNCN 2019, c. C-1

Nisichawayasi Community Protection Law

WHEREAS *Kihche’othasowewin* (the Great Law of the Creator) and the customary law principles of the *Nisichawayasi Nehethowuk* are to guide the conduct of *Ethiniwuk* (individuals) and *Ka’esi’pisketuskan’nesichik* (the Nation);

WHEREAS the customary law principles outlined in Article 1.2 of *Othasowewin* are to be adhered to and followed, particularly *Kistethichikewin* (respect), *Oh’chinewin* (cause and effect) and *Asehewewin* (spiritual responsibility); *Pastamowin* (failure to speak out against wrongdoing) and *Pastahowin* (breaching sacred laws);

WHEREAS it is in the best interests of the Nisichawayasihk Cree Nation to enact an NCN Law to protect the safety of the community, children and other vulnerable persons from exposure to violent crime, gang activity, illegal drugs, bootlegging, abuse of alcohol, sexual exploitation, human trafficking and abuse on or adjacent to NCN Lands;

WHEREAS NCN recognizes the importance of collective rights and the priority of those rights over individual rights in order to maintain peace, order and safety within the community;

WHEREAS NCN may prohibit harmful substances or people from entering *N’Tuskenan* (NCN traditional ancestral lands) , grant authority to persons to conduct inspections of persons and vehicles entering NCN Lands and banish people who engage in harmful activities including gang activity, harbouring persons engaged in human trafficking, criminal activity or other conduct that is harmful to NCN from NCN Lands;

WHEREAS NCN has the authority under Article 14.13 of *Othasowewin* and Article 8.1 of *Aski-Pumenikewin* to enact NCN Laws urgently required for public health or safety or to stop or prevent criminal activity on or adjacent to NCN Lands

THIS LAW in accordance with *Othasowewin* 2017, c. O-1 and *Aski-Pumenikewin* 2017, c. A-1 by and with the advice of the citizens of the Nisichawayasihk Cree Nation is enacted as follows:

Title

1 This law may be cited as the *Nisichawayasi* Community Protection Law, 2019, c. C-1.

PART I

INTERPRETATION AND APPLICATION

Definitions

2 In this *Nisichawayasi* Protection Law,

“alcohol” means beer, wine, liquor, home brew and any other product intended for human consumption that contains more than 1% alcohol by volume.

“cannabis” means any part of a cannabis plant as defined in the laws of Canada.

“director” means the person appointed by chief and council or the chief executive officer as the director, and includes any designate, for the purposes of this law.

“drone” means a powered air vehicle that is designed to operate without a human operator on board and which may include cameras or other audio-visual technology.

“drugs” means a controlled substance as defined in the laws of Canada.

“drug activity” means producing, providing, selling, storing, trafficking, or possessing alcohol, drugs, prescription drugs without a valid prescription or intoxicants without a valid permit.

“gang activity” means activities undertaken by an organized group of people who rely on intimidation, violence and the commission of criminal acts in order to gain power, recognition or to control other people or certain areas of unlawful activity.

“harbouring” means a person who hides another person who the person knew or ought to know is a vulnerable person in need of protection, a criminal offender, suspect or an accessory to a crime or that there is an outstanding warrant for that person’s arrest.

“human trafficking” means the recruitment, transportation, or exercising control, direction or influence over the movements of a person in order to exploit that person through sexual or other types of exploitation or forced labour.

“intoxicants” means industrial, commercial or household products including but not limited to hand sanitizer, fertilizer, duct tape, and Lysol which are not meant to be ingested or inhaled.

“NCN Lands” means the reserve lands more particularly described in *Aski-Pumenikewin*;

“*N’tuskenan*” means the traditional lands occupied and used by the *Nisichawayasi Nehethowuk* prior to signing the adhesion to Treaty 5 and includes NCN Lands and the Resource Management Area;

“motorized vehicle” includes but is not limited to cars, trucks, motorcycles, boats, personal water craft, recreational vehicles, snowmobiles and all terrain vehicles with or without a human operator.

“non-motorized vehicle” includes but is not limited to bicycles, dog sleds and canoes.

“prescription drug” means a drug that is obtained or supposed to be obtained by a prescription issued by an authorized practitioner.

“peace officer” means a peace officer as defined in the Criminal Code of Canada and includes a First Nations Safety Officer appointed by Chief and Council, with authority to enforce NCN Laws and to maintain peace, order and safety on or adjacent to NCN Lands.

“permit” means giving *Tawinamakewin* (formal consent) by issuing a written authorization to engage in certain legal activities or to do certain things.

Scope and Application

3 This law applies to the protection and safety of people throughout *N’tuskenan*.

PART II

PROHIBITIONS ON ALCOHOL AND ILLEGAL DRUGS

Unauthorized manufacture or sale of alcohol, drugs, prescription drugs or intoxicants

4 Except as authorized by permit under this Law, no person shall manufacture, produce, grow or sell alcohol, cannabis, drugs, prescription drugs or intoxicants on NCN Lands.

Unlawful purchase of alcohol, drugs, prescription drugs or intoxicants

5 A person must not purchase alcohol, cannabis, drugs, prescription drugs or intoxicants from a person who is not authorized to sell such substances.

Prohibition on buying or selling drugs

6 No person shall buy, sell or transport alcohol, cannabis, drugs, intoxicants or prescription drugs without a valid prescription on NCN Lands without a permit.

Unlawful transportation onto NCN Lands

7 A person must not transport or conceal in a drone, motorized vehicle or non-motorized vehicle, for transportation onto NCN Lands more alcohol, cannabis or intoxicants than the limits established by regulation.

Prohibition of alcohol or cannabis in public places

8 Except as permitted under this NCN Law, a person must not distribute or consume alcohol or cannabis in a public place.

Places alcohol or cannabis can be used

9 Alcohol or cannabis may only be consumed in a residence or on premises where a permit has been issued by the director, and the occupier of a residence or other building on NCN Lands must ensure no gang activity, harbouring, human trafficking or illegal drug activity occurs in the residence or premises.

Alcohol or drugs not to be provided to intoxicated persons

10 A person must not give, sell or otherwise supply alcohol, cannabis, drugs, prescription drugs without a valid prescription or intoxicants to a person who is or who appears on reasonable grounds to be intoxicated.

Obligation to prevent disturbances from alcohol consumption

11 The occupier of a residence or other premises must not allow any person to become intoxicated and cause violence or other disturbances in the residence or premises or in its immediate vicinity from the consumption of alcohol and the occupier of a residence or other premises shall be responsible for the safety of any person who consumes alcohol, cannabis, drugs, prescription drugs without a valid prescription and intoxicants at the occupier's residence or other premises.

Transporting alcohol or cannabis in motorized vehicles

12 A person must not drive or have the care and control of motorized vehicles, whether or not the vehicle is in motion, if there is alcohol or cannabis in the motor vehicle unless the alcohol or cannabis has not been opened or unsealed and it is stored in a trunk, behind the last seat in a vehicle with open trunk space, in an exterior carrier or in a storage area that is part of the motor vehicle where it cannot be accessed by persons in the motor vehicle.

Minors

13 A person must not give, sell or otherwise supply alcohol, cannabis or other drugs to a minor unless such cannabis or other drugs have been prescribed by a doctor, dentist or nurse practitioner for the minor or are available for purchase from a duly licensed vendor or pharmacy.

PART III

PERMITS

Permits to transport alcohol or cannabis

14 (1) Subject to subsections (2) to (4), any person who wishes to transport alcohol or cannabis onto NCN Lands in accordance with any limits established by Chief and Council shall make an application to the director to issue a permit to transport such alcohol or cannabis.

Social permits

14(2) A person who wishes to serve alcohol at a social event must obtain a permit from the director prior to holding the social event.

No permits for Mystery Lake Lands

14 (3) Any person wishing to transport or consume alcohol or cannabis on the Mystery Lake Lands in designated areas shall not be required to obtain a permit from the director but must comply with all relevant provincial laws.

Permit Terms and Conditions

14 (4) Chief and Council may by regulation establish terms and conditions for the granting of permits including but not limited to:

- (a) the quantity and size of any alcohol or cannabis that may be transported onto NCN Lands;
- (b) the type of any drugs that may be transported onto NCN Lands;
- (c) restrictions on the transportation of alcohol, cannabis or other drugs;
- (d) the destruction of alcohol, cannabis or other drugs over the limits in a permit;
- (e) permit fees; and
- (f) any matter or thing Chief and Council considers relevant in the circumstances including a requirement to produce receipts for the alcohol, cannabis or other drugs being transported.

Driver of motorized vehicle

14 (5) The driver of, and any passenger in, a motorized vehicle or non-motorized vehicle used to transport alcohol or cannabis must have a valid permit and in the case of prescription drugs being transported a person may be required to show a peace officer evidence of a valid prescription for the drugs.

Violations of permit conditions

14 (6) Any permit issued to a person who violates the terms and conditions of a permit issued under this Law shall be immediately cancelled and the person shall be subject to the penalties in this Law.

Ban on Transportation or Consumption

15 Chief and Council may by order ban the transportation and consumption of alcohol, cannabis or other drugs on NCN Lands or a portion of NCN Lands if it is considered in the public interest to do so.

PART IV

CHECKSTOP AND OTHER SEARCHES

Checkstop

16 (1) Chief and Council may establish a checkstop on or adjacent to NCN Lands for peace officers to conduct inspections of persons, motorized vehicles and non-motorized vehicles on or entering NCN Lands to the confirm persons in such vehicles

- (a) have proper licencing and insurance;
- (b) having possession of, or transporting alcohol, cannabis, drugs, prescription drugs or intoxicants are not doing so contrary to this Law or the regulations;
- (c) are not being inappropriately harboured on NCN Lands;
- (d) are not being exploited or the subject of human trafficking or gang activity;
- (e) have any required residency or work permits issued in accordance with NCN Laws;
- (f) are not in violation of any banishment order issued pursuant to NCN Laws or any court order issued by a court of competent jurisdiction; and
- (g) are not violating any other laws.

Search and Refusal of Entry onto NCN Lands

16(2) All motorized vehicles, non-motorized vehicles, persons and any personal property in such vehicles or on such persons may be searched prior to being allowed entry onto NCN Lands and any person who refuses to be searched shall not be allowed entry onto NCN Lands.

Special procedures to search sacred bundles

16(3) A peace officer shall request a person who is in possession of a sacred bundle or object to open the bundle or object and show the peace officer its contents who shall not examine or touch the sacred

bundle or its contents without the permission of the owner but if the person refuses to open the bundle at the request of the peace officer, the person shall not be allowed entry onto NCN Lands.

Confiscation illegal substances

16 (4) Any illegal substances found during a search of a person, a sacred bundle or vehicle will be confiscated by the peace officer.

Other Authorized Searches

16(5) If Chief and Council believes on reasonable and probable grounds that bootlegging, drug activity, gang activity, human trafficking or harbouring is occurring on NCN Lands or adjacent to NCN Lands, Chief and Council may make any order it considers advisable to allow a peace officer to inspect the NCN Lands and any buildings on the such lands.

Revocation of Benefits or Interests

16(6) Without limiting any order made by Chief and Council under subsection (5), the order may include temporary or permanent removal of the person and the person's family from the residence or any other building on NCN Lands, removal from NCN Lands, notification of the relevant child and family services authority if children are involved and revocation of any benefits being received by the person who is subject to the search or any interest a person may have in NCN Lands.

Reconsideration

16(7) Any person directly affected by an order under this section may within seven (7) days of the order apply to the Peacekeepers Tribunal for reconsideration of the order.

16(8) Onus

The onus is on the applicant in a request for reconsideration to establish that the order was

- (a) unnecessary because no drug activity, gang activity, human trafficking or harbouring was occurring;
- (b) not made on reasonable and probable grounds; or
- (c) inappropriate in the circumstances.

Remedies

16(9) The Peacekeepers Tribunal may set aside, vary with or without conditions, or confirm the order.

PART V

EVICTIION AND BANISHMENT

Authority to evict or banish

17 (1). A person who

- (a) poses a significant threat to the health, safety or wellbeing of NCN or any person residing on or visiting NCN Lands,
- (b) has engaged in human trafficking, harbouring or other criminal activity, or
- (c) refuses to comply with NCN Laws,

may be evicted from any residence, building or other premises or banished from NCN Lands by order of Chief and Council or any person or entity to whom Chief and Council has delegated such authority by regulation.

Process to be followed

17 (2) If Chief and Council approve an order of eviction or banishment pursuant to subsection (1), the CEO or designate shall issue a notice of the eviction or banishment order within two (2) business days which notice shall contain

- (a) the name, address, and date of birth, if known of the person evicted or banished;
- (b) a photograph or description of the person or both;
- (c) a brief description of the basis for the eviction or banishment;
- (d) any other information Chief and Council considers relevant and appropriate in the circumstances.

and a copy of the notice of the eviction or banishment order shall be delivered to the director, the RCMP and if possible, to the person named in the order within three (3) business days of it being issued.

Eviction order hearings

17 (3) Any person who receives a notice of an eviction order may request a hearing before the Peacekeepers Tribunal within seven (7) days from the date the notice is issued to present information about why the eviction order should be rescinded.

Banishment order hearings

17 (4) Any person who is banished from NCN Lands may, as part of restorative justice, request a hearing before the Peacekeepers Tribunal no earlier than five (5) years from the date of the banishment order or if the person has been sentenced to jail, no earlier than five (5) years from the date the person is released from jail, to request that the banishment order be rescinded.

Submissions at hearing

17 (5) The Peacekeepers Tribunal shall take into consideration any submissions made by or on behalf of the person who is the subject of an eviction or banishment order, Chief and Council, and any victims of the person and shall decide whether to rescind or confirm the order, with or without conditions.

Decisions following hearing

17 (6) If a person could not be served with a copy of the order after reasonable attempts were made, does not appear at a hearing scheduled pursuant to this section or appears and makes submissions but the order is not rescinded, the Peacekeepers Tribunal shall confirm the date the order is to take effect and the director or designate shall forthwith notify the RCMP and post the order on NCN Lands and on the NCN website.

Register

17 (7) The director shall establish and maintain a register of persons who have been evicted or banished in accordance with the regulations or any band council resolution issued prior to this law coming into force.

Trespass

17 (8) Any person who

- (a) is the subject of a banishment order that has not been rescinded and enters upon NCN Lands;
- (b) is the subject of an eviction order that has not been rescinded and enters into the building or premises from which the person has been evicted;
- (c) does not have a valid residency or work permit to enter NCN Lands; or
- (d) where no permit has been issued, has failed to report to the director upon entry onto NCN Lands,

shall be guilty of trespassing and may be removed by a peace officer.

PART VI

ENFORCEMENT

Offences

18 (1) Any person who violates the provisions of this Law is guilty of an offence and is subject to the penalties imposed by this Law or any other NCN Law in addition to any other penalties imposed by Canada or Manitoba.

Penalty

18 (2) Any person who is guilty of an offence under this Law is liable on summary conviction to a fine of not more than five thousand dollars (\$5,000.00) or to a term of imprisonment not exceeding six (6) months or both.

Community Service

18 (3) A person who is sentenced under ss. 18 (2) may in addition be required to perform community service as part of giving effect to the customary law principles of *Kwayaskonikiwin* (reconciliation) and *Ponethetamakewin* (forgiveness).

PART V

COMING INTO FORCE

Effective date

19 This law comes into force on October 1st, 2019.

Transition

The Council Resolution dated January 22, 2013 establishing the limits of alcohol that can be transported onto NCN Lands shall be considered a valid and subsisting regulation passed in accordance with this NCN Law until such time as it is replaced and all banishment orders issued by Chief and Council by Band Council Resolution pursuant to the Indian Act (Canada) shall be considered valid and continue in effect under this NCN Law.

Members of the Appeal Committee appointed in accordance with the *Nisichawayasi* Election Law 1998, c. E-1 shall be considered the Peacekeeper Tribunal for purposes of this Law until a separate Peacekeepers Tribunal Law is enacted and persons are appointed to the Peacekeepers Tribunal.

THIS IS EXHIBIT " B "
referred to in the Affidavit of
Ashley Sexton
Sworn before me this 18
day of Sept A.D. 20 25
[Signature]

Marty Moore
Barrister & Solicitor



[Canada.ca](#) > [Crown-Indigenous Relations and Northern Affairs Canada](#)
> [Indigenous peoples and communities](#) > [First Nations](#)

Governance

Official Name

Nisichawayasihk Cree Nation

Number

313

Membership Authority

Section 10 Band

*Election System

Custom Electoral System

*Council Quorum

Please contact the First Nation for the quorum information.

*First Nation Officials

Title	Surname	Given Name	Appointment Date	Expiry Date
Chief	LEVASSEUR	ANGELA	10/22/2022	08/21/2026
Councillor	HUNTER-MOORE	CHERYL	10/22/2022	08/21/2026
Councillor	LINKLATER	KIM	10/22/2022	08/21/2026
Councillor	LINKLATER	SHIRLEY	10/22/2022	08/21/2026

Councillor	SPENCE	JEREMIAH	10/22/2022	08/21/2026
Councillor	SPENCE	RON	10/22/2022	08/21/2026
Deputy Chief	MOODY	MARCEL	10/22/2022	08/21/2026

*Note: Election System - The type of system used by a First Nation in the selection of its chief and councillors (can be either under the Indian Act election system, the First Nations Elections Act, a custom system, or under the provisions of a self-governing agreement).

Date modified:

2025-03-18

FEDERAL COURT

B E T W E E N:

TERRY WAYNE FRANCOIS

Applicant/Moving Party

and

NISICHAWAYASIIHK CREE NATION

Respondent/Responding Party

(APPLICATION UNDER SECTIONS 18(1) AND 18.1 OF THE
FEDERAL COURTS ACT, R.S.C. 1985, c. F-7)

**MOVING PARTY'S
MEMORANDUM OF FACT AND LAW**

September 19, 2025

MOORE JUSTICE LAW

[REDACTED]

**Marty Moore
Phil Dunlop (Student-at-Law)**

[REDACTED]

CHARTER ADVOCATES CANADA

[REDACTED]

James Manson

[REDACTED]

Counsel for the Applicant/Moving Party

OVERVIEW

1. The applicant, Terry Wayne Francois, seeks an order from this Court allowing him to return to his home in Nelson House (the “**Home**”), where he lives as a single father and caregiver with three of his daughters, one of whom is a minor, pending the resolution of this proceeding.

2. Mr. Francois is a member of the Nisichawayasihk Cree Nation (“**NCN**”). In May 2025, he was prevented by an NCN Safety Officer (“**FNSO**”) from going to his Home. The FNSO told him that he had been banished from NCN lands. He had not received any prior notice and had no opportunity whatsoever to defend himself against the banishment.

3. NCN banished Mr. Francois for a minimum of *five years*, effective December 30, 2024 (the “**Banishment Decision**”), after which time, under NCN’s *Community Protection Law*, Mr. Francois can request a hearing seeking to have the banishment order rescinded.

4. The facts establish that on December 30, 2024, Mr. Francois was involved in an incident where he refused to allow what he believed to be an unauthorized search of his vehicle by a sniffer dog at the NCN checkstop on the border of NCN lands (the “**Checkstop**”). NCN subsequently claimed, falsely, that Mr. Francois assaulted a FNSO with his vehicle; the letter advising Mr. Francois of the Banishment Decision also states, falsely, that Mr. Francois was convicted of assaulting NCN’s Chief of Law Enforcement. In fact, Mr. Francois pleaded guilty to resisting peace officers (not assault), and paid the resulting \$600 in fines.

5. Mr. Francois sought, unsuccessfully, to have NCN reconsider the Banishment Decision.

6. On July 24, 2025, Mr. Francois filed a Notice of Application in this Court. He seeks to quash the Banishment Decision and requests a declaration that the Banishment Decision unreasonably infringes his rights protected by sections 7, 8, 9, 11(h) and 12 of the *Canadian Charter of Rights and Freedoms*. Mr. Francois further seeks declarations that section 17 of the *Community Protection Law* (the “**Banishment Law**”) is *ultra vires*, an unreasonable violation of

his statutory and treaty rights, and an unjustified violation of sections 7 and 12 of the *Charter*. Mr. Francois also seeks a declaration that section 16 of the *Community Protection Law* (the “**Checkstop Law**”) unjustifiably violates sections 7, 8 and 9 of the *Charter*.

7. On this motion, Mr. Francois seeks an interlocutory injunction staying the Banishment Decision, which is causing irreparable harm by preventing Mr. Francois from living in his Home with his family in his community, pending the final determination of this matter.

PART I – STATEMENT OF FACT

8. Mr. Francois is a Cree man, a father, a grandfather and a NCN member.¹ Born on [REDACTED] [REDACTED]² he grew up on NCN lands in the old part of Nelson House, called Wasahsihk.³

9. Over the years, Mr. Francois has lived on and off NCN lands, but has always considered NCN home. His mother lived in Nelson House for years and worked as an addiction counselor for 25 years at the Nelson House Medicine Lodge. Two of his siblings and their families continue to live on NCN lands. Further, he is related to a significant percentage of NCN members.⁴

10. Mr. Francois has also worked both on and off NCN lands. As a young man, he worked as a NCN band constable for approximately 5 years. He currently works as an underground mining contractor for Hudbay Minerals, Inc. at their mining operations in Snow Lake.⁵

Mr. Francois’ Home at Nelson House

11. More than ten years ago, Mr. Francois decided, along with his spouse at the time, to move back to Nelson House, part of NCN lands, with his girls. To him, Nelson House has always been home, and he wanted his girls to experience that connection as well.⁶ For roughly a decade since

¹ Affidavit of Terry Wayne Francois, sworn August 21, 2025 (the “**Francois Affidavit**”) at paragraph 1, **Moving Party’s Motion Record (“MPMR”)**, Tab X.

² Francois Affidavit, paragraph 2.

³ Francois Affidavit, paragraph 3.

⁴ Francois Affidavit, paragraph 5.

⁵ Francois Affidavit, paragraph 6.

⁶ Francois Affidavit, paragraph 7.

then, until December 31, 2024, Mr. Francois lived with his family in the Home at [REDACTED]

[REDACTED]⁷

12. Mr. Francois has five daughters, four of whom, along with his granddaughter, live on NCN lands. Three of his daughters, aged 16, 18 and 22, presently reside at the Home.⁸

13. Mr. Francois is the primary caregiver for his three daughters who live in the Home. He believes it is critical for him to be there for them and support them financially and emotionally: their mother battles alcoholism, does not live in the Home and is not able to be there for them. Since Mr. Francois has not been able to go Home, he drives to the NCN Checkstop at least once a month to deliver groceries for his family.⁹

14. The area where the Home is located is known to be a rough and dangerous area of Nelson House. Mr. Francois is very concerned for the safety of his daughters; it is common knowledge among NCN members that there has been significant violence on NCN lands, including random violence. Young women are also at risk of sexual assault there.¹⁰

15. Mr. Francois also has a granddaughter who is now two years old. She resides on NCN lands with her father and mother (his daughter). Mr. Francois and his granddaughter have developed a special bond, as she lived in the Home until her father and mother got assigned their own home in Nelson House.¹¹ That bond, however, has been significantly weakened by Mr. Francois' removal from NCN and now by his banishment. Nowadays, he only gets to see her if her parents take her on the hour-long trip to Thompson. Mr. Francois fears that his bond with his granddaughter will be irretrievably lost if he is not permitted to live at the Home.¹²

⁷ Francois Affidavit, paragraph 8.

⁸ Francois Affidavit, paragraph 9 and Exhibit "A".

⁹ Francois Affidavit, paragraph 10.

¹⁰ Francois Affidavit, paragraphs 11 and 12.

¹¹ Francois Affidavit, paragraph 13.

¹² Francois Affidavit, paragraph 14.

December 2024 Incident

16. On December 30, 2024, Mr. Francois was driving Home from Thompson with one of his daughters with some pizza in his vehicle for the rest of the family.¹³ He stopped at the NCN Checkstop to submit to a search of his vehicle as he had done countless times before. He became concerned when a person who was not an NCN First Nations Safety Officer (“FNSO”) came to search his vehicle. A couple of FNSOs then did come over. While he was prepared to consent to a search of his vehicle by FNSOs, when yet another person, who was also not an FNSO, brought over a dog to search his vehicle, he refused to consent to the search of his vehicle by the dog.¹⁴

17. A heated verbal disagreement ensued. Mr. Francois strenuously disagreed with the demands being made of him, as he didn’t believe there was a legal basis to allow either non-FNSOs or a dog to search his vehicle.¹⁵ He found it very unreasonable and frustrating to accept what he believed were illegal demands. He ended the conversation at the Checkstop by saying, **“I am from this reserve. I don’t have to leave”**. He then proceeded to drive forward, over a traffic cone, and continued on his way Home without submitting to what he viewed as an illegal search.¹⁶

18. Prior to arriving Home, Mr. Francois was stopped by RCMP officers and questioned about the incident at the Checkstop. He answered the officers’ questions and was permitted to continue Home.¹⁷ The following day, however, three RCMP officers came to his Home to arrest him for “assault with a weapon” and other charges. Initially, he protested his innocence and refused to consent to be taken from his Home; however, shortly thereafter he verbally confirmed to the officers that he would go with them and allowed them to arrest him.¹⁸

¹³ Francois Affidavit, paragraph 15.

¹⁴ Francois Affidavit, paragraph 16

¹⁵ Francois Affidavit, paragraph 17.

¹⁶ Francois Affidavit, paragraph 18 and Exhibit “B”.

¹⁷ Francois Affidavit, paragraph 19.

¹⁸ Francois Affidavit, paragraph 20.

19. Mr. Francois was then taken to the RCMP station and charged. He was released thereafter, but was told that he was not allowed to go Home or remain on NCN lands while his trial was pending. He was forced to relocate to Thompson, renting a room there at his own expense.¹⁹

Resolution of Charges

20. On May 21, 2025, Mr. Francois pleaded guilty to two counts of resisting a peace officer, and was fined a total of \$600. He has paid those fines in full.²⁰ The remaining charges arising from the events of December 30-31, 2024 were stayed.²¹

Banishment from NCN Lands

21. Around May 22, 2025, Mr. Francois attempted to return to the Home at Nelson House. He was prevented from entering NCN lands by an FNSO who told him that he was banished.²²

22. Mr. Francois immediately called Carol Kobliski, NCN's Chief of Law Enforcement, and asked what this banishment was about. Ms. Kobliski refused to tell him why he had been banished, and told him to call Bonnie Campbell, who works in NCN's Justice department. He then called and texted Ms. Campbell, to try and get an explanation, but the only response he received was Ms. Campbell's voicemail.²³

23. Despite not having any explanation for his alleged banishment, Mr. Francois complied with the FNSO's order not to enter NCN lands, and drove to Thompson.²⁴ He then reached out to the NCN band office, who told him to contact Curtis McDonald in NCN Justice. He called Mr. McDonald, but Mr. McDonald did not give him any explanation.²⁵

24. One morning at the end of May or in early June 2025, Mr. Francois received a call from

¹⁹ Francois Affidavit, paragraph 21.

²⁰ Francois Affidavit, paragraph 22.

²¹ Francois Affidavit, paragraph 23.

²² Francois Affidavit, paragraph 24.

²³ Francois Affidavit, paragraph 25.

²⁴ Francois Affidavit, paragraph 26.

²⁵ Francois Affidavit, paragraph 27.

Terry B. Linklater, the NCN Director of Justice, who stated that he had made the decision to banish Mr. Francois. Mr. Linklater mentioned a situation in 2022, but when Mr. Francois told him he had no idea what that was about, Mr. Linklater did not explain. Mr. Linklater also mentioned the December 2024 incident at the Checkstop. Mr. Francois told Mr. Linklater that he was not the right person to be making this decision because there was animosity between them. Mr. Francois said that the decision should be made by Chief and Council. But Mr. Linklater was clear in stating that his decision was final, and that there was nothing Mr. Francois could say to change it. He then advised that NCN would be getting Mr. Francois the paperwork for the banishment.²⁶

25. Mr. Francois then told Mr. Linklater that two of his daughters were graduating in June 2025; Mr. Linklater replied that he would only be allowed on to NCN lands to attend the ceremonies. Mr. Francois' daughters' graduation ceremonies took place on June 24 and June 27, respectively.²⁷

26. When Mr. Francois attended his daughter's graduation on June 24, 2025, he was met at the Checkstop by an FNSO who gave him a letter from Terry Linklater, dated June 10, 2025.²⁸ This was the first time he was informed that, among other things, he had allegedly been placed on a "conditional banishment" on May 5, 2022, and that this "conditional banishment" had been upgraded to a full banishment for a minimum of five years, effective December 30, 2024.²⁹

27. Prior to December 31, 2024, Mr. Francois had resided on NCN lands continuously, with his family in the Home, for roughly a decade. This would include the entire time that he was supposedly under "conditional banishment".³⁰

28. The letter Mr. Francois received on June 24, 2025 (the "**June 24 Letter**") outlined the

²⁶ Francois Affidavit, paragraph 28.

²⁷ Francois Affidavit, paragraph 29.

²⁸ Francois Affidavit, paragraph 30 and Exhibit "C".

²⁹ Francois Affidavit, paragraph 31.

³⁰ Francois Affidavit, paragraph 32.

alleged conditions of the “conditional banishment,” which he had never been notified of before.

These conditions outlined in the conditional banishment included the following:

1. TERRY WAYNE FRANCOIS [REDACTED] be permitted to reside in NCN subject to the following conditions:

- a. That he acknowledges and pay for any outstanding fines issued under Nisichawayasihk Cree Laws
- b. That he apologizes to the First Nations Safety Officer in writing for any inappropriate conduct directed towards FNSO.
- c. That if he violates Community Protection Law Sections:

4. Unauthorized manufacture or sale of alcohol, drugs, prescription drugs or intoxicants except as authorized by permit under this Law, no person shall manufacture, produce, grow or sell alcohol, cannabis, drugs, prescription drugs or intoxicants on NCN Lands.

5. Unlawful purchase of alcohol, drugs, prescription drugs or intoxicants A person must not purchase alcohol, cannabis, drugs, prescription drugs or intoxicants from a person who is not authorized to sell such substances.

6. Prohibition on buying or selling drugs No person shall buy, sell or transport alcohol, cannabis, drugs, intoxicants or prescription drugs without a valid prescription on NCN Lands without a permit.

- d. That he keeps the peace and be of good behavior.

2. Any violations by TERRY WAYNE FRANCOIS of the conditions set out in Paragraph 1 may result in Chief and Council authorizing the FIRST NATIONS SAFETY OFFICER/NCN RCMP to escort TERRY WAYNE FRANCOIS off the Nisichawayasihk Cree Nation reserve boundary.

BE IT FURTHER RESOLVED THAT: any actions pertaining to violence will result in banishment, including if TERRY WAYNE FRANCOIS returns to Nisichawayasihk Cree Nation and its traditional territory, that he/she be charged with trespassing.³¹

29. In regard to the alleged condition “a.”, above, Mr. Francois is not aware of any alleged “outstanding fines” he was apparently supposed to acknowledge and pay.³² In regard to the alleged condition “b.”, above, he is not aware of any “inappropriate conduct” for which he was apparently supposed to apologize in writing.³³ In regard to condition “c.”, above, he does not do drugs or sell drugs. He rarely drinks alcohol. Mr. Francois is not aware of any NCN accusations in 2022, or

³¹ Francois Affidavit, paragraph 33.

³² Francois Affidavit, paragraph 34.

³³ Francois Affidavit, paragraph 35.

subsequently, that he was involved in any of these banned activities.³⁴

30. Mr. Francois is *still* unaware of the basis for any alleged conditional banishment against him in 2022, or even whether he was in fact conditionally banished. Because June 24, 2025 was the first he ever heard of being “*conditionally banished*” as of May 5, 2022, he had no way of challenging or otherwise responding to that alleged “*conditional banishment*”.³⁵

31. The second page of the June 24 Letter implies that Mr. Francois was involved in an earlier “*incident, on record*” where his “*actions jeopardized the safety of our First Nations Safety Officers.*” He is unaware of what the June 24 Letter is referring to in making this allegation.³⁶

32. The June 24 Letter then advises that Mr. Francois was convicted of assaulting a peace officer with a weapon by allegedly striking FNSO Carol Kobliski with his vehicle. This is false. Mr. Francois pleaded guilty to a charge of resisting FNSO Kobliski, not to assaulting her.³⁷

33. The June 24 Letter goes on to allege that Mr. Francois “fought” with RCMP officers at the Home on December 31, 2024, which is also false.³⁸

34. After learning of his banishment, Mr. Francois wanted to challenge it. He thus reached out to NCN Councillors to do this. First, he called Councillor Cheryl Moore, to ask what was going on with his banishment. She indicated that she didn’t want to get involved. She indicated that he could call Councillor Kim Linklater.³⁹

35. Mr. Francois then called Councillor Linklater, who told him that the Chief and Council had no choice but to sign off on Terry Linklater’s decision to banish him. Mr. Francois protested that Terry Linklater had animosity toward him, but Councillor Linklater stated that Chief and Council

³⁴ Francois Affidavit, paragraph 36.

³⁵ Francois Affidavit, paragraph 37.

³⁶ Francois Affidavit, paragraph 38.

³⁷ Francois Affidavit, paragraph 39 and Exhibit “D”.

³⁸ Francois Affidavit, paragraph 40.

³⁹ Francois Affidavit, paragraph 41.

had already decided to delegate banishment decisions and affirmed that Chief and Council were “*not getting involved*”.⁴⁰

36. Ultimately, Mr. Francois believes that the banishment decision was made by Terry Linklater, as the Director of Justice, with the input of FNSO Carol Kobliski, Chief of Law Enforcement, and Bonnie Linklater, who works in the NCN Justice Department.⁴¹

37. Mr. Francois believes that Terry Linklater’s decision was biased. Mr. Linklater is the brother-in-law of Carol Kobliski who had made the accusation against Mr. Francois that he had committed assault against her with a deadly weapon, for driving through the Checkstop on December 30, 2024. Further, in late 2024, there had been a serious allegation against one of Terry Linklater’s grandsons, who is also a son of Bonnie Linklater, and a nephew of Carol Kobliski, in regard to one of Mr. Francois’ daughters. Further, shortly after the RCMP issued a news release about the December 2024 incident on January 2, 2025, Bonnie Linklater made public and serious allegations against Mr. Francois on her public Facebook page, stating that “*Luckily, he hasn’t killed anyone yet*” and that it is “*Scary to live in a community with a mentally unwell person with rage.*”⁴²

38. Finally, when Mr. Francois spoke to Terry Linklater in or about June 2025 about being banished, it was clear that his mind was made up and that the decision to banish him was already final and irrevocable regardless of what he could say.⁴³

39. Mr. Francois states that he is not a danger to his community; rather, he makes positive contributions to it. For example, for about ten years, he has assisted the NCN Wellness Centre in transporting people in need to various locations in Manitoba and Saskatchewan. He has made numerous trips to transport children—ranging from infants in car seats to teens—to Winnipeg and

⁴⁰ Francois Affidavit, paragraphs 42 and 43.

⁴¹ Francois Affidavit, paragraph 44.

⁴² Francois Affidavit, paragraph 45.

⁴³ Francois Affidavit, paragraph 46.

other places.⁴⁴ However, since he has not been permitted to return to Nelson House in 2025, people coming from Nelson House for these trips now have to be driven out of NCN lands before he can pick them up.⁴⁵ He has made two or three trips transporting people for the NCN Wellness Centre so far this year, including one in July, transporting two NCN women from Regina to more suitable housing in Winnipeg.⁴⁶

40. Further, Mr. Francois has taken responsibility for his actions in driving away from the NCN Checkstop by pleading guilty to resisting a FNSO, and by paying the resulting fine. Likewise, he pleaded guilty to resisting RCMP officers arresting him, and he also paid that fine.⁴⁷

41. Mr. Francois is also committed to complying with NCN laws, including directions of FNSOs that are authorized by NCN laws, even while he takes appropriate steps through this case to challenge NCN laws and actions that he believes violate his legal and constitutional rights.⁴⁸

42. Mr. Francois would find it unbearable to be separated from his family and community months or years. He lives for his girls and his granddaughter, and he believes he has an important role to play as a father and grandfather, providing support, care, protection and love. There is no way that irregular visits in Thompson can replace living together in the Home, or in the same community.⁴⁹

43. Mr. Francois has a strong desire to be a positive role model in his community, showing the next generations that there is a better way than alcohol, drugs and incarceration. He promotes getting a job, working hard and maintaining fitness. He continues to serve his community, despite being forcibly cut off from it. In addition to his continued service as a transport driver for the NCN Wellness Centre, for the last few months, he has been coordinating with the school at Nelson House

⁴⁴ Francois Affidavit, paragraph 47.

⁴⁵ Francois Affidavit, paragraph 48.

⁴⁶ Francois Affidavit, paragraph 49.

⁴⁷ Francois Affidavit, paragraph 50.

⁴⁸ Francois Affidavit, paragraph 51.

⁴⁹ Francois Affidavit, paragraph 52-53.

and Hudbay Minerals to bring high school students from Nelson House to tour his workplace in Snow Lake. While he will continue to try and make a positive impact in his community, being prohibited from being in the community is going to severely hinder Mr. Francois' ability to be a positive influence.⁵⁰

44. As an NCN member, Mr. Francois' connection to the land and community is strong, and he attests that banishment destroys that physical, emotional and even spiritual connection. He already feels this heavy weight on his soul.⁵¹

PART II POINTS IN ISSUE

45. This motion raises the following issue:

- a) whether the Court ought to grant Mr. Francois injunctive relief staying the Banishment Decision pending the final determination of this matter.

PART III SUBMISSIONS

A. An interlocutory injunction should be granted in this case

1. Relevant Legal Principles

46. Before turning to Mr. Francois' substantive arguments in support of the relief sought on this motion, it will be useful to review the relevant legal principles with respect to the law of interlocutory injunctions.

47. At the outset, it must be borne in mind that Mr. Francois does not seek a mandatory injunction on this motion. Rather, in the Notice of Motion, he seeks an interlocutory injunction restraining and enjoining [NCN] from taking any steps whatsoever, directly or indirectly, to:

⁵⁰ Francois Affidavit, paragraph 54.

⁵¹ Francois Affidavit, paragraph 55.

- i. enforce the Banishment Decision (as that term is defined in the Notice of Application filed in this proceeding);
- ii. remove Mr. Francois from NCN lands, including Mr. Francois' Home (as that term is defined below); or
- iii. prevent Mr. Francois from accessing NCN lands, including Mr. Francois' Home.

48. Mr. Francois relies on *Edgar v. Kitasoo Band Council*⁵² and *Solomon v. Garden River First Nation*,⁵³ both of which were motions for injunctive relief against banishment decisions. In each case, this Court agreed that the nature of the injunctions sought were not mandatory injunctions, but rather standard interlocutory injunctions.

49. The test for an interlocutory injunction was articulated by the Supreme Court of Canada in *RJR-Macdonald Inc. v. Canada (Attorney General)* [*RJR-Macdonald*].⁵⁴ The test requires the Court to answer three questions:

- a) is a serious issue to be tried;
- b) would the person applying for the injunction suffer irreparable harm if the injunction were not granted; and
- c) does the balance of convenience between the parties favour granting the interlocutory injunction or denying it.⁵⁵

50. Justice Locke of the Federal Court of Appeal recently explained this test as follows:

[7] The threshold for establishing a serious question to be tried is generally a low one. The Court must be satisfied that the appeal is not frivolous or vexatious: *RJR-MacDonald* at 348.

⁵² *Edgar v. Kitasoo Band Council*, 2003 FCT 166 at paragraphs 30-40 (FC) [*Edgar*].

⁵³ *Solomon v. Garden River First Nation*, 2018 FC 1284 at paragraphs 12-14 (FC) [*Solomon 2018*].

⁵⁴ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (SCC) [*"RJR"*].

⁵⁵ *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, at paragraph 25, citing *RJR* (SCC).

[8] With regard to irreparable harm, the moving party must adduce clear, compelling and non-speculative evidence to establish, on a balance of probabilities, that it will suffer “harm which either cannot be quantified in monetary terms or which cannot be cured”: *RJR-MacDonald* at 341; *Sheldon M. Chumir Foundation for Ethics in Leadership v. Canada (National Revenue)*, [2023 FCA 242](#) at paras. 6–8.

[9] The issue of the balance of convenience involves “a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits”: *RJR-MacDonald* at 342.⁵⁶

51. The fundamental question for the Court in determining this motion is “whether granting the injunction would be just and equitable in all the circumstances of the case.”⁵⁷

52. The *Edgar* and *Solomon 2018* decisions mentioned above demonstrate this Court’s application of the *RJR-MacDonald* test in the context of judicial review applications of First Nations banishment decisions.

53. In *Edgar*,⁵⁸ Justice Lemieux granted an injunction against a decision of the KITASOO Band Council to banish Ms. Margaret Edgar from the remote village of Klemtu, British Columbia, for allegedly trafficking marijuana to an undercover officer and also apparently for being involved in bootlegging liquor.⁵⁹

54. In *Solomon 2018*,⁶⁰ Justice Strickland denied a motion seeking to stay band council resolutions banishing two people who had been charged with drug trafficking and possession.⁶¹

⁵⁶ *Salt River First Nation #195 v. Heron*, 2024 FCA 88, at [paragraphs 7-9](#) (FCA).

⁵⁷ *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, at [paragraph 1](#) (SCC); see also *Sheldon M. Chumir Foundation for Ethics in Leadership v. Canada (National Revenue)*, [2023 FCA 242](#), at [paragraph 4](#) (FCA).

⁵⁸ *Edgar v. KITASOO Band Council*, 2003 FCT 166 (FC) [*Edgar*].

⁵⁹ *Edgar* at [paragraphs 1-3](#), [16](#), [41](#).

⁶⁰ *Solomon v. Garden River First Nation*, 2018 FC 1284 (FC) [*Solomon 2018*].

⁶¹ *Ibid.* at [paragraphs 1](#), [62](#).

2. Argument

a. There is a serious issue to be tried concerning the Banishment Decision

55. The banishment of a person from their home, their family and community is “an extreme measure.”⁶² This obvious fact does not change because a First Nation government banishes one of its own members: if anything, the significant physical, emotional and even spiritual connection that members feel to their own land heightens the detrimental effects of banishment.⁶³

56. Mr. Francois has raised the following grounds—which are by no means frivolous or vexatious—challenging the legality of the Banishment Decision, all of which, taken individually or together, further satisfy this branch of the *RJR* test.

i. The Banishment Decision is procedurally unfair

57. Given the serious nature of the decision and its importance and detriment to Mr. Francois, a high degree of procedural fairness was owed to him before the Banishment Decision was taken.⁶⁴ Mr. Francois however received no notice or opportunity whatsoever to be heard before the Banishment Decision was made.⁶⁵ On the merits, this ground alone clearly warrants the quashing of the Banishment Decision.⁶⁶

58. In *Edgar*, Justice Lemieux dealt with a challenge to a banishment decision under circumstances where the applicant similarly had received no procedural fairness before the banishment decision had been made. Lemieux J. stated: “The applicant in my view has a very

⁶² *R. v. G.N.*, 2019 NUCA 5, at paragraph 18; see also *R v Serafino*, 2021 SKCA 29 at paragraphs 21-23 (adopting the reasoning of *R. v G.N.*).

⁶³ See Francois Affidavit at paras 55-56.

⁶⁴ See *Solomon v. Garden River First Nation*, 2019 FC 1505 [*Solomon 2019*] at paragraph 39 (“Given the serious consequences of the banishment decisions to the Applicants, the degree of procedural fairness owed to the Applicants is heightened.”).

⁶⁵ Francois Affidavit, at paras 24-28, 31-38.

⁶⁶ *Solomon 2019* at paras 2 and 53-54.

strong case that a breach of fairness invalidates the Resolution. She was banned from her community without being able to address the decision-maker (the Band Council).”⁶⁷ Mr. Francois relies on *Edgar*; he likewise has a very strong case that a breach of procedural fairness invalidates the Banishment Decision.

59. In *Solomon 2018*, it was also conceded “that the procedural fairness and natural justice grounds set out in the underlying applications for judicial review raise a serious issue.”⁶⁸ Justice Strickland noted:

“...neither Kody Solomon nor Ralph Romano were given any notice of the intention of the Band Council to issue the BCRs. They were not afforded an opportunity for a hearing or to make submissions and no reasons were given to them, other than the BCRs themselves. In fact, the Band Council meeting was held *in camera*, no notes were taken, the meeting was not videotaped and, there were no minutes to record any discussions, information or considerations that lead to the decisions to issue the BCRs.”⁶⁹

Mr. Francois also relies on this aspect of *Solomon 2018* in support of his contention that the first step of the *RJR* test is met.

ii. The Banishment Decision is unreasonable and the result of fettered discretion

60. Mr. Francois further alleges that the Chief and Council improperly fettered their discretion by simply signing off on the Banishment Decision,⁷⁰ and refusing to allow or consider Mr. Francois’ attempt to appeal.⁷¹ The Banishment Decision further lacks the hallmarks of reasonableness – transparency, justification, and intelligibility – including for failing to explain

⁶⁷ *Edgar*, para 30.

⁶⁸ *Solomon 2018* at para 17.

⁶⁹ *Solomon 2018* at para 16.

⁷⁰ See NoA, at paras 28-36.

⁷¹ See Francois Affidavit, at paras 41-43.

which, if any, of the grounds listed in section 17(1) of the *Community Protection Law* serve as the basis for banishing Mr. Francois.⁷²

iii. The Banishment Decision unreasonably limited Mr. Francois' *Charter* rights

61. The Banishment Decision engaged Mr. Francois' rights under sections 7, 8, 9, 11(h) and 12 of the *Charter*, yet no *Doré* analysis was conducted as required. The Banishment Decision failed to consider, let alone proportionately balance, the limitation of Mr. Francois' *Charter* rights. This is a fatal error.⁷³

iv. The Banishment Decision is invalid because the Banishment Law is unconstitutional and *ultra vires*

62. The Banishment Decision is further undermined because, as outlined in the Notice of Application, the Banishment Law under which it is made violates section 7 and 12 of the *Charter* without justification. The Banishment Law is also *ultra vires* the authority of NCN as it unreasonably deprives members of their treaty and statutory rights to use and benefit from reserve lands.

b. Mr. Francois will suffer irreparable if the Banishment Decision is not stayed

63. Mr. Francois has provided a sworn affidavit with clear, compelling and non-speculative evidence showing that he has and will continue to suffer harm caused by the Banishment Decision that cannot be quantified monetarily or cured.

64. First, the Banishment Decision is impeding Mr. Francois' ability to carry out his irreplaceable role as a father, particularly to his three single daughters, one of whom is still a minor.⁷⁴ Mr. Francois states that he lives for his girls.⁷⁵ Mr. Francois believes that it is critical that

⁷² NoA at para 37.

⁷³ See *McCarthy v. Whitefish Lake First Nation #128*, 2023 FC 220, at para 95.

⁷⁴ Francois Affidavit at paras 8-12.

⁷⁵ Francois Affidavit at para 53.

he be physically present at his Home in Nelson House to support his family, providing care, protection and love.⁷⁶

65. Mr. Francois attests to his concern for the physical safety of his daughters.⁷⁷ Mr. Francois, a former band constable, is prevented by the Banishment Decision from being at Nelson House to protect his daughters, and this causes him to feel anxious and sick.⁷⁸

66. In regard to his two-year old granddaughter, Mr. Francois states that the special bond he had with her has been significantly broken since he has been banished from NCN lands. He fears this special relationship will be “irretrievably lost” unless he is allowed to return Home.⁷⁹

67. Mr. Francois relies on *M.L. v. B.T.*,⁸⁰ an Ontario Court of Appeal decision from 2021. In that case, Paciocco J.A., sitting in chambers, granted a stay of a custody decision pending appeal. In *M.L.*, the dispute arose between two applicants, M.L. and D.L., and the respondent, Dilico Anishnabek Family Care (“**Dilico**”), with respect to custody of a child, J.T. Dilico had originally placed J.T. into the care and custody of M.L. and D.L. eight days after J.T.’s birth. However, Dilico intended, some six years later, to terminate the placement and place J.T. back with her mother and her family in northern Manitoba.⁸¹

68. M.L. and D.L. opposed Dilico’s plans for J.T., believing that it was in J.T.’s best interests to remain in their care. They launched a custody application pursuant to the *Children’s Law Reform Act*, R.S.O., 1990, c. C.12.⁸² Ultimately, in September 2001, Justice Newton of the Ontario

⁷⁶ Francois Affidavit at paras 10, 53.

⁷⁷ Francois Affidavit at para 11.

⁷⁸ Francois Affidavit at para

⁷⁹ Francois Affidavit at para 13-14.

⁸⁰ *M.L. v. B.T.*, 2021 ONCA 683 (CA).

⁸¹ *Ibid.*, paragraph 1.

⁸² *Ibid.*, paragraph 1.

Superior Court of Justice released an appeal decision setting aside M.L. and D.L.’s custody application, paving the way for Dilico to remove J.T. from their care.⁸³

69. M.L. and D.L. appealed to the Ontario Court of Appeal, and brought a motion seeking a stay of Justice Newton’s decision.⁸⁴ In granting the stay application, Justice Paciocco held, in relevant part, that as caregivers D.L. and M.L. would suffer irreparable harm were they to lose their caregiving role without further and final determination of the serious questions he had identified. He wrote, at paragraph 19:

19 Second, D.L. and M.L. have a tremendous emotional investment in their relationship with J.T. and will suffer irreparable harm if they lose their caregiving role without further and final determination of the serious questions I have identified. More importantly, all indications are that J.T. is being extremely well cared for and has closely bonded with D.L. and M.L. I agree entirely with the responsible and sensitive recognition by Dilico that it is not in her best interests to terminate her placement with D.L. and M.L., given that such outcome could be reversed as the result of this legal action. J.T. requires a stable interim care placement pending final determination of what her ultimate placement will be.⁸⁵

Mr. Francois’ own evidence demonstrates that he, too, has a “tremendous emotional investment” in his daughters and granddaughter. Like D.L. and M.L., he will continue to suffer irreparable harm if the Banishment Decision impairing his caregiving role is not stayed while this matter proceeds to a final hearing.

70. Mr. Francois has also testified to the Banishment Decision destroying his “physical, emotional and even spiritual connection” to NCN lands: he describes “already” feeling the “heavy weight on [his] soul.”⁸⁶ Mr. Francois has described the desperation other banished NCN members

⁸³ *Ibid.*, [paragraph 2](#).

⁸⁴ *Ibid.*, [paragraph 3](#).

⁸⁵ *Ibid.*, [paragraph 19](#).

⁸⁶ Francois Affidavit, paragraph 55.

have had to return home to NCN, so much so that some have died attempting to bypass the Checkstop to return home.⁸⁷

71. Mr. Francois further desires to serve as a positive role model for younger generations, encouraging them toward employment, hard work and fitness, rather than alcohol, drugs and incarceration.⁸⁸ Mr. Francois states that “being prohibited from being in my community is going to severely minimize my ability to be a positive influence on those in my community.”⁸⁹

72. None of the above harms, which will be continued and deepened by the continuation of the Banishment Decision, can be quantified in terms of money or later remediated. They are irreparable.

73. In *Edgar*, Justice Lemieux held:

The evidence, in my view, clearly establishes irreparable harm. The forced separation from her loved ones and the exclusion from her community, with the attendant psychological and emotional stress, are the types of harm which cannot be remedied if she is successful at trial.⁹⁰

This holding is directly applicable to Mr. Francois. The Banishment Decision forces Mr. Francois to be separated from his family, his Home and his community, and Mr. Francois attests to the negative psychological and emotional effects this has.

74. In contrast, in *Solomon 2018*, the applicants failed to file affidavits. Justice Strickland was “of the view that the absence of any evidence from these Applicants significantly weakens their claim of irreparable harm.”⁹¹ Justice Strickland further noted that the First Nation was only a 20-minute

⁸⁷ Francois Affidavit para 56.

⁸⁸ Francois Affidavit para 54.

⁸⁹ Francois Affidavit para 54.

⁹⁰ *Edgar* at [para 35](#).

⁹¹ *Solomon 2018* at [para 39](#).

drive from where the applicants were living after being banished.⁹² As Justice Strickland commented, “it is the evidence in each case that is determinative.”⁹³

75. Mr. Francois has raised the serious legal issues above, and has also challenged the Checkstop Law – which was the genesis of the present conflict – for violating sections 7, 8 and 9 of the *Charter* without justification.⁹⁴

76. *McCarthy v Whitefish Lake First Nation #128* shows an analogous proceeding, involving both judicial review of decisions and constitutional challenges to a First Nation’s laws. The applications in that case were commenced in 2021 and a fulsome decision on the merits was delivered in February of 2023, over 20 months later.

77. The time necessary to adjudicate this matter will perpetuate the above-describe harms unless the Banishment Decision is stayed.

c. The balance of convenience weighs in favour of staying the Banishment Decision

78. As Justice Lemieux held in *Edgar*, the balance of convenience test “involves a determination ‘of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits.’”⁹⁵

79. In *Edgar*, Justice Lemieux acknowledged that public interest considerations are relevant, and also stated that he would not second-guess the judgment of the First Nation as to the scope and extent of the problems caused by substance abuse in the community.⁹⁶

⁹² *Solomon 2018* at [paragraph 51](#).

⁹³ *Ibid.*

⁹⁴ See NoA at paras 51-62.

⁹⁵ *Edgar* at [paragraph 36](#) (quoting *RJR - MacDonald Inc.*, at para 62 (Sopinka J. and Cory J.)); see also *Salmon 2018* at [paragraph 52](#).

⁹⁶ *Edgar* at [paragraphs 36-37](#).

80. While the First Nation was concerned that Ms. Edgar would traffic again if her banishment was lifted, Justice Lemieux held that the proper response to evidence Ms. Edgar was trafficking would be to lay a charge.⁹⁷

81. In regard to Mr. Francois, it is unclear what, if any, public interest is being advanced by the Banishment Decision. The Banishment Decision fails to explain, or even claim, that Mr. Francois is a “significant threat too the health, safety or wellbeing” of anyone; that Mr. Francois has engaged in human trafficking, harbouring or other criminal activity; or that Mr. Francois refuses to comply with NCN Law. Mr. Francois testifies that none of those situations are the case.⁹⁸ Rather, Mr. Francois has taken responsibility for past actions where he resisted peace officers in the execution of their duties and is committed to complying with NCN laws.⁹⁹ Mr. Francois’ actions since learning of his banishment have demonstrated this fact.¹⁰⁰

82. The Banishment Decision, in addition to imposing the above-described irreparable harm on Mr. Francois, also harms the interests of his family members who are NCN members. Further, the broader community in Nelson House is deprived of a good role model, who is actively seeking to promote employment, hard work and fitness to next generations.¹⁰¹ Mr. Francois’ work with the NCN Wellness Centre helping transport often vulnerable people from Nelson House is also hindered by the Banishment Decision.¹⁰²

⁹⁷ *Edgar* at [paragraphs 39-40](#).

⁹⁸ Francois Affidavit at paragraphs 47-51.

⁹⁹ Francois Affidavit at paragraphs 50-51.

¹⁰⁰ See e.g. Francois Affidavit at paragraph 26.

¹⁰¹ Francois Affidavit at paragraph 54.

¹⁰² Francois Affidavit at paras 47-48.

83. Both Mr. Francois and other members of the NCN community will continue to suffer harm if the Banishment Decision remains in force during these proceedings. There is no evidence of any harm that will result to NCN if the Banishment Decision is stayed.

PART IV ORDER SOUGHT

84. For the above reasons, Mr. Francois asks this Court to grant him an injunction, pursuant to Rule 373(1) of the *Federal Courts Rules*, restraining and enjoining NCN from taking any steps whatsoever, directly or indirectly, to:

- i. enforce the Banishment Decision;
 - ii. remove Mr. Francois from NCN lands, including Mr. Francois's Home; or
 - iii. prevent Mr. Francois from accessing NCN lands, including Mr. Francois's Home,
- until further order of this Court; all of the relief described in the Notice of Motion, with costs.

September 19, 2025

MOORE JUSTICE LAW

**Marty Moore,
Phil Dunlop (Student-at-Law)**

CHARTER ADVOCATES CANADA

James Manson

Counsel for the Applicant/Moving Party

PART V

STATUTES AND REGULATIONS
<u>Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c.11, including the Canadian Charter of Rights and Freedom, preamble, s. 3 and s. 5</u>
<u>Constitution Act, 1867, 30 & 31 Victoria, c. 3 (UK), preamble</u>
<u>Customs Tariff, SC 1997, c. 36, section 53(2) and paragraph 79(a)</u>
<u>Federal Courts Act, RSC 1985, c F-7 at s. 18.1(1)</u>

TABLE OF AUTHORITIES
<i>Edgar v. Kitasoo Band Council</i> , 2003 FCT 166
<i>Google Inc. v. Equustek Solutions Inc.</i> , 2017 SCC 34
<i>McCarthy v. Whitefish Lake First Nation #128</i> , 2023 FC 220
<i>M.L. v. B.T.</i> , 2021 ONCA 683
<i>R. v. G.N.</i> , 2019 NUCA 5
<i>R v Serafino</i> , 2021 SKCA 29
<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1994] 1 S.C.R. 311
<i>Salt River First Nation #195 v. Heron</i> , 2024 FCA 88
<i>Sheldon M. Chumir Foundation for Ethics in Leadership v. Canada (National Revenue)</i> , 2023 FCA 242
<i>Solomon v. Garden River First Nation</i> , 2018 FC 1284
<i>Solomon v. Garden River First Nation</i> , 2019 FC 1505



Court File No. T-2637-25

FEDERAL COURT

BETWEEN:

TERRY WAYNE FRANCOIS

Applicant

-and-

NISICHAWAYASIIHK CREE NATION

Respondent

NOTICE OF APPLICATION

APPLICATION UNDER sections 18(1) and 18.1 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules*.

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant 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 363 Broadway Street, Winnipeg, Manitoba.

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: _____

Issued by:

ORIGINAL SIGNED BY
CHANELLE GALLANT
ORIGINAL SIGNÉ PAR

Registry Officer

Address of local office:

[REDACTED]

TO: **NISICAWAYASIIHK CREE NATION #313**

[REDACTED]

Respondent

APPLICATION

1. The Applicant, Terry Wayne Francois, brings this application challenging the decision of the Respondent Nisichawayasihk Cree Nation (“NCN”) banishing him for a minimum of five years from NCN reserve lands where he lived with his daughters, without any prior notice or opportunity to be heard (the “**Banishment Decision**”). Mr. Francois asserts that the Banishment Decision was procedurally unfair, unreasonable and amounts to an unjustified violation of his rights under sections 7, 8, 9, 11(h) and 12 of the *Constitution Act, 1982* (the “**Charter**”).

2. Mr. Francois also challenges the “**Banishment Law**” and the “**Checkstop Law**” (each as defined below) on which the Banishment Decision is based. Mr. Francois asserts that the Banishment Law is *ultra vires* and that it unreasonably violates his treaty rights, rights under the *Indian Act* and *Charter* rights under sections 7 and 12. Similarly, Mr. Francois asserts that the Checkstop Law is *ultra vires* and that it unreasonably violates his treaty rights, rights under the *Indian Act* and *Charter* rights under sections 7, 8 and 9.

RELIEF SOUGHT

3. Mr. Francois seeks the following relief:

- (a) an interim and/or interlocutory injunction staying the Banishment Decision pending the final determination of this matter;
- (b) an Order quashing the Banishment Decision;
- (c) a Declaration, pursuant to section 24(1) of the *Charter*, that the Banishment Decision unreasonably infringes Mr. Francois’ section 7, 8, 9, 11(h) and 12 *Charter* rights;
- (d) a Declaration that the Banishment Law is *ultra vires* and/or an unreasonable violation of his treaty and statutory rights;
- (e) a Declaration, pursuant to section 52(1) of the *Constitution Act, 1982*, that the Banishment Law (see below) unjustifiably infringes his section 7 right to liberty and his *Charter* section 12 right to be free from cruel and unusual punishment, neither of which infringements are saved by s. 1;

(f) a Declaration, pursuant to section 52(1) of the *Constitution Act, 1982*, that the Checkstop Law (see below) unjustifiably infringes his *Charter* section 7 right to liberty; his *Charter* section 8 right to be secure against unreasonable search or seizure; and his *Charter* section 9 right not to be arbitrarily detained, and that none of these infringements are saved by s. 1;

(g) costs; and

(h) such further and other relief as counsel may advise and this Court considers appropriate.

FACTS

The Parties

4. Mr. Francois is a member of NCN who has lived on and off NCN reserve lands since he was a child. For the past decade, Mr. Francois has lived on NCN reserve lands in a dwelling located at [REDACTED] (the “**Home**”) with his family. Mr. Francois has five daughters, three of whom currently live in the Home. Another daughter, along with his first grandchild, also live on NCN reserve lands.

5. NCN is a Treaty 5 First Nation headquartered in Nelson House, Manitoba, approximately 850 km north of Winnipeg and 80 km west of Thompson, Manitoba. NCN is a Section 10 Band that manages its own membership under the *Indian Act* and is governed by a Chief and Council.

Permanent NCN Checkstop

6. In 2019, NCN adopted and approved the *Community Protection Law 2019*, c. C-1 (the “*CPL*”).

7. Section 16(1) of the *CPL* authorizes NCN’s Chief and Council to set up a checkstop to enable peace officers to conduct inspection of vehicles, persons and personal property of everyone seeking to enter NCN lands. Pursuant to section 16(1) of the *CPL*, the stated purposes of the checkstop are: 1) to ensure that motorists are properly licenced and insured; 2) to ensure that no one is transporting contraband; 3) to ensure that no one is being “harboured” on NCN lands; 4) to

ensure that no one is being exploited, trafficked, or involved in gang activity; 5) to ensure that people entering NCN have proper work permits or are NCN residents ; 6) to ensure that no one seeking to enter NCN lands is under a banishment order or other court order; and 7) to ensure that no one is violating any other laws.

8. Subsection 16(2) of the *CPL* provides that all persons seeking to enter NCN lands are subject to search at a checkstop, and that anyone who refuses to be searched will be denied entry.

9. Subsection 16(3) of the *CPL* prescribes a modified search procedure for “sacred bundles”, but still prescribes that all who refuse to allow their sacred bundle to be searched will be denied entry.

10. Subsection 16(4) of the *CPL* authorizes the confiscation of “illegal substances” found during a search.

11. Sections 16(1)-(4) are referred to hereinafter collectively as the “**Checkstop Law**”.

12. NCN has been operating a permanent roadside checkstop (the “**Checkstop**”) at the entry to NCN reserve lands for several years. It has used dogs to conduct searches at these checkstops on occasion, including on the date of the events giving rise to this Application. The *CPL* is silent on the use of sniffer dogs.

The Banishment Law

13. Section 17 of the *Community Protection Law* is entitled “Eviction and Banishment” (subsections 17(1), (4), and (8) are referred to herein collectively as the “**Banishment Law**”).

14. Subsection 17(1) states:

Authority to evict or banish

17 (1). A person who

- (a) poses a significant threat to the health, safety or wellbeing of NCN or any person residing on or visiting NCN Lands,
- (b) has engaged in human trafficking, harbouring or other criminal activity, or

(c) refuses to comply with NCN Laws,

may be evicted from any residence, building or other premises or banished from NCN Lands by order of Chief and Council or any person or entity to whom Chief and Council has delegated such authority by regulation.

15. While subsection 17(3) provides that a hearing on an eviction order can be requested within seven days, subsection 17(4) provides that a person subject to a banishment order can request a hearing “**no earlier than five (5) years from the date of the banishment order**” [emphasis added].

The December 2024 Incident

16. On December 30, 2024, Mr. Francois was driving to his Home from Thompson, MB, with one of his daughters, bringing take-out pizza for his family. He stopped at the Checkstop at the entry point to NCN. Mr. Francois was willing to consent to a search of his vehicle by NCN peace officers, as he had done numerous times in the past. However, on this occasion, a dog was brought forward to search inside Mr. Francois’ vehicle. Mr. Francois refused to permit the dog to search his vehicle, believing that such a search was not authorized by law. Mr. Francois expressed his strong objections to the peace officers; he then proceeded to leave the Checkstop and drive Home.

17. On his way Home, Mr. Francois was stopped by RCMP officers who inquired about the incident at the Checkstop. After Mr. Francois explained his position, the RCMP officers allowed him to proceed to his Home.

18. The next morning, however, three RCMP officers arrived at Mr. Francois’ Home to arrest him on criminal charges, including assault with a weapon by driving away from the Checkstop the previous night. Mr. Francois recoiled from the officers, told them that the charges were bogus, protested his innocence and expressed his refusal to leave his Home. The RCMP officers chose to physically remove Mr. Francois from his Home, whereupon Mr. Francois pulled away. After some resistance, Mr. Francois relented and told the RCMP officers that he would go with them.

19. Mr. Francois was charged and then released from RCMP custody on December 31, 2024. The RCMP officers told him that he was not permitted to stay at his Home or remain on NCN

reserve lands while the charges were pending. Mr. Francois was forced to stay in Thompson at his own expense, rather than returning to his Home.

20. On May 21, 2025, the charges against Mr. Francois were resolved, with Mr. Francois pleading guilty under section 129 of the *Criminal Code* to resisting an NCN peace officer in the execution of her duties on December 30, 2024, and to resisting the RCMP officers when they came to arrest him on December 31, 2024. Mr. Francois was fined \$500 and \$100, respectively. The other charges were stayed.

Banishment of Mr. Francois

21. On or about May 22, 2025, Mr. Francois attempted to return Home, however, he was told by an NCN peace officer at the Checkstop that he was not permitted on NCN reserve lands and had been banished. This was the first time Mr. Francois had heard that he was banished. Mr. Francois complied with the NCN peace officer's direction and left.

22. Mr. Francois began reaching out to NCN officials to get an explanation. He learned that Terry B. Linklater, the NCN Director of Justice, had decided to banish him, but at no time was Mr. Francois ever made aware of the purported basis for his banishment. When Mr. Francois spoke to Mr. Linklater on the phone around the end of May 2025, he simply told him that he was not allowed on to NCN reserve lands and that he was banished, without providing an explanation, or an opportunity for Mr. Francois to respond to any basis for the banishment. When Mr. Francois communicated to Mr. Linklater that his actions against related to an issue between a member of Mr. Linklater's family and a member of Terry's family, Mr. Linklater denied that and hung up.

23. In June 2025 two of Mr. Francois' daughters were graduating. Mr. Francois sought and received permission to attend their graduation ceremonies held on NCN reserve lands on June 24 and June 27, 2025.

24. When Mr. Francois arrived at NCN on June 24, 2025 to attend the first graduation ceremony, he was handed a letter that was dated June 10, 2025, informing him that he had been banished, effective December 30, 2024, and that he could request a hearing "no earlier than **December 30, 2029**" [emphasis in the original].

Alleged “Conditional Banishment”

25. The Banishment Decision letter opens by stating: “This letter is to inform you that on May 5, 2022 Chief and Council passed a motion to place you on a conditional banishment.”

26. Mr. Francois was never previously informed of any “conditional banishment” against him in 2022.

Upgrade to Full Banishment

27. The Banishment Decision letter continued:

We have received information that you were convicted of:

- Assault on peace officer with a weapon (striking Carol with your vehicle)
- Resisting arrest by fighting with RCMP members.

For this reason, your conditional banishment will be upgraded to a full banishment as of December 30, 2024.

Attempt to Appeal Banishment Decision Internally

28. Mr. Francois then attempted to challenge the Banishment Decision by reaching out to elected NCN Councillors. He was told that the Councillors had no choice but to sign off on the Banishment Decision and that there was nothing they could do.

GROUND OF APPLICATION

29. Mr. Francois challenges the Banishment Decision, the Banishment Law and the Checkstop Law, on the following grounds.

The Banishment Decision was procedurally unfair

30. Given the serious nature of the decision and its importance and detriment to Mr. Francois, a high degree of procedural fairness was owed before the Banishment Decision was taken. Mr. Francois however, received no procedural fairness whatsoever.

31. Mr. Francois had no notice of the banishment allegations against him, or opportunity to respond to those allegations, prior to receiving the Banishment Decision letter dated June 10, 2025,

on June 24, 2025. He had not been informed or notified of any alleged “conditional banishment” prior to receiving the Banishment Decision letter, which would have put him on notice that he risked “full banishment.” Nor was Mr. Francois ever made aware of any conditions that he had to meet in order to remain eligible to reside on NCN lands.

32. Despite the alleged “conditional banishment” stating that “if TERRY WAYNE FRANCOIS returns to Nisichawayasihk Cree Nation and its traditional territory, that he/she be charged with trespassing”, Mr. Francois continued to live with his family in his Home on NCN reserve lands in 2022, 2023 and 2024, and was processed by NCN peace officers through the Checkstop countless times without ever being told that he was conditionally banished and without ever being charged with trespassing.

33. The Banishment Decision letter states that the December 2024 incident was “the second incident, on record, where your actions jeopardized the safety of our First Nations Safety Officers.” Mr. Francois is not aware of any inferentially-alleged first incident.

34. Mr. Francois was given no opportunity, at any time, to respond to allegations or claims against him, which formed the basis for either the alleged “conditional banishment” or the full banishment.

35. Terry B. Linklater, in making the Banishment Decision against him, was biased or is reasonably apprehended to be biased in that:

- a) Mr. Linklater indicated a closed mind about the Banishment Decision when Mr. Francois tried to speak with him in May 2025; and
- b) there had been a recent negative issue between a member of Mr. Linklater’s family and a member of Terry’s family.

Chief and Council have fettered their discretion

36. NCN Chief and Council improperly fettered their discretion by simply signing off on Terry B Linklater's decision to banish Mr. Francois.

The Banishment Decision is unreasonable

37. To the extent that reasons for the Banishment Decision are discernible, they do not bear the hallmarks of reasonableness – transparency, justification, and intelligibility – that would make the Banishment Decision a reasonable exercise of discretion. For example and without limitation:

- a. the Banishment Decision fails to explain how Mr. Francois:
 - (a) poses a significant threat to the health, safety or wellbeing of NCN or any person residing on or visiting NCN Lands;
 - (b) has engaged in human trafficking, harbouring or other criminal activity; or
 - (c) refuses to comply with NCN Laws, [*Community Protection Law* s. 17(1)],

or on which, if any, of these sections the Banishment Decision against Mr. Francois is even based. At most, the Banishment Decision claims that Mr. Francois in two incidents (one of which is not described or known) “jeopardized the safety of [NCN] First Nations Safety Officers” without explaining whether Mr. Francois currently “poses a significant threat”. Furthermore, Mr. Francois is alleged to have intentionally violated unspecified NCN laws, without any explanation of a necessary finding that Mr. Francois “refuses to comply with NCN Laws”. Mr. Francois:

- (a) does not pose a threat to anyone's health, safety or wellbeing;
 - (b) has not engaged in human trafficking, harbouring or other related criminal activity;
 - or,
 - (c) is willing to comply with NCN Laws;
- b. the Banishment Decision purports to be based on a failure to comply with an alleged 2022 “conditional banishment” which itself was apparently based on unspecified “outstanding fines”, a failure to apologize for unspecified “inappropriate conduct directed towards FNSO” and possibly based on an unspecified incident where Mr. Francois' conduct allegedly “jeopardized the safety of our First Nations Safety Officers.” Mr. Francois was only informed about the “conditional banishment” after it had been upgraded to a full banishment, according to the June 10, 2025 letter itself; and

c. the Banishment Decision further states that the reason Mr. Francois' "conditional banishment will be upgraded to a full banishment" was because he was convicted of assault on a peace officer with a weapon for allegedly striking an officer with his vehicle, which is not true. In fact, that allegation had been amended, and Mr. Francois only pled guilty to resisting a peace officer under section 129 of the *Criminal Code*, for which he received a \$500 fine, which he subsequently paid. In regard to the Banishment Decision's allegation that Mr. Francois had been convicted of "fighting" with RCMP members, the charge was that Mr. Francois had resisted RCMP officers "by pulling away contrary to Section 129(a) of the *Criminal Code*." Mr. Francois pled guilty to this charge and received a \$100 fine, which he also paid before it was due.

The Banishment Decision unreasonably limited Mr. Francois' *Charter* rights

38. Where an individual's *Charter* rights are engaged by an administrative decision, the decision-maker must consider those rights, and attempt to balance any limitations on those rights against the decision-maker's statutory objective. Failure to do so is a fatal constitutional error.

39. The Banishment Decision engaged Mr. Francois' rights under sections 7, 8, 9, 11(h) and 12 of the *Charter*. NCN did not consider these *Charter* rights of Mr. Francois before making the Banishment Decision.

40. Furthermore, the Banishment Decision unreasonably, disproportionately and unjustifiably violated Mr. Francois' rights as guaranteed by sections 7, 8, 9, 11(h) and 12 of the *Charter*, for the reasons explained below.

41. Specifically, in regard to Mr. Francois' right to not be punished again, protected by section 11(h) of the *Charter*, the Banishment Decision expressly states that because Mr. Francois had been convicted, NCN was choosing to impose full banishment on him. Mr. Francois was already punished for the offences to which he pleaded guilty, and paid the fines that were imposed as punishment. NCN is now punishing Mr. Francois again with a minimum five-year banishment, in violation of section 11(h). Further, NCN cannot justify this violation of Mr. Francois' section 11(h) rights under section 1.

The Banishment Law violates section 7 of the *Charter*

42. The Banishment Law provides that NCN can banish members from NCN lands for a minimum of five years, which constitutes a significant interference with the liberty of NCN members, denying them access to their homes, their families and their community. Such a mandatory minimum term of banishment for a person who is deemed to fall into one of the three categories eligible for banishment is overbroad, arbitrary and grossly disproportionate.

43. A member who refuses to comply with NCN Laws or who has been deemed to pose a significant threat to the health, safety or wellbeing of NCN or a person on NCN lands could – through rehabilitation or other personal or situational changes – pose no threat in much less time than five years.

44. Empowering Chief and Council to banish a member for a minimum of five years if they are found to have engaged in harbouring or other criminal activity may also be an inordinate length of time to achieve NCN's objectives to prevent harm on NCN lands.

45. Yet, the Banishment Law allows for no shorter period of banishment than five years, with no possibility for calibration of the banishment, either before or after it is ordered, to prevent harm on NCN lands in a proportionate manner.

46. NCN cannot demonstrate that the Banishment Law is reasonably justified. Accordingly, the Banishment Law violates section 7 of the *Charter* and cannot be saved by section 1.

The Banishment Law violates section 12 of the *Charter*

47. Section 17(4) of the *CPL* provides that a banished person may apply for readmission to NCN lands no earlier than five years from the effective date of banishment. Readmission is at the discretion of NCN's Peacekeepers Tribunal. Banishment decisions have no inherent end point. Absent an application for readmission, banishment is permanent. This is effectively a five-year mandatory minimum sentence, which is grossly disproportionate to the scope of possible conduct that the Banishment Law may capture. As such, it is a cruel and unusual punishment, contrary to section 12 of the *Charter*. Furthermore, NCN cannot demonstrate that the Banishment Law is

reasonably justified. Accordingly, the Banishment Law violates section 12 of the *Charter* and cannot be saved under section 1.

The Banishment Law is *ultra vires* and unreasonably interferes with members' rights

48. NCN reserve lands were established pursuant to Treaty 5, with such lands being established in proportion to “each family”.

49. NCN is a “band” under the *Indian Act*, which is defined as “a body of Indians (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart....” Likewise, NCN reserve lands are a “reserve” under the *Indian Act*, which is defined as “a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band....”

50. The Banishment Law is thus *ultra vires* the authority of NCN in that it purports to deprive members of their treaty and statutory rights to the use and benefit of reserve lands. The Banishment Law further unreasonably interferes with these rights.

The Checkstop Law unjustifiably infringes section 9 of the *Charter*

51. Roadside checkstops by law enforcement are a form of detention under section 9 of the *Charter*. A checkstop that stops everyone without exception – where the officer has no discretion whatsoever as to who gets stopped – is arbitrary.

52. The Checkstop Law provides for the detention and search of all vehicles, motorized and non-motorized, as well as persons and personal property, that attempt to enter NCN lands. It contains no language relating to reasonable and probable grounds. It contains no guidance for officers, or any criteria whatsoever governing the operation of the Checkstop. As such, it is an arbitrary detention within the meaning of section 9.

53. The Checkstop Law encompasses more purposes than are constitutionally permissible. NCN is using the Checkstop Law as a broad law enforcement, criminal investigation, general public safety and regulatory tool. This goes far beyond the limited purposes for which checkstops are constitutionally permissible.

54. Furthermore, NCN cannot demonstrate that the Checkstop Law is reasonably justified. Accordingly, the Checkstop Law violates section 9 of the *Charter* and cannot be saved under section 1.

The Checkstop Law unjustifiably infringes section 8 of the *Charter*

55. The Checkstop Law engages members' reasonable expectation of privacy protected under *Charter* section 8, by allowing their persons, personal property and vehicles to be searched at the Checkstop.

56. The Checkstop Law contains no requirement that the searching officer obtain a warrant prior to conducting the search, nor does it require the officer to have reasonable and probable grounds.

57. The Checkstop Law, therefore, is not a reasonable authorizing law.

58. Further, to the extent the Checkstop Law can be viewed as authorizing the use of sniffer dogs, sniffer dogs may only be used in warrantless searches where the officer has a reasonable suspicion based on objectively discernible facts that evidence of a crime is present.

59. In any event, the only valid purposes of a roadside checkstop are to ensure proper licencing, insurance, driver sobriety and vehicular fitness, none of which requires the use of a sniffer dog. The use of sniffer dogs at the Checkstop to carry out such searches, therefore, is not reasonable.

60. In the absence of any warrant requirements whatsoever, and by permitting searches in the absence of reasonable and probable grounds, and in the unreasonable use of sniffer dogs, the Checkstop Law is an unreasonable law within the meaning of section 8 of the *Charter*, which cannot be justified under section 1.

The Checkstop Law unjustifiably violates section 7 of the *Charter*

61. NCN members who fail to comply with the unreasonable, arbitrary and grossly disproportionate requirements of the Checkstop Law described above, are not allowed entry onto NCN Lands, preventing them from accessing their families, homes and community. Failure to comply with the Checkstop Law can also lead to banishment.

62. The Checkstop Law therefore deprives members of their *Charter* section 7 right to liberty, not in accordance with the principles of fundamental justice. The Checkstop Law violates section 7 of the *Charter* and cannot be saved by section 1.

The Applicant relies on the following statutory provisions, rules and principles:

- a) *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11, including the *Canadian Charter of Rights and Freedoms*.
- b) *Treaty No. 5, between [REDACTED] and the Saulteaux and Swampy Cree Tribes of Indians [REDACTED] River and Norway House with adhesions*.
- c) *Federal Courts Act*, RSC 1985, c F-7, s 18.1.
- d) *Federal Courts Rules*, SOR/98-106.
[REDACTED]
[REDACTED] 1985, c 18.
- f) *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976).
- g) *Nisichawayasi Community Protection Law*, 2019 c C-1 (NCN).
- h) *Othasowewin* (NCN).
- i) *Peacekeepers Tribunal Law* (NCN).
- j) *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2008).
- k) *Universal Declaration of Human Rights*, GA Res 217 A (III), UN Doc A/810 (1948).

This Application will be supported by the following material:

- a) the Affidavit of Terry Wayne Francois, to be filed; and

b) such further and other affidavits and material as counsel may advise and this Court permit.

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicant requests that the Respondents send the following material that is not in the possession of the Applicant but is in the Respondent's possession, to the Applicant and to the Registry:

- a) all documents and other materials in the possession and control of NCN informing the Banishment Decision;
- b) all documents and other materials related to the adoption, review and continued utilization of section 17 of the *NCN Community Protection Law*;
- c) all documents and other materials related to the adoption, review and continued utilization of section 16 of the *NCN Community Protection Law*; and
- d) such further and other material that may be in the possession, power or control of the Respondent and which may be relevant to these proceedings.

Date: July 24, 2025

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the 28
day of July A.D. 2025
Dated this 24 day of July 2025
Chanelle Sallon



Marty Moore
Phil Dunlop (Student-at-Law)

Moore Justice Law



Counsel for the Applicant