

## **TKJC 2016-11 - Jacobs and Jacobs vs. TKC**

### **Complaint**

The Ta'an Kwächän Judicial Council (TKJC) accepted to adjudicate an appeal by Teresa Jacobs and Justin Jacobs, which challenges a decision made by the Ta'an Kwächän Council (TKC) Enrollment Coordinator to remove them from the Official Enrolment List and the TKC Citizenship List because of their dual citizenship with the Moravian Town/Delaware on the Thames First Nation in Ontario .

### **Background**

At the prehearing in the matter of Jacobs and Jacobs vs. TKC (TKJC File 2016-11) held on May 4, 2018 the following was deemed accepted by both parties:

1. Teresa Jacobs and Justin Jacobs (her son by Joel Jacobs) are both on the enrolment list as TKC citizens and recognized as such by the TKC.
2. Teresa Jacobs and Justin Jacobs are registered in the Chief Jim Boss family line.
3. Teresa Jacobs and Justin Jacobs are members of the Moravian Town/Delaware on the Thames First Nation in Ontario.

At that time the TKJC saw three paths forward:

- The TKC and Teresa Jacobs and Justin Jacobs mediate a resolution to this issue, which might have entail their being 'grandmothered' into the TK First Nation as an exception to the rule excluding dual citizens from the TKC membership rolls and continue to maintain their membership in the Moravian Town/Delaware on the Thames First Nation in Ontario.
- Teresa Jacobs and Justin Jacobs vs. TKC (TKJC 2016-11) proceed to adjudication by the TKJC.
- Teresa Jacobs and Justin Jacobs decide to relinquish their Moravian Town/Delaware on the Thames First Nation citizenship and notify the TKC of this decision on membership.

Teresa Jacobs and Justin Jacobs communicated their desire that the TKJC proceed with adjudication of TKJC 2016-11.

The TKJC notified both parties of its desire to proceed with the matter without going to a formal hearing. It offered both parties the opportunity to submit further written evidence.

Neither party chose to submit additional information by the June, 2019 deadline.

The TKJC then decided to proceed with its adjudication on the basis of information already received from the parties.

### **Issue**

The matter before the TKJC reduced to its simplest term, is the decision of the TKC to not accept dual First Nations citizenship within the TKC. This decision deals with the right of Teresa Jacobs and Justin Jacobs to receive benefits of citizenship from the TKC while being citizens by marriage of the Moravian Town/Delaware on the Thames First Nation in Ontario.

### **Questions Arising**

Does the TKC First Nation have the authority to determine its own laws?  
Does the Ta'an Kwächän Council have the right to determine who is a TKC citizen?

Can the TKC deny dual First Nation citizenship to its members?

How do the traditional unwritten laws, the Dooli, inform these questions?

### **Authority**

The TKJC has the authorities granted to it by the Constitution of the TKC. These include:

- 12.1.4 determine the validity of a law or regulation enacted by the Ta'an Kwäch'än Council, which has been challenged pursuant to section 14.0 of this Constitution;
- 14.5 The Judicial Council shall declare a law or regulation of the Ta'an Kwäch'än Council to be invalid and void if it finds the law or regulation to be inconsistent with the grounds set out in sections 14.2.1, 14.2.2 or 14.2.3 of this Constitution.
- In the Constitution of the TKC Schedule 1 - the Ta'an Kwächän Council Citizenship Code states:

- 6.1 The Judicial Council shall consider any appeal made by an applicant, or his representative, by any Citizen or by the Council of a decision of the Citizenship Committee within one year of the date of the decision.
- 6.3 The Judicial Council shall have the authority to uphold, vary or rescind any decision of the Citizenship Committee or refer the matter back to the Citizenship Committee for reconsideration.
- 6.4 A decision of the Judicial Council shall be final.

### **Evidence**

Subsequent to the Pre-hearing conference, the TKC representatives indicated that they would review the matter and reconsider the multi-faceted issues related to dual citizenship. Following the Pre-hearing Conference the TKJC requested final summary written submissions from the parties prior to it deliberating on the issues presented without a formal hearing. Neither party chose to submit additional information by the June, 2019 deadline.

All parties agreed that:

1. Teresa Jacobs and Justin Jacobs (her son by Joel Jacobs) are both on the enrolment list as TKC citizens and recognized as such by the TKC.
2. Teresa Jacobs and Justin Jacobs are registered in the Chief Jim Boss family line.
3. Teresa Jacobs and Justin Jacobs are members of the Moravian Town/Delaware on the Thames First Nation in Ontario by virtue of the marriage and paternity respectively to Joel Jacobs who is a member of said First Nation.
4. Teresa Jacobs and Justin Jacobs are the recipients of benefits from the Moravian Town/Delaware on the Thames First Nation in Ontario.

### **Analysis**

The analysis of the issues in this matter is based on the written communication received from both parties and the information presented by both parties at the pre-hearing. In addition the questions arising demanded the TKJC consult the foundational and governing documents of the TKC and Dooli relating to the issues. Further the

historical context of intra First Nations relations in North America provide additional insights for the TKJC to consider in its deliberations.

There is no dispute that Teresa Jacobs and Justin Jacobs are both on the enrolment list as TKC citizens and recognized as such by the TKC or that Teresa Jacobs and Justin Jacobs are registered in the Chief Jim Boss family line. Furthermore Teresa Jacobs and Justin Jacobs are members of the Moravian Town/Delaware on the Thames First Nation in Ontario with the inherent rights and responsibilities, which it entails.

*Does the TKC First Nation have the authority to determine its own laws?*

The law making ability of the Ta'an Kwächän people predates the assertion of sovereignty over the territory of the Ta'an Kwächän people by the Canadian government. This implies "the ability of a group of people to make their own decisions and control their own lives in relation to the space where they reside" ( Kevin Bruyneel, 2007, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations*). The evolution of the modern nation-state and engagement of the Ta'an Kwächän people in contemporary treaty making process with the Canadian government marked their additional acceptance of the sovereign state concept and its incumbent notions of nation and citizenship brought by the Canadian government officials. The treaty-making process marked the formal recognition by the Canadian and Yukon governments of the law-making ability of the Ta'an Kwächän people through the Ta'an Kwächän Council.

*Does the Ta'an Kwächän Council have the right to determine who is a citizen of the TKC?*

The laws made by the Ta'an Kwächän must be, as noted under the Umbrella Final Agreement, "in conformity with the Constitution of Canada". This implies adherence to the Charter of Rights and Freedoms as well. Signatory Yukon First Nations accepted that their self-governing agreements "shall not affect the rights of Yukon Indian People as Canadian citizens."

The *Yukon First Nations Self-Government Act* of 1994 brought the first Yukon First Nations self-government agreements into effect. Under its

section 8 it explicitly affirms that “The constitution of a first nation named in Schedule II shall, in a manner consistent with its self-government agreement, provide for (a) a citizenship code that includes the requirements for citizenship in the first nation and the procedure for determining whether a person is a citizen”.

By its definition a “*citizen*, in relation to a first nation, means a citizen as determined in accordance with the constitution of the first nation”.

The TKC has the right and obligation to determine who is a citizen.

*Can the TKC deny dual First Nation citizenship to its members?*

As a law-making body the TKC is empowered to determine its own requirements for citizenship. The Umbrella Final Agreement (UFA) ‘Eligibility Criteria’ provides direction on the issue of dual citizenship. Its Section 3.2.5 it states that “Any Person eligible for enrollment as a Yukon Indian Person pursuant to 3.2.2 or 3.2.3 is entitled to be enrolled under one, and no more than one, Yukon First Nation Final Agreement.”

**“Yukon First Nation”** means one of the following:

- Carcross/Tagish First Nation;
- Champagne and Aishihik First Nations;
- Dawson First Nation;
- Kluane First Nation;
- Kwanlin Dun First Nation;
- Liard First Nation;
- Little Salmon/Carmacks First Nation;
- First Nation of Nacho Nyak Dun;
- Ross River Dena Council;
- Selkirk First Nation;
- *Ta'an Kwächän* Council;
- Teslin Tlingit Council;
- Vuntut Gwitchin First Nation; or
- White River First Nation.

As well under 3.4.0 ‘Other Settlements’, citizenship entitlement is further limited.

**3.4.1 “Subject to 3.4.2, a Person who is enrolled in any other aboriginal land claims settlement in Canada shall not be enrolled as a Yukon Indian Person under any Yukon First Nation Final Agreement.”**

**The Ta'an Kwächän Council Final Agreement directly addresses this issue in relation to its citizenship determination responsibilities. It mirrors the UFA exactly section 3.2.5 “Any Person eligible for enrollment as a Yukon Indian Person pursuant to 3.2.2 or 3.2.3 is entitled to be enrolled under one, and no more than one, Yukon First Nation Final Agreement.” And as well 3.4.1 “Subject to 3.4.2, a Person who is enrolled in any other aboriginal land claims settlement in Canada shall not be enrolled as a Yukon Indian Person under any Yukon First Nation Final Agreement.”**

**Ta'an Kwächän Council Citizenship Code in Schedule 1 of the TKC Constitution reinforces this perspective on dual citizenship by emphatically stating:**

**3.0 Loss of Citizenship**

**3.1 A person ceases to be a Citizen and his name shall be removed from the Citizenship List when the following occurs:**

**A person becomes a member or citizen of another First Nation.**

*How do the traditional unwritten laws, the Dooli, inform these questions?*

**Little Salmon Carmacks First Nation citizen Viola Mullett noted “Our Dooli helped us take care of each other, the land and water, the fish and wildlife and the rest of the world around us.”**

**[mappingtheway.ca/stories/-revitalizing-northern-tutchone-teachings-future-generations](http://mappingtheway.ca/stories/-revitalizing-northern-tutchone-teachings-future-generations)**

**Reflecting on the Dooli, Southern Tutchone society holds a matrilineal kinship system as its societal foundation. Children are considered born into their mother's clan and descent is figured by the mother's line. This relationship would always be recognized even though when a marriage occurred with partners from different clans as prescribed;**

**“traditional Athabaskan husbands were expected to live with the wife's family during the first year, when the new husband would work for the family and go hunting with his brothers-in-law. A central feature of**

traditional Athabascan life was (and still is for some) a system whereby the mother's brother takes social responsibility for training and socializing his sister's children so that the children grow up knowing their clan history and customs."

(<https://www.alaskan-natives.com/alaskan-native-cultures/athabascan-cultures/>)

Concepts of citizenship arose in the context of Canadian colonialism. The matrilineal clan based kinship system integrated Ta'an Kwächän peoples relationally. A marriage, which resulted in the male partner moving into his wife's clan with all its incumbent obligations, did not sever the relationship with his previous clan. However, from his wife's clan he would assume the direct benefits; food shelter, and other forms of support formerly derived from his previous clan association. His responsibilities and duties would similarly be focused on his new clan. The larger kinship-based network would continue to tie together families across clan lines and foster co-operation in the greater community.

This traditional societal understanding should inform any contemporary consideration of dual citizenship within Ta'an Kwächän society. Benefits are derived from current residency and/or primary relationship. Shifts in clan membership through marriage would not and could not negate the relational reality of brother and sister, or parent and child. However they do alter the primary responsibilities due to and benefits received from a particular clan.

## **Conclusion**

The TKC has the right to make its own laws. It has the duty and obligation to determine who is a TKC citizen. Under this power the TKC has accepted the determination established by the UFA that citizenship in more than one Yukon First Nation or beneficiary any other aboriginal land claims settlement in Canada makes an individual ineligible for TKC citizenship. However through the traditional societal lense citizenship established by ancestry cannot be denied. Once Ta'an Kwächän citizenship has been established through ancestry it cannot be denied.

Canada has recognized dual citizenship since 1977. However, access to benefits such as public health care and education all depend on residency in a particular province or territory, not on national citizenship.

This could be interpreted to mean that while a person may be permitted to hold dual citizenship whether living in or outside of the Yukon, yet as the recipient of benefits through membership in another First Nation, they could be deemed ineligible for TKC benefits for that time.

The TKJC sees TKC benefits flowing from residency or the primary relationship with the TKC and not from the mere fact that a person is entitled to Citizenship.

### **Decision**

From the perspective of the TKJC, from both the perspective of First Nation tradition of Matriarchal blood lines denoting First Nation membership and the western concept of 'citizenship', there is a difference between Citizenship/membership and entitlement to Benefits offered under the First Nations Settlement Agreements.

Therefore, the TKC cannot deny Citizenship where the bloodline shows they have citizenship rights. However, the TKC does have the right to deny member benefits if it is deemed that their residency, primary relationship and receipt of benefits flowing to them come from another Yukon First nation or other First Nation's aboriginal land claims settlement in Canada.

Teresa Jacobs and Justin Jacobs are Ta'an Kwächän Council citizens regardless of their membership in the Moravian Town/Delaware on the Thames First Nation in Ontario. Their dual citizenship should be recognized and accepted by the TKC. This will require an amendment of the TKC Citizenship Code.

However, since they are living on and/or primary recipients of benefits from another First Nation, the TKJC rules them ineligible for TKC benefits for so long as they are receiving benefits elsewhere. Should residency be re-established with the Ta'an Kwächän Council and it is



determined that they are no longer in receipt of their primary benefits from another First Nation, they would be eligible for benefits again from the TKC.

**Note to Enrollment Commission**

The path of 'Grandmothering' the Jacobs and their dual status remains open.

**Note to the TKC**

Contemporary concepts like citizenship must be married to the concepts articulated in traditional Dooli. The martilineal kinship system as the societal foundation of the Ta'an Kwächän must be fostered in a positive and healthy manner. The TKC should work assiduously on the 'family building' capacity of the Ta'an Kwächän people.

Dated at Whitehorse, Yukon  
this 13<sup>th</sup> day of March, 2020

  
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Judge Michael Dougherty

  
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Judge Darla-Jean Lindstrom

  
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Judge Barbara Evans

