

**ALGONQUIN TRIBUNAL**

**RE: Inquiry conducted by the Algonquin Tribunal pursuant to section 76(d) of the Special Resolution of the Algonquin Negotiation Representatives on the Algonquins of Ontario Enrolment and Appeal Board (approved on April 20, 2021) regarding the historical person known as FRANCOIS KAWITADIJIK (RIN# 6869)**

**DETERMINATION AND REASONS FOR DETERMINATION REGARDING THE ALGONQUIN TRIBUNAL'S INQUIRY INTO FRANCOIS KAWITADIJIK (RIN# 6869)**

Hearing Date:	December 12, 2022, Pembroke, Ontario
Date of Determination and Reasons:	January 16, 2023
Hearing Panel:	Ralph Lance (Chairperson), Andre Carle, Connie Deroneth, Deborah M. Moore, and Robin Tinney
Legal counsel:	Ben Mills (Advisory Member) Angel Li
Persons filing written submissions:	Joan Holmes (Enrolment Officer) Cathy Hostyn on her own behalf and on behalf of her family members
Persons making presentations at hearing:	Joan Holmes (Enrolment Officer) Cathy Hostyn on her own behalf and on behalf of her family members Chief Clifford Bastien

**ALGONQUIN TRIBUNAL'S DETERMINATION REGARDING THE  
INQUIRY INTO FRANCOIS KAWITADIJK (RIN# 6869)**

The Algonquin Tribunal, pursuant to the provisions of Special Resolution of the Algonquin Negotiation Representatives on the Algonquins of Ontario Enrolment and Appeal Board (approved on April 20, 2021) and at the direction of the Algonquin Negotiation Representatives' Motion 20220422-01, has conducted an inquiry to determine whether François Kawitadijik (RIN# 6869) is identified in a historic record or document dated on or before December 31, 1921, in such a way that it would be reasonable to conclude that he was considered to be an Algonquin or Nipissing, or a sibling of such a person. A "sibling of such a person" means a person with a common Algonquin parent.

Further to its inquiry, the Algonquin Tribunal unanimously determines that François Kawitadijik (RIN# 6869) is identified in a historic record or document dated on or before December 31, 1921, in such a way that it would be reasonable to conclude that he was considered to be an Algonquin or Nipissing, or a sibling of such a person.

Ralph Lance (Chairperson),  
Andre Carle  
Connie Deroneth  
Deborah M. Moore  
Robin Tinney

## REASONS FOR DETERMINATION

**REASONS DELIVERED BY:**

**Lance (Chairperson), Carle, Deroneth,  
Moore and Tinney**

### **A. Introduction and Background**

#### **1. Tribunal's Mandate**

1. The Algonquin Tribunal (the “**Tribunal**”) was established by the Algonquin Negotiation Representatives (the “**ANRs**”) pursuant to the Special Resolution of the Algonquin Negotiation Representatives on the Algonquins of Ontario Enrolment and Appeal Board (approved on April 20, 2021) (the “**Special Resolution**”).
2. By way of Motion 20220422-01, the ANRs directed the Tribunal to conduct inquiries into fourteen historical persons who are presently on the Schedule of Algonquin Ancestors with a view to determining whether those historical persons are identified in a historic record or document dated on or before December 31, 1921, in such a way that it would be reasonable to conclude that the person was considered to be an Algonquin or Nipissing, or a sibling of such a person. A “sibling of such a person” means a person with a common Algonquin parent.
3. This criteria is taken from the definition of “Algonquin Ancestor” as that term is used in the Special Resolution of the Algonquin Negotiation Representatives on the Proposed Beneficiary Criteria (approved on January 22, 2020) (the “**Proposed Beneficiary Criteria**”).<sup>1</sup>
4. Included amongst the fourteen historic persons referred to the Tribunal for inquiry was François Kawitadjik (RIN# 6869).<sup>2</sup>
5. The ANRs referral of François Kawitadjik (and other historical persons) to the Tribunal was made pursuant to section 76(e) of the Special Resolution, which provides that the “Tribunal

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<sup>1</sup> Being a lineal descendant of an “Algonquin Ancestor” is one element of the Proposed Beneficiary Criteria. For the other elements, reference should be made to the Algonquin Negotiation Representatives on the Proposed Beneficiary Criteria (approved on January 22, 2020).

<sup>2</sup> As noted in the Enrolment Officer’s Report, an “RIN#” is a randomly generated number assigned by the Legacy Genealogical database to each individual person entered in that database. The use of a RIN # is not indicative of whether a historical person is, or is not, an Algonquin Ancestor or is otherwise suspected of being Algonquin. It merely means that the historical person has been entered into the Legacy Genealogical database. RIN #s are used to assist in the identification and tracing of family trees and are particularly useful when a historic person may be identified by different names or spelling conventions or when several individuals have the same or similar name.

has jurisdiction to hear and determine ... such other matters as may be referred to the Tribunal by the ANRs or may be necessary to carry out its functions under this Special Resolution.”

6. In short, the Tribunal’s mandate is to determine whether François Kawitadjik is properly considered an “Algonquin Ancestor” for the purposes of the Proposed Beneficiary Criteria (which is also sometimes known as the “Enrolment Criteria”).
7. If the Tribunal determines that the criteria is met, then François Kawitadjik would remain on the Schedule of Algonquin Ancestors.
8. If the Tribunal determines that François Kawitadjik does not meet the above noted criteria, then François Kawitadjik would be removed from the Schedule of Algonquin Ancestors. As a consequence of that decision, the Enrolment Officer would review the Enrolment List to identify those individuals who no longer qualify for enrolment as a result of the Tribunal’s decision to remove François Kawitadjik from the Schedule of Algonquin Ancestors.
9. Section 101 of the Special Resolution provides that the Tribunal’s determination, its reasons for determination and any accompanying order or recommendation are to be provided to those participating in the inquiry, the Enrolment Officer and the ANRs. Also, the Tribunal is to provide these documents to the AOO Consultation Office for public posting.

## **2. Procedural Background**

10. Once the Tribunal was constituted and a Chair and Vice-Chair appointed, the Tribunal undertook various efforts to ensure that interested parties were informed: a) that the Tribunal was undertaking inquiries as directed by the ANRs; b) that interested parties could participate in the inquiries; and c) how interested parties could access information relevant to the inquiry and file evidence or submissions in support of their respective positions.
11. The Tribunal’s efforts to inform interested parties of the inquiries and how they may wish to participate in the Tribunal’s inquiry process include, but are not limited to, the measures described below.
12. First, the Tribunal sent a letter to all enrolled members of the AOO whose enrolment is based on them being a lineal descendant of one or more of the fourteen historical persons referred to the Tribunal for inquiry. This letter informed recipients that their enrolment as proposed beneficiaries may be affected by one or more of the Tribunal’s inquiries and that they are being

afforded an opportunity to participate in the inquiries. This letter directed affected persons to the Tribunal's website, which is <https://www.tanakiwin.com/tribunal/>

13. Second, the Tribunal sent a letter to all other enrolled members of the AOO whose enrolment is not based on them being a lineal descendant of one or more of the fourteen historical persons referred to the Tribunal for inquiry. This letter informed recipients of the fact that the Tribunal had undertaken the inquiries and that they may participate. This letter also noted the removal of Algonquin Ancestors may result in persons who are presently enrolled as proposed beneficiaries no longer being eligible for enrolment. This letter also directed recipients to the Tribunal's website. This letter was sent to individuals who are enrolled through the AOO application process and to individuals who are enrolled on the basis of being members of the Algonquins of Pikwakanagan First Nation (the "AOPFN").
14. The Tribunal notes that members of the AOPFN are not directly affected by the Tribunal's inquiries as their enrolment is based on them being on the AOPFN's membership list. Nonetheless, the Tribunal wanted to ensure that members of the AOPFN were specifically informed of the Tribunal's inquiries and also understood that they are welcome to participate in the inquiries. The Tribunal recognizes that the proper and dutiful application of the Proposed Beneficiary Criteria is of great importance to everyone involved in the treaty process, including the AOPFN.
15. In addition to the above noted letters, the Tribunal also undertook its best efforts to send letters to individuals who are not presently enrolled but are known to be interested in the Tribunal's inquiries. These individuals included, but are not limited to, people who sought enrolment on the basis of one or more of the above noted historical individuals but were not enrolled for some other reason. Recipients were informed of the Tribunal's inquiries and their potential interest in one or more of the inquiries and were also advised to visit the Tribunal's website for additional information.
16. The Tribunal's website was (and continues to be) publicly available. Through the website, interested parties were able to access additional information regarding the Tribunal's process, scheduling information and relevant documents. Individuals were encouraged to sign-up for updates from the Tribunal and were encouraged to state their interest in participating in one or more of the inquiries. As information became available and the Tribunal's website was

updated (such as posting the Enrolment Officer's report or submissions from participants), the Tribunal would send an email to those who indicated their interest in receiving up-dates. Also, the Tribunal maintained a telephone number at which interested parties may speak with the Tribunal's legal support team to ask questions regarding the Tribunal's process and their Algonquin ancestry.

17. Specifically with respect to the Tribunal's inquiry into François Kawitadijik, the Tribunal notes that the following documents were filed with the Tribunal and made available on its website:
  - a) The Enrolment Document 1 – Enrolment Officer's Report Regarding Ancestor François Kawitadijik
  - b) Document 2 – Initial submissions made by C. Hostyn on behalf of herself and her extended family
  - c) Document 3 – Enrolment Officer's Replies to Tribunal re François Kawitadijik Report
  - d) Document 4 – Enrolment Officer's Reply to François Kawitadijik Initial Submission of September 16
  - e) Document 5 – Reply submission by C. Hostyn
18. The schedule for filing materials, the hearing date and the materials noted above were all made available on the Tribunal's website in a timely manner and were also the subject of the Tribunal's update emails that were sent from time to time.
19. In addition, the Tribunal held a hearing on December 12, 2022 at the Best Western Hotel in Pembroke. The hearing was open to any interested parties. The Enrolment Officer gave a brief oral presentation supplemented with PowerPoint visuals. She answered questions from the panel and from those in attendance. Ms. Hostyn made a brief presentation on the basis of her written submissions. Chief Bastian spoke briefly regarding the contents of the Enrolment Officer's report and the importance of the Tribunal's work. No other presentations were made despite interested parties having been invited to speak in favour or against the inclusion of François Kawitadijik. The panel reserved its decision at the hearing until the release of these written reasons.

**B. The Tribunal's Determination**

20. Upon consideration of the evidence and having reference to the definition of “Algonquin Ancestor”, the Tribunal has unanimously determined that François Kawitadijik is properly considered an “Algonquin Ancestor” and should remain on the Schedule of Algonquin Ancestors.
21. The Tribunal's reasons for its determination are set out below.

**C. Tribunal's Reasons**

**1. Introduction**

22. In coming to its determination, the Tribunal had reference to all of the information before it. Of those materials, the Tribunal notes that the comprehensive report provided by the Enrolment Officer and the definition of “Algonquin Ancestor” were key to making its determination regarding François Kawitadijik.

**2. Review of Historic Records**

23. The Enrolment Officer's report is based on historical documents in her possession. No issues were raised with the respect to the authenticity of the documents and their reliability. The records and documents appended to the Enrolment Officer's report are well-known to researchers and originate from well-known and reputable sources.
24. In her report, the Enrolment Officer states that François Kawitadijik was originally included on the Schedule of Algonquin Ancestors because he was listed on the 1850 Census of Lower Canada “Return of the Algonquin Tribe of the Lake of two Mountains” (otherwise known as Oka) as the head of a household of eight people consisting of one adult male, three adult females, one male aged five to nine, two girls aged 10-14 and one girl aged five to nine.
25. On the basis of the available historical documentation (which documentation is appended to the Enrolment Officer's report and has been analyzed by the Tribunal members), the Enrolment Officer makes the following observations:
- a) François Kawitadijik was baptized as Oka in 1818 at 22 years of age. His baptismal record identifies him as being “sauvage” born of Machkigon. The witnesses to his baptism are François Odjik (RIN #6927) and his wife Marie Louise (Chevallier, RIN #6928). François Odjik and his wife's father, Amable Pakwakona (RIN #58180), are both listed on the Schedule of Algonquin Ancestors.

- b) François Kawitadijik married Marie Anne Kapimasikekwe (RIN #6870) on August 10, 1819 at Oka. François Kawitadijik's origin is given as 'outaois' on this document. François Kawitadijik and Marie Anne's marriage was witnessed by: a) "Amable Pakwakona" (noted above); and b) two of Marie Anne's brothers, being "François" and "Ignace Kwetchens". "François" is François Wabikekek dit Kaioko (RIN #6205) and "Ignace Kwetchens" is Ignace Kwatcenj dit Inini (RIN #7085), both of whom are listed on the Schedule of Algonquin Ancestors.
- c) The Enrolment Officer confirmed that "Outaois" is a reference to Odawa or Ottawa, an Algonquian-speaking people who occupied land around the upper Great Lakes and were active at Michilimackinac during the War of 1812.
- d) The Enrolment Officer confirmed that, in addition to being on the Schedule of Algonquin Ancestors, the records held by the Enrolment Office identify Marie Anne's brothers, François Wabikekek and Ignace Kwatcenj, as Algonquin and/or Nipissing.
- e) The various baptisms of François Kawitadijik and Marie Anne's children were witnessed by other Algonquin/Nipissing individuals.
- f) Only three of François Kawitadijik and Marie Anne's children are known to have descendants. These children married into Algonquin/Nipissing families.
- g) More specifically to François Kawitadijik, the Enrolment Officer confirms, and the historical records show, that François Kawitadijik was:
  - i) Listed on the 1850 Census of Lower Canada "Return of the Algonquin Tribe of the Lake of two Mountains" as the head of a household of eight people consisting of one adult male, three adult females, one male aged five to nine, two girls aged 10-14 and one girl aged five to nine.
  - ii) Identified as Algonquin on the marriage record of his daughter Therese (which recorded Therese's marriage to Benjamin Weiwassang dit Leclair/Leclerc).
  - iii) Listed as a signatory to the 1863 Petition from the "Indians of the village of Two Mountains hunting on the head waters of the Madawaska and other rivers of central Canada". This petition was a precursor to the present land claim as it was an effort by Algonquins to obtain land on the upper Madawaska for "the whole Algonquin tribe".



François Kawitadjik appears as “Kawitachik” on this petition. The Enrolment Officer confirms that “Kawitachik” is a reference to François Kawitadjik by cross referencing additional documentation that associates “Kawitachik” with François Kawitadjik.

26. The Enrolment Officer also observes, and the Tribunal agrees, that the available historical records indicate that François Kawitadjik was clearly integrated into the Algonquin community, as evidenced by his marriage to an Algonquin woman, living and being enumerated in the Algonquin village at Lake of Two Mountains, and signing a petition on behalf of the whole Algonquin tribe. Other prominent Algonquins witnessed the family’s events, such as baptisms and marriages. His children married into other Algonquin families and become identified as Algonquin in an era where children were typically assigned the ethnic origin of their father.
27. The Tribunal observes that this integration was not of a passing nature, but unfolded over the course of his lifetime, and, ultimately, culminated with him being a signatory to the 1863 petition from the “Indians of the village of Two Mountains hunting on the head waters of the Madawaska and other rivers of central Canada” which sought land on the upper Madawaska for “the whole Algonquin tribe”. Indeed, the integration goes beyond François’s own lifetime and is reflected in the lives of his children.

### **3. Definition of “Algonquin Ancestor”**

28. On the basis of this historical documentation, the key issue before the Tribunal is whether a person who is identified in some historical documents as being associated with, or originating from, an Indigenous nation that is not Algonquin (in this case, Outaouais/Odawa), may nonetheless meet the definition of “Algonquin Ancestor” on the basis of other historical documentation that relate to different or subsequent life events.
29. As discussed in more detail below, the Tribunal is of the view that the term “Algonquin Ancestor” is broad enough to allow the Tribunal to conclude that such a person may be an “Algonquin Ancestor”.
30. As a starting point, the Tribunal must first consider the definition of “Algonquin Ancestor”. Broken down into its components, an “Algonquin Ancestor” is:
  - a) a person

- b) the person must be one who was born on or before July 15, 1897 and
- c) the person must be identified in a historic record or document
- d) this historic record or document must be one that is dated on or before December 31, 1921,
- e) the identification of the person must be in such a way that it would be reasonable for the Tribunal to conclude
- f) that the person identified in the historic record was considered to be an Algonquin or Nipissing,
- g) or a sibling of such a person. A “sibling of such a person” means a person with a common Algonquin parent.

31. Elements (a), (b) and (c) confirm that the “Algonquin Ancestor” must be an identifiable historical person. While this may seem somewhat trite, these elements are very important as they confirm that a determination of who is or who is not an “Algonquin Ancestor” requires the Tribunal to focus on a specific historical person who is documented as being an identifiable person who existed in a time and place. This requirement means that the claim to Algonquin ancestry for the purposes of enrolment must be grounded or based on an actual historical person.
32. Element (d) pertains to the historic record itself as opposed to the person under consideration and that the historic record must be one that is dated on or before December 31, 1921.
33. Element (e) describes the standard that Tribunal must apply when making its determination. In this regard, the Tribunal must be satisfied that it is “reasonable to conclude”. As is readily apparent from the words used, this standard is obviously higher than “possible to conclude” or “may conclude” but is lower than being convinced “beyond all doubt”. The “reasonable to conclude” standard requires the Tribunal to conduct a thorough analysis of the evidence and to base its determination on the evidence. In this case, the evidence on which the Tribunal relies is found in the in Enrolment Officer’s detailed report and the historical documents attached to it.
34. Element (f) is the crux of the matter. As with any other element of the definition, the Tribunal assumes that this element of the definition was created in a thoughtful and deliberate manner

and was subject to considerable debate and discussion. On that basis, the Tribunal has to be mindful to the specific words used (or not used) in the definition.

35. For example, the use of the phrase “considered to be” indicates that the person identified in the historical document must be “considered” as being Algonquin or Nipissing by someone else. It is not enough for the person to self-identify as Algonquin or Nipissing. Rather, the identification of the historical person as Algonquin or Nipissing must be something that is recognized by others.
36. Also, the Tribunal notes that the past tense is used. This indicates that those who are “considering” whether the historical person is Algonquin or Nipissing are the contemporaries of the historical person at issue.
37. In addition, the Tribunal notes that the definition does not state that the person must be identified as being “born” Algonquin or Nipissing or that being identified as originating from another Indigenous nation in one or more documents would absolutely disqualify a historical person from being “considered Algonquin or Nipissing” regardless of what other historical documents might indicate.
38. This interpretation is supported by the definition of “sibling” included in “Algonquin Ancestor”. Sibling is defined as “a person with a common Algonquin parent.” This means that a historical person may be listed as an Algonquin Ancestor on the basis of being a sibling to someone who is all ready on the Schedule of Algonquin Ancestors so long as those two historical people share a common Algonquin parent. This definition of “sibling” indicates that it is possible for a person to be an Algonquin Ancestor but have siblings who are not Algonquin. Otherwise, it would not be necessary to define sibling with reference to Algonquin parentage. This, in turn, indicates that there may be Algonquin Ancestor’s who originated from some other Indigenous nation but were “considered to be an Algonquin or Nipissing” on some basis other than birth.
39. As a word of caution, the Tribunal emphasizes that the application of the phrase “consider Algonquin or Nipissing” is a fact driven exercise that requires an attentive examination of the historical documents and the historical context in which they were created. The Tribunal notes that this is highly contextual exercise that requires the Tribunal to analyze the evidence on the record before it as it relates to each matter or inquiry. The Tribunal’s task is always to

determine whether it is reasonable to conclude that the historical person at issue “was considered to be an Algonquin or Nipissing” on the basis of the historical records.

#### **4. The Crux of the Matter**

40. In the present case, the Tribunal recognizes that François Kawitadjik is identified in certain historical documents as “sauvage” born of Machkigon or as “Outaouis”.
41. However, the Tribunal also notes that François Kawitadjik is identified as being a head of household in the context of the 1850 Census of Lower Canada “Return of the Algonquin Tribe of the Lake of two Mountains” census and as a signatory to the 1863 Petition from the “Indians of the village of Two Mountains hunting on the head waters of the Madawaska and other rivers of central Canada”.
42. Of particular significance is the fact that François Kawitadjik was a signatory to 1863 Petition from the “Indians of the village of Two Mountains hunting on the head waters of the Madawaska and other rivers of central Canada”. This was a petition submitted by Algonquins to the Crown for the purposes of acquiring land on behalf of the entire Algonquin nation. Given the nature of the document, it is clear that this document was created by (or at the direction of) Algonquins for the benefit of Algonquins.
43. The Tribunal has a very difficult time accepting the proposition that other Algonquin signatories would have included François Kawitadjik on that petition unless they considered him as being Algonquin.
44. The Tribunal’s conclusion that François Kawitadjik was considered Algonquin is supported by the fact that the other historic documents available to the Tribunal indicate that the life events of François Kawitadjik and his family members were witnessed by Algonquins and that this occurred over the course of decades.
45. These historic documents, particularly when taken together, demonstrate that François Kawitadjik was considered to be “Algonquin” by his Algonquin contemporaries.

#### **5. François Kawitadjik’s Siblings**

46. The Tribunal notes that the definition of Algonquin Ancestor provides that a historical person may be included on the Schedule of Algonquin Ancestors on the basis that such historical person is a sibling of a person already listed on the Schedule of Algonquin Ancestors.

47. Given that François Kawitadjik appears to have originated from the Outaouais/Odawa and that his identification as Algonquin in historical records comes on the basis of his unique life experience of being integrated and accepted into the Algonquin nation, then future Tribunals or enrolment processes must be careful to ensure that any siblings of François Kawitadjik (should any be identified) meet the criteria of Algonquin Ancestor.
48. In order for a historical person to be listed on the Schedule of Algonquin Ancestors on the basis of being a sibling of François Kawitadjik, it would have to be shown that such historical person has an Algonquin parent in common with François Kawitadjik. This would avoid a situation where siblings of François Kawitadjik who, presumably, remained part of the Outaouais/Odawa nation are not enrolled on the basis of simply being a sibling of François Kawitadjik. Alternatively, such historical person may also be included in the Schedule of Algonquin Ancestors on the basis that such historical person is, him or herself, identified in a historic record or document dated on or before December 31, 1921, in such a way that it would be reasonable to conclude that the person was considered to be an Algonquin or Nipissing.

**D. Additional comment regarding Marie Anne**

49. As mandated, the Tribunal has made its determination regarding François Kawitadjik by considering the historical documents that pertain to him and are relevant to determining whether it is reasonable to conclude that François Kawitadjik was considered to be Algonquin or Nipissing.
50. In addition to that determination, certain members of the Tribunal also wish to note the historical documentation included in the Enrolment Officer's report and in her response to the Tribunal's questions provide a strong basis on which to conclude that Marie Anne Kapimasikekwe (RIN #6870) (who was married to François Kawitadjik and is mother to his known descendants) was an Algonquin/Nipissing woman.
51. In addition to this primary historical documentation, the Tribunal notes that Marie Anne's brothers, François Wabikekek dit Kaioko (RIN #6205) and Ignace Kwatcenj dit Inini (RIN #7085), are on the Schedule of Algonquin Ancestors.
52. The Tribunal recognizes that Marie Anne is not on the Schedule of Algonquin Ancestors and, as such, whether she is properly considered an "Algonquin Ancestor" has not been finally determined through the Tribunal's process. However, the Tribunal makes note of the fact that

Marie Anne appears to be Algonquin and, if this is accepted, the children of Marie Anne and Francois Kawitadijik and Marie Anne would also be Algonquin.

**E. Confirmation of Determination**

53. For the reasons stated above and on the basis of the record before the Tribunal, the Tribunal determines that François Kawitadijik is properly considered an “Algonquin Ancestor” and should remain on the Schedule of Algonquin Ancestors.

**TO:** Algonquin Negotiation Representatives

**AND TO:** Enrolment Officer

**AND TO:** Algonquins of Ontario Consultation Office (for public posting)

**AND TO:** Registered Participants:

- a) Cathy Hostyn on her own behalf and on behalf of her family members
- b) Chief Clifford Bastien