

**ALGONQUIN TRIBUNAL**

**RE: Inquiry conducted by the Algonquin Tribunal pursuant to Article 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 Michel McDonald (RIN #14703)**

**DETERMINATION AND REASONS FOR DETERMINATION  
REGARDING THE ALGONQUIN TRIBUNAL'S INQUIRY INTO  
MICHEL MCDONALD (RIN #14703)**

Hearing Date:	June 7, 2023, Pembroke, Ontario
Date of Determination and Reasons:	August 4, 2023
Hearing Panel:	Deborah Moore (Chairperson), Andre Carle, Ralph Lance, Robin McLaren and Tom Vincent
Legal counsel:	Ben Mills (Advisory Member) Angel Li
Persons filing written submissions:	Joan Holmes (Enrolment Officer) Bob Majaury Michelle de Braux Veldon Coburn Chief Wendy Jocko Heather Majaury Chief Greg Sarazin Brent Whetung
Persons making presentations at hearing:	Joan Holmes (Enrolment Officer) Heather Majaury

Bob Majaury

Myrriah Xochitl

Ryerson Whetung

Brian Majaury

Darrel Leroux on behalf of Chief and Council of the  
Algonquins of Pikwakanagan First Nation

**ALGONQUIN TRIBUNAL’S DETERMINATION REGARDING  
THE INQUIRY INTO MICHEL MCDONALD (RIN #14703)**

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, conducted an inquiry to determine whether Michel McDonald (RIN #14703) 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 has determined that Michel McDonald (RIN #14703) is not 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.

Pursuant to Article 100 of the Special Resolution of the Algonquin Negotiation Representatives on the Algonquins of Ontario Enrolment and Appeal Board (approved on April 20, 2021), the Tribunal directs that Michel McDonald (RIN #14703) be removed from the Schedule of Algonquin Ancestors.

Deborah Moore (Chairperson)  
Andre Carle  
Ralph Lance  
Robin McLaren  
Tom Vincent

## REASONS FOR DETERMINATION

**REASONS DELIVERED BY:**

**Moore (Chairperson), Carle, Lance,  
McLaren and Vincent**

### **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. These criteria are 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 Michel McDonald (RIN #14703).<sup>2</sup>
5. The ANRs referral of Michel McDonald (RIN #14703) (and other historical persons) to the Tribunal was made pursuant to Article 76(e) of the Special Resolution, which provides that the

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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.

“Tribunal 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 Michel McDonald (RIN #14703) is properly considered an “Algonquin Ancestor” for the purposes of the Proposed Beneficiary Criteria (which is also known as the “Enrolment Criteria”).
7. If the Tribunal determines that the criteria are met, then Michel McDonald (RIN #14703) would remain on the Schedule of Algonquin Ancestors.
8. If the Tribunal determines that Michel McDonald (RIN #14703) does not meet the above noted criteria, then Michel McDonald (RIN #14703) 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 Michel McDonald (RIN #14703) from the Schedule of Algonquin Ancestors and remove those individuals from the Enrolment List. This would be done pursuant to Article 103 of the Special Resolution.
9. Article 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.
10. The Special Resolution is an effort by the ANRs (and those whom they represent) to engage in self-governance and self-determination. The Special Resolution establishes a fair process by which Algonquins are making decisions regarding enrolment and membership. This is an exercise of Algonquin Indigenous rights as they exist and as they are recognized under section 35 of the *Constitution Act, 1982*. This endeavour is wholly consistent with the rights described in *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14).

## **2. Procedural Background**

11. 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.

12. The Tribunal's efforts to inform interested parties of the inquiries and how they could participate in the Tribunal's inquiry process include, but are not limited to, the measures described below.
13. 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 have an opportunity to participate in the inquiries. This letter directed affected persons to the Tribunal's website, which is <https://www.tanakiwin.com/tribunal/>. This letter was sent during the second week of August 2022.
14. 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 was also sent during the second week of August, 2022. This letter informed recipients of the fact that the Tribunal had undertaken the inquiries and that they may participate. This letter also noted that 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").
15. The Tribunal notes that members of the AOPFN are not directly affected by the Tribunal's inquiries because 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 members of the AOPFN.

16. 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.
17. 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 reports from the Enrolment Officer or submissions from participants), the Tribunal would send an email to those who indicated their interest in receiving updates. Also, the Tribunal maintained a telephone number so that interested parties could speak with the Tribunal's legal support team to ask questions regarding the Tribunal's process and their Algonquin ancestry. The Tribunal understands that participants in this inquiry availed themselves of these resources.

**B. Written Submissions Received**

18. Specifically with respect to the Tribunal's inquiry into Michel McDonald (RIN #14703), the following documents were filed with the Tribunal and made available on its website:
  - Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices
  - Document 2 – Initial Submission by B. Majaury
  - Document 3 – Initial Submission by B. Majaury
  - Document 4 – Initial Submission by M. de Braux
  - Document 5 – Initial Submission by H. Majaury
  - Document 6 – Submission by V. Coburn regarding Michel McDonald
  - Document 7 – Submission by Chief W. Jocko on behalf of her community

- Document 8 – Responding Submission by B. Majaury re. V. Coburn Submission
- Document 9 – Responding Submission by H. Majaury re. V. Coburn Submission
- Document 10 – Responding Submission by Chief G. Sarazin on behalf of his community
- Document 11 – Responding Submission by B. Whetung re. V. Coburn Submission
- Document 12 – Enrolment Officer’s Response to submissions 2-5 re #14703
- Document 13 – Enrolment Officer’s Reply to submissions 6, 7, 10 re #14703
- Document 14 – Reply Submission by H. Majaury
- Document 15 – Enrolment Officer’s Reply to submissions 8, 9, 11, 14 re #14703
- Document 16 – Submission by Council of AOPFN (McDonald)
- Document 17 – Submission by B. Majaury re. Document 16 (McDonald)
- Document 18 – Submission by H. Majaury re. Document 15
- Document 19 – Enrolment Officer’s Reply to submission 18 re #14703
- Document 20 – Information on JHA Enrolment Team
- Document 21 – Submission by H. Majaury re. Doc 19 EO Report
- Document 22 – Enrolment Officer’s Presentation for Michel McDonald (Note that Document 22 is a copy of the power point presentation made by the Enrolment Officer at the hearing on June 7, 2023. This presentation was posted on the Tribunal’s website after the hearing.)

19. The Tribunal members attentively reviewed Documents 1 to 21 in preparation for the hearing. The Tribunal re-reviewed those materials, as well as the other documents filed during or subsequent to the hearing, as part of the deliberations that followed the hearing.
20. The Tribunal recognizes that this is an important matter and has considered all the materials that have been filed.
21. The schedule for filing materials 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.



22. In addition to the above noted material, the Tribunal also reviewed a submission that was filed by Heather Majaury after the hearing and a report provided by the Enrolment Office regarding the Oral History presented by Ryerson Whetung. Both of these submissions are discussed in more detail below.

### **C. Hearing**

23. The Tribunal held a hearing on June 7, 2023, at the Best Western Hotel in Pembroke. Interested parties could also attend the hearing via electronic video platform (i.e., Zoom). The hearing date was posted on the Tribunal's website and was the subject of an update email from the Tribunal.
24. The hearing was open to all interested parties.
25. Approximately 15 to 20 people attended in person and an additional 7 people attended via Zoom.
26. The hearing opened with a prayer. The Chairperson then provided an overview of the order of proceedings and the panel members introduced themselves.<sup>3</sup>
27. After providing a brief opportunity to ask questions regarding procedural issues, the Chairperson called upon the Enrolment Officer to make her presentation.
28. The Enrolment Officer gave an oral presentation supplemented with PowerPoint visuals (which are now posted on the Tribunal's website as *Document 22 – Enrolment Officer's Presentation for Michel McDonald*). The Enrolment Officer answered questions from the panel and from those in attendance and spoke in response to submissions and comments made by others.
29. Heather Majaury made submissions in support of keeping Michel McDonald (RIN #14703) on the Schedule of Algonquin Ancestors. Ms. Majaury spoke from the heart and described her personal and family history. Ms. Majaury acknowledged that there is very little documentary evidence regarding Michel McDonald (RIN #14703) and that his origins are unknown as we do not know his parents' names. Ms. Majaury submitted that it is possible that Michel

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<sup>3</sup> The names of the Tribunal members have been posted on the Tribunal's website for some time and the members presiding over this inquiry were impanelled in a manner required by the Special Resolution and in such a way so as to reduce the potential for conflicts of interest. No objections were made regarding the composition of the panel.

McDonald (RIN #14703) could have been Cree but that it is also possible that he could have been Algonquin-Cree, French-Algonquin-Cree, or other variations. Ms. Majaury also explained that she and her family approached the enrolment process in good faith and on the basis of a genuine belief that they are Algonquin. Furthermore, Ms. Majaury explained that she and her family live in the Algonquin culture to support and help it grow. She also commented on how this process has negatively impacted her family.

30. Bob Majaury spoke in support of keeping Michel McDonald (RIN #14703) on the Schedule of Algonquin Ancestors. Amongst other things, Mr. Majaury submitted that:
- a) His family successfully defended Michel McDonald (RIN #14703) as an Algonquin Ancestor in the 2013 proceeding before Justice Chadwick and that there is no new information, evidence of fraud or palpable and overriding error that would justify departing from Justice Chadwick's decision;
  - b) There is no documentation indicating that Michel McDonald (RIN #14703) associated with any Indigenous people other than Algonquins in traditional Algonquin territory;
  - c) There is no documentation actually showing that Michel McDonald (RIN #14703) lived anywhere other than in traditional Algonquin territory;
  - d) The 1921 Census identifies three of Michel McDonald (RIN #14703)'s sons (and their respective children) as "Indian", and their children as "Indian" and his daughter as speaking "Indian";
  - e) Information regarding Michel McDonald (RIN #14703)'s origin as recorded in census documents conflict with one another, and some censuses indicate that he was born in Ontario;
  - f) Michel McDonald (RIN #14703) had close relations with Algonquins which included separately marrying two Algonquin women (both of whom died) and having a third Algonquin woman (Sarah Whiteduck) live in his family home to help look after his children; and
  - g) Michel McDonald (RIN #14703) was witness to life events of certain Algonquins.
31. Myrriah Xochitl spoke in support of keeping Michel McDonald (RIN #14703) on the Schedule of Algonquin Ancestors. Ms. Xochitl stated that this process has done immense damage but

that she will forever love and respect her community. Ms. Xochilt stated that she does not want the reality of her life and experiences and those of her family and ancestors to be erased.

32. Ryerson Whetung spoke in support of keeping Michel McDonald (RIN #14703) on the Schedule of Algonquin Ancestors. Mr. Whetung provided an oral history of his family, which includes Michel McDonald's daughter, Eliza McDonald (i.e., Elizabeth McDonald (RIN #46007)). Mr. Whetung also advised that he disagrees with this Tribunal's process as it seems to be colonial in nature. He also submitted that oral history is very important.
33. Dr. Darryl Leroux attended the hearing as a representative of Chief and Council of the AOPFN. Dr. Leroux advised that Chief and Council of the AOPFN are opposed to keeping Michel McDonald (RIN #14703) on the Schedule of Algonquin Ancestors for the reason expressed in their written submissions.
34. Heather Majaury and Brian Majaury spoke in reply. Amongst other things, Ms. Majaury commented on the standard that the Tribunal must apply to its assessment of the evidence. Brian Majaury stated that he was told by his mother that he was Algonquin and grew up believing that to be a fact. He has engaged in hunting and trapping throughout his life and loves it. The possibility of losing his identity as an Algonquin at 72 years of age is hurtful.
35. There were also various questions and comments directed to the Enrolment Officer, which were discussed and answered.
36. The hearing concluded with the Tribunal indicating that it was reserving its decision so as to deliberate on this important matter and to review the written submissions again in light of the oral submissions presented at the hearing. The hearing ended with a closing prayer.

**D. Materials received after the hearing**

37. After the hearing, the Tribunal received an additional submission from Heather Majaury on June 28, 2023. In this submission, Ms. Majaury compares the historical records pertaining to Michel McDonald (RIN #14703) with historical records pertaining to the ancestors of other people. The Tribunal recognizes that the process of making inferences from historical records is challenging and also recognizes that it should not expect that historical records will be comprehensive given the era in which they were created. However, apart from these points, the Tribunal does not put any material weight on the June 28, 2023, submissions as they do not

assist in determining whether it is reasonable to conclude that Michel McDonald (RIN #14703) was considered to be Algonquin.

38. The Tribunal also received an additional report from the Enrolment Officer titled *Supplementary Research re Ancestor Michel McDonald*. In this report, the Enrolment Officer reports on the oral history provided by Ryerson Whetung and relevant historical records that may corroborate that oral history. As noted above, Mr. Whetung presented oral history at the hearing. This was the first time that the Tribunal heard this information. Also, despite the Tribunal's request for oral history to be filed in writing, it was presented verbally. The Tribunal wanted to have it reduced to writing so as to better appreciate the information and to assess how it might correspond with other information on the Tribunal's record or otherwise be corroborated with reference to other historical records. As such, the Tribunal instructed the Enrolment Officer to interview Mr. Whetung and to carry out such additional research as may be appropriate to assist the Tribunal. This was necessary in order to comply with Article 8 of the Special Resolution, which is discussed in more detail below.

#### **E. The Tribunal's Determination**

39. All members of the Tribunal recognize and agree that Michel McDonald (RIN #14703) was an Indigenous person and, hence, his descendants are of Indigenous ancestry.
40. The majority of Tribunal members (being three members) have determined on the basis of the record before the Tribunal that Michel McDonald (RIN #14703) is not 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; nor is he a sibling of such a person.
41. The minority of Tribunal members (being two members) have determined on the basis of the record before the Tribunal that Michel McDonald (RIN #14703) 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.
42. Michel McDonald (RIN #14703) will be removed from the Schedule of Algonquin Ancestors because a majority of Tribunal members have concluded that he is not properly considered an "Algonquin Ancestor" as that term is defined in the Proposed Beneficiary Criteria.

43. In coming to its determination, all members of the Tribunal had reference to all the information before the Tribunal and to the submissions made at the hearing. The Tribunal sincerely thanks all parties for their thoughtful submissions.
44. This matter was subject to meaningful discussion and deliberation amongst Tribunal members.
45. The reasons for the Tribunal's majority decision and the reasons for the minority decision are set out below.

**F. Definition of Algonquin Ancestor**

46. All members of the Tribunal agree that the starting point of the Tribunal's analysis is the definition of "Algonquin Ancestor".
47. 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.
48. 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.

49. In this inquiry, the Tribunal was focused on Michel McDonald (RIN #14703) and considered historical records pertaining to Michel McDonald (RIN #14703). As was the case with other inquiries, the Tribunal also considered information and historical documents pertaining to historical persons who are connected with the subject ancestor. The parents of Michel McDonald (RIN #14703) have not been identified. The Tribunal considered historical records pertaining to others who formed part of Michel McDonald (RIN #14703)'s household and extended family. This was done to determine what those records might say about Michel McDonald (RIN #14703) and whether he is properly considered an Algonquin Ancestor.
50. 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.
51. Element (e) describes the standard that the 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. The Tribunal confirms that it has reviewed all of the evidence with the standard "reasonable to conclude" in mind.
52. Element (f) is the crux of the matter and requires the Tribunal to assess what the historical document or documents are telling us about the historical person at issue and how that person may have been viewed by others.
53. 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 of the specific words used (or not used) in the definition.
54. 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.

55. The Tribunal also notes that the past tense is used. This indicates that those who “considered” whether the historical person is Algonquin or Nipissing are the contemporaries of the historical person at issue.
56. In addition, as the Tribunal held in the inquiries regarding François Kawitadijik (RIN# 6869) and Louis Michiminanakwakwe (RIN #7619), 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.
57. As the Tribunal previously stated, the application of the phrase “was considered to be an 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. This is a 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.

**G. Review of Historical Records Pertaining to Michel McDonald (RIN #14703)**

58. At the outset, the Tribunal notes that Michel McDonald (RIN #14703)’s surname was sometimes spelled as “McDonald” or “McDonell” and that his first name was sometimes spelled as “Michael” or “Mishel”. These spelling variations commonly occurred in documents from this era. For convenience and consistency, the Tribunal will refer to the subject ancestor as “Michel McDonald (RIN #14703)” because this is the name that appears on the Schedule of Algonquin Ancestors.
59. The earliest known record for Michel McDonald (RIN #14703) is a document recording his marriage to Mary Whiteduck (RIN #7749) on February 2, 1866.<sup>4</sup> This document does not name Michel McDonald (RIN #14703)’s father other than providing his last name and does not provide any name for his mother. Mary Whiteduck (RIN #7749)’s parents are identified as Michael Wilduck (who the Enrolment Officer states is Whiteduck dit Chapwewitang (RIN#

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<sup>4</sup> ALG 01437

7084)) and Elizabeth (who the Enrolment Officer states is Elizabeth Wasseiasikekwe (RIN #7081)). The marriage was witnessed by Ignace Naokijik (RIN# 7380) and Joseph Teneskon (RIN #6594). Whiteduck dit Chapwewitang (RIN# 7084), Ignace Naokijik (RIN# 7380) and Joseph Teneskon (RIN #6594) are all listed on the Schedule of Algonquin Ancestors.

60. The civil record for this marriage indicates that Michel McDonald (RIN #14703) was 26 years old at the time of the marriage and that he was born in “Canada”. His father is simply identified as “McDonald” and no information is provided about his mother.<sup>5</sup>
61. On the basis of these documents, it is clear that Michel McDonald (RIN #14703) married an Algonquin woman. However, these documents do not indicate that Michel McDonald (RIN #14703) is Algonquin.
62. No children are known to have resulted from this marriage. It appears that Mary Whiteduck (RIN #7749) died shortly after the marriage as the historical records indicate that Michel McDonald (RIN #14703) remarried approximately three years later, on September 29, 1869.
63. Michel McDonald (RIN #14703)’s second marriage was to Mary Constant (RIN #22442) on September 29, 1869.<sup>6</sup> Ignace Kikonse (RIN #7747) and Genevieve Whiteduck (RIN #16462) are identified as Mary Constant (RIN #22442)’s parents. Andre Michel (RIN #16462) witnessed the marriage.
64. Genevieve Whiteduck (RIN #16462) (i.e., Mary Constant (RIN #22442)’s mother) is the sister of Whiteduck dit Chapwewitang (RIN# 7084) (i.e., Mary Whiteduck (RIN #7749)’s father). This makes Mary Constant (RIN #22442) and Mary Whiteduck (RIN #7749) cousins.<sup>7</sup>
65. On the basis of the marriage record, it is clear that Michel McDonald (RIN #14703)’s second wife is an Algonquin woman. However, this document does not indicate that Michel McDonald (RIN #14703) is Algonquin.
66. Michel McDonald (RIN #14703) and Mary Constant (RIN #22442)’s daughter, Margaret McDonald (RIN #14187), was born in October 1870. The civil registration of her birth states that Michel McDonald (RIN #14703) is a hunter and labourer. The civil registration also states

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<sup>5</sup> ALG 40176

<sup>6</sup> ALG 07747

<sup>7</sup> See pages 7 to 9 of *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*



“half breed” in the remarks section. It is not clear whether this is referring to the entire family or a particular person.<sup>8</sup>

67. Michel McDonald (RIN #14703), Mary Constant (RIN #22442) and their daughter are enumerated on the 1871 census for Bagot and Blythefield, Renfrew.<sup>9</sup> Michel McDonald (RIN #14703) is recorded as “Scotch” in origin and his occupation is listed as hunter and farmer. Mary Constant (RIN #22442) is described as “Indian” in origin. He is also identified as having been born in Manitoba. Their daughter is identified as “Scotch” in origin.
68. Despite the Enrolment Officer’s best efforts, the Enrolment Officer was not able to locate additional documents regarding Margaret McDonald (RIN #14187). Other participants in the inquiry did not provide any additional documentation regarding Margaret McDonald (RIN #14187).
69. On July 3, 1876, Michel McDonald (RIN #14703) witnessed the burial of Theresa Jacob dit Miskwabininc (RIN # 18910) at Mount St. Patrick.<sup>10</sup> On the basis of the information in *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices* it is clear that Theresa Jacob dit Miskwabininc (RIN # 18910) and her family are Algonquin.<sup>11</sup>
70. It appears that Mary Constant (RIN #22442) died sometime before 1879 as Michel McDonald (RIN #14703) remarried and had children with a third spouse, Elizabeth Arcle (RIN #14704). It does not appear that the Enrolment Officer or other participants were able to locate a document recording Michel McDonald (RIN #14703) and Elizabeth Arcle (RIN #14704)’s marriage. However, the baptismal records of their first two children confirm that the oldest child was born on November 15, 1879, and described Elizabeth Arcle (RIN #14704) as Michel McDonald (RIN #14703)’s lawful wife.<sup>12</sup>
71. Michel McDonald (RIN #14703) and Elizabeth Arcle (RIN #14704) had a number of children. The Tribunal notes that a) the November 15, 1879 civil birth registration of Xavier Michel

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<sup>8</sup> ALG 27241

<sup>9</sup> ALG 27242

<sup>10</sup> ALG 00755

<sup>11</sup> See page 7 of *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*

<sup>12</sup> ALG 27245

(RIN #14705) describes Michel McDonald (RIN #14703) as “Yeoman (Indian)”<sup>13</sup>; and b) the December 10, 1881 civil birth registration for “Michele” (who is actually believed to be Peter Abraham (RIN #18305) describes Michel McDonald (RIN #14703) as “Indian”.<sup>14</sup>

72. Michel McDonald (RIN #14703) was enumerated on the 1881 census for the township of Palmerston, Canonto, Addington County.<sup>15</sup> In this census, Michel McDonald (RIN #14703) was described as having been born in Ontario and “Scotch ~~Ind~~” in origin and that he is a hunter by occupation. The Tribunal understands that the “~~Ind~~” is a reference to “Indian”. The reason why “Indian” was struck through is not known. Elizabeth Arcle (RIN #14704) is noted as being “French” in origin and their children are identified as “Scotch”.
73. On the 1891 census for Palmerston and Canonto, Addington County, Michel McDonald (RIN #14703) was identified as “Indian” and as having been born in Canada. The census also notes that Michel McDonald (RIN #14703)’s parents were also born in Canada.
74. Elizabeth Arcle (RIN #14704) died on July 19, 1893 as a result of post partum hemorrhaging.<sup>16</sup>
75. Michel McDonald (RIN #14703) was enumerated on the 1901 census for Palmerston and Canonto, Addington County.<sup>17</sup> In this census, Michel McDonald (RIN #14703) is identified as: a) a widower; b) living with six children, c) having been born in “Man r” (i.e., rural Manitoba); d) being of “Cree FB” (Cree French Breed) origin; and e) a farmer by occupation.
76. On this census, Michel McDonald (RIN #14703)’s children are all noted as being born in rural Ontario and Cree French Breed in origin.
77. The 1901 census also indicates that Michel McDonald (RIN #14703)’s household included a woman named “Searry Whiteduck”, who was described as a 31 year old “servant” born on July 10, 1869. “Searry Whiteduck” (i.e., Sarah Whiteduck (RIN #2339) is noted as being “R” (i.e., Indigenous) and “Cree FB” (i.e., Cree French Breed) in origin. The Tribunal understands that the reference to “servant” in this context essentially means an unwed woman who is working

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<sup>13</sup> ALG 40573

<sup>14</sup> ALG 40574

<sup>15</sup> ALG 27243

<sup>16</sup> ALG 40177

<sup>17</sup> ALG 07859

in the house.<sup>18</sup> The most logical inference is that Sarah Whiteduck (RIN #2339) was helping Michel McDonald (RIN #14703) raise his children after the death of Elizabeth Arcle (RIN #14704). Also, included in the household is an infant child born on February 13, 1901. While not properly documented on the census, this child is understood to be Sarah Whiteduck (RIN #2339)'s daughter, Mary Brown.

78. Sarah Whiteduck (RIN #2339) was the daughter of Simon Whiteduck (RIN #18909) and Therese Jacob dit Miskwabininc (RIN #18910) and was an Algonquin woman.<sup>19</sup> The historical records suggest that the father of Sarah Whiteduck (RIN #2339)'s daughter was George Brown (RIN #57617), and that the child was born outside of a formal marriage.<sup>20</sup>
79. The Tribunal notes that the identification of Sarah Whiteduck (RIN #2339) as “Cree FB” on the 1901 census is wrong and she was clearly an Algonquin woman.
80. Michel McDonald (RIN #14703) was recorded as having died on March 14, 1907, at the age of 68. The death record indicates that he was married at the time of his death. However, as noted above, his last know wife, Elizabeth Arcle (RIN #14704), died in 1893.
81. Subsequent to Michel McDonald (RIN #14703) death, Sarah Whiteduck (RIN #2339) was enumerated on the 1911 census in West Line, Bonfield Township in the District of Nipissing as living with the family of Joseph and Mary Fisher (i.e., Mary Anne Whiteduck (RIN #57625 and sister of Sarah Whiteduck (RIN #2339)). This household is identified as “Algonquin” and speaking “Indian”.<sup>21</sup>

#### **H. Michel McDonald (RIN #14703)'s Children**

82. The Enrolment Officer has reported on the available records pertaining to Michel McDonald (RIN #14703)'s known children.
83. The only children that have been identified are those resulting from the union between Michel McDonald (RIN #14703) and his third wife, Elizabeth Arcle (RIN #14704).

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<sup>18</sup> ALG 07859

<sup>19</sup> ALG 00756

<sup>20</sup> See page16 of *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*

<sup>21</sup> ALG 27659

84. The various historical documents provide the following information regarding Michel McDonald (RIN #14703)'s children that is relevant to determining whether Michel McDonald (RIN #14703) is properly considered an Algonquin Ancestor as that term is defined in the Proposed Beneficiary Criteria:

- a) The 1921 census identifies George McDonald (RIN #46005) and his children as being “Indian” and states that his father (Michel McDonald (RIN #14703)) was born in Ontario.<sup>22</sup>
- b) Peter McDonald (RIN #18305) married Catherine Pierre on September 7, 1903.<sup>23</sup> Catherine Pierre is the granddaughter of Mani Kijiwedjiwanokwe dit Whiteduck (RIN #13138) and Francois Miskwabinij (RIN #5468) and the great granddaughter of Joseph Pekakasiketch (RIN #6527) who is on the Schedule of Algonquin Ancestors.<sup>24</sup> Peter McDonald (RIN #18305) is identified on the 1921 census as “Indian”, and the birthplace of his father is listed as Ontario.
- c) John Christmas McDonald (RIN #14633) and his children are recorded on the 1921 census as “Indian”, and the birthplace of his father is listed as Ontario.<sup>25</sup> John Christmas McDonald (RIN #14633) married Mary Anne Peters (RIN #14634). It was suggested that Mary Anne Peters (RIN #14634) is related to the Whiteduck family, but this has not been confirmed.<sup>26</sup>
- d) Elizabeth McDonald (RIN #46007) married Edgerton Ryerson Whetung on March 25, 1912.<sup>27</sup> Elizabeth McDonald (RIN #46007) is recorded on the 1921 census as living on the Mud Lake Indian Reserve, which is a Mississauga community that is now known as Curve Lake First Nation. Her origin is recorded on the 1921 census as “French” and her language is “Indian”. The birthplace of her father is Ontario.<sup>28</sup> Additional information was provided by Brent Whetung and Ryerson Whetung on the basis of their family’s oral

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<sup>22</sup> ALG 27507

<sup>23</sup> ALG 27252

<sup>24</sup> See pages 7 to 9 of *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*

<sup>25</sup> ALG 27650

<sup>26</sup> See Document 2 – *Initial Submission by B. Majaury* and page 8 of *Document 12 – Enrolment Officer’s Response to submissions 2-5 re #14703*

<sup>27</sup> ALG 40207

<sup>28</sup> ALG 40208

history. This is discussed in further detail below. Also, Brian Majaury provided his family's oral history regarding Elizabeth McDonald (RIN #46007).

85. As set out in *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*, there is no evidence indicating that Elizabeth Arcle (RIN #14704) was Algonquin or Indigenous. Rather, it appears from the available records that she was French Canadian.<sup>29</sup> The participants did not dispute the Enrolment Officer's conclusion in this regard and, in any event, did not submit any information that would cause the Tribunal to question the Enrolment's Officer conclusion.
86. As such, the identification of Michel McDonald (RIN #14703) and Elizabeth Arcle (RIN #14704)'s children as "Indian", as noted above, is derived from Michel McDonald (RIN #14703) being Indigenous.
87. In addition to the documentary evidence provided by the Enrolment Officer and other participants, Brent Whetung and Ryerson Whetung provided their family's oral history. Brent Whetung's recounted his family's oral history in *Document 11 – Responding Submission by B. Whetung re. V. Coburn Submission*. Ryerson Whetung recounted his family's oral history at the hearing. At the request of the Tribunal, the Enrolment Officer interviewed Ryerson Whetung after the hearing to confirm his oral history so that it could be considered in more detail. This evidence is discussed in more detail below. However, at this point, the Tribunal notes that the oral history provided by Brent and Ryerson Whetung indicates that Elizabeth McDonald (RIN #46007) spoke the Algonquin language, identified herself as Algonquin, was recognized as Algonquin by those at her new community at the Curve Lake First Nation and referred to her natal family as "the Indians over there" (which was a reference to the Ottawa area).

#### **I. Michel McDonald (RIN #14703)'s Descendants**

88. Heather and Bob Majaury filed written submissions and made submissions at the hearing describing their Indigenous heritage and how it has been incorporated into their lives and those of their immediate ancestors and descendants. This evidence was confirmed by the evidence provided by Brian Majaury and Myrriah Xochitl. Also, the Majaury family has made it clear

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<sup>29</sup> See pages 17 to 20 of *Document 1 – Enrolment Officer Report Regarding Michel McDonald & Appendices*

that they have always identified as Algonquin and do not have any known lineal family or cultural connection to the Cree nation.

89. These submissions also addressed various historical documents and the context in which Michel McDonald (RIN #14703) and his children lived their lives. These submissions were read in conjunction with the Enrolment Officer's reports regarding the historical document so as gain a better understanding of the historical documents and what may be inferred from them.
90. Some of the submissions made by Heather Majaury go beyond the Tribunal's mandate. They invite comments on the enrolment process or enrolment criteria more generally and are regarding present day events and personal interactions. These issues have no bearing on whether Michel McDonald (RIN #14703) meets the criteria noted above so as to be properly considered an "Algonquin Ancestor" as that term is defined in the Proposed Beneficiary Criteria.

#### **J. Reasons provided by the Majority of the Tribunal Members**

##### *(i) Introduction*

91. As indicated above, the majority of Tribunal members (the "**Majority**") has concluded that Michel McDonald (RIN #14703) does not meet the criteria so as to be considered an "Algonquin Ancestor".

##### *(ii) Michel McDonald (RIN #14703) is Indigenous but there is not a sufficient basis on which to conclude that he is an "Algonquin Ancestor"*

92. It is clear that Michel McDonald (RIN #14703) is an Indigenous person and that his descendants share in that legacy.
93. The Majority recognizes that Michel McDonald (RIN #14703) had close personal relationships with Algonquins.
94. However, in the opinion of the Majority, the evidence does not provide a sufficient basis on which to reasonably conclude that Michel McDonald (RIN #14703) was considered to be Algonquin.

95. In this regard, Michel McDonald (RIN #14703) is specifically identified in the 1871 census as having been born in Manitoba<sup>30</sup> and is identified in the 1901 census as “Cree FB” and as having been born in Manitoba.<sup>31</sup>
96. In the Majority’s view, the information that he was born in Manitoba could only have come from Michel McDonald (RIN #14703). The Majority notes that these censuses are thirty years apart and were conducted in different geographic locations and were conducted by different census takers. The 1871 census was for the Renfrew area and the 1901 Census was for Addington County.
97. The Majority recognizes that information on censuses can often be recorded in error. However, there is no reason to suppose that Michel McDonald (RIN #14703) was misidentified as having been born in Manitoba on two different censuses that were conducted years apart. The logical inference is that the information regarding Michel McDonald (RIN #14703)’s birthplace was provided by Michel McDonald (RIN #14703).
98. The Majority recognizes that the enumeration of Michel McDonald (RIN #14703)’s children on the 1921 census record Michel McDonald (RIN #14703)’s birthplace as Ontario.<sup>32</sup> However, the Majority does not believe that the children’s reporting of their father’s birthplace would be more accurate than information the information recorded on the 1871 and 1901 censuses. In the Majority’s view, it would not be unusual for a person being enumerated in Ontario to be recorded as being from Ontario on the basis of an assumption or error. However, it would be usual to record someone as being from Manitoba in two different censuses on the basis of an assumption or in error. In the Majority’s view, there would be no basis to say that Michel McDonald (RIN #14703) was born in Manitoba on two different occasions unless this information came from Michel McDonald (RIN #14703). Also, Michel McDonald (RIN #14703) was in a better position to report on his birthplace than his children and the historical records indicate that he maintained that he was born in Manitoba throughout his known life in the territory.

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<sup>30</sup> ALG 27242

<sup>31</sup> ALG 07859

<sup>32</sup> ALG 27507, ALG 27650, ALG 40206 and ALG 40208

99. Also, the Tribunal recognizes that Sarah Whiteduck was misidentified as Cree FB on the 1901 census, which, in the view of those in support and the Enrolment Officer, raises some doubt as to whether Michel McDonald (RIN #14703) is properly identified as Cree FB on that census.
100. However, the fact that Sarah Whiteduck (RIN #2339) was misidentified as “Cree FB” does not mean that Michel McDonald (RIN #14703) is also misidentified. The Majority sees it as being more likely that Sarah Whiteduck (RIN #2339) was incorrectly attributed the same ethnic/national identity as that attributed to Michel McDonald (RIN #14703) as he was the head of the household. In any event, even if Michel McDonald (RIN #14703) is misidentified as “Cree FB”, that does not provide a basis on which to conclude that he should have been identified as Algonquin.
101. Also, even if the Tribunal were to ignore the specific reference to Manitoba, and consider him as having been born in Ontario, being born in Ontario and being Indigenous is not sufficient basis on which to conclude that Michel McDonald (RIN #14703) was considered to be Algonquin. Also, the Tribunal does not have any other information regarding his ancestry and the earliest document showing his presence in Algonquin territory is his marriage in 1886, when he would have been 26 years old. The Majority recognizes that this marriage would have been preceded by a period of courtship. However, even then, this would only provide a basis to suppose that he was in the territory from the age of 24-25 onwards.
102. The Majority recognizes that Michel McDonald (RIN #14703) associated with Algonquins and was close to them. However, these associations do not mean that he himself was considered Algonquin.
103. The Majority has considered the oral histories provided by the participants, including Brent Whetung and Ryerson Whetung. The Majority is of the view that the oral history provided by Brent Whetung and Ryerson Whetung has probative value under Article 8 of the Special Resolution in so far as it describes Elizabeth McDonald (RIN #46007) as being a person who spoke Algonquin and who identified herself as Algonquin. The Majority does not find a reasonable basis within the oral history on which to conclude that Michel McDonald (RIN #14703) was considered to be an Algonquin.
104. In this regard, the Majority notes that Elizabeth McDonald (RIN #46007) is specifically associated with Algonquins during her formative years. First, she lived in the same household



as Sarah Whiteduck (RIN #2339), who assisted in her upbringing. Subsequently, she was recorded on the 1911 census as living with Margaret Whiteduck (RIN #13146) and Ricard Cornelius (RIN #57630). Margaret Whiteduck (RIN #13146) is the daughter of Joseph Pakakasiketch dit Whiteduck (RIN #13138) and the granddaughter of Joseph Pekakasiketch and, is therefore, an Algonquin woman.<sup>33</sup>

105. As such, it appears to the Majority that Elizabeth McDonald (RIN #46007)'s identification as Algonquin is attributable to her upbringing in and amongst Algonquins as opposed to being attributed to the Michel McDonald (RIN #14703). The Majority is of the view that the reference to the "Indians over there" is a reference to the community of Algonquins with whom Elizabeth McDonald (RIN #46007) grew up and associated.
106. Also, the Majority notes that Elizabeth McDonald (RIN #46007) married Edgerton Ryerson Whetung on March 25, 1912. Michel McDonald (RIN #14703) died in 1907, five years before that marriage. As such, the reference to the "Indians over there" was not a reference to Michel McDonald (RIN #14703).
107. Also, the Majority notes that the oral history communicated by Ryerson Whetung suggests that Michel McDonald (RIN #14703) was formerly a "Whiteduck" and that he was from Kitigan Zibi.<sup>34</sup>
108. The documentary record does not provide a basis on which to conclude that Michel McDonald (RIN #14703) was formerly a "Whiteduck". Michel McDonald (RIN #14703) married woman who were part of the Whiteduck family but there is no documentary evidence to indicate that he was a "Whiteduck". Indeed, this would be peculiar given who he married.
109. However, there is information on the Tribunal's record that Elizabeth McDonald (RIN #46007) might have considered herself or otherwise identified as a "Whiteduck" because she lived with Sarah Whiteduck (RIN #2339) and Margaret Whiteduck (RIN #13146) prior to moving to Curve Lake First Nation.
110. Furthermore, the documentary record before the Tribunal does not provide a basis on which to conclude that Michel McDonald (RIN #14703) was from Kitigan Zibi. He is not identified as

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<sup>33</sup> ALG 40208 as attached to *Supplementary Research re Ancestor Michel McDonald*.

<sup>34</sup> *Supplementary Research re Ancestor Michel McDonald*.

coming from Quebec in any record and his recorded life events put him in the Eganville/Renfrew area and then in the Ardoch area. The census records variously put him as originating from Manitoba, Ontario and Canada, but not specifically Quebec.

111. In the Majority's view, it is important to remember that the subject of this inquiry is Michel McDonald (RIN #14703). The life experiences of Elizabeth McDonald (RIN #46007) and information pertaining to her, while relevant, can only go so far in establishing that Michel McDonald (RIN #14703) was considered to be Algonquin.
112. The Majority has considered the submission made by Brian Majaury at the hearing that his mother told him that they were Algonquin. It is difficult for the Majority to give weight to this evidence as it has not been provided the necessary information to assess this oral history pursuant to the requirements of section 8 of the Special Resolution. While the documentary evidence available to the Tribunal confirms that Michel McDonald (RIN #14703) was closely associated with Algonquins through marriage, it does not indicate that Michel McDonald (RIN #14703) was "considered to be an Algonquin".
113. The Majority finds that there is insufficient information on the Tribunal's record for the Majority to reasonably conclude that Michel McDonald (RIN #14703) was considered to be an Algonquin. Indeed, in the Majority's view, Michel McDonald (RIN #14703) identified his birthplace as Manitoba on the 1871 and 1901 censuses.

***(iii) Justice Chadwick's Decision***

114. The Majority is aware that the Honourable James B. Chadwick, a retired Justice of the Ontario Superior Court of Justice, dismissed a protest that sought to remove Michel McDonald (RIN #14703) from the Preliminary List of Algonquin Ancestors on February 27, 2013. This protest was made and determined pursuant to Chapter 15 of the Preliminary Draft Agreement-in-Principle.
115. The Tribunal has attentively reviewed Justice Chadwick's decision.
116. The Tribunal is not obligated or bound to adhere to Justice Chadwick's decision. Rather, the Tribunal is obliged to weigh the evidence on its record.
117. Article 77 of the Special Resolution provides that:

Any matter brought to the Tribunal for determination shall be heard and be determined as a new proceeding, but this does not preclude the Tribunal from considering decisions made by other decision-making bodies including with respect to past enrolment processes.

118. Justice Chadwick's decision is a decision made by another decision-making body and falls within Article 77 of the Special Resolution.
119. At the outset, it is important to note Justice Chadwick's mandate under Chapter 15 of the Preliminary Draft Agreement-in-Principal. With respect to protests to remove a historical person from the Preliminary List of Algonquin Ancestors, Justice Chadwick's mandate was to review decisions made by the Ratification Committee and that decisions made by the Ratification Committee could not be overturned in the absence of:
- a) "a palpable and overriding error by the Ratification Committee or Appeal Board that determined that an ancestor of the Applicant was an Algonquin Ancestor;
  - b) fraud in any application; or
  - c) new evidence that was not available to the Ratification Committee or the Appeal Board that determined that an ancestor of the Applicant was an Algonquin Ancestor.<sup>35</sup>

120. Recognizing this mandate, Justice Chadwick concluded that:

The place of Michel McDonald's birth is very much in issue. If he was born in Ontario, he was most likely Algonquin. If born in Manitoba, he would not be of Algonquin ancestry. Neither the historical documents, nor oral history is able to conclusively identify Michel McDonald's place of birth. There is no question that Michel McDonald is an aboriginal. The Enrollment Board considered this matter and unanimously found an aboriginal lineage. In order to allow the protest, and to remove Michel McDonald as an Algonquin Ancestor, I must find that the Enrolment Board made a "palpable and overriding error". On all of the evidence and submissions, in my view the protestors have not satisfied the onus upon them to show that the Enrollment board made a "palpable and override error". As such, the protest is dismissed and Michel McDonald will remain on the list of Algonquin Ancestors.

121. It is evident from Justice Chadwick's conclusion that he did not make a positive determination that Michel McDonald (RIN #14703) is properly considered an Algonquin Ancestor. Rather, Justice Chadwick merely found that there was no palpable and overriding error made by the Enrollment Board that originally identified Michel McDonald (RIN #14703) as an Algonquin Ancestor.

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<sup>35</sup> See Article 15.7.9 of the Preliminary Draft Agreement-in-Principal.

122. The Tribunal's mandate is very different. The Tribunal does not sit in review of previous decisionmakers and is not required to show deference to those decisionmakers. Rather, the Tribunal's mandate is to get to the bottom of the issue and to determine whether it is reasonable to conclude that Michel McDonald (RIN #14703) was considered to be Algonquin.
123. Furthermore, this is to be done on the basis of the evidence before the Tribunal and as a function of the Tribunal members exercising their own judgment.
124. The Tribunal members have great respect for those who have participated in the difficult task of making decisions regarding enrolment and the identification of Algonquin Ancestors, including Justice Chadwick. However, the Tribunal must make decisions on the basis of the evidence before it and in accordance with the requirements of the Special Resolution and the criteria set out in the definition of "Algonquin Ancestor".
125. As set out above, the Majority is of the view that the evidence before the Tribunal does not provide a sufficient basis on which to reasonably conclude that Michel McDonald (RIN #14703) meets the criteria set out in the definition of an Algonquin Ancestor.

**K. Reasons provided by the Minority of Tribunal Members**

126. The minority of Tribunal members (the "**Minority**") have concluded that Michel McDonald (RIN #14703) is properly considered an Algonquin Ancestor.
127. As indicated above, it is clear that Michel McDonald (RIN #14703) is an Indigenous person.
128. The Minority recognizes that the 1871 and 1901 census indicated that Michel McDonald (RIN #14703) was born in Manitoba and, the 1901 census identified him as "Cree FB". However, the Minority does not share the Majority's view that the censuses identifying Michel McDonald (RIN #14703)'s birthplace or origin as Manitoba are more reliable than those indicating that he was from Ontario. The Tribunal has no way of knowing how the census information was collected or from whom. In the Minority's view, an Ontario origin seems more plausible since this origin was recorded in the 1921 census in relation to four of Michel McDonald (RIN #14703)'s children.
129. Given this conflicting information, the Minority does not attach any significant weight to the census information as a means of identifying Michel McDonald (RIN #14703)'s specific Indigenous ancestry.

130. Rather, the Minority is of the view that the information regarding Michel McDonald (RIN #14703)'s ancestry set out in government records is inconclusive as to his ethnic/national origin. The fact that government records are inconclusive does not end the Tribunal's consideration of the matter.
131. It is clear from the available historical records that Michel McDonald (RIN #14703) lived his adult life in Algonquin territory. The record recording his marriage to Mary Whiteduck (RIN #7749) puts him in the territory and interacting with Algonquins by at least 1866. It is safe to assume that Michel McDonald (RIN #14703)'s marriage to Mary Whiteduck (RIN #7749) was preceded by a period of courtship. This would suggest that he was in Algonquin territory and engaging in relationships with Algonquins many months, and potentially, years earlier. It also does not preclude the possibility that Michel McDonald (RIN #14703) actually originates from Algonquin territory. This possibility is consistent with his children reporting Michel McDonald (RIN #14703)'s birthplace as Ontario in the 1921 census.<sup>36</sup>
132. Furthermore, even after he left the Eganville/Renfrew area subsequent to the death of Mary Constant (RIN #22442), Michel McDonald (RIN #14703) remained within Algonquin territory (specifically the Ardoch area) and continued to have relationships with Algonquins. This is evident in light of the fact that Sarah Whiteduck lived in the Michel McDonald (RIN #14703) household. Also, the relationship with Algonquins was such that Elizabeth McDonald also lived in an Algonquin family (being that of Margaret Whiteduck (RIN #13146)) prior to marrying Edgerton Ryerson Whetung.<sup>37</sup>
133. The time spent in Algonquin territory and significant and meaningful interactions with Algonquins are important facts. However, the Minority recognizes that the definition of Algonquin Ancestor requires much more than living in Algonquin territory coupled with meaningful interactions with Algonquins. The critical criterion in this case is whether Michel McDonald (RIN #14703) was considered to be an Algonquin or Nipissing.
134. The Minority is of the view that the oral history presented by Ryerson Whetung, Brent Whetung and Brian Majaury provides a basis on which the Tribunal can reasonably conclude

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<sup>36</sup> ALG 27507, ALG 27650, ALG 40206 and ALG 40208

<sup>37</sup> ALG 40208 as attached to *Supplementary Research re Ancestor Michel McDonald*.

that Michel McDonald (RIN #14703) was considered to be an Algonquin and is, therefore, properly considered an Algonquin Ancestor.

135. Sections 8, 31 and 45 of the Special Resolution confirm that the Tribunal may consider Oral History.
136. “Oral History” is defined as information that is said to have been passed down from one generation to another (including subsequent generations) by some means other than by way of written document. This confirms that the Tribunal is not required to limit its analysis to written documents.
137. While it is evident that the Tribunal is permitted to consider oral history, the Special Resolution also makes it clear that the Tribunal must approach oral history with caution.
138. In this regard, section 8 of the Special Resolution provides that:

When the Tribunal is asked to consider the probative value of evidence presented as Oral History, the Tribunal shall assess whether the Oral History is reliable and what weight is properly assigned to such Oral History by considering all the circumstances relevant to the Oral History and the matter that is sought to be proven by the Oral History, including:

- a) the original source of the Oral History;
- b) how the Oral History has been recorded and transmitted to others over time;
- c) whether the person presenting the Oral History is a reasonably reliable source for the Oral History;
- d) the degree to which the Oral History is known to members of the Algonquin Collective from which the Oral History is said to originate or otherwise relates; and
- e) the degree to which the Oral History is corroborated by or consistent with other evidence that is available to the Tribunal.

139. In the present case, the Minority is of the view that the oral history provided by Ryerson Whetung and Brent Whetung is of significant probative value for the following reasons:
  - a) The original source of the oral history is Elizabeth McDonald (RIN #46007). She is in an excellent position to comment on her specific circumstances, including that she is Algonquin. She lived in the home with her father. Furthermore, the fact that she spoke Algonquin is an objective fact that could be observed by others.
  - b) The manner in which the oral history has been communicated is known. It was communicated directly from Elizabeth McDonald (RIN #46007) to her children and

grandchildren and ultimately communicated to the Tribunal by Ryerson Whetung and Brent Whetung. Specifically, Ryerson Whetung reported that the oral history was transmitted to him by his grandfather, Donald Whetung, and from his great uncles, Leonard and Sunny and also his cousins.

- c) Ryerson Whetung and Brent Whetung are viewed by all members of the Tribunal as credible and reliable.
- d) It is difficult to say the degree to which the information is known to members of the Algonquin Collective. However, it is clear that the idea of Michel McDonald (RIN #14703) being Algonquin is independently known through different lineal lines descending from Michel McDonald (RIN #14703), being the line descending from Elizabeth McDonald (RIN #46007) and the line descending from John Christmas McDonald (RIN #14633). Also, while not an Algonquin Collective, the information appears to be well known at the Curve Lake First Nation which lends credibility to the oral history as it has been shared across generations.
- e) The information set out in the oral history is corroborated by and consistent with other evidence that is available to the Tribunal. In this regard, the fact that Elizabeth McDonald (RIN #46007) is said to have spoken Algonquin is corroborated by the 1921 census document, which indicates that she spoke “Indian”.<sup>38</sup> The fact that Elizabeth McDonald (RIN #46007) would identify herself as Algonquin and would have been considered Algonquin is corroborated by the fact that she spoke “Algonquin” and that she is identified as “Indian” on various documents. It is important to note that the people who understood Elizabeth McDonald (RIN #46007) to be Algonquin and to speak Algonquin were members of another Indigenous nation (being those of Curve Lake First Nation). They were in a position to assess the language that Elizabeth McDonald (RIN #46007) spoke and the veracity/reliability of her claim to be Algonquin. Furthermore, this identification did not occur in the context of a fleeting moment. Rather, it was made in the context of a relationship that culminated in marriage and the establishment of what has become a longstanding family line. Finally, the relationship between the descendants of Elizabeth

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<sup>38</sup> ALG 40208 as attached to *Supplementary Research re Ancestor Michel McDonald*.

McDonald (RIN #46007) and the descendants of her siblings confirm that they share a common understanding of their Algonquin ancestry.

140. In the Minority's view, Elizabeth McDonald (RIN #46007)'s understanding of her identity is attributable to her father, Michel McDonald (RIN #14703), as her mother was of French ancestry. The Minority recognizes that Elizabeth McDonald (RIN #46007)'s understanding of her identity would have been influenced by her interactions with Algonquins (such as Sarah Whiteduck (RIN #2339) and Margaret Whiteduck (RIN #13146)) but that does not mean that her stated identity would have been derived from them.
141. The more logical (and indeed reasonable) inference is that she derived her Algonquin identity from her father and that identity further developed within the Algonquin social group that Michel McDonald (RIN #14703) and his children participated in. In the Minority's view, when Elizabeth McDonald (RIN #46007) stated that she was Algonquin, she was not simply stating that she was from an Algonquin community, but she was stating that she was of Algonquin ancestry. As noted above, this Algonquin ancestry could only have come from her father, Michel McDonald (RIN #14703).
142. Furthermore, it appears from the available records that Elizabeth McDonald (RIN #46007) was born on August 24, 1888, which is a few years before her mother's death. The historic records indicate that Michel McDonald (RIN #14703) found assistance for his young family from Algonquins as opposed to Eliza Arcle's family. This assistance is evidenced by the 1901 census, which indicates that Sarah Whiteduck was part of the Michel McDonald (RIN #14703) household and is further confirmed by the 1911 census which documents Elizabeth McDonald (RIN #46007) as living with Margaret Whiteduck (RIN #13146) after her father's death.
143. In addition to the oral history provided by Ryerson Whetung and Brent Whetung, oral history was presented by Brian Majaury and Bob Majaury, both of whom indicated that they were told that they were Algonquin throughout their lives. The source of this information appears to be John Christmas McDonald (RIN #14633), whose father was Michel McDonald (RIN #14703). The Minority is of the view that John Christmas McDonald (RIN #14633) was in a position to assess whether his family was Algonquin as he lived with Michel McDonald (RIN #14703). However, this oral history was not fully explained with reference to the elements set out in Article 8 of the Special Resolution. While the Minority would be reluctant to rely solely on



this oral history due to the inability to fully assess it against the requirements of Article 8, the Minority sees this oral history as being of sufficient probative value to corroborate the oral history provided by Ryerson Whetung and Brent Whetung.

144. Ultimately, the Minority is of the view that evidence regarding Elizabeth McDonald confirms that Michel McDonald (RIN #14703) was himself Algonquin and considered as such by his contemporaries.

**L. The connection that individuals have with Algonquin culture and ways**

145. Those in support described their connection with Algonquin culture and ways and how being identified as part of the Algonquin community is important to them.
146. All members of the Tribunal accept these statements as genuine. The Tribunal also accepts that those who were enrolled on the basis of being a lineal descendant of Michel McDonald (RIN #14703) did so in good faith. There is no basis for anyone to allege that the enrolment of Michel McDonald (RIN #14703)'s descendants was based on any misrepresentation.
147. Furthermore, it is evident to all members of the Tribunal that Michel McDonald (RIN #14703) was an Indigenous man and identified himself as such throughout his life. His descendants should proudly share in that legacy.
148. The Tribunal recognizes that its determination may result in individuals being removed from the Enrolment List. This is the reality of the Tribunal's inquiry process and the fact that this process is being undertaken with a view to applying the Proposed Beneficial Criteria for the purposes of the treaty being negotiated with the Governments of Ontario and Canada.
149. The Tribunal notes that its determination is only with respect to descendant of Michel McDonald (RIN #14703). It is possible that those who rely on being descendants of Michel McDonald (RIN #14703) may have an alternative Algonquin Ancestor or may be a descendant of another historical person who may qualify as an Algonquin Ancestor. These are considerations for those affected by this decision to explore and research. The Tribunal's present ruling does not preclude Algonquin ancestry by some other historical person.

**M. Conclusion**

150. The Tribunal has determined that Michel McDonald (RIN #14703) is not 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.

151. Pursuant to Article 100 of the Special Resolution, Michel McDonald (RIN #14703) will be removed from the Schedule of Algonquin Ancestors.
152. Pursuant to Article 103 of the Special Resolution, the Enrolment Officer will undertake a review of the Enrolment List to identify those individuals who no longer meet Article 2.1(b)(ii) of the Enrolment Criteria and remove the names of those individuals from the Enrolment List. The Enrolment Officer will also provide the names of those individuals to the Tribunal Chairperson who will notify those individuals that they are no longer Enrolled.

**TO:** Bob Majaury  
Michelle de Braux  
Veldon Coburn  
Chief Wendy Jocko  
Heather Majaury  
Chief Greg Sarazin  
Brent Whetung  
Myriah Xochitl  
Ryerson Whetung  
Brian Majaury  
Darrel Leroux on behalf of Chief and Council of the  
AOPFN

**AND TO:** Algonquin Negotiation Representatives

**AND TO:** Enrolment Officer

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