Federal Court  Cour fédérale

Date: 20240611

Docket: T-1257-23

Citation: 2024 FC 886

Vancouver, British Columbia, June 11, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

ROBERT WAY

Applicant

and

FIRST MINISTER,
NUNATSIAVUT GOVERNMENT

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Labrador Inuit Land Claims Agreement [the Agreement] creates a form of self-government for the Inuit of Nunatsiavut, a region that encompasses most of the northern coast of Labrador. To participate in the government of Nunatsiavut or exercise rights recognized by the Agreement, one must be enrolled as a beneficiary of the Agreement. Local membership committees and the Inuit Membership Appeal Board [the Board] make decisions regarding

enrolment. Enrolment as a beneficiary is tantamount to official recognition of Indigenous identity.

[2] In 2012, Robert Way was enrolled by a decision of the Board. He has Inuit ancestry but he does not reside in Nunatsiavut. Nevertheless, the Board then found that he had sufficient connections to Nunatsiavut to be eligible. In 2023, however, the Board reviewed his situation and found him to be ineligible, apparently because he had no connections to Nunatsiavut.

[3] I am granting Mr. Way's application for judicial review of the Board's 2023 decision. The Board's reasons are not intelligible, especially as they fail to address the evidence he brought forward to prove his connection to Nunatsiavut. Most importantly, the Board failed to identify any reason for reviewing his enrollment. Neither the Board nor the parties have articulated any material change of circumstances since the Board enrolled him in 2012.

[4] I am setting aside the Board's decision and I am not remitting the matter for reconsideration. There was simply no reason to review Mr. Way's enrollment, so reconsidering the matter would be useless. Hence, the Board's 2012 decision stands and Mr. Way remains enrolled.

II. Background

[5] Before describing Mr. Way's background and the history of his enrollment as a beneficiary of the Agreement, it is necessary to explain how beneficiaries are defined, with

particular attention to the distinction between two categories of beneficiaries, Inuit and Kablunângajuit, and the relevance of residence or connection to Nunatsiavut.

A. *Defining Beneficiaries of the Agreement*

[6] It has always been a challenge for the law to define Indigenous identity, because its subjective and relational aspects cannot be easily captured in simple, objective formulas. Indeed, what defines an Indigenous people's identity is often a matter of debate within the group. Beyond any attempt to reach a formal definition, recognition by other Indigenous persons or groups is often used as a way of ascertaining Indigenous identity. In spite of these inherent challenges, legal definitions of identity and legal processes for ascertaining identity provide stability and certainty where one needs to know who is entitled to certain benefits.

[7] Definitions of identity and status have often been imposed on Indigenous peoples. Nowadays, it is increasingly accepted that defining Indigenous identity or citizenship is a component of self-determination or self-government: see article 33 of the United Nations Declaration on the Rights of Indigenous Peoples. Membership determination processes involving Indigenous decision-makers may help foster self-determination in this regard.

[8] In Canada, modern treaties, such as the Agreement, define Indigenous identity through the concept of beneficiary, that is, a person who can claim benefits under the treaty. Typically, the conditions for being recognized as a beneficiary are negotiated by the Crown and the Indigenous party and enshrined in the treaty. This affords the Indigenous party a certain degree of participation with respect to what will inevitably become a legal definition of its identity. In

addition, some treaties refer to the Indigenous party's legal system or legal order to identify their beneficiaries. For example, in the Agreement, certain concepts are defined "according to Inuit customs and traditions", or, in other words, Inuit law.

[9] One distinctive feature of the Agreement is that there are two categories of persons entitled to become beneficiaries, the Inuit and the Kablunângajuit. The Kablunângajuit are persons, typically of mixed ancestry, who live in Northern Labrador and adopt certain elements of the Inuit way of life. Historically, the Moravian missionaries who established missions on the Labrador coast and provided schooling to the Nunatsiavummiut attempted to keep the Kablunângajuit separate from the Inuit. For this and other reasons, a separate group consciousness arose. When the Labrador Inuit Association [LIA] was founded in 1975, it decided to accept both the Inuit and the Kablunângajuit as members. The LIA negotiated a treaty on behalf of both groups. When the Agreement came into force in 2005, members of both groups became beneficiaries without distinction. Section 3.1.1 of the Agreement defines the Kablunângajuit as follows:

"Kablunângajuk" means an individual who is given that designation according to Inuit customs and traditions and who has:	« Kablunângajuk » s'entend d'un particulier ainsi désigné selon les coutumes et traditions des Inuit et :
a. Inuit ancestry;	a. qui est d'ascendance inuite;
b. no Inuit ancestry but who settled permanently in the Labrador Inuit Land Claims Area before 1940; or	b. qui n'est pas d'ascendance inuite, mais qui s'est établi de façon permanente dans la région des revendications territoriales des Inuit du Labrador avant 1940; ou

c. no Inuit ancestry, but:	c. qui n'est pas d'ascendance inuite, mais :
i. is a lineal descendant of an individual referred to in clause (b); and	i. qui est descendant en ligne directe d'un particulier dont il est question à l'alinéa *b*); et
ii. was born on or before November 30th, 1990;	ii. qui est né le ou avant le 30 novembre 1990;

[10] Under the Agreement, one can be entitled to be enrolled as a beneficiary in several manners. One of those is through ancestry alone. Pursuant to section 3.3.3, someone who has more than 25% Inuit ancestry is entitled to be enrolled, irrespective of residence or other conditions. For those who do not meet this threshold, the main provision governing beneficiary status is section 3.3.2:

3.3.2 An individual shall be enrolled on the Register if, on the Effective Date, that individual is alive and is:	3.3.2 Un particulier est inscrit au registre si, à la date d'entrée en vigueur, il est vivant et :
a. a Canadian citizen or a permanent resident of Canada under federal Legislation;	a. est citoyen canadien ou résident permanent du Canada en vertu de la législation fédérale;
b. an Inuk pursuant to Inuit customs and traditions and is of Inuit ancestry, or is a Kablunângajuk; and	b. est Inuk selon les coutumes et traditions des Inuit et est d'ascendance inuite ou est Kablunângajuk; et
c. either:	c. est soit :
i. a Permanent Resident of the Labrador Inuit Settlement Area; or	i. résident permanent de la région du règlement des Inuit du Labrador; ou

ii. a Permanent Resident of a place outside the Labrador Inuit Settlement Area but is connected to the Labrador Inuit Settlement Area.	ii. résident permanent d'un lieu hors de la région du règlement des Inuit du Labrador mais est rattaché à la région du règlement des Inuit du Labrador.

[11] Geography is thus an important factor in defining beneficiary status pursuant to the Agreement. Inuit or Kablunângajuit who do not meet the ancestry threshold can be enrolled if they reside in the Settlement Area. Roughly speaking, the Settlement area is a strip of land along the northern Labrador Coast. It includes the Nunatsiavut communities of Rigolet, Postville, Hopedale, Makkovik and Nain. It does not include central or southern Labrador and, in particular, does not include Happy Valley-Goose Bay, where Mr. Way grew up.

[12] Pursuant to section 3.3.2(c)(ii), persons who do not reside in the Settlement Area can be enrolled if they are "connected" to it. In this regard, section 3.1.2 establishes a presumption that is at the crux of the present case. In its relevant part, it reads:

3.1.2 For purposes of this chapter, an individual who is not a Permanent Resident of the Labrador Inuit Settlement Area is connected to the Labrador Inuit Settlement Area if he or she:	3.1.2 Aux fins du présent chapitre, un particulier qui n'est pas résident permanent de la région du règlement des Inuit du Labrador est rattaché à la région du règlement des Inuit du Labrador :
[…]	[…]
b. is the child of an individual who was born in the Labrador Inuit Land Claims Area; […] and	b. s'il est l'enfant d'un particulier qui est né dans la région des revendications territoriales des Inuit du Labrador; […] et
d. has associations with the Labrador Inuit Land	d. s'il a des rapports avec la région des

Claims Area or a Region and close kinship ties to Inuit or Kablunângajuit who are Permanent Residents of the Labrador Inuit Land Claims Area, and those associations and ties are recognized by Inuit or Kablunângajuit other than that individual's kin who are Permanent Residents of the Labrador Inuit Land Claims Area.	revendications territoriales des Inuit du Labrador ou avec une région et a des liens de parenté étroits avec des Inuit ou des Kablunângajuit qui sont résidents permanents de la région des revendications territoriales des Inuit du Labrador et si ces rapports et ces liens sont reconnus par des Inuit ou des Kablunângajuit, autres que des parents de ce particulier, qui sont résidents permanents de la région des revendications territoriales des Inuit du Labrador.

[13] It should be noted that, contrary to section 3.3.2, which refers to the Settlement Area, section 3.1.2 refers to the Land Claims Area. The difference between the two concepts is of no moment in this case. The parties and the decision-makers in this case appear to have used these terms interchangeably to refer to the region also known as Nunatsiavut.

B. *Mr. Way's Background*

[14] Mr. Way was born in 1989 in Happy Valley-Goose Bay, outside the Land Claims Area. Through his father, he has Inuit ancestry, although less than 25%. Mr. Way's father was born in Rigolet, now in the Land Claims Area.

[15] Mr. Way went to school in Happy Valley-Goose Bay. He asserts that during his childhood, he was introduced to traditional Inuit activities on the land. However, it seems that

these activities took place mainly outside the Settlement Area and that he rarely, if ever, visited the Nunatsiavut communities. After graduating from high school, he obtained a bachelor's degree from the University of Ottawa, a master's degree from Memorial University and a Ph.D. from the University of Ottawa. In 2018, he became an Assistant Professor at Queen's University. He asserts that throughout his studies and now as a professor, he has made efforts to engage in research projects that would bring him to the Settlement Area and that would benefit Nunatsiavummiut. He says that he spent a total of six months in the Settlement Area between 2011 and 2019.

C. *Mr. Way's Efforts to Enrol*

[16] Mr. Way's father enrolled him in the LIA shortly after his birth. Mr. Way's father was also a member of the LIA. When the Agreement came into force, Mr. Way was enrolled as a beneficiary. Section 3.11.4 of the Agreement provides that children who are enrolled must reapply upon reaching the age of majority. Thus, in 2011, Mr. Way submitted an application for enrolment, in which he asserted that he was a Kablunângajuk.

[17] Applications for enrolment are first considered by local membership committees. In November 2011, the membership committee for Rigolet and Upper Lake Melville rejected Mr. Way's application. He appealed this decision to the Inuit Membership Appeal Board. His father appeared in person before the Board and provided evidence on his son's behalf. In February 2012, the Board allowed the appeal and found that Mr. Way was entitled to be enrolled. Specifically, the Board found that he had Inuit ancestry, that he was recognized as a

Kablunângajuk, that he "certainly grew up and practiced the Inuit way of life" and that he was connected to the Settlement Area.

[18] Section 3.8.2 of the Agreement empowers a local membership committee to review beneficiaries' entitlement. In April 2019, the Rigolet and Lake Melville Membership Committee exercised this power and requested that Mr. Way submit a new application. He complied with this request in May 2019. The Committee provided him with a preliminary negative decision and afforded him an opportunity to make additional submissions. In November 2020, the Committee rejected his application, because it found that his "work-related" visits to the communities did not meet the connections test of section 3.1.2(d) of the Agreement.

[19] Mr. Way then appealed to the Board. He provided additional written materials, including ten letters of support from residents of the Settlement Area, and appeared in person before the Board in July 2021. In August 2021, the Board rejected his application. It found that the time he spent in the communities did not count towards establishing his connection to the Settlement Area because his research was not a "traditional or cultural activity." The Board also discussed his ancestry. He sought judicial review of this decision. The parties reached agreement that the decision had to be set aside "because it lacked sufficient reasons." Associate Judge Mireille Tabib granted the application for judicial review based on the parties' agreement.

[20] The Board heard Mr. Way again in April 2023. In May 2023, the Board dismissed his appeal. He is now seeking judicial review of the Board's 2023 decision.

III. Analysis

[21] I am granting Mr. Way's application because, once again, the Board's decision is unintelligible and fails to explain why it finds that he lacks connections to the Settlement Area. Hence, the decision is unreasonable and must be set aside. This is sufficient to dispose of the application. It is therefore not necessary to address Mr. Way's submission that the Board was biased against him given certain public statements made by the Board's Chairperson.

A. *Judicial Review Analytical Framework*

[22] Before explaining why I find the Board's decision unreasonable, I will first outline the framework that this Court applies when reviewing administrative decisions such as this.

[23] On judicial review, an administrative decision will only be set aside if it is shown to be unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. In other words, courts must show deference towards administrative decision-makers. Where reasonable persons may legitimately disagree about an issue, the administrative decision-maker has the last word instead of the Court. Nevertheless, the reasons for the administrative decision must be logical and coherent and must comply with the constraints bearing upon it, in particular the legislative provisions that the decision-maker must apply and the evidentiary record. While the reasons need not be perfect, they must nevertheless justify the decision: *Vavilov*, at paragraphs 91 and 95.

[24] The requirement for deference takes particular importance in the Indigenous context. Granting jurisdiction over membership matters to an Indigenous body may reflect the relational aspect of identity, namely, recognition by one's peers. Thus, deference towards Indigenous decision-makers reinforces self-determination: *Pastion v Dene Tha' First Nation*, 2018 FC 648, [2018] 4 FCR 467.

[25] Deference may be especially warranted where an Indigenous decision-maker is applying unwritten Indigenous law: *Bastien v Jackson*, 2022 FC 591. This, however, is not the case here. While the enrolment provisions of the Agreement resort to certain concepts as they are understood "pursuant to Inuit customs and traditions," the application of these concepts is not in issue, or no longer in issue, in Mr. Way's case.

[26] Deference must be balanced with the requirement that administrative decision-makers justify their decisions in relation to the law and the evidence. In this case, the requirement for justification is especially important given the significant consequences of the decision for Mr. Way: *Vavilov*, at paragraph 133.

[27] Enrolment under the Agreement confers tangible and intangible benefits. Tangible benefits are expressly provided by the Agreement and by other programs offered exclusively to Indigenous persons. Intangible benefits include the reinforcement of "a sense of identity, cultural heritage, and belonging": *McIvor v The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827 at paragraph 286 (and paragraphs 123–143), aff'd 2009 BCCA 153 at paragraph 70.

[28] While such benefits should not be abused by those who are not entitled to them, neither should they be denied to those who qualify. Requiring an intelligible justification promotes a degree of quality in decision-making that is commensurate with the stakes for the individual and the Indigenous people concerned.

B. *The Board's decision is unreasonable*

[29] In my view, the Board's decision is unreasonable because it fails to explain why it finds that Mr. Way has no connections to the Land Claims Area, to discuss the evidence he brought forward in this regard and, most importantly, to articulate any reason to depart from the positive decision it made in 2012.

[30] At the hearing of this application, the parties agreed that the determinative issue was whether Mr. Way met the "connections" test in section 3.1.2(d) of the Agreement. The Nunatsiavut Government conceded that Mr. Way has Inuit ancestry, that his status as a Kablunângajuk is not in issue and that his father was born in the Land Claims Area. Hence, he meets the requirements for enrollment set forth in section 3.3.2 if he meets the "connections" test of section 3.1.2(d).

[31] Yet, the Board's decision says very little about this crucial issue. It mainly deals with other issues that the parties now agree are not determinative. With respect to Mr. Way's connections to the Land Claims Area, the Board simply discounts the ten support letters, stating that these letters do "nothing to help prove your connection to the Land Claims Area".
The Board continues:

> In your last presentation to the Board, when asked if you would have spent time in the Claim Area, you said yourself, that you kind of doubt if you would have. In the Board's view, this is not exercising traditional activities in the Labrador Inuit Land Claims Area.

[32] The Board's previous decision, which was set aside on consent, stated that Mr. Way's presence in the Land Claims Area in connection with his research projects did not constitute traditional activities and did not count. It contrasted these activities to those of people "who come back every year to spend time in their traditional family territories." Taking the most charitable view of the Board's reasons, I will assume that it intended to incorporate the reasoning of its 2021 decision in this regard.

[33] The Board's decision is unreasonable on several grounds. The Board engages in a selective and dismissive review of the evidence that appears aimed at bolstering a pre-ordained outcome. While the Board quotes section 3.1.2 at length, it does not tie its reasoning to the provision in any intelligible manner, in contrast to the reasoning it provided in its 2012 decision letter. Most importantly, the Board completely ignores the decision rendered in 2012 and fails to provide any justification for reviewing it.

[34] As far as one can understand, the Board's analysis seems to be based on a failure to appreciate the different components of section 3.1.2(d). This provision sets out three requirements: (1) the person must have "associations" with the Land Claims Area and (2) close relatives who reside there, and (3) these associations and kinship ties must be recognized by Inuit or Kablunângajuit who reside there. This last requirement is related to recognition by other Indigenous persons, which, as I mentioned earlier, may be an important component of a

definition of Indigenous identity. Here, although associations and recognition are related, they are not the same; they are separate requirements and each must have a meaning. The Board's apparent failure to notice this distinction led it to disregard Mr. Way's support letters because the signatories did not provide any justification for their statement that "I consider Robert Way to be a Kablunângajuk who has close ties to the Labrador Inuit Claims Area." Such a statement is evidence of recognition (criterion 3), although it may not be independent evidence of the associations (criterion 1).

[35] Moreover, the Board is entirely silent with respect to the two witnesses Mr. Way listed in his application to attest to his associations with the Land Claims Area. Its treatment of Mr. Way's own evidence is also unreasonable. It is disingenuous for the Board to suggest that Mr. Way never spent any time in the Land Claims Area. In his application, he stated that he had spent a total of approximately six months in the communities since 2011. In his notice of appeal, he explained that he had travelled to the communities almost every year between 2011 and 2019 and gave particulars. This misrepresentation of the evidence renders the decision unreasonable.

[36] Trying once again to give the decision a charitable reading, it may be that the Board was of the view that Mr. Way's regular presence in the communities did not count towards establishing his associations with the Land Claims Area, because it was not the exercise of traditional activities, such as hunting and trapping on his family's traditional territory. If the Board considered that only such traditional activities qualified as associations pursuant to section 3.1.2(d), it fettered its discretion and effectively changed the wording of the provision. Even if the Board could validly take such a position, its decision could not be reconciled with its earlier

decision in which it enrolled Mr. Way despite the lack of any evidence that he engaged in traditional activities in the Land Claims Area (as opposed to elsewhere in Labrador) during his childhood. An administrative decision-maker, such as the Board, is expected to give reasons if it departs from a longstanding interpretation: *Vavilov*, at paragraph 131.

[37] Most importantly, a justification for the Committee and the Board to reopen Mr. Way's enrolment appears nowhere in the record. In this regard, I do not agree with Mr. Way's submission that the 2012 decision was *res judicata*, because section 3.8.2 of the Agreement expressly contemplates that a person's enrolment may be reviewed. However, both parties agree that the exercise of the power conferred by section 3.8.2 must be justified by circumstances such as the discovery of fraud or new evidence or a material change in the circumstances that led the person to be enrolled in the first place. Given the importance of enrollment for Mr. Way, the Committee and the Board should have provided reasons that enabled him to understand why the Board's 2012 decision was no longer sound and needed to be revisited.

[38] In spite of this, neither the Committee nor the Board explained what circumstances justified the review of Mr. Way's membership. At the hearing, counsel for the Nunatsiavut Government was unable to articulate any change in circumstances that could conceivably justify a review of his enrollment. If anything, the circumstances have changed in a manner favourable to him. At the time of the 2012 enrolment decision, he had not spent any significant time in the Land Claims Area. Since then, he has visited the communities on a regular basis.

[39] The only explanation appearing from the record is that the Chairperson of the local membership committee strongly disagreed with the Board's 2012 decision and arranged for the

matter to be reconsidered at a later date. As it happened, the composition of the Board had changed by then. Accepting such a basis for reconsideration would strip the enrollment process found in Chapter 3 of the Agreement of the stability and certainty it is meant to provide. Simply put, one's status cannot be in jeopardy whenever the composition of the Board changes.

[40] At the hearing before me, the Nunatsiavut Government argued that the discrepancy between the 2012 and 2023 decisions might be explained by the fact that the evidence before the Board was different. This, however, misses the point. There had to be some justification for reconsidering Mr. Way's enrollment before he was required to provide any evidence. In any event, as far as I can ascertain, the evidence that might have been different pertained to issues that are no longer in dispute.

[41] For these reasons, the Board's decision is unreasonable and must be set aside.

C. *The matter is not remitted to the Board*

[42] The Nunatsiavut Government submits that if I set aside the Board's decision, I should remit the case to the Board for reconsideration, as is normally done on judicial review. In my view, however, this is one of the few cases in which the Court must bring finality to the administrative decision-making process: *Vavilov*, at paragraph 142. By not sending the matter back to the Committee, I am letting the 2012 decision stand, with the result that Mr. Way remains enrolled as a beneficiary.

[43] My main reason for doing so is the total lack of any justification for reviewing Mr. Way's eligibility pursuant to section 3.8.2 of the Agreement. As I mentioned above, both parties agree

that a review pursuant to section 3.8.2 cannot be undertaken without such a justification, yet none appears from the record. It would be useless to remit the matter to the Board when there is an utter absence of any basis for the proceeding in the first place.

[44] Moreover, this is the second time the Board has rendered an unintelligible decision regarding Mr. Way's eligibility. In this regard, I note that the Board's Chairperson (who was not the Board's Chairperson in 2012) has publicly expressed negative opinions about the eligibility of Kablunângajuit in a manner that was directed to Mr. Way personally. This suggests that the Board's Chairperson disagrees with substantial aspects of the law the Board has to apply. While I do not need to rely on Mr. Way's submissions regarding bias to set aside the Board's decision, I am concerned that the lack of intelligibility of the reasons may well be related to the Chairperson's personal opinions. This undermines the Court's confidence that the Board can make a reasonable decision regarding Mr. Way.

[45] I mentioned above that on judicial review, courts should be loathe to substitute their decisions for those of Indigenous decision-makers. In this case, however, the decision to enroll Mr. Way was made in 2012 by the Board, the Indigenous decision-maker empowered by the Agreement to decide such matters. There is no impingement on self-government by letting the 2012 decision stand.

IV. Disposition

[46] As the Appeal Board's decision is unreasonable, Mr. Way's application for judicial review will be granted. The Board's decision will be set aside and the matter will not be remitted

to the Board for redetermination. As a result, the Board's 2012 decision to enroll Mr. Way still stands. Costs will be awarded to Mr. Way.

JUDGMENT in T-1257-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision of the Inuit Membership Appeal Board dated May 4, 2023 is set aside.
3. The decision of the Inuit Membership Appeal Board dated February 14, 2012 remains in effect and the applicant remains enrolled as a beneficiary of the Labrador Inuit Land Claims Agreement.
4. The Nunatsiavut Government shall ensure that the Register of Beneficiaries reflects the judgment of this Court.
5. Costs are awarded to the applicant.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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