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When is a Citizen Initiative Petition a Dead Parrot?

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Decisions Commented On: *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 375 (CanLII) and *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 278 (CanLII).

In the main decision that is the subject of this post, *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 375 (CanLII) (*ACFN*) Justice Shaina Leonard of the Court of King's Bench quashed the decision of Alberta's Chief Electoral Officer (CEO) to issue an initiative petition to Mr. Mitch Sylvestre (the Proponent) under the *Citizen Initiative Act,* SA 2021, c C-13.2 (the *CIA*) on January 2, 2026. Sylvestre's petition was a constitutional referendum proposal within the meaning of the *CIA*. The petition aimed to gather affirmative signatures for the following question: "Do you agree that the Province of Alberta should cease to be a part of Canada to become an independent state?"

Justice Leonard gave three reasons for her decision.

First, the CEO's interpretation and application of the Transitional Provisions embedded in the amendments to the *CIA* adopted in December 2025 in Bill 14, particularly s 71.1(1), was an error of law rendering the CEO's Decision unreasonable. Second, the CEO's decision not to reject Sylvestre's petition in the face of Justice Colin Feasby's earlier decision in *Chief Electoral Officer of Alberta v Sylvestre,* 2025 ABKB 712 (CanLII) (*Sylvestre*) was an error rendering the CEO's Decision unreasonable. Third, the Crown failed to meet its duty to consult with the parties bringing this application for judicial review - namely the Athabasca Chipewyan First Nation (ACFN) and the Piikani Nation, Siksika Nation and Blood Tribe (Blackfoot Nations) (collectively the applicants) (*ACFN* at para 245). Justice Leonard had previously granted the applicants a limited stay enjoining the CEO from certifying the results of Sylvestre's collection of signatories to his petition pending the Court's decision on the merits of the applicants' request for judicial review: *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 278 (CanLII).

This post examines each of these grounds of decision, but before doing so it is necessary to provide some additional background.

Background

Alberta's *CIA* is an experiment in direct democracy. It allows a voter to initiate one of three types of citizen initiative petitions: (1) a policy proposal, (2) a legislative proposal, or (3) a

constitutional referendum proposal. As noted above, Mr. Sylvestre's initiative is a constitutional initiative (or a constitutional referendum proposal) which the *CIA* effectively defines as "a proposed question relating to the Constitution of Canada or relating to or arising out of a possible change to the Constitution of Canada" (*CIA*, s 1.1(2)(g)). First enacted in 2021, the *CIA* has been amended several times in its short life, and in ways that are material to this judicial review application.

Mr. Sylvestre's quest to initiate a constitutional citizen initiative petition on the issue of secession of Alberta from Canada began on July 4, 2025, shortly after the *CIA* was amended by Bill 54 to lower the threshold for constitutional initiatives (see ABlawg post here). Prior to the amendments effected by Bill 54 (in force May 15, 2025, SA 2025 c7) a constitutional initiative petition required the following before it could proceed to the next stage in the process (presentation to the legislature): a threshold of 20% of eligible electors in at least 2/3 of all electoral divisions (see prior version of *CIA* here, ss 6(2) and 6(3)). With that amendment the threshold became 10% of the votes cast in the last election (see now *CIA*, s 6(2)). Mr. Sylvestre's question at that time was the following: "Do you agree that the Province of Alberta shall become a sovereign country and cease to be a province in Canada?" (the First Proposal).

The version of the *CIA* in force at the time of the First Proposal also allowed the CEO to state a question for the Court of King's Bench on whether a proposal "conforms with the requirements of section 2(3) and (4), as applicable." At the time, s 2(4) stated that "[a]n initiative petition proposal must not contravene sections 1 to 35.1 of the *Constitution Act, 1982*." The CEO exercised their discretion to state a case, asking the Court to assess the question embodied in the First Proposal against these constitutional texts.

The matter came on before Justice Feasby who concluded in *Sylvestre* that secession and independence as contemplated by the petition would contravene both *Charter* rights and constitutionally protected treaty rights (at paras 244, 245). Justice Feasby did not express an opinion on whether the Crown might also be in breach of its duty to consult and, if necessary, to accommodate Indigenous people. Justice Feasby rendered his judgment on December 5, 2025 the day after Bill 14, *Justice Statutes Amendment Act, 2025,* which proposed yet more amendments to the *CIA*, received first reading. Following Justice Feasby's decision, the CEO formally rejected the First Proposal on December 8, 2025 on the basis that it did not comply with the Act.

Bill 14, ultimately enacted as SA 2025 c 22 and proclaimed in force December 11, 2025, removed the right of the CEO to state a question for the Court. Importantly for present purposes it also contained a transitional provision addressing the legal effect of the enactment on pending petitions including, potentially, Sylvestre's First proposal, as well as a legislative petition proposing to ban new coal mining activities on the eastern slopes sponsored by Corb Lund. Corb Lund also refiled his initiative relying on the transitional provision of Bill 14: for details of that petition (which is still collecting signatures until June 10, 2026) see here.

> Transitional
>
> 71.1(1) An application for the issuance of an initiative petition made before the coming into force of this section for which an initiative petition has not been issued under section 3(3)(a) as of the coming into force of this section is deemed to have never been made.

> (2) If an application is deemed to have never been made under subsection (1), the applicant may submit a notice of intent with the same subject-matter as the application deemed to have never been made, and if the applicant does so within 30 days of the coming into force of this section, the application fee required under section 2(2)(h) is waived in respect of a new application submitted in respect of the notice of intent.
>
> (3) If the Chief Electoral Officer has stated a question in the form of a special case to the Court under section 2.1 as it read immediately before the coming into force of this section, the special case is discontinued without costs to any party or any person granted status to intervene in the special case.
>
> (4) Except as otherwise provided in this section, this Act as it read when an application for the issuance of an initiative petition was submitted shall apply in respect of that application and any resulting initiative petition.

Sylvestre considered that this transitional provision applied to his First Proposal and he wasted no time in filing a notice of intent with the CEO with a slightly re-stated question on [December 11, 2025](). The re-stated question (the "second proposal") was as follows: "Do you agree that the Province of Alberta should cease to be a part of Canada to become an independent state?"

Under the current *CIA* as amended by Bill 14 the initial steps of the petition process consist of the following:

- Elector submits to the CEO a notice of intent to apply for the issuance of an initiative petition: s 1.1(1).
- CEO acknowledges receipt and publishes information on the website: s 1.1(5).
- Within 30 days of receipt of acknowledgement from the CEO, a proponent applies to the CEO for issuance of the petition: s 2(1).
- CEO determines if the requirements of the legislation have been met and if they have, the CEO provides a copy of the application to the Minister of Justice and concurrently provides notice to the proponent: s 2.2.
- If satisfied that the proponent has appointed an eligible chief financial officer, the CEO issues the petition: s 3(3).

Under these new rules there is no statutory pre-condition of conformity with the Constitution, and, as already noted, no opportunity for the CEO to state a case to the Court of King's Bench. But this of course does not prevent a person or persons, with standing, from bringing an ordinary application for judicial review of a statutory decision on either or both administrative law or constitutional grounds (see *CIA*, s 53). And that was what the applicants did in the *ACFN* case that is the subject of this post.

The applicants' administrative law arguments focused on whether the CEO made a reviewable error when they approved the application for issuance of the petition on December 22, 2025 and more specifically when they issued the petition for the second proposal on January 2, 2026. This

in turn engaged the interpretation of the transitional provision of Bill 14, quoted above. The constitutional law arguments dealt with treaty rights and the duty to consult and accommodate.

The Administrative Law Issues

The first step in assessing whether or not the CEO made a reviewable error in issuing the petition for the second proposal was to establish the applicable standard of review for the CEO's decision. Justice Leonard concluded that the standard of review for the administrative law question was that of reasonableness: *ACFN* at para 99, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII). *Vavilov* instructs that the starting point for assessing the reasonableness of a decision is the reasons given by the decision-maker. In this case the CEO provided no formal reasons for the decision to accept the application and issue the petition, but Justice Leonard concluded that the CEO must have applied the transitional provision of Bill 14 as part of their decision-making for the following reasons:

> a. There is no dispute that the First Proposal and the Second Proposal are substantially the same questions.
>
> b. On July 4, 2025, the Proponent submitted an application related to the First Proposal, along with the prescribed fee of $500. A handwritten notation on a letter dated December 11, 2025, from counsel for Mr. Sylvestre to the CEO indicates that there was a request to apply the $500 fee from the previous application to the second application.
>
> c. The evidence before the Court includes an admission by the CEO to the effect that he "applied the transitional provisions in Bill 14 to apply the application fee from Mr. Sylvestre's first application to the Notice of Intent contained in the Certified Record in the present proceedings."
>
> d. Absent the Transitional Provisions, the application fee was not otherwise refundable in these circumstances (*Citizen Initiative Regulation*, Alta Reg 54/2022 (in effect between 2022-04-05 and 2026-01-06), s 2(3)). (*ACFN* at para 97)

The issue for the Court therefore was whether the CEO could reasonably have concluded that Sylvestre's first application was "deemed never to have been made" under s 71.1(1) and was therefore entitled to the benefit of s 71.1(2). *Vavilov* instructs that "[t]he party challenging the decision bears the burden of demonstrating that the decision is unreasonable" (*Vavilov* at para 100) and that:

> There are two types of fundamental flaw: the first is a failure of rationality internal to the reasoning process; and the second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it (*Vavilov* at para 101). (*ACFN* at para 88)

The reasonableness of a statutory decision-maker's interpretation of its own statute is carried out in light of ordinary principles of statutory interpretation that require attention to the text, context and purpose of the statutory provisions at issue (*ACFN* at paras 100 – 107).

In this case, the text supported the applicants. At the time Bill 14 entered into force there was no live application pending before the CEO because the CEO, acting on the basis of Justice Feasby's judgment in *Sylvestre*, had rejected Sylvestre's application:

> Simply put, the First Proposal was not pending when the amendments came into force. It had been rejected and had come to an end. (*ACFN* at para 115)

It was a dead parrot. Bereft of life. Expired.

The context for s 71.1(1) and (2) included subsection (3), which provided for the discontinuance of any stated case. That provision may have dissolved any possibility of an appeal, but it did not address the status of an application that had already been rejected. There is nothing in the section that revives such an application such that it can benefit from the deeming provision in subsection (1). No doubt the legislature could have so provided but it did not do so.

As for purpose, Justice Leonard seems to have focused on the purpose of Bill 14 more generally rather than s 71.1 specifically since she held that the purpose of the amendments was "to expedite the [petition] process and ensure referendum proposals were not delayed by Court proceedings" (*ACFN* at para 141 and more generally at paras 141 – 150). That said, Justice Leonard also seems to have understood that perhaps one of the purposes of the transitional provision was to benefit a person in the position of Sylvestre (see her comments on "context" at paras 120 – 126); the question for the Court was whether the provisions of s 71.1 were capable of achieving that result (*ACFN* at para 126.) Overall, it seems that Justice Leonard was of the view that such an inferred purpose could not overwhelm the plain meaning of the text. In sum:

> The CEO erred in law in applying the Transitional Provisions to the First Proposal. That error was central to the CEO Decision and undermines the rationality of the decision. The CEO did not interpret the Transitional Provisions in a manner consistent with the text, context and purpose which he was required to do. The Transitional Provisions, properly interpreted, did not permit the Transitional Provisions to apply to the First Proposal. The CEO's failure to consider the text, context and purpose, key elements, affected the outcome and renders the CEO Decision unreasonable. (*ACFN* at para 155)

That was enough to decide the judicial review application in favour of the applicants. It is notable that this reason for decision was based on a pure administrative law argument. The argument could have been mounted by any party with standing. It is not an argument that required an Indigenous applicant.

But while that was enough to decide the case, Justice Leaonard went on to consider an additional ground for review raised by the Blackfoot Nations as well as a duty to consult argument raised by both applicants.

The additional Blackfoot Nations argument is best thought of as an administrative law argument informed by constitutional law. Essentially, the argument is that the constitution constrains all administrative decision-making, and, in this case, Justice Feasby had already concluded in *Sylvestre* that a citizen initiative question, very much like the revised question before the CEO, was inconsistent with the constitutionally protected treaty rights of the treaty nations of Alberta. While Justice Feasby reached that conclusion in the context of applying the *CIA* as it stood at the time, and while the Act no longer expressly requires a consideration of the constitutionality of a proposal before it can be accepted, Justice Leonard agreed with the Blackfoot Nations that the CEO's failure to grapple with the implications of Feasby J's decision rendered the CEO's decision unreasonable:

> [The decision of Justice Feasby in *Sylvestre*] is information that formed part of the context and record before the CEO, and that he, as an administrative decision-maker, had to consider. The omission of the CEO to consider *Sylvestre* and the findings within do not inspire confidence in the outcome reached by the CEO (*Vavilov* at para 122). Approving the Second Proposal, in the face of the findings in *Sylvestre*, was unreasonable and the CEO erred in granting the approval. (*ACFN* at para 164)

In sum, I think that this falls short of concluding that the revised question is also unconstitutional, but it is instead a conclusion of administrative law to the effect that the CEO's failure to grapple with the obvious constitutional issue (obvious because of the relevant background facts and circumstances including the *Sylvestre* decision) made the CEO's decision unreasonable because it was incompletely reasoned and failed to recognize possible constraints on the exercise of the statutory discretion.

The Duty to Consult

The applicants also argued that the CEO's decision to allow the petition to proceed engaged the duty to consult. The argument seems to have ranged across a number of different formulations including the following: did the decision trigger a duty to consult; did the CEO have a duty to consult; did the CEO have a duty to satisfy themselves that the duty if triggered had been discharged by the Crown (*ACFN* at paras 165 – 170).

In the end, Justice Leonard (largely following *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 (CanLII); for ABlawg comment see here) concluded that the CEO had the implied power to determine questions of law (after all the CEO must decide whether a petition is a policy petition, a constitutional petition or a legislative petition) and therefore also the power to determine questions of constitutional law unless the legislature had chosen to limit that power. While the province pointed to the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3 (*APJA*) and the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, Schedule 1 as evidence that the CEO had no power to determine a question of constitutional law, Justice Leonard seems to have been of the view that at least some of the duty to consult issues fell outside the relevant branch of the definition of a "question of constitutional law" i.e. "a determination of any right under the Constitution of Canada" (at para 188) – perhaps because the duty is rooted in the honour of the Crown rather than any specific provision of the Constitution. As such Justice Leonard concluded that:

> … the CEO had jurisdiction to consider whether the duty to consult was engaged. The CEO failed to recognize this jurisdiction and assess whether the duty to consult was triggered in this case. (*ACFN* at para 196)

That still left the question of whether the duty to consult was triggered. The parties agreed on the relevant test for this question and the standard of review (correctness) (*ACFN* at paras 91 – 93), but not its application. The agreed test is as follows:

1. Crown's real or constructive knowledge of an Aboriginal or Treaty right;
2. Contemplated Crown conduct;
3. Potential adverse effects on the right arising from the Crown conduct issue. (*ACFN* at para 205)

Given the background to this case, including the Sylvestre decision, the notoriety of treaty rights (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005 SCC 69 (CanLII)]) and the CEO's notification to the Minster of the amended petition, it was fairly easy for Justice Leonard to conclude that the Crown had the requisite knowledge. And, notwithstanding the status of the CEO as an officer of the Legislature (*Election Act*, [RSA 2000, c E-1], s 2(2)) independent of Crown control, Justice Leonard also found that the CEO's actions could amount to Crown conduct for the purposes of the duty to consult. Justice Leonard reached this conclusion partly on the basis of the Court's decision in *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, [2017 SCC 40 (CanLII)] (*AFCN* at para 234 and see ABlawg post [here]) but also on the basis of earlier analysis in the judgment where Justice Leonard noted the inexorable nature of the constitutional referendum proposal provisions of the *CIA*:

> … I have already found that the framework of the *Amended CIA* provides that upon the CEO verifying that the Second Proposal complies with statutory requirements, including verifying that the signature thresholds are met, it is mandatory for the executive to undertake the subsequent actions outlined in the *Amended CIA* and the *Referendum Act*. This means, once an initiative petition is approved and the required signatures are obtained, the executive must hold a referendum and must implement the results of the referendum. (*ACFN* at para 232)

There was also, given the findings in *Sylvestre* and the inexorable nature of the process once initiated, potential for adverse effects arising from the Crown conduct (*ACFN* at para 238).

In sum, the CEO's decision triggered the Crown's duty to consult. As noted by Justice Leonard: "No consultation occurred. Alberta breached its duty to consult with the Applicants" (*ACFN* at para 241). This did not mean that the CEO had a duty to consult: "The CEO does not represent the Crown for the purpose of fulfilling the duty to consult. It is Government, as the party that would implement secession that must engage in consultation" (*ACFN* at para 240).

Subsequent Events and Commentary

Justice Leonard's decision has already (and predictably) attracted criticism from pro-separatist forces as well as those who think that the courts should not serve as "gatekeepers" to the exercise of direct democracy. For example, the ink was barely dry on the decision before Premier Danielle Smith weighed in, describing the decision as anti-democratic and promising to appeal it. The promise to appeal in turn attracted the ire of others who thought that an appeal could be left in the hands of the separatists, rather than spending public money to once again further the separatist cause. Bruce Mcallister, the Executive Director of the Premier's Office, also weighed in yoking criticism of Justice Leonard's judgment to partisan comments on "Trudeau appointed judges" thus harkening back to the Premier's earlier proposals to carve out a larger provincial role in judicial appointments through an additional referendum question. And for a variety of different views on Justice Leonard's ruling see a recent issue of the *Walrus* here.

There is also talk (see here and here) that Premier Smith will simply decide to put a separatist question on the fall referendum ballot, completely independent of the Sylvestre initiative. Section 1 of the *Referendum Act*, RSA 2000, c R-8.4 provides authority for this, but any effort to use this mechanism is likely equally vulnerable to the duty to consult and breach of treaty arguments illustrated in both Sylvestre and ACFN, as well as possible international law arguments as articulated in *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217. Alberta First Nations are clearly anticipating such a move. Indeed, ACFN has already taken steps to protect its position and put the Province on notice of its legal position with an extensive brief to Cabinet which it has also posted on its website.

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