



Senate Action No. 1-30-04-47-1-00008

SENATE
Apihtow-kosison nekanapowin
MÉTIS NATION BRITISH COLUMBIA
Apihtow-kosison peyakosihtwawin

KAY DAHL
Applicant

and

MNBC BOARD OF DIRECTORS
Respondent

DECISION
OF THE MÉTIS NATION BRITISH COLUMBIA SENATE

Dated 06/01/2008

UPON hearing the submissions and reading the material provided by or on behalf of the Applicant and the Respondent in this matter, the METIS NATION BRITISH COLUMBIA SENATE HAS DETERMINED THE FOLLOWING:

1. The Senate has concluded that on the whole of the evidence and by reason of the fundamental principles involved that the action of the RESPONDENT, involving the APPLICANT’s suspension and temporary replacement on the MNBC Board, was justified.

Signed on behalf of the Senate:

Dean Trumbley
Interim Senate Clerk

HEARD IN FRONT OF THE MÉTIS NATION BRITISH COLUMBIA'S SENATE

Appeal Name: Dahl vs. MNBC Board of Directors,
1-30-04-47-1-00008

Date: 20080308
Senate Clerk: Trumbley
Location: Richmond

Between:

Kay Dahl

Applicant

And

**Métis Nation British Columbia (MNBC)
Board of Directors**

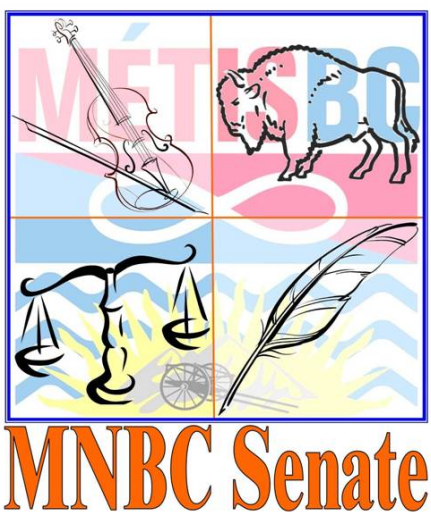
Respondent

Reasons for Decision

Residing Senators:

Senator Gerald Pope
Senator Margaret Penner
Senator Bill Thibeault

Senator Philip Gladue
Senator Bob Adams
Senator Ron Snider



Introduction

[1] The Métis Nation British Columbia's Board of Directors ("RESPONDENT"), which at that time Mrs. Kay Dahl ("APPLICANT") was a member of, held a meeting on March 24-25, 2007. One of the agenda items was a discussion on the allocation of a cultural funding program of the Métis Nation British Columbia. Historically, the Métis Nation British Columbia funded \$5,000.00 to a Vancouver Island event named Red River West. However, due to pressures from other Métis Chartered Communities the RESPONDENT felt it necessary to discuss the topic of reallocating funds to be more widely dispersed.

[2] On May 30, 2007 a letter from the Métis Nation British Columbia's Minister responsible for Heritage, Language and Culture addressed to the President of the Red River West organization stated:

"The new MNBC strategy implemented will ensure fairness and equity for all MNBC regions. The Board has decided that a regional allocation would be provided for the Regional Director to allocate."

[3] On June 01, 2007 the APPLICANT wrote an e-mail that spoke against the letter written by the Métis Nation British Columbia's Minister responsible for Heritage, Language and Culture. The e-mail was written from the perspective of the Vancouver Island Regional Governance Council being an effected party of the Minister's decision. This e-mail was then forwarded by the APPLICANT to a staff member of the Vancouver Island Métis Management Association (a third-party contractor of the Métis Nation British Columbia) with instructions to place it on Vancouver Island Métis Management Association letterhead.

[4] On June 02, 2007 the Vancouver Island Regional Governance Council held a meeting at which a quorum was not present and therefore no motions or decisions could be endorsed. The APPLICANT presented the letter to the attendees of the meeting and as a result of its presentation a copy of the letter dated June 02, 2007 was acquired by the RESPONDENT.

[5] On June 05, 2007 the President of the RESPONDENT spoke with the APPLICANT and indicated that the letter dated June 02, 2007 should not have been written or distributed by her.

[6] On June 06, 2007 the APPLICANT contacted the Vancouver Island Senator, by phone, to express her concerns.

[7] On June 11, 2007, in Victoria, British Columbia, the APPLICANT met with the Executive Committee of the RESPONDENT and discussed the letter dated June 02, 2007.

[8] On June 11, 2007, in the evening, the APPLICANT again contacted the Vancouver Island Senator, by phone, to express her concerns.

[9] On June 12, 2007 the APPLICANT met with the Vice-President and President of the RESPONDENT who then was advised that she was suspended "with pay" and requested to keep the issue confidential.

[10] On June 13, 2007 the APPLICANT received a letter, dated June 12, 2007, from the Chief Executive Officer of the RESPONDENT, indicating that her position as the Vancouver Island Regional Director was officially suspended with pay. Specifically, the RESPONDENT's letter highlighted:

"You will be invited to the Board meeting to discuss the allegations. Furthermore, you are immediately suspended

"with pay" and relieved of all duties. You will not participate in any administrative or political duties until the MNBC Board of Directors renders a final decision on July 11th, 2007. Please immediately return all MNBC equipment (blackberry and laptop) and you are advised to keep this matter in confidence until the Board and you have the ability to discuss."

[11] On June 13, 2007 the APPLICANT wrote a letter to the RESPONDENT's President indicating, in part, the following:

"Vice-President LaFleur was an invited guest to the meeting on June 02, 2007. The letter dated June 02, 2007 was a draft and had not been approved for distribution. The APPLICANT was in error in the process she followed."

[12] On July 06, 2007 the RESPONDENT completed the "Conduct Report" as specified in the Métis Nation British Columbia's Board Manual. A copy of this report was forwarded by the RESPONDENT to the APPLICANT.

[13] On July 11, 2007 the APPLICANT indicated that she would not be able to attend the RESPONDENT's board meeting. The APPLICANT received an additional letter from the RESPONDENT indicating that due to her absence from the July 11, 2007 board meeting the APPLICANT's suspension "with pay" would remain in effect until the next Board meeting.

[14] On September 18, 2007 the APPLICANT and her lawyer met with the RESPONDENT to discuss the letter dated June 02, 2007 and her actions.

[15] On September 19, 2007 the APPLICANT received a final letter from the RESPONDENT indicating that her position of Vancouver Island Regional Director was suspended "without pay" or benefits indefinitely. Specifically, the RESPONDENT's letter highlighted:

"Please accept this letter as notification that effective Monday, October 01, 2007 you are suspended without pay or benefits indefinitely in accordance with progressive disciplinary processes outlined in the MNBC approved Board Manual."

[16] On December 19, 2007 the APPLICANT sent a Mediation/Dispute Notice of Appeal to the RESPONDENT and the Métis Nation British Columbia Senate. The appeal is against the decision of the RESPONDENT dated September 19, 2007.

[17] Upon the APPLICANT's suspension the RESPONDENT, upon request by the Vancouver Island Regional Governance Council and various Métis Citizens, appointed an "interim regional representative" with a non-voting authority with the provincial MNBC Board of Directors.

[18] Based on a request by the Vancouver Island Regional Governance Council, the RESPONDENT authorized the "interim regional representative" to have a vote at the 2007 Métis Nation Governing Assembly.

[19] In the afternoon of December 19, 2007, the Métis Nation British Columbia Senate agreed to hear the appeal of the APPLICANT against the decision of the RESPONDENT.

Nature of the Orders Sought

[20] The APPLICANT seeks:

If the finding is in my favor I would like the Senate to make recommendations regarding my reinstatement with back pay and payment of my legal fees.

The appointment of the "Vancouver Island interim regional representative" is a replacement of the Vancouver Island Regional Director and the appointment should be removed.

[21] The RESPONDENT seeks:

The MNBC seeks an order dismissing the APPLICANT's application and to uphold the MNBC Board of Director's decision to suspend the APPLICANT indefinitely, without pay.

MNBC finally submits that the APPLICANT should not be titled to any legal costs as it is our opinion that she is fully responsible for the current situation.

Issues of the Applicant and the Respondent

a) Applicant

[22] The APPLICANT relies on the following issues:

- i) The letter submitted at the Vancouver Island Regional Governance Council meeting was "draft" and not approved for distribution.
- ii) The letter was illegally removed from the Vancouver Island Regional Governance Council meeting by a "guest".
- iii) The Vancouver Island Regional Governance Council meeting was not officially a meeting due to an absence of quorum.

[23] The RESPONDENT relies on the following issues:

- i) The letter written by the APPLICANT was not properly authorized by either the Red River West or the Vancouver Island Regional Métis Management Association.
- ii) The Vice-President has a responsibility to attend Regional Governance Council meetings.
- iii) The act of writing the letter is contrary to the MNBC governance model as these issues are to be brought forward by citizens, communities or the Regional Governance Council, not a member of the Board of Directors.
- iv) The letter was an act of insubordination (breach in confidentiality) and a conflict of interest.
- v) That the decision and decision-making process is not contrary to the MNBC Constitution.
- vi) The appointment of an "interim regional representative" by the MNBC, via request of the Vancouver Island Region, is "constitutional".

Summary of the MNBC Legislation, MNBC Policies and Procedures

[24] The Senate has reviewed and has applied the MNBC's Constitution, MNBC Human Resource Manual and the MNBC Board Manual when making this decision. However, the following summary of sections contained within the legislation, policies and procedures applied directly with the issues raised by the APPLICANT and the RESPONDENT.

a) MNBC Constitution

[25] The following is a list of sections that the Senate relied on in making their decision:

- i) Métis Nation British Columbia, point 23, bullet 8
- ii) Métis Nation Governing Assembly, section 29

b) MNBC Board Manual

[26] The following is a list of sections that the Senate relied on in making their decision:

- i) Board Structure, Authority, point 4
- ii) In-Camera meetings, Procedure, point 4
- iii) Board Director/Executive Director Relationship point 3
- iv) Role of the Board of Directors, Expected Standard of Care, paragraph 2
- v) Role of the Board of Directors, Reporting Inappropriate Conduct of Board Members, paragraph 5
- vi) Board Executive Committee Responsibilities, Regional Directors, points 1-5

c) MNBC Human Resource Manual

[27] The following is a list of sections that the Senate relied on in making their decision:

- i) Conflict of Interest, General Guidelines, point 4
- ii) Progressive Discipline, Misconduct, point 4
- iii) Conflict of Interest, General Guidelines, point 6 and bullet 4
- iv) Conflict of Interest, Organization Responsibilities, bullet 2-4
- v) Progressive Discipline, General Guidelines, point 5

- vi) Progressive Discipline, General Guidelines, point 6
- vii) Progressive Discipline, Misconduct, point 4
- viii) Progressive Discipline, Gross Misconduct, point 11

Conflict of Interest

[28] MNBC Vancouver Island Region's Senator Alan Edkin filed a conflict of interest claim on the *Dahl vs. MNBC Board of Directors* (Senate Action Number 1-30-04-47-1-00008). Upon review of Senator Alan Edkin's conflict of interest claim the Senate determined that there was not a direct conflict of interest, however there is a "perceived" conflict therefore Senator Alan Edkin's claim was granted and he was removed from the panel of residing Senators. Senator Alan Edkins was not privy to any portion of this decision or decision-making process.

The Standard of Review

[29] The Senate's role is to ensure that all MNBC legislation, policies and procedures were adhered to by both the APPLICANT and the RESPONDENT and if not, rule accordingly.

[30] The Senate has based this decision on the information supplied by the APPLICANT (October 05, 2007) and RESPONDENT (February 13, 2008) in their respective submission packages and the testimony presented during the hearing, which presentation was restricted to statements made by the parties followed only by questions from the Senate to clarify their understanding.

[31] No other evidence was considered or allowed during this process.

The Essential Facts as Determined by the Senate

[32] The minutes of the MNBC Board meeting on March 24-25, 2007 did not have a recorded motion or decision pertaining to the cultural funding; however an action item was present.

[33] There was no summary recorded by the MNBC Secretary of motions, actions or decisions made while in-camera at the March 24-25, 2007 MNBC Board meeting.

[34] The cultural funding issue was discussed at the Métis Nation British Columbia Board Meeting and the Minister of Heritage, Language and Culture did communicate its decision to the President of the Red River West organization.

[35] The APPLICANT admits authorship of the letter dated June 02, 2007 and although there are two versions the contents are to the same effect with the real issue being the APPLICANT's drafting and distribution of the letter dated June 02, 2007.

[36] Based on the evidence submitted and the clarification testimony the Senate believes that the APPLICANT acted on her own accord when drafting the June 02, 2007 letter although it was contrary to the MNBC's communication sent by the Minister referred to in paragraph 2 of this decision and the discussions of the Board which the APPLICANT was privy to.

[37] The APPLICANT admits in a letter dated June 13, 2007 to the MNBC President as follows:

"Please understand me; I am not justifying the letter. I was in error in the process I followed."

This indicates to the Senate that the APPLICANT understood the significance of the letter dated June 02, 2007 and by it the conflict of interest it represented.

[38] The issue of whether the APPLICANT had permission or was directed by the Red River West organization to submit the letter was unclear.

[39] The APPLICANT in her capacity as a Regional Director is accountable to represent her Regional Governance Council, Métis Chartered Communities and individual Métis Citizens of Vancouver Island.

[40] In the APPLICANT's submissions to the Senate she included a communication which reads as follows:

"She was going to relay the concerns of the Red River West President along with presenting the draft letter to the Regional Governance Council appealing the decision of the Métis Nation British Columbia."

[41] By this action she, while a member of the MNBC Board of Directors, was attempting to promote and initiate an appeal action by the Vancouver Island Regional Governance Council against herself and her fellow Board Members of the Métis Nation British Columbia.

[42] This promotion of an appeal against the Board of Directors was based on the individual actions of the APPLICANT representing her interests and those of the Red River West organization.

[43] It was also noted by the Senate that this action was initiated by the APPLICANT prior to any position being taken or initiated by the Vancouver Island Regional Governance Council.

[44] The APPLICANT admitted directing the Vancouver Island Regional Métis Management Association staff to transfer the June 02, 2007 letter onto Vancouver Island Regional Métis Management Association letterhead. Further, the APPLICANT in her submission

indicated that this behavior was not a one-time event, in that a letter dated June 2007 endorsed by Vancouver Island Regional Métis Management Association management stated:

"Director Dahl continued to contact the regional office and ask assistance from the staff even after she was asked not to."

[45] Based on clarification testimony there was no permission for the APPLICANT to use the Vancouver Island Regional Métis Management Association letterhead by management or the Vancouver Island Regional Governance Council.

[46] Vancouver Island Regional Governance Council meetings, as with any Métis Nation British Columbia Regional Governance Council meetings, are a public forum for any Métis Citizen.

[47] The Senate also relies on the fact that the APPLICANT did not state, while distributing the letter, at any stage, that the document was confidential or not for further distribution.

[48] The Senate also takes notes that the President and the Vice-President have provincially elected jurisdiction and have a right to participate at any Regional Governance Council meeting either as an official or as a Métis Citizen.

[49] The letter dated June 02, 2007 was obtained at a public meeting with no indication by the APPLICANT that it was draft, confidential or not for distribution.

[50] A Métis Nation British Columbia Board Member would have had a mandatory responsibility to submit the document to the MNBC Board of Directors, regardless of its confidentiality, if they identified a Board Member as being in "conflict of interest", perceived or actual.

The Senate, on the Basis of the Legislation and Facts of this Case, Rule as Follows:

[51] The Senate rules that the MNBC Board of Directors speaks with one voice regardless of "in-camera" discussions and personal opinions.

[52] The Senate rules that by writing the letter dated June 02, 2007 the APPLICANT placed herself in a position of conflict of interest, as it was contrary to the MNBC Board of Director's decision and the MNBC Minister's communication.

[53] The Senate rules that the APPLICANT's constituency is not the Red River West organization but instead the Regional Governance Council, Métis Chartered Communities and the individual Métis Citizens of Vancouver Island.

[54] The Senate rules that the writing of the June 02, 2007 letter by the APPLICANT is an act of insubordination in addition to a conflict of interest as the MNBC Board of Directors can only speak with one voice.

[55] The Senate rules that the APPLICANT performed a breach of MNBC Policies and Procedures by directing Vancouver Island Regional Métis Management Association staff.

[56] The Senate rules that a public meeting did occur on June 02, 2007 regardless of quorum not being present.

[57] The Senate rules that the APPLICANT's advice to the Vancouver Island Regional Governance Council to appeal the decision of the MNBC Board of Directors, which she is a Director of, is classified as a gross-misconduct.

[58] The Senate rules that it is the responsibility of any MNBC Board of Director to immediately report any conflict of interest, either theirs or other Board Members, potential or actual.

[59] The Senate rules that the phone contact by the APPLICANT to a MNBC Senator on June 06, 2007 is a breach of confidentiality and additionally an act of insubordination.

[60] The Senate rules that the phone contact by the APPLICANT to a MNBC Senator on June 11, 2007 is a breach of confidentiality and additionally an act of insubordination.

[61] The Senate rules that the letter submitted by the APPLICANT to the MNBC President on June 13, 2007 is a breach in confidentiality and additionally an act of insubordination.

[62] The Senate rules that the MNBC Board of Directors did adhere to the MNBC Policies and Procedures for addressing the suspension of the APPLICANT.

[63] The Senate rules that the appointment of an interim regional representative by the MNBC Board of Directors and the Vancouver Island Regional Governance Council is not clearly permitted in any of the MNBC legislation or policy; however it does not violate or compromise the integrity or intent of the *MNBC Constitution*. Thereby, the Senate has determined that the appointment is acceptable.

[64] The Senate rules that the action of allocating a vote to the interim regional representative, who is not duly elected, at the 2007 Métis Nation Governing Assembly is contrary to *Section 29* of the *MNBC Constitution* and as such is invalid.

[65] The Senate rules that the indefinite suspension without pay is not a termination but a MNBC Constitutional disqualification as a Member of the MNBC Board of Directors.

[66] The Senate rules that the Regional Director title and position is still held by the APPLICANT but by her actions have disqualified herself as a Board Member.

Decision

[67] The Senate has concluded that on the whole of the evidence and by reason of the fundamental principles involved that the action of the RESONDENT, involving the APPLICANT's suspension and temporary replacement on the MNBC Board, was justified.