

PRESENTATION TO THE MÉTIS NATION RELATING TO THE CONDUCT OF PRESIDENT MORIN DAL COL

I have been asked to give an opinion regarding the status of Morin Dal Col, the President of the Métis Nation of British Columbia.

There have been a series of allegations alleging misconduct against the President.

I wish to make clear that the comments and recommendations that I make here are based on my personal opinions. To that end, my opinions are based upon the following:

1. The Constitution of the Métis Nation of British Columbia;
2. The Board Manual of the Métis Nation of British Columbia; and
3. A Conduct Report prepared by Ms. Sarah Chamberlain, an Investigator retained by the Métis Nation.

A. MÉTIS NATION BRITISH COLUMBIA: CONSTITUTION

The Constitution of the MNBC sets out the following key provisions:

- Article 23.8 A person is disqualified from being a Member of the MNBC when he/she has clearly been identified as having breached his or her fiduciary duty to the Members or to Métis citizens.
- Article 24 A member of the MNBC shall not be removed from the MNBC for any reason other than as set out in Article 23 or through an election held in accordance with this Constitution.
- Article 25 A person may be suspended from being a Board Member of the MNBC, with or without pay, by a vote of the majority of the Members of the MNBC. A person so suspended may appeal the suspension to the Senate whose decision shall be final and binding.
- Article 67 All Members of the MNBC, MNGA and Senate shall swear an Oath of Allegiance prior to taking office.

memo

B. CONDUCT REPORT DATED JUNE 23, 2021

I will review the relevant parts of the report, prepared by Ms. Chamberlain. As the Investigator, she dealt first, with the potential misconduct. In so doing, she rightfully dealt with the issue of credibility, which I find is relevant in this proceeding. Ms. Chamberlain interviewed a number of Members. The evidence given by those Members, and interested parties, was largely uncontradicted because President Morin Dal Col declined to participate in the investigation. That is unfortunate to say the least. However, notwithstanding her lack of participation, Ms. Chamberlain did make reference to an affidavit filed by the President in a civil claim that was commenced against the Board. I pause here to note that the claim filed in the Supreme Court, was dismissed on the basis that the President was required to exhaust her internal remedies before resorting to the provisions of the Supreme Court.

In any event, where there was a conflict in the evidence between the MNBC Members and the President, the Investigator *"preferred the evidence of MNBC Members over that of the President."* I am in no position to contradict the Investigator since she had the opportunity of examining, first-hand, the evidence of those persons who came before her.

I will now deal with the findings of fact made by the Investigator. Again, I pause here to note that the dispute regarding the alleged misconduct of the President is factually based. I have put in summary form, the findings made by the Investigator; they are as follows:

Findings of Fact

Summarized below are the allegations of wrongdoing that the Investigator found to be substantiated and in contravention of President Morin Dal Col's fiduciary duties, Oath of Office, and MNBC policies including the Respectful Workplace Policy, the MNGA Act, the Travel Policy, and the Conflict of Interest Policy.

1. Bullying and Harassment

The Investigator found that President Morin Dal Col's behaviour towards Ms. LeFranc and Ms. Trudeau amounted to bullying and harassment, in breach of the Respectful Workplace Policy.

a) Ms. LeFranc

President Morin Dal Col exhibited a pattern of behaviour towards Ms. LeFranc which included yelling, alleging that she did not understand something or did not want to do something because "she's not Métis", and threatening her job security by referring to the fact that she was still within her probationary period, implying that her job could be terminated at any time. This behaviour would reasonably be expected to cause an individual to be humiliated or threatened, and considered cumulatively amounts to bullying and harassment.

b) Ms. Trudeau

President Morin Dal Col removed Ms. Trudeau's IT access prior to her planned maternity leave date, and refused to reinstitute it once Mr. Gall clarified that Ms. Trudeau had not yet started her leave. There is no reasonable explanation for her refusal to permit Ms. Trudeau to work until her leave date. This was reasonably perceived by Ms. Trudeau as a punitive action which threatened her job security. Further, Ms. Trudeau had to work for a week without access to her email or computer files, which would reasonably be humiliating for her to explain to her staff. It would further be reasonable for Ms. Trudeau to fear returning to her job after her leave.

2. Breach of the Respectful Workplace Policy

The Investigator found that President Morin Dal Col's conduct of pressuring Mr. Fontaine to fire staff was inappropriate and disconcerting. She regularly (on a weekly basis) spoke to Mr. Fontaine about firing staff members, stating that they "were not loyal to her" and "needed to go". President Morin Dal Col did not have authority to fire or hire staff, as authority rests with the CEO. The manner in which President Morin Dal Col engaged in this pressuring tactic was inappropriate and did not foster a positive work environment, in breach of the Respectful Workplace Policy.

3. Failure to Follow BOD Motions

The Investigator found that President Morin Dal Col's behaviour in failing to follow BOD motions amounted to a breach of her fiduciary duties and Oath of Office.

a) March 4, 2020 Motion

The March 4, 2020 motion required President Morin Dal Col to engage in discussions and deliberations with the BOD members about any MNC issues. However, President Morin Dal Col failed to inform the BOD members of the content of budget submissions made to MNC regarding MNBC's requests for federal funding.

b) April 16, 2020 Motion

The April 16, 2020 motion required "that all communications be sent to the Board of Directors before being sent out publicly including to the communities". President Morin Dal Col breached this motion on several occasions by failing to provide the BOD with communications before they went out to the public, and/or by failing to provide them with reasonable time to review and comment on the communications.

These actions also go against her obligations under the Board Manual to "act as one voice" with the BOD. Although the President is the spokesperson, the BOD members have a right to participate in decision making.

c) December 14, 2020 Motion

The December 14, 2020 motions required President Morin Dal Col or the VP to call for the MNC Council to convene its Board of Directors Meeting within 15 days and to call for the MNC to convene the National Assembly to finish the deliberations regarding the MNO within 60 days. President Morin Dal Col failed to comply with these obligations.

4. Undermining the Integrity of MNBC Laws and Processes

a) Failure to post BOD expenses

President Morin Dal Col instructed Mr. Fontaine not to post BOD member expenditures before the election in 2020, which constituted a breach of Article 9.2.1 of the MNGA Act.

b) Continuing to be involved in MNBC matters post-suspension

President Morin Dal Col continued to engage in work and communications while representing herself as President after her suspension. Although she had not been removed from her position, the intention of the suspension was that she cease all MNBC-related work. President Morin Dal Col's conduct in attending meetings in her capacity as President of MNC was in violation of this suspension, undermined the integrity of MNBC laws and processes, and amounted to a breach of her fiduciary duties and Oath of Office.

5. Breaches of Confidentiality and Privacy

The Investigator found that President Morin Dal Col's conduct in reviewing VP Smith's personnel file and citizenship file, and requesting that scanned copies be sent to her, was inappropriate and amount to a breach of VP Smith's personal privacy rights. If President Morin Dal Col had concerns about VP Smith's conduct, the appropriate procedure under the Board Manual would be to submit a Conduct Report to the CEO. President Morin Dal Col's behaviour with respect to VP Smith's citizenship file violated VP Smith's privacy rights by surreptitiously accessing her personal information.

Further, reviewing or attempting to review VP Smith's citizenship file without informing VP Smith and calling into question the validity of the MNBC registry amounts to a breach of her fiduciary duties and Oath of Office.

6. Refusal to Provide Information to BOD Members

The Investigator found that President Morin Dal Col's conduct in refusing to provide, or instructing others to withhold, information to BOD members amounted to a breach of her fiduciary duties and Oath of Office.

For instance, President Morin Dal Col instructed Mr. Fontaine not to provide the Treasurer with copies of the MNBC budget as requested, because she believed he was “spying” for the BC Métis Federation. She also told certain BOD members that they were not to speak with staff unless she was also present. On another occasion, President Morin Dal Col instructed Mr. Fontaine not to distribute the briefing notes he had prepared to BOD members, indicating that all information going to BOD members had to come from her, and that the BOD members were not “smart enough” to receive information, and it would “leak out.” There is no reasonable explanation for failing to provide BOD members with information they required to oversee their portfolios and understand the business of the MNBC, particularly as the majority of the BOD members were new to their positions.

7. Preferring Interests of MNC over those of MNBC

The Investigator found that President Morin Dal Col’s failure to inform BOD members of MNC and national Métis business, and her comment to Mr. Robitaille that she had a plan to create a “National Card” that would stop funding from going to the MNBC, amounted to a breach of her fiduciary duties to the MNBC and Oath of Office. She had an obligation as President to act in good faith and in the best interests of the MNBC, and she failed to do so.

8. Misuse of MNBC Finances

The Investigator found that President Morin Dal Col used the MNBC credit card for personal expenses unrelated to her position with the MNBC. Such inappropriate charges included her personal Amazon prime membership.

Without evidence to the contrary, the Investigator found that President Morin Dal Col’s extra-provincial travel was not related to her MNBC work and was a breach of the Travel Policy.

This misuse of MNBC finances amounted to a breach of her fiduciary duties and Oath of Office.

9. Failure to Comply with the Conflict of Interest Policy

While there is no evidence that President Morin Dal Col’s legal fees in relation to the Civil Claim were paid for by anyone other than herself, her failure to comply with the disclosure requests breached her obligations under the Conflict of Interest Policy.

Further, as the July 30, 2019 BOD vote involved issues of potential personal gain and/or misuse of finances by President Morin Dal Col, she was required to remove herself from the discussion and from voting on the motion, which she failed to do. This failure amounts to a breach of the Conflict of Interest Policy.

10. January 11 and 15, 2021 Letters and Facebook Posts

In her letters dated January 11 and 15, 2021, President Morin Dal Col called into question the integrity of the BOD, stated that a number of members pulled a “stunt”, called into question the

validity of the MNBC registry, and placed the reputation of MNBC at risk. The letters were sent out to MNBC citizens and posted on social media. She also posted unapproved BOD minutes publicly, without approval from the BOD to do so.

The Investigator found that President Morin Dal Col's behaviour in publishing the January 11 and 15, 2021 letters constituted a breach of the Social Media and Networking Policy in that it "tarnish[es] the image of or otherwise bring[s] disrepute to the MNBC", and was also a breach of her fiduciary duties and Oath of Office.

As stated earlier, I am not in a position to contradict the conclusions reached by the Investigator, therefor I am bound by her findings.

C. MÉTIS NATION BRITISH COLUMBIA: BOARD MANUAL

The MNBC Board Manual sets out the following key provisions:

Role of Board of Directors: Expected Standard of Care

The Métis Nation British Columbia Constitution recognized that the members of the MNBC Board of Directors have a fiduciary relationship and duty to all Métis Citizens and that a breach of that relationship and duty will result in being disqualified as a member of the MNBC Board of Directors.

The members of the Board of Directors for the MNBC are expected to conduct themselves in a manner which exemplifies their status as leaders and role models for all Métis Citizens.

[...]

In relation to the staff and to Métis Citizens, the members of the BOD are expected to act in a manner which recognizes that staff members, employees and all Métis Citizens are entitled to be treated with respect and dignity.

Role of Board of Directors: Reporting Inappropriate Conduct of Board Members

A Conduct Report received by the Board Executive shall be provided to the Board Member who is the subject of the Conduct Report and to the Board Executive. The Board Executive may, upon review of the Conduct Report, dismiss the allegations contained in the Conduct Report, render a summary decision with respect to the allegations contained in the Conduct Report, or, if it is determined that the allegations in the Conduct Report warrant a Hearing, shall set a Hearing date.

In the event a Hearing is appropriate, the Board Member who is the subject of the Conduct Report and the person who had reported the inappropriate conduct of the Board Member (the "Parties to the Hearing") shall be invited to attend and present his or her position with evidence in support, to the Executive Board. The Parties to the Hearing may be represented by an advocate, which may include legal counsel.

After providing the Parties to the Hearing an opportunity to present their submissions and evidence the Executive Board shall render a decision within seven days of the date of the Hearing. If the allegations contained in the Conduct Report are not found to be valid, the matter shall be dismissed and no reference shall be made to the Conduct Report in the Board Member's file.

In the event the allegations contained in the Conduct Report are substantiated, the Executive Board shall render a decision in which it must consider the principle of progressive discipline and which may include the following:

- a) Referral to the MNBC BOD for review and determination;
- b) Disciplinary letter to remain on the offending Board Member's file with the MNBC;
- c) Removal or reduction of duties or functions relating to that Board Member's Ministry/Portfolio;
- d) Loss of portfolio;
- e) Suspension with or without pay;
- f) Removal pursuant to Article 23.8 of the MNBC Constitution; or
- g) Such other disciplinary action which may be deemed appropriate.

A decision of the Executive Board may be appealed, in writing, to the Senate.

In the event the Board Member who is the subject of the Conduct Report is a member of the Executive Board, that Member shall excuse him/herself from sitting as an Board Member in review or for the determination of the Conduct Report.

I have considered the potential applicable employment law to any such disciplinary recommendation. Having reviewing the structure of the Board, and the role of the President, it is my understanding that President, Morin Dal Col, is an elected official and not in an employment relationship with MNBC. As a result, the Law of Wrongful Dismissal does not apply and does not provide remedies for the President for any loss of her elective office. As a result, there is no relative application or discussion of "just cause dismissal" or "without cause termination" or other kinds of employment discipline.

D. CONCLUSION

In the Conduct Report, the Investigator found that President Morin Dal Col violated her fiduciary duties, Oath of Office, and numerous MNBC policies including the *Respectful Workplace Policy*, the *MNGA Act*, the *Travel Policy*, and the *Conflict of Interest Policy*.

Crucially, removal of President Morin Dal Col is an option which would be available to the BOD in this circumstance, as the Conduct Report found that President Morin Dal Col violated her fiduciary duties to the MNBC on multiple counts, and Article 23.8 of the Constitution provides that “A person is disqualified from being a Member of the MNBC when he/she has clearly been identified as having breached his or her fiduciary duty to the Members or to Métis citizens”.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



The Honourable Wally T. Oppal, O.B.C., Q.C.

Dated: August 13, 2021