



IN THE MÉTIS NATION BRITISH COLUMBIA'S SENATE

Appeal Name: *Morin Dal Col vs Chief Electoral Officer*

File: 199

Date: August 16, 2024

Between:

Clara Morin Dal Col

Applicant

And:

Chief Electoral Officer

Respondent

Reasons for Decision

Presiding Senators:

Senator Lucier

Senator Gerald Pope

Senator Kevin Murray

Introduction

[1] On August 5, 2024, the Senate Clerk received a letter electronically from Clara Morin Dal Col (hereinafter referred to as Morin Dal Col) in which it was stated:



“Pursuant to the provisions of the MNBC Electoral Act – Articles 42, I do hereby appeal the decision of the Chief Electoral Officer for the September 2024 MNBC General Election in which he rejected my nomination papers to seek the MNBC Presidency”.

She states in that email the following grounds to appeal that decision:

1. The Chief Electoral Officer erred by overstepping the limits of the MNBC Electoral Act.
2. The Chief Electoral Officer based his decision on a biased and flawed legal opinion.
3. The Chief Electoral Officer was unduly influenced by others.
4. The Chief Electoral Officer failed to acknowledge that I complied with every provision of the MNBC Electoral Act, and his decision is a travesty of Métis democracy.

[2] On August 7, 2024, the Senate Clerk advised Morin Dal Col the request for appeal had been accepted for processing and was provided with the link to the Senate required Dispute Applicant’s Submission form for completion.

[3] On August 8, 2024, a completed Dispute Respondent’s Submission form was received from the Chief Electoral Officer which included a legal opinion letter dated January 23, 2024, from Baker and Newby LLP.

A completed Dispute Applicant’s Submission was received from Morin Dal Col the following day.

EVIDENCE ON BEHALF OF THE APPLICANT CLARA MORIN DAL COL

Written statements including exhibits presented to the Senate by the Applicant



EVIDENCE ON BEHALF OF THE RESPONDENT CHIEF ELECTORAL OFFICER

Written statements including exhibits presented to the Senate by the Respondent

BACKGROUND

[4] This is a dispute brought by way of an application to appeal to the Senate wherein the Applicant stated her candidate applicant nomination package for the upcoming Métis Nation BC general election had been wrongfully rejected by the Respondent.

[5] This Appeal is directed to the Senate and is accepted pursuant to s. 8.0 subsection c. of the Senate Act which reads as follows:

Pursuant to this Act the Senate shall establish any such committees as are required by the Métis Nation British Columbia Constitution or Legislation and as required to carry out the following duties:

c. Election appeals

[6] The Senate's jurisdiction in this matter is further confirmed by section 3.1 of the Senate Act which reads as follows:

3.1 Act as the judicial arm of the Métis Nation British Columbia in accordance with the provisions of the Constitution.

[7] Finally, jurisdiction is accepted and confirmed by both of the parties in their written submissions to the Senate voluntarily attorning to the Senate's jurisdiction.

Relevant Legislation and Policies

[8] Section 23 of the MNBC Constitution states as follows:

23. A person is disqualified from being a Member of the MNBC when:

23.1. They die.

23.2. They resign.

23.3. They are no longer the President of the MNBC, or are no longer the Vice-President of the MNBC or are no longer a Regional Director.

23.4. They are no longer the Chairperson of the Métis Women of British Columbia.

23.5. They are no longer the Chairperson of the Métis Youth of British Columbia.

23.6. They are under eighteen (18) years of age.

23.7. They have been convicted of a criminal offence carrying a penalty of two (2) years or greater. A person disqualified from being a member of the MNBC by this subsection may appeal that disqualification to the Senate.

23.8. They have clearly been identified as having breached their fiduciary duty to the Members or to Métis citizens.

[9] Section 5 of the Electoral Act states as follows: The Chief Electoral Officer shall be appointed by the Métis Nation General Assembly (hereinafter referred to as the MNGA) to hold office for each Election. This individual shall manage and conduct an Election. The Chief Electoral Officer (hereinafter also referred to as the CEO) shall also have the responsibility of conducting any necessary By-Elections while their appointment remains in effect. The Chief Electoral Officer shall:

5.1 Provide guidance and supervision respecting the conduct of the Election:

- a. Create all electoral notifications, forms, ballots and documents as may be required;
- b. Decide the eligibility of all Candidates seeking office in an Election;
- c. Prepare the List of Electors; Appoint Returning Officers and Poll Clerks;

- d. Ensure that all Election Officers are in compliance with this Electoral Act and use the guiding principles of fairness and impartiality when conducting an Election;
- e. Issue to Election Officers any information and guidance they consider necessary for the administration of the Electoral Act;
- f. Reconcile all ballots and prepare an official Election report for the Métis Communities and Métis Nation British Columbia Board of Directors; and
- g. Perform all duties assigned pursuant to this Electoral Act.

[10] Article 42.1 of the Electoral Act states as follows:

Decisions of the Chief Electoral Officer during an Election may be appealed to the Métis Nation British Columbia Senate.

- a. The Chief Electoral Officer will have the authority to refuse Candidates and voters who do not meet the required eligibility pre-requisites and deadlines set out in the MNBC Electoral Act.
- b. All Candidates or electors refused will have the option to file a written Election appeal before the Métis Nation British Columbia Senate.

[11] Senate Policy 981 – Election Appeals states as follows:

Candidate Refusal Appeal:

In accordance with Article 42 of the MNBC Electoral Act pertaining to refusal by a Chief Electoral Officer to accept the eligibility of a candidate or voter, the MNBC Senate will render a decision within seven (7) days of the acceptance of the Candidate/Voter Refusal.

Appeal application:

The composition of the Candidate/Voter Refusal Appeal committee is as specified. The Candidate Refusal Appeal will be based on the record supplied to the Chief Electoral Officer at the time of their decision.

EVIDENCE HIGHLIGHTED BY THE APPLICANT

[12] On Tuesday, July 23, 2024, Morin Dal Col personally filed nomination papers for MNBC President.

[13] On July 29, 2024, Morin Dal Col received an email from the Chief Executive Officer (CEO) stating (in part) "...that we regret to inform you that your nomination package for running for the office has been rejected as you are no longer qualified to do so". This pursuant to the fact that s.23.8 of the MNBC Constitution disqualifies her to be a candidate. This was followed up the next day by correspondence from the CEO advising Morin Dal Col of the process for the Applicant to appeal the Chief Electoral Officer's decision to the Senate.

[14] In consequence of the CEO's decision, the Applicant filed an appeal to the Senate wherein Morin Dal Col submits that his decision was flawed in that he:

1. Errored and misused his authority by applying a provision from the MNBC Constitution that is not at all referenced in the MNBC Electoral Act.
2. Based his decision on a biased and flawed legal opinion.
3. Was unduly influenced by others.
4. Failed to acknowledge that the Applicant complied with every provision of the MNBC Electoral Act and that his decision was a travesty of Métis democracy.

EVIDENCE FOUND TO BE RELEVANT BY THE SENATE

[15] MNBC called a General Election for September 7, 2024, for which Lawrence Lewis

was appointed the Chief Electoral Officer.

[16] On July 24, 2024, the CEO received a nomination package from Morin Dal Col and on inspection it appeared to be complete.

[17] Following his receipt of the nomination package from Morin Dal Col the CEO asked the Chief Governance Officer for all relevant materials, legal decisions and or any other information relevant to his determining Morin Dal Col's eligibility to stand as a candidate in the 2024 general election resulting in the CEO being provided with a legal opinion from the law firm Baker Newby LLP.

[18] The CEO reviewed the legal opinion which had concluded that pursuant to Section 23.8 of the Métis Nation BC Constitution (the "Constitution") that a person who had clearly breached their common law fiduciary duty as described in Section 23.8 of the MNBC Constitution is disqualified from holding a position on the MNBC Board of Directors. Furthermore, the Baker Newby LLP legal opinion outlined that a person who is found to have breached their fiduciary duty is not qualified to compete for an office in the MNBC as they no longer meet the definition of "candidate" under the Métis Nation BC Electoral Act ("Electoral Act").

[19] The actions that gave rise to the CEO determining that Morin Dal Col was precluded from running for the office of President included the breaches of her common law fiduciary duties enumerated and outlined in the Baker Newby LLP letter and are enumerated in that letter as follows:

1. Reviewing or attempting to review Vice-President Lissa Smith's personnel file and citizenship application without informing the Vice-President, and calling into question the validity of the registry.
2. Preferring the interests of the Métis National Counsel over those of MNBC.
3. Continuing to engage in post suspension work in her position as President.
4. Misuse of MNBC finances.

All of which Baker Newby LLP and the Chief Electoral Officer, and now the Senate, accept as accurate. No persuasive evidence has been offered by the Applicant to refute them.

REASONS FOR JUDGEMENT

[20] The Senate accepts and adopts the reasoning set out in the letter of Baker Newby LLP wherein they conclude that when a Métis citizen breaches their fiduciary duty, as set out in Section 23.8 of the Constitution, they become ineligible to run for, or hold office in the MNBC, by reason of the fact that a breach of Section 23.8 of the Constitution precludes that citizen from becoming a “candidate” which is a prerequisite to being able to stand for office in the executive of the MNBC.

[21] Three Senators, namely: Senator Gerald Pope, Senator Arnold Lucier and Senator Kevin Murray, after carefully reviewing all of the facts relied upon by the CEO and having reviewed the submissions and information supplied by the Applicant, unanimously determined that her conduct and behaviour while previously in office fell within the definition of a person who has fallen afoul of Section 23.8 of the MNBC Constitution. The Senators, in making this decision, are defining a breach of fiduciary duty “for Métis purposes” as actions taken by an individual that the Nation’s confidence in their ability to act appropriately in the future has been lost.

[22] In addition, there is nothing in the materials currently before the Senate which would allow it to conclude that the Applicant understands her errors of the past or that she would do something different should a similar circumstance arise.

[23] The Senate further concludes that with respect to the Applicant’s assertion that the CEO’s decision was based on a biased and or flawed legal opinion that there is no credible evidence presented by the Applicant to substantiate this assertion and accordingly, they dismiss it as a grounds for appeal.

[24] The Senate further finds that as regards the allegation of undue influence, there is likewise no credible evidence produced by the Applicant to substantiate this assertion

and accordingly, they dismiss it as grounds for appeal.

[25] The Applicant argues that the CEO is restricted to basing his decision regarding eligibility of election to offices in the MNBC to issues raised in the Electoral Act, something which the Senate does not accept as it is obvious that the CEO must first decide who falls within the section of the Act, and if a citizen does not qualify as a candidate by reason of a breach of Section 23.8 of the Constitution, they cannot bring themselves within the Electoral Act.

[26] On this issue, the Senate says that even if the CEO does not have this power, which we say he does, then we do, and find for compelling reasons already set out in this Judgement, that the Applicant, by her actions, has breached the duties imposed upon her by Section 23.8 of the Constitution and is thereby ineligible to be a candidate for the office she seeks.

For all of these reasons, the Appeal is dismissed.