

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

Appeal Name: Bitterman vs. Pope
7-07-12-50-4-00062

Date: 20100917
Senate Clerk: Thibeault
Location: Kelowna

Between:

Earlene Bitterman

Applicant

And

Gerald Pope

Respondent

Reasons for Decision

Residing Senators:

Senator Allan Edkins

Senator Philip Gladue

Senator Margaret Penner

Senator Ron Snider



Introduction

[1] On March 2, 2010 the Senate Chair received an e-mail from a Métis citizen, Ms. Earlene Bitterman ("APPLICANT"). The Senate Chair directed the APPLICANT to communicate with the Senate Clerk in regard to her request.

[2] On March 2, 2010 the APPLICANT then sent a note to the Senate Clerk (at the time, Dean Trumbley). The APPLICANT was requesting that the Senate investigate concerns in regard to Senator Gerald Pope ("RESPONDENT") being in a conflict of interest position or an area of questionable ethical conduct from acting in a political process by Chairing the Annual General Meeting (AGM) of the North East Métis Association (NEMA) in Dawson Creek on February 27, 2010.

[3] On March 11, 2010 further e-mails were exchanged by the APPLICANT and the Senate Clerk, as follow up to the notes of March 2, providing clarification on the process to be applied by the Senate for the alleged conflict of interest or questionable conduct by the RESPONDENT. Over time a further exchange of e-mails took place between the APPLICANT and the Senate Clerk in regard to communication to provide clarity on process and procedures for the alleged conflict of interest or ethical conduct, and the manner in which the APPLICANT would be involved in such process.

[4] During the e-mail exchanges, there was discussion on the use of a video of the AGM that had been taken by the APPLICANT. There was concern that since the taping had been carried out without knowledge and consent by all the participants attending the annual general meeting, that the Senate may not be able to consider the video as part of the evidentiary package.

[5] The video had been posted on YouTube, and was publically available for viewing on that media application.

[6] In mid-March Senate Clerk Trumbley stepped down from the Senate Clerk position. Due to the many tasks Mr. Trumbley was performing for the Métis Nation he, along with the Senate, was concerned that there may be perceptions that his work in other important areas with Métis Nation British Columbia (MNBC) might be viewed as compromising or in conflict with the various duties he was carrying out as Senate Clerk. Subsequent to this, a new Senate Clerk, W.I. (Bill) Thibeault, a former Senator, was appointed in May of 2010.

[7] On June 18, 2010 the new Senate Clerk (Thibeault) re-initiated contact with the APPLICANT in regard to the alleged conflict of interest or questionable conduct issue for the RESPONDENT. The APPLICANT responded on June 24, 2010 and between that time and the hearing, the APPLICANT and the Senate Clerk carried on a series of e-mails to provide information on process and timing for the Senate to collect evidence and make a determination on the alleged conflict of interest.

[8] On July 02, 2010 the APPLICANT wrote a letter to the Senate Clerk stating that she had provided evidence about the conduct of the Northeast Regional Senator and had sent in critical information and the APPLICANT confirmed that the RESPONDENT chaired the Annual General Meeting in Dawson Creek.

[9] On August 26, 2010 the Clerk contacted the APPLICANT to inform that the Senate would be meeting in mid-September to make a determination on the alleged conflict of interest, and offering the APPLICANT the opportunity to present to the Senate, via telephone, a synopsis of the evidence as part of the hearing process.

[10] The Clerk also informed the APPLICANT that there may be questions from the Senators to ensure a full and complete understanding of the evidence presented and the circumstances around the RESPONDENT chairing the AGM. The Clerk clearly stated that this was an invitation, if the APPLICANT was not comfortable with presenting during Senate deliberations, it was not obligatory. If the APPLICANT did wish to present, the Clerk offered to work with the APPLICANT to establish a time and a means of communication for the evidence and comments to be presented to the Senate.

[11] On September 06, 2010, the Clerk informed the APPLICANT that the hearing would be held on September 17, 2010 and suggested that the Senate call the APPLICANT in the morning, at 10:30 a.m., to hear the evidence and ask questions for clarification.

[12] The Senate has often expressed concern over the time it was taking to gather all evidence and to prepare for the hearing. Much of the delay on the ability of the Senate to meet was due to financial constraints as the Senate was waiting to hear on the budgetary process to be provided by the provincial government.

[13] On September 17, 2010, the Senate met in Kelowna to consider all evidence on the alleged conflict of interest and to render a decision on the matter. The APPLICANT and the RESPONDENT were both contacted to present clarification on the evidence, the APPLICANT by telephone and the RESPONDENT in person at Kelowna.

Issues of the Applicant and the Respondent

[14] The APPLICANT relies on the following issues:

- i) The evidence provided, including the videos of the AGM, clearly demonstrate that the RESPONDENT chaired the AGM of NEMA.
- ii) The Senate Policies and Procedures clearly spell out that a Senator can attend, upon request, a Métis Chartered Community meeting in their respective MNBC Region, and that the Senator can only conduct the opening and closing prayers and supply the Métis Chartered Community with a report on Senate activities. Senators must physically remove themselves from the meeting room during the course of the official business of the Métis Chartered Community meeting.

[15] The RESPONDENT relies on the following:

- i) The RESPONDENT agreed to chair the electoral part of the AGM at the request of the Regional Director.
- ii) The RESPONDENT believed that it is part of the role or duty of a Senator to assist communities and/or regions by fulfilling the role of Chair for the electoral portion of meetings only.
- iii) The RESPONDENT was not aware of the requirement in the Constitution of NEMA that fifty percent of the citizens of the Association needed to be present as the quorum requirements for an election to be held for the AGM until after the meeting in Dawson Creek had commenced.
- iv) When quorum was not present, the election was not held. An informal meeting was convened and

occurred, in which Board members gave their reports, and the meeting was then adjourned, thus the meeting was not an official business meeting for NEMA.

- v) The RESPONDENT did not step down as Chair when the informal meeting convened.

Summary of the MNBC Legislation, MNBC Policies and Procedures

[16] The Senate has reviewed and has applied the MNBC`s Senate Act, and the Senate Policies and Procedures, version 3.0 when making this decision. 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 Senate Act

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

- i) Article 3.3
- ii) Article 6.3
- iii) Article 7.0

b) Senate Policies and Procedures version 3.0

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

- i) Section 2.7
- ii) Section 2.9.4

iii) Section 2.10

The Standard of Review

[19] The Senate's role is to ensure that all MNBC legislation, Policies and Procedures were adhered to, and if not, to rule accordingly.

[20] The Senate has based this decision on the information supplied by the APPLICANT (from March 2 to September 17, 2010) and RESPONDENT (September 17, 2010) in their respective submission packages and the testimony presented during the hearing, which presentation was comprised of statements made by the parties followed by questions from the Senate to clarify their understanding.

The Essential Facts as Determined by the Senate

[21] The RESPONDENT had previously received and agreed to a request from the Regional Director to Chair the electoral portion of the Annual General Meeting of NEMA.

[22] The RESPONDENT did proceed to Chair the electoral portion of the Annual General Meeting (AGM) of the North East Métis Association (NEMA) in Dawson Creek on February 27, 2010.

[23] The purpose of the Chair at a meeting is to render decisions on Parliamentary procedure, thus the role of the Chair is part of a political process.

[24] An informal meeting convened, as there were an insufficient number of NEMA citizens present to meet quorum for the AGM as required by the NEMA Constitution.

[25] The Senate notes that, in the past, Senators have chaired electoral portions of meetings at various levels (Community, Region).

Additional Elements Accepted by the Senate

[26] The Senate accepts that the RESPONDENT was sincere in presenting his belief that it was the role of a Senator to Chair meetings for the electoral purposes only.

[27] The Senate accepts that the RESPONDENT did express genuine remorse at the error in judgment made with the agreement to Chair the electoral portion of the meeting.

[28] The petition by the APPLICANT brought the matter to the full attention of the Senate. The timing was initiated by the action of the RESPONDENT, but the issue was not exclusive to the RESPONDENT in regard to Senatorial actions at meetings.

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

[29] The Senate rules that the RESPONDENT did agree to Chair the electoral portion of the North East Métis Association Annual General Meeting at the request of the Regional Director.

[30] The Senate rules that the RESPONDENT did not resign as Chair when the election did not occur and an informal meeting was convened.

[31] The Senate rules that a verbal reprimand will be delivered to the RESPONDENT by the Chair of the Senate.

[32] The Senate rules that there will not be any retroactive repercussions from this ruling to other Senators who may have acted as a Chair in past meetings.

Senate Recommendations

[33] The Senate directs that the Senate Policies and Procedures shall be updated to have a section that directs Senators are

not to Chair meetings or Electoral Processes at any political (community, region, provincial) level.

[34] The Senate directs all Senators, when confronting a situation that is questionable in regard to possible perception as a political activity, to contact the Senate Chair and/or the Senate Clerk for guidance on the decision facing them.

Decision

[35] The Senate has concluded that, on the whole of the evidence considered and by reason of the fundamental principles involved, that the action of the RESONDENT was an error in judgment.