

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

Appeal Name: Henry vs. MNBC Chief Electoral Officer,
2-28-09-71-5-00021

Date: 20080912
Senate Clerk: Trumbley
Location: Richmond

Between:

Keith Albert Henry

Applicant

And

**Métis Nation British Columbia (MNBC)
Chief Electoral Officer**

Respondent

Reasons for Decision

Residing Tribunal Senators:

Senator Bill Thibeault

Senator Margaret Penner

Senator Ron Snider



Introduction

[1] On September 05, 2008 at 19:40pm Mr. Derrick Whiteskycloud sent an electronic mail message to various recipients entitled "MNBC (Keith Henry) VS Salkeld for sexual assault (pt2)".

[2] Mr. Earl Belcourt, Presidential Candidate for the Métis Nation British Columbia, forwarded the above electronic mail to various recipients on September 05, 2008 at 20:20pm.

[3] Mr. Keith Henry ("APPLICANT") received two electronic mails, September 05, 2008 at 22:14pm and September 06, 2008 at 08:33am from concerned Métis citizens, about the circulation of the above noted electronic mail.

[4] On September 06, 2008 the APPLICANT filed an official complaint to the Chief Electoral Officer, Mr. Don Caverley ("RESPONDENT") regarding the actions of Mr. Earl Belcourt, the complaint stated:

"I have provided you my one and only public statement about this situation but I request you to consider this situation in your role as the ¹Chief Executive Officer and this action by a MNBC General Election Candidate.

I believe it is malicious and contravenes Article 8.8 of the MNBC Electoral Act. Therefore I am seeking your consideration for this action as I would with any of the MNBC General Election candidates who choose to attack my professional credibility in my role as the MNBC Chief Executive Officer and the MNBC".

[5] On September 06, 2008 at 16:34pm the RESPONDENT accepted the APPLICANT's submission. Furthermore, an electronic mail was sent to Mr. Belcourt affording him the opportunity to respond, in writing, no later than September 07, 2008 at 16:30pm.

¹ It stated "Chief Executive Officer" in the original complaint by the APPLICANT; however it is referring to the Chief Electoral Officer.

[6] On September 07, 2008 at 21:09pm the RESPONDENT provided the following decision:

"At this point in time, it is the view of the MNBC Chief Electoral Office that the electronic message that you forwarded on September 5, 2008 at 8:20 PM entitled "FW: MNBC (Keith Henry) VS Salkeld for sexual assault (pt2)" was not carried out in a malicious or objectionable manner; thus, you will not be disqualified as an official candidate for the Office of MNBC President. However, the MNBC Chief Electoral Office is of the view that you exercised poor judgment and unprofessional conduct that is unbecoming of an official Presidential Candidate seeking elected office for a provincial organization. This is in specific reference to the fact that there was no mention of a "sexual assault" in the Human Rights documentation that was circulated in the September 5, 2008 (8:20 pm) email message".

[7] On September 08, 2008 the RESPONDENT file an appeal to the MNBC Senate on the decision of the RESPONDENT. Specifically, the APPLICANT requested:

"Reconsideration for identifying the ²actions as Objectionable or Malicious".

[8] On September 09, 2008 at 22:43pm the MNBC Senate accepted the APPLICANT's appeal.

Summary of the MNBC Legislation, MNBC Policies and Procedures

[9] The Senate in making its decision has relied upon the following legislation.

a) MNBC Constitution

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

i) Fundamental Rights of Métis People

8. No Métis Citizen shall be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour or reputation.

² Referring to MNBC Presidential Candidate, Mr. Earl Belcourt.

ii) Senate

49. *There shall be established a Métis Nation Senate, which shall be responsible for the conduct of Elections, Métis Citizenship and Dispute Resolution.*

b) MNBC Electoral Act

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

- i) Article Eight Nomination of Candidates
 - 8.8 *Candidates who use malicious or objectionable practice or conduct themselves in a malicious or objectionable manner during the Campaign Period shall be subject to disqualification at the discretion of the Chief Electoral Officer.*
- ii) Article Fourty-Two Election Appeal
 - 42.1. *Decisions of the Chief Electoral Officer during an election may be appealed to the Métis Nation British Columbia Senate.*
 - 42.3. *The Chief Electoral Officer will provide information at the request of the MNBC Senate during the election appeals process so as to deliver a fair and balanced decision.*
 - *The Chief Electoral Officer will be responsible in providing reasons for refusal as supported by the Articles in the Electoral Act.*
 - *The MNBC Senate reserves the right to set a date when the candidate or elector who filed the election appeal may present their arguments in person. The onus to prove the appeal to the satisfaction of the MNBC is upon the individual who filed the election appeal.*

c) MNBC Senate Act

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

- i) Article Seven Guidelines For Protocol, Code Of Ethics, Standards Of Conduct
 - 7.0 *Within four (4) months of the final ratification of this Act, the Senate shall prepare, compile and deliver to the MNGA a copy of guidelines, in writing, setting out the Protocol, Code of Ethics and Standard of Conduct pursuant to which the Senate shall conduct its affairs and manage and administer the duties and functions of the Senate*

in accordance with this Act and the Senator's fiduciary duty to the MNGA, the MNBC and Métis Citizens.

d) Senate Policies and Procedures

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

6.0 Code of Ethics

- 1) The Senators will participate in establishing, maintaining and enforcing high standards of conduct so that the integrity and independence of the Senate are preserved.*
- 6) A Senator will perform all their duties impartially and diligently; they will be faithful to the law and the Métis culture regardless of partisan interests, public clamor or fear of criticism.*

The Standard of Review

[14] The Senate's role is to ensure that all MNBC legislation was adhered to by the RESPONDENT when processing the APPLICANT's electoral appeal application and if not, rule accordingly.

[15] The Senate has based this decision on the information supplied by the APPLICANT and RESPONDENT.

[16] The Senate in rendering its decision not only applied and interpreted the relevant legislation but took into account all facts of the case.

[17] The Senate has applied their high standard of conduct and ethics, as mandated in the *MNBC Senate Act* and articulated in the *Senate Policies and Procedures*, when pertaining to the authority assigned in the *MNBC Constitution* for electoral conduct.

The Essential Facts as Determined by the Senate

[18] Mr. Belcourt did forward the electronic mail entitled "*MNBC (Keith Henry) VS Salkeld for sexual assault (pt2)*".

[19] Mr. Belcourt relied on the legitimacy of the electronic mail attachments, based on the presence of government website links in the header of the two documents.

[20] That the determination of truthfulness for the communication is based on the document as a whole, thus meaning the subject line, body of the electronic mail and associated attachments.

[21] The subject line referring to "sexual assault" is not truthful.

[22] The inaccurate classification of the subject line from "harassment" to "assault" has increased the severity of damage to the APPLICANT's professional and personal reputation.

[23] The RESPONDENT did not consider the actions of Mr. Belcourt to be carried out in a malicious or objectionable manner.

[24] The RESPONDENT did find the act of Mr. Belcourt forwarding the electronic mail to be poor judgment and unprofessional conduct.

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

[25] The Senate rules that the onus is on Mr. Belcourt to ensure the accuracy and validity of all information pertaining to the communication as a whole.

[26] The Senate rules that although the initial authoring of the electronic mail constitutes a malicious act, the forwarding of the communication with the inaccurate subject line is an objectionable practice.

[27] The Senate rules that the conduct of any MNBC election, especially its candidates, is to be of the highest standard to protect the integrity of the Métis Nation.

Decision

[28] The Senate rules that Mr. Belcourt's action of forwarding the electronic mail is an objectionable practice.