

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

Appeal Name: Belcourt vs. MNBC Chief Electoral Officer,  
1-08-04-52-5-00022

Date: 2008/09/25  
Senate Clerk: Trumbley  
Location: Kelowna

Between:

**Earl Belcourt**

Applicant

And

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

Respondent

**Reasons for Decision**

Residing Tribunal Senators:

Senator Alan Edkins

Senator Philip Gladue

Senator Margaret Penner

Senator Bob Adams

Senator Bill Thibeault

Senator Gerald Pope

Senator Ron Snider



## **Introduction**

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

[2] On September 06, 2008 at 16:34pm the RESPONDENT accepted Mr. Keith Henry's submission.

[3] 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."*

[4] Furthermore, on September 08, 2008 the RESPONDENT administered alternative punishment by imposing the following;

*"Retract the e-mail message entitled, FW: MNBC (Keith Henry) VS Salkeld for sexual assault (pt2)" by sending a follow-up electronic message to all of the individuals with whom you circulated said e-mail message; and*

*Indicate (in writing) as part of your e-mail retraction that "... (the e-mail) was sent to me and I forwarded it as is. I did not put "Sexual Assault" on any heading on any e-mail nor did I write or attach any comments"*

[5] On September 08, 2008 at 10:37am the APPLICANT sent a retraction e-mail that stated;

*"To all those concerned it seems that the e-mail I sent to you is public information and that my forwarding it seemed inappropriate. Having said that I must say that I did not state it was a sexual assault. If you'll notice I simply forwarded the e-mail without attachments or comments. That statement was part of the e-mail that I received."*

[6] On September 11, 2008 the APPLICANT filed for an appeal of the RESPONDENT's decision indicating that the RESPONDENT acted outside of the authority designated under section 8.8 of the *MNBC Electoral Act*.

[7] On September 12, 2008 the Senate accepted the appeal of the APPLICANT.

### **Summary of the MNBC Legislation, MNBC Policies and Procedures**

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

#### **a) MNBC Electoral Act**

[9] 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 FIVE - CHIEF ELECTORAL OFFICER

5. *The Chief Electoral Officer shall be appointed by the MNGA to hold office for each election. This individual shall manage and conduct an election. The Chief Electoral Officer shall also have the responsibility of conducting any necessary By-Elections while his/her appointment remains in effect. The Chief Electoral Officer shall:*

*5.1. Provide guidance and supervision respecting the conduct of the election:*

- Create all electoral notifications, forms, ballots and documents as may be required;*
- Decide the eligibility of all candidates seeking office in an election;*
- Prepare the List of Electors;*

- *Appoint Returning Officers and Poll Clerks;*
- *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;*
- *Issue to Election Officers any information and guidance they consider necessary for the administration of the Electoral Act;*
- *Reconcile all ballots and prepare an official election report for the Métis Communities and Métis Nation British Columbia Board of Directors; and*
- *Perform all duties assigned pursuant to this Electoral Act.*

5.2. *In addition, the Chief Electoral Officer may:*

- *Implement public education and information activities to make the electoral process better known to the public, particularly to those persons most likely to experience difficulties in exercising their democratic rights;*
- *Remove from office and replace Election Officers upon being satisfied that the officers:*
- *Refuse, neglect or have an inability to act;*
- *Have failed to perform satisfactorily the duties of their office; or*
- *Is engaging in partisan political activities.*

5.3. *The Chief Electoral Officer shall consult with the Solicitor for the MNBC, when and if necessary with respect to issues that may arise from time to time concerning the election process.*

5.4. *If during the course of an election, it transpires that insufficient time has been allowed, or insufficient Election Officers or polling stations have been provided, for the execution of any of the purposes of the Electoral Act, by reason of the operation of any provision of this Electoral Act, the*

*Chief Electoral Officer, notwithstanding anything in the Electoral Act may:*

- *Increase the number of Election Officers (subject to financial resources);*
- *Increase the number of polling stations (subject to financial resources);*

### **The Standard of Review**

[10] 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.

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

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

[13] 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**

[14] That the discretionary authority assigned under Article 8.8 of the *MNBC Electoral Act* can only be applied to either disqualify or not to disqualify a candidate.

[15] There is no legislation that provides the RESPONDENT the authority to apply alternative <sup>1</sup>penalties for malicious or objectionable practice.

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<sup>1</sup> As referenced in line 4 of this decision.

[16] The RESPONDENT exercised his authority by not disqualifying the APPLICANT for the alleged infraction.

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

[17] The Senate rules that the RESPONDENT did act outside of his authority by delivering alternative penalties to the APPLICANT.

**Decision**

[18] The Senate rules in favor of the APPLICANT.