

Ta'an Kwäch'än Judicial Council

Decision on Charge of Compromising Dignity or Effectiveness of Office

Date: January 12, 2005

Case Number: TKJC 04-05

Notice of Charge

filed by: Doreen Grady
Whitehorse, Yukon

This matter relates to a charge set out in a written notice dated July 13, 2004, filed by Doreen Grady pursuant to 12.2 of the Constitution of the Ta'an Kwäch'än Council. The charge alleges that Ta'an Kwäch'än Council Board member, Bonnie Harpe, compromised the dignity and effectiveness of her position and asks that the Judicial Council remove Ms. Harpe from office.

The charge is based on Ms. Harpe's alleged conduct when dealing with Directors, Elders, Ta'an Kwäch'än citizens and Board staff when she was Acting Chair of the Ta'an Kwäch'än Council Board of Directors and her public and private reactions to the results of the April 2004 election for Chief.

In a letter dated July 18, 2004, Ms. Harpe provided the Judicial Council with a written response to the July 13, 2004, written notice filed by Ms. Grady. As required by 12.2.3 of the Constitution, the Judicial Council also provided Ms. Harpe with an opportunity to make a statement to it prior to rendering a decision on this matter. Ms. Harpe initially indicated to the Judicial Council that she wished to make an oral statement but subsequently elected not to make such a statement.

In considering this matter, the Judicial Council has taken into account the detailed provisions Part 8 of the Constitution that address the rules and procedures for Board membership, including eligibility, selection, recall and replacement. Read in the context of the Constitution as a whole, it is clear that the authority bestowed on the Judicial Council to remove a Board member from office is extraordinary. This authority, in the Judicial Council's view, should only be exercised when there is clear and convincing evidence established on a balance of probabilities that a Board member has compromised the dignity or effectiveness of their office. The burden of proof lies on the party making the charge.

The charge filed by Ms. Grady, and Ms. Harpe's response, indicate a considerable, and in our view, unfortunate, level of acrimony. However, we do not believe that the matters complained of warrant the Judicial Council exercising the extraordinary authority granted to it under the Constitution to remove a Board member who has been duly selected.

Without deciding conclusively what conduct would justify the Judicial Council removing a Board member from office, it is our view that removal may be warranted where the evidence demonstrates, for example, that actions of a Board member have created widespread public disgrace for the First Nation or its institutions, or that a Board member, through an abuse of office, has effectively undermined the proper operations of the First Nation or its institutions.

After reviewing the matter very carefully, the Judicial Council has concluded that the matters raised in the written notice dated July 13, 2004, even if assumed to be established by the evidence, would not support a finding by the Judicial Council that Bonnie Harpe has compromised the dignity or effectiveness of her Board member position within the meaning of 12.2 of the Constitution. The request that Ms. Harpe be removed from office is therefore denied.

SmLemke
per: Chuck Hume
Judge

SmLemke
per: John Bailey
Judge

Michael Dougherty
Michael Dougherty
Judge