

Ta'an Kwäch'än Judicial Council

Decision on the matter of Ms. Alice McGuire's removal from and the appointment of Ms. Lori Duncan to the Ta'an Kwäch'än Council

Case Number: TKJC 11-01
Date: January 12, 2011
Applicant: Alice McGuire
Respondent: Lori Duncan

ISSUES

On January 10, 2011, the Ta'an Kwäch'än Judicial Council received a complaint from Alice McGuire stating her belief that she had been "unjustly and illegally removed, according to procedural custom and replaced by another member" as an appointed "Director of the Clethero/Lebarga Family Line" to the Ta'an Kwäch'än Council.

While the Judicial Council has consistently recognized and stated repeatedly that it has no role in the selection or appointment of Family Directors, the Judicial Council does have a constitutional responsibility to adjudicate alleged violations of laws of the Ta'an Kwäch'än Council (*Constitution* s. 12.1.1). The *Constitution* is the paramount law of the Ta'an Kwäch'än.

The issues set before the Judicial Council demanded that it determine:

1. What the procedures are for Family Director selection by the Jenny Lebarga family in order to ascertain if those procedures were adhered to according to section 8.4 of the *Constitution* of the Ta'an Kwäch'än; and
2. Whether or not the removal Ms. McGuire as a representative to the Ta'an Kwäch'än Board was done in a manner that violated section 8.5 of the *Constitution*.

SUBMISSIONS

Alice McGuire, in her oral submission and written complaint brought before the Ta'an Kwäch'än Judicial Council, pointed to an agreement made with her in August 2002 as establishing the "procedure of custom" for selecting Family Directors for the Cletheroe members of the Jenny Lebarga family. As she testified the document entitled "Family Agreement: RE: Cletheroe Members" (Exhibit 5), allegedly framed by George Henry, was presented to her by Frances Woolsey. The agreement acknowledged Ms. Woolsey as the family elder of the Cletheroe members of the Jenny Lebarga family of the Ta'an Kwäch'än and Violet Santo as the Family Spokesperson. This agreement also appointed Ms. McGuire as the "sole Board representative for the Cletheroe members". This appointment was for a four-year term in accordance with the *Constitution*.

Ms. McGuire further stated in her complaint and submission that she had to negotiate the addition of Ms. Santo as spokesperson of the family and as a necessary signatory on Family Director appointments into the agreement. With the agreement and the necessary signatures in place, Ms. McGuire began a four-year term as a Family Director for the Jenny Lebarge family in 2002.

Ms. McGuire noted that her appointment as Family Director simply rolled over in 2006 into another four-year term from her initial appointment in 2002. Ms. McGuire also argued the point that the Cletheroe line of the Jenny Lebarge family had a right to one of the two positions guaranteed to this family under section 8.1.3.4 of the *Constitution*. The other position fell to the Irvine family line to appoint. Both families had the right to do this without interference from the other family lines or the Ta'an Kwäch'än Board.

Ms. McGuire offered in her Exhibits 2 and 3, her understanding of how the family lines evolved. Initially, the process was very informal but slowly evolved into its present form. She believed on the basis of her research that the family line model made its first appearance in the discussions leading up to the adoption of the 1990 Ta'an Kwäch'än *Constitution*. It is through that document that she stated that "family lines are established." However, that form was flexible. Ms. McGuire noted that members of one family line have served and could serve as representatives of the other family line if chosen to do so. As well, members of the Board representing the Jenny Lebarge family but from outside the appropriate family line have been removed when a suitable candidate from inside the particular family line has come forward, as in the case of Selma Sawyer's replacement of Roberta Austin more than a decade ago.

Ms. McGuire remarked at the end of Exhibit 2 on her explanation of family lines, and reinforced orally, that "I firmly believe that in trying to preserve our moiety system, we have consumed a great deal of time, created unnecessary stress and sickness." She later contended in her summation that while the matriarchal system of the Tutchone people "sounds great", traditionally females did not rule as chiefs. Female lines were followed, Ms. McGuire noted, as a way to maintain true blood lines for marriage purposes. She concluded her comments in Exhibit 2 with the statement: "It's now time for the citizens of Ta'an Kwäch'än to consider going into a complete democratic process of electing all TK government leaders, as we have proven to ourselves that OUR WAY, doesn't work."

In her complaint, Ms. McGuire noted that after the swearing in of Ms. Duncan as a Director on January 5, 2011 to replace her, she voluntarily stepped down. This was, as she stated, in order for a quorum on the Ta'an Kwäch'än Board to be maintained and the business of the Ta'an Kwäch'än to be attended to without delay. This was despite a protest in December by Ms. Santo that Ms. Duncan's appointment was not valid without her signature as the Family Spokesperson (Exhibit 4). Ms. Duncan's swearing in, which Ms. McGuire regarded as invalid without Ms. Santo's signature, triggered her complaint.

Ms. McGuire additionally believed that a September 21, 2010 “pact” made with Ms. Woolsey and Ms. Duncan, which stated that she would consider stepping down in March, 2011 until she was legally replaced, should hold. In her discussion of remedy, Ms. McGuire believes that Ms. Duncan should be suspended until her complaint is resolved.

Duncan argument

Ms. Duncan, in response, noted in Exhibit 6 that there are a number of possible family lines emanating from the marriage of Jenny Lebarge (KuaalMaa) and Lebarge Billy, not just the Cletheroe and Irvine family lines. They had 10 children, eight of whom survived to adulthood. Ms. Duncan asked why these other lines weren’t considered as well in determining Board representation. Ms. Duncan stated that the fact is that the two seats on the Ta’an Kwäch’än Board are indeed for the whole Jenny Lebarge family, not any particular line of it.

While not disputing Ms. McGuire's contribution to the Ta’an Kwäch’än Board, Ms. Duncan did dispute the existence of family lines as interpreted by Ms. McGuire. She noted as well that in Exhibit 2 both family directors in 1997 were from the Clethero line. As for the selection of a family director, the custom and tradition point to the eldest matriarch of the family, who currently is Frances Woolsey, as the person whose signature is needed to appoint a family director for a four-year term to the board and no other.

Ms. Duncan also argued that the role of Family Spokesperson did not exist within the Jenny Lebarge family. She suggested that there was no valid agreement ever with Ms. Santo and that the Jenny Lebarge family does not recognize role of a Family Spokesperson. Certainly from her perspective, no signature was required from Ms. Santo to confirm the appointment of a family director.

Ms. Duncan stated that the 2002 agreement was not valid. She believed that Ms. Woolsey had been coerced into signing it. Even if it was not a pressured agreement, Ms. Duncan contended it would have expired in 2006.

A letter addressed to the Chief and Board of Directors of the Ta’an Kwäch’än Council dated November 27, 2010 (Exhibit 9) and signed solely by Ms. Frances Woolsey, stated that the Jenny Lebarge family had removed Ms. McGuire from the Board. It affirmed that a replacement “has been assigned.” It also referred to a meeting held in September, 2010, which agreed to allow a transition period from Ms. McGuire's tenure on the Board to Ms. Duncan's assumption of that Family Director role until the end of March, 2010, but that “[I]t has now been decided that a transition period is not necessary.” The letter ended by thanking Ms. McGuire for “her many years of dedicated service.”

In her summation, Ms. Duncan noted that the Jenny Lebarge family did not really have a process for removing a sitting Family Director under Section 8.5 of the *Constitution*. She concluded that, without this, it was up to the family matriarch to decide. Ms. Duncan

stated that the Jenny Lebarge family is currently working on a written draft of a process to clearly lay out how a Family Director is named.

Correspondence from Chief Brenda Sam

The Ta'an Kwäch'än Judicial Council also received several pieces of information from Chief Brenda Sam on February 24, 2011, dealing with appointments by the Jenny Lebarge family to the Ta'an Kwäch'än Council in response to its requests. Five appointment forms naming Ms. McGuire as a representative were included. These were dated July 9, 2006, November 27, 2006, February 4, 2008, July 30, 2008 and June 29, 2009. Some of these forms held several signatures in addition to Ms. Woolsey's. Two of the forms held only signatures by Ms. Woolsey, along with Ms. McGuire's. Two forms appointing Ms. Duncan to the Ta'an Kwäch'än Council in 2010 were also presented to the Judicial Council (March 25, 2010 and April 4, 2010) but these, according to later testimony before the Judicial Council by Ms. Duncan, were not presented formally to the Ta'an Kwäch'än Council until September 2010. Each of these forms included the signature of Ms. Woolsey, along with several other signatures.

FINDINGS FROM SUBMISSIONS

The current conflict over the selection process for a Family Director for the Jenny Lebarge traditional family stems from disagreement on the definition of "family lines", the application of traditional decision-making processes to new legal requirements, the interpretation of the 2002 agreement, the role of the Family Spokesperson and an overall lack of clarity in the process.

While Section 8.4 of the *Constitution* states that "Each family line shall select a Citizen of its Traditional Family" to serve as a Family Director, the unclarified term "family line" creates difficulties. It may imply various options from which a traditional family may choose to pursue in its own unique selection process. It is clear, though, that the Jenny Lebarge family has two constitutionally guaranteed seats on the Board. The argument that the Jenny Lebarge family with more than just the Clethero and Irvine family lines to consider, should have a process that grants all members the possibility of serving as a Family Director has weight.

That the term "family line" has not been explicitly defined, however, forces the Judicial Council to examine past practices. The Judicial Council notes that Family Directors in the past have at times both been from a single identified family line within the Jenny Lebarge family. The question of whether the Irvine family or Clethero family has an established "right" to one of the two constitutionally determined seats on the Ta'an Kwäch'än Board to the exclusion of others within the Jenny Lebarge traditional family is obviously weakened by this practice.

The central role of the eldest woman within the Jenny Lebarge traditional family is not disputed by the Parties to this complaint. Ms. Woolsey is the recognized matriarch of this family. As such, her input on matters of importance to the whole family is key.

The 2002 agreement did not outline a procedure for Family Director appointments beyond the appointment of Ms. McGuire to the Board in 2002. This agreement was not relied upon for subsequent reappointments of Ms. McGuire or any other Family Director appointment to the knowledge of the Judicial Council. All the appointment forms, the 2002 agreement and the November 27, 2011 note removing Ms. McGuire from her position of Family Director had Ms. Woolsey's signature on them. This compels the Judicial Council to accept the argument that the established procedure only requires the matriarch of the Jenny Lebarge family to sign the form in order for it to be considered valid under Section 8.4 of the *Constitution*. This logic extends then also to the recall of a Family Director under Section 8.5 of the *Constitution*.

The 2004 *Constitution* of the Ta'an Kwäch'än Council defines "Family Spokesperson" as "the individual selected by a Traditional Family, according to its own procedures, as its spokesperson." In the naming of a Family Spokesperson solely for the Cletheroe family line members of the Jenny Lebarge traditional family in the 2002 agreement takes this a step further, opening the possibility for multiple Family Spokespeople for any given traditional family. The 2002 agreement does not specify that the Family Spokesperson of the Cletheroe members, however named, has a role in the naming of a Family Director beyond being a signatory to the notice of Ms. McGuire's appointment to that position in 2002. The *Constitution* is mute on this point as well.

Subsequent appointment forms of Ms. McGuire do not include Ms. Santo's signature. However, the lack of Ms. Santo's signature on Ms. Duncan's appointment form in 2010 lies at the root of this complaint. The Judicial Council cannot find that the lack of Ms. Santo's signature on Ms. Duncan's appointment form in any way invalidates her appointment as a Family Director for the Jenny Lebarge family. Only one signature is absolutely required, and that is of the family matriarch, Ms. Woolsey.

Judge Hume

Judge Hume took the opportunity at the closing of the hearing to offer his thoughts on the importance of healing and respect. If the aduli, the traditional laws and customs of the Tutchone people, are to be adhered to, it demands respect for the role of the traditional family elder. This core tradition must not be sacrificed in challenging times. When stress and conflict create breaks in family relations, it is again necessary to consider traditional practices for healing them. The kokon, a gathering seeking forgiveness or a potlatch for overcoming grievances, should be considered as a way to assist in the healing process within the Jenny Lebarge traditional family.

End Notes

Ms. McGuire remarked in the hearing on the matter that an inability to work within the traditional system possibly pointed to the need to "go fully democratic." Ms. Duncan noted that the Jenny Lebarge family is currently working on a written draft of a process to clearly lay out how a Family Director is named. Both of these individuals point to the need for greater clarification and possible change in the way that the choice is made and understood. Transparency and openness within the Jenny Lebarge traditional

family will clearly assist in the evolution of a functioning and effective system of governance which can only assist in engendering more support for and participation in the affairs of the Ta'an Kwäch'än First Nation by its citizenry.

The Judicial Council also sees the need for increased clarification of the process and supports any efforts of the Jenny Leberge traditional family to this end. As well, it must be understood that the appointments as Family Director under the *Constitution* are for four years. There is no need for periodic or annual reaffirmations of these Family Director appointments by the Board as has happened in the past. The process of naming alternates when the Family Director is not able to attend must be clarified.

This Judicial Council did not consider exhibits and testimony which included personal attacks or allegations of wrongdoing. These were not appropriate to the matter before it.

The Judicial Council reaffirms that it has no role in the selection or appointment of Family Directors and only dealt with its responsibility to adjudicate alleged violations of laws of the Ta'an Kwäch'än Council stemming from this complaint.

DECISION

The Ta'an Kwäch'än Judicial Council finds no violations of the Ta'an Kwäch'än *Constitution* either in the manner of appointment of Lori Duncan to the Ta'an Kwäch'än Council or Alice McGuire's removal from the Ta'an Kwäch'än Council under sections 8.4 and 8.5 of the *Constitution*.

The Ta'an Kwäch'än Judicial Council, therefore, dismisses Ms. McGuire's complaint of January 10, 2011.

Issued by the Ta'an Kwäch'än Judicial Council this 2nd day of June 2011.



per: Chuck Hume
Judge



Michael Dougherty
Judge



Barbara A. Evans
Judge

c. TKC Board of Directors