

Ta'an Kwäch'än Judicial Council

Decision on Complaint Regarding Suspension of a Board member following a criminal charge

Date: 31 May 2006

Case Number: TKJC06-01

Applicant: Bonnie Harpe

The Ta'an Kwäch'än Judicial Council received a complaint from the applicant, dated April 5, 2006, alleging that a member of the Board, Ms. Doreen Grady, was charged with a criminal offence and not suspended from the Board as provided for under 8.16 of the Constitution of the Ta'an Kwäch'än Council. The complaint further alleges that the Acting Chief did not take any action on the matter after being advised of the criminal charge.

Supplementary submissions were submitted by representatives of the Board and the applicant. These submissions, together with the Information sworn by RCMP Member Putnam on March 10, 2006, and obtained from the Yukon Territorial Court records, have provided the information necessary to render a decision.

In the view of the Judicial Council, this application raises the following matters: whether Doreen Grady was or is to be suspended and whether she carried out activities and was remunerated as a Board member improperly; and where the responsibility rests to implement the provisions of the Constitution relating to the suspension of a Board member charged with an offence.

It is a matter of public record that Doreen Jane Grady was charged with committing an offence on or about March 8, 2006, contrary to subsections 253(a) and 254(5) of the Criminal Code (Yukon Territorial Court File # 05-00706). It is not disputed that this is the same Doreen Grady named in the April 5 complaint filed by Bonnie Harpe.

Subsections 253(a) and 254(5) are both "hybrid" offences, meaning the Crown can elect to prosecute these offences by indictment or by summary conviction. If the Crown elects to proceed by indictment the offence becomes an indictable offence; if the Crown elects to proceed by summary conviction the offence is not an indictable offence and effectively becomes a summary conviction offence.

In this case, the court record confirms that on April 12, 2006, the Crown elected to proceed by summary conviction and as a result Doreen Grady stands charged with having committed a summary conviction offence. As will be seen below, the fact this case involves a summary conviction offence is central to our decision. We also note that the court record confirms that on April 12, 2006, Doreen Grady pleaded not guilty to the charges against her and as of that date there had been no trial or conviction in relation to the charges.

The record in this proceeding indicates that between March 8, 2006, and April 12, 2006, no action was taken by Doreen Grady to advise the Board that she had been charged with a criminal offence. The record also confirms that she participated in and formed part of the quorum for a meeting of the Board on April 5, 2006. Written submissions filed by Board Director Harold Chambers and by legal counsel for the Board confirm that the Board did conduct business and pass motions at this meeting. (These submissions are dated April 24, 2006, and May 10, 2006, respectively). The applicant contends that Doreen Grady should not have participated in this meeting and further that without Doreen Grady there was no quorum for the meeting. The applicant therefore calls into question the validity of any decisions made by the Board at that meeting.

Counsel for the Board also confirms in his May 10 submission that Doreen Grady received an honorarium as remuneration for attending the April 5 meeting. The Board has not asked Doreen Grady to return the money, nor has Doreen Grady voluntarily repaid the money.

A central issue in this case turns on the meaning of “criminal offence” in 8.16 of the Constitution. In separate letters dated April 27, 2006, to the applicant, Doreen Grady, Acting Chief Ruth Massie, and the Board, the Judicial Council requested written submissions on a number of matters, including whether:

“...the reference to “criminal offence” in 8.16 of the Constitution means “any criminal offence”, or, taking into account 8.14, 8.15 and 18.6.1 of the Constitution, should “criminal offence” be understood as referring to a criminal offence listed in 8.14 and 8.15, namely “ an indictable offence or the offence of theft, fraud, or false pretenses”.

Responses to these requests were received from the applicant and the Board. The applicant submits that “a criminal offence” in 8.16 of the Constitution should be interpreted as meaning “any criminal offence”, while the Board says it should be understood as referring back to the criminal offences listed in 8.14 and 8.15 — that is, “criminal offence” in 8.16 means an indictable offence or the offence of theft, fraud or false pretenses.

Read in isolation from 8.14, 8.15 and 8.16.1, and understood according to its literal or ordinary meaning, we would agree with the interpretation urged upon us by the applicant. However, we are in agreement with the submission of counsel for the Board that 8.16, and in particular the meaning of a “criminal offence” in that section, must be interpreted having regard to the overall context in which it is used, and taking into account other related provisions in the Constitution. Reading 8.14 to 8.16.1 together, it is our view that the reference in 8.16 to “a criminal offence” means a criminal offence referred to in the preceding sections 8.14 and 8.15. To extend the meaning to include criminal offences punishable on summary conviction results in an illogical and perverse result: if convicted, there is no provision to terminate the suspension or to reinstate the person in office; and there is no logic to the suspension in the first place if following a conviction a person is entitled to simply resume their position. Consequently, we have concluded that “criminal offence” in 8.16 of the Constitution refers back to the criminal offences listed in 8.14 and 8.15 and therefore means “an indictable offence or the offence of theft, fraud or false pretenses”.

Doreen Grady was charged under “hybrid” criminal offences which may have been proceeded on by the Crown by way of indictment. Therefore she was charged with an offence that, until the Crown decides otherwise, may be indictable. In our view it should be treated as an indictable offence for the purpose of the application of 8.16 of the Constitution, unless and until the Crown elects otherwise. The Judicial Council finds that Ms. Grady should have been suspended from the Board immediately following the laying of the charge and that suspension continued until the Crown’s decision to proceed with the charges by summary conviction. Consequently, Ms. Grady should not have participated as a Board member at the April 5, 2006, meeting and should not have received any remuneration as a Board member for the period between March 8, 2006, and April 12, 2006, and should repay any remuneration received during this time period. Any decisions or other actions taken by the Board that involved the participation of Ms. Grady during the March 8 to April 12, 2006, period should be revisited with respect to their validity – something the submission from the Board indicated has been initiated.

As a result of our conclusion respecting the meaning of “criminal offence” in 8.16 of the Constitution, it follows that Doreen Grady was not subject to suspension from office under 8.16 of the Constitution as a result of the criminal charges on March 8, 2006, once it was clear that the Crown would not be proceeding by way of indictment (April 12, 2006).

The second area considered by the Judicial Council relates to establishing responsibility for acting on the suspension requirements under 8.16 of the Constitution. The applicant’s view is that the Acting Chief was responsible, was aware of the charges and failed to take action, while the Board contends that addressing such a suspension is primarily the responsibility of the Board member’s Traditional Family.


8.16 of the Constitution does not specify who is to suspend the Director, Chief or Deputy Chief. While 8.5 of the Constitution provides that a Traditional Family may recall its representative(s) to the Board, this would not apply to the Chief or Deputy Chief, who normally occupy elected positions. Clearly, some other entity must have the primary responsibility to suspend a Board member under 8.16 of the Constitution. This logically falls to the Board itself as it is dealing with one of its members and because the Board is the main governing body for the Ta'an Kwäch'än. However, individual Board members also have special responsibilities by virtue of being public officials acting on behalf of the Ta'an Kwäch'än. A Board member who is charged with an offence that is or may be an indictable offence or one relating to theft, fraud or false pretenses is obliged to bring the matter to the attention of the Board immediately. Similarly, a Board member that has reason to believe that one of his or her fellow Board members has been charged with an indictable offence or an offence relating to theft, fraud or false pretenses has an obligation as a Ta'an Kwäch'än public official to bring the matter to the attention of the Board. Finally, it is the primary responsibility of the Board, as the main governing body of the Ta'an Kwäch'än, to implement a suspension under 8.16 of the Constitution without delay.

In summary, the Judicial Council has decided:


- 1. Doreen Grady should have been suspended by the Board immediately following the March 8, 2006, charge as it was a hybrid criminal offence and should be treated as an indictable offence for the purpose of the application of 8.16 of the Constitution, unless and until the Crown elects otherwise.**
- 2. The Board should recover any remuneration paid to Ms. Grady for a role as a Board member for the period of March 8 to April 12, 2006.**
- 3. The Board should review all decisions and other actions taken by it that involved the participation of Ms. Grady between March 8 and April 12, 2006.**
- 4. Doreen Grady was no longer required to be suspended under 8.16 of the Constitution following the April 12, 2006, decision by the Crown to proceed with her criminal charge by summary conviction.**
- 5. A Board member who has been charged with an offence that is or may be indictable, or that relates to theft, fraud or false pretenses has a duty to bring the matter to the attention of the Board without delay.**
- 6. Any Board member who has reason to believe that a fellow Board member has been charged with an offence that is or may be**

indictable, or that relates to theft, fraud or false pretenses has a duty to bring the matter to the attention of the Board without delay.

7. Where the Board has been made aware of one of its members being charged with an offence that is or may be indictable, or that relates to theft, fraud or false pretenses, it has a duty to implement the suspension provisions of 8.16 of the Constitution.


per: Chuck Hume
Judge


per: Michael Dougherty
Judge


John Bailey
Judge 