

Federal Court



Cour fédérale

Date: 20141215

Docket: T-1878-13

Citation: 2014 FC 1214

Ottawa, Ontario, December 15, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SHARON PELLISSEY

Applicant

and

**PEHDZEH KI FIRST NATION; PEHDZEH KI
FIRST NATION COUNCIL AND
COUNCILLOR ELSIE HARDISTY,
COUNCILLOR LISA MOSES,
COUNCILLOR GLORIA HARDSTY AND
COUNCILLOR MARY CLILLE**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Ms Sharon Pellissey served as Chief of the Pehdzeh Ki First Nation in British Columbia from July 25, 2013 until October 29, 2013, when the First Nation's Council issued a resolution removing her as Chief.

[2] Ms Pellissey contends that the First Nation treated her unfairly as she was not given adequate notice of the proceedings that led to a vote to remove her, or the particulars of the grounds for her removal. She also maintains that the decision to remove her was unreasonable because it was unsupported by evidence of misconduct on her part.

[3] Looking at the circumstances as a whole, I am not satisfied that Ms Pellissey was treated unfairly or that the First Nation's decision was unreasonable. Ms Pellissey was aware of the allegations against her, informed of the proceedings, and given a chance to defend herself. Further, the First Nation's decision was based on evidence relating to Ms Pellissey's conduct leading up to the meeting and, therefore, was not unreasonable.

[4] Accordingly, I must dismiss this application for judicial review. As Ms Pellissey did not appear, either personally or through counsel, at the scheduled hearing of this application for judicial review, I have relied on the written materials filed by the parties.

A. *The First Nation's Decision*

[5] The First Nation Council held a meeting on October 22, 2013 that was attended by four Councillors, but not Ms Pellissey. Her brother, who was also a Councillor, did not attend either. The Councillors passed a motion of non-confidence in Ms Pellissey as Chief based on four grounds: (i) breach of professional conduct; (ii) public intoxication; (iii) disclosure of confidential information; and (iv) lack of communication. The Council decided that the matter should be put to a public vote.

[6] At the time of the October 22, 2013 meeting, Ms Pellissey was attending another meeting in Hay River, Northwest Territories. The Council had requested that Ms Pellissey not attend the Hay River meeting due to concerns about her intoxication, and sent a letter to Hay River to that effect. Ms Pellissey received the letter but attended the meeting anyway.

[7] A public meeting was held in the community on October 28, 2013. Members of the community received notice of the meeting, as did Ms Pellissey. The allegations against Ms Pellissey were read aloud at the meeting, and those in attendance, including Ms Pellissey, were permitted to speak. A majority of those in attendance voted to hold a by-election to elect a new Chief. The vote was confirmed by the First Nation's Council the next day by way of a Band Council Resolution.

(1) Was Ms Pellissey treated unfairly?

[8] Ms Pellissey argues that the process by which she was purportedly removed as Chief was unauthorized by any accepted band custom and, in addition, was unfair. In particular, she maintains that she did not receive proper notice of the public meeting, or an agenda, or an adequate opportunity to respond to the allegations against her.

[9] Ms Pellissey also argues that the First Nation Council treated her unfairly in respect of its previous meeting on October 22, 2013. That meeting was deliberately held in her and her brother's absence and, in effect, resulted in a decision to remove her as Chief without any input from her.

[10] I do not agree that Ms Pellissey was treated unfairly.

[11] Regarding the October 22, 2013 Band Council meeting, it took place as a result of the Council's concern that Ms Pellissey was conducting Band business (*ie*, attending the meeting in Hay River) while intoxicated. It was held on an urgent basis. Ms Pellissey was aware of the Council's concern. In any event, given the subject matter of the meeting, she would not have been entitled to attend. Ms Pellissey's brother was informed of the meeting, but declined to attend based on a conflict of interest.

[12] As I see it, no definitive decision was taken at the October 22, 2013 meeting. Councillors recorded a vote of non-confidence in Ms Pellissey and drafted, but did not sign, a Band Council Resolution removing her from office. The Council decided to put the matter to a public vote, which led to the public meeting on October 28, 2013.

[13] In respect of the public meeting, notices were delivered throughout the community, including to Ms Pellissey. In addition, Ms Pellissey was informed directly about the subject matter of the meeting. The specific allegations were also read aloud at the meeting, and Ms Pellissey was given ample opportunity to address them. A vote was called, and a majority expressed its wish to hold a by-election for a new Chief. That vote was confirmed by a Band Council resolution the next day.

[14] I can see nothing unfair about this process. Ms Pellissey was given notice, advised of the allegations in issue, provided an opportunity to address those allegations, and given the benefit of

a public vote. After the vote, Ms Pellissey wrote to the Council and expressed her thanks, requested a severance package, and asked for her old job back as Lands Officer. She did not complain about the process by which she was removed.

[15] I would also note that the evidence shows that the process employed by the First Nation here had been used in the past for purposes of removing a chief from office.

B. *Was the First Nation's decision unreasonable?*

[16] Ms Pellissey argues that the decision to remove her was unreasonable, as it was not based on any reliable evidence of misconduct on her part.

[17] In my view, the record does not support Ms Pellissey's position.

[18] In addition to the evidence described above, the Senior Administrative Officer for the First Nation received telephone calls from members of the community about Ms Pellissey's conduct. Her behaviour was inconsistent with her oath of office in which she specifically promised to act as a role model for the community, and where appropriate, to maintain strict confidentiality.

[19] Based on the evidence, the decision to remove Ms Pellissey as Chief was not unreasonable.

II. Conclusion and Disposition

[20] The process by which Ms Pellissey was removed from office was not unfair; nor was the outcome unreasonable. I must, therefore, dismiss this application for judicial review, with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
with costs.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1878-13

STYLE OF CAUSE: SHARON PELLISSEY v PEHDZEH KI FIRST NATION;
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LISA MOSES, COUNCILLOR GLORIA HARDSTY
AND COUNCILLOR MARY CLILLE

**HEARING HELD BY TELECONFERENCE BETWEEN VANCOUVER, BRITISH
COLUMBIA AND EDMONTON, ALBERTA**

DATE OF HEARING: JUNE 23, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: DECEMBER 15, 2014

APPEARANCES:

Unrepresented

FOR THE APPLICANT

Shawn A. Beaver

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Unrepresented

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FOR THE RESPONDENTS