



Via Mail

September 3, 2020

Chief and Council
Kwantlen First Nation
23690 Gabriel Lane
Langley, BC V1M 2R4

Dear Chief and Council,

Re: Freedom of Expression

It has come to the BCCLA's attention through Robert Jago and the Kwantlen Reform Committee that members of the Kwantlen First Nation ("KFN") have received a demand from your office that they cannot speak about KFN governance in public or on social media.

Section 2(b) of the *Canadian Charter of Rights and Freedoms* outlines the fundamental freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. This fundamental freedom is subject only to reasonable limits as may be justified in a free and democratic society.

The BCCLA provides direct assistance to individuals who request information or have complaints about civil liberties violations by government agencies, employers or other organizations. The BCCLA is a non-Indigenous led organization and we respect and affirm the inherent right of Indigenous Peoples to be self-determining. We are not in a position to determine whether or not KFN Band Council is an expression of Stó:lō law or is a customized governance structure. We are, however, aware that the KFN is a Band within the meaning of the *Indian Act* and derives authority to govern and regulate persons and activity on reserve pursuant to the *Indian Act*.

Canadian courts have decided whether First Nations people are protected by the *Charter* on a case-by-case basis. We respectfully present a few publicly accessible cases for your consideration.

In the *Gitwangak Indian Band*¹ case at the BC Supreme Court, members of the Gitwangak First Nation ("GFN") occupied the Band Office in response to a decision that was made by

¹ *Gitwangak Indian Band v. Davis*, 2017 BCSC 744

the Band Council. The Court held that the GFN members were entitled to exercise their right to freedom of expression but that the balance of justice and convenience requires that they exercise their rights and freedoms of expression and Aboriginal title rights elsewhere than in the Band Office.

In the *Horse Lake First Nation*² case, the Band attempted to restrain a group of women from protesting against the Band Council. The Court held that the Charter should apply to any decision or by-law or action the Band Council or Band makes under the authority under the *Indian Act* because the band is using its statutory authority to regulate the life of its members. The Court therefore held that the women should be able to exercise their *Charter* right to freedom of expression.

Finally, the BCCLA is aware that KFN operates under a custom electoral system. It is our understanding that when a First Nation adopts a custom electoral system, the community or custom leadership selection process is documented in an election code that is consistent with the *Charter*³. With respect to the later, the Supreme Court of Canada recognized that election codes are subject to the Charter in the *Kahkewistahaw First Nation*⁴ case. Although the Court could not make a determination if there was a Charter breach due to the lack of evidence in that case, the Court stated that the burden would fall on the Kahkewistahaw First Nation to justify a *Charter* breach.

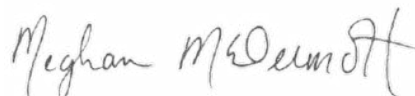
In conclusion, some members of KFN argue that their *Charter*-protected freedom of expression rights are being threatened in light of the demand by the Band Council that they cannot speak about KFN governance in public or on social media. In consideration of their concerns, we ask that you give this letter due regard.

If you have further questions or wish to discuss this matter further, please do not hesitate to contact Meghan McDermott at 778-783-3011 or by email at meghan@bccla.org.

Sincerely,



Veronica Martisius
Articled Student
BC Civil Liberties Association



Meghan McDermott
Interim Policy Director
BC Civil Liberties Association

CC: Robert Jago and the Committee of the Kwantlen

² *Horse Lake First Nation v. Horseman*, 2003 ABQB 152

³ Government of Canada, Indigenous and Northern Affairs Canada, “Conversion to Community Election System Policy” (2015), online: <<https://www.rcaanccirnac.gc.ca/eng/1461766373625/1556203056093>>.

⁴ *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 SCR 548