



Fisher River

CREE NATION

FISHER RIVER CREE NATION APPEAL COMMITTEE, 2021-01

IN THE MATTER OF THE APPEAL OF MICHAEL WAYNE MURDOCK OF BAND COUNCIL RESOLUTION 264-2018-026 OF THE FISHER RIVER CREE NATION DATED JULY 23, 2018.

Presiding:

Hillary Murdock, Chair and Legal representative
Peggy Werstiuk, Community Member
Stella Walker, Elder
Phoenix Cochrane, Youth
Chief David Crate, Council Representative

Heard by online videoconference hosted by the Chair on February 19, 2021.

Judgement and reasons delivered March 1, 2021.

Reasons for Judgement

Background

1. On July 23, 2020, Michael Wayne Murdock (the “appellant”) was banished from the Fisher River Cree Nation reserve pursuant to By-Law No. 2004-1 (the “Illegal Drug By-Law”). The appellant was known by Chief and Council at the time to have been selling drugs in the community. The appellant had also been charged in relation to a shooting in Peguis, Manitoba which related to drug trafficking.
2. The hearing of this appeal was initially scheduled for Thursday, April 16, 2020, but was delayed due to the outbreak of the COVID-19 pandemic. A letter was provided to the appellant on or about February 4, 2020, and this hearing was scheduled and did proceed on Friday, February 19, 2021.

The By-Law

3. The following factors must be taken into account by the Appeal Committee in making their decision on appeal under section 9.03(c) of the Illegal Drug By-Law:
 - i. The nature and severity of the offence, including whether it was an offence under section 3.01, 3.02 or 3.03 of this By-Law;

- ii. Any attempts made by the individual at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm;
- iii. The connection of the individual to the community and its members, including whether the individual has any dependents for whom their removal from the community could be detrimental;
- iv. The extent to which banishment in the specific case contributes to the objective of this type of sanction, specifically whether banishment of the individual would be in the best interests of the safety and protection of the community;
- v. Any other consideration that the Appeal Committee deems relevant.

These factors were read out by the Committee at the commencement of the hearing.

4. Sections 3.01, 3.02 and 3.03 of the By-Law read as follows:

- 3.01 No person shall sell, barter, supply or manufacture an illegal drug on the Lands.
- 3.02 No person shall use or be in possession of an illegal drug on the Lands.
- 3.03 No person shall harbour an individual who has been removed or banished pursuant to this By-Law.

Evidence presented by the appellant

5. In the February 4, 2021 letter to the appellant, he was informed that a public hearing would be held on February 19, 2021 pursuant to the Illegal Drug By-Law, that he would be permitted to submit any documentary evidence or letters of support in advance of the hearing, and that any individual would be permitted to speak in his support at the hearing, provided that such documents, letters of support and the names of such witnesses be provided to the Committee at least ten (10) days in advance of the hearing.
6. The appellant submitted the following documentation from Phoenix Recovery for consideration by the Committee:
 - a. Copies of drug tests conducted on the appellant from August 24, 2018 to October 2, 2020;
 - b. Participant reports from the appellants involvement in addictions programming.
7. The appellant submitted the name of Larry Cochrane, Community Safety Officer for Fisher River Cree Nation, to speak on his behalf. Unfortunately, this witness was unable to attend the hearing, but did provide comments to the Chair prior to the hearing. Mr. Cochrane stated that he was not worried about the appellant reoffending, and that the appellant had not been a concern for a while.
8. The appellant testified at the hearing. He stated that he understood that he had been banished to protect the community, that he did not blame anybody for his banishment and that he respected the decision of Chief and Council. He stated that his banishment has made him a better person and has made him realize his responsibility as a community member.

9. The appellant admitted that he had been selling drugs prior to his banishment. The appellant stated that he had been involved in programming with Phoenix Recovery for almost two years, that he had not used cocaine or opiates for over a year and a half, and that he was trying to repair himself for his children. This was confirmed by the drug tests provided by Phoenix Recovery, which showed that he had not used cocaine since December 3, 2019.
10. The appellant stated that he had been unable to find steady work due to his banishment but had been taking odd jobs and selling food and clothing from his residence in order to earn an income. He expressed a goal to start a clothing store in Fisher River. The appellant stated that he had applied for programming within Fisher River but had been denied due to his banishment. He had been involved in one fishing program within the community. The appellant further stated that his family had remained on the reserve, and that his children had been affected as they had watched him be removed from the reserve. He testified that his permanent banishment would mean that his family would need to move away from the reserve or that he would be separated from them.
11. The appellant admitted that his banishment had been in the best interest of the community but said that he had changed his life and would never return to drugs. He expressed regret and apologized for hurting the elders, the community, and the children of Fisher River.
12. The appellant expressed that he has many supports within Fisher River, including his family, his partner, his parents, and his sister.

Analysis

13. Under section 9.07 of the Illegal Drug By-Law, the Appeal Committee can use their discretion in allowing the appellant to re-enter the lands. Considering the factors contained in section 9.03(c), the Committee has decided to allow this appeal, and therefore allow the appellant to return to the reserve, subject to the following conditions:
 - a. The appellant must regularly communicate with the addictions specialist for the Fisher River Cree Nation's Native Alcohol and Drug Addiction Program, and must enroll in any recommendations provided by the addictions specialist until such time as the addictions specialist is satisfied that such regular communication and programming is no longer necessary; and
 - b. The appellant must submit to drug testing by the Fisher River Cree Nation's Compliance and Resource Coordinator three (3) months following the date of this decision and six (6) months following the date of this decision. The results of such testing must be provided to the Chair of the Committee as soon as practicable following the test.

Upon the completion of these conditions, the appellants banishment will be permanently lifted.

14. In this case, the offence was severe. The appellant admitted to selling drugs in the community, although he was never formerly charged by the RCMP. The charges brought against the appellant in 2018 relating to gun violence in Peguis, Manitoba were dropped, and the Cpl. Michael Garton of the Fisher Branch RCMP confirmed that there are no current charges against the appellant. The appellant also admitted to using drugs, although the drug tests provided by Phoenix Recovery showed that he had been clean since December 3, 2019. The appellant was therefore in violation of both 3.01 and 3.02 of the Illegal Drug By-Law.
15. The appellant has attended a long-term treatment program and has shown efforts to seek additional treatment. The Committee is satisfied that the appellant intends to continue treatment. As well, the appellant has shown remorse for his actions, and has shown substantial efforts to correct his behavior.
16. The appellant testified that he has much support from his family in Fisher River Cree Nation, and that he has been separated from his children and has had a difficult time providing for them since his banishment. He expressed at length that his focus is now to better himself so that he can provide for his children and teach them to not follow the same path as he did. The Committee is satisfied that the appellant's family, specifically his children, would benefit from the repeal of his banishment, and that he would be better able to support his family if his banishment were lifted.
17. The stated objective of the Illegal Drug By-Law is to undertake measures for the protection and safety of the community and residents of Fisher River Cree Nation. This objective is referenced in section 9.03(c)(iv). Although the appellant admitted that his banishment was in the best interest of the community at the time, he has shown great strides in his rehabilitation. Further, Larry Cochrane, the Community Safety Officer for Fisher River Cree Nation expressed that he is not concerned that the appellant is a risk to the safety of the community, and there are no current criminal charges against the appellant. The Committee is satisfied that although banishment was necessary in this case, the continued banishment of the appellant is no longer necessary for the protection and safety of the community.

Conclusion

18. For the reasons outlined above, the Committee hereby allows this appeal, and therefore allows the appellant to return to the reserve, subject to the conditions set out in paragraph 13 above. Upon the satisfaction of those conditions, the banishment of the appellant pursuant to Band Council Resolution 264-2018-026 shall be lifted.



Hillary Murdock, Chair

On behalf of the Fisher River Cree Nation Appeal Committee