

ILRU Case Note: Human Rights in Indigenous (Gitxsan) Law

Recently, a Gitxsan woman initiated a claim with the Canadian Human Rights Tribunal and successfully argued that she was discriminated against on the basis of gender by her former employer, a Gitxsan organization. This was a complex case that generated deeply felt acrimony and widespread conflict, and the agreed settlement is confidential. While recognition of her wrongful treatment according to Canadian law was important, the major concern for this Gitxsan woman was recognition that the behaviour toward her was also wrong according to Gitxsan law. The Human Rights Tribunal agreed with her and adjourned for one year during which time this woman and her kin, her former employer, and others are to explore how Gitxsan law would apply in cases such as hers. The intent here is not to “retry” her case, but to engage in an exploration of Gitxsan law and its application to similar, but abstracted cases. Pending the result at the end of the year, the Tribunal will either resume the case or close it.

This woman holds a Chiefly name within Gitxsan society. Within decentralized Gitxsan society, a Chief’s authority is their *daxgyet* and this enables a chief to maintain their position and role, and the prerogatives of their name (e.g., access to land, resources, etc.). A Chief’s own bad behaviour or disrespectful behaviour toward her that remains unaddressed can undermine her *daxgyet* which in turn will cause shame and the diminishment of her authority in the Feast Hall (public political, legal, and economic assembly).

At this point, it is necessary to consider several key differences between Gitxsan law and Canadian law as well as how this woman is situated within each legal order. First, in this case, Canadian law is primarily concerned with the protection of her human rights while Gitxsan law emphasizes the obligations both owed to her and by her to others. In other words, this woman needs to be able to continue to fulfil her Chiefly obligations to her kin and others within the community and Feast Hall. While she has distinct legal obligations to others, those others also hold clear legal obligations to her. Second, it is difficult, but not impossible to correlate human rights with this Gitxsan woman’s *daxgyet*. Gitxsan law does include individual and collective human rights, and people are accountable to uphold these rights within the social and kinship system rather than to a centralized state. Given this, it is possible to consider *daxgyet* as a human right.

The legal question according to Gitxsan law could be, “Does behaviour, such as the employer’s, potentially cause the diminishment of a female Chief’s *daxgyet*?” Such behaviours will have to be assessed along the lines of: whether a similarly placed Gitxsan woman would be caused embarrassment, whether the public actions of the former employer would cause shame to her kinship group (House group), whether doubt might be raised about her trustworthiness and chiefly capacity, and what remedial measures might be available including compensation.

In the end, it is only resolving this case and others like it according to Gitxsan law that will ultimately be considered legitimate by this woman Chief and other Gitxsan people. Failure to apply Gitxsan law and the singular reliance on Canadian law will only result in continued hard feelings and conflict within the communities.

