

# ONTARIO COURT OF JUSTICE

DATE: 2024 04 22  
COURT FILE No.: Elliot Lake 0121-998-24-MFN1-00  
0121-998-24-MFN2-00

**B E T W E E N :**

**Mississauga First Nation**

**— AND —**

**Roberta Witty**

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Before Justice of the Peace J. E. Morris  
Heard on April 22, 2024  
Reasons for Judgment released on April 22, 2024

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Jay Herbert.....counsel for the prosecution  
Wilma Bissiallon.....affiant  
Pre-enquête..... no appearance by defendant at this stage

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## **JUSTICE OF THE PEACE J. E. Morris:**

[1] The court is here for the first private prosecution made by the Mississauga First Nation in the pilot project for prosecution applications in relation to First Nation Band By-Laws.

[2] K'omoks First Nation v. Thordarson and Sorbie was filed on March 19, 2024 at the time of the swearing of the two informations charging Roberta Witty for various counts related to trespassing on and failing to comply with a resolution after failing to vacate Mississauga First Nation Lands. There are 4 counts on each information: one dated February 28<sup>th</sup>, 2024 and the other March 5<sup>th</sup>, 2024.

[3] In K'omoks First Nation v. Thordarson and Sorbie the court established that it did not have to hear any witnesses as the information provided by the affiant was extensive and satisfactory. In the case at bar the court was also satisfied that it was not necessary to hear from Witnesses or the Informant given the extensive information provided by way of Affidavit by the affiant, Wilma Bissiallon, the Chi'Naakinagawin (Constitution) Director of Mississauga First Nations.

[4] There are two exhibits that were made on this hearing:

Exhibit # 1 - April 16<sup>th</sup> - Affidavit of Wilma Bissiallon

Exhibit # 2 – March 12, 2024 – Affidavit of Wilma Bissiallon

[5] The affidavits outline the legal authority of the MFN and the ongoing issues that the First Nation has had with the defendant starting around February 2020. The allegations include the possibility of the defendant using and trafficking drugs from the residence where the defendant was residing within the Mississauga First Nation (MFN).

[6] The legal authority as set out in the affidavit, is as follows:

[7] On June 2, 2009, MFN ratified the Mississauga First Nation Land Code

[8] On March 15, 2015, MFN ratified the Misswezahging Constitution – A MFN constitution wherein it state at paragraph 11 *The Misswezahging (MFN) have the inherent right given by the Creator to enact laws necessary in order to protect and preserve Anishinaabe culture, to protect our lands, our language, customs, tradition and practices.*

[9] On July 19, 2019, in accordance with eh Misswezahging Constitution, MFN ratified the Mississauga First Nation Community Protection Law

[10] The MFN Community Protection Law (CPL) was created to protect MFN, its land and its members. The CPL sets out perimeters for residency and public access within MFN territory. Part of the law is designed for the exclusions and removal of people who are not permitted within the MFN territory.


[11] The defendant is not a member of the MFN and is not status Indian under the Indian Act.

[12] A letter dated February 28, 2020 was sent to Ms. Witty advising her right to be on MFN lands was rescinded pursuant to section 16 of the Community Protection Law and advised she must vacate within 30 days. There was an appeal date and time offered within the letter and Ms. Witty exercise her right to this appeal, but MFN Chief and Council did not overturn the original decision and advised that the decision issued would be enforced commencing April 7, 2020. Thereafter there were some informal efforts to have Ms. Witty removed from MFN as she continued to return to the First Nation.

[13] Another notice/order to vacate was issued pursuant to section 9(1) of the Community Protection Law with an expiry date of January 31, 2024. In that letter Ms. Witty was advised if she failed to vacate on the expiry date, she would be committing an offence under section 8.1 of the Community Protection Law. When previous notices to vacate have failed and Ms. Witty has chosen not to vacate the Prosecutor for MFN applied for a private prosecution charging Roberta Witty and requested charges be laid for one count under the Mississauga First Nation Land Code section 37.5, one count under the Mississauga First Nation Community Protection Law section 3.1.1 and 2 counts under section 8.1 of the same protection law. Each of the 4 counts are on two separate informations dated February 28, 2024 and March 5, 2024

[14] Having read the affidavits the court is satisfied that information has been received on each of the essential elements and that the defendant, Roberta Witty, should be summonsed to the court to face the 8 aforementioned charges. On that basis a Summons will issued on today's date for Roberta Witty to attend at Blind River Criminal Court at the Elliot Lake Courthouse to answer to the charges on July 4, 2024 @ 10:30 am.

**Released: April 22, 2024**



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Signed: Justice of the Peace J. E. Morris