

In the Matter under the Splatsin Custom Election Code
Section 6 – Removal of Council Member

BETWEEN:

Splatsin Elector 6000064501 Vikki Tronson

Petitioner

AND:

Elected Splatsin Councillor Theresa William

Respondent

DECISION OF THE SPLATSIN COMPLAINTS AND APPEAL BOARD

August 31, 2023

Before: Ronald Stevenson (Chair-Person)
Wendy Cheung
Lisa Glowacki

Place and Date of Hearing: Video Conference (British Columbia)
August 22, 2023

Petitioner: Vikki Tronson (self-represented)

Respondent: Theresa William (with helper, Gloria Morgan)

Written Reasons by: Wendy Cheung

Concurred in by: Dr. S. Ronald Stevenson
Lisa Glowacki

REASONS FOR DECISION

Introduction

1. On August 22, 2023, the Splatsin Complaints and Appeal Board (the "Board") considered a Petition to remove Councillor Theresa William ("Respondent") from her position as an elected councillor for the Splatsin First Nation.
2. The Petition was brought by Splatsin Elector Vikki Tronson ("Petitioner") under the Splatsin Custom Election Code.
3. After consideration of the evidence presented by the Petitioner and the Respondent (together, the "Parties"), the Board has determined that the Petitioner has not met the burden of proof to remove the Respondent from office, and therefore, the Petition is dismissed.

Procedural History

4. Splatsin First Nation adopted the Splatsin Custom Election Code (the "Code") in or about February, 2016. Among other matters, the Code governs both elections and removal of elected officials from office.
5. The Code establishes a Splatsin Complaints and Appeal Board to be appointed for a four-year term (the "Board"). The Board is mandated to address petitions for removal from elected office.
6. An election for chief and council of Splatsin First Nation was held on January 10, 2022. Theresa William was elected as a Councillor.
7. On July 19, 2023, the Board received the Petitioner's Petition for removal of the Respondent from office. The Petition was submitted under Section 6, Subsection 23(a) of the Code.
8. The Petitioner alleges that on April 17, 2023, the Respondent unlocked and propped open a door to offices and meeting spaces in the Splatsin Development Corporation ("SDC") building during a company board meeting, which allowed access to, to quote from the Petition, "several protestors, enabling them to enter and access the restricted areas of the building, interrupt business and harass/verbally abuse the board & staff....Theresa's actions compromised the safety of all board members and employees of the SDC and her actions clearly violated the policies, procedures, codes, and charters of that a sworn oath was given..."

9. With the Petition, the Petitioner tendered as evidence a workplace investigation report prepared by Highbridge Human Capital, as well as four video clips.
10. The Parties were given an opportunity to make preliminary submissions relating to the jurisdiction of the Board to hear the Petition. In that regard, the Parties had to answer whether the Respondent was acting as a Councillor or a board member of SDC related to the acts complained of in the Petition.
11. The Petitioner indicated that "Theresa William was acting in her primary role as Councillor of the Splotsin Council at the time of the acts alleged in the Petition. There are no distinguishing factors which separate Councillor Theresa William "the Councillor" and "(Councillor) Splotsin elect William". She sits at these tables as the Splotsin Council representative, you cannot separate one position from the other. If she were not Splotsin Council, she would not be Splotsin Development Corp (SDC), Quilakwa Investments Ltd., Yucwemenlucwu (Caretakers of the Land) 2007 LLP Board of Director."
12. In support of her position, the Petitioner provided BCRs appointing the Respondent as primary representative to the Board of Directors of Quilakwa Investments Ltd., Yucwemenlucwu (Caretakers of the Land) 2007 LLP, and Splotsin Development Corporation Board of Director's table, articles from the handbook for clarification on Councillor William's role at the Splotsin Development Corporation board, and an excerpt of SDC minutes where Councillor William was recorded in attendance.
13. The Respondent indicated that she was at a SDC board meeting, and not a Chief and Council meeting. The Board interprets this to mean that the Respondent did not consider herself to be a Councillor at the SDC board meeting.
14. Splotsin Ethics Committee member Lawrence Lee, who is entitled to give advice regarding the petition under the Code, Subsection 25, indicated that the Petition warranted a full hearing and stated "Chiefs and Councillors are elected to represent all band members at all times. In their official roles they are responsible to represent the members on many levels, at many tables, at many meetings. They may sit at those tables as ex-officio members, committee members, board members but they do so because they are first and foremost *elected Chiefs or Councillors.*"
15. After receipt of the responses from the Parties and Mr. Lee of the Ethics Advisory Committee, the Board deliberated pursuant to Subsection 25(a) on whether the grounds put forth in the Petition are frivolous in nature or unsubstantiated, and also deliberated on its jurisdiction to hear the Petition.
16. The Board took into consideration the Ethics Advisory Committee's comments about the Respondent's role on the SDC board and determined it had jurisdiction to hear the Petition under Section 6 of the Code and that the Petition grounds were not frivolous in that there was some evidence which showed the Respondent in the videos. Further, while the Respondent was acting as a board member at the time of the allegations, she

was doing so as a representative of Chief and Council such that her conduct may be reviewed from the perspective of whether she upheld the standard required of elected councillors.

17. Section 6 provides for an oral hearing, which was held by video-conference on August 22, 2023. The Parties consented to the hearing to be done by video-conference, due to scheduling conflicts of Board members. The Board informed the Parties of the hearing date and gave the Chief and other Councillors an opportunity to attend the hearing to make presentations pursuant to Subsection 27 and Subsection 28(c) of the Code.
18. The hearing was live-streamed to Splatins community members at the Splatins Community Centre on August 22, 2023.

Suspension if Under Investigation

19. Subsection 21 of Section 6 of the Code provides that a "member of Council who is the subject of a petition for removal from office for serious breaches of the Oath of Office and the Splatins Code of Ethics...shall be immediately placed on paid suspension until the matter is resolved by a decision of the Complaints and Appeal Board until proven guilty then full unpaid vacancy."
20. Subsection 21 limits suspension to serious breaches based on the Oath of Office and the Splatins Code of Ethics. Subsection 21 does not require the Board to determine whether the Respondent committed the serious breaches as alleged by the Petitioners, but rather, only whether allegations of serious breaches were made in the Petitions. The Board determined that the Petitions contained allegations of serious breaches, and therefore Subsection 21 was met.
21. The Notice of Hearing advised that the Respondent was placed on paid suspension until the matter of the Petition is resolved.

Respondent's Right to Counsel

22. Prior to the hearing, the Respondent had requested a band member, Gloria Morgan, to be a legal advocate to act on the Respondent's behalf.
23. At the time, Ms. Morgan was presented by the Respondent to be a witness for her defense, as Ms. Morgan was alleged to be one of the organizers of the demonstration.
24. The Petitioner raised concerns about the multiple roles that Ms. Morgan would play at the hearing.

25. The Board determined that, although Ms. Morgan was a former lawyer, she was not currently a member of the Law Society of British Columbia and could not hold herself out as legal advocate or legal counsel for the Respondent. However, the Board determined that Ms. Morgan may act as a 'helper' for the Respondent throughout the hearing, but that all presentation of evidence, submissions and questioning had to be done by the Respondent.

Preliminary Application

26. On the evening of August 21, 2023, just one day before the scheduled hearing date of August 22, 2023, the Respondent submitted a Notice of Application to dismiss the Petition, seeking the following orders:

- a) That the Petition be dismissed for having obtained videos and documents from SDC without proper authority and illegally;
- b) A request had been made for these same videos and documents, by Splantsin Stet'xam (Splantsin Elders Group) at a duly convened SDC Board meeting, and the Board refused to release them;
- c) It is unknown at this time as to who released these confidential videos and documents and SDC is doing their internal investigation;
- d) Shawn Thomas has been an SDC Board Member for more than two years. He will give evidence (*The Respondent ultimately did not ask Mr. Thomas to give testimony at the hearing*);
- e) As these documents and videos were obtained illegally, the Respondent asked the Board to find that the videos and documents cannot be entered as evidence because they were obtained illegally and without proper authority.

27. The Respondent relied on various parts of the BC *Personal Information Protection Act*, SBC 2003, c. 63. The Board presumes that the documents and videos referenced by the Respondent are the four videos and an investigation report from Hybridge Human Capital (the "Hybridge Report") relied on by the Petitioner as evidence.

28. Without disclosing sensitive or confidential contents of the videos, the following are general descriptions of the videos:

- a) Video labelled as "GMU20230417..." shows a board of directors' agenda of April 17, 2023 and in the top right hand corner, a demonstration taking place with 5

individuals, one holding a sign that says "NEW ELECTION"; one of the 5 demonstrators indicated that the meeting is to be shut down and adjourned and that the people in the room should leave as a result of a non-confidence vote where Splatsin people want a new election and that the SDC business belongs to the Splatsin people; no one raised their voice;

- b) Video labeled as "Loading Dock..." shows back entry doors where the Respondent is seen opening and closing a door to exit with what appears to be a pack of cigarettes in her hands and walking away. The video is dated April 17, 2023. The video does not show any other individual entering or exiting through the same door;
- c) Video labeled as "SDC Building System..." shows an upstairs office corridor. The Respondent is seen leaving a room and turning right to open another door and exiting the door/ video. The door stays open and approximately 8 – 9 seconds later, a group of individuals starting with who appears to be an Elder comes through the door, followed by a few other individuals, one of whom carries a sign saying NEW ELECTION and another individual is beating on a drum;
- d) Video labeled as "Tim Horton's store system..." shows a shot of a Tim Horton's café with the same demonstrators from the SDC Building System video entering the store.

(together, the "4 Videos").

- 29. The Parties were given an opportunity to speak to and in response to the Respondent's preliminary application at the start of the hearing. Given the late submission of the application, the Petitioner was also given an opportunity to provide a fulsome response in written closing submissions to be provided to the Respondent and the Board after the close of the hearing.
- 30. The Respondent indicates she did not know how the 4 Videos were obtained by the Petitioner. She was told that the Elders Committee had asked for a copy of the 4 Videos and the Elders Committee was told they would need a subpoena. It is implied that the Petitioner did not obtain the 4 Videos and the Hybrid Report via a subpoena. The Respondent says that the SDC owns the 4 Videos, and acknowledges that the primary purpose for SDC setting up surveillance cameras was to monitor potential theft.
- 31. The Respondent says she feels she has a right to privacy in respect of the 4 Videos. The general rule about public video surveillance is that individuals do not have a right to privacy in public places.

32. Councillor Len Edwards testified that he is an alternate SDC Board member. He testified that he did not know how the Petitioner obtained access to the 4 Videos. As for the Hybridge Report, he says that Hybridge was retained, pursuant to an in-camera session of the SDC Board, to look into what occurred on April 17, 2023. Councillor Edwards confirmed that the Petitioner is not an employee or board member of the SDC and therefore would not have access to obtain the 4 Videos or the Hybridge Report.
33. The Petitioner says that she obtained the 4 Videos on a USB stick and the Hybridge Report in an orange envelope left on her door-step with no indication of who put the package together or who put it on her door step. She reviewed the contents of the envelope and immediately drafted the Petition.
34. The Petitioner says that she did not report the receipt of the orange envelope to SDC.
35. In her opinion, the Petitioner says the contents of the orange envelope belong to the Splatsin people who are majority shareholders of SDC.
36. What is clear from the evidence is that neither of the Parties know how the 4 Videos and the Hybridge Report were obtained from the SDC which ended up on the doorstep of the Petitioner's home. The Board finds the Petitioner credible and finds that the Petitioner did not obtain the evidence illegally.
37. Even if the 4 Videos were obtained illegally, the Board would not dismiss the Petition. In her evidence, the Respondent has acknowledged to opening door(s) which allowed the demonstrators to enter a SDC board meeting, rendering reliance on the video for the sole fact-finding purpose of whether the Respondent opened a door or not somewhat unnecessary.
38. Further, while corporations do have a responsibility not to put cameras in places where people have a heightened expectation of privacy, such as in washrooms, showers, or within private residences, the Board finds that the 4 Videos, with the exception of the one showing a board of director meeting taking place, are shot in places where a member of the public generally does not have an expectation of privacy.
39. As for the Hybridge Report, the Board had expressed concerns about any reliance on the Hybridge Report as evidence because the writer of the report had not been presented as a witness and those who were interviewed for the purposes of the report were not identified in the report.
40. The Hybridge Report includes content, including recommendations, intended to be confidential and which are potentially prejudicial to admit as evidence in an open hearing, with no way to subject contents of the report to scrutiny.

41. The Board has determined that the Hybridge Report ought not be tendered as evidence due to both credibility and reliability issues. The Board ruled that the Hybridge Report will not be relied on by either party as evidence and would not be referenced in the open hearing.
42. In her closing submissions, the Petitioner asked the Board to reconsider relying on the Hybridge Report as evidence. While the Board is not bound by the formal rules of evidence that would be otherwise followed in a court of competent jurisdiction, in this case, among other reasons to exclude the Report, the author of the written report should be available as a witness to speak to the content and be subjected to cross-examination by the opposing party, and was not. Further, the interviewees who gave statements to the author of the report were also not named and not called as witnesses. The Board cannot rely on the truth of the contents of the Hybridge report if the authenticity of the interviewee statements given to the author cannot be substantiated. The Board confirms its ruling that the Report is excluded from evidence.

Governing Laws

43. Removals under Section 6 are governed by Subsection 19, which states:

19. The Chief or a Councillor shall be removed from office and be prevented from running for office for 8 years if s/he:

- a) Violates this Splitsin Custom Election Code, his Oath of Office or the Splitsin Code of Ethics;*
- b) Fails to attend three regular Council meetings or regular scheduled Community Assembly Meeting or Special Splitsin Meetings, within a twelve month period without Council approval, or medical recommendation in writing as recorded in Council minutes and in that Council Member's annual attendance record;*
- c) Fails to maintain a standard of conduct expected of a member of Council;*
- d) Has been convicted of an offence in [sic] contrary to this Splitsin Custom Election Code since his election;*
- e) Accepts or offers a bribe, forges a Council document or otherwise acts dishonestly in his role;*
- f) Is negligent in failing to ensure the safety and protection of the community members and property;*

- g) Uses his office for personal financial gain or for the financial benefit of members of his family to the detriment of the Council or the Band as a whole;*
- h) Abuses his office such that the conduct negatively affects the dignity and integrity of the Community or of Council;*
- i) Encourages others to commit any of the above acts or omissions;*
- j) Engages in such other conduct as may be determined by Complaints and Appeal Board and the advice of the Ethics Advisory Committee to be of such a serious nature that the removal is necessary and appropriate;*
- k) Makes an untrue declaration in the information declared in the Chief/Councillor Qualification Certificate;*
- l) Resigns from office prior to the expiration of his term unless there are extenuating circumstances.*

44. The Splatsin Code of Ethics for elected officials and employees is listed in Subsection 197 of the Code. In deciding this Petition, the Board is mindful of the provisions of Subsection 197.

45. Splatsin First Nation government is also regulated by the Splatsin Governance Policy (the "Policy"). Appendix 3 of the Policy is a Splatsin Code of Conduct, which reads as follows:

- (1) As a Kukpi7/Tkwampila7 [chief/council], I agree to exercise my official powers and perform my duties in such a manner as to maintain public confidence and trust;*
- (2) I will act honestly and in good faith with a view towards the best interest of Splatsin;*
- (3) I will demonstrate high ethical standards in both my personal and professional dealings and therefore lead by example;*
- (4) I will treat my colleagues with courtesy, honesty, and respect because I know that we are all working towards the goal of improving our community;*
- (5) I will excuse myself from conflicts of interests, even if they are only perceived. I will not use Splatsin property for my personal benefit;*
- (6) I must not use any information attained during my term as Kukpi7 and Tkwampila7 for my personal gain, or the gain of my immediate family*

members, particularly information about upcoming contract tenders, jobs, or otherwise business opportunities.

46. The Oath of Office is found at Appendix 1 of the Splatsin Governance Policy.

47. Under Part C- KUKPI7 AND TKWAMIPLA7 ACCOUNTABILITY PROCESS, the Governance Policy states:

155. The Kukpi7 and Tkwamipla7 are committed to govern with excellence and therefore must accept the responsibility to discipline fellow Kukpi7 and Tkwamipla7 with due reverence.

156. Splatsin believes in inspiring its Kukpi7 and Tkwamipla7 in such a way that allows for personal growth, through times of poor judgement.

48. Part C goes on to set out a process for investigation of breaches of conduct by chief or council and for remedial actions (different from removal from office).

49. Part C is relevant to interpreting the grounds for removal in that it indicates that not every error or breach is expected to constitute grounds for removal; and, Splatsin have chosen an approach that promotes growth and learning by their elected officials.

50. This is consistent with the preamble of the Governance Policy, which states:

"...it is the intended function of the Governance Policy to provide a framework that not only fosters the very best decision-making environment but also holds our leaders up in order to give them the best opportunity for personal growth and development.

It is the aim of the Governance Policy that leaders – Kukpi7 and Tkwampila7 as equal – will benefit from kindness and understanding during times of development in the expectation that it will be reflected back.

In this manner, Splatsin is committing itself to a new way of thinking with the expectation that by adjusting our perspective to that of a model of forgiveness that our language, culture, and traditions will flourish once again."

Interpreting the Grounds for Removal in the Code

51. As set out above, the Code is considered the customary law of the Splatsin First Nation. There was no evidence or argument put forth by any of the Parties to this Petition that the custom of the Splatsin First Nation differs from the provisions set out in the Code.

52. Subsection 19 is a key provision for determination by the Board whether either of the Petitioners have met their burden of proving that the Respondent has committed at least one of the grounds for removal. The Board will also consider the Code of Ethics listed in Subsection 197 of the Code.
53. The Board may look at custom, evidence and law to interpret these (and all) standards of conduct.
54. As noted above, the preamble and Part C of the Splatsin Governance Policy assist in interpreting the standards of conduct and what may be required to breach them to warrant removal. That Policy evinces underlying themes of opportunities for personal growth, development, kindness, understanding during times of development with expectations for reciprocation, and perhaps, most importantly, a model of forgiveness, and, progressive response to error or breach.
55. In addition, the Board is mindful of the general principle of law that removal of an elected official must take into account the principles of democracy that require that sufficient weight be given to the decisions of the electorate. For this reason, removal of an elected official implies wrongdoing of a sufficiently serious nature that outweighs the presumption of respect for the democratic decision of the community. The grounds should be strictly interpreted. (See *Shirt v. Saddle Lake*, 2022 FC 321, para. 58; *Martselos v. Salt River Nation #195*, 2008 FC 8, para. 32).
56. Further, consistent with the common law principle of ejusdem generis that supports general terms in a list being read consistent with more specific ones, the general grounds should be interpreted to be on par in terms of seriousness with the more specific clauses (such as using the office for personal gain). (See *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029).

Burden of Proof

57. The burden on the Petitioner is to prove a breach or violation of one of the provisions of Subsection 19 and Subsection 197 of the Code, the Oath of Office, the Code of Conduct, and the Splatsin Governance Policy of a seriousness that establishes grounds for removal of the Respondent from the position as Councillor on a balance of probabilities.

Petitioner's Position

58. The Petitioner says that the Respondent, while attending a board meeting of the SDC as a member of Council, unlocked and propped open a door to the SDC building and

opened the door to allow access to protestors enabling them to interrupt business and harass/verbally abuse the board and staff. The Petitioner says that the Respondent's actions compromised the safety of all board members and employees of the SDC.

59. The Petitioner says that the Respondent breached:

- a) Subsection 19(a) of the Code: violating the Code, the Oath of Office or the Code of Ethics;
- b) Subsection 19(f) of the Code: is negligent in failing to ensure the safety and protection of the community members and property;
- c) Subsection 19(h) of the Code: abuses his office such that the conduct negatively affects the dignity and integrity of the Community or of Council;
- d) Subsection 19(i) of the Code: encourages others to commit any of the above acts or omissions;
- e) Subsection 19(j) of the Code: engages in such other conduct as may be determined by the Board and the advice of the Ethics Advisory Committee to be of such a serious nature that the removal is necessary and appropriate;
- f) Section 4(g) of the Policy: Kukpi7 and Tkwamipla7 will: ensure a safe and secure working environment that promotes equality of opportunities, respect for human rights and compliance with all applicable statutes and regulations;
- g) Section 135 of the Policy requiring Kukpi7 and Tkwamipla7 to avoid acting in a way which may result in conflict of interests;
- h) The Oath of Office of the Policy (Appendix 1); and
- i) The Code of Conduct of the Policy (Appendix 3).

Respondent's Position

60. The Respondent says she exited the board meeting to take a smoke break, and left the hallway through a door where she then saw an Elder and a group of people behind the Elder. It's her position that she did not intentionally open the door for the demonstrators to enter the board meeting, but rather, held the door open for an Elder as it is customary and general courteous practice to open doors or leave doors open for Elders. She said she realized the group of people walking through were demonstrators

as one individual was beating a hand held drum, but by that time, that group had already walked through the door she opened in order for her to exit to take her smoke break.

61. The Respondent says she has already acknowledged that she made a mistake by leaving the door open for the group of demonstrators and says she has since apologized and stepped down from the SDC Board. The Respondent says her unintended actions and her corrective actions thereafter do not warrant the harsh and onerous remedy of having her removed as Councillor.

Petitioner's Evidence

62. The Petitioner introduced herself as a member and elector of the Splat'sin First Nation.
63. She gave context to the demonstration that occurred on April 17, by providing a narrative related to a protest that took place at Band offices on April 17, 2023 which she says, blocked access to some essential services and government buildings.
64. The Petitioner says that the Respondent participated in the protest. The Petitioner provided a video link which she says the Respondent participated in the April 17 protest. That video link can be found here: [\(1\) Splat'sin First Nation demonstration calls for new election | Globalnews.ca](#)
65. The Petition says that three councillors: Theresa William (the Respondent), Len Edwards, and Sabrina Vergata were also participants in or supported the protest.
66. On the Board's review of the video link and news article provided by the Petitioner, the protest that took place in that link seems to have taken place sometime in November 2022. In the 2 minute and 13 second video clip, the Respondent along with fellow Councillors Edwards and Vergata can be seen in the video where Councillor Vergata said: "This is something that our people need, we are not doing what we need to do as Chief and Council for the betterment of our whole community of Splat'sin."
67. There is no video evidence provided showing that the Respondent played an active role in the protest that took place on April 17, 2023.
68. In addition, as noted above, the Petitioner relies on surveillance video clips from in and around the office of the SDC.
69. The Petitioner argued that in any event, the Respondent has already admitted to opening the door which allowed the demonstrators to enter into the SDC board room,

which is enough to warrant a finding that the Respondent breached her responsibilities under the Code and/or the Policy.

70. The Petitioner called no witnesses.

Respondent's Evidence

Crystal Johnson

71. The first witness called by the Respondent was Crystal Johnson.

72. Ms. Johnson confirmed that the Respondent opened the door which was on the second floor of the building just outside the SDC boardroom which let the demonstrators in, but that the Respondent would not have known that there were demonstrators on the other side of the door waiting to be let in.

73. Ms. Johnson acknowledged she was a participant in the demonstration and that everything was done "by the seat of her pants" and that "no one let anyone know what was going on." She indicated that the demonstration was peaceful with the exception of Chief Doug Thomas' family who was screaming at the demonstration.

74. Ms. Johnson indicated that at the SDC boardroom, she asked for the meeting to be adjourned and that it was not okay for the current Chief and Council to be doing business on the Splatsin people's behalf. She indicated that the group of demonstrators entered the room in a staggered manner.

75. Ms. Johnson confirmed that at no point was the demonstration violent.

76. The Respondent referenced a Facebook comment made on the Splatsin Band Members page where Shawn Tronson indicated "Should go shut down sdc aswell (*sic*), we have no say there" to which Ms. Johnson responded "done".

77. Ms. Johnson confirmed that by the time the demonstrators were in the SDC boardroom, the Respondent was not in the room.

Len Edwards

78. Councillor Edwards indicated he had reviewed the 4 Videos. He indicated he did not see any violence or threats made by the demonstrators.

Edna Felix

79. Ms. Felix attended the demonstration and indicated she “kind of” had a role in planning the demonstration. She said the purpose for the demonstration was to show that the people had no confidence in the Chief and Council.
80. She indicated that the demonstration and protest outside the Band offices came from the failure to heed the petition which was signed by 158 Band members to call a new election.

The Respondent's Oral Evidence

81. The Respondent says that during the SDC Board meeting on April 17, the Chair of the meeting called a break and she left the boardroom to go outside for a smoke break. The boardroom is on the second floor of the SDC building. She exited the boardroom and then proceeded to a door to take her downstairs to go outside. The door had no window so she could not see who was on the other side. When she opened the door, there were a group of people led by an Elder.
82. In her custom, they do not let their Elders ‘stand outside’, and it is practice to open the door for an Elder. She says she never propped the door open, simply left it open for the Elder to enter. She confirms she never texted or communicated with the demonstrators prior to and after they entered through the door. She says that when she saw Ms. Morgan with a drum, she figured out it was a demonstration because that is what beating on a drum signifies in her culture – a peaceful demonstration.
83. The Respondent confirms that she left the boardroom with the intention of only leaving it temporarily. Her laptop was left in the boardroom when she went outside for her smoke break.
84. As noted above, the Respondent says that in her opinion, she was not acting as a Councillor in the SDC Board meeting. She says that as a Councillor, she wears two different hats. When she is a Board member in an SDC meeting, she does not share with the Board information from Chief and Council.
85. The Respondent says she has been properly disciplined by the SDC Board and has since stepped down from her position as board member.
86. The Respondent provided as evidence an email that she wrote on April 25, 2023 to the SDC board and chiefandcouncil@splatsin.ca. The email said:

“Hi all, I would like to apologize to you all for my action that led up to the events that happened and how you felt on April 17, 2023. I may have let them in

unintentionally, but I make no excuses. When I see each and every one of you I will apologize in person. Kukwstamc for listening.

Tkwamipla7 (Councillor) Theresa William”

Findings of the Board

87. On hearing the live witness testimony as well as assessing the credibility of the testimony, the Board makes the following factual findings:

- a) As stated above, the Respondent was attending the SDC meeting of April 17, 2023 as a Board member of the SDC primarily, but she would not be in that role but for the fact that she is a member of Council. In that regard, she can be perceived to be a representative of Chief and Council as a Board member of SDC;
- b) The meeting is held on the second floor of a building. To access the meeting room, a person must enter several doors, some of which are locked, though the evidence with respect to which were locked or supposed to be locked on April 17, 2023 was not clear. At the very least, the door to the meeting room is locked and the meeting is meant to be private;
- c) When the Chair of the SDC Board meeting called a break, the Respondent took the opportunity during the break to go out for a smoke break;
- d) The Respondent left the boardroom and opened the door to go downstairs and outside and upon opening the door on the second floor of the SDC building, she saw an Elder;
- e) The Respondent believed that it is customary to open doors for Elders and she allowed the Elder to go through that door for no other purpose other than out of a customary courtesy;
- f) Following the Elders were other demonstrators, and when the Respondent saw the other demonstrators and particularly Ms. Morgan who was beating a drum, the Respondent realized she let in a group of demonstrators;
- g) The Respondent did not stop the group of demonstrators and proceeded to exit through the loading dock doors on the ground floor to go outside for her smoke break;

- h) The Respondent was not aware, prior to seeing the demonstrators, that the demonstration was to take place. In other words, the Respondent had no knowledge or any active participation in the demonstration or its planning;
 - i) While in the SDC meeting room, the 5 demonstrators spoke in a calm voice, stating that the councillors and corporation did not have authority and that all persons needed to leave. This was repeated. The persons in the boardroom did leave.
 - j) 8 days after the incident, the Respondent apologized to the SDC Board and Chief and Council and acknowledged that she let the demonstrators in unintentionally but apologized nonetheless."
88. The issue to determine is whether the Respondent's actions of letting the demonstrators in to interrupt the SDC Board meeting warrants removal of her in an office position, and if so, whether the removal should be sustained for 8 years to prevent her from running for office until the fall of 2032.
89. Subsection 19 of the Code requires the Board to interpret what the Splitsin community holds as a standard of conduct that would be so serious to warrant the removal of the Respondent as a Councillor. The Code of Conduct and the Oath of Office in the Policy and the purposes of the Policy will also guide this interpretation.
90. The main focus is on the Respondent's act of letting the demonstrators in through what would otherwise be a locked door, into a hallway leading to SDC's boardroom. The Board has found that such action was unintentional.
91. Given that the meeting was closed to the public, the Respondent should have advised the group of demonstrators that they could not enter through the locked door that the Respondent opened to exit for her smoke break; particularly when she identified that they intended to enter for the purpose of a demonstration, political or otherwise. The Respondent did not do that.
92. Whether the demonstrators would have abided by the Respondent's advice cannot be known but seems unlikely. As Ms. Johnson testified, the demonstrators opposed the legitimacy of all councillors. This would include the Respondent. The demonstrators were already on their way in with the objective of shutting down the meeting.
93. The question therefore is whether the Respondent's course of action is of a seriousness and nature that warrants removal from office under one or more of the grounds in Subsection 19 or Subsection 197 of the Code or the Policy's Oath of Office or Code of Conduct to find a breach of the Respondent's responsibilities as a Councillor. The Respondent is not to be held to a standard of perfection and the Code and the Policy

certainly does not require the standard of conduct to be held to a standard of perfection.

94. On April 17, 2023, when the Respondent saw the group of demonstrators and unintentionally allowed them to walk through a locked door, the Respondent displayed a momentary lapse in judgment which, although is not condoned by the Board, is one that is understandable in the circumstances which the Respondent faced at that moment. The Board finds that there should be some consideration towards the Respondent's momentary subjective reactions to seeing an Elder lead the group and acting out of an instinctive customary courtesy to allow doors to be open for Elders, and secondary, to being overwhelmed by the power of the drum which in the custom of the First Nation, sends a strong sign of peaceful prayer and messages through song which is to be respected. At best, the Respondent could have told one or more of the demonstrators that they should not enter, but again, the demonstrators questioned the legitimacy of all councillors, including the Respondent. When in the SDC meeting room, the demonstrators calmly voiced their demand for the persons in the room to leave. This could have been unsettling for the persons in the room, but the Board did not hear evidence to that effect.
95. The Respondent is to uphold the dignity of the office of elected councillor and to act in the best interests of Splatsin in conducting herself. This would include supporting and protecting the business of SDC and the board. The Respondent should have acted differently when she encountered the persons on the other side of the door, but her failure to do so did not result in any serious negative outcome for Splatsin, council, or the SDC.
96. Coupled with the fact that the Respondent took it upon herself, approximately 8 days after the event, to write an email of apology to the SDC Board and Chief and Council with a voluntary resignation, the Board finds that the Respondent has displayed genuine contrition. This leads to rejecting a finding to warrant the removal of the Respondent. Other provisions of the Code that demonstrate a staged and culturally appropriate approach, including the underlying principles of opportunities for personal growth, development, kindness, understanding, and forgiveness set out in the Policy support this finding.
97. In sum, the Board finds that the Petitioner has not met the burden of proof to show that the Respondent's alleged actions or inactions are so serious to warrant removal from her position as Councillor on any of the alleged grounds. The Petitioner's Petition is thereby dismissed.

Conclusion

98. The Board's role is restricted to determining whether a breach of the applicable customary laws and policy of Splantsin First Nation have been contravened to an extent and of a nature that would warrant the serious consequence of removal from elected office.

99. The grounds for removal were not established on the evidence presented by the Petition. The Board concludes that no serious breach was proven on the evidence.

100. The Petition is dismissed pursuant to Subsection 30(b) of the Code.

101. The Respondent's temporary suspension made pursuant to Subsection 21 of the Code is hereby immediately lifted.

Dated: August 31, 2023



Board member: Wendy Cheung

Dr. S. Ronald Stevenson

Board member: Dr. S. Ronald Stevenson



Board member: Lisa Glowacki