

**In the Matter under the Splitsin Custom Election Code**

**Section 6 – Removal of Council Member**

**BETWEEN:**

**Len Edwards, Sabrina Vergata, Theresa William**

**Petitioners**

**AND:**

**Elected Splitsin Councillor Beverly Thomas; Elected Splitsin Chief Douglas Thomas**

**Respondents**

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**DECISION OF THE SPLATSIN COMPLAINTS AND APPEAL BOARD**

**September 12, 2023**

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

Place and Date of Hearing: August 10 and 11, 2023 (Splitsin Community Centre)  
August 25, 2023 (Video-Conference)

Petitioner: Len Edwards, Theresa William, Sabrina Vergata - self represented

Respondent: Beverly Thomas and Douglas Thomas - represented by legal counsel  
Jennifer Trotti

Written Reasons by: Dr. S. Ronald Stevenson, Lisa Glowacki and Wendy Cheung

## REASONS FOR DECISION

### INTRODUCTION

1. On May 26, 2023, the Splatsin Complaints and Appeal Board (the “Board”) received two Petitions.
2. The Petitioners for both Petitions are Councillor Len Edwards, Councillor Sabrina Vergata, and Councillor Theresa William.
3. The first Petition is for the removal of elected Councillor Beverly Thomas (“Councillor Thomas”) pursuant to the Splatsin Custom Election Code (the “Code”). The Petitioners allege that Councillor Thomas should be removed as councillor because she received honorarium and gas cards which she did not return to the Band. The Petitioners also allege that Councillor Thomas attended at a bank and signed two bank drafts dated April 26, 2023 while she was suspended and/or in a conflict of interest. This Petition is referred to herein as the “Councillor Thomas Petition”.
4. The second Petition is for the removal of elected Kukpi7 (Splatsin for Chief) Douglas Thomas (“Chief Thomas”). The Petitioners allege that Chief Thomas should be removed as Chief because he attended at the bank on two occasions, along with his aunt Councillor Thomas, and withdrew Splatsin funds by four bank drafts payable to a forensic audit firm, a related law firm, and to a separate law firm which the chief had retained to represent him. It is alleged that Chief Thomas failed to follow proper financial administration policies, including having the four cheques approved in a duly convened meeting and/or by way of a band council resolution. This Petition is referred to herein as the “Chief Thomas Petition”.
5. After consideration of the evidence and arguments presented by the Petitioners and the Respondents (together, the “Parties”), the Board has determined that the Petitioners have met the burden of proof to remove Chief Thomas and Councillor Thomas from office.

### PROCEDURAL HISTORY

6. Splatsin First Nation adopted the Code in or about February 2016. Among other matters, the Code governs both elections and removal of elected officials from office.
7. The Code establishes the Board, which is mandated to address petitions for removal from elected office.
8. An election for Chief and council of Splatsin First Nation was held on January 10, 2022. The Parties were each elected to office.
9. The Chief Thomas Petition and the Councillor Thomas Petition were submitted pursuant to Section 6 of the Code, which allows either individual electors or the council acting as a majority to file a petition for removal. The Petitioners opted to file under subsection 23(b) of the Code, which states that

proceedings to declare a person ineligible to continue to hold the office of Chief or Councillor shall be initiated by a majority of Council Members submitting a petition to the Board on which shall appear:

- a. The grounds on which removal of a Chief or Councillor is sought;
  - b. The evidence in support of the resolution; and
  - c. The signatures of all Council Members who voted for the removal.
10. Pursuant to Section 6 Subsection 21 of the Code, the Respondents were placed on paid temporary suspension until the Petitions are resolved.
  11. As addressed further below, the Respondents objected to the Board's initial acceptance of the Petitions, alleging that quorum was not met and not all elected Councillors voted in favour of the Petitions. The Respondents' position was that the Petitions were non-compliant with section 6 of the Code. The Respondents submitted an application to have both Petitions dismissed (the "Dismissal Application").
  12. The Board and the Parties originally set down dates for a hearing of the Petitions on July 18 and 19, 2023, to be held in person with the community present at the Splatsin Community Centre.
  13. The Board and the Parties had a pre-hearing conference just prior to the original hearing dates to discuss issues, including the manner in which the Dismissal Application would be addressed. It was decided by consent that due to deaths in the community and funerals that were due to be held at the Splatsin Community Centre, the hearing would be adjourned to August 10 and 11, 2023.
  14. The Parties would have an opportunity to make submissions on the Dismissal Application on the morning of the first day of the hearing – August 10.
  15. The hearing took place on August 10 and 11 and continued for a further day on August 25, 2023.
  16. All Parties provided documents intended to be evidence and law on an ongoing basis to the Board, including receiving new evidence from all Parties at the hearing on August 10<sup>th</sup> and from the Respondents the evening before the August 25, 2023 continuation of the hearing.

### **DISMISSAL APPLICATION**

17. As noted, the Respondents presented a preliminary argument for the dismissal of the Petitions on the basis that they did not meet the requirements under section 6 of the Code- specifically that a "majority of council" could not be obtained absent a decision in a duly constituted meeting of Council that meets the quorum requirement of the Code. A combination of resignations and suspensions meant that such a meeting was not possible at the time the Petitions were filed. The Petitioners defended their right to proceed as a "majority of Council".

18. The wording of section 6 is internally inconsistent, and the requirements are not obvious- with reference to quorum as well as majority and two, slightly different processes contemplated. (This is one area of the Code that warrants attention and possible amendment in the future.) The provisions relating to a petition by the majority of council may indeed be a difficult fit with the circumstances that Splatsin currently find themselves in, without quorum or the ability to call a meeting of council. Yet, members of council share with all electors of Splatsin the right and ability to bring a petition for removal as individuals.
19. During argument of the preliminary motion, the Board suggested a way both Petitions could proceed. It noted that the three Petitioners were prepared to go forward as three individual petitioners. The Respondents accepted this proposal, expressing a desire to have the substance of the Petitions heard and addressed. Given consent by all to proceed in this manner, the Board proceeded with the hearing, addressing the substance of the Petitions as though they were filed by the three as individuals, without a need to refile or amend the original Petitions.
20. Therefore, both Petitions have been heard on the assumption that they are presented by three individual members of the Splatsin. The Petitioners are of course councillors of Splatsin and the allegations they make are grounded in the happenings within government, but the filing of the Petitions itself is not to be understood as an act of governance.

#### **GROUNDINGS FOR REMOVAL UNDER THE CODE**

21. 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 Splatsin Custom Election Code, his Oath of Office or the Splatsin Code of Ethics;*
- b. Fails to attend three regular Council meetings or regular scheduled Community Assembly Meeting or Special Splatsin 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 Splatsin 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.*
22. The Splitsin 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.
23. The Code is considered the customary law of the Splitsin First Nation. The Board may also look at custom, evidence and law to interpret the grounds for removal, and standards of conduct.
24. Splitsin First Nation government is also regulated by the Splitsin Governance Policy (the “Governance Policy”). Attached as Appendix 3 to the Policy is the Splitsin Code of Conduct.

*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;*

*I will act honestly and in good faith with a view towards the best interest of Splitsin;*

*I will demonstrate high ethical standards in both my personal and professional dealings and therefore lead by example;*

*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;*

*I will excuse myself from conflicts of interests, even if they are only perceived. I will not use Splitsin property for my personal benefit;*

*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.*

25. 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.*

26. Part C is relevant to interpreting the grounds for removal while balancing with an approach that promotes growth and learning by their elected officials. The Governance Policy evinces underlying themes of opportunities for personal growth, development, kindness, understanding during times of development with expectations for reciprocation, and a model of forgiveness through progressive response to errors in judgment.
27. The Board is also 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 are to be strictly interpreted (See *Shirt v. Saddle Lake*, 2022 FC 321, para. 58; *Martselos v. Salt River Nation #195*, 2008 FC 8, para. 32).
28. The burden of proof is on the Petitioners 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, or the Governance Policy of a seriousness that establishes grounds for removal of the Respondents from the position as Chief or Councillor on a balance of probabilities.

## **PETITIONERS' CASE**

### **Petitioners' Allegations**

29. The Petitioner's position on the Chief Thomas Petition is as follows:
  - a. Chief Thomas unilaterally signed for two bank drafts on April 18, 2023. Those two bank drafts were made to:
    - i. MLT Aikins, in the amount of \$2,700.00;
    - ii. MNP LLP, in the amount of \$25,000.

(together, the "Forensic Audit Drafts").
  - b. The Forensic Audit Drafts were not properly withdrawn in that the withdrawal process and did not follow due process mandated by Splatsin Financial Procedures;

- c. Chief Thomas signed for two bank drafts on April 26, 2023, with his aunt, Councillor Thomas as a co-signor. The two bank drafts were made to Stevens and Company, in amounts of \$25,000 and \$36,501.75 (the “Stevens Law Drafts”).
  - d. The Stevens Law Drafts were not properly withdrawn in that the withdrawal process and did not follow due process mandated by the Splantsin Financial Procedures.
30. The Petitioners say that Chief Thomas breached his fiduciary duties to Splantsin and committed the following breaches:
- a. Governance Policy: Paras. 2, 4(e) and (g), 12, 13, 19, 20, 71(d), 135; Appendix 1, Paras. 2, 5; Appendix 3, Para. 1, 2, 3, 5, and 6
  - b. Code: Subsections 14(f), 19(a), (c), (e), (g), (h), (i), 53; Appendix 5, Paras. 2 and 3;
  - c. Financial Administration Law: Paras. 3(1)(d), 6, 7, 8, 9, 22, 35, 36, 40, 84,
    - i. Expenditure Policy: Para. 1;
    - ii. Procurement Policy: Paras. 3 and 5;
    - iii. Appointment of First Nations Policy;
  - d. Bylaw No. 8 Financial Administration Bylaw: Paras. 2, 5, 20, 21, 22, 43, 44, 50, 65, 66, 67, 83, 84, 92.
31. The Petitioners’ position on the Councillor Thomas Petition is as follows:
- a. Councillor Thomas received honorarium and gas cards in the collective amount of \$650.00 between April 21, 2022 and August 4, 2022, from attending Landmarks project meetings. The Petitioners say that honorarium and gas cards and things of the like received by an office member must be returned to the Band administration and there is a proper due process that is to be followed by office members to claim travel expenses, which Councillor Thomas did not follow;
  - b. Councillor Thomas was suspended on April 12, 2023 for serving a Federal Court Notice of Application naming “Splantsin” as a Respondent. The Petitioners say that Councillor Thomas was suspended under Subsection 14(j) of the Code which says “A Chief or Councillor position on the Council shall become vacant if, while in office, the Chief or Council initiates a lawsuit against Splantsin will be suspended with honorarium pay without benefits for the duration of the lawsuit considering potential conflicts of interest”;
  - c. Councillor Thomas was not permitted to co-sign the Stevens Law Drafts with Chief Thomas on April 26, 2023 because she was suspended, and because she has familial ties to Chief Thomas,

putting her in a position of conflict and thereby in breach of the Splatsin Financial Procedures which do not permit two family members to co-sign cheques.

32. The Petitioners say that Councillor Thomas breached her fiduciary duties to Splatsin and committed the following breaches:
- a. Governance Policy: Paras. 2, 4(e), 12, 13, 19(a), 20, 29, 34, 35, 36, 71(d), 135; Appendix 1, Paras. 2 and 5; Appendix 3, Paras. 1, 2 3, 5, 6;
  - b. Code: Subsections 14(f) and (j), 19(a), (c), (e), (g), (h), (k), 53, Appendix 4, Paras. (e) and (h); Appendix 5, Paras. 2 and 5;
  - c. Financial Administrative Law: Paras. 2, 3, 6, 7, 8, 9, 22, 35, 36, 40, 84, SFP-015;
    - i. Procurement Policy: Paras. 3 and 5;
  - d. Bylaw No. 8, Financial Administration Bylaw: Sections 2, 5, 19, 20, 22, 43, 44, 50, 65, 66, 67, 83, 84, 92.

### **Petitioners' Evidence**

33. The Petitioners brought forth the following witnesses at the hearing:
- a. The Petitioners gave oral testimony;
  - b. Gloria Morgan ("Ms. Morgan"), Elder and community member;
  - c. Edna Felix ("Ms. Felix"), Elder and community member;
  - d. George William ("Mr. William"), former councillor;
  - e. Elaine Dowling ("Ms. Dowling"), Splatsin Finance Director;
  - f. Norbert Frese ("Mr. Frese"), Chair, Splatsin finance and audit committee.
34. The Petitioners relied on the following documentary evidence:
- a. A Splatsin Policy Review report of June 2023, authored by Mr. Frese;
  - b. Emails and correspondences of July 2023 relating to mediation of disputed issues with Respondents' counsel;
  - c. Splatsin Procurement Policy approved by Council on April 4, 2017;
  - d. Splatsin Expenditure Policy approved by Council on April 4, 2017;



- e. Splatsin Bylaw No. 8 (Financial Administration Bylaw);
- f. Splatsin Financial Administration Law enacted 2017;
- g. Splatsin Appointment of First Nations Officers Policy approved by Council on November 24, 2015;
- h. Table of travel expenses of Chief and Council travel expenses since May 2022 to March 2023;
- i. RBC transaction history showing MLT Aikins, MNP, Stevens and Company bank drafts withdrawals in April 2023, along with corresponding signature verification forms and copies of drafts;
- j. Emails between Elaine Dowling and Chief Thomas of April 2023;
- k. March 28, 2023 letter from Splatsin re: NOTICE – Suspension from Council of Councillor Thomas;
- l. Emails of June 2022 re: authorization of personal credit card use for SA air conditions;
- m. Table showing honoraria received by Councillor Thomas on April 21, 2022, May 13, 2022, June 15, 2022, July 22, 2022, and August 4, 2022.

***Theresa William Testimony***

- 35. With respect to the allegation that Councillor Thomas contravened policy when she kept honorarium payments, Councillor William testified that the Band pays its own honorarium to Council members, so Council members cannot collect honorariums from other sources, otherwise it is considered to be double dipping.
- 36. Councillor William testified that following a Landmark meeting she attended, Ms. Morgan asked Councillor William to look into whether Councillor Thomas received and kept an honorarium from the Landmarks project meeting. Councillor William indicated that she privately asked Councillor Thomas outside of a duly convened meeting wherein Councillor Thomas acknowledged that she received honoraria and gas money for attending the Landmark meetings.
- 37. Regarding the bank draft allegations, Councillor William indicated that she learned that bank drafts had been withdrawn from the bank on April 28, 2023 by Chief Thomas in a conversation she had with Ms. Dowling, Cindy Monkman, a band administrator, Councillor Edwards and Councillor Vergata.
- 38. On April 28, 2023, Councillor William, Councillor Edwards, and Councillor Vergata attended at the bank and met with the general manager of the bank, it was there that they also found out that in addition to the Forensic Audit Drafts taken out by Chief Thomas, that Chief Thomas also withdrew the Stevens Law Drafts. She attested that the chief did not follow policy.

39. Councillor William was taken to a January 12, 2023 Splat-sin Band Member Resolution wherein the Electors of Splat-sin Band Members resolved to support the presentation by MNP Forensic Auditors, moving forward with a forensic audit and to have the Band fund the audit. She stated in evidence that in her view, the Resolution was approved by the Band membership.
40. Councillor William spoke to a community assembly which took place on January 26, 2023 at the Splat-sin Community Centre where the forensic audit was discussed amongst the community where there was a general sentiment that the audit was supported.
41. On cross-examination, she acknowledged that there was a motion approved to accept and approve MNP to do a forensic audit for the years 2019 – 2022 for the senior executive advisor position with a retainer in the amount of \$25,000 and the funds to come from the Forest Consultation and Revenue Sharing Agreements funding (moved by Councillor Edwards and seconded by Councillor Vergata with no opposition), at a Chief and Council meeting of February 15, 2023. She maintained that there were still questions and discussions to be had regarding the terms for the audit and related contract, and that the chief was aware of this.
42. Regarding the suspension of Councillor Thomas, Councillor William maintained that Councillor Thomas was suspended by the end of March 2023 and that she knew that.
43. On cross-examination, Councillor William was referred to a letter dated March 28, 2023 signed by Councillor Vergata, Councillor Edwards, and herself. This letter indicated:

*RE: NOTICE – Suspension from Council*

*Dear Beverly Thomas*

*We write to notify you that Chief and Council of Splat-sin is considering whether you should be suspended from Council given that you have filed an application for judicial review against Splat-sin.*

*...*

*Council's decision whether to suspend you will be made based on the provisions of the Custom Election Code and the Application. Please let us know whether you need a copy of the Code or the Application.*

*This letter also serves as notice that you will be permitted to make written representations and to submit supporting documentation to Council on whether you should be suspended. These representations must be submitted to Council by April 11, 2023. If you choose not to make representations within this time frame, Council will go ahead and make a decision without them.*

44. Councillor William acknowledged that this March 28 letter was provided to Councillor Thomas by hand, but the letter did not act as a suspension of Councillor Thomas.
45. Councillor William was then referred to a letter dated April 12, 2023 with no letterhead and no signatures. The letter states:

*RE: Suspension from Council*

*Splatsin Chief and Council has decided to suspend you from Council effective today given that you have filed an application for judicial review against Splatsin.*

...

*On March 28, 2023, we notified you that Council was considering your suspension based on the provisions of the Custom Election Code and the Application and gave you one week to make written representations. Council also notified you that a decision would be made without your written representations should you choose not to make them.*

*You have chosen not to make written representations. Council makes its decision to suspend you based on the provisions of the Custom Election Code, which mandate that you be suspended for filing the judicial review...*

46. Councillor William agreed this letter was not signed by any Council members but pointed to the March letter and an email from a Rob Louie.
47. The email from Rob Louie is dated March 23, 2023 and addressed to chiefandcouncil@splatsin.ca, Councillor Edwards, Councillor Vergata, executive\_secretary@splatsin.ca, and Councillor Bev Thomas. The email stated:

*Dear Chief and Council:*

*We have been contacted by Councillor Bev Thomas regarding your decision to suspend her from the Council. Councillor Thomas has provided us with the email chain of yesterday that shows your decision to suspend her. As this matter is serious, we ask that you advise your legal counsel.*

*After reviewing the email chain that led up to the suspension of Councillor Thomas, your decision lacked procedural fairness which is a legal right that is owed to Councillor Thomas. Simply put, procedural fairness is afforded to a person if their rights, interests or privilege are at stake. That means they are entitled to: (1) notice and (2) be provided an opportunity to be heard **before** a decision is made. In this case, you have violated both aspects of Councillor Thomas' right to procedural fairness.*

*Furthermore, Councillor Thomas is elected by the membership and answers to those that elected her – she is not the property of the Council.*

...

*We trust that you will immediately reverse your decision by the end of tomorrow (Friday) and advise Councillor Thomas that she has been returned to the Council. If not, we anticipate receiving instructions from Councillor Thomas to appoint a lawyer to commence legal action against you...*

48. Councillor William opined that based on the March 23 email from Rob Louie, Councillor Thomas should have known she was suspended, despite the lack of clarity on formalizing the suspension set out in the March 28 and April 12 letter.

### ***Sabrina Vergata Testimony***

49. Councillor Vergata testified regarding various alleged facts, but focused her testimony on the bank withdrawals.
50. In respect of the bank drafts, Councillor Vergata indicated that the matter of the withdrawals was brought to her attention on April 28, 2023 through a meeting in Council chambers with the interim administration team which included Ms. Monkman, as well as the financial director, Ms. Dowling.
51. Councillor Vergata stated that Ms. Dowling’s face was red and she appeared as if she was trying not to cry. Ms. Monkman expressed that Ms. Dowling had brought to her attention that there was some activity at the banks conducted by Chief Thomas and Councillor Thomas that Ms. Dowling was scared to bring forward.
52. Ms. Dowling told the three Councillors that Chief Thomas had asked for general bank account information. Ms. Dowling told the three Councillors that she knew proper process hadn’t been followed but when she asked pointed Chief Thomas he pointed to Section 27 of the Governance Policy.
53. Councillor Vergata described what she understood to be the proper process for getting payment on contracts. She explained that discussions on contracts are led by Council where proposals are brought to Council meetings for discussions, and then a motion is brought before Council may get passed or defeated. From her perspective, the contracts on the forensic audit didn’t follow the proper process in that no motion was passed. Councillor Vergata emphasized that she was never against the financial audit, but rather needed more questions answered on details and scope of the audit before a motion to approve the contracts could be passed.

54. Councillor Vergata then clarified that there was an approved motion to spend money to retain a forensic auditor and lawyer for the audit. However, there was no due process followed for the withdrawal of the funds for the retainer.
55. On April 28, when she was told that the Forensic Audit Drafts had been withdrawn, she attended at the bank and at the bank, found out that the Stevens Law Drafts had also been withdrawn. The Stevens Law Drafts had signatures of both Chief Thomas and Councillor Thomas. She testified that never has a chief gone to a bank to withdraw cash from Splatsin. She said that the Respondents' conduct breached all Splatsin laws and internal procedures for financial administration.
56. It was Councillor Vergata's understanding that Councillor Thomas was suspended as of April 12, 2023 due to a filing of a Federal Court Notice of Application. Councillor Vergata questioned how Councillor Thomas could have co-signed a bank draft to conduct business on behalf of Splatsin if she was suspended.
57. With respect to the honorarium, Councillor Vergata testified that councillors are paid by Splatsin; and, councillors should not expect or keep any gifts or monies through other entities. When office members travel, their expenses are reimbursed through an authorization process, which include filling out a travel form with information such as mileage travelled, hotel costs, etc. She maintained that any exception for "cultural" gifts was very limited- being items such as eagle feathers, which have great cultural value to Splatsin.
58. Councillor Vergata confirmed that Councillor Thomas indicated she would not pay back the honorarium and gas cards but would instead not claim a travel expense for attending the Landmarks project meeting.

### ***Len Edwards***

59. On the matter of the honoraria and gas cards, Councillor Edwards stated that the claim against Councillor Thomas was founded on principles of honesty and transparency that he believes Chief and Council must abide by.
60. On the remainder of the matters, Councillor Edwards gave minimal oral testimony, but generally tended to give opinions and submissions of the Petitioners' positions premised on a high-level argument of honesty and transparency required of office members.

### ***Gloria Morgan Testimony***

61. The Petitioners had provided an affidavit sworn on July 15, 2023 by Gloria Morgan. She also gave oral evidence at the hearing. Ms. Morgan's evidence is as follows.
62. Ms. Morgan is a Splatsin Band member and is 69 years old. Ms. Morgan indicated she was the Kukpi7 of Splatsin First Nation for two terms from 2001 to 2005.

63. In respect of the allegations against Councillor Thomas, Ms. Morgan testified that she went to a Monuments (aka Landmarks) meeting where Councillor Thomas said that she was present in her role as a Splatsin Band member only. The purpose of the Monuments meeting was to determine what monuments to erect for various landmarks in the territory.
64. Ms. Morgan expressed that she was confused as it was Ms. Morgan's understanding that when a member is elected to Council, it is their responsibility to always introduce themselves as a Councillor so that people recognize that person as a leader of the Splatsin Band. Ms. Morgan stated that she attended as a member and received a honorarium of \$150.00 and a gas card for attending the Monuments meeting.
65. She understands there is a policy, probably in a Splatsin finance policy, where Chief and Councillors who attend meetings can make a travel claim for mileage and other travel related expenditures. She understands that Chief and Councillors must seek authorization for the travel first, and if no authorization is sought, then there is no reimbursement for travel expenses. The policy is that gifts and money provided to Chief and Councillors at such meetings must be turned over to Splatsin administrator for depositing into Band funds. Ms. Morgan indicated that an honorarium is not a gift.
66. In respect of the allegations against Chief Thomas, she indicated that during her terms as Chief, she did not make any spending decisions unilaterally without proper consultation with the Council. She says that, as custom, the Chief has no authority to make decisions to spend money without consulting the Council. Such consultation would occur during duly convened meetings.
67. Ms. Morgan testified that in her experience Chief and Councillors do not have authority to spend more than \$10,000 without bringing it to the membership. In cross examination, she indicated that things may have changed since she was Chief, and that procedures would change to provide for more accountability because the Splatsin Band is dealing with more money now than it had in the past.
68. Ms. Morgan stated that where family members are on Council, they would not be able to sign cheques or make withdrawals from banks together, due to a perception of conflict of interest.

### ***Edna Felix Testimony***

69. Ms. Felix was a former Councillor and an elder. She testified that in her role as Councillor, she always treated herself as Councillor – in that the "Councillor hat" was never taken off.
70. She said that when honorariums are collected, they are paid back to the Band. When she attended meetings as Councillor, she would reject honorariums and tell the provider to pay the honorarium to the Band instead. Any cultural gifts provided to office members are handed to the executive secretary. When a Councillor travels as part of work, the Councillor pays out of pocket and then seeks reimbursement from the Band.

71. In her time as a Councillor, she does not know of a situation where a Councillor or Chief went to the bank to take out a monies on behalf of Splatsin without Council knowing.
72. In her view, when a Council member is suspended, that person does not have authority to conduct band business, including executing any financial decisions.

***George William Testimony***

73. George William swore an affidavit on July 14, 2023 and testified at the hearing.
74. Mr. William is a Band member who moved back to Splatsin in 1991. He was a Councillor for 26 years until he retired in 2022.
75. Mr. William said that, based on recollection, a Chief had never entered into any contract without knowledge and approval from Council. He had never entered a bank and received bank drafts in his name or made bank drafts to any company without authorization. He said that it is customary for a Chief to have approval of Council through a band council resolution.
76. He said that the proper process to pay an invoice for a contract by Chief and Council must have many checks and balances to ensure accountability:
  - a. Contracts must go through a financial committee first which is a team of people who is hired to ask questions of contracts and invoices for payments to ensure all documents are provided to back up authorizing the contract and payments;
  - b. If the contract is for a sizeable amount, it is put on a Chief and Council meeting agenda to be put into a motion for approval.
77. On cross-examination, Mr. William was asked what the proper procedure is for paying contracts for services rendered by legal counsel. Mr. William indicated that that if the legal contract would go to Chief and Counsel for approval to ensure that representation by a lawyer is what the community wanted. Contracts could also potentially go through a tender and bidding process.
78. In respect of travel expense reimbursements, Mr. William said that whenever Chief or Council need to travel as part of work, the approval was sought at council table so that there is accountability. Reimbursements for travel expenses must be raised by a motion.

***Elaine Dowling Testimony***

79. Ms. Dowling had sworn an affidavit on August 1, 2023 and testified at the hearing. She was permitted to have her affidavit before her during her oral testimony.
80. Ms. Dowling is the finance director of Splatsin and has been since December 2014. In her role, among other responsibilities, she reviews financial transactions made by and on behalf of Splatsin and

ensures that internal controls and processes are followed and maintained pursuant to the Financial Administration Law (some of those responsibilities are outlined in the “Governing Law” section of this decision).

81. She is very familiar with Splatsin’s financial protocols and guidelines including internal control guidelines and mitigation of risk with respect to withdrawing funds from Splatsin’s bank accounts.
82. Ms. Dowling gave evidence that on April 19, 2023, Chief Thomas entered her office and shut the door behind him. He indicated to her that he had concerns that a former advisor had received kickbacks from a modular home deal in Edmonton. As a result, Chief Thomas indicated that a forensic audit was to take place in relation to those concerns and had the authority to enter into contracts with MNP for the audit on behalf of Splatsin. Chief Thomas indicated to Ms. Dowling that he and Councillor Thomas went to the bank and withdrew bank drafts to pay the audit companies for the audit process.
83. Ms. Dowling responded to the Chief and indicated that she needed the proper paperwork for the drafts to follow proper procedure and internal controls. She also told the Chief that he should meet with the chair of the Audit and Finance Committee, Mr. Frese, to provide Mr. Frese with information related to the drafts. Ms. Dowling produced an email dated April 20, 2023 wherein Chief Thomas indicated that he would reach out to Mr. Frese. She testified that she believed Chief Thomas never ended up meeting with Mr. Frese. [In his testimony, the Chief confirmed that he did not meet with Mr. Frese.]
84. On April 21, 2023, Ms. Dowling received copies of the Forensic Audit Drafts from Chief Thomas but did not receive any invoices or contracts on which those drafts were based. Ms. Dowling says that Splatsin’s banking policies indicate cheques and other instruments must be signed by two authorized signatories, whereas the Forensic Audit Drafts were only signed by Chief Thomas. Ms. Dowling produced the “Cash Management and Banking Policy” which provides, at section 26: “The financial institution accounts will be created such that all non-deposit transactions (such as cheques, electronic transfers, etc.) require two signatures for approval according to the Delegated and Assigned Responsibilities Policy.” She also attached an excerpt from the Expenditure Policy, which, among other things, requires that “No money may be paid out of any account without a requisition for payment.” (s. 30). Section 32 sets out steps and paperwork required for payment of invoices to the Nation.
85. On April 26, 2023, Chief Thomas left Ms. Dowling a voicemail to ask for Splatsin’s general bank account information. She advised Chief Thomas of her concerns for giving out such sensitive information. Ms. Dowling stated that it was highly unusual to provide bank account information because once that information is provided to anyone, it is challenging to mitigate risks for financial issues and mistakes that can be made. She was concerned that Chief Thomas had asked her for such information.



86. Ms. Dowling provided an email she sent to Chief Thomas on April 26, 2023 at 4:36 pm. In it (in addition to asking whether the Chief had touched base with Mr. Frese yet and some details about the 2023/24 budget process), she wrote:

*Hi Doug, I just got your voicemail and since I was going to email you before end of day anyway, I thought everything could be done at once.*

*...can you please provide me with the policy you referred to that Chief has the authority to sign contracts on behalf of the Band. The auditors will need this for subsequent events.*

*...*

*May I ask what you want the general bank account number for? I have not been asked to provide bank account information at anytime to anyone internally as it has a big effect on effective internal controls which the auditors review every year as well...*

87. Ms. Dowling produced the email sent in response by the Chief at 10:50 pm on dated April 26, 2023:

*Hi Elaine,*

*Page 14 – Section 27 – Authorizing Expenditures*

*27. The Kukpi7 and the Band Manager may enter a contract for legal counsel, financial audits or professional consultants on behalf of the Splitsin.*

*Technically speaking, there is ambiguity in the wording...I read it as the two roles that can enter into contracts.....however, it can also be taken as the 2 roles together can enter into contracts. I had at least one lawyer state is in fact ambiguous.*

88. Ms. Dowling did not give bank account information to the Chief and was not aware how he got it. In cross-examination, she denied having received a call directly from a bank representative, though she had a voicemail from the Chief which she responded to with the email above.

89. At 8:55 in the morning of April 28, 2023, Chief Thomas emailed Ms. Dowling and referenced two payments to Stevens and Company. He wrote, simply:

*Ph XXX XXX XXXX*

*Stevens and Company*

*\$36501.75*

*\$25000.00*

90. Ms. Dowling responded by email at 9:05 that she was in a manager meeting that morning.
91. Later that day, Ms. Dowling learned that Chief Thomas had been suspended due to Petitions that had been filed against Chief Thomas for his removal from office. Ms. Dowling had also learned that Chief Thomas and Councillor Thomas co-signed for the Stevens Law Drafts for the sums referenced in his email of April 28. It was also Ms. Dowling's understanding that Councillor Thomas was on suspension, and she opined that a suspended office member should not be conducting Council business.
92. On April 28 in the afternoon, Ms. Dowling met with Councillor William, Edwards and Vergata, as well as administrator, Ms. Monkman. Ms. Dowling recommended that signing authorization for the bank be changed immediately. Ms. Dowling contacted Splatsin's representative at the bank and asked that the bank immediately remove Chief Thomas and Councillor Thomas as signing authorities for Splatsin's account.
93. Ms. Dowling indicated that the usual procedures followed by Council members in respect of Splatsin expenditures is as follows:
- a. For wire transfers, a signed letter and form is taken into the bank with two council members present to do the transaction. Signed documentation showing the bank the transaction has been approved by Council must be presented to the bank;
  - b. Council was responsible for approving documents, but those documents need not necessarily have been prepared pursuant to a duly convened meeting.
94. She said Splatsin do not normally use or take out bank drafts.
95. In terms of how contracts are normally paid, she indicated:
- a. Finance must have copies of all signed contracts made with Splatsin;
  - b. When an invoice for payment comes in, that invoice goes through "proper approval processes", which will in turn depend on which department the invoice is to go through,
  - c. The invoice typically is reviewed by finance who codes and signs it;
  - d. A requisition for payment or cheque will come to Ms. Dowling and checks that the coding is accurate and proper authorizations have been done, including making sure there is money in the budget to pay for the amount;
  - e. A band council resolution is not always required for payment of a contract invoice;
  - f. She interprets Section 27 of the Governance Policy as requiring the Chief and the band manager/administrator to always contract together on behalf of Splatsin.

96. On cross-examination, Ms. Dowling acknowledged that when Chief Thomas went into her office on April 19, that his actions were not aggressive and he did not speak to her in a loud voice or tone. She said she felt intimidated because she felt the Chief was a person of authority who went into her office and closed the door.
97. She confirmed that Splatsin First Nation is her employer, not Chief and Council. However, she says that she sees the Chief to be in a position of power to her. She reports to the Band administrator.

***Norbert Frese Testimony***

98. Mr. Frese was called to testify in his capacity as the chair of the Finance and Audit Committee for Splatsin. He was appointed by Chief and Council in October 2021.
99. He says he is not an employee of Splatsin, but rather an independent contractor paid by Splatsin. He does assist Chief and Council in performing their role in the oversight of financial affairs of Splatsin. He says there is a clearly outlined procedure in the Procurement Policy related Splatsin contracts of a certain amount and since October 2021, the procedures of in the Procurement Policy are to be followed.
100. Mr. Frese indicated that review and assessments of transactions are normally a part of his role.
101. The Petitioners sought to put into evidence a Policy Report prepared in part by Mr. Frese. The Policy Report, dated June 2023, reviews Splatsin's financial policies with respect to the approval and payment of invoices as relevant to the Forensic Audit Drafts and the Stevens Law Drafts. The Policy Report purported to determine whether policies and procedures were breached and made recommendations to improve the policies and procedures.
102. The Petitioners indicated that the Policy Report was an "expert report" and they were to rely on Mr. Frese as an "expert" for those purposes. However, the Board concluded at the hearing that the Respondents had no opportunity to review the Policy Report or retain their own expert prior to the hearing commencing on August 10. The Board ruled that Mr. Frese could testify as a lay witness as to his observations in his role as chair of the Finance and Audit Committee, including by way of his report, but would not accept "opinion" regarding purported breaches of policy or wrong-doing, proffered as an expert.
103. While the Board does not accept his report and any opinions therein as expert evidence, given Mr. Frese's role as chair of Splatsin's Finance and Audit Committee, he is able to and did identify relevant law and policy that apply to the bank withdrawals at issue. He included excerpts from policies that are mainly otherwise set out in the "Governing Law" section of this decision. Based on the information he had, the withdrawals did not comply with numerous of these policies. He did not, in preparing his report, interview the Chief or Councillor Thomas. The Board appreciates the assistance of pointing out some of the relevant policies that should be followed. However, the Board is able to draw its own conclusions with respect to non-compliance, based on all the evidence presented in these Petitions.

104. For ease, we include here a table included in Mr. Frese’s report that draws from the Expenditure and Procurement policies.

**Authorization and Delegation Table (Revised August 1, 2017)**

	Financial Administration Activity / Function	Who is Responsible	Authorization level	Authority Limit	Authority Standard
7	Expenditures	Council	Must authorize purchases (purchase orders, work orders) greater than \$100,000	No delegation	SFP#15 Expenditures Policy, Procedures 6. (1)
		Band Manager	Must authorize purchases (purchase orders, work orders) up to \$100,000. (Note: The Band Manager limit is \$50,000 during their probationary period and will increase to \$100,000 thereafter.)	No delegation	SFP#15 Expenditures Policy, Procedures 6. (1)
		Finance Director	Responsible for all purchases up to \$50,000.	No delegation	SFP#15 Expenditures Policy, Procedures 6. (1)
		Directors	Responsible for all purchases up to \$25,000.	No delegation	SFP#15 Expenditures Policy, Procedures 6. (1)
8	Professional Service Contracts	Band Manager	Must authorize contracts less than \$100,000. (Note: The Band Manager limit is \$50,000 during their probationary period and will increase to \$100,000 thereafter.)	No delegation	SPF#17 Procurement Policy, Appendix A- Purchasing Approval Limits
9	External Auditor	Council	Council to approve	No delegation	SFP#25 Audit Policy, Responsibilities 5. (1)(a)

105. Finally, with respect to Section 27 of Governance Policy, Mr. Frese describes as unclear but states that no matter how that section is interpreted, the policies within relating to financial transactions and processes do not override the 2017 Financial Administration Law and Procurement Policy.

**RESPONDENTS’ CASE**

**Respondents’ Position**

106. The Respondents have provided comprehensive written final submissions which set out their position, which will be briefly summarized herein:

- a. The Respondent focus heavily on the interpretation of Section 27 of the Governance Policy, but bring in considerable evidence on the customs and language of the Splantsin people to aid in their interpretation;
- b. Chief Thomas denies he committed fraud or misappropriation of funds by entering into the Forensic Audit contracts, and says he was fulfilling the community’s strong wishes to have the

audit conducted in a timely manner. Chief Thomas references the high bar as required in the Canadian Criminal Code definition of fraud and misappropriation, despite the fact that the Petitioners are not asking for a finding that the Chief's conduct is akin to fraud or misappropriation under the Criminal Code. Chief Thomas' position in any event is that he had authority to sign cheques on behalf of Splatsin, pointing to a band council resolution giving all elected members of government signing authority with Splatsin's bank. He also says all four drafts were payments made to third parties with whom he had lawfully entered into contracts;

- c. He submits that because he had no personal monetary benefit or interest in the payments made to third-party contractors, the claim of fiduciary duty being breached fails. He says that particularly so because the actions he took were on behalf of the people and at their will;
- d. Chief Thomas submits he had a right to retain legal representation to defend his title as Chief and in doing so, acted honestly and earnestly to ensure that he carried out his responsibilities that he committed to perform to the membership when he was elected;
- e. He submits that the payment of bank drafts to third parties is implied in his authority to enter into contract on behalf of Splatsin;
- f. He submits that his authority as Chief comes from the will of the majority of the Splatsin membership and he takes into account the customary, cultural and traditional laws which delegate a unique authority to the title of the Chief to make decisions on behalf of the Splatsin community;
- g. He submits that the Code has diminished the role of the Chief and introduced a role of the Councillors that is largely created through the *Indian Act* which does not represent the Splatsin customary governance that has existed since time immemorial;
- h. He relies on the law of contract to mean offer, acceptance and consideration and says consideration includes payment of contracts that he has entered into on behalf of Splatsin;
- i. In respect of Section 27 of the Governance Policy, Chief Thomas submits that customs, cultural and historical practices led in evidence shows that the Chief can have sole authority to enter into contracts for legal counsel and audits on behalf of the Splatsin people. Furthermore, his evidence gave examples of former Chiefs entering into contracts for Splatsin without consensus of Council members;
- j. Councillor Thomas submits that she stands by her acceptance of the honoraria and gas cards provided at the Landmarks meetings as she does not claim travel expenses through the usual channels that other Councillors use. Evidence was provided by the administration which shows that Councillor Thomas has claimed no travel reimbursement from the Band;

- k. Councillor Thomas submits she did not consider herself to be suspended on the dates when the Stevens Law Drafts were withdrawn. It is her position that the Petitioners as three Councillors had failed to follow due process when disciplining and suspending a member of office;
- l. Councillor Thomas takes a different view of what conflict of interest means when it comes to the scenario of two family members co-signing cheques or bank drafts. She does not believe that in signing the Stevens Law Drafts with Chief Thomas, she was in a conflict of interest. It is her position that there are glaring inconsistencies in the Splitsin Policies as to which family members are in a conflict of interest and say that the relationship between nephew and aunt is far removed from being immediate family members which would tend to attract a more obvious finding of conflict. She also submits that there is no interest as the bank draft was not being paid to a family member;
- m. The Respondents point to instances where the Petitioners’ evidence contradicted themselves, and call into question the Petitioners’ credibility.

**Respondents’ Evidence**

107. The Respondents brought forth the following witnesses:

- a. Each of Chief Thomas and Councillor Thomas gave oral testimony;
- b. Mike Christian (“Mr. Christian”), former Kukpi7 from 1999 to 2001;
- c. Shawn Tronson (“Mr. Tronson”), councillor from 2018 to 2022;
- d. Rosalind Williams (“Dr. Williams”), doctor of letters with honorary title, Elder with specialized knowledge of Secwepmc language;
- e. Julianne Alexander (“Ms. Alexander”), Stsmamlt Elder, knowledge keeper of the Land;
- f. Grahame Go (“Mr. Go”), former Band Manager from 1981 to 1995 and employee.

108. Chief Thomas relied on the following documentary evidence:

**RESPONDENT DOCUMENTS (Chief Thomas)**

Doc. #	Date:	Name:	Document Type:
1.	2015-11-24	Appointment of First Nations Officers Policy	Policy
2.	2013-10-25	Email from Chief W. Christian Re: RBC Mtg & G. Go	Email
3.	2016-04-25	Splitsin Job Posting – Interim Band Admin.	Job Posting

4.	2023-07-17	Splatsin's List of Contracts	List
5.	2020-06-17	Service Plus Computers Contract	Contract
6.	2020-12-04	Email from Chief W. Christian to S. Kulmatycki Re Contract	Email
7.	2021-04-28	Purchase of Homes from Total Modular Ltd. – signed by S. Kulmatycki	Contract
8.	2021-11-12	Email from S. Kulmatycki to W. Christian Re: Interim Emergency Finance Director	Email
9.	2022-02-22	Letter from S. Kulmatycki Re: Authority to Contract on behalf of Splatsin	Letter
10.	2022-04-08	Service Plus Computers Contract	Contract
11.	2022-08-17	Email from D. Thomas to N. Webb Re CAID Services Signature	Email
12.	2022-12-19	Email from J. Wiegele to T. William Re: Employment Agreement	Contract
13.	Undated	RBC Master Client Agreement	Agreement
14.	2022-01-10	RBC and Splatsin Master Agreement- Signature Cards	Signing Authorities
15.	2023-01-04	Email from L. Edwards to D. Thomas Re Disagrees with Audit	Email
16.	2023-01-05	Chief & Council Minutes Re Forensic Audit	Minutes
17.	2023-01-13	Band Member Resolution Re: Forensic Audit	BMR
18.	2023-01-17	Chief & Council Minutes Re Forensic Audit	Minutes
19.	2023-01-31	Chief & Council Minutes Re Forensic Audit	Minutes
20.	2023-02-15	Chief & Council Minutes Re Forensic Audit	Minutes
21.	2023-03-28	Letter to D. Thomas Re: Bi-Election & Quorum	Letter
22.	2023-04-12	Email from S. Vergata Re disabling email, FOB, and Phone	Email
23.	2023-04-13	Email from E. Dowling to D Thomas Re: Audit	Email

24.	2023-04-18	RBC Bank Drafts	Bank Drafts
25.	2023-04-26	Email from D. Thomas to E. Dowling Re: Excerpt Splatsin Governance Policy	Email
26.	2023-04-26	RBC Authorization	Receipts
27.	2023-04-28	Email from E. Dowling to D. Thomas Re: Contract Payment	Email
28.	2023-04-28	Saira Walters Re: RBC and Splatsin - Contact Form	Email
29.	2023-05-12	Email from RBC Legal Counsel Re: Signing Authority	Email
30.	2023-07-13	Letter from S&Co to Splatsin Council Re: Section 6 Petition and Document Request No. 1	Letter
31.	2023-07-17	Email from C. Monkman Re: Service Contracts and Lists of Contracts	Email
32.	2023-07-19	Letter from S&Co to Petitioners Re Document Production No. 2	Letter
33.	2023-07-20	Email and Letter from S&Co to Petitioners Re Mediation	Email and Letter
34.	2023-07-20	Email from C. Monkman Re: Splatsin Refusal to Produce Requested Documents	Email
35.	2023-07-20	Letter from S&Co to Petitioners Re Document Production No. 3	Letter
36.	2023-07-21	Letter from Petitioners to S&Co Re Decline of Mediation & Offer to Withdraw	Letter
37.	2023-08-03	Email from Complaints and Appeals Board Re Request for More Information	Email
38.	2023-01-23	Email from M. Nicholas to K. Barnes Re Community meeting about Forensic Audit on January 26 and Meeting Announcement	Email & Meeting Announcement
39.	2023-03-22	Email to Council Re Retainer to Council for Forensic Audit	Email
40.	2021-11-22	Email from Chief W. Christian to S. Kulmatycki Re Grahame Go Contract	Email
41.	2021-12-22	Splatsin All Candidates Forum	Website Post
42.	2021-12-22	Splatsin All Candidates Forum	Video
43.	2022-08-05	Email from Chief D. Thomas to N. Webb Re Forensic Audit	Email
44.	2023-01-04	Vernon News – Forensic Audit to Dig into Splatsin Finances	News Article
45.	2023-01-11	Email from L. Edwards to C&C Re Forensic Audit on duly	Email
46.	2023-03-07	Email from Chief D. Thomas to L. Majeau Gordon Re BCR for Forensic Audit	Email
47.	2023-05-18	Forensic Audit Update – Splatsin Website	Website Post
48.	2023-06-01	Forensic Audit Update – Splatsin Website	Website Post



109. Councillor Thomas relied on the following additional documentary evidence:

<b>Doc. #</b>	<b>Date:</b>	<b>Name:</b>	<b>Document Type:</b>
1.	2015-11-24	Appointment of First Nations Officers Policy	Policy
2.	2022-03-31	C&C Re Honorarium & Travel Allowance	Expense Chart
3.	2022-09-02	Email from T. William to L. Chisholm Re: Honorarium	Email
4.	2022-09-30	C&C Re Honorarium & Travel Allowance	Expense Chart
5.	2023-06-30	Letter from Adams Lake Indian Band to Leonard Edwards	Letter
6.	2023-07-06	Email from M. Nicholas to S. Witzky Re Secwepemc Landmark Phase 1	Email
7.	2023-07-17	Email from C. Monkman Re List of Travel Claims	Email
8.	2023-07-17	List of Travel Claims	List
9.	2022-April to August	Elder Honoraria	Expense Sheet
10.	2023-03-28	Chief and Council Meeting Minutes	Minutes
11.	2023-03-28	Letter From Council Re: Contemplated Suspension	Letter
12.	2023-04-12	Letter from Splatsin Council to B. Thomas Re Suspension (Not Signed)	Letter
13.	2023-04-18	RBC Bank Drafts	Bank Draft
14.	2023-04-26	RBC Authorization	Receipts
15.	Undated	RBC Master Client Agreement	Agreement
16.	2023-04-12	Email from R. Louie to R. Dean Re Mediation	Email
17.	2023-04-12	Email from R. Louie to R. Dean Re Judicial Review	Email
18.	2023-04-19	Email from R. Dean to R. Louie Re Talk about Judicial Review	Email
19.	2023-04-24	Email from R. Dean to R. Louie Re: Bev Thomas v. Splatsin	Email
20.	2023-04-25	Email from R. Dean to R. Louie Re Update	Email
21.	2023-05-13	Email from R. Louie to R. Dean Re: Draft of Notice of Discontinuance	Email
22.	2023-05-17	Email from R. Dean to R. Louie Re Hello	Email
23.	2023-06-07	Email from R. Louie to R. Dean Re Notice of Discontinuance	Email

24.	2023-06-07	Email from R. Louie to R. Dean Re Notice of Discontinuance CMC	Email
25.	2023-06-08	Email from M. Rehallu to R. Louie Re Letter	Email
26.	2023-06-08	Letter from Clark Wilson LLP to Federal Court Re: CMC	Letter
27.	2023-06-19	Notice of Discontinuance - File: T-527-23	Federal Notice
28.	2023-06-20	Affidavit of Service – File: T-527-23	Affidavit
29.	2021-05-20	Secwepemc Landmarks Project receives 296,000 in grant funding for Phase II	Information Page
30.	Undated	Beverly Thomas Travel Record	Excel
31.	2022-06-27	Letter from Callison & Hanna to Splatsin Re Retainer	Letter
32.	2023-08-09 to 2023-08-10	Emails T. Williams sent while suspended	Emails
33.	2022-07-05	Letter from Council to J. Trotti Re Retaining Lawyer	Letter
34.	Undated	Stevens Evans – Miller Thomson Bio	Bio
35.	2023-03-09	Notice of Application Re Bev Thomas	Notice of Application
36.	2023-03-10	Splatsin Election Dates	Website Post
37.	2023-04-18	Councillors’ Petition – No supporting Documents	Petition
38.	2023-08-04	T. William Suspended	Website Post
39.	2023-08-09 and 10	Emails T. Williams sent while suspended	Emails
40.	2022-11-03	Splatsin Community Petition to Call New Election	Community Petition

**Chief Thomas Testimony**

110. According to Chief Thomas, on the matter of the forensic audit, there was a band member resolution (distinct from a band council resolution) with direction for a forensic audit. The meeting minutes show there were at least four discussions on the topic of the audit, and it is possible there were more times that the audit was discussed by Council.
111. From his perspective, it was clear that there was a desire in the community for an audit to take place. He acknowledged that despite a unanimous motion having been made to

move ahead with the audit, a few Councillors had some questions about the process of the audit that remained unresolved.

112. As a result, MNP was retained to do a presentation and he believed that Splatsin reached an agreement with MNP for MNP to conduct the audit, but from his perspective, things were not moving along and the process to get the audit underway was stalled. Because of what he believed to be the unanimous motion by the community, he signed the MNP agreement and then attended at the bank to take out the Forensic Audit Drafts to pay the retainer to MNP and the related law firm. He said that the urgency to get the audit underway was community driven.
113. On the day he went to the bank to get the Forensic Audit Drafts (April 18), he had not been suspended.
114. In respect of his dealing with Ms. Dowling, he said that in his meeting with Ms. Dowling, she asked him only what authority he had to enter an audit. He testified that he had left a voicemail for Ms. Dowling regarding information for the bank account, and indicated he had some banking to do. He went to the bank and found out that there were several accounts so, according to his testimony, the bank called Ms. Dowling for further information but she did not get back to the bank. They decided to use the account with the most money. He was at the bank that day on April 18 with Councillor Thomas. She was a party to the discussions with the bank.
115. When pressed on his interpretation of Section 27 of the Governance Policy, he acknowledged that there was some ambiguity in the language as to whether both the Chief *and* the Band Manager or the Chief *or* the Band Manager can enter into contracts on behalf of Splatsin. (This is consistent with his wording in the email he sent to Ms. Dowling late on April 26<sup>th</sup>, described in the review of Ms. Dowling's evidence above).
116. In his mind, when he went to the bank to obtain the bank drafts, he was aware of the band member resolution for the forensic audit and knew that the community wanted to get the audit done and that discussions had been ongoing for four months. He said that the community's urgency became his duty to get the audit going. He said that he felt that Section 27 of the Governance Policy authorized him to obtain the bank drafts.
117. The Chief was brought to numerous past contracts- his evidence was that a few would go to council, others would not. He said most contracts are under the purview of band administration.
118. In respect of the issue on the purported suspension of Councillor Thomas, Chief Thomas indicated that he did not agree that Councillor Thomas should be suspended, but suggests that he understood that Councillor Thomas was suspended at some point. He

clarified and indicated that when Councillor Thomas went with him to the bank to withdraw the bank drafts, he did not believe Councillor Thomas to be formally suspended.

119. It was his understanding that there are conflict policies in place to ensure that family members don't co-sign cheques. He says that he interprets those policies to mean that a direct family member should not sign a cheque that is being paid to another family member.
120. He agrees that as a Chief, he has to follow Splatsin's financial policies. He says he has a good knowledge of financial policies because he sat on the Finance and Audit Committee.
121. In response to questions from the Board, the Chief stated that he had never gone to the bank to withdraw funds before the four Drafts at issue and he was not aware of any precedent for it, though he was not in the presence of the previous Chief much so he would not know going back, and he said he had conversations with past Chiefs that said they could contract on own.
122. In respect of entering into the contracts with Stevens and Company, he acknowledged that he did not seek consent from Council. He explained that the discussion was raised in a heated public meeting, where he felt that he was bullied by the community through lines of questioning that was trying to convince him to pay personally for his own legal bills. He acknowledged that he did not seek advice from the Finance Director or anyone relating to the Stevens and Company contracts, including whether it was a contract on behalf of Splatsin. He says he entered into the Stevens and Company contracts because he feels that legal action was being taken against him as Chief in an elected position and he has a right to legal defence as being for the benefit of Splatsin. He has not provided the Stevens and Company contracts to Splatsin or the Finance Director.

### ***Councillor Thomas Testimony***

123. In her testimony, Councillor Thomas indicated that she carpooled to the Landmarks meetings and then would provide some money to the driver for gas. She said does not drive due to health and eyesight issues.
124. She says the honoraria provided at those meetings is for the exchange of cultural information learned relating to Splatsin boundaries, stories behind landmarks, names and legends of the landmarks.

125. Councillor Thomas testified that she does not make travel claims through the usual process, despite having the right to do so. The documented evidence shows that she has not submitted travel claims to Splatsin for reimbursement.
126. She was not aware that the three Councillors had been investigating her without her knowledge, and subsequently found out that Gloria Morgan had asked the three Councillors to look into whether she kept the honorarium and gas cards.
127. With respect to her suspension, she said that she did not consider herself to be suspended when she attended the bank to withdraw the bank drafts with Chief Thomas. She says she has never personally benefited from the bank drafts.
128. She had talked to Rob Louie about the letters/notices of suspension, and Rob Louie advised Councillor Thomas she was not formally suspended.
129. In respect of the conflict of interest claim, it is her understanding that a conflict only exists if family members sign cheques for payment to go to a direct family member, as opposed to two family members co-signing cheques to go a third party.
130. For the forensic audit payments, she said she was aware that a motion regarding the retainer was tabled and not passed in March, but she maintained that the Chief has authority because of the will of the people and the issue was going around and around. She says the withdrawal of the Stevens Law Drafts was at the direction of the community. She recalls a band meeting that took place where the three Councillors discussed getting their legal fees paid by the Band and the community agreed. She took this to mean that the Chief can also get his own legal fees paid by the Band.

### ***Mike Christian Testimony***

131. Mr. Christian is a former Chief who provided evidence on his experience as Chief from 1999 to 2001.
132. He said that as Chief, he had exclusive authority over everything. When he was elected, he inherited whatever rights the Chief before him had.
133. He gave an example that when he was Chief, he signed contracts for natural resources without permission of Council. He also gave an example that he entered into a retainer with lawyers as Chief without permission of Council while Splatsin for litigation with the Ministry of Forests and pursuing Aboriginal rights and title.
134. He said that he would bring the contracts to the attention of Council, but the Council at the time would just say that entering into contracts was his responsibility as Chief. He confirmed that Council supported retaining the lawyers for Splatsin.

135. He indicated he contributed to the development of the Governance Policy and the Code.
136. When asked about his interpretation of Section 27 of the Governance Policy, Mr. Christian indicated that when there was no band administrator, the onus was on the Chief alone to enter into contracts on behalf of Splantsin. Mr. Christian had served a dual role as both administrator and Chief for part of his tenure. He said that the Chief has ultimate authority because he represents the membership.

***Shawn Tronson Testimony***

137. Mr. Tronson was a Council member from 2018 – 2021. At the time, Wayne Christian was the Chief.
138. He testified that the former Chief Christian entered into contracts without his knowledge. He believes that a Chief is the only person who can enter into a contract for a financial audit. With respect to the difference between a Chief and a band manager, the Chief signs on behalf of the community considering the best interests of the community; whereas a band manager is to sign a contract under supervision of Chief and council. Ultimately, however, it is the community and Elders who are the highest ranking officials in the community.
139. He is of the opinion that a Chief has authority to hire legal counsel to defend himself in his role as Chief and defend their office title, and thereby enter into legal contracts on behalf of Splantsin. However, an office member would not be able to hire legal counsel on behalf of Splantsin for personal lawsuits. On cross-examination, Mr. Tronson said that it follows that a Chief can go to a bank to withdraw a bank draft to pay for legal counsel that the Chief retains to defend his title as Chief as Chief Thomas did in this case. However, when asked whether entering into contracts and taking out bank drafts is the same thing, Mr. Tronson said 'no'. On re-direct, Mr. Tronson clarified that payment of a legal contract is the natural step to take once a contract is made.
140. On cross-examination, Mr. Tronson also indicated that Chief Thomas and Councillor Thomas, as nephew and aunt respectively, are in a conflict of interest and ought not to have went to the bank to co-sign for bank drafts together.

### ***Rosalind Williams Testimony***

141. Dr. Williams is a former chief and a current Elder of Splotsin. She was the first female Chief of Splotsin in the 70's and in British Columbia at the time. She became Chief at 24 years old.
142. She received a Doctor of Letters in 2018 as a result of her role in researching the Splotsin culture and language. She is a leader in documentation and conservation of the language. She created the Splotsin Teaching Society to ensure that the Secwepemc culture is taught to the young and passed on through generations.
143. She explained that that the Splotsin language came from Secwepemc ancestors. A study of the language could explain the role of the Splotsin government system and the role of Chief and Councillors, as well as the contributions of Splotsin families and their heads of households.
144. In respect of the role of the Chief, the meaning of the word Kukpi7 (Chief) must be considered. Kukpi7 can be seen to be derived from the word TqeltKukpi7 (Chief Above). While the Chief is in charge of what can be seen, the Chief Above governs the spiritual realm. The Chief has authority over the nation of people but the *Indian Act* created regulations to govern the people. Ultimately, it is the Chief's mandate and authority to do whatever he needs to do for the well-being of the band members.
145. According to her, the Chief's role is to carry out the wishes of the people/band members. If there were important matters to discuss leading to decisions that need to be made, the head of the families would get together to discuss the matter, and also discuss it with their families. The headmen would come together and share ideas and present the best option to the Chief. During these discussions, the Chief would stay with the people. After the headmen presented their idea, the Chief would ask the people for their input and only carry out what the people decided.
146. On cross-examination by the Petitioners, Dr. Williams indicated that if her band members wanted her to do something as Chief, she will carry out their wishes. For instance, if the majority of the people directed her as Chief to take out drafts from a bank, she indicated that she 'might' have done so.
147. Dr. Williams says that the role of a Councillor is to assist the Chief in carrying out a decision. The Councillor should always support the Chief. However, the Code changes the relationship between the Chief and Council. Councillors are not created by custom, but are instead created by the *Indian Act*. The Code is not a custom and is a just a reframing of the *Indian Act*. She considers the Code to diminish the role of the Chief.

148. Dr. Williams was critical of the process for removal of office members under the Code. She says the Code's overall objective diminishes the role of the Chief which she feels is dangerous for Splatsin. She says the Code is a document which flows from the *Indian Act*. The conflict that the current Chief and Council are dealing with has been caused in part from the procedures spelled out in the Code and the parties are attempting to follow a process on paper that doesn't work out for them in terms of how governance traditionally worked given the historical study of the language. She is critical of the disputes that have taken place.

### ***Julianne Alexander Testimony***

149. Ms. Alexander is a knowledge and guardian keeper of the land. She is 78 years old.
150. She teaches Secwepemc culture and history. She says that traditionally and customarily, the Chief was like a father and the community members were like his children. There were no Councillors back then. The Chief takes direction from the community. She says that the Chief is given authority to problem solve which includes paying bills.
151. Ms. Alexander was a Councillor in the early 80's. She says the Governance Policy is new, but questions whether the Governance Policy is valid or registered properly. She is critical of the dispute taking place, and says that the governance is "narcissistic and dysfunctional".

### ***Grahame Go Testimony***

152. Mr. Go was a former band manager for Splatsin. He dealt with various contracts for Splatsin and with the Splatsin Development Corporation and says he is familiar with the contract process between Splatsin and other companies. He says that while he was band manager for Splatsin (in the 80's and 90's), he had sole authority to enter into contracts on behalf of Splatsin without the band membership approval. He indicated that former Chiefs also did the same – that is, to enter into contracts unilaterally.
153. However, on cross-examination, Mr. Go indicated that the existing policies, such as the Governance Policy and the Financial Administrative Law were not in place while he was band manager.

### **GOVERNING LAW- SPLATSIN FINANCIAL POLICIES AND LAWS**

154. The main allegations in the Petitions relate to financial administration of Splatsin, including the authority, approvals and process for entering a contract, and, for withdrawing funds from Splatsin bank accounts to pay third parties. As such, it is worth noting a few of the relevant financial laws, including provisions of the Splatsin Financial Administration Law and related policies ("Splatsin Financial Procedures").



155. The main law that applies here is the Splitsin Financial Administration Law, approved by Chief and Council on March 2, 2017 and enacted pursuant to section 9 of the federal *First Nations Fiscal Management Act*, S.C. 2005, c. 9 Under the federal law, a First Nation is not obliged to enact such a law, but when it does the First Nation becomes obligated to enact measures that deal with several types of financial control and oversight. Among the matters that must be addressed are expenditure policies, budget management, procurement, and financial conflicts of interest.
156. The preamble to Splitsin’s Financial Administration Law states that the Council of Splitsin consider it in the best interest of Splitsin to make laws respecting the financial administration of the Nation. The Act (section 6) provides that the law prevails over any other Splitsin law, other than a code, that may be in conflict. Section 7 states that the Law applies to the financial administration of the First Nation.
157. Section 8 confirms the responsibility of the Council for all matters relating to the financial administration of the First Nation.
158. Section 9 enables the First Nation to establish policies and procedures and give directions relating to the financial administration of the First Nation. Sub-section 3 of this provision states: “The Council must not establish any policies or procedures or give any directions relating to the financial administration of the First Nation that are in conflict with this Law, the Act or GAAP.” The Act provides for the establishment of a finance and audit committee with financial planning and audit responsibilities, as well as a band administrator and a finance director.
159. Under section 18(1) of the Act, the administrator has a duty to “oversee and administer the contracts of the First Nation.”
160. Under section 19 of the Act, the finance director reports to the band administrator and is responsible for the day-to-day management of the systems of the financial administration of the Nation, including, but not limited to:
  - (a) to ensure the financial administration systems, policies, procedures, directions and internal controls are appropriately designed and operating effectively;
  - (g) to administer and supervise the preparation and maintenance of financial records and the financial administration reporting systems;
  - (h) to administer and supervise the maintenance of the records of all receipts and expenditures of the First Nation to facilitate the annual audit;

-(i) to actively monitor compliance with the Act, this Law, any other applicable First Nation law, applicable standards and any policies, procedures and directions of the Council respecting the financial administration of the First Nation;

(m) to develop and recommend procedures to Council for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed.

161. Under section 22 of the Law, a councillor must comply with the Law, other applicable First Nation law and applicable standards, act honestly, exercise care and diligence, and avoid conflicts of interest.
162. Section 34 restricts use of assets in a trust account to the terms of the trust and those in a local revenue account to the purposes permitted under the local revenue law.
163. Section 35 prohibits the paying out of money from an account unless the expenditure is authorized under an appropriation (in the budget- s. 38).
164. Further, pursuant to section 40(1), no money may be paid out of an account without a requisition for payment according to the requirements in section 40. These requirements include that the finance director or administrator can authorize payment out of or sign a requisition for payment out of a trust account or appropriation and the tax administrator must authorize payment out of a local revenue account.
165. Under section 44, any two members of Council may sign any purchase order, work order, cheque, agreement or other obligation to make an expenditure from First Nation funds, provided that those Councillors must immediately provide a copy of the signed document to the Band Administrator and that there has been consultation with the respective Program Director and that he/she has provided a recommendation in respect of the expenditure.
  - a. It is further provided in Bylaw No. 8, Section 83(b) which defines who related members in respect of conflict of interest where personal gains are had or perceived, that related members are “spouse, including a common law spouse, children, parent, brother, sister, father-in-law, mother-in-law, uncle, aunt, Grandparent, son-in-law, daughter-in-law, and also includes any relative permanently residing in the person’s household, and all companies or other legal entities that are owned by any such person.
166. The Law also includes many reporting, investigation, liability and audit requirements as well as restrictions on spending, borrowing, investment, etcetera.

167. Under section 59, Council is to establish policies or procedures or give directions to establish and implement an effective system of internal controls for the orderly conduct of the Nations' operations.
168. Council passed numerous policies in accordance with the Financial Administration Law.
169. The responsibilities and roles for the administrator and finance director established in the Financial Administration Law are further elaborated on in the Appointment of First Nations Officers Policy. Section 3 of that Policy states that the finance director reports to the administrator.
170. As set out in the table included in the summary of Mr. Frese' s evidence, the Financial Policy includes possible delegation of responsibilities. According to an "Authorization and Delegation Table" from August 2017, under "7- Expenditures", directors are responsible to authorize purchases up to \$25,000 and the finance director is responsible for authorizing expenditures up to \$50,000 (citing the Expenditure Policy). These powers cannot be delegated. Under "8- Professional Service Contracts", the band manager must authorize contracts less than \$100,000 (citing the Procurement Policy). This too cannot be delegated. Under 9, Council is to approve an external auditor (under the Audit Policy).
171. The Splatsin Expenditure Policy approved on April 4, 2017 has several relevant provisions, including:
- Section 30 prohibits any money to be paid out of a Splatsin account without a requisition;
  - Section 31 requires an additional authorization by the Tax Administrator for any payment out of a local revenue account;
  - Section 32 sets out how an invoice must be processed for payment, including the submission of a requisition, and then for the processing person to ensure that there is supporting documentation, accuracy, correct tax calculation, confirmation of available funds, and identify and note the authorized general ledger account coding.
  - Section 34 requires that the person who approves the expenditure is a different person from that who signs the cheque.
  - -Section 40-44 sets out the documentation and procedure, including two authorized signatories, required for making payments.
172. The Splatsin Cash Management and Banking Policy section 19 prohibits the same individual to enter an invoice, select an invoice for payment and sign a cheque for payment. At least two individuals must be involved. Section 26 requires that banking accounts will require at least two signatures.

173. The Splitsin Procurement Policy, approved Nov. 15, 2017, establishes processes and documentation for and responsibilities for procurement of services. As otherwise noted, a director has responsibility for purchases up to \$25,000 and the finance director has responsibility for purchases up to \$50,000. While Council are to oversee effective procurement, they do not engage in the procurement itself under the policy.
174. Under the Financial Code of Conduct, each Councillor, employee and contractor must swear, among other things, that they understand and will comply with the laws, responsibilities and conflict of interest provisions.
175. Splitsin also continues to have a Bylaw No. 8- Financial Administration Bylaw. This bylaw was enacted pursuant to section 83 of the *Indian Act* in September, 2011. In other words, it precedes the Financial Administration Act. If the Bylaw is in conflict with the Act, then the Act and related procedure prevails. The bylaw recognizes similar principles of accountability and transparency, but is less elaborate and some of the descriptions of powers and requirements therein are different than the more recent ones under the Act and policies. To a large extent, this Bylaw has been overtaken by the Act and policies, and/or powers and responsibilities that are not in conflict with the Act are also subject to the additional requirements in the 2017 Act and policies. The Bylaw includes a requirement for community approval of expenditures above \$10,000. Section 44 provides for two councillors to approve an expenditure so long as a copy of the signed document is immediately provided to the band administrator and there is consultation with the program director. Section 65 prohibits payment on behalf of the Nation without a resolution or delegated authority under the bylaw. Under section 66, the administrator is required to ensure an invoice is rendered for any good or service. Under section 67, Council may by resolution approve a contract on behalf of Splitsin provided that specific conditions are met.
176. In addition, the Governance Policy is relevant. The policy requires chief and council to ensure financial management and accountability of the Nation. A key provision put in issue by the Respondents, is section 27 of the Governance Policy, which states:

*The Kukpi7 and the Band manager may enter a contract for legal counsel, financial audits or professional consultants on behalf of the Splitsin.*

## **DETERMINATION ON SUBSTANTIVE ALLEGATIONS**

### **Chief Thomas and Bank Drafts**

177. The Petitioners allege that Chief Thomas (and Councillor Thomas) breached their duties to Splitsin and contravened law and policy when they attended a bank and withdrew funds from a Splitsin account via bank drafts payable to third parties.

178. As set out above and summarized here, Chief Thomas submits that his actions with respect to the bank drafts are not a breach of his duties or contrary to any Splatsin law. He submits that:
- a. Section 27 of the Governance Policy provides a full answer – he submits that the section, when interpreted according to the law of contracts and Splatsin custom, allows the chief to authorize, sign, administer, and withdraw Splatsin funds to pay out the contracts covered by the provision.
  - b. The “and” used in the provision must be interpreted as an “or” in a fashion which supports some level of unilateral authority for both the Chief and the Band Manager.
  - c. Past practice involving Chiefs and and Band Managers supports this interpretation.
  - d. Past practice has coalesced into a Splatsin custom which assists interpretation of the provision.
179. With respect to section 27, the Petitioners:
- a. Maintain a conjunctive interpretation of Section 27 which provides a role for both the Chief and the Band Manager and that does not allow for unilateral action by the Chief without the knowledge of council.
  - b. Deny that practice of past Chiefs or Band Managers supports Chief Thomas’s interpretation.
  - c. Deny the existence of any Splatsin custom that supports the Chief’s conduct.
  - d. Deny that Section 27 authorizes the chief to withdraw funds from a Splatsin band account.
  - e. Rely on other Splatsin financial administration law and policy that must be followed for the withdrawal of funds.
  - f. Argue that the actions of the Chief- going to the bank and withdrawing funds by bank drafts- is without precedent and its implications are very significant for Splatsin governance.

***Summary of Board Determination with respect to Bank Drafts***

180. In summary, as is elaborated below, the Board has concluded that Chief Thomas’s arguments must be rejected. First, Section 27 itself does not provide a sufficient

foundation for determining the issue that divides the parties. While the Board prefers the interpretation that some joint role of both the Chief and the Band Manager is required, the provision itself provides no guidance as to the contours of that joint role (or the potential scope of any, at best limited, unilateral authority). What is clear though, is that other Splantsin law and policy apply. It is the Financial Administration Law of 2017 and the various instruments that have been adopted pursuant to that law which flesh out the authorizations and procedures that are required to expend Splantsin funds. At all times, Splantsin financial law and policy must be followed. Secondly, while the Board heard evidence on past practice, the evidence simply does not support the interpretation of section 27 offered by Chief Thomas, providing a unilateral power to the chief to enter into a contract and then make payment on it from Splantsin, in light of existing laws and policy. Moreover, it is inimical to good governance and the general principles adopted in the Splantsin electoral and governance regime to support the broad unilateral power advocated for by the Chief. Again, even if the chief could enter a contract without the band administrator, that does not authorize going to the bank and withdrawing bank drafts without the knowledge of, authorization or oversight of the finance director or other administrators of funds and band procedure, law and policy. Finally, even if the chief could enter a contract for legal services, it must be on behalf of the Splantsin, which is questionable here and not a question that the chief asked of his council or administration.

### **Facts**

181. On the basis of the evidence, there are several findings of fact that can be stated to give context to the determination of this allegation.
182. Splantsin membership had indicated support for a financial audit directed at investigating a specific person. Council discussed this proposal on several occasions. A motion for a BCR was passed at a February 15, 2023 meeting to approve MNP LLP Forensic Audit Services to do a forensic audit with a retainer of \$25,000 to come from the Forest Consultation and Revenue Sharing Agreement funding. On March 23<sup>rd</sup>, Chief Thomas emails to “Chief and Council” and the Executive Secretary with a retainer letter from MNP LLP with a place for a signature of the Chief on behalf of Splantsin. In his email to Council, the Chief stated  

*“If we can review the retainer and sign the bcr on Tuesday, we can get on with the audit. Advise at your convenience any issues you foresee.”*
183. At the March 28, 2023 meeting, a motion to approve the forensic audit was tabled “due to no retainer and quote being provided.”

184. Chief Thomas and Councillor Thomas went to the Royal Bank on April 18, 2023 to withdraw funds from a Splatsin bank account by way of bank drafts. On this occasion, Chief Thomas alone authorized the withdrawal of funds. Councillor Thomas did not sign. The bank drafts were for \$25,000.00 payable to MNP LLP and \$2,700.00 payable to MLT Aikins.
185. Chief Thomas and Councillor Thomas went again to the Royal Bank on April 26, 2023 to withdraw funds from a Splatsin bank account by way of two further bank drafts. On this occasion, both Chief Thomas and Councillor Thomas authorized the withdrawal of funds with their respective signatures. The bank drafts were in the amounts of \$25,000.00 and \$36,501.75, both payable to the law firm Stevens and Company.
186. Councillor Thomas went with Chief Thomas at his request.
187. Chief Thomas did not seek authorization from elected council, the finance director or the band administration to withdraw funds via bank drafts prior to doing so. He did not provide signed contracts or any paperwork or proof of debts owing to the finance director or band administration before going to the bank and he did not have a requisition.
188. At the bank, the Chief called finance director Ms. Dowling to ask for bank account information. He was not able to get in touch with her but left a voicemail asking for the information. Apparently on discussion with the bank representative or teller, the Splatsin account with the most amount of funds was chosen to withdraw the funds via the bank drafts.
189. The Chief gave finance director Ms. Dowling after-the-fact notice of the first two bank drafts – on April 19 or later.
190. When the Finance Director asked in an email sent on April 26<sup>th</sup> what policy the chief was relying on that gave him the power to contract, he emailed her back later that evening citing section 27-, noting it was “ambiguous” but relying on it.
191. Two days after the second visit to the bank, Chief Thomas sent an email to the finance director that stated a phone number, Stevens and Company and the two numbers \$36,501.75 and \$25,000.00.
192. The finance director did not become aware of the bank drafts to Stevens & Company until later on April 28<sup>th</sup> when she had contacted the bank, concerned with banking irregularities. After learning of the Chief’s suspension, Ms. Dowling also met with Councillors Vergata, William and Edwards, and the band administrator that day to inform them of potential irregularities.

193. The bank was advised of possible impropriety and followed up with at least Stevens and Co.
194. Stevens and Co. has not deposited the two bank drafts in their possession.

### ***Contracts***

195. There are two “contracts” at issue, insofar as the Chief was purporting to pay debts owed on contracts when he authorized the withdrawal of funds via the bank drafts. “Contract” is in quotes because no signed contract was ever provided by the Chief to the finance department, council or band administration. In his testimony, the chief said the audit contract was on his desk, which he had not been able to access since suspended on April 28<sup>th</sup>. But even if true, what is relevant is that a signed contract was not provided to the persons charged with administering contractual obligations, band finances and expenditures under Splitsin law. Thus in these reasons, where “contract” is used, it is understood to refer to agreements that are assumed to exist.
196. One of the contracts relates to a financial audit. In that regard, as set out above, there is in evidence an unsigned retainer letter emailed by the Chief to council setting out terms for a financial audit. It is this that is assumed to be signed and the contract.
197. The second contract is a retainer agreement between the Chief and Stevens and Co. There is no documentary evidence before the Board regarding the terms of the retainer, though Ms. Trotti confirmed that the chief was her client, not Splitsin. Ms. Trotti has represented the chief since he was under an internal investigation by Splitsin and is his counsel in the present petitions, as with previous petitions. Beyond that, the nature of the retainer was not revealed and is subject to solicitor-client privilege. In the Respondent’s final written submissions, the retainer relationship is described as “defend[ing] the authority” he held as Kukpi7 or Chief.
198. More specifics of each of these contracts are addressed in the analysis section below.

### ***Section 27***

199. Section 27 of the Governance Policy has been addressed in two previous decisions of the Board. In the Section 6 decision dated May 26, 2023, the Board limited its analysis to a confirmation of an independent right of any person to obtain legal services. That decision entirely leaves open the question of whether a chief or councillor can contract a lawyer and then make a unilateral decision to charge the incurred legal fees to Splitsin without a BCR, knowledge of or approval by the finance director or the provision of paperwork, or, to withdraw funds to pay incurred fees again without the knowledge or approval of anyone else. In the Section 16 decision dated June 19, 2023, the Board again



addressed the interpretation of Section 27. Boiled to its essentials, the Petitioners in the Section 16 petition alleged that the word “and “ that is used in the provision should be interpreted in a conjunctive fashion. Under this interpretation, both the Chief and the Band Manager would have to be involved in the authorization and signature of the three classes of contracts mentioned in the provision. The Respondent argued that the word “and” should be given a disjunctive reading. Under this interpretation, either the Chief or Band Manager would be empowered to sign contracts covered by the provision. The Board expressed a preference for the interpretation presented by the Petitioners, but it noted that the Respondent backed up the interpretation of the provision with an argument based on band custom. It presented some evidence that past Chiefs and Band Managers entered contracts under this provision in a unilateral fashion. As there was no sworn testimony to rebut this evidence of a Splantsin custom, the Board decided that there was insufficient evidence to accept the argument of the Petitioners with respect to unilaterally entering the audit and legal contracts. The conclusion was a reflection of the scant evidence before the Board, in light of the high burden that must be met to remove an elected official from office, and was not a final determination on the interpretation of section 27.

200. A wider range of evidence was presented in this hearing, but it still is insufficient to rule definitively on the scope of the ability of the chief to enter contracts on behalf of Splantsin under section 27 while following other applicable Splantsin laws and policy. The preponderance of evidence calls into question the ability of the chief to do so, at least after the Financial Administration Law was enacted in 2017, but even assuming that some power does exist, it is constrained, including by financial policies in place. As will be apparent below, whether or not in some circumstances, for some amount, the chief can do so and still act in accordance with Splantsin laws and policy is not relevant to the outcome of the present Petitions. The chief clearly could not do what he did in this case, which contravened numerous Splantsin Financial Procedures.

### ***Analysis***

201. The Board has determined that the Respondents case fails. Section 27 must be interpreted in the context of the full background of the financial governance instruments of the Splantsin. Evidence of past practice does not support the argument presented by the Respondents. The attempt to equate the alleged historical governance with the current Code cannot be accepted. The Code was in fact recognized by the Respondent’s main historical witness as a significant change and diminishment to traditional authority. In today’s Splantsin context, there is little role for unilateralism in the administration of Splantsin business. Governmental decision-making and administrative procedures must be followed.

### Splatsin Customary Law and Governance

202. The Respondents rely heavily on a traditional power of the chief to act without council, unilaterally, and for his people. The Respondents say this power is overriding, including in the present circumstances.
203. The Board heard some evidence regarding Splatsin custom. The different witnesses spoke to practice in their lifetime, and, one witness for the Respondents, Dr. Rosalind Williams testified about her understanding of Splatsin traditions going back much further in time.
204. The Splatsin, as part of a broader Secwepemc Nation, governed themselves under their own laws for millenia prior to the imposition of the *Indian Act*. Canadian law has been slow to recognize the ongoing importance of Indigenous law, though there have been strides and commitments in that direction in recent decades.
205. Custom election codes such as that enacted by the Splatsin in 2017 are considered reflective of Indigenous customary law and do not draw their authority from the Canadian state. Where there is a custom code, the Indian Act provisions regarding elections do not apply. Testimony about the historical development of governance models among the Splatsin provides relevant context.
206. As set out above, the most extensive historical evidence was tendered by Dr. Rosalind Williams. Dr. Williams opined that the governance structure of the Splatsin is embedded within the very structure of the Secwepemc language. Dr. Williams testified that three key words are particularly important for understanding the Splatsin model of governance: stik-lep, kel-Kukpi7 and Kukpi7. They translate roughly to roots, the Creator and the Chief. Language as passed through successive generations provides a guidepost to the people about how they can best manage their interactions. Language provides the foundations of the governance system. Kukpi7 exercises a form of authority inspired by the Creator but applied to the physical needs of day-to-day life. Prior to the imposition of the Indian Act, Kukpi7 exercised very broad authority. The people were the children of the chief, who acted as a father. Major decisions would be made by the community, who would provide directives to the Kukpi7. Headmen would play a role in the governance structure but there was no traditional counterpart to the modern conception of “councillor”. Dr. Williams expressed the view that the transition from this system to the Indian Act (especially with the system of elections every two years) caused a great deal of dislocation to the Splatsin. Indeed, the current regime of elections under a customary code is seen as a “modified Indian Act regulation”. Dr. Williams regards Councillors as playing a very different role from the Chief. They are, in her view, best regarded as assistants to the Chief. Dr. Williams considers the Code to be (in her view unfortunate) departure from Splatsin custom as she understands it. She

considers the Code to have diminished the role of the Chief, and, to have elevated the role of Council.

207. Ms. Alexander opined that Kukpi7 retains broad discretionary powers which must be exercised in accordance with the wishes of the community. These powers include authority to deal with problem-solving, such as paying cheques. She rejected the idea that modern day councillors played a role like that played by family heads in the past. Shawn Tronson, a former councillor, testified that the role of the Chief was to represent the community and the band administrators were to deal with council. The highest level of authority in the Splantsin governance system are the elders.
208. Mike Christian testified as a past Kukpi7. He was elected as Chief in 1999-2001. He portrayed a strong role for the Kukpi7, who he said did not ask for permission to act. He held exclusive authority over everything and ultimate authority over important matters for decision. He described how, when he was Kukpi7, he would enter contracts. He recalled retaining lawyers to represent Splantsin on a rights and title legal action, though he said that the council supported him doing so. Though a provision like Section 27 did not exist when he was Kukpi7 over two decades ago, he sees it as reflecting the model of Kukpi7 authority that he understood.
209. This testimony was led by the Respondents to draw a parallel between the traditional governance of the Splantsin and the broad interpretation of Section 27 presented by the Respondents.
210. On the other hand, the Petitioners' witnesses cast a different portrayal of Splantsin practice, in their lifetime and experience.
211. Councillor Vergata expressed that Dr. Williams' portrayal of historical practice was new to her.
212. Gloria Morgan, who was chief about as long ago as Mr. Christian, recalled the chief acting with council and without a power to make bank withdrawals. George William, who was on council for over twenty years, including when Mr. Christian was chief, did not recognize a unilateral role for the chief to act without council.
213. The totality of the evidence suggests that traditional Splantsin governance was headed by a strong chief, who was appointed, not elected; and who consulted with hereditary headmen. That system has changed significantly over time, for a long time; and, in lived experience of the witnesses, there is no consensus on the role of the chief or council.

214. Since 2016, the community has taken numerous steps to formalize their own customs and laws as presently agreed-on- in the Code, an amended Governance Policy, the Financial Administration Act, and the various policies and bylaws.

*Review of evidence on past contracting practice*

215. Another strand in the argument presented by Chief Thomas is that, in addition to his preferred interpretation of the wording of Section 27, his broad interpretation was supported by evidence of past practice of contracting by previous Chiefs and band administrators. The evidence presented to support it was piecemeal and often inconsistent. In a preparation meeting with both parties, the Board asked that the parties submit a more systematic overview of contracting practices over the last five years. This, ideally, should include information on who signed contracts, whether they were supported by discussions at the Council table, including relevant Band Council Resolutions, and whether there was a pattern of consultation before entering contracts. The evidence that was presented to the Board fell short of this.
216. Though there was evidence of some small contracts that previous chiefs or administrators had signed, evidence of specific instances a Chief signing a significant contract in a truly unilateral fashion, without knowledge or authorization by council or band administration, was lacking, with the possible exception of the evidence of Mike Christian, which applied to a period decades earlier and was general. Much of the evidence, often indirect and based on hearsay, predates the adoption of the 2017 Financial Administration Law. Key witnesses, including Chief Thomas, on several occasions said that they simply did not recall or did not know whether key contracts were brought to the attention of Council or the administration. For example, Grahame Go testified as to contracts he negotiated with a previous chief but testified that he had no knowledge of the internal process that was followed to authorize these contracts. The Board heard testimony that new contracts must go to council but that renewals might not need fresh approval. The Respondents point to different examples of legal contracts, but the evidence around them is scant. Former chief Christian spoke of support by council for the retainer for legal services on behalf of Splatsin rights and title. At least one of the more recent legal retainers is authorized by a BCR from council, and, the circumstances of the others are not fully known and in any event not analogous enough to match or overcome the facts of this case. Significantly, there was absolutely no evidence of a Chief signing a contract and then unilaterally administering all aspects of that contract and/or going to the bank to withdraw funds by bank drafts.
217. The Board rejects the argument of the Respondents that the Chief's contracting is consistent with past practice for contracts, including those for legal services. Indeed,

there was no evidence of any other example of legal contracting for a member of council's own lawyer without any knowledge of other council or the administration that resulted in the signatory going to the bank to unilaterally withdraw money from a Splatsin bank account.

Current financial administration and governance structure

218. The Board was presented with the Financial Administration Law and several policies and procedures but no party placed these policies and procedures into a coherent narrative. What is clear is that the laws and policies are interlocking and establish rules and procedures for committing and expending Splatsin funds. No one person, including the chief, is tasked with or authorized to commit and withdraw funds unilaterally, without an approved contract, a requisition, knowledge of the finance director, and other procedures.
219. Ms. Dowling, who has been the finance director for almost a decade and is responsible for the day-to-day financial administration of the Nation as well as other responsibilities, highlighted various policies that apply to the expenditure of funds. The evidence of Mr. Norbert Frese was also helpful in understanding how the various financial laws of the Splatsin fit together.
220. As set out at paras. 93-95 above (Ms. Dowling's requirements under summary of her evidence above) and para. 161 in the Governing Laws section above, there are numerous provisions that apply before a payment can be made from a Splatsin bank account. Leaving aside whether the chief can enter a contract unilaterally, among other requirements, a contract must be provided to the finance department, as must an invoice for payment which will go through proper approval processes, a requisition for payment is required, and documentation is reviewed by the finance director to ensure the amount is authorized and there are funds in the budget and account. The finance director is tasked under the Financial Administration Act with administering the maintenance of records, ensuring financial administration systems are operating efficiently, mitigating risk, and, monitoring compliance with the Act. Sections 22, 34, 35, 40(1), 41 of the Law are relevant. So too are sections 30-34 and 40-44 of the Expenditure Policy, which set out specifics on how an invoice is approved and payment made. The Policy includes checks and balances and separation of roles so that no one person can authorize a payment. The Procurement Policy identifies who is empowered to make purchases up to certain amounts.

221. Each of these provisions were not followed by the Chief when he withdrew Splatsin funds via the four bank drafts.
222. Of additional note, given the significance placed on section 27 of the Governance Policy by the Respondents, Ms. Dowling was unaware of any policy that would allow the chief to enter a contract unilaterally. In her brief email exchanges with the chief in April, she requested from the chief that he identify the policy he purported to rely on.
223. The chief's response to Ms. Dowling's email is also significant. In pointing to section 27 of the Governance Policy, acknowledged that the section is ambiguous. Though the Respondents take the position in final submissions that band custom, and section 27, clearly provide the chief with unilateral power to enter contracts, that appears to be a relatively newly developed clarity.
224. The enactment of the Financial Administration Law, as well as the specific policies that were adopted by the Splatsin in the month following its enactment, preclude an argument that Section 27 of the Governance Policy exempts the Chief from normal financial reporting and accounting practices.

#### Application

225. The evidence does not in its totality support a unilateral power of the Chief to enter contracts as he did here. The most that can be said is that it may be that in some circumstances the chief is authorized to enter a contract on behalf of Splatsin, but he must do so always in accordance with Splatsin law and policy. There may have been some occasions when a contract was not authorized by council by a BCR, but there was no other instance provided where a contract was entered into against the will of council and without the administrator's knowledge and approval. Splatsin is a government, which is required to act by the consent of the majority of council, and, in accordance with its own and federal laws.
226. For the audit contract, there was evidence of strong band member support for the process and there was discussion at the Council table. There was an approved motion in February 15, 2023, but when brought back to the council table for further steps and BCR on March 28, 2023, the motion was tabled. The various witnesses- the Petitioners and the Respondents- each suggested that the state of council approvals for contracts was unfinished the chief said that the issue kept going around and around, which, he said, is why he decided to act unilaterally to go to the bank to withdraw funds.
227. In any event, there is at least some basis on the evidence that the Chief was authorized to pursue contracts on the terms set out in the February motion. However, the Board need not parse through all the history of the audit contracts. Even assuming sufficient

authority for the chief to sign contracts for the audit, there is nothing in that history that provides an authorization to either Chief Thomas or Councillor Thomas to withdraw funds unilaterally from a band bank account. The Chief was motivated to exercise leadership in light of the views he was hearing from the community, but that does not provide a licence to exempt himself from the financial controls and accountability measures set out in the Financial Administration Law and associated policies.

228. With respect to the retainer contract with Stevens and Co, there is no evidence of serious engagement at the Council table about the legal contracts. Julianne Alexander first suggested in her testimony that authorization had been obtained by the Chief from Splatsin Elders. But this assertion did not withstand scrutiny from the Board. She recalled discussion about the audit contracts with the elders but simply presumed that the legal contracts pertained to the audit- i.e. they were one in the same. In fact, they were not.
229. It is uncontradicted that the contracts for legal services with Stevens and Co. were not taken into account in the budgetary process, were not preceded by the type of council discussion or motions obtained for the audit contracts, were not based on genuine consultation with other members of Council and, when used to access funds to pay for bank drafts, were not supported by expenditure authorizations as would be obtained in the normal financial management practices of the Splatsin.
230. As noted above, Splatsin was not a party to or client of the retainer. During the hearing, when the petitioners sought to examine legal counsel regarding what they perceived to be a conflict of interest, legal counsel for the respondent confirmed that Splatsin was not her client, the Chief was. On that basis, no examination on this issue was permitted. Yet, the power to contract in section 27 is only on behalf of Splatsin. Whatever the nature of the retainer with his lawyer, it is questionable whether it can be said to be on behalf of the Splatsin within the meaning of that section. The Chief confirmed in his testimony that he had not discussed that question of whether he could enter the legal retainer on behalf of Splatsin with anyone in the band, and, he had not considered whether he might be in a conflict of interest to make that decision on his own.
231. To be clear, the Board has not and is not making a finding or declaration that an office member's legal defence fees, when they are defending their title to office as a result of a petition to remove them from office, cannot be paid out of Splatsin funds. Rather, the Board is making a finding that the Chief's conduct in removing funds from the Splatsin bank account for the purposes of paying for legal defence fees is not compliant with the financial procedures required under Splatsin laws and policies.
232. When comparing the Chief's conduct with the policies and laws in place, and recognizing there is some ambiguity with section 27, the Chief did not follow Splatsin's important

financial checks and balances. The most that can be said is that he had some authorization from band council to enter a contract with an auditor. Beyond that, he did not provide a final signed contract to council or the finance director or anyone in the administration, and, he did not otherwise follow the provisions of the Financial Administration Act, the Expenditure Policy and the Procurement Policy. He may have been an authorized signatory at RBC, but that did not authorize him to withdraw funds without following internal Splitsin procedures. The same is true for the legal services retainer contract.

233. The withdrawal of funds via four bank drafts contravened numerous Splitsin Financial Procedures with serious implications for financial accounting and accountability, and is contrary to the Chief's duties as elected leader.

### ***Other submissions***

234. The Respondents rely on the fact that both the Chief and Councillor Thomas had signing authority for RBC. That they are authorized to sign for Splitsin for RBC accounts does not mean that they do not have to follow internal Splitsin procedures and have the necessary internal authorizations and paperwork. The fact that the bank allowed the withdrawals speaks nothing to whether as an internal matter the conduct of the Chief complied with Splitsin law and policy. The RBC signing authority is not a defence.
235. The Respondents also submit that the law of contracts means that if section 27 authorizes the chief to "enter a contract", then this includes the authority to withdraw funds to pay monies owing on the contract in the way that he did. The Respondents say that there are three basic features of a contract- offer, acceptance and consideration; and, that an authority to contract can imply an authority to make payment on it, drawing from cases of agency and implied authority. The need for consideration in a contract does not equate to making full payment on whatever commitment is in the contract no matter the context. Even if in some circumstances there may be found an implied authority, that simply cannot be said to be the case for Splitsin. Splitsin is a government. It receives, budgets and spends large amount of funds as a government for its people. It must have and does have a bureaucracy and a set of laws and policies for administration of those funds. In that context, there is no implied authority for the Chief to withdraw funds without following procedure.

### **Co-signing with Councillor Thomas while in a conflict of interest**

236. Considering the decision that has been reached by the Board, it is not strictly necessary to address other arguments, but the Board notes several points on these issues.



237. One such allegation is that the chief and Councillor Thomas were in a conflict of interest when they authorized the withdrawal of funds together. The various conflict provisions set out in the Splatsin governance instruments adopt a broad approach to familial relations that can pose a conflict of interest. There are express references to an aunt and a nephew falling within this broad view of conflict of interest. The Board also heard testimony that Chief and Council had discussed limiting the application of conflict-of-interest rules to direct familial relationships. The evidence was that this discussion was not reflected in a change to the language of the relevant provisions because of the difficulties posed by the current governance impasse. The written governance instruments therefore must be presumed to prevail. If there is an intention to change the rules, the intent should be formalized. However, for the purposes of these petitions, the application of these provisions to the circumstances of signing bank drafts is unclear. Given that, the Board declines to decide this specific allegation of conflict of interest in relation to either the chief or councillor Thomas.

#### **Intimidation in relation to Splatsin finance director**

238. The Petitioners allege that Chief Thomas engaged in intimidation when he met the Splatsin Finance Manager behind a closed door in her office. The Finance Director, Elaine Dowling, gave helpful, balanced and clear testimony. The meeting was clearly not typical. Section 44 of the Governance Policy prohibits a Chief or Councillor providing direct instructions to band staff. The evidence does suggest that Ms. Dowling was uncomfortable about what the Chief was doing, and it is reasonable to infer that she was trying to be tactful in her questions and response to him, given that he was Chief, though what he was doing and/or proposing was not in accordance with what she understood to be the law or practice. Nonetheless, the evidence of the Finance Director was that Chief Thomas did not engage in pressure, did not raise his voice and was respectful. Ms. Dowling noted that “his tone was fine”.

239. The Board declines to find intimidation as a ground for removal of Chief Thomas.

#### **CONCLUSION RE CHIEF THOMAS**

240. The Board has found that the conduct of Chief Thomas was improper and contravened Splatsin financial law and policy. The task remains of assessing this conduct against the standards set out in the Code. Chief Thomas’s evidence was that he thought this was a situation where strong leadership was required and that his actions made sense to him. He acknowledged that his interpretation of Section 27 was not the only one available and that the issue was ambiguous. He conceded that Section 27 did not, in its clear terms, authorize the steps he took. He acknowledged that the provision did not provide an exception from financial rules. He is indeed bound by those rules.

241. The chief withdrew significant funds via bank drafts from a Splantsin account in contravention of existing Splantsin laws and procedures for financial accountability and spending.
242. The Board concludes that the Chief's withdrawal of funds via a bank draft without obtaining prior approval, authorization, requisitions and otherwise following procedure is conduct that contravenes subsection 19(c) of the Code. The manner in which the Chief acted "...fails to maintain a standard of conduct expected of a member of Council". The Board relies only on this provision to conclude that a breach has occurred that justifies removal of the Chief. As per 19(j) of the Code, the Board concludes that the Chief's conduct is "of such a serious nature that the removal is necessary and appropriate".
243. The Petitioners also cited subsections 19 (e), (g) and (h) of the Code. These relate to acting dishonestly, using his office for personal financial gain, or abusing his office such as that the conduct negatively affects the dignity and integrity of the Community or of Council. Given the finding above based on 19(c), the Board need not decide the additional allegations.

## **ALLEGATIONS AGAINST COUNCILLOR THOMAS**

### **Inappropriately withdrawing funds via bank drafts**

244. While the Board was initially inclined to see the role of Councillor Thomas as secondary in the withdrawal of Splantsin funds, her direct testimony demonstrated her knowledge and participation. It is true that she only signed for two of the drafts and was driven to the bank at the request of Chief Thomas. But she clearly understood what she was doing and even embraced a broader theory that Chief Thomas was entitled to act without approvals from council or the administration. She said she saw her responsibility to the community (to move forward with the financial audit) as overriding any of the constraints imposed by the Splantsin financial laws. Yet she did not appear to know the nature of the contracts with Stevens & Co and only referred to the audit and the community desire for the audit. In response to a question in cross-examination from Sabrina Vergata, Councillor Thomas responded that she too could go to the bank and take out funds if she wished. She reiterated several times that it was the directions from the community that had overriding force. Ultimately, Splantsin law and policy apply, and, these were violated when Councillor Thomas accompanied the chief to the bank and signed to withdraw funds from Splantsin accounts via bank drafts. Her conduct therefore breaches s. 19(c) of the Code as well.

### **Conducting Splatsin business while under suspension**

245. This is a difficult issue because there is inconsistent between the formal status of the suspension and the subjective belief of Councillor Thomas and others as to whether she was in fact suspended.
246. Councillor Thomas was provided a letter in March 2023 where Council (with the Chief abstaining) indicated its intention to suspend Councillor Thomas and offering her an opportunity to make submissions. Council was purporting to follow Subsection 14(j) of the Code, which states: “ A Chief or Councillor position on the Council shall become vacant if, while in office the Chief or Council initiates a lawsuit against Splatsin will be suspended with honorarium pay without benefits for the duration of the lawsuit considering potential conflicts of interest.” did not make any submissions. But the letter indicating an intention to suspend was never followed up with a formal suspension. The Board was provided an unsigned suspension letter. One of the Petitioners testified that a signed letter had been shredded and that Council simply never did give a signed copy to Councillor Thomas. The law is clear that suspending an elected official from her duties requires compliance with applicable formalities. Tendering an unsigned letter is simply not sufficient.
247. The issue is further clouded by the intervention of Robert Louie, which the Petitioners pointed to as evidence that Councillor Thomas knew she was suspended. Mr. Louie was not acting as a lawyer when he gave advice to Councillor Thomas or wrote to Council via email demanding reinstatement. But Councillor Thomas understood him to be saying that her suspension was not valid and she was not under suspension. She maintained that view in her testimony before the Board. The Board notes that her testimony was not entirely consistent. She testified that she did not go to Council meetings because she understood herself to be under suspension.
248. Though it is not strictly necessary to decide this issue because of the conclusion that the Board has reached with respect to the bank drafts, the Board would not be inclined to find Councillor Thomas conducted council business while under suspension. There is doubt about the formal validity of the suspension and the evidence about Ms. Thomas’s belief about whether she was under suspension. However, the Board notes that Councillor Thomas’s statement that she would have signed the cheques even she was under suspension did not help her case.

### **Accepting honoraria for four Landmark meetings**

249. The Board accepts the defence of Councillor Thomas on this issue. She relied upon the written provisions of the Code that permit the receipt of gifts at cultural events. The Board is persuaded that Councillor Thomas participated in the four Landmark events

solely as an elder of the Splantsin and not as part of official Splantsin business. Splantsin provided no funding for the four events. Councillor Thomas submitted no travel claims for the four events. If Councillor Thomas' conduct was not entirely in keeping with the Code regarding honorarium, it does not rise to the level of a breach justifying removal from office. There are other provisions in Splantsin laws to address this conduct, including dispute resolution.

### **CONCLUSION WITH RESPECT TO COUNCILLOR THOMAS**

250. As stated above, Councillor Thomas knowingly attended the bank and signed to withdraw bank drafts without following Splantsin procedure, and, breached section 19(c) of the Code in doing so. The Board finds this conduct of a serious nature justifying removal.
251. The other allegations against Councillor Thomas are dismissed.

### **RESPONDENTS' SUBMISSIONS REGARDING PROCEDURAL FAIRNESS AND BIAS**

252. The Respondents have raised concerns related to their rights to procedural fairness and relying on the laws of natural justice. The Respondents raised, at the hearing of the preliminary motion, about having to prepare for the hearings without the Board first deciding whether the Petitioners had complied with the *Code*, which raised the concern of bias and prejudice.
253. To that end, the Board has already noted that, in the hearing of the preliminary motion on the morning of August 10, the Parties had reached a consensus that the Petitioners may proceed as if they are individual electors under Subsection 23(a) of the Code. The Board makes a ruling that each Petitioner must pay their individual \$100 filing fee per Petition filed, to ensure true technical compliance with Subsection 23(a).
254. The Respondents' concern of bias and prejudice in respect of the preliminary motion itself is without true foundation. Due to the timing of the hearings having to take place within 20 days of the receipt of the Petitions, which in all due respect to the Code, is an exceptionally short timeline for three Board members and a number of parties to coordinate, and further – taking into account that the community desired the hearing to be held live at the Splantsin Community Centre with members present, the Board determined that it is the wisest and most economical use of time for all parties, not just the Respondents, to have *one* live hearing of the preliminary motion to take place before the hearing of the merits of the actual Petitions, and reserve determination on the preliminary motion. The Board remained at liberty to make a determination on the preliminary motion if need be (ie: had the Parties not reached the consensus that they

had) while at the same time, hearing the arguments of the Parties on the merits of the Petitions, and deciding whether to render a decision on just the motion or if the motion was determined to fail, also rendering a decision on the merits of the Petitions.

255. In respect of the Respondent's allegations that the Petitioners were treated differently than the Respondents during their suspensions, the Respondents point to the fact that the Board had granted the suspended Petitioner William limited access to her emails and to use her Splatsin email account to communicate with the Board. On the other hand, the Respondents were made to use their personal accounts since April 2023.
256. That Petitioner William was granted limited access to her Splatsin email in a separate Petition matter unrelated to the matters raised in these Petitions is of no relevance. The Respondents in these Petitions were represented by a lawyer and communication was directed at the lawyer, whereas Ms. William is unrepresented and required a means to communicate with the Board.
257. That being said, the Board takes its jurisdiction from Subsection 21 of the Code to mandatorily suspend any office member subject of a petition for removal from office until the matter is resolved by the Board. It remains incumbent upon Band Administrator(s) to undertake whatever is required to suspend that office member from office. The Board plays no role in enforcing the suspension.
258. In July 2023, the Board held a pre-hearing conference with the Parties and their counsel to discuss procedural matters leading up to the hearing, which at the time was scheduled for July. The Band Administrator, Cindy Monkman, was also present at the conference. In the pre-hearing conference, the Respondents asked that the Petitioners, as members of Council, grant limited access to both Chief Thomas and Councillor Thomas to their Splatsin email account so that they can access emails for the purposes of producing evidence to defend their cases against the Petitioners. While no order was specifically made by the Board, the Board supported the Respondents' request for the Respondents to have limited access to their emails for the purpose of defending their case against the Petitions. The Board also cautioned the Petitioners that failure to provide the Respondents limited access to their work emails could, in effect, adversely impact any weight given to the Petitioners' evidence, especially where the Respondents could not challenge that evidence with their own evidence.
259. In the end, the Respondents indeed failed to permit the Respondents limited access to their work emails and the hearing and adjudication proceeded without whatever evidence the Respondents think they could have produced from their email accounts that would challenge the Petitioners' positions.

260. The Respondents say that the Petitioners have interfered with the laws of natural justice and procedural fairness and that their refusal to permit the Respondents access to their work emails should be considered to be an intentional concealment of relevant evidence or alternatively abusing their authority by preventing the Respondents from defending the serious allegations. The Respondents say that the Petitioners' refusal to produce documents or grant access to their emails and relevant should lead to a dismissal of the Petitioners' Petitions.
261. One of the issues with the Respondents' position is that they have yet to demonstrate what documents or emails in their Splatsin account they could rely on in their defence. The Respondents have simply made a broad stroke argument to say that the inability to access their email leads to an inability to properly defend their position and as such the whole of the Petitions should be dismissed.
262. Similar to the provisions for disclosure of documents in court and specifically under the British Columbia Supreme Court Rules, the success of an application for production of documents must be founded on particularized demand based on specified categories or classes of documents which the applicant must show can be used to prove or disprove a material fact. Throughout the Respondents' request for access to their emails, they have not specified what emails or documents exist in the accounts that they think can be used to prove or disprove a material fact or allegation raised in the Petitions.
263. There was some testimony which suggested that Chief Thomas could have had access to email threads relating to the forensic audit contracts and the Stevens and Company contracts, including access to the Stevens and Company contracts requested by the Band Administrator and the Petitioners, and also the email conversations he had with Ms. Dowling relating to the bank drafts. The Board finds that any pertinent emails relating to the discussion he had with Ms. Dowling were disclosed by the Petitioners and Chief Thomas did not raise the probability that there were missing emails in the disclosure which would tell another story. In respect of emails or documents relating to contracts, the uncontroverted facts are that Chief Thomas did not discuss his withdrawal of any of the bank drafts with any of the Council members, and that his procedure for withdrawing the bank drafts is based on his customary beliefs that the Chief acts for the will of the people. It is also uncontroversial that the Chief did not give either contract to the finance director or band administration as required by Splatsin Financial Procedures. That they may exist is not material. The Board does not see how any emails or documents in the Respondents' email accounts would bring about a different understanding or finding. Indeed, the findings leading to removal are based on straight facts about what did and did not happen when the Chief and Councillor Thomas withdrew funds.

264. In assessing the whole of the Petitioners' evidence, the Board has found the evidence to be completely adequate to make the finding that the Respondents have breached the conduct required of them as office members. To reiterate, the Respondents have not pointed to any potential categories or classes of documents missing that would provide a substantially different narrative that has been painted by all of the evidence such that the findings of the Board are obvious errors.
265. The substantive findings of the Board are based on a consideration of the existing financial laws and policies that govern financial matters and transactions and especially those that are conducted by Chief and Council. Given the admitted facts and other evidence, it is not possible to envision anything in the Respondents' email account that would show that the Respondents followed the due process required of them in respect of the allegations related to the improper banking transactions that are at the heart of these Petitions.
266. As such, the Respondents' application to dismiss the Petitions based on lack of ability to obtain evidence from the Respondents' work email is hereby dismissed.

#### **DISQUALIFICATION FROM OFFICE FOR EIGHT YEARS**

267. The Board has determined that each of Chief Thomas and Councillor Thomas has violated the Code and specifically, Subsection 19(c) of the Code which reads: "The Chief or a Councillor shall be removed from office and be prevented from running for office for 8 years if s/he: fails to maintain a standard of conducted expected of a member of Council."
268. As such, the Chief and Councillor Thomas are hereby declared removed from their elected positions.
269. In addition to removal, as noted above, subsection 19 prevents running for office for eight years.
270. In addition to Subsection 19, subsection 33 of the Code also provides that, if a Council position is declared vacant, the Board may further declare the Chief or Councillor removed from office and disqualified from being a candidate for a period of eight years commencing on the date of the board's ruling.
271. It is clear that Subsection 19 makes it mandatory to impose an 8 year limitation on running as a candidate for office if it is determined that the office member is removed for being in breach of any of the grounds listed in Subsection 19.
272. It is also clear that Subsection 33 makes it mandatory to disqualify a candidate from running for the same amount of time – 8 years – if the Board declares that a Chief or

Councillor is removed from office. The Board finds no ambiguity in Subsection 33 despite the use of word “may”. Subsection 33 states:

If the Council position is declared vacant, the Complaints and Appeal Board **may** further declare the Chief or Councillor removed from office and disqualified from being a candidate for a period of eight (8) years commencing on the date of the board’s ruling.

273. Subsection 33 starts with a condition “If the Council position is declared vacant”, which follows from a finding from Subsection 30 – which says:

“...the Complaints and Appeal Board shall rule:

- a. That the petition shall be allowed to stand, and declare the Council position of the member of Council who is the subject of the petition to be vacant; or
- b. That the petition is dismissed.”

274. In this case, the Board has ruled that the Chief Thomas Petition and the Councillor Thomas Petition will both be allowed to stand and in doing so, the Chief and Council position once occupied by Chief Thomas and Councillor Thomas respectively are vacant.

275. There is no ambiguity in Subsection 33 about the mandatory requirement of disqualification despite the use of the word ‘may’. Ultimately, Subsection 33 is redundant in and of itself as a provision. If a seat is vacant as a result of a finding of breach under Subsection 19, then it follows that the seat is vacant because a council member is removed. There is no need to determine whether, if a seat is vacant under Subsection 33, the council member should be removed. The seat is vacant *because* the council member has been removed. Under section 33, if there is a removal, there is also disqualification.

276. As such, the Board is bound by the provisions of Subsection 19 and Subsection 33, in finding that Chief Thomas and Councillor Thomas is to be removed for breaching Subsection 19(c) of the Code, to also declare that Chief Thomas and Councillor Thomas are each prevented and disqualified from running as a candidate for office of the Splantsin government for the next 8 years commencing from the date of this decision.

277. The Board acknowledges that it initially suggested that the disqualification from running may be at the discretion of the Board, but it has now determined that the Board has no discretion and must, rather, abide by the mandatory requirement for disqualification under Subsection 19 and Subsection 33.

278. Having made the determination, the Board will take this opportunity to state, as *obiter dicta*, that despite the seriousness of the breach in this case committed by both



Respondents, which involve a unilateral departure from a carefully developed scheme of financial and expenditure controls, the Board considers the eight year disqualification requirement to be severe, given the significance of the ability to run for elected office and to hold a position of Chief or Councillor, including for Splantsin.

279. Had the disqualification provision been discretionary, the Board would not have imposed the disqualification for running for office for a full eight years. However, the language of the Code leaves the Board with no choice. This is unfortunate because the right to present oneself for democratic office is central to any functioning government. There is no reason to believe that this different from a Splantsin cultural perspective.
280. The Board remains bound by the mandatory disqualification provided in Subsection 19 and Subsection 33. It might be possible to carve a path through this maze to support a limited Board discretion, but it would be preferable for Splantsin to development amendments to the Code to clarify the precise authority that is conferred on the Board with respect to the democratic suspension penalty.

## **CONCLUSION**

281. The Board concludes that Councillor Thomas and Chief Thomas have breached the Code in a manner that requires their immediate removal from their elected positions and disqualification from running for office for eight years.
282. More broadly, these Petition set in motion a process that laid bare some questions about how modern systems of financial management and accountability fit with traditional concepts of leadership and governance. Splantsin has and will continue to undertake to determine how to effectively govern complex internal and external relations in a manner that respects who they are as an Indigenous people.
283. The Board is left with the distinct impression that there is no unanimous view among the Splantsin community about the proper role to be played by Chief and Council. This is an issue that can only be addressed by the community acting in a democratic and consultative fashion. The Elections Code and the related instruments dealing with governance can certainly be amended to accord with the needs of the community. When the authority of the Board is invoked, it can only act based on the instruments that are before it. Deeper change is something only the community can achieve.

## **Additional Reasons of Board Member Dr. Stevenson**

284. I completely agree with the determination and reasons above but add a few comments.
285. Firstly, though I reluctantly agree with the conclusion as to the mandatory nature of the 8-year democratic suspension, if a discretion were clearly available to the Board with

respect to the application of this sanction, I would not apply it in this case for the following three reasons.

286. Firstly, I recognize that Chief Thomas sought legal advice on the interpretation of Section 27 and conducted himself, in part, based on that legal advice. It is not entirely clear as to whether such advice extended to taking out bank drafts, but Chief Thomas subjectively believed that Section 27 and customary practices gave him the authority he needed to take this step. There was no malice or ill-intention in his actions.
287. Secondly, I am of the view that Chief Thomas was frustrated by the governance impasse that has arisen at the Council table. He thought he was responding to the majority voice of the community at least with respect to moving the audit process along. He believed he was exercising leadership in his role as Chief.
288. Thirdly, I take into account the evidence of the Elders and knowledge keepers who spoke of the customs and traditions of the role of Chief before the Code and other current financial governance laws and policies came into being. The strong element in Splatsin traditional thought that sees the Kukpi7 as being a strong leader who acts for what he or she believes is in the best interest of the community likely meant that a modern disqualification provision would not have been remotely contemplated as a method of punishment for a Chief or any council member back in the early days.
289. A further anomaly is apparent when Section 16 is considered. There is no reference to a democratic penalty in this provision, though there is a requirement that the Board "...shall take the necessary steps to protect and safeguard the Community's interest and remove the respondent from Council."
290. Section 16 is limited to matters that are "...beyond the Election results and that are related to violations." However, the grounds that are taken into account in making this assessment are the grounds listed in Section 6. I am left with a number of interpretive challenges when considering democratic suspension. It may be that democratic suspension is limited to Section 6 because it provides for an oral hearing. This would be important if a democratic penalty is applied.
291. The right to present as a candidate to serve the community is a very important democratic right and the loss of that right must be balanced against the degree of culpability of the breaches that lead to dismissal.
292. Finally, the consideration of these Petitions disclosed the existence of deep conflict within the Splatsin community on several fundamental issues. I offer the opinion that Splatsin would benefit from third-party assistance from a facilitator or mediator to help

structure the democratic debate within the Splotsin community that is necessary to address these issues.

293. Over the course of several determinations made by this Board in the past few months, the Board has offered non-binding suggestions to grapple with these questions. Tensions at a governing table, whether spurred by inter-personal differences or more structural factors, sometimes call for third party involvement. Facilitation or mediation can sometimes generate solutions that are not immediately obvious to the parties embroiled in a dispute. There are many practitioners of dispute resolution who have developed a special expertise in working with Indigenous communities and respecting Indigenous values. I note that, on paper at least, the governance documents of the Splotsin provide for dispute resolution, a robust role for Elders and a role for an Ethics Committee. Some effort must be made to revitalize these resources for conflict resolution.
294. I am left with the distinct impression that there is no unanimous view among the Splotsin community about the proper role to be played by Chief and Council. This is an issue that can only be addressed by the community acting in a democratic and consultative fashion. The Code and the related instruments dealing with governance can certainly be amended to accord with the needs of the community.

**BOARD RULING**

295. Further to Subsection 30 of the Code, the Board rules and declares:

- a. The Chief Thomas Petition shall be allowed to stand;
- b. The position of Chief will be vacant effective immediately as of the date of this Decision;
- c. Doug Thomas is hereby prevented from running for office for 8 years commencing on the date of this Decision;
- d. The Councillor Thomas Petition shall be allowed to stand;
- e. The position of Councillor once held by Councillor Thomas will be vacant effective immediately as of the date of this Decision;
- f. Beverly Thomas is hereby prevented from running for office for 8 years commencing on the date of this Decision;
- g. The \$200.00 filing fee paid from Band funds by the Petitioners as Councillors shall be returned to Band funds within 5 business days of this Decision;
- h. Each of Theresa William, Sabrina Vergata, and Len Edwards is hereby ordered to personally pay \$200.00 filing fee pursuant to Subsection 23(a)(iv) to Splantsin for individually filing the Chief Thomas Petition and the Councillor Thomas Petition within 5 business days of this Decision.

296. The Board so orders.

DATE: SEPTEMBER 13, 2023

Dr. Stevenson

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Board Member Dr. Stevenson



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Board Member L. Glowacki



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Board Member W. Cheung