

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

BETWEEN:

Gloria Morgan

Petitioner 1

Crystal Johnson

Petitioner 2

AND:

Elected Splitsin Chief Douglas Thomas

Respondent

DECISION OF THE SPLATSIN COMPLAINTS AND APPEAL BOARD

May 26, 2023

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

Place and Date of Hearing: Kelowna, British Columbia
May 8, 9, and 15

Self-Represented: Gloria Morgan and Crystal Johnson

Counsel for the Respondent: J. Trotti

Written Reasons by: Ronald Stevenson

Concurred in by: Wendy Cheung
Lisa Glowacki

Reasons for Decision

Introduction

1. On May 8, 9, and 15, 2023, the Splat-sin Complaints and Appeal Board (the “Board”) considered two individual Petitions to remove the Chief of the Splat-sin First Nation from office. The Petitions were brought by community members Gloria Morgan and Crystal Johnson under the Splat-sin Custom Election Code. After consideration of the evidence presented by the two Petitioners and the Respondent, the Board has determined that the Petitioners have not met the burden of proof to remove the Respondent from office and therefore, the Petitions are dismissed.

Procedural History

2. Splat-sin First Nation adopted the Splat-sin Custom Election Code (the “Code) in or about February, 2016. Among other matters, the Code governs both elections and removal of elected officials from office.
3. The Code establishes a Splat-sin Complaints and Appeal Board to be appointed for a four-year term (the “Board”). The Board is mandated to address petitions for removal from elected office.
4. An election for chief and council of Splat-sin First Nation was held on January 10, 2022. Doug Thomas was elected as chief. This was a significant change for Splat-sin, as prior to that, Wayne Christian had been chief for many years. Loretta Eustache, Sabrina Vergata, Leonard Edwards, Beverly Thomas and Theresa William were each elected as councillors.
5. The Code includes two different processes for removal from office. One, under Section 6 of the Code, provides for an oral hearing within 20 days of receipt of a petition. This process includes a list of grounds for removal (subsection 19, described in detail below). The other, under Section 16 of the Code, provides for a process based on written submissions and evidence (i.e. no oral hearing). There are no (additional) enumerated grounds for removal under Section 16, only a statement in subsection 227 that “This section addresses petitions for removal of council from office, beyond the Election Results and that are related to violations.”
6. On April 18, 2023, the Board received a petition for removal of Chief Thomas from office submitted by three members of the Splat-sin Council (the “Councillors’ Petition”). The Councillors’ Petition was submitted under Section 16, subsection 228 of the Code.

7. On April 18, 2023, the Board received a petition submitted by Gloria Morgan seeking removal of Chief Thomas from office (the “Morgan Petition” or “Petitioner 1”). The Morgan Petition was submitted under Section 6, Subsection 23 of the Code.
8. On April 20, 2023, the Board received a petition submitted by Crystal Johnson seeking removal of Chief Thomas from office (the “Johnson Petition” or “Petitioner 2”). The Johnson Petition was submitted under Section 16, Subsection 228 of the Code.
9. On April 23, 2023, by letter the Board informed the petitioners, Chief Thomas (the “Respondent”), the councillors, the Splatsin Ethics Committee, and Splatsin Administrators Cindy Monkman and Darrell Jones that the Board had received the Councillors’ Petition, the Morgan Petition, and the Johnson Petition. In that letter, the Board asked the petitioners, the Respondent, and the Splatsin Ethics Committee to provide their position on whether the three petitions should be heard and determined together or separately, and under which procedure of the Code – that is, Section 6 or Section 16. The Board asked the recipients for a response by April 27, 2023.
10. As described further below, the Code indicates that the Splatsin Ethics Committee may play an advisory role in any petition for removal. As such, as indicated, the Board included the Ethics Committee as a recipient to the April 23 letter. The Board consulted the Splatsin First Nation website which indicated that the members of the Splatsin Ethics Committee were Tia Felix, Frank Joe, and Lawrence Lee who can be reached at splatsinethics@gmail.com. The letter was emailed to that address.
11. By letter dated April 23, 2023, Petitioner 1 requested that the Board hear all three Petitions together under either Section 6 or Section 16 of the Code. By way of email dated April 24, 2023, Petitioner 1 indicated to the Board that she preferred the procedure provide under Section 6 of the Code.
12. By email dated April 24, 2023, Petitioner 2 requested the Board to hear her Petition and the Petition of Petitioner 1 together under Section 6 of the Code.
13. By email dated April 25, 2023, Councillors Edwards, Vergata, and William indicated to the Board that they wanted their Petition to be decided under Section 16 of the Code.
14. By letter dated April 27, 2023, the Respondent’s lawyer, Jennifer Trotti, indicated that it was her view that the Petitions submitted under the different sections should be heard separately.
15. On April 27, 2023, the Board determined that the Petitions of Petitioner 1 and Petitioner 2 comply with the Code further to Subsection 24 of the Code. The Board did not determine the grounds put forth in the Petition to be either frivolous in nature or unsubstantiated, as considered in Subsection 25(a) of the Code.

16. By April 27, 2023, no member of the Splatsin Ethics Committee had responded to the Board with any advice, as permitted under Subsection 25 of the Code.
17. The Board scheduled a hearing to take place within 20 days from the date on which the Petitions were submitted to the Board. Since the Board decided to schedule one hearing for both Petition 1 and Petition 2, the Hearing dates were scheduled for May 8 and 9.
18. On April 28, 2023, pursuant to subsections 27 and 28 of the Code, the Board emailed and registered mailed a written Notice of Hearing to Respondent's lawyer, Petitioner 1, Petitioner 2, Councillor Bev Thomas, Councillor Sabrina Vergata, Councillor Len Edwards, and Councillor Theresa William. The Notice of Hearing was also to the Splatsin Ethics Committee, and the Splatsin Administrators. In addition to providing notice of the hearing, the Notice also indicated that the Councillors' Petition would be addressed through a separate section 16 process.
19. The hearing was held on May 8 and 9th, 2023 in Kelowna, British Columbia. Board members Ron Stevenson and Wendy Cheung attended the Hearing in person. Board member Lisa Glowacki attended the Hearing via virtual live webcam. The Hearing was open to members of the Splatsin First Nation attending as observers on May 8 and 9. Because the hearing did not complete on the 9th, a further half day was held on May 15th, with Board member Chung in person and Board members Stevenson and Glowacki appearing virtually. The May 15th hearing was only open to and was attended by the Respondent, his lawyer, the Petitioners and a support person for each party.

Splatsin Ethics Committee

20. Subsection 29 of the Code provides that "throughout the entire hearing process the ethics advisory committee shall function in an advisory capacity to the Complaints and Appeal Board."
21. Between April 18 and April 28, 2023, the Board did not hear from the Ethics Committee, with the exception of a phone call made on or about from Lawrence Lee who indicated that he had not received any notices of the Petitions. Board member Wendy Cheung indicated to Mr. Lee that notices of the Petitions had been emailed to splatsinethics@gmail.com on April 23, 2023. On April 26, 2023, the Board emailed the contents of what had been sent to splatsinethics@gmail.com on April 23, 2023, to Mr. Lee at a personal email address that he provided to Board member Wendy Cheung.
22. By email dated April 28, 2023, the Splatsin Administrator, Cindy Monkman, indicated to the Board that the Executive Secretary advised that the members of the Ethics Committee are Trina Antoine, Frank Joe, Tia Felix and Cindy Couch. Personal email addresses for each of these Ethics Committee members were also provided to the Board.

23. The Board informed these members of the Ethics Committee of the Hearing to be held May 8 and 9, 2023. On May 2, 2023, Trina Antoine informed the Board that she had stepped down as a member of the Ethics Committee.
24. The Board's role is not to make a determination of which members form the Splitsin Ethics Committee. The Board is taking, at face value, the email dated April 28, 2023 of the Splitsin Administrator indicating who the members of the Ethics Committee are and thereby considers the Ethics Committee to be comprised of Frank Joe, Tia Felix and Cindy Couch. This list was confirmed by the Splitsin Administrator on May 8, 2023.
25. Cindy Couch attended a portion of the Hearing on May 9, 2023 and May 15th.
26. The Board received a memorandum of suggestions from Ethics Committee member Frank Joe on May 11, 2023, in which Mr. Joe provided criticism of the Board, their lack of knowledge of fundamental values of the community, and the hearing process.
27. The Board has not received any other advice from the Ethics Committee, other than the memorandum sent by Mr. Joe on May 11, 2023. Ultimately, no substantive advice was received by the Board that influenced either the process or the outcome of the hearing of the Petitions.

Suspension if Under Investigation

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

Governing Laws

31. 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 Splantsin Custom Election Code, his Oath of Office or the Splantsin Code of Ethics;*
- b) Fails to attend three regular Council meetings or regular scheduled Community Assembly Meeting or Special Splantsin 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 Splantsin 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.*

32. The Code of Ethics is a term defined in the Custom Election Code under Section 3 as “guidelines, general rules of behaviour and standards established in accordance with Section 5 of this Splatsin Custom Election Code, which govern the conduct of candidates running for office and their supporters relating to their participation in the electoral process.”
33. Section 5 of the Splatsin Custom Election Code details the rules on how candidates must campaign, restrictions to campaigning, and restrictions on influencing, bribing, intimidating during the election process. (Subsections 7, 15, 16, 17, and 18 of the Code). This Code of Ethics, applicable only to election conduct, has no bearing on these Petitions.
34. However, despite the definition in the Code, the Code does include another “Splatsin Code of Ethics” for elected officials and employees in subsection 197 of Section 13 of the Code (which governs “Post-Election Procedures”). Subsection 197 includes a long list of standards of conduct and is therefore not repeated here. However, in deciding these Petitions, the Board is mindful of the provisions of subsection 197 Code of Ethics.
35. There is a further Code of Ethics in the Splatsin Governance Policy dated July 20, 2021. In that Policy, a “Code of Ethics” is defined in Part 2 as the declaration attached to the Policy as Appendix 2. Appendix 2 of the Policy is actually a Splatsin Oath of Confidentiality.
36. Appendix 3 of the Policy is the Splatsin Code of Conduct. Based on the reading of this Splatsin Code of Conduct, the Board concludes that this document was likely meant to be the Code of Ethics referenced in the definition section. The Code of Conduct reads as follows:
- (1) As a Kukpi7/Tkwampila7 [chief/council], I agree to exercise my official powers and perform my duties in such a manner as to maintain public confidence and trust;*
 - (2) I will act honestly and in good faith with a view towards the best interest of Splatsin;*
 - (3) I will demonstrate high ethical standards in both my personal and professional dealings and therefore lead by example;*
 - (4) I will treat my colleagues with courtesy, honesty, and respect because I know that we are all working towards the goal of improving our community;*
 - (5) I will excuse myself from conflicts of interests, even if they are only perceived. I will not use Splatsin property for my personal benefit;*
 - (6) I must not use any information attained during my term as Kukpi7 and Tkwampila7 for my personal gain, or the gain of my immediate family members, particularly information about upcoming contract tenders, jobs, or otherwise business opportunities.*

37. The Oath of Office is found at Appendix 1 of the Splitsin Governance Policy.

38. The Petitioners have also referenced various sections of the Splitsin Governance Policy which they say the Respondent breached. The Governance Policy includes standards of conduct, not only in the appendices (as set out above) but also in the Policy itself. Relevant to the Petitions, paragraph 16 of the Policy states:

KUKPI7 ROLES AND RESPONSIBILITIES [KUKPI7 is "Chief"]

16. Kukpi7 is responsible for: a) acting as a Chairperson during Kukpi7 and Tkwamipla7 Sqw7al;

b) representing Splitsin to governments, private industry, Aboriginal organizations and other stakeholders;

c) acting as a spokesperson for Splitsin to the media, and the general public;

d) consulting with a broad range of Splitsin Members on a continuing basis to determine contemporary needs and to seek direction; and

e) adequately consulting with the Splitsin Elders' Advisory Council on appropriate issues.

39. Further, paragraph 27 states:

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.

40. Paras. 29-31 of the Policy address claimed expenses for travel:

Travel expenses

29. Kukpi7 and Tkwamipla7 may approve Kukpi7 and each Tkwamipla7 travel request where the travel is necessary in order to conduct the business of Splitsin by way of a digital motion with four (4) Tkwamipla7 responding or at a duly convened Sqwa7al.

30. All requests for travel by Kukpi7 and each Tkwamipla7 will be requested for inclusion on the agenda to the Band Manager and supporting information provided that includes the purpose of the trip, dates of Sqw7al(s), anticipated expenses, date of departure and date of return.

31. Upon return, a travel summary must be submitted to the Kukpi7 and Tkwamipla7 and an oral report offered indicating the benefit to the Splitsin.

32. All expense claims must be submitted within sixty (60) days of incurring the charge or they must not be reimbursed.

41. Under the Governance Policy, the chief is the chair of band council meetings (para. 58).

42. Community Assemblies are distinct from band council meetings and are provided for under Part I of the Governance Policy. Band members are expected to participate in Community Assemblies and chief and council have a collective responsibility to assess the effectiveness of these Assemblies (section 113). As set out below, there are provisions that guide conduct of all attending a Community Assembly.

43. 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.

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

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

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

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

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

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

47. For the purpose of determining the Petitions requesting removal of the Respondent, the Board considers the relevant governing laws and provisions to be Subsection 19 under Section 6 of the Code, Subsection 197 under Section 13 of the Code, the Oath of Office found at Appendix 1 of the Splatsin Governance Policy, and the Code of Conduct found at Appendix 3 of the Splatsin Governance Policy and sections of the Splatsin Governance

Policy. Each of these form part of the customary standards chosen by Splantsin to apply to elected officials.

48. Petitioner 1 has also provided a copy of the Disorderly Conduct Bylaw of June 7, 2012 to the Board. On the Board's review of this Bylaw, the Board finds that it has no jurisdiction to make any finding under the Bylaw, nor will it consider the application of the Bylaw to the Petitions.

Interpreting the Grounds for Removal in the Code

49. As set out above, the Code is considered the customary law of the Splantsin First Nation. There was no evidence or argument put forth by any of the parties that the custom of the Splantsin First Nation differs from the provisions set out in the Code.
50. Subsection 19 is a key provision for determination by the Board whether either of the Petitioners have met their burden of proving that the Respondent has committed at least one of the grounds for removal.
51. Several of the grounds are general and leave significant room for interpretation. These include 19 (a), (c), (f), (h), and (j).
52. The Board may look at custom, evidence and law to interpret these (and all) standards of conduct.
53. As noted above, the preamble and Part C of the Splantsin Governance Policy assist in interpreting the standards of conduct and what may be required to breach them to warrant removal. That Policy evinces underlying themes of opportunities for personal growth, development, kindness, understanding during times of development with expectations for reciprocation, and perhaps, most importantly, a model of forgiveness, and, progressive response to error or breach.
54. In addition, the Board is mindful of the general principle of law that removal of an elected official must take into account the principles of democracy that require that sufficient weight be given to the decisions of the electorate. For this reason, removal of an elected official implies wrongdoing of a sufficiently serious nature that outweighs the presumption of respect for the democratic decision of the community. The grounds should be strictly interpreted. (See *Shirt v. Saddle Lake*, 2022 FC 321, para. 58; *Martselos v. Salt River Nation #195*, 2008 FC 8, para. 32).
55. Further, consistent with the common law principle of *eiusdem generis* that supports general terms in a list being read consistent with more specific ones, the general grounds should be interpreted to be on par in terms of seriousness with the more specific clauses (such as using the office for personal gain). (See *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029).

Preliminary Arguments advanced by the Respondent

56. The Respondent argued that the Petitioners lacked standing to ask for removal of the Respondent from office. This argument is without merit. The Code sets out who may file a Petition for removal from office. Subsection 23 of the Code provides that an “elector” may submit such petition. An elector is defined in the Code as a person who is a member of the Band and is at least 18 years of age on the day on which the Election is held. Both Petitioners meet this definition.
57. The Respondent has argued that the Petitioner’s complaints should be disregarded on the theory that the Petitioners were acting as agents of members of Council or participated in some form of conspiracy to remove the Chief. However, there is no foundation to support these allegations.

Burden of Proof

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

Petitions and Evidence

Evidence of the Petitioners

59. Petitioner 1, Ms. Morgan, tendered a Petition dated April 18, 2023. The Petition is in the form of a sworn statement of 6 pages with two pages of Appendices.
60. The Petition makes the following allegations relating to the conduct of the Respondent as Chief, summarized as follows:
- a. Attending a trip to Las Vegas to discuss a business opportunity in respect of First Nation housing development without first discussing same with his Council members;
 - b. Retention of a lawyer to deal with a human resources complaint and to make complaints against Council members instead of submitting to mediation;
 - c. Causing or perpetuating a dysfunctional leadership team in Chief and Council;
 - d. Failing to maintain a respectful and safe environment for the community members to speak their voices at community meetings and doing little or nothing to stop or prevent lateral violence at the community meetings;
 - e. Receiving a driving suspension due to driving under the influence of alcohol and failing to discuss same with the community and Council prior to a media release; failing to inform the community and Council of a personal treatment plan to deal with alcohol challenges;

- f. Making a phone call to a forensic auditor without involving or consulting Council;
- g. Leaving Chief and Council meetings without adjourning the meetings;
- h. Failing to provide an update on housing contracts to the community members;
- i. Failing to take action to hire critical staff for the administration, and hiring interim band administrators without consulting Council on the choice of administrators;
- j. Failing to take adequate action to ensure band administration building(s) were adequately heated for staff during the winter time;
- k. Publicly criticizing a Councillor in breach of confidentiality;
- l. Failing to implement time sheets and time record keeping for Chief and Council contrary to the advice of a Councillor;
- m. Approving expenditure of money without community consent while the Respondent was a Councillor;
- n. Failing to acknowledge that a Federal Court filing was not a 'lawsuit';
- o. Failing to attend the protest/blockade to talk to community members and failing to call a Chief and Council meeting to address the protest/blockade.
- p. A general breakdown in the trust and working relationship between the Chief and Council members where blame is laid on the Respondent's actions and conduct.

61. Petitioner 1, Ms. Morgan, spoke to and elaborated on her Petition which was tendered as a sworn statement. She also added the following points in her oral testimony/submissions:

- a. She emphasized that she campaigned for and voted for the Respondent to be Chief in the recent election. She indicated that this Petition to remove him as Chief is not an easy thing for her to do; and
- b. Ms. Morgan emphasized to the Board that, in considering the grounds for removal, the Board must look at the Respondent's acts complained of at the time the acts occurred, not whether the Respondent seems to be "okay now" to act as Chief.

62. Ms. Morgan was thoughtful and clear in her evidence and in her questions to other witnesses. The matters raised by her petition are clearly important to her and it is obvious that the functioning and well-being of her community are very significant to her.

63. Ms. Morgan's first witness was Miranda Kimbaskat. Ms. Kimbaskat is an employee of the Band office.

- a. Ms. Kimbaskat indicated she was in the band meetings where she observed the lack of chair and control of the misbehaviour and disrespect taking place the meetings;

- b. Ms. Kimbaskat indicated that she was told by one of the Respondent's aunt to shut up and sit down. She indicated that she feels uncomfortable speaking up in the community;
- c. She gave evidence that the Respondent has his own personal website on which he gives updates about healing strategies, combatting lateral violence, and heal divisions and encourage happiness, but it was Ms. Kimbaskat's opinion that the Respondent has not done any of those things;
- d. She also takes issue that only some members know about the Respondent's personal website and not all. She feels that the Respondent should be posting to the Splatsin website so that all community members have access.

64. Ms. Morgan's second witness was Chanelle Celeste.

- a. Ms. Celeste highlighted the recent community meetings that were cancelled;
- b. She testified about lateral violence and said she has seen people who speak up get attacked by the Respondent's family members who use derogatory names and slanderous comments;
- c. She asked the Respondent at a meeting he was chairing what it would take for a new election to happen. She indicated that the Respondent said that he would call a new election if he saw 100 signatures on a petition for a new election.

65. Ms. Morgan's third witness was Edna Felix.

- a. Ms. Felix spoke to her observations of lateral violence at community meetings;
- b. She touched on how the previous Kukpi7 Christian conducted some meetings. For instance, previous Kukpi7 Christian conducted meetings with round tables and put ideas on a white board. She indicated that members attended previous Kukpi7 Christian's meetings and left happy with their voices heard.

66. Petitioner 2, Ms. Johnson, tendered a Petition dated April 20, 2023. The Petition is in the form of a sworn statement of 4 pages with a copy of a community petition with signatures of some members attached. The community petition relates to a call for a by-election for a new Chief and Council.

67. The Petition makes the following allegations relating to the conduct of the Respondent as Chief, summarized as follows:

- a. The Respondent failed to keep community meetings respectful and orderly, and did little to stop and prevent lateral violence, including, failing to stop the meetings or call a recess. It is alleged that those who contribute to the lateral violence and "physical attacks" are the Respondent's own family members;
- b. The Respondent failed to provide meetings agendas to Council member in a timely manner;

- c. The Respondent admitted that work was not being done or carried out because of his conflict with the Councillors at the political table;
 - d. The Respondent has failed to recognize the validity of the community petition signed by 157 Splantsin Band members and has failed to call a by-election pursuant to the community petition.
68. Petitioner 2, Ms. Johnson, spoke to and elaborated on her Petition which was tendered as a sworn statement. She also added the following points in her oral testimony/submissions:
- a. She emphasized that she feels she is a voice for the Splantsin community;
 - b. She feels there is a big target on herself and her family. She feels that the Respondent's door is not open to herself or her family members;
 - c. She does not feel safe under current leadership;
 - d. She gave evidence that she built a house for \$90,000 for a small family, and questioned why under current leadership, no new houses has been built;
 - e. She alleges the Respondent failed to mediate and spent wasted dollars on legal fees on a human resources complaint issue and complaints against Council members;
 - f. She alleges that the Respondent attacks the youth of the Splantsin community for having a voice;
 - g. She says she feels there is hope for the Respondent as Chief to act, however, he cannot be influenced by his family;
 - h. She says that trust has been broken at the leadership table.
69. Ms. Johnson was frank and clear in her evidence and submissions. As with Ms. Morgan, the matters at issue clearly mean a lot to her.
70. Ms. Johnson's first witness was Phyllis Jedzkewsky.
- a. She expressed that she has no hard feelings against the Respondent or their family;
 - b. She spoke of her observations of lateral violence at community meetings and the tremendous divide in the community;
 - c. She feels that all members of Council, not only the Respondent, should step down and there should be a new election for all leadership positions.
71. Ms. Johnson's second witness was Lauren Felix.
- a. Ms. Felix gave testimony on the petition that was signed calling for a non-confidence vote and a new election;
 - b. She gave her perspective that the Respondent does not trust his Council members;

- c. She spoke about lateral violence at community meetings and gave an example of her sister being attacked with words and physical gestures at a meeting;
- d. She says when this happened, the Respondent did not adjourn the meeting;
- e. She emphasized her opinion that the fracture was caused by a 'family vs. family' division;
- f. She gave evidence, albeit hearsay evidence, that other First Nation communities are saying they do not want to work with Splatsin First Nation due to concern over its leadership.

72. Ms. Johnson's third witness was Theresa William. Ms. William is a councillor but it was not necessarily clear that she was giving evidence in her role as councillor.

- a. Ms. William indicated that the Respondent was not sending agendas out for community meetings and when asked for agendas, the Respondent does not respond.

Evidence of the Respondent

73. The Respondent relied on his legal counsel, Ms. Trotti, to present opening arguments. He testified about each of the allegations presented by the Petitioners. Generally, speaking, the Respondent denied all allegations and provided rationale for each of the Petitioners' allegations, all as outlined in his written submissions.

74. Rather than summarizing all of his oral evidence, which was provided over the course of 1.5 days of the Hearing, the Board will provide observations of the Respondent's demeanor, manner of testifying, and credibility analysis:

- a. The Respondent was calm and generally speaking, did not give testimony in a defensive manner;
- b. The Respondent acknowledged some lapses in judgments, such as admitting that more could have been done to control lateral violence at meeting;
- c. The Respondent was unable to answer questions he had no recollection of, such as when asked by Ms. Morgan whether he remembered being asked to enforce a Disorderly Conduct Bylaw at one of the community meetings;
- d. The Respondent was not able to or did not answer some questions in a clear and direct manner and on occasion he could not remember events or details. For instance, when the Respondent was asked what standard governing principles he abides by to conduct community meetings that get out of hand, his response was somewhat circular. Some of the Respondent's imprecision or lack of memory may be attributed to time or inexperience (eg. not familiar with all of the governing documents). Overall, the Chief tried to answer the questions posed to him in a credible way.

75. The Respondent called Crystal Dawn Morris as his first witness.

- a. Ms. Morris gave evidence of the lateral violence that does take place at the community meetings. Her evidence insinuates that the Petitioners and their supporters are the ones who instigate the lateral violence at the meetings;
- b. She spoke of “certain people” in the community meeting who intimidate by saying they are ‘retired lawyers’. The Board presumes she is referring to Ms. Morgan.

76. The Respondent called Patricia Muskrat as his second witness.

- a. Ms. Muskrat attended monthly community meetings in 2022 and 2023. She agreed that there is lateral violence at the meetings and an air of toxic environment. It is her opinion that the violence is instigated by the Petitioners and their supporters. She gave specific evidence about Petitioner 2, Ms. Johnson, being an active participant in the lateral violence;
- b. Ms. Muskrat indicated that the Respondent did use his best efforts to keep order in the meetings but was ignored by the community members. She emphasized that the Respondent “did try” to control the lateral violence, but was unsuccessful because the people did not listen to him;
- c. She confirmed she is the vice president of the Elders’ Committee.

77. The Respondent called Ida Alexander as his third witness.

- a. Ms. Alexander indicated that she was initially a signatory on the petition distributed by the Petitioners for a new election. However, Ms. Alexander indicated that she was not aware of what she was signing, and withdrew her signature from the Petitioner;
- b. She indicated that Petitioner 2 showed up at her house with the petition and did not describe to her that the petition was to call a new election to oust the Respondent;
- c. On cross-examination by Petitioner 2, Ms. Alexander was questioned on why she did not inform herself as to the precise details of the petition prior to signing. Petitioner 2 pointed out, through the cross-examination, that Ms. Alexander has the skillset to review financial and other documents, and called into question the veracity of Ms. Alexander’s statement that she did not read the petition prior to signing it.

Determination by the Board of Petitioner 1’s and Petitioner 2’ Claims

78. The following is the Board’s determination of the factual allegations made in Petition 1 and Petition 2. The Board has, when appropriate, reviewed the different Splitsin customary laws and policy described above as part of the analysis. These legislative or policy provisions were not always clearly identified by the Petitioners, but given that this

is meant to be a process open to all members, including those not represented by legal counsel (as here), the Board does draw from those sources. In any event, the general provisions of subsection 19 can arguably capture much of the specific allegations in the Petitions.

Allegation A: Respondent's Driving Infraction

79. Petitioner 1 made allegations with respect to an infraction by the Chief for driving under the influence.
80. The facts behind this allegation are as follows. On July 1, 2022, the Respondent received an administrative driving prohibition of 90 days under the *Motor Vehicle Act Regulations*. There was no evidence provided as to whether an impaired driving charge and/or conviction under the *Criminal Code of Canada* was also laid.
81. Petitioner 1 alleges that the Respondent failed to advise his Council and the community of the offence until late July. Petitioner 1 says that, instead of telling Council and the community *first*, the Respondent told the Shuswap Nation Tribal Council and the Union of BC Indian Chiefs/Assembly of First Nations instead. Petitioner 1 says in her Petition: "This conduct, the suspension and lack of transparency and accountability is contrary to Section c. of Splitsin Code of Ethics. In addition, section m. of the Splitsin Code of Ethics requires striving towards self-improvement, etc. To date, Chief Thomas has not advised Band Members if he has attended treatment or followed a treatment plan for his alcohol challenges. He does not have to disclose his plan, simply confirm that he is addressing his issues with alcohol."
82. Petitioner 1 submits that the decision by the Chief to drink and drive, the lack of transparency with the community, and the lack of accountability alone are sufficient grounds for removal as a Chief.
83. In oral evidence, the Respondent indicated:
 - a. He was suffering from mental health issues arising from, amongst other things, the stresses of being a new Chief;
 - b. Another stressor came from the community dealing with a loss of 30 people, with three people lost in 4 days, and the Chief was internalizing how to deal with such "continuous loss" of lives within the community;
 - c. He acknowledges the driving prohibition that occurred on July 1, 2022 and does not take such an infraction lightly;
 - d. He decided that the course of action he would take would be to:
 - i. Provide a media release which would acknowledge his seriousness of the infraction;
 - ii. Attend to 16 hours of meetings with a counsellor;

- iii. Meeting with the Assembly of First Nations BC Chiefs and Shuswap Nation Tribal Council Chiefs to inform them that he had received a driving prohibition.
 - e. The Respondent also gave evidence that he initially planned on resigning from his position as Chief subsequent to the driving prohibition. The Respondent also acknowledged that the conduct was not acceptable for a Chief.
- 84. Petitioner 1's main claim is that the Chief failed to have a meeting or public discussions with the members of the Splitsin First Nation, where such discussions should have included some sort of action plan for treatment and expression of remorse. It is also Petitioner 1's position that the very occurrence of the driving prohibition is enough to warrant a removal, regardless of what steps he chose to take after.
- 85. The Board also heard evidence of the harmful effects of alcohol and drugs within the community and it is not unreasonable that a serious incident involving alcohol and driving be raised as a potential ground for removal of the Respondent. However, after considering the evidence and reviewing the relevant provisions of the Code, the Board has concluded that the Respondent's conduct does not establish a ground for removal.
- 86. There are several grounds set out in the Code that could apply to an incident involving driving under the influence of alcohol. These include:
 - a. Subsection 19(a) of the Code providing for violation of the Code, the Oath of Office, and the Splitsin Code of Ethics;
 - b. Subsection 19(c) of the Code in failing to maintain a standard of conduct expected of a member of Council;
 - c. Subsection 19(d) of the Code: conviction of an offence in contrary to the Splitsin Custom Election Code since the election;
 - d. Subsection 19(j) of the Code: the residual category of engaging in other conduct as may be determined by the Board (and the Ethics Advisory Committee) to be so serious to warrant a removal.
- 87. In respect of the Splitsin Code of Ethics set out in Subsection 197, the following grounds can also apply:
 - a. Subsection 197(c): Both on and off duty, I will conduct myself in a manner that will reflect credit to myself and the Band;
 - b. Subsection 197(m): I will strive toward self-improvement and professional development through self-evaluation...
- 88. In respect of the Splitsin Code of Conduct at Appendix 3 of the Splitsin Governance Policy, Paragraph 3 provides: "I will demonstrate high ethical standards in both my personal and professional dealings and thereby lead by example." In analyzing whether

a breach of this particular paragraph occurred in response to the driving infraction claim, again – the principles provided for in the Preamble must underly such an analysis.

89. The Board finds:

- a. In respect of Subsection 19(a) of the Code, the Oath of Office has not been breached. There is no provision in the Oath of Office that relates to the allegation of the driving prohibition and subsequent personal conduct of the Respondent after the prohibition was rendered;
 - b. In respect of Subsection 197(c) and (m) of the Code, driving under the influence is serious and is not conduct that could be described as a “credit” to himself and the Band. However, the standard is not one of perfection and there is room for mistakes. The Respondent’s actions subsequent to the driving prohibition are relevant. The Respondent, although not taking the actions suggested by Petitioner 1, has taken what he believed to be the actions that best show his remorse and steps to correction. Those actions, which include the media release, discussions with the Assembly and Nation of Chiefs, and personal counselling, are positive steps towards change and remorse and are in keeping with subsection 197(m) of the Code, striving toward self-improvement and professional development through self-evaluation;
 - c. This is also balanced with the recent ideal expressed in the Preamble of the Governance Policy – and that is of a “model of forgiveness”;
 - d. In respect of Subsection 19(d) of the Code, the Board finds that this provision is not applicable as the Respondent has not been convicted of an offence. Based on evidence heard on the Petitions, the Respondent received an administrative suspension under the authority of the Province. The qualifying phrase “in contrary to this Splitsin Custom Code” has no obvious effect. There is nothing in the Code which speaks to removal due to an administrative suspension.
90. This leads into an analysis of whether Subsection 19(c) and (j) of the Code has been breached. These sections require the Board to interpret what the Splitsin community holds as a standard of conduct that would be so serious to warrant the removal of a Chief. The Code of Conduct in the Governance Policy can also guide this interpretation, however, the term “high ethical standards” is also vague. The Board takes into account the testimony of the Respondent:
- a. The Respondent has stated that this occurrence was not indicative of his normal behaviour and associated his lapse in judgment to mental health concerns aggravated by the increasing tension associated with breakdown in relations with other members of Council;

- b. The Respondent ultimately did have a meeting with the community for over three and a half hours to engage in dialogue, albeit not within the timeline that Petitioner 1 claims should have happened. The Respondent's response to this is a community meeting had to be delayed because of successive deaths within the community and the cultural imperative of not having important meeting while the community is dealing with loss;
- c. While the Respondent was inclined to consider resigning, he was persuaded by some community members to continue in his role.

91. The Board found the Respondent's oral testimony to be presented in a non-defensive and credible manner.

92. The Board finds the Respondent's genuine contrition, his efforts to understand the motivating factors that led to the lapse in judgment and behavior, and the cultural steps he took to demonstrate his accountability to the community, all tend towards rejecting this ground. Other provisions of the Code that demonstrate a staged and culturally appropriate approach, including the underlying principles of opportunities for personal growth, development, kindness, understanding, and forgiveness set out in the Governance Policy, support this finding.

Allegation B: Failure to Control Community Meetings and Preventing Lateral Violence

93. Both Petitioners claim that the Chief failed to maintain order or prevent "lateral violence" at community assemblies.

94. Petitioner 1's allegations are summarized as follows:

- a. The Respondent failed to maintain order at a community meeting in May 2022, particularly when the Respondent's aunt raised her fists and threatened another Band member;
- b. The Respondent failed to maintain order at a community meeting in June 2022 when the Respondent's aunt was verbally aggressive and attempted to physically assault another band member with a handheld microphone. When presented with a copy of the Disorderly Conduct By-Law No. 7, the Respondent failed to act according to and failed to enforce the By-Law;
- c. The Respondent failed to respond to a memorandum provided by Petitioner 1 to the Respondent, the subject of which was the concern of lateral violence at meetings;
- d. The Respondent failed to maintain order at a community meeting on January 26, 2023 where the Respondent's family members waived their arms in the air, made loud comments when others were speaking;
- e. The Respondent left duly convened Chief and Council meetings before the meetings had been adjourned. The adjective used to describe the Respondent

was that he left in a 'huff' and in a childish manner, which is not reflective of a behaviour of a leader.

95. Petitioner 2's allegations (which also reference the May and June 2022 meetings) are summarized as follows:

- a. The Respondent failed to keep order because there was lateral violence and people were being disrespectful and disorderly. Specifically, the Respondent continued the meeting(s) and would not stop the meeting(s) or call a recess;
- b. The Respondent failed to stop violent physical attacks and does little to stop some community members from verbally attacking others, where the attackers have been the Respondent's family members;
- c. Petitioner 2 alleges she is targeted and has been the victim of lateral violence and potential physical violence from the Respondent's family members.

96. Given the similarities in allegations in respect of failing to control order and preventing lateral violence at these community meetings, the Board will summarize the evidence heard from the Petitioners and their witnesses together.

97. The Petitioners say that the Respondent's failure to prevent lateral violence and control community meetings is a breach of the Code, the Code of Ethics, and the Governance Policy. In particular, Petitioner 2 directed the Board to the following sections of the Governance Policy:

- a. 114. Splatsin will not tolerate intoxication, rudeness, swearing or any personal attacks during Community Assembly Sqw7al;
- b. 115. Kukpi7, and Tkwamipla7 or Splatsin member, who demonstrates any of the above noted behavior will be asked to leave the Community Assembly Sqw7al. If the individual refuses to leave the Community Assembly Sqw7al, the Community Assembly Sqw7al must be adjourned immediately and rescheduled later.

98. The other ground for removal to be considered by the Board is under Subsection 19(f) of the Code, which provides that a member of office can be removed if that person is negligent in failing to ensure the safety and protection of the community members and property. The Board is prepared to take a broad view of the notion of "safety and protection" and will interpret that phrase as capturing what has been described to the Board as 'lateral violence'. The Board rejects the Respondent's submission that actual injury or damage to property is required to meet this ground for removal.

99. Petitioner 1 also says that the Respondent's display of 'childish behaviour' by leaving an unadjourned meeting in a 'huff' is contrary to Subsection 19(c) which requires a Chief to maintain a standard of conduct expected of a member of Council.

100. It is the Petitioners' (and their witnesses') evidence that:
- a. There was a lack of chairing and control of disrespectful behaviour at community meetings;
 - b. Members' safety was perceived to be at risk;
 - c. Some members are scared to speak up at community meetings for fear of reprisal;
 - d. Community meetings have been cancelled by the Chief for no reasons;
 - e. Derogatory words and name-calling occurs at community meetings;
 - f. A Band member looked like she was going to 'attack' another Band member with a microphone at a community meeting;
 - g. Those attending Band meetings who say something have been told to 'shut up' by opposition Band members;
 - h. Band members at meetings, particularly those who appear to be supporting the Respondent, have made threatening hand gestures at opposition Band members;
 - i. In community meetings chaired by the former Chief of 16 years, Petitioner 1 has never witnessed any Band members acting out of order.

101. The Respondent's own oral testimony was as follows:

- a. He acknowledged there was a significant amount of lateral violence at community meetings;
- b. He acknowledged what he referred to as "melees" that would occur at community meetings when 'contentious issues' came up and members would voice their concerns publicly about these issues;
- c. He indicated that the actions he took to calm or control the melees were:
 - iv. To ask members to 'respect the mike [microphone]'
 - v. To arrange community meetings where members would sit in a circle, as suggested by Ms. Morgan at one of those meetings;
 - vi. To take a recess or what he described as 20 minute cool down break so people can calm their tempers.
- d. He acknowledged that he did not:
 - vii. Adjourn any meetings where melees occurred;
 - viii. Ask any members causing disturbances to leave or stop.
- e. He stated there was one particular meeting where the meeting was *de facto* adjourned because he walked out of the community meeting;
- f. He stated that when melees broke out at community meetings, from his vantage point, there was no way he could have observed all individual acts of lateral violence taking place through the commotions;
- g. He did not recall the incident where Ms. Morgan presented the Disorderly Conduct Bylaw and asked the Respondent to 'enforce it';

- h. The Respondent stated that he did have private discussions with Councillor Len Edwards, and two Elders, one of which was the Respondent's mother, about his concerns and how best to handle lateral violence at community meetings. It is not clear what came of those private discussions or whether the Respondent made any changes to the way he would handle lateral violence at community meetings;
 - i. The RCMP presence were at some meetings, on the advice of the Elders' Committee; and
 - j. If he intervened more than he did, he would be seen to participate in the melee.

- 102. The Respondent's witnesses confirmed that there was aggressive conduct or lateral violence at the community meetings and insinuated that such violence was instigated by the Petitioner(s) or members who are supportive of the Petitioners or their family members.

- 103. It is irrelevant as to who instigated the melees or lateral violence. On the evidence, lateral violence does occur at community meetings. It is not necessary to determine which 'side' was primarily responsible for the breakdown in civility as the primary focus must be placed on the actions of the Chief and what steps he took to respond or control the melees.

- 104. The Respondent's witnesses also say that they observed the Respondent attempting to control the lateral violence and tempers flared at the community meetings, but that those engaged in the lateral violence do not stop or react according to the Respondent's attempts.

- 105. The Respondent also indicated in oral testimony, "I suppose more could be done". The Respondent recognized that he could have asked the person(s) breaching civility at the community meetings to leave. This is consistent with the requirement of Governance Policy paragraph 115.

- 106. The issue to be determined here is whether the steps that the Respondent took, that is, to ask those involved in the melee and those who participated in the lateral violence to respect the microphone, and take a 20 minute recess where he felt was appropriate is enough to control community meetings which got out of hand. To look at this issue in another way, the issue is whether the failure to ask those who participated in the lateral violence to leave the community meetings and adjourn the meetings if those didn't leave, is in breach of the Respondent's standard of conduct as a Chief and chair of those meetings, contrary to the Code, and specifically, paragraph 115 of the Governance Policy.

107. Several points are important here. First, paragraph 115, read together with paragraph 114, sets out a standard of conduct that applies to all Splantsin in attendance at a Community Assembly and a consequence of failing to uphold it- i.e. a person will be asked to leave an assembly if they are intoxicated, rude, swear or commit a personal attack. Paragraph 115 does not impose a specific obligation on the Chief to remove a person. Maintaining effectiveness of assemblies is a responsibility borne by all council (paragraph 113).
108. It may well have been more effective to ask those who offended section 114 to leave the meeting. However, the Respondent, as an elected official, who has only been sitting chief for 6 months at the time of the May and June meetings, has, in the totality of the circumstances, shown that he took reasonable steps to deal with the incidents that posed a risk to the safety of the members at the community meetings, even though those steps were not 'perfect' and it appears that there are ongoing issues with personal conduct and division in the community that plays out at community assemblies.
109. Maintaining order at meetings, including Community Assemblies, is an important part of governance and this issue deserves more attention internally. But, on the evidence presented, the Board concludes that the Respondent acted sufficiently and reasonably, in the circumstances.
110. As for the allegation that the Respondent left Chief and Council meetings angry and frustrated, which the Respondent himself acknowledged in evidence, the Board finds that the standard of conduct may be overcome temporarily by emotion such as frustration. The Board did not hear much evidence about the reasons for the frustration or the outcome and cannot conclude that the Chief's temporary conduct had an impact on band governance or constituted a serious breach.
111. Finally, to address Petitioner 1's claim that the Respondent failed to enforce the Disorderly Conduct Bylaw, on the Board's review of the said Bylaw, only an individual who meets the definition of an "Officer" may order any person who is engaging in any disorderly conduct to stop such conduct immediately. An "Officer" is defined as "any police officer, police constable, or other person employed for the preservation and maintenance of the public peace and without limiting the generality of the foregoing shall include any member of the Royal Canadian Mountain Police and any by-law officer or any other person appointed by the Council for the purpose maintaining law and order on the reserve." There was no evidence or argument presented by the Petitioners that the Respondent in his role as Chief meets the definition of an Officer. There is also no requirement under the Bylaw for the Chief to contact an Officer for the purpose of enforcing the Bylaw. In fact, it is open to any member whose safety is being

threatened or harmed, to contact an Officer for the purpose of enforcing the Bylaw.

112. As a result, the Petitioners are not successful in proving that the actions or inactions of the Respondent were of such serious nature in failing to prevent the melees or lateral violence from occurring, such that the Respondent ought to be removed as Chief.

Allegation C: Failure to React Appropriately to the Protest/Blockade

113. On Monday, April 17, 2023, Splatsin members held a protest and blockage of the Splatsin Band office, Splatsin Health center, and Splatsin community center.

114. Petitioner 1 takes issue with the manner in which the Respondent reacted to the protest. She alleges:

“The Chief chose to meet with his supporters at the Elders portable. At no time did he attend to meet with or speak with any of the protestors...

The failure by the Chief to meet with the peaceful protestors, but to meet with his own supporters, and failure to speak to Splatsin members at the protest and failure to attend the emergency community meeting is a failure to perform his duties to the best of his abilities.”

115. Petitioner 1 and her witnesses testified that the protest was “peaceful”.

116. In her written submissions, Petitioner 1 wrote:

“...[The Respondent] failed to call a meeting of his Council to try to sort out matters, especially when he said he was concerned about blockading the driveways to Splatsin program services. At no time did he attend to ensure that the protest was peaceful...He failed to attend a community meeting to discuss the protest...He failed as Chief.”

117. In his evidence, the Respondent did not deny that he did not meet with all Splatsin members at the protest. The Respondent said he chose not to attend or participate because the protest was not peaceful or was an illegal blockage by the protesters. The Respondent said that he was of the understanding that cars were blocking driveways to buildings of essential services and as a result, he contacted law enforcement who advised him to file a report.

118. Petitioner 1 does not point to any specific section of the Code, the Code of Ethics, or any provision of the Governance Policy that obligates a member of Council to act in a specific way when a protest, peaceful or otherwise, is held. As such, the Board is left to assume that the Petitioner 1’s argument that the

Respondent did not act in a way she feels that the Respondent, as Chief, should have acted in response to the protest is thereby a ground for removal.

119. The Petitioners and the Respondent disagree as to whether the protest was peaceful or not, or whether access to essential services was impeded. It is not necessary for the Board to express a finding on this nor would such a finding be relevant to a determination.

120. All that is within the jurisdiction of the Board to determine is whether the steps that Petitioner 1 says the Respondent ought to have or should have taken but didn't is a ground for removal. It is the burden of Petitioner 1, to show why non-attendance to meet with protestors, and why failure to call a meeting with Council, fell short of the standard of conduct of a member of Council. In that regard, no evidence was led by Petition 1 to show the Board what are the customary steps for a Chief to take when there is a protest, what the results of those steps would be, or other guidance on what steps Chief/Council should take when there is a protest, whether or not there is interference with services. Therefore, this allegation is not established as a ground for removal.

Allegation D: Governance – Failure to Collaborate with Council

Trip to Las Vegas

121. Petitioner 1 alleges that the Respondent went to Las Vegas with the Splitsin Developments Corporation CEO but did not inform the Council of the trip prior to going, nor were all Elders informed of the trip.

122. The Respondent explained that the purpose of the trip was to meet with an industrial proponent in respect of contractual opportunities to satisfy a First Nations housing crisis in Canada. The Respondent indicated in his testimony that he had a reasonable belief that upon assuming the role of the Chief he would become the representative of Council on the board of the Splitsin Development Corporation as the former Chiefs had held this role. The Respondent indicated he had received approval from the Splitsin Development Corporation board to travel to Las Vegas for such purposes.

123. The Respondent testified that the trip was to pursue a potential business opportunity with respect to green home construction, and, that the opportunity was, at the time, highly confidential, apparently to protect against potential competitors pursuing the opportunity. The Chief considered there to be a potential housing opportunity that would benefit the band.

124. According to the Respondent, when he arrived back to the community from Las Vegas, he asked the President of the Elders' Council to set up a meeting with Council members present, the purpose of which was to ask Elders and Council

members whether there was interest in moving the business opportunity forward.

125. It would appear that the main point of contention, as alleged by Petitioner 1, is whether the Respondent should have informed his Council members about the Las Vegas trip and the purpose of the trip, *prior* to the trip taking place, as opposed to after.
126. The Governance Policy describe one of the roles of the Chief as being a representative of Splantsin with private proponents (Governance Policy, para. 16), therefore to the extent that the Chief communicated with a company or individual regarding a potential opportunity is not in itself offside.
127. Petitioner 1 does not explicitly identify which section or paragraph of the governing provisions that the Respondent's action(s) are in serious breach of. The Board assumes that Petitioner 1 is alleging that failing to inform Council of his trip prior to the trip falls short of the standards of conduct that apply to Chief and Council (Subsection 19(c) of the Code). Petitioner 1 says that the failure to inform Council of his trip prior to the trip goes against a standard of being transparent, honest and accountable to his Council members.
128. It does seem unusual for a Chief to go on this sort of business trip without advising his Council. However, the Board was not provided with law or policy that required prior approval. There are provisions in the Governance Policy (paragraphs 29-32 cited above) for a member of Council to get prior approval through a BCR of a trip for the purposes of claiming expenses for the travel. There may well be an issue whether the Chief can claim travel expenses against the band, however, the Board did not hear evidence about whether he did make a claim, or whether he or the Development Corp. paid for his trip.
129. In summary, there is no clear evidence of the Respondent falling short of standards of conduct which may apply to members of Council and this ground is not established.
130. There is also a related allegation that the Respondent entered into a contract for over \$1 million while on the trip, in breach of monetary limits on contracts. However, the evidence was vague regarding any potential contract and as best as can be discerned, if there was a potential contract drawn up, it was not finalized or entered into, seemingly because of what ended up being resistance by Council. No wrongdoing is established regarding the alleged contract.

Other Incidents of Not Cooperating with Council Members

131. The following are other allegations made by the Petitioners that the Respondent does not get along with or is not cooperating with other Council members:

- a. Petitioner 1 alleges that an elected member of Council resigned because of the dysfunction with Chief and Council;
- b. Petitioner 1 alleges that the Respondent conducted the business of the forensic audit without consulting his Council members.
- c. Petitioner 1 alleges that the Respondent publicly criticized another Councillor, which Petitioner 1 says in breach of Subsection 197(f) of the Code which provides that as Chief, he “will not publicly criticize other employees, past employees, or the policies of the Band.”
- d. Petitioner 1 alleges that the Respondent failed to implement Councillor Len Edward’s suggestion that all Council members submit hourly time sheets to be accountable to members of the community based on a concern that not all Council members were working every day or not working a 35 hour work week as required under the Governance Policy. Petitioner 1 says that the Respondent did not support the recommendation because he did not want to treat his Council members “like children”;
- e. Petitioner 2’s allegation at paragraph 3 of her Petitioner that the Respondent “openly admitted” that work is not being done or carried out because of his conflict with the Councillors at the political table. Petitioner 2 cites Paragraph 3 and 4 of the Oath of Office of the Governance Policy.

132. The Board’s findings on each of the allegations above are as follows:

- a. The allegedly resigned Councillor did not give any evidence at the hearing. The Board was not provided with sufficient evidence of the resignation or the reasons behind it to establish any culpability on the part of the Chief specifically that would establish a ground for removal;
- b. The Respondent testified that he had a telephone conversation with an auditor without presence of Council. Beyond that, there is not evidence presented as to the purpose, nature, outcome or other particulars of the call. Therefore the Board cannot find a breach of conduct by the Chief;
- c. No evidence beyond the testimony of the Petitioner was presented about the allegation that the Respondent criticized another Councillor including what was said, reaction to it or effect. The Board cannot find on the limited evidence a breach of conduct warranting removal;

- d. The allegation that the Respondent did not accept the suggestion to implement hourly timesheets because he did not want to treat them like children can be viewed as evidence that the Respondent trusts the other members of Council, at least with respect to their fulfillment of time dedicated to their role. The evidence does not support an allegation that the Chief cannot work with Council or otherwise breached a standard of conduct;
- e. There was sparse evidence regarding the allegation that the Respondent admitted that work was not getting done. Even if the Respondent did make such a statement, more is required regarding the context, outcome and culpability for this to be evidence of a breach of the standard expected of the Chief. This allegation does not establish a ground for removal.

Allegation E: Failure to Ensure Proper Heating in Band Office(s)

- 133. At paragraph 13 of Petitioner 1's Petition, she claims that Splatsin administration offices were without heat for approximately 7 weeks and that staff had to bring in space heaters and wear coats. Specifically, Petitioner 1 stated in the Petition "Chief Thomas has stated on several occasions that Splatsin has approximately \$29 million, but failed to protect Splatsin Staff by failing to provide heat for the building..."
- 134. A witness for the Petitioner 1 testified that as a staff who works in the administration buildings, the building was not heated for 7 weeks during the cold spell of winter.
- 135. Seven weeks without heat in a government building is a long time and some oversight occurred somewhere within band management. However, it is not established that the Chief failed to act on a responsibility that belonged specifically to him.
- 136. The Respondent's evidence is that typically the Band administrator is responsible for issues such as mechanical problems in Band buildings. However, because there was no Band administrator at the time, the Respondent indicated that once apprised of the issue, he enlisted the aid of Councillor Len Edwards and the problem was resolved within 2 to 3 days. It is not clear whether the resolution that the Respondent testified about is a resolution of the actual heating problem, or whether the resolution is that the right people to contact to resolve the problem was contacted. In any event, an analysis of whether the failed heating is grounds for removal of the Respondent must look at the conduct of the Respondent in resolving or using best efforts to resolve the problem, rather than the actual problem itself (ie: no heat for 7 weeks or whatever the length of time was).

137. The uncontradicted evidence is that the Respondent was apprised of the issue and enlisted the aid of others within 2 – 3 days to resolve/attempt to resolve the problem. As such, the evidence does not establish a ground for removal.

Allegation F: Failed Housing Development/Contracts

138. Petitioner 1 claims that the Respondent has failed to provide updates on housing contracts by which the company was contracted and paid in full in November 2021. In addition, Petitioner 1 says that in the summer of 2022, the same company was granted a contract for 6 Elders’ units and to date, no infrastructure has been built. Allegedly, no work has begun on either contract.
139. Petitioner 1 submits that the Respondent did not act in the best interests of the community by failing to show leadership in the Splatsin housing crisis, despite the Respondent admitting that no houses have been built in the Splatsin community for the past 22 years.
140. It is not clear what Petitioner 1 alleges is the act or inaction of the Respondent that aligns with a governing provision and forms a ground for removal. Petitioner 1 is displeased with the housing crisis for her community, which the Board recognizes is a genuine concern. However, the allegation is a generalized sentiment that the Respondent has failed, in his role as Chief for approximately 1.5 years, to ensure that housing is built in his short tenure, despite the acknowledgement that no housing has been built in the past 22 years and despite the first contract being entered into before the Respondent became Chief. The Board was not provided with the contract, the terms of the contract or payment, or any other objective information regarding its implementation.
141. Therefore, the Board cannot, on the evidence, lay responsibility for the housing crisis or the lack of progress in addressing it with the chief alone that would or could establish a breach warranting removal.

Allegation G: Respondent’s Description of what a “lawsuit” is or is not

142. Petitioner 1 claims that at a Chief and Council meeting on April 13, 2023, the Chief told Council that a legal action that his aunt, a Councillor, filed with the Federal Court in Edmonton was not a lawsuit. Petitioner 1 says “Either the Chief does not know or understand the meaning of “lawsuit” or he is intentionally trying to mislead the Council. In any event, he is failing to carry out his duties faithfully, honestly, impartially and to the best of his abilities by failing to recognize that the legal action is a lawsuit against Splatsin.”
143. In any event, this issue reflects a disagreement between a non-lawyer Respondent and non-lawyer Council members about the use or definition of

legal terminology. In his testimony, the Respondent appeared to not know what a petition for judicial review was. He testified he had no intention to deceive or mislead, as alleged by the Petitioner 1. This testimony was credible.

144. Whether the Respondent understands the Federal Court filing to be defined, legally or colloquially, as a “lawsuit” or not does not constitute a ground for removal.

Allegation H: Failure to Provide Agendas for Community Meetings

145. Petitioner 2 alleges that the Respondent has failed to provide agendas for community meetings. She cites paragraphs 106, 107 and 108 of the Governance Policy, which requires notice of the agenda to be posted to the Kukpi7 or their delegate.
146. The Respondent acknowledged that he did not provide agendas prior to one or more community meetings. The Respondent says that this was a responsibility customarily shared with the Band administrator. Due to a breakdown of administrative procedures caused by key vacancies in Splitsin administrative staffing, the practice of circulation of agendas was not fulfilled in the Respondent’s tenure as Chief for at least some meetings.
147. Community assemblies are distinct from band meetings, which have different provisions for agendas. The evidence was that there were only a few community assemblies in the last year.
148. Undoubtedly agendas can be important information for members, however, no serious implication for band governance was established on the evidence that would lend gravity to this allegation. While agendas for meetings should be distributed according to the proper procedures, the evidence does not establish a serious breach that would warrant removal.

Allegation I: Respondent’s Retention of Legal Counsel against Council members; and Alleged Refusal to Mediate

149. Petitioner 1 alleges that the Respondent retained a lawyer in May 2022 and presented to the Council members a letter from his lawyer containing complaints against Council and potential confidential information regarding staff members. Petitioner 1’s complaint is that “By hiring a lawyer against three of his Councillors, he failed to act in the best interests of the Splitsin Community and breached confidentiality.”
150. In her written submissions, Petitioner 1 further particularizes that “Even though mediation was recommended by the community, the Chief failed to follow the recommendation of the community and to this day, no mediation has been

attempted. Hiring a lawyer against 3 councillors does nothing to build any trust or communication amongst the Council. In failing to complete mediation and hiring a lawyer against his Council, the Chief failed to act in the best interests of the community.”

151. The evidence regarding the Respondent’s retention of a lawyer is as follows:
- a. A “Confidential Complaint” in the form of a letter dated March 8, 2022 against the Respondent was received by Splatsin “Human Resources”. The sender is or was a staff member (the “Sender”);
 - b. A letter dated May 12, 2022 from Carol Roberts Law Corporation was sent to the Respondent who indicated that she had been retained by the “Splatsin government” to investigate two complaints it received against the Respondent (the “Investigation”). The said letter attached the Sender’s Confidential Complaint of March 8, 2022 and advised that the final report would go to two Councillors, one or more of whom retained the lawyer to investigate the complaints against the Chief;
 - c. The Respondent retained a lawyer, Ms. Trotti, to help him navigate and address the response requested in Ms. Roberts’ letter;
 - d. Letters were exchanged between Ms. Roberts and Ms. Trotti, each stating their positions on the validity of the Investigation;
 - e. Ms. Trotti sent a letter dated June 24, 2022 to Ms. Roberts. The letter indicated the Respondent continued to challenge the validity of the Investigation;
 - f. On the same day – June 24, 2022, Ms. Trotti sent a letter, which is the subject matter of Petitioner 1’s allegation, to Councillor Edwards, William and Vergata. The letter references the validity of the Investigation launched by the Councillors and states complaints made by the Respondent against the Councillors. The letter contains an offer made by the Respondent for the parties to participate in voluntary mediation and proposes the name of a mediator.
 - g. The Councillors retain their own lawyer from Callison & Hanna, presumably to deal with Ms. Trotti’s letter of June 24, 2022. It would appear from the evidence that nothing else was exchanged and there was no response made to the Respondent’s proposal to mediate.
152. Petitioner 1’s complaint is two-fold.

153. The first complaint is that Respondent retained a lawyer against the Councillors even though as Petitioner 1 wrote in her Petition: *“This lawyer’s letter came as a complete surprise to his Council, as they stated that they believed that conditions had improved.”* The Council was not called as witnesses as to what they believed or stated. The correspondence indicates that the parties had not agreed to the substance and validity of the Investigation and does not evince an improvement in conditions. There were legal processes in motion.
154. In any event, the act of retaining a lawyer to make a claim or defend oneself is a right held by any person, including the Chief. It is not for the Board to weigh in on legal advice given to the Chief or his response to the investigation.
155. The second complaint is that the Respondent refused to participate in a mediation process. In fact, Ms. Trotti’s letter of June 24, 2022 disproves this assertion. The letter states that the Respondent was interested in mediation and proposed the name of a mediator. He apparently received no substantive response from the Councillors or their lawyer to this proposal.
156. Evidence was heard that led Petitioner 1 to indicate that the mediation process commenced by Ms. Roberts was rejected by the Respondent. However, in the Board’s review of the letters from Ms. Roberts, it is clear that Ms. Roberts did not hold herself out to be a neutral mediator in respect of the Investigation. Rather, Ms. Roberts held herself out to be an Investigator of the human resources issues. The Board finds that mediation was first proposed by the Respondent, to which the Councillors did not respond. . In any event, the mediation under consideration is a voluntary process, and refusal to participate in mediation would not be a ground for removal.
157. This allegation is not substantiated as a ground for removal.

Allegation J: Failure to Hire Key Staff and Hiring Staff without Council Approval

158. Petitioner 1 claims that Splatsin have been without a Band Administrator for more than a year and without a permanent Health Director and a Human Resources person for many months.
159. At paragraph 18 of her Petition, it is alleged that the Respondent filled the Band Administrator role without consulting and collaborating with his Council. The Respondent’s decision was overturned by majority of Council.
160. The Respondent’s evidence and position is that:
- a. Splatsin was without a Band Administrator from March to July 2022;

- b. In August 2022, the Councillors proposed to Chief and Council that a former Councillor should be hired as a temporary Band Administrator with a specific salary;
- c. The Respondent was of the view that the salary expectation was not in line with what a Band Administrator had customarily been paid. The was also concerned about a potential conflict of interest by the councilor who proposed the candidate, given a familial relationship;
- d. In order to provide a fair process for hiring a Band Administrator, Chief and Council decided to include a posting for the position to the Splatsin website. Three candidates applied, including the former Councillor. One candidate withdrew and another was proposed for an interview. The three remaining were interviewed;
- e. Upon the interview process concluding, the Respondent prepared a list of pros and cons for each of the candidates;
- f. The Councillors continued to push for the former Councillor to be chosen as the Band Administrator. The Respondent remained concerned about their salary expectation;
- g. The Respondent determined that it was in the best interests of the Splatsin Band and community to be cost-conscious;
- h. He unilaterally decided to offer on a temporary basis the position two Candidates, both willing to receive a significantly lower salary than the former councilor sought to be compensated for;
- i. The two were contracted for four months to act as co-Band Administrators;
- j. The contracts were ultimately cancelled.

161. As for the vacant roles of Human Resources and Health Director, there is no evidence that those roles had been fulfilled by the time of the Hearing. It is the Respondent's position that responsibility for filling those roles lies with the Band Administrator(s).

162. Ultimately, the Respondent made a decision based on a rudimentary balance of interests, and took into consideration the cost implications for the Band. Whether he had authority to do so unilaterally would seem questionable, particularly given that the Councillors apparently had authority to cancel the

contracts. Further, ensuring that key positions are filled would seem to be a collective responsibility of Chief and Council. However, the Board was not provided with relevant applicable customs, practices or laws of the Nation; and, does not have evidence of the contracts or from the Councillors regarding this process.

163. Therefore, the Board cannot find a breach that would warrant removal.

By-Election Petition

164. Paragraph 6 of Petitioner 2's Petition presents a petition calling for a by-election signed by 157 Splitsin Band Members. It is Petitioner 2's evidence and position that at a 'motion' passed at a November 3, 2022 community meeting, the Respondent was asked what he would accept to resign as Chief and trigger a by-election for a new Chief and Council. Petitioner 2 says that the Respondent indicated that he would call a by-election if he receives a petition with at least 100 signatures.

165. Petitioner 2 took steps to prepare the petition pursuant to the motion. The petition was tendered as evidence and the first page of the petition provides:

"We, the undersigned, members of the Splitsin First Nations Community, sign this petition to show our dissatisfaction with the current Chief and Council.

A motion of non-confidence and by-election was passed at a Splitsin Community meeting on Thursday, November 3, 2022. The non-confidence was found against the current Chief and Council.

We ask that the current Chief and Council serve until the earliest time that a by-election can be held, and a new Chief and Council is elected."

166. What follows is a table of 149 signatures along with emails from other members who indicate that they want to be signatories on the petition.

167. Petitioner 2 alleges that the Respondent did not abide by his promise to call a by-election, after being in receipt of the petition calling for the by-election that contained over 100 signatures.

168. It was the Respondent's oral testimony that he did indeed indicate that he would call a by-election if he received a petition with over 100 signatures, but that upon receiving the petition, he realized that the petition itself was not a proper 'legal' document to trigger a by-election. He indicated that the Custom Election Code and the Splitsin Governance Policy does not provide a procedure by which

a petition of over 100 signatures can legally trigger a by-election. He indicated that that the 157 signatories did not represent the majority of the membership, which is comprised of 900+ members. He indicated that it is his opinion that the proper procedure would be to call a referendum so that all 900+ members can receive notice of the referendum to vote on whether a by-election should be held.

169. On the Board's review of the Code and the Governance Policy, there is no provision obligating Chief and/or Council to call a by-election upon receipt of a petition with more than 100 signatures. Furthermore, the parties have not introduced any evidence of another customary practices by the Splatsin people that by-elections have typically been triggered by such a petition with more than 100 signatures.
170. Having said that, the Board notes that the Respondent created confusion and expectations by verbally promised a by-election without first educating himself on the proper channels to take to call a by-election, which is unfortunate.
171. Ultimately, the Board is not persuaded that the petition has any binding force under the Code. The Board recognizes that the document is an expression of the democratic will of some of the Splatsin community, but 157 signatures does not represent the majority of electors; and even if it did, the Code sets out exhaustive grounds for removal of a Chief or Council and these grounds do not include the preparation of an informal sounding of opinion through a petition.

Conduct prior to becoming Chief

172. Petitioner 1 includes allegations with respect to conduct of the Respondent while he was Councillor prior to January 2022, and not of conduct while the Respondent was Chief. The Board will not address these allegations as conduct of the Respondent before he was Chief are not relevant to an analysis as to whether there are grounds for removal as Chief.

Conclusion

173. In summary, grounds for removal were not established on the evidence presented by the Petitioners Morgan and Johnson. The hearing indicated clear signs of division and governance challenges in the Splatsin community; and, the Chief, as one of the elected officials, bears a heavy burden to act impartially and in the interest of the community. There have been missteps and there remain challenges and improvements that can be made. However, the Board's role is restricted to determining whether a breach of the applicable customary laws and policy of Splatsin have been contravened to an extent and of a nature that would warrant the serious consequence of removal from elected office. The Board concludes that no such breach was proven on the evidence. As such, the Morgan and Johnson Petitions are dismissed pursuant to subsection 30(b) of the Code.

Dated: May 26, 2023

Ron Stevenson

Ronald Stevenson



Wendy Cheung



Lisa Glowacki