

Ta'an Kwäch'än Judicial Council

Date: March 27, 2018

Case Number: TKJC 18-01

Complainant: Bonnie Harpe

Respondent: Kristina Kane

This is the Ta'an Kwäch'än Judicial Council Decision in the matter of **TKJC 18-01** Harpe v. Kane regarding David Irvine Criminal Record.

BACKGROUND

A letter to the Ta'an Kwäch'än Judicial Council dated February 27, 2018 from Ms. Bonnie Harpe asks that Ms. Kristina Kane, as Chief of the Ta'an Kwäch'än First Nation, be removed from her office under Section 8.12 of the Ta'an Kwäch'än *Constitution*. Section 8.12 of the Ta'an Kwäch'än *Constitution* states that the Chief: "... may be removed by the Judicial Council in accordance with section 12.2 of this Constitution if he or she is found to be compromising the repute or obstructing the duties of that office."

This request is founded on the belief that Chief Kane breached her oath of office and had not been truthful to Council when she swore in Mr. David Irvine as a member of the Ta'an Kwäch'än Council on February 6, 2018. At that time Chief Kane is alleged to have informed the TK Council that Mr. Irvine had submitted a Criminal Record Check establishing his eligibility for office.

Ms. Harpe provided a fax copy of a document on February 27, 2018 also proving, she alleges, that Mr. Irvine had indeed committed an indictable offense under the Criminal Code in 1993. If true Ms. Harpe believes this would have made Mr. Irvine ineligible to serve on the Ta'an Kwäch'än Council under section 8.15 of the *Constitution* and Chief Kane derelict in her duty by allowing him to be sworn in.

AUTHORITY

The Ta'an Kwäch'än Judicial Council accepts its responsibility to: "... adjudicate any cases of allege violations of the laws of the Ta'an Kwäch'än Council and impose such sentences as are provided by law to ensure compliance;" (Ta'an Kwäch'än *Constitution* 12.1.1).

The Ta'an Kwäch'än Judicial Council also recognizes its continuing duty to interpret the Ta'an Kwäch'än *Constitution* as needed.

ISSUE

The failure of Chief Kane to ensure compliance with section 8.15 of the Ta'an Kwäch'än *Constitution* in the case of Mr. Irvine is at the heart of this complaint.

ANALYSIS

Section 8.15 of the Ta'an Kwäch'än *Constitution* refers to removal from office due to a conviction for an indictable offence during a person's term in office. The appropriate section is 8.14, which states: "Citizens are not eligible to be a Family Councillor, Chief or Deputy Chief if they have been convicted of an indictable offence of theft, fraud, or false pretences." This is clearly the situation implied by Ms. Harpe in the case of Mr. Irvine.

This error notwithstanding, the allegation by Ms. Harpe, which places the burden of ensuring compliance with section 8.14 on Chief Kane is at the heart of the matter. Previous decisions by this Ta'an Kwäch'än Judicial Council notably those referenced as TKJC06-02, TKJC06-07 and TKJC06-08 attend to this question. Ms. Harpe was the applicant in all these matters.

The analysis in those cases by the Ta'an Kwäch'än Judicial Council notes on the matters before the Ta'an Kwäch'än Board: "... it is the Board members collectively that share responsibility to ensure the Board operates in accordance with its constitutional requirements, including its proper composition." This decision by itself would mitigate any burden borne by Chief Kane.

Further, and more to the point on the eligibility of Mr. Irvine, these decisions state that primary burden for selection of family councilors rests with the traditional family: "Each Traditional Family, as the authority responsible for selecting Family Directors and for establishing its own selection procedures, has an implied constitutional obligation to take reasonable steps to ensure that the individual it selects is eligible for office. It is not reasonable for a Traditional Family to make selections without regard to eligibility requirements in the Constitution and leave compliance with those requirements up to the Chief or others.

"An integral part of the selection process is verifying that an individual being considered for selection as Family Director is not disqualified from holding that office: at a minimum the selection process should include measures to confirm the individual is a Citizen of its Traditional Family, is at least 16 years of age, and that he or she has not been convicted of a disqualifying criminal offence."

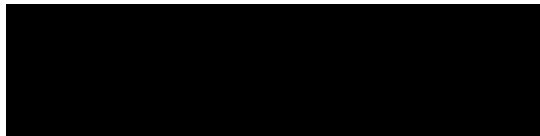
However if the Traditional Family selection process fails and a Family Director is found to have been ineligible for whatever reason at anytime following their swearing in, it is incumbent on the Chief, Deputy Chief or other Family Directors on the Ta'an Kwäch'än Council to act and remedy the breach.

DECISION

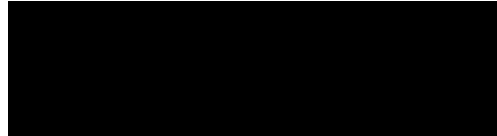
This Ta'an Kwäch'än Judicial Council reaffirms this analysis and cannot find Chief Kane responsible for her possible failure to recognize Mr. Irvine's alleged ineligibility to serve as a Family Director on the Ta'an Kwäch'än Board.

The Ta'an Kwäch'än Judicial Council dismisses this complaint.

Issued by the Ta'an Kwäch'än Judicial Council this 27th day of March 2018.



Michael Dougherty, Judge



Barbara Evans, Judge

JUDICIAL NOTE

As the Ta'an Kwäch'än Judicial Council has noted in previous decisions it is necessary for all Traditional Families to clearly establish their selection procedures for their Family Directors and make these available to all members of their family lines. Improvements in procedural accountability and transparency are essential in order to enhance the development of the democratic governance capacity of the Ta'an Kwäch'än First Nation.