

# TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

BOX 31735  
WHITEHORSE, YUKON Y1A 6L3

Email: registrar@tkjc.ca  
Fax: (867) 633-6954

To: Mr. John Bunbury  
[REDACTED]

RE: FILE 2020 - 02 Complaint to the Ta'an Kwäch'än Judicial Council

Dear Mr. Bunbury:

This letter is in response to your letter of complaint filed with the Ta'an Kwäch'än Judicial Council [TKJC] related to voting procedures at Ta'an Kwäch'än Council [TKC] Council meetings. The Judges met and reviewed the complaint, the Rules of Procedure for the Board, the Minutes of the March 5, 2020 meeting (including a recording of the meeting) and the 2017 General Assembly Resolution 2017-02 as received from the TKC.

According to the Rules of Procedure for Council (which are in force) -Section 27(11) - states that "abstentions are considered a vote in the affirmative".

In review of the recording of the Meeting, the TKJC notes that the procedure was:

- there was information disclosed on the Agenda Item with discussion
- a Motion to accept one of the Recommendations was made and seconded
- a call for any abstentions and one Councillor abstained
- a call for any objections and none were made
- the motion was declared passed by majority
- the abstaining Councillor made some comments and discussion further ensued, including engagement by Councillor Bunbury who after some time stated that he wished to abstain until he had time to further review the matter
- it was explained that the Motion had been made, seconded and passed by majority
- Mr. Bunbury stated that he thought the Motion was still under discussion
- it was clarified that the vote had been conducted and he could not, at this point, abstain.

According to your submission, you were on the telephone during the meeting and "doing both my class and council at home" and clearly were unaware that the vote had been taken. You state that to refuse your abstention is "a violation of your constitutional right".

The TKJC then took note that at the 2017 General Assembly it was directed that Council revise the Board Rules of Procedure on abstentions, whereby they are considered non-votes..

**GENERAL ASSEMBLY RESOLUTION 2017-02 - ABSTENTION VOTES  
OCTOBER 29, 2017**

**WHEREAS** the TKC Rules of Procedure for the Council Section 27.11 now reads: "A Councillor who refuses to vote shall be deemed to vote in the affirmative"; and

**WHEREAS** the 27.11 subsection implies that an abstention vote counts as an affirmative vote; and

**WHEREAS** the Parliament of Canada and Robert's Rules of Order are explicit in that abstention votes are non-votes.

**THEREFORE BE IT RESOLVED THAT** the TKC amend section 27.11 of the Rules of Procedure of the Council to read: "A councillor who refuses to vote shall be deemed to have not voted."

**Moved by: Bengie Clethero**

**Seconded by: Jessica Jacobs**

**Decision: Passed by consensus**

While this General Assembly Motion was passed, we have been advised that it has not yet been adopted by Council and is an outstanding item for actual adoption into their procedures. That being said, however, even if the change had been adopted by Council, and your abstention had been voiced at the time of the vote, or accepted afterwards, it would not have affected the outcome of the vote and the Motion as presented would have passed,

Recognizing that to pursue this matter to hearing would serve no beneficial purpose, the TKJC has decided in the alternative to issue a Disposition on the matter which will be forwarded to the TKC. A copy of the Disposition is attached.

Thank you for your correspondence and for your commitment to the TKC. Your actions will have a positive impact on the TKC as they will be required to adopt a standardized Rules of Procedure going forward and recognize their responsibility to implement GA Motions as passed in a timely manner as they are directives from the Citizens.

Anne Powers, Registrar  
On behalf of the Ta'an Kwäch'än Judicial Council

Copy: Ta'an Kwäch'än Council

# TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

## DISPOSITION

ON THE MATTER OF TA'AN KWÄCH'ÄN COUNCIL  
AND  
RULES OF PROCEDURE OF THE BOARD

ARISING OUT OF A COMPLAINT FROM COUNCILLOR BUNBURY

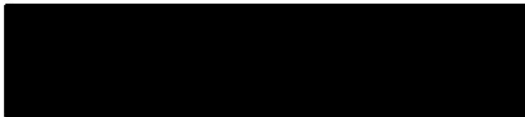
The Ta'an Kwäch'än Judicial Council received a Complaint that during the Ta'an Kwäch'än Council meeting on March 5, 2020, which the Complainant attended by phone, he was unable to file an abstention on a vote taken.

Having considered the facts of the matter, and having heard a recording of the event, the TKJC finds that the Complaint will not be pursued to hearing. The reason for dismissal is that the impact of this abstention, even if it had been recorded is moot to the outcome of the vote.

The Ta'an Kwäch'än Judicial Council however, must find that the TKC is in non-compliance with the Rules of Procedure as amended by Motion at the 2017 General Assembly (Motion 2017 – 02). The Ta'an Kwäch'än Judicial Council directs the TKC to immediately amend and comply with the Motion as passed at all TKC meetings.

Further, the Ta'an Kwäch'än Judicial Council strongly suggests that the Ta'an Kwäch'än Council strictly adhere to a set of generally accepted Rules of Procedures standard and recommends the use of Robert's Rules of Procedure which dictate that a Motion, properly moved and seconded is put to the floor for discussion and at the end of the discussion, a vote is properly taken including yea, nay and abstentions, declaring the outcome of the Motion for the records and not allowing further discussion at the same meeting on the same item.

BY ORDER MADE THIS 5<sup>th</sup> day of October, 2020



Judge Michael Dougherty



Judge Darla-Jean Lindstrom



Judge Barbara Evans



# TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

BOX 31735  
WHITEHORSE, YUKON Y1A 6L3

Email:  
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October 6, 2020

To: Ms. Bonnie Harpe  
By Email to [bjharpe@gmail.com](mailto:bjharpe@gmail.com)

RE: FILES 2020-03, 2020-04, 2020-05 & 2020-06 Complaints to the TKJC

Dear Ms. Harpe:

This letter is in response to your letters of complaint filed with the TKJC related to a number of matters (in order of File Numbers noted above):

1. Allegation that Chief Kane illegally authorized \$13,000.00 to be paid to the Ta'an Kwach'an's Mundessa Development Corporation.
2. Allegations that chques are being signed by Chief Kane and her sister, a TKC Councillor Charlotte Kane which alledgedly is a Conflict of Interest and nepotism.
3. Actions and activities of Chief Kane arising out of the January 2020 General Assembly and ongoing operationally.
4. Request to direct Council to order a forensic audit and investigation of Chief Massie related to the years she was Chief (2003-2009).

## **1. Actions and Activities of Chief Kane**

The Judges met and reviewed in detail your letter and the attached documents and summarize your complaint as follows:

- The TKC held a GA in January 2020 having had no GA in 2019; You state that the resolution of November 2015 to call a special GA before February 2016 was ignored and infer that there have been no GA's since 2015.
- That Chief Kane "disappeared from the GA without announcement
- That Chief Kane left the GA to attend the Oil and Gas Roundup in Vancouver, taking a personal trip to Oregon prior to the Roundup
- That last year Chief Kane and a delegation attended Roundup and you allege it was "one big party" which was not a good expenditure of funds
- That her reply to a query that no staff attended Roundup was a lie as she is a staff person
- Chief Kane's behaviour is disturbing as she is rarely at work, refuses to disclose her salary, that confidential information of citizens may be stored insecurely at her home, and that she does not report to Council on her travels and committee activities.
- That Chief Kane yells at some Council members and that her family line, who holds a majority of votes, support her "no matter what she does even if it's illegal" and demands that the Chief be investigated for theft and fraud.
- That Chief Kane is abusing Section 9.6 of the Constitution which allows the responsibilities of the Chief to be carried out by the Deputy Chief as shown by your allegation that Chief Kane has said that she "does not have to be at work because of this provision".

*Having carefully scrutinized the numerous allegations, the TKJC surmises that you believe that Chief Kane is unsuitable to sit as Chief for a multitude of reasons. However, while it is your belief, you have not provided the TKJC any basis to accept your complaints within our Constitutional jurisdiction. The only matter which may be within our jurisdiction is related to the allegation of theft and fraud, a complaint you have brought before and which the TKJC previously decided. In the absence of further evidence to support an ongoing allegation of theft and fraud, we cannot revisit the issue.*

As to whether or not Chief Kane is a good and responsible Chief is not within the jurisdiction of the TKJC, but rather a matter to be dealt with by election.

## **2. Cheque Signing Authority**

Based on the complaint of conflict of interest and nepotism where two people of the same family are signing cheques, the TKC has confirmed that there is no cheque signing policy in place. As a point of history, a draft Cheque Signing Policy was produced by Administration and, subsequent to a legal review of the policy, the lawyer recommended The Limits on Requisitions for Expenditures Regulation be revised rather than interpreted by a secondary policy. While that policy has not yet been amended, the standards set in the existing policy are not breached when family members sign a cheque. The TKC did, however, advise that in-lieu of official cheque signing guidelines, the general practice is for cheque signers not to sign cheques for payees they are closely associated with the signees.

*In the absence of specific evidence that signees personally have benefitted from the practices currently in place, there can be no finding of Conflict of Interest.*

## **3. Mundessa Expenses and Authorization improperly by Chief Kane**

The TKJC recognized that the issue raised was likely within their jurisdiction to accept for investigation and contacted the TKC requesting clarification in regard to your allegation that Chief Kane had, within her role as Chief, personally authorized payment of approximately \$13,000. to Mundessa Corporation from the TKC revenues without Council approval. The TKC administration provided details, which the TKJC are sharing with you to clarify the chain of events:

- Since late 2018 – Administration flagged concerns about Mundessa’s cashflow forecast, urging Jackie Bazett to speak with Council.
- Dec 2019 – Having waited until the Mundessa bank account was depleted and with debts were owed for critical expenses like insurance, Jackie Bazett approached Council for funding.
- Rather than approving short-term expenses or core funding, Council requested Mundessa call a public meeting to disclose the status of the Corporation. In February 2020, the Mundessa meeting was held at the Whitehorse library with Jackie Bazett in attendance but none of the board members attended.
- Spring 2020 – Left in a catch-22 situation where creditors were pursuing TKC for unpaid Mundessa invoices and Council had deferred the funding issue to a public meeting, invoices were signed off for critical expenses (*see breakdown below*).
- April 2020 – The funding issue was taken back to Council by administration clarifying that a cumulative 13K of expenses had been processed but that funding was still required for future expenses.

- May 2020 – Council directed Mundessa to vacate their premises and approved \$54,000 for specific expenses, which did not include additional expenses for which Mundessa was still liable.
- Spring 2020 – Jackie Bazett advised that due to the fact TKC had not approved funds for Mundessa’s insurance premium, all but one member of the Mundessa board had resigned.
- July 2020 – The funding issue was taken back to Council for a third time by administration, clarifying Mundessa was still liable for certain expenses at which time Council approved \$9,700 for Mundessa rent related expenses but did not approve other known liabilities. Jackie Bazett resigned as Mundessa president along with the one remaining board member. The debts Jackie Bazett disclosed before resigning remain outstanding, and, TKC has been contacted by additional creditors seeking payment of other Mundessa expenses.

The complaint specifically focusses on a breach of the Limits on Requisitions for Expenditures Regulation and the 10K limit by the Chief. The following are the standards as set out in The Limits on Requisitions for Expenditures Regulation:

1. The signing authorities and limits on requisitions for expenditures shall be as follows:

	Expenditure Line Items		
	Manager	Chief & Manager	Board & Chief
Operating Expenditures	≤ \$5,000	≤ \$10,000	> \$10,000
Offers of Employment	≤ \$5,000	\$10,000	> \$10,000
Capital (Fixed) Assets	≤ \$5,000	≤ \$10,000	> \$10,000

Date	Expense	Amount	Expense Authorization Signed By *
2020-01-06	BDO	\$ 3,127.00	Executive Director
2020-01-01	Rent	\$ 1,150.00	Executive Director
2020-01-20	Insurance (1/4)	\$ 6,277.00	Dep. Chief & Exec. Director
2020-01-08	Christ Church Cathedral	\$ 100.00	Deputy Chief
2020-01-17	Northwestel	\$ 85.00	Executive Director
2020-01-01	Rent	\$ 1,150.00	Executive Director
2020-01-07	Property Tax	\$ 14.71	Executive Director
2020-01-28	ATCO	\$ 506.70	Executive Director
2020-02-14	Common Ground Chair (Council requested meeting)	\$ 960.00	Finance Manager
2020-02-13	Christ Church Cathedral (Council requested meeting)	\$ 75.00	Executive Director
2020-02-13	Superstore (Council requested meeting)	\$ 464.76	Finance Manager
2020-01-01	Rent	\$ 1,150.00	Executive Director
2020-02-29	Notetaker (meeting Council requested)	\$ 500.00	Executive Director

\*Executive Director: David Steele, Deputy Chief: Christina Peters, Finance Manager: Andrew Johnston

The TKJC reviewed The Limits on Requisitions for Expenditures Regulation as well as other Finance legislation and note that none of the expenses paid by TKC were authorized by Chief Kane personally. Further, that each “requisition” was a signed purchase order, invoice, etc. authorized within the permitted limits for payment by the Executive Director or Finance

Manager or Deputy Chief/Executive Director. Once items have been properly authorized within allowed limits, the signatories on cheques are irrelevant.

*Therefore, the TKJC finds there has been no breach of the Limits on Requisitions for Expenditures Regulation and, more particularly that Chief Kane did not personally authorize payment of funds from TKC to Mundessa Corporation without approval of Council.*

**4. Request to direct Council to order a forensic audit and investigation of Chief Massie related to the years she was Chief (2003-2009).**

Your Complaint requested that the TKJC force the council to contact the RCMP to order a forensic audit" and "that former Chief Ruth Massie be investigated and charged for her many breaches of the Finance Act". Attached to your Complaint was a copy of an email from the RCMP which states "from my initial review of the Mynett Financial Investigation report, it does not appear as though the elements of any criminal offence has been met".


TKJC file 2014-05 was a Complaint filed by you on November 18, 2014 stating "I am writing to request a financial investigative committee be struck under section 12.1.3 of the TKC Constitution to conduct an investigation of the irregularities of the attached 2011 Financial Audit".

Arising out of that complaint, the TKJC reviewed a TKC letter dated March 3, 2011 referring to the Mynett Report that states "we did not find evidence within the scope of our review that such funds were used for any purpose other than the business of the TKC and its subsidiaries."

The TKJC file 11-03 was a Complaint filed by MacDonald/Duncan and arising from that complaint the TKJC established an investigative committee who, in part reported "Financial irregularities appear to exist but do not appear to be malicious or self-serving. I did not find any misappropriation of public money. Internal controls and processes are not transparent although there does appear to be processes in place. The processes are inconsistently applied and authorities for financial dealings are not clearly defined."

*In our closing letter to you in 2014, the TKJC stated "Recognizing that the Judicial Council has previously appointed an investigative committee to investigate irregularities identified in the 2011 audit and that recommendations to the TKC Chief, Board and Elders Council in regard to financial accountabilities and governance matters have been made, to accept your complaint would substantively duplicate work that has been done. Therefore the Judicial Council cannot accept your complaint as submitted. "We confirm that, having been decided previously, this Complaint is dismissed.*

The TKJC, having reviewed each of your recent Complaints dismisses all of them for the reasons provided.

  
Anne Powers, Registrar,  
On behalf of the TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

Copy to: Ta'an Kwäch'än Council

TA'AN KWÄCH'ÄN JUDICIAL COUNCIL