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# TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

June 13, 2024

To: Ta'an Kwäch'än Council  
117 Industrial Road  
Whitehorse, YT Y1A 2T8

And To: Michelle Telep (by email)

## DECISION

### Re: File 2024-1, M. Telep v. TKC Council

This decision of the Ta'an Kwäch'än Judicial Council (TKJC) relates to an application filed with the TKJC by Michelle Telep on March 14, 2024, seeking a ruling that two motions passed by the Ta'an Kwäch'än Council (TKC) Council on March 6, 2024, were beyond their jurisdiction and seeking clarity as to the Council's authority and jurisdiction over the removal or suspension of the Chief.

The two motions were:

**Motion 2024-03-07 (March 7, 2024):** That Council directs that the Chief be suspended from signing authority, credit card access and attendance at both internal and external meetings where the Chief would be sitting in a Chief capacity, until this matter is resolved.

Moved by: Christina Peters

Seconded by: Charlotte Kane

Opposed: Diane Graham

Decision: Passed by Majority

**Motion 2024-03-08 (March 7, 2024):** That Council will call a Special General Assembly as of April 22, 2024 to be announced at such time, noting this Special General Assembly will not occur if the Chief resigns prior to April 22, 2024.

Moved by: Doris Anderson

Seconded by: John Bunbury

Opposed: Diane Graham

Decision: Passed by Majority<sup>1</sup>

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<sup>1</sup> At a subsequent Council meeting on March 14, 2024, this latter motion was amended (with advice from TKC legal counsel) and replaced by the following:

**Motion 2024-03-04 (March 14, 2024):** That Council will call a Special General Assembly to be held on April 22, 2024, to be announced on March 22, 2024.

Moved by Doris Anderson

Seconded by John Bunbury

Abstention: 1 (Jay Massie)

Passed by Majority

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On or about April 11, 2024, the Special General Assembly, originally scheduled for April 22 was cancelled, with the regularly scheduled General Assembly set to proceed on May 24 to 26, 2024.

The Application by Ms. Telep states, *inter alia*:

*My question is regarding the Council's authority and jurisdiction on suspending Chief Amanda Leas from her duties without following the due process as outlined in the TKC Constitution. . . . The [second March 7] motion is bullying and threatening behaviour by Council and is inappropriate, unacceptable, and violates the TKC Constitution.*

*A General Assembly date has already been set by Council for May 24, 25, 26, 2024. . . . It is financially irresponsible for Council to call a Special General Assembly to remove the Chief when a General Assembly date has already been set for May 2024.*

*This matter needs to be reviewed by the TKC Judicial Council . . . Clarity needs to be given to the Council on their authority and jurisdiction when the matter of removal/suspension of Chief/Deputy Chief discussions arise, so they may clearly understand their role and boundaries as Council members.*

The Application does not seek damages or any specific remedy other than clarifying the jurisdiction of the TKC Council to remove a Chief or Deputy Chief.

### **Summary of Facts**

Prior to receiving the Telep complaint, the TKJC received an email on March 7, 2024, from a TKC Citizen alleging that the Chief was seen in public acting in a manner which they suggested should be seen as “compromising the dignity or effectiveness of that office.” A second letter attached to the email stated, “we implore the Judicial Council and Council to act swiftly and decisively to remove Chief Leas from office, effective immediately.” The TKJC opened a file to determine jurisdiction and followed up with a letter to the Citizen requesting them to submit a signed Application form pursuant to the TKJC Rules of Procedure. Subsequently, the Citizen who sent that email advised that they had no intention of filing a Complaint to the TKJC but rather had provided the email as a “copy” of what was submitted to the TKC, even though the TKJC’s involvement had been requested in one of the letters.

On March 14, 2024, the TKJC received an Application from Michelle Telep, a TKC Citizen, requesting the involvement of the TKJC in relation to two Motions passed by the TKC at a meeting of March 7, 2024.

On March 18, 2024, the TKJC sent a letter to the TKC advising that the Application by Ms. Telep had been accepted as a Matter before the TKJC and requested a response from the Council within thirty days. The letter also suggested that the motions passed by the TKC on March 7, 2024, appeared on their face to be outside Council’s jurisdiction pursuant to Sections 5.3 and 8.7 of the TKC’s *Constitution*, and that it appeared that the TKC motions may have been triggered by the unsubstantiated claims in the two unsigned letters sent to the TKJC on March 7, 2024.

On March 13, 2024, the TKJC was contacted by the RCMP to request that we supply copies of the photos which were referred to in the email from the TKC Citizen. The TKJC advised that no photos were attached, and none had been provided to the TKJC.

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The TKJC requested and received copies of the minutes of the TKC meeting of March 7, 2024.

The TKJC canvassed the Complainant and Respondent on April 11, 2024 asking if they would be interested in mediation (informal resolution) of the Matter; the Complainant responded on April 12 and indicated that she was not interested in mediation.

On April 17, 2024, TKC informed the TKJC that on March 14, 2024, Council had defeated a motion to support a budget for the Special General Assembly (SGA), and thus the SGA had been cancelled and would not be going forward. TKC also asked for an extension to the thirty-day deadline to provide evidence. This request was denied.

On May 6, 2024, the TKJC advised the parties that they would proceed with a paper hearing and should either wish to submit any further information or documents they must be received by May 10, 2024.

On May 7, 2024, Deputy Chief Kane provided the TKJC with an email submission attaching the following:

- Newspaper article from May 6, 2024, showing that Chief Leas was attending meetings in her capacity as Chief;
- Emails between First Nations Bank of Canada and TKC's Senior Finance Manager Andrew Johnston reinstating the Chief's signing authority for cheques and bank transfers as well as reinstating her credit card on April 29, 2024;
- April 29, 2024, letter from TKC's Senior Finance Manager Andrew Johnston to First Nations Bank of Canada reinstating the Chief's signing authority for cheques; and
- Email to Council, Elders Council and Youth Council with TKJC correspondence attached reinstating Chief Leas to full duties and responsibilities on April 29, 2024.

The May 7, 2024, TKC submission did not respond to the allegations set out in the Application that Council lacked the jurisdiction to pass the two motions made on March 7, 2024. Their submission simply stated that the Chief's signing authority was reinstated on April 29, 2024, and that she was now appearing in public as Chief. In other words, the TKC did not provide any submissions providing a legal justification for the two motions passed by Council on March 7, 2024, and did not respond to the allegation that these two motions exceeded their constitutional jurisdiction.

On May 9, 2024, Michelle Telep provided a final submission for the paper hearing questioning why it took Chief Leas so long to be reinstated after TKJC's preliminary letter which was sent on March 18, 2024 – the Chief's signing authority was not reinstated until April 29, 2024.

### **Materials considered**

1. Application from Michelle Telep dated March 14, 2024;
2. Draft Minutes of March 7, 2024, TKC Council meeting;
3. Draft Minutes of March 14, 2024, TKC Council meeting;
4. Submission from TKC (email dated May 7, 2024, with attachments);
5. Submission from Michelle Telep (email dated May 9, 2024); and
6. TKC 2018 Constitution

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## Analysis and Decision

The Ta'an Kwäch'än Judicial Council has the responsibility of adjudicating cases of alleged violations of the laws of the TKC, including violations of the *Constitution*. The 2018 *Constitution* of the TKC sets out the governance structure for the TKC and the branches established by the *Constitution*: the General Assembly, the Elders Council, Council, Youth Council, and the Judicial Council. Subsection 5.3 of the *Constitution* states "*No branch of the Ta'an Kwäch'än Council shall have authority beyond the jurisdiction prescribed by this Constitution.*"

Three sections of the *Constitution* speak to the issue of how Council members, the Chief or Deputy Chief may be removed from office.

Section 6.9.2.1 states:

*At a meeting of the General Assembly, if at least forty Citizens are present, who are at least sixteen years of age, those Citizens may with a three-quarter majority vote, remove any member of the Council.*

Section 8.12 states:

*A Family Councillor, Chief or Deputy 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.*

Section 12.2.1 states:

*In accordance with this section, the Judicial Council may remove a member of the Council if he or she is found to be compromising the dignity or effectiveness of that office. Any Citizen may charge a member of the Council of compromising the dignity and effectiveness of his or her position in a written notice.*

In addition, sections 8.15 and 8.16 indicate that where a Councillor, Chief or Deputy Chief is convicted of an indictable offence they shall be removed from office and where charged with a criminal offence, will be suspended. These provisions are not relevant to the case at hand as there have been no criminal charges.

These constitutional provisions make it clear that a Chief, Deputy Chief, or Councillor can only be removed from office by the Judicial Council, or by a three-quarter majority vote of Citizens at a General Assembly.

Pursuant to the TKC Constitution, the Council of the TKC does not have the ability to remove or suspend a Chief or Deputy Chief from office. The Council motion of March 7, 2024, suspending the Chief from signing authority, credit card access and attendance at internal and external meetings was a *de facto* suspension of the Chief, and exceeded Council's jurisdiction. The Chief's signing authority was not reinstated until April 29, 2024. This Council motion of March 7, 2024, was made without authority or jurisdiction and is of no force or effect. The second motion passed on March 7, 2024, which appeared to be pressuring the Chief to resign voluntarily, was an inappropriate exercise of Council's authority and could be interpreted as Council attempting to accomplish by pressure what they were not legally authorized to do by law, i.e. effect the removal of the Chief. This motion was also made without authority or jurisdiction and is of no force or effect.

**Order**

The TKJC orders the TKC to apologize to Chief Leas for passing motions on March 7, 2024 in excess of its jurisdiction which effectively suspended Chief Leas. The TKJC also orders that the following statement to read into the record at the next Council meeting of the TKC and also read into the record at the next Elders Council meeting, the next Youth Council meeting and the next TKC General Assembly:

*One of the objectives of the 2018 TKC Constitution is to establish a responsible, balanced and accountable governing body for the Ta'an Kwäch'än. The governing bodies established by the Constitution have powers which are set out, and restricted by, the Constitution. Pursuant to the TKC Constitution, the Council of the TKC does not have the ability to remove or suspend a Chief or Deputy Chief from office. A Chief, Deputy Chief, or Councillor can only be removed from office by the Judicial Council, or by a three-quarter majority vote of Citizens at a properly constituted General Assembly. Any action or motions by Council to attempt to suspend a Chief, Deputy Chief or Councillor, either directly or indirectly, are ultra vires, i.e. done without authority, and are of no force or effect.*

ISSUED BY THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL THIS 13<sup>th</sup> day of June, 2024



Judge Julie Jai



Judge Barbara Evans



Judge Michael Dougherty