
TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

October 11, 2024

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

And To: Bonnie Harpe (by email)

DECISION

Re: File 2024-2, Harpe v. TKC Deputy Chief and TKC Councillors

MATTER

This decision of the Ta'an Kwäch'än Judicial Council (TKJC) relates to the application filed with the TKJC by Bonnie Harpe on April 4, 2024. In her application Ms. Harpe states that "*Kane has formed a coup against Chief Amanda Leas. Kane and some councillors.*" She cited articles 12.2 and 12.2.1 of the Ta'an Kwäch'än Council (TKC) Constitution as the constitutional authority for her action. In her application she called on the TKJC to accept it because, she wrote, "*It is a serious issue that impacts our Chief and Government.*" At the time of the application Ms. Harpe did not provide any additional documentation or comments.

While the application did not directly seek damages or any specific remedy, it implied by its reference to Sections 12.2 and 12.2.1 of the TKC Constitution that the remedy would be removal from office of the Respondents. In later correspondence, TKC Councilors Doris Anderson, Roberta Austin, John Bunbury Jr., Charlotte Kane, Heather Marks and Christina Peters were named along with Deputy Chief Kristina Kane as Respondents in this application. In further correspondence, TKC Councilor Roberta Austin was removed as a Respondent. Subsequent correspondence from the Applicant indicated that the Applicant was seeking to have the Respondents removed from Council and banned from serving as Councilors for ten years.

The TKJC accepted the application and assigned it the file number 2024-2.

In accepting an application, the TKJC recognizes its jurisdiction in relation to a matter and the seriousness of the issue being brought before it.

The Respondents have brought a motion to dismiss the application, which is the subject of the current decision.

SUMMARY OF FACTS

On February 23, 2024, a public incident occurred involving Chief Amanda Leas. This incident provoked various responses from within the TKC community both supporting Chief Leas or calling for her removal from office. Email correspondence directed to the TKJC was received on March 7, 2024 from a TKC citizen calling for the removal of the Chief from office because the incident should be seen as “compromising the dignity and effectiveness of that office.” The TKJC requested that the citizen file a formal application pursuant to the TKJC Rules of Procedure. No formal application was made to the TKJC concerning this incident. No further action was taken by the TKJC at that time.

The February 23, 2024 incident did, however, elicit a response from the Council of the TKC. It passed two motions on March 7, 2024. The two motions were:

Motion 2024-03-07 (March 7, 2024):

That Council directs the Chief be suspended from signing authority, credit card access and attendance at 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

and

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 GA will not occur unless the Chief resigns prior to April 22, 2024.

Moved by: Doris Anderson

Seconded by: John Bunbury

Opposed: Diane Graham

Decision: Passed by Majority¹

On March 13, 2024, the RCMP contacted the TKJC requesting copies of the photos that were allegedly taken at the February 23, 2024 incident with Chief Leas. The implication of this police action was that the TKJC had in its possession relevant photos that a TKC citizen who had corresponded with the TKJC on March 7, 2024, had provided. The TKJC had no such photos in its possession and has never been provided with any photos.

¹ 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)

Decision: Passed by Majority

An application was made by Michelle Telep to the TKJC on March 14, 2024. In it, Ms. Telep raised questions about the TKC authority and jurisdiction over the removal or suspension of the Chief. She 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 did not seek damages or any specific remedy other than clarifying the jurisdiction of the Council of the TKC to remove a Chief or Deputy Chief.

The TKJC accepted the application and assigned it the file number 2024-1. The TKJC began its inquiry into the matter raised. The parties were contacted. The TKJC requested salient information and received it. A paper hearing based on the material filed was held and a decision rendered on June 13, 2024.

In that decision, the TKJC ordered *“The TKC to apologize to Chief Leas for passing motions on March 7, 2024 in excess of its jurisdiction which effectively suspended Chief Leas.”* It also ordered that a statement be read at the next meetings of the TKC Council, Elders Council, Youth Council and TKC General Assembly. The statement reads:

“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 Councilor can only be removed from office by the Judicial Council, or by a three-quarters majority vote of Citizens at a properly constituted General Assembly. Any action or motion by Council to attempt to suspend a Chief, Deputy Chief or Councilor, either directly or indirectly, are ultra vires (done without authority) and are of no force or effect.”

In the interim, the TKC Council defeated a motion on March 14, 2024 to support a budget for the Special General Assembly (SGA) called for in the March 7, 2024 motion. This action effectively cancelled the SGA. The Chief’s signing power was restored, and Chief Leas was able to assume her full duties and responsibilities on April 29, 2024.

Ms. Harpe was aware of the application and subsequent decision in *Telep v. TKC Council* (File 2024-1) in April and June but felt that the matter she had brought forward on April 4, 2024 significantly varied from it. In correspondence dated August 5, 2024 to the TKJC she stated *“My complaint is*

different because my complaint has to do with the coup that Deputy Chief Kristina Kane and some of the council members formed against Chief Leas,” even though she additionally noted “The evidence submitted to you and your ruling in the Telep case prove that they intended to take over.” She saw a difference in the remedy called for as well. “My complaint also asked the JC to remove all those involved in the coup pending an investigation.”

A hearing on this matter was set to begin on September 18, 2024. A letter from Deputy Chief Kane on September 12, 2024, on behalf of all the Respondents requested an adjournment in order to secure legal representation. The TKJC granted the adjournment but called a pre-hearing conference for September 18, 2024 to address the setting of a new hearing date and to more clearly identify the issues before the parties and the TKJC. This pre-hearing was held. The Respondents had obtained legal counsel who appeared at the hearing. The Applicant was unrepresented. Counsel for the Respondents stated that he would be filing a number of pre-hearing motions, and the TKJC agreed to consider motions from all parties.

A Sept 19, 2024 letter from TKJC to the parties summarized the results of the pre-hearing conference.

“Thank you for your attendance and participation in the pre-hearing conference on September 18. The Ta’an Kwäch’än Judicial Council (TKJC) wishes to confirm the following revised timeline and schedule:

- 1. The Applicant, Ms. Harpe will review the summary of evidence and list of witnesses compiled by the Registrar on September 16 and confirm if it is correct by Friday, September 20.*
- 2. If Ms. Harpe wishes to add additional evidence to what she has already provided, she will do that by Wednesday, September 25.*
- 3. All Parties will have to Wednesday, September 25 to file any preliminary Motions.*
- 4. All parties will have to Wednesday, October 2 to respond to any preliminary Motions.*
- 5. The TKJC will hold a paper hearing on the preliminary Motions and issue a Decision by Tuesday, October 8.*
- 6. Counsel for the Respondents, Mr. Sandiford will provide a summary of evidence and list of witnesses by Wednesday, October 16.*
- 7. The Hearing will take place in person, in Whitehorse beginning at 9am on Wednesday, November 13. Thursday, November 14 will be reserved for a continuation of the Hearing if needed. Please note that all parties’ preliminary motions and responses to preliminary motions must be copied to all other parties and the TKJC. And, that the venue for the hearing scheduled for November 13 and 14, 2024 will be announced at a later date.”*

Additional adjustments to the timeline were subsequently requested by both parties and accepted by the TKJC.

PRE-HEARING MOTIONS and ANALYSIS

Pre-hearing motions from both parties were received and the arguments were thoroughly reviewed along with all previously received correspondence and submissions. A complete list of materials considered is attached as an appendix.

The Applicant's pre-hearing motions fall into two categories: some dealing with the conduct of the hearing itself and some presenting arguments relating to the complaint. The latter are not pre-hearing motions dealing with the conduct of the hearing but are arguments which could be raised in the actual hearing.

The Applicant's Motion #7 deals with both the conduct of the hearing, and arguments. It states "*That the Judges, of the TKC Judicial Council follow the provisions within the TKC Constitution and hear the case of Harpe vs Deputy Chief & TKC Councillors. The Respondents breached TKC laws and regulations, their Oath of Office and committed what I believe is a criminal code offense. They have given at least four different reasons to the Judicial Council on why this case should not move forward. They must be held accountable for their actions.*"

The Respondents' notice of motion requests that the application be dismissed for a variety of reasons.

The Applicant's response to the Respondent's pre-hearing motions attempts to rebut their arguments for dismissal and further restates her key arguments for proceeding to a full hearing on the case.

The Respondents presented a number of arguments to support their motion that the application be dismissed. They also offered several "Other Facts". These included a synopsis of the application history of Bonnie Harpe with the TKJC. The TKJC wholly disregarded previous interactions of Ms. Harpe with the TKJC in its consideration of the matter at hand as this is irrelevant to the present case.

The Respondents also agreed to accept a number of the Applicant's motions directly related to the conduct of the hearing if it were to be held, and all parties agreed that the hearing should be a "closed hearing."

One of the Respondents' arguments is that Ms. Harpe's application should not proceed to a hearing because it is frivolous and vexatious for a variety of reasons. The TKJC does not agree that Ms. Harpe's application is frivolous or vexatious. However, the TKJC agrees that the key issue raised by Ms. Harpe's application was already addressed by the TKJC in its decision in *Telep*.

In assessing whether the present application raises any new issues which were not already determined by the *Telep* decision, the TKJC has carefully examined the Applicant's materials to search for new issues. The application alleges that the Respondents "intended to take over" in an alleged coup by removing Chief Leas' powers; and also argues that the decision in *Telep* was too lenient on the Respondents and that she would like the Judicial Council to remove the Respondents from office and ban them from serving as Councillors for a period of ten years.

The fact that the Applicant would prefer a more severe remedy against the Respondents than what was provided for in the *Telep* decision is not a reason to re-hear a case which has already been decided. The principles of judicial economy and *res judicata* obligate the TKJC to not re-hear essentially the same matter which had been addressed in *Telep v. TKC Council* (File 2024-1) solely in order to secure a different remedy.

However, the TKJC considered the Applicant's argument that the Respondents "formed a coup" by plotting behind closed doors to remove Chief Leas from office. Does this alleged action by the Respondents create a new cause of action, distinct from that raised in the *Telep* case, that would require the TKJC to hear the application? Or is the application *res judicata* as the Respondents argue?

The TKJC's jurisdiction is set out in the TKC Constitution. The relevant sections are:

8.12 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.

12.2 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.

Based on these provisions, the TKJC must assess whether the allegations raised by the Applicant, if proven at a hearing, would be sufficient to establish that the Respondent Councillors' actions rose to the level of "compromising the repute or obstructing the duties" of the office of councillor, or "compromised the dignity or effectiveness of that office".

The TKJC, in its decision in *Telep*, made it clear that the TKC Council had overstepped its authority by passing two motions which, in effect, suspended the Chief. This was a legal error which was pointed out to Council in that decision and which will be pointed out to all TKC citizens when the statement set out in the decision is read out loud, and into the minutes, of the next TKC General Assembly. It is critical that TKJC decisions be implemented so that citizens are made aware of the legal limits on Council and the provisions of the TKC Constitution.

While it is clear that the TKC Council, which at the time included the Respondents in this application, made a legal error and acted without authority in suspending the Chief, this in and of itself does not, in our view, rise to the level of "compromising the dignity or effectiveness" of the office of councillor. The legal error has already been addressed by the *Telep* decision.

The Applicant argues that the Respondents actions in "forming a coup" was treason and was a *Criminal Code* offence. The Applicant, like all citizens, has the right to contact the RCMP if they believe that a criminal offence has been committed. It appears that the RCMP had been contacted, based on the RCMP's contacting the TKJC to enquire about photos related to the Leas' incident on March 13, 2024. This police inquiry apparently failed to result in anything actionable.

The actions which the Applicant alleges formed the basis of the coup, namely comments made by some Councillors, and Council members discussing and "maliciously" passing the two motions in a meeting which the Chief did not attend, do not, in our view, rise to the level of compromising the dignity or effectiveness of the office. Therefore, there is no separate cause of action, distinct from the issues addressed in the *Telep* decision.

DECISION

The TKJC concludes that no new legal issues that would justify a rehearing of the issues raised by *Telep v. TKC Council (2024-1)* were brought forward by the Applicant. The TKJC accepts the Respondents' motion for dismissal on the basis of *res judicata*.

The TKJC dismisses *Harpe v. TKC Deputy Chief, TKC Councillors*

ISSUED BY THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL THIS 11th day of October, 2024.



Judge Michael Dougherty



Judge Julie Jai

Judge Julie Jai

Appendix

Materials considered

1. Application with letter from Bonnie Harpe (dated April 4, 2024).
2. Email from Bonnie Harpe (dated August 5, 2024).
3. Email from Bonnie Harpe (dated May 2, 2024).
4. Jenny Dawson family letter (dated March 4, 2024).
5. Draft Minutes of March 7, 2024, TKC Council meeting.
6. Youth Council letter (dated March 11, 2024).
7. Draft Minutes of March 14, 2024, TKC Council meeting.
8. Brenda Sam letter (dated March 15, 2024).
9. Jenny Dawson family letter (dated March 18, 2024).
10. Respondents' Response (dated April 29, 2024).
11. Email from Chief Amanda Leas (dated May 23, 2024).
12. Emails from Councillor John Bunbury (x2 dated May 23, 2024).
13. Email from Councillor Jay Massie (dated May 23, 2024).
14. Email from Councillor John Bunbury (dated May 23, 2024).
15. Email from Deputy Chief Kristina Kane (dated May 23, 2024).
16. Email from Councillor Heather Marks (dated May 23, 2024).
17. Email from Deputy Chief Kristina Kane (dated May 23, 2024).
18. Email from Bonnie Harpe (dated May 31, 2024).
19. Email from Bonnie Harpe (dated September 9, 2024).
20. Email from John Bunbury (dated September 9, 2024).
21. Document, Council Status.
22. Document, Tabled Council Motions Resolutions 2024.
23. Screenshot of Facebook post made by John Bunbury, no date.
24. TKC Constitution.
25. TKC Government Administration and Interpretation Act.
26. TKC Oath of Office.
27. TKJC Rules of Procedure
28. Applicant Motions (dated September 25, 2024).

29. Respondents Motions (dated September 27, 2024).
 - a. Affidavit of Kristina Kane #1 (dated September 27, 2024).
 - b. Outline of Submissions (dated September 27, 2024).
 - c. TKC Constitution.
 - d. TKC Government Administration and Interpretation Act (Excerpt).
 - e. TKJC Rules of Procedure.
 - f. TKJC Decision in 2024-1, Telep v TKC Council.
 - g. Respondents Cases – Outline (dated September 26, 2024).
30. Applicant Response to Motions (dated October 3, 2024).
31. Respondents Response to Motions (dated October 2, 2024).
 - a. TKC Rules of Procedure for the Board.
 - b. TKC Government Administration and Interpretation Act.