

IN THE MATTER OF AN ARBITRATION  
PURSUANT TO THE CUSTOM ELECTION CODE (the “Code”)  
OF THE SHACKAN INDIAN BAND

BETWEEN:

Anthony Percy Joe

APPLICANT

AND:

Chief Arnold Lampreau

RESPONDENT

Arbitrator: John R. Rich

Date of Hearing: December 12, 2022

**DECISION**

**DECISION SUMMARY**

1. This is an application by the Applicant, Percy Joe, for the removal of the Respondent, Chief Arnold Lampreau, as Chief of the Shackan Indian Band, pursuant to section 23 of the *Custom Election Code* (the “Code”) of the Shackan Indian Band.
2. In accordance with section 23.10 and 23.11 of the Code, a hearing of this Application was held at Merritt, BC, December 12, 2022, where evidence was submitted and argument made by the respective Applicant and Respondent.
3. Having heard and reviewed all of the evidence that I have received, I rule pursuant to section 23.12 of the Code that the Application for removal is denied.

**THE APPLICATION**

4. This Arbitration is to determine whether, pursuant to section 23 of the Code, Shackan Chief Arnold Lampreau is to be removed from office.
5. On November 18, 2022, Shackan Band member Percy Joe submitted the Application for Removal, dated May 15, 2022, together with a Petition signed by 31 members of the Shackan Band, dated November 6, 2021, pursuant to section 23.3 of the Code, asserting that Chief Arnold Lampreau had breached his oath, contrary to section 23.1 of the Code, and should be removed from office.

6. The Shackan Oath of Office provides:

- I. We promise that we will perform the duties of Chief & Council to the best of our abilities, with honesty and respect.
- II. We promise that we will carry out our duties carefully and loyally, remembering that our main objective is to serve all citizens of the Shackan Indian Band.
- III. At your direction, we will set clear goals and dedicate ourselves to achieving them through commitment, discipline and consistency.
- IV. In accordance with the ways of Nlaka'pamux people, we will work together as a team to ensure that the future of our community will be economically, socially and culturally viable.
- V. With the teachings of our elders in our hearts and minds, we will conduct ourselves in a positive manner. We will maintain a good path for our youth, so they carry on in such a way that the future of our generations remains protected.
- VI. We will encourage an atmosphere of caring and sharing amongst all people of the Shackan Indian Band.
- VII. We will promise mutual respect, trust, and understanding amongst ourselves and with all members of our community.
- VIII. We will encourage balance and harmony. We will build trust and confidence.
- IX. We will communicate openly with our people and keep them informed of any and all business that is related to the well-being of our community.
- X. We promise that we will fulfill our duties in a manner where our entire community enjoys progress and prosperity.

7. The Applicant Percy Joe and the Petitioners allege that Chief Lampreau has breached all ten of these provisions.

## THE ARBITRATOR

8. Section 23.4 of the Code provides that upon receipt of an Application for Removal, the Band Administrator shall forthwith instruct a licensed arbitration organization such as the BC Arbitration and Mediation Institute to appoint an arbitrator to adjudicate the Application. However, the Shackan Band Council determined that there is no licensed arbitration organization having the function of appointing an arbitrator, and as a result passed a Band Council Resolution as follows:

“WHEREAS

- A. Band Member, Percy Joe, has prepared an application for the removal of our Chief pursuant to the Custom Election Code of the Shackan Indian Band (the “Code”).
- B. The Code requires the Band Administrator to instruct a licensed arbitration organization such as the BC Arbitration and Mediation Institute to appoint an arbitrator with experience in First Nations issues to adjudicate the application.
- C. The BC Arbitration and Mediation Institute has indicated that it will not appoint an arbitrator, as that is not a service that the Institute provides.
- D. Council has determined that in the absence of any alternative hiring process being specified in the Code, it will act in place of the BC Arbitration and Mediation Institute and select an arbitrator with experience in First Nations issues to adjudicate the application.

[signed]

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Councillor – Yvonne Joe

[signed]

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Councillor – Lindsay Tighe”

9. The Applicant, Percy Joe, questioned whether it was appropriate that I be appointed arbitrator, since I am associated with Rateliff LLP, which firm provides legal advice to the Band Council. However, Mr. Joe confirmed that he accepted my independence.
10. The Respondent, Chief Lampreau, was represented by Mark Underhill of the law firm Arvay Finley, and made no submissions respecting the choice of the arbitrator.
11. I find that, having determined that the strict provisions of section 23.4.a of the Code could not be complied with, it was appropriate that the Band Council choose an arbitrator. I find further that the Applicant has accepted my independence as Arbitrator, and the Respondent has made no submissions respecting the appointment.

12. I conclude that it was a reasonable decision of the Band Council to give effect to section 23 of the Code and that I have jurisdiction to arbitrate this Application.

### **PRELIMINARY MATTERS**

13. On November 24, 2022, I issued a decision pursuant to section 23.6 of the Code, finding that the Application of Percy Joe complied with section 23.3 of the Code and setting the date of December 12, 2022, at Merritt, BC, for a hearing of the Arbitration pursuant to section 23.10 of the Code.
14. On November 30, 2022, a pre-hearing conference was held by telephone conference with the Applicant Percy Joe appearing on his own behalf and David Wu, counsel appearing for the Respondent Chief Lampreau.
15. At the pre-hearing conference, dates were set by the agreement of the parties:
- a) the Applicant would submit any new documents or allegations by the end of the day December 1, 2022;
  - b) the Respondent would submit a response by Tuesday, December 6, 2022; and
  - c) the Applicant would submit any reply by Thursday, December 8, 2022.
16. The Respondent submitted the “Response Submission of the Respondent, Chief Arnold Lampreau” December 6, 2022.
17. The Applicant did not submit any new documents or allegations, nor submit any reply materials.

### ***The Hearing***

18. The hearing of this Application was held as scheduled, at Merritt, BC, December 12, 2022.
19. The Applicant Percy Joe, together with Band member Wayne MacDonald and his wife, Rhonda MacDonald, represented the Applicant and the other Petitioners. The Respondent Chief Lampreau was represented by Mark Underhill of the firm Arvay Finley.
20. The hearing was conducted in accordance with the requirements of the Code, sections 23.10 and 23.11, and the procedure described in my initial determination pursuant to section 23.6 of the Code, November 24, 2022.

### **EVIDENTIARY MATTERS**

21. At the outset of the hearing, Council for the Respondent sought rulings that certain evidence be declared inadmissible, and identified four categories for which he sought a ruling, as follows:

**(a) Allegations involving historic grievances which pre-date Chief Lampreau’s election**

22. The Respondent argued that section 23.1 of the Code makes it clear that conduct prior to election is not subject to review pursuant to the Code. Section 23.1.b. provides:
- “b. from the time of election until the end of his or her term of office:
- I. violates the Council Oath of Office or refuses or fails to take the Council Oath of Office [emphasis added]”
23. In response, the Applicant submitted that all conduct should be considered in assessing the Application.
24. I concurred with the submission of the Respondent that the language of the Code is clear that alleged breaches of the Oath of Office must have occurred “from the time of election”, i.e., subsequent to the election.
25. Accordingly, evidence of conduct on the part of Chief Lampreau prior to his election in March 2021 is not relevant, is inadmissible, and has been disregarded.

**(b) Grievances over how Band Council and the Band as a whole is functioning or collateral attacks on Council decisions**

26. The Respondent argued that decisions of the Band Council as a whole could not be evidence of the adherence of Chief Lampreau to the Oath of Office. He argued that such allegations are simply disagreement with how the Shackan Band is being governed and that those objecting are able to pursue their objections through avenues other than the Election Code.
27. The Applicant responded that the Chief was part of the Band Council, so those matters should be considered in the hearing.
28. I concluded that the argument of the Respondent is correct. I find that decisions of Band Council as a whole are not evidence of the conduct of the Chief pursuant to the Code. Thus, decisions and actions taken by the Band Council are not admissible, and have not been considered in resolving the Application.

**(c) Allegations based on hearsay**

29. The Respondent argued that hearsay evidence should not be accepted, submitting that:
- a) accepting hearsay evidence would amount to a serious violation of procedural fairness;
- b) given the potential serious consequences to Chief Lampreau and his legitimate expectations, the degree of procedural fairness that needs to be afforded is very high and that allowing hearsay evidence would be a breach of procedural fairness.

30. The Respondent identified a number of allegations made by the Applicant based entirely on hearsay.
31. The Applicant made no submissions on the matter of hearsay.
32. I ruled that hearsay evidence may be admitted, subject to assessment of its trustworthiness, and that hearsay evidence would be considered, taking into consideration corroboration through oral testimony or other means.

**(d) General vague and unparticularized allegations of misconduct**

33. The Respondent argued that because of the high level of procedural fairness required in the context of this Application, findings of misconduct based on vague and unparticularized allegations would be a breach of procedural fairness. The Respondent argued that the Chief was entitled to sufficient particulars to enable him to prepare a defense, citing caselaw holding that the degree of particularity should resemble that in judicial proceedings.
34. The Respondent provided a list of allegations which he submitted failed to meet this requirement.
35. The Applicant made no submissions on this issue.
36. I concluded that it was not appropriate to exclude evidence on this basis at the outset of the hearing, since it was possible that sufficient particulars of the various allegations might be established through oral testimony, and that the Respondent Chief was in a position to deal with that on a case by case basis.

**APPLICANT'S EVIDENCE**

***Documents***

37. The Applicant tendered seven letters, which had been provided November 18, 2022, in support of the Application and several documents relating to fencing on the Shackan Reserve:

**(a) Letter from Band Member, Wayne MacDonald**

38. Mr. MacDonald submitted a letter, undated, "as my official support towards Arnold Lampreau being removed as Chief of the Shackan Indian Band."
39. Mr. MacDonald stated that he felt that he and his family had been unfairly treated and singled out by Mr. Lampreau since he was elected as Chief. Mr. MacDonald acknowledged that "Arnold and I have a long, extensive history of dislike toward one another". Mr. MacDonald described an incident that occurred September 11, 2021 when Mr. Lampreau attended at Mr. MacDonald's house to complain that Mr. MacDonald's cattle were trespassing on his land. Mr. MacDonald disputed the claim, on the basis that

he was not responsible for fence repairs and that the location of his cattle was consistent with the Band Range Use Plan.

40. Mr. MacDonald stated that Mr. Lampreau raised his voice and told him that he would chase the MacDonald cattle “until their tongues were dragging” and then repeated “I will chase those cocksuckers until their tongues are dragging on the ground”. Mr. MacDonald asserts that this is not appropriate behaviour for an elected Chief.
41. Mr. MacDonald’s letter also includes a complaint about a decision of Chief & Council to decline a potential donation to help with the construction following a flood. This was voted on by Chief & Council but Mr. MacDonald stated, “It’s my belief that this was denied for purely personal and malicious reasons”.
42. Mr. MacDonald stated that there are “several more incidents that have happened between Mr. Lampreau and myself over the years” but provided no further details. He concluded stating that “A Chief should have all of his Band members’ best interests at heart, not just a select portion of the population”.
43. In addition to his letter, Mr. MacDonald testified at the hearing, discussed below.

**(b) Letter from Band Member’s wife, Rhonda MacDonald**

44. Ms. MacDonald submitted an undated letter describing the same September 11, 2021 incident as Mr. MacDonald had described, corroborating the account he had provided, and confirming that Mr. Lampreau had stated that he would “chase those cocksuckers until their tongues are dragging on the ground.”
45. Ms. MacDonald considered that the Chief was threatening the family’s livelihood and was trying to “throw his perceived political weight around by bullying.”
46. Ms. MacDonald also testified at the hearing, discussed below.

**(c) Letter from Band Member, Michelle Stone**

47. Ms. Stone submitted a letter which includes a notation “received May 9, 2022”, recounting interaction with Mr. Lampreau beginning in 2012 and then again in 2017.
48. Ms. Stone also recounted that neighbours have told her that Mr. Lampreau had told them “it’s about time to put a bullet in that bitch’s head”, however, she provided no date for this allegation, nor any other details. Ms. Stone concluded by saying, “Over the years there have been so many little things such as glares when driving past, being told I’m not my grandpa’s real granddaughter, in winter he ploughs everyone’s road/driveway with the exception of mine”.
49. Michelle Stone did not testify at the hearing.

**(d) Letter from Band Member, Sharon Stone, dated September 26, 2021**

50. Band Member Sharon Stone submitted a letter dated September 26, 2021. She described an incident in 2008 which she considered to be a breach of the Oath of Office.
51. Ms. Stone also expressed the view that “the Chief & Council are not faithful to their oaths, commitments or obligations to serve the people of Shackan Band”, and expressed her concern about decisions of the Chief & Council, respecting construction of a house. She further expressed concern that Chief & Council did not maintain confidentiality. Ms. Stone also recounted an incident involving a Band Councillor which occurred in 2017.
52. Sharon Stone did not testify at the hearing.

**(e) Letter from Band Member, Lennard Joe, dated November 6, 2021**

53. Band Member Lennard Joe submitted a letter, November 6, 2021. He stated he has been “a past Council member and a servant and representative of the Shackan Band for over 20 years”.
54. Generally, Mr. Joe’s letter goes on to provide details respecting his allegations about the Chief. Further, many of his complaints relate to decisions of the Shackan Band Council.
55. Mr. Joe set out each of the ten provisions of the Oath of Office and alleged breaches of each by the Chief:
- (i) “Respect” is broken;
  - (ii) The Chief has made rash decisions and created an atmosphere and confusion;
  - (iii) The Chief is not taking any direction from the Band;
  - (iv) We are not working together as a “team”, including:
    - i. Removal of key employees
    - ii. Creation of an environment of distrust
    - iii. Freeze/lockout of Shackan Development Corporation
    - iv. Not sharing information
    - v. No Band meetings for over several months
    - vi. Not following cultural protocols
  - (v) The Chief is not conducting himself in a positive matter and youth have been directly impacted;



- (vi) The Band is divided and much of it is a result of the Chief's past interactions with Band Members;
- (vii) There is no mutual respect. The Chief has said that he has no respect for certain members of the community;
- (viii) Balance and Harmony has been dismantled;
- (ix) Communication has been poor;
- (x) The community has not progressed or prospered.

56. I have found that this evidence is inadmissible, for various reasons, discussed below.

57. Mr. Joe did not testify at the hearing.

**(f) Letter from Band Member, Lennard Joe, dated January 18, 2022**

58. Mr. Joe submitted a second letter dated January 18, 2022.

59. This letter recounts Mr. Joe's observations of a community meeting held December 9, 2021, focusing on an interaction between the Chief and Band Member William Oppenheim. Mr. Joe observed that Mr. Oppenheim was critical of the Chief at the meeting, and following the meeting, the Chief told him that "I'm going to deal with that fucker. I'm going to deal with that fucker the Joe way" and held up his fist. Mr. Joe said he could "only assume that he was talking about William Oppenheim". Mr. Joe expressed his view that uttering threats to a Band members and treating such member with little or no respect goes against the Oaths of Office.

60. Mr. Joe's letter also describes an interaction between Chief and another Band member, including texting involving threats and obscene language on the part of the Chief.

61. Mr. Joe's letter also states that he has received information that the Scwexmx Child and Family Services Society receives phone calls from the Chief where he "screams at them on the phone", and that "this same thing has happened at the Nlaka'pamux Health Organization with their Executive Director."

62. As noted, Mr. Joe did not testify at the hearing.

**(g) Letter from STC Executive Assistant, Elizabeth Gilchrist, dated January 21, 2022**

63. Ms. Gilchrist submitted a letter dated January 21, 2022 in support of the Application.

64. Ms. Gilchrist's letter made various allegations about Chief Lampreau, including that:

- a) "Arnold put us down";
- b) "He hasn't come to talk to us";

- c) “He has bullied my receptionist”;
- d) “He has engaged in bullying, belittling and harassment.”

65. However, Ms. Gilchrist provided no details respecting these allegations, nor did she testify.
66. These letters were accepted as evidence in the hearing, subject to the rulings and objections discussed above and below.

**(h) Documents Respecting Fencing Submitted by Rhonda MacDonald**

67. Rhonda MacDonald submitted documents, including photographs, a copy of an agreement between the MacDonald’s and the Shackan Band respecting range land, and information issued by the BC Department of Agriculture. These documents are discussed below.

*Witnesses*

68. The Applicant called five witnesses, all of whom affirmed to tell the truth:

**(a) Wayne MacDonald**

69. Much of Mr. MacDonald’s evidence involved complaints about the administration of the band, management of the reserve land, and efforts to recover from the damage caused by the flood. None of this evidence is relevant to the issue of whether the Chief breached his oath of office, as alleged in the application for removal.
70. In giving his testimony, it was clear that Mr. MacDonald was angry respecting his various complaints, and he directed that anger toward the Chief. Nevertheless, I found his account of the interaction with the Chief regarding his cattle to be credible, and his views on the obligation to fence land to be correct.
71. Mr. MacDonald read his letter, which had been submitted previously. Mr. MacDonald made several points in addition to or for clarification of his letter:
- (i) he was critical of decisions of the Band Council dealing with the flooding problems in 2021;
  - (ii) he was also critical of decisions of the Band Council respecting the lack of hydro hook ups in 2022;
  - (iii) he acknowledged that there was significant animosity between himself and Chief Lampreau;
  - (iv) he expressed the view that responsibility for fencing lay with the Chief if he wished it to keep cows off his land, that the Reserve was range land and cattle were free to roam if there were no fences;

- (v) in response to questioning by the Respondent, he stated he had no knowledge of any restraining order against him. Later, Mr. MacDonald advised that he had called the RCMP and confirmed that there were no restraining orders against him, referring to the assertion by Chief Lampreau in his evidence. However this evidence is irrelevant to the application, being subsequent to both the Petition of November 6, 2021 and the swearing of the affidavit in May 2022.

**(b) Rhonda MacDonald**

72. Ms. MacDonald read the letter which she had previously submitted. She also submitted documents relating to the fencing issue:
- (i) information from the BC Ministry of Agriculture respecting the fencing of range land;
  - (ii) photographs showing a dilapidated fence in the location where the MacDonald cows had entered the Chief's pasture;
  - (iii) an agreement between the Shackan Indian Band and Wayne and Rhonda MacDonald of Bar FX Ranch, including a provision that the MacDonald's are not responsible for maintaining fencing on existing CPR fences throughout Shackan IR lands (Agreement s.10);
73. Ms. MacDonald testified the Chief's threats to her cattle were threats to her livelihood.
74. Ms. MacDonald testified that her cows, which the Chief had complained of coming onto his land, are coming across CPR fences, which were referred to in the agreement between the MacDonald's and the Band.
75. Ms. MacDonald was clearly angry with the Chief. However, I found her evidence regarding the incident with the cows to be credible.

**(c) William Oppenheim**

76. Mr. Oppenheim is a Band member.
77. Mr. Oppenheim claimed that the Chief had been threatening community members, and telling lies, with the benefit for himself. He provided no details.
78. Mr. Oppenheim also testified that there had been threats to him and that he had been accused because he was friends with Jack Stone.
79. He stated that the Chief did not tell the truth and laughed at people. He addressed the Chief, stating, "I don't like the way you put me through the dirt... I will put you the same way through the dirt. You treat people like this, the people should treat you like this."
80. Mr. Oppenheim testified that, "Chief & Council took Sharon Stone's house away".

81. Mr. Oppenheim’s evidence was hard to follow and had no relevance to the Application, rather, the testimony appeared to reflect personal animosity. I did not find his evidence useful in respect of the application to remove the Chief.

**(d) Jason Wray**

82. Mr. Wray is a community member, but not a Shackan Band member.

83. Mr. Wray began his evidence stating, “I have questions, but don’t have answers.”

84. Mr. Wray testified about the effect of the major flood on his property and his dealings with the Chief. He expressed concern that he was denied access to his property following the flood.

85. Mr. Wray stated the Chief said to him that I am “an effing idiot for not moving the stuff.”

86. Mr. Wray made numerous statements about failure to get assistance from the Band. He stated he needed food for his children and hay for his horses.

87. Mr. Wray was asked whether the Chief swore at him. He stated, “Yes, on text.”

88. Other than the swearing incident, which has been corroborated by a photograph of the texts, Mr. Wray’s evidence was not relevant to the Application.

**(e) Lindsay Taigh**

89. Lindsay Taigh is one of two Band Councillors of the Shackan Band. He testified that he gets phone calls from Band members expressing concern about how the Chief is treating people. He spoke of his job as a Councillor, and confirmed that he is there to represent the people and support the community.

90. Mr. Taigh expressed his opinion that the Election Code is “actually a joke, it doesn’t work for what it is supposed to do.”

91. Mr. Taigh was somewhat critical of the Chief, but provided no details relevant to the Application.

92. While Mr. Taigh’s evidence was credible, none of it addressed the issues in the application to remove the Chief for a breach of his oath, rather the evidence addressed political issues in the community.

**RESPONDENT’S EVIDENCE**

***Documents***

93. The Respondent submitted documentary evidence consisting of:

a) a July 2021 Band newsletter;

- b) a photo of Chief Lampreau taken November 9, 2021; and
- c) a Globe & Mail article dated November 19, 2022.

### ***Witnesses***

94. The Respondent called four witnesses:

**(a) Katie Perrin**

- 95. Ms. Perrin testified that her job is an assistant to the Chief & Council and that previously she had been a finance clerk and previously reception, beginning in 2021. She testified that she had daily interaction with the Chief and found him to be supportive.
- 96. Ms. Perrin described some interactions with Band members. She testified she had one interaction with Wayne MacDonald, which involved curse words. She said that she had one interaction with Jason Wray, including an inappropriate text message he sent, and that he was heated and ended the conversation on a sour note with “thank you sweetheart”.
- 97. Ms. Perrin was asked whether she had witnessed the Chief acting inappropriately with staff, to which she replied, “Absolutely not”.
- 98. The Applicant Percy Joe asked whether Band members knew what Ms. Perrin’s job was at the office, to which she replied, “there was an announcement on Facebook.”

**(b) Keith Franson**

- 99. Mr. Franson testified that he is an engineer working with Shackan on flood recovery. He began work November 18, 2021 after the flood happened. Mr. Franson described his interaction with the Chief as good, and his observations of the Chief’s interaction with others as “respectful, open”.
- 100. Mr. Franson stated that he was aware of tensions in the community, including between the MacDonalds and the Chief. Mr. Franson testified that, following the flood in 2021, he worked with Jason Wray and his family to recover their personal belongings from inside and outside the house. He could not recall the exact number but said \$160,000 of funding “sounds about right”.
- 101. Mr. Franson was then cross-examined by Wayne MacDonald on behalf of the Applicants. Mr. MacDonald asked questions regarding the protection of homes on the south side of the river. Mr. Franson explained at length the issues respecting protection of the south side of the river, including questions of the location of rights of way and the proposed location of a new bridge. However, none of the evidence respecting the location of the bridge, rights of way, etc., is relevant to the issues in the Application.

**(c) Yvonne Joe**

102. Yvonne Joe is one of two Councillors of the Shackan Band.
103. Councillor Joe was asked how the Chief had been dealing with Band members given the suffering of the Band members due to recent incidents. Councillor Joe responded, "I feel that it has been respectful to the degree under circumstance".
104. Asked about the Chief's relationship with staff, Ms. Joe stated that, "The relationship has been great."
105. Ms. Joe was asked about the December 9, 2021 community meeting, but appeared to be confused as to whether she was recalling that meeting or some other meeting. After some attempts to clarify she stated, "My memory is bad".
106. Asked about interactions with Mr. Wray, Councillor Joe stated those are "just through the School District and grocery store".
107. Generally, Councillor Joe had a poor memory of the matters at issue, although she was clear that she had a positive impression of Chief Lampreau.

**(d) Chief Arnold Lampreau**

108. The Chief described his experience of the December 9, 2021 meeting. He said that the meeting was to give updates on the fires and floods which had occurred in the summer and fall of 2021. He stated there were a lot of hurtful questions and by the end of the evening "I was beat up", "upset because of the treatment I'd been given as a leader".
109. Chief Lampreau was asked about the letter from Lennard Joe recounting a statement by the Chief "I'm going to deal with that fucker the Joe way". The Chief stated that he was raised as a Joe we deal with it the hard way or thoughtful way. He stated that his comment was not directed at anybody and that he had no intent to initiate violence against a band member.
110. The Chief was cross-examined by the Applicant Percy Joe. Mr. Joe asked the Chief how he interpreted the "Joe way". The Chief's response was we take it out the back and settle or we will think about it, come up with a plan.
111. The Chief then addressed the text exchange referred to by Lennard Joe in his letter, where the Chief had texted to Jason Wray "fuck you you fucking idiot".
112. The Chief explained the context of this exchange, being in the midst of the dramatic flooding event which had severely impacted the Shackan community. The Chief said that he went to Jason Wray's house when the water was rising quickly and told them they should get out, but when he returned 45 minutes later Jason Wray had left, but not taken his family. The Chief said he tried to be helpful but Mr. Wray started swearing and anger took over. He said "we were in such a panic".

113. The Chief agreed that the words he had used in the text are not the words a Chief should use.
114. Mr. Joe asked the Chief if it is inappropriate, as a leader, to swear at community members. The Chief acknowledged that he regretted that and apologized.
115. Chief Lampreau also testified about the damage to Mr. Wray's house, including mold, and that Mr. Wray had benefited from funding from Indigenous Services Canada.
116. Finally, the Chief addressed the allegation by the MacDonald's about the issue respecting their cows and the language used.
117. The Chief said that he had notified the owner of the field that cows were in there and the owner said to remove them.
118. The Chief referred to an agreement which had been signed with Wayne respecting range, but did not explain his understanding of the agreement as it related to the cows coming onto his land. I understand this to be the agreement introduced by Rhonda MacDonald on behalf of the Applicants.
119. The Chief testified that when he had gone to the MacDonald's house the conversation between Wayne and himself got heated and that he, the Chief, "tried to maintain a distance and backed away and he, Wayne, kept following." The Chief said that Wayne MacDonald kept saying the cows can go wherever they want and so the Chief made the comment complained about.
120. The Chief acknowledged a "history" with Wayne MacDonald and claimed he had obtained a restraining order after receiving a threat on his answering machine.
121. I found the Chief's evidence to be credible, although somewhat self-serving.

### **CONCLUSIONS RESPECTING EVIDENCE- RELEVANCE AND ADMISSIBILITY**

122. I have concluded that much of the evidence advanced by the Applicants is not relevant in this Application. Much of the evidence deals with allegations of conduct which fall outside of the timeframe established by the custom Election Code. Other evidence which has been tendered is not evidence of misconduct, but rather evidence of decisions of the Band Council to which the Applicants object. These are political issues, not subject to the provisions of the Code, and not relevant in this proceeding.
123. Much of the evidence presented by the Applicants is also inadmissible for the various reasons put forward by the Respondent, discussed above.

### ***Conduct Prior to the Chief's Election***

124. The Respondent argued as a preliminary matter that allegations involving historic grievances which pre-date Chief Lampreau's election were inadmissible. I agreed.

125. Consequently, all of the allegations in Michelle Stone’s letter, which deal with the period between 2012 and 2017 are irrelevant and inadmissible.
126. The allegation in the Sharon Stone letter respecting an incident in 2008 is irrelevant and inadmissible, as is her allegation involving an incident in 2017.

***Decisions of the Band Council***

127. As a preliminary matter, the Respondent argued that decisions of the Band Council and Band Administration, generally, are not matters relevant to the Chief’s conduct pursuant to the Oath of Office. I agreed with that submission. The Respondent identified a number of allegations which fall into this category:
- “a. the allegation raised by Wayne MacDonald over a decision the Council made over rejecting a donation to a non-profit;
  - b. the allegation by Sharon Stone regarding a decision to put a halt on a home being built for her;
  - c. the following allegations by Lennard Joe from his November , 2021 letter:
    - i. the decision to shut down the Shackan Development Corporation;
    - ii. removal of employees;
    - iii. lack of Band meetings, development of community committees, and general lack of transparency regarding Band business;
    - iv. the “dismantling” of youth programs;
    - v. denial of educational funding for youth; and
    - vi. the lack of “balance and harmony” or progress and prosperity, including lack of housing or deficient quality of housing.”

128. I agree that this evidence is inadmissible for the reasons advanced by the Respondent, and my preliminary decision.

***Hearsay***

129. The Respondent argued that numerous allegations were based entirely on hearsay and were thus inadmissible:
- “a. allegation by Lennard Joe in his January 18, 2022 letter that Chief Lampreau screamed at people from Scwexmex Child and Family Services Society and the Nlaka’pamux Health Organization;



- b. allegation by Lennard Joe in his November 6, 2021 letter that the Chief made threats to an unnamed band member regarding the removal of their property;
  - c. allegation by Lennard Joe in his November 6, 2021 letter about the Chief creating an atmosphere of fear and confusion which caused all the Band's staff to resign;
  - d. allegations by Michelle Stone regarding the events in 2017 and what she heard from her brother-in-law and her neighbours;
  - e. allegation by Sharon Stone regarding Brinkline Contracting being approached by a non-band member ostensibly speaking on behalf of the Chief;
  - f. allegation by Sharon Stone regarding the termination of the housing manager;
  - g. allegation by Sharon Stone involving the incident dated March 15, 2017 and the death threat received by her elderly friend; and
  - h. allegations by Elizabeth Gilchrist regarding bullying of Scw'exmx Tribal Council ("STC")'s receptionist."
130. I concur that these allegations are based entirely on hearsay, and observe that no corroborating evidence was provided from any other source to make this evidence trustworthy.
131. I note that Lennard Joe, Michelle Stone, Sharon Stone and Elizabeth Gilchrist did not testify at the hearing, to speak to their letters or otherwise.
132. Without testimony from Lennard Joe, Sharon Stone, Michelle Stone and Elizabeth Gilchrist, there is no way to know:
- a) the source or grounds of their knowledge or belief that the allegations they describe are true;
  - b) the significance or severity of the alleged misconduct;
  - c) generally, the reliability of their assertions, which is fundamental to the admissibility of any evidence.
133. Consequently, the allegations identified by the Respondent are inadmissible on the basis that they are uncorroborated hearsay and cannot be considered trustworthy.

***General vague and unparticularized allegations of misconduct***

134. The Respondent argued that, given the seriousness of the Application, i.e., removal of the Chief from office, a high degree of particularity is required. The Respondent identified a number of allegations which do not meet the requirement of particularity:
- a. allegation by Lennard Joe in his November 6, 2021 letter regarding not following cultural protocols;
  - b. allegation by Lennard Joe in his November 6, 2021 letter regarding the Chief not having respect for certain members;
  - c. allegations by Lennard Joe in his November 6, 2021 letter regarding the toxic atmosphere, division, and mistrust that the Chief has created;
  - d. allegations by Sharon Stone regarding harassment and lateral violence; and
  - e. allegations by Elizabeth Gilchrist that Chief Lampreau has put her down in meetings and said STC staff are not competent or educated.
135. I agree with the Respondent that these allegations are vague, and, further, they are not supported by other evidence. I note again that Lennard Joe, Sharon Stone and Elizabeth Gilchrist did not testify at the hearing.
136. I conclude that the evidence identified by the Respondent as failing to meet the requirement of particularity is inadmissible.

***Allegations of conduct occurring subsequent to the date of the Petition***

137. The provisions of the Election Code which provide for an application by a Band Member to remove a chief or councillor from office involve conditions. An individual voter seeking the Chief's removal from office may only make an application in the matter as set out at section 23.3. Section 23.3.a.ii. requires that the application include "a petition in support of the application for removal signed by at least 15% of all voters".
138. I infer from this provision that, before the conduct of a chief or councillor may be the basis of removal from office, that conduct must have met the disapproval of at least 15% of Band members.
139. In the present case, the Petition is dated November 6, 2021, and is signed by 31 Band members, well above the 15% threshold.
140. There is no Petition relating to the conduct of the Chief subsequent to November 6, 2021. Therefore, I find that allegations of breach of the Oath subsequent to November 6, 2021 do not fall within the provisions of the Code and are inadmissible in this Application. Thus, the following allegations are inadmissible in this Application:

- a) allegations made respecting the December 9, 2021 meeting;
  - b) allegations made respecting comments made subsequent to the December 9, 2021 meeting;
141. However, if I am wrong that allegations of conduct subsequent to the date of the Petition are admissible in this Application, I consider those allegations below for the sake of completeness.

## **ARGUMENT**

### ***Applicant's Argument***

142. The Applicant's argument was presented by Percy Joe, Rhonda MacDonald and Wayne MacDonald.
143. Mr. Joe submitted that all ten of the Oaths under the Election Code had been violated. He stated that leaders should not get frustrated and that there is no room for leaders to panic.
144. He commented on the teaching that Chief Lampreau received from Mr. Joe's brother and father.
145. Mr. Joe acknowledged that he had "no bones to pick with Arnold" and that "I'm sure the staff are happy to work with him", continuing that there is good in all people. However, he continued to state that he had talked to a lot of people in the community who fear for their safety and that they have been threatened.
146. Following Mr. Joe's remarks, Rhonda MacDonald spoke on behalf of the Applicants. She stated that any elected official should be held to a high standard, and asserted that the Chief was using political power for his benefit.
147. Wayne MacDonald then continued the submissions on behalf of the Applicants. He expressed concern that the Chief was targeting him.
148. Mr. MacDonald spoke of his difficulties with his ranch and the flood. He stated that he felt disrespected by the Chief. He also stated that the Chief was disrespectful to the livestock.
149. Mr. Joe concluded the Applicant's argument by stating that the Chief should do things the cultural way but he was not doing that.

### ***Respondent's Argument***

150. The Respondent's argument may be summarized:

- a) The provisions of the Code for Removal of the Chief are discretionary, and the Chief's conduct ought to be measured from a common sense perspective with realistic expectations;
- b) Most of the allegations advanced by the Applicant's are based on inadmissible evidence and should be dismissed summarily, and
- c) There are only three allegations which cannot be dismissed summarily and these are not sufficient to justify removing the Chief from office.

### ***Discretionary Remedy***

151. Counsel for the Respondent emphasized in his submission that a decision to remove the Chief from office was discretionary, noting his submission that the wording of section 23:

“23.1 A council member *may* be removed from office and be ineligible to stand for election...” [emphasis added]

152. Counsel submitted:

“Guidance can be taken from the case of *Johnny v. Adams Lake Indian Band*, 2017 FCA 147 [*Johnny*], where a councillor was removed for some offensive remarks made during a meeting, which then resulted in some pushing. The Community Panel, which was the decision-making body responsible for determining removals, found that the language used by the councillor breached the councillor's oath of office. That decision was upheld by the Federal Court. In overturning the decision, the Federal Court of Appeal noted the following:

[22] In the present case, missing from the reasons of the Community Panel is any consideration of whether the alleged misconduct rose to the level that warranted removing the appellant from office. Indeed, the reasoning of the Community Panel is consistent with the view that any and all breaches of the oath of office justify removal from office. However, this is an unreasonable interpretation of the Election Rules. If this was the intent of the Election Rules, Part 24.1 would require that Councillors “shall”, not “may”, be removed from office for a breach of their oath of office. [Emphasis added]

...

Given the similar use of “may” in the Code in this case, there is no automatic removal if the Oath is found to be breached. Rather, any decision to remove the Chief must also “measure the gravity of the impugned conduct against the disruption and other consequences that arise when a duly elected member of the Band Council is removed.” (*Johnny* at para 21).

...

It is also critical to bear in mind that the standard in which an elected councilor or Chief's conduct is measured against is not one of perfection. The Federal Court of Appeal said this in *Johnny*:

[20] In every case it is for the elected Community Panel to determine whether impugned conduct rises to the level that warrants removing a democratically elected Councillor from their office. This is a decision the Community Panel must make on the basis of its knowledge of the customs and norms of the Band, taking into account realistic expectations and a goodly measure of common sense in order to determine whether a Councillor has engaged in conduct that has caused electors to lose faith or confidence in the judgment of the Councillor or to so lose respect for the Councillor that the Councillor ought to be removed from office. Realistic expectations and common sense are required because a standard of conduct based upon unfailing perfection is one not likely to be met consistently, and one likely to lead to frequent petitions to remove Councillors.”

153. The Respondent says the same standard applies in this case, and his conduct ought to be measured from a common sense perspective with realistic expectations.

***Summary Dismissal***

154. Respondent's Arguments on the admissibility of various evidence are discussed above.

***Three Issues Remaining***

155. The Respondent submitted:

“24. There are only three allegations which cannot be dismissed summarily, and are all based on rude or profane language that is said to have been used by the Chief:

- a. Chief Lampreau allegedly saying “I’m going to deal with that Fucker the Joe way” after the December 9, 2021 meeting (Lennard Joe’s January 18, 2022 letter).
- b. An alleged text message exchange where Chief Lampreau said “Fuck you you fucking idiot” (Lennard Joe’s January 18, 2022 letter).
- c. Chief Lampreau allegedly saying, in reference to some cattle, that he would “chase those cocksuckers until their tongues are dragging on the ground” (Wayne MacDonald and Rhonda MacDonald letters).”

156. Counsel submitted that the gravity of the conduct alleged, the profane language used, does not rise close to the level of justifying the removal of a Chief.

**ANALYSIS**

157. I agree with the Respondent that removal of the Chief is a serious sanction, and consequently, breaches of the Shackan Oath of Office must be proportionally serious to justify removal.
158. I also agree that most of the evidence of the applicants is inadmissible, being historical grievances, unsupported hearsay, vague generalizations of complaints about the Chief or complaints about the actions of the Band Council as a whole. Most of the complaints directed at the Chief are essentially political or personal, not relating to his adherence to the Oath of Office.
159. However, the Respondent has acknowledged that there are three allegations which cannot be dismissed summarily:
- a) An alleged text message exchange where Chief Lampreau said “Fuck you you fucking idiot” (Lennard Joe’s January 18, 2022 letter).
  - b) Chief Lampreau allegedly saying, in reference to some cattle, that he would “chase those cocksuckers until their tongues are dragging on the ground” (Wayne MacDonald and Rhonda MacDonald letters).
  - c) Chief Lampreau allegedly saying “I’m going to deal with that Fucker the Joe way” after the December 9, 2021 meeting (Lennard Joe’s January 18, 2022 letter).
160. I have considered each of these allegations, whether they are breaches of the Code, and if so, whether they justify removal of the Chief.

***Text Messages to Jason Wray***

161. Chief Lampreau acknowledged that he had had a text exchange with Jason Wray at the time of the severe flooding on the Shackan Reserve in the Fall of 2021, and had sent a message including “fuck you you fucking idiot”.
162. The Chief acknowledged that those words are not the words a Chief should use.
163. The Chief also explained the context of the text messages. His evidence was that the flood waters were rising rapidly and threatening to inundate houses on the reserve, including that of Jason Wray. The Chief went to various houses on the reserve, including Jason Wray’s, telling Mr. Wray “You need to get out the water is too high”. He said that 45 minutes later he returned to Jason Wray’s house and found that he had not evacuated, and was not with his family, but the water was up to the steps on the house, rising quickly, and he was “fearing for the boy’s life”.
164. I find that the use of the words “fuck you you fucking idiot” in a text conversation with Mr. Wray is a breach of the Chief and Council Oath of Office, parts I, and VII. These words are disrespectful. However, I consider this a minor breach of the Code. It is an isolated incident in the context of an extremely serious natural disaster to which the Chief

was attempting to respond on behalf of his community. I agree with Respondent that this conduct does not rise close to the level of justifying the removal of a Chief.

***MacDonald Cows***

165. Wayne and Rhonda MacDonald stated in their letters and testimony that the Chief came to their home to complain that the MacDonalds' cows were coming on to land which the Chief leases and he wanted them kept off. They described a heated discussion and said that Chief Lampreau threatened to chase their cows "until their tongues were dragging" and again said "I will chase those cocksuckers until their tongues are dragging on the ground".
166. In his evidence, the Chief did not deny using those words, and acknowledged there was a heated conversation between himself and Wayne MacDonald. The Chief said that he made the comment in response to Wayne MacDonald's statement that the cows can go wherever they want.
167. The Respondent argued that this incident was interpersonal, a private civil dispute regarding trespass, and that Chief Lampreau was not acting in his capacity as Chief. The Respondent also says that the issue is really one of using profane language, which was directed at the cattle, not the MacDonalds.
168. However, the MacDonalds' position was that the Chief was in the wrong by asserting that the cows could not come on to his land, and that his threat was a threat to their livelihood which had already been severely impacted by the forest fires in the summer of 2021.
169. I agree with the Respondent that profane language, in itself, is not a breach of the Code. However, there is more to this incident than the mere use of profane language.
170. I accept the evidence of the MacDonalds that the Shackan reserve and surrounding Crown land is open range, that is, cattle are free to roam and persons who do not wish them on their land bear the obligation of maintaining fences to keep the cattle out.
171. I also accept the MacDonalds' evidence that the Chief's threat to chase their cows was a threat to their livelihood and it was made in circumstances where their ranching operation had suffered significant losses due to the fires.
172. I do not accept the Respondent's argument that this was a private matter. Although it had the elements of a private matter, the Chief can not so easily avoid his responsibilities under the Code, including requirements to act with respect, encourage an atmosphere of caring and sharing, mutual respect, encourage balance and harmony (Code, sections, VI, VII and VIII).
173. I find that, despite the long-standing animosity between the Chief and the MacDonalds, acknowledged by both, the Chief was in the wrong in this situation. He was wrong in believing, or purporting to believe, that the MacDonalds had an obligation to keep their cattle out of his property. If he did not know that they had no such obligation, he ought to

have known, since he was a signatory to the Range Agreement between the MacDonalds and the Band, in particular, section 10 of that Agreement.

174. Given the history of animosity between the parties, the Chief used bad judgment in attending at the MacDonald's house to make demands, when he knew or ought to have to known that he was in the wrong, and to make threats to their cattle, which he knew to be their livelihood.
175. However, this is an isolated incident which occurred in the context of animosity acknowledged by both parties and although I find that the Chief breached his obligations under sections VI, VII and VIII of the Code, I do not consider the breach sufficient to justify his removal as Chief.

***December 9 Meeting – the “Joe Way”***

176. I have found that allegations respecting the Chief's conduct at and following the December 9 Band meeting are inadmissible in this application, having occurred subsequent to the Petition of Band members which is a condition precedent to an application for removal pursuant to s. 23 of the Code. However, in case my interpretation of the Code is incorrect, I consider whether the allegations are made out, and whether they justify the Chief's removal.
177. In his letter of January 18, 2022, Band member Lennard Joe alleged that following the meeting, he spoke to the Chief who was visibly shaken, and the Chief, stated “I am going to deal with that fucker, I am going to deal with that fucker the Joe way”. Lennard Joe, in his letter, considered this to be a threat of violence. Lennard Joe did not testify at the hearing, nor did any other witness testify to corroborate Lennard Joe's allegation.
178. The Chief testified, acknowledging he had made reference to the “Joe Way” but claiming that the “Joe Way” could mean violence or thoughtful planning, and denying that his reference to the “Joe Way” involved any threats.
179. While I found the Chief's evidence to be somewhat self-serving, I can not prefer the uncorroborated account in Lennard Joe's letter to the Chief's explanation. Therefore, I agree with the Respondent's argument that this is simply a matter of using profanity which is not prohibited by the Code.

***Cumulative Breaches***

180. I have found that the Chief has beached the Code in two incidents: the text exchange with Jason Ray, and the issue with the MacDonald cows. However, I have found that neither of these breaches is sufficiently serious to justify removal of the Chief.
181. I also note the positive statements of the Respondent's witnesses respecting the Chief.
182. I have considered whether the two breaches taken together change my conclusion but find that they do not.



**DECISION PURSUANT TO SECTION 23.12**

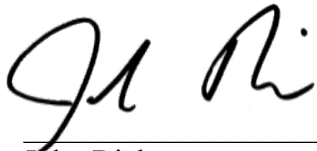
183. Pursuant to section 23.12 of the Custom Election Code of the Shackan Indian and, I rule that the Application for Removal brought by Percy Joe on November 18, 2022 is denied.

**COSTS**

184. Paragraph 23.13 of the Code states that:

“The Arbitrator shall make such order regarding costs of the application as he or she deems appropriate. The Arbitrator’s fee and all reasonable expenses shall be the responsibility of the Band unless otherwise ordered by the Arbitrator.”

185. I am prepared to hear submissions from the parties on the matter of costs.



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John Rich  
Arbitrator  
December 20, 2022