

DECISION OF THE BOARD OF DIRECTORS

IN THE MATTER OF A COMPLAINT REGARDING ALLEGED ELECTION VIOLATIONS IN THE 2024 GWICH'IN TRIBAL COUNCIL GRAND CHIEF ELECTION

A. INTRODUCTION AND BACKGROUND

1. This document sets out the decision of the Board of Directors (the “**Board**”) of the Gwich’in Tribal Council (“**GTC**”), regarding a report by Mr. Ken Kyikavichik (the “**Complainant**”) of alleged violations of GTC By-law No. 1 (the “**By-law**”) and the Policy and Procedure Manual for Executive Elections (the “**Policy**”) by Mr. Frederick (Sonny) Blake Jr. and other individuals in the election of the Grand Chief of the GTC.
2. The election of the Grand Chief of the GTC occurred on Monday, August 19, 2024. Both the Complainant and Mr. Blake were candidates for the office of Grand Chief of the GTC.
3. On August 19, 2024, the Chief Returning Office (“**CRO**”) announced that 604 votes had been cast in favour of Mr. Blake and 515 votes had been cast in favour of the Complainant. Accordingly, Mr. Blake was announced as the successful candidate for the office of Grand Chief of the GTC.
4. On August 20, 2024, in accordance with Article 8.19 of the By-law and Section 23 of the Policy, the Complainant filed a report with the Elections Committee regarding alleged violations of, and offences under, the By-law and the Policy by the Respondent (the “**Complaint**”). The Complaint, included in the EC Report (as defined below), is attached as Appendix I.
5. The Complainant argues in the Complaint that the alleged violations and offences constitute grounds for a new election for the office of Grand Chief of the GTC.
6. In accordance with Article 8.19 of the By-law and Section 23.2 of the Policy, upon receipt of the Complaint, the Election Committee must investigate the allegations and provide a report and recommendations, based on the Election Committee’s investigation, to the Board regarding such alleged violations.
7. The Elections Committee provided its report to the Board on August 25, 2024 (the “**EC Report**”). The EC Report is attached as Appendix I.
8. Pursuant to Article 8.19 of the By-law and Section 23 of the Policy, the Board is now required to render a final decision on the alleged violations set out in the Complaint based on the information presented to it within five days of receiving the EC Report.

B. THE ALLEGED VIOLATIONS

9. Article 8.19 of the By-Law states that “if anyone may have violated any rule related to an Election or Runoff Election under [the] By-law or the [Policy], such alleged violations may be reported”. Violations by Participant Members must be reported to the Elections Committee. Section 23.1 states that “any Voter may report to the Elections Committee any violations of [the By-law] and [the] Policy regarding an Election or Runoff Election that they believe were committed”.
10. Section 23.1 of the Policy requires, among other things, that a report of an alleged violation be in writing and delivered to the Elections Committee no later than 12:00 pm on the day following the day of the election.
11. The Complainant filed the Complaint on August 20, 2024, the day after the election and before the 12:00 pm deadline.
12. The details of the alleged violations are set out in the Complaint and summarized at paragraphs 11 to 19 of the EC Report. In the Complaint, the Complainant alleges that the following issues amount to violations of Articles 8.7 and 8.18(a) of the By-law and offences under Section 1(a) of Appendix I of the Policy:
 - a. the timing for the launching of, and the allegations set out within, the application filed by the Gwichya Gwich'in Council against the GTC in the Supreme Court of the Northwest Territories (“**Allegation 1**”);
 - b. social media posts made by the named Participant Members (as defined in the By-law) in the Complaint (“**Allegation 2**”);
 - c. bullying and intimidation of the electorate in connection with the posting of signage (“**Allegation 3**”); and
 - d. a breach of campaign expense limit by Mr. Blake (“**Allegation 4**”).
13. Section 8.7 of the By-law states that “no nominee may spend more than ten thousand dollars (\$10,000.00) in relation to any one election”. The Complainant alleges that Mr. Blake exceeded such limit in contravention of Section 8.7 of the By-law, and that such conduct amounts to a violation of Article 8.7 of the By-law.
14. Section 8.18(a) states that “no Participant Member may in any Election influence or attempt to influence a Participant Member to vote or not vote for any candidate(s) by means of

libel, bribery, threats, force or intimidation”. Section 1(a) of Appendix I of the Policy states that “it is an offence for a Voter, Candidate or Candidate’s representative or Election Officials to” “influence or attempt to influence a Voter to vote or not vote for any Candidate(s) by means of libel, bribery, threat, force or intimidation”.

15. The Complainant alleges that the conduct described in Allegations 1, 2 and 3 of the Complaint by the Respondent and other named Participant Members amount to violations of s. 8.18(a) of the By-law and offences under Section 1(a) of Appendix I of the Policy.
16. Pursuant to Article 8.19 of the By-law and Section 23.2 and Appendix I of the Policy, the Complainant is seeking that, as a remedy for the alleged violations, a new election for the office of Grand Chief be ordered by the Board.

C. ELECTIONS COMMITTEE INVESTIGATION AND REPORT

17. Section 8.19 of the By-law states that if a report of an alleged violation is made to the Elections Committee, then the Elections Committee “shall review such allegations and prepare a report on such review for publication”. The Election Committee’s investigation is therefore limited to the alleged violations raised in the Complaint.
18. Section 23 of the Policy states that “immediately upon receipt of a report, the Election Committee shall”... “review and investigate the allegations described in the report”, “determine the validity of the complaint” and “within five (5) days of the receipt of such report, provide a report and recommendations, based on the investigation, to the Board...”.

Elections Committee Investigation Process

19. Pursuant to Article 8.19 of the By-law and Section 23.2 of the Policy, the Elections Committee undertook an investigation into each of the alleged violations raised in the Complaint. This investigation is described in the EC Report and addressed below in respect of each alleged violation.
20. As part of the investigation, the Elections Committee provided a copy of the Complaint to Mr. Blake. Mr. Blake’s response to each allegation, through his legal counsel, is set out at pgs. 11 – 14 of the EC Report.
21. As per the timeline set out in Section 23.1 of the Policy, the Elections Committee’s investigation closed on August 25, 2024, being five days after the Complaint was filed.
22. The Elections Committee provided the EC Report to the Board on August 25, 2024. On August 26, 2024, the CRO presented the EC Report to the Board in a meeting with the Board. During that meeting, the CRO supplied additional documents to the Board upon

which the Elections Committee relied to make its determinations and recommendation set out in the EC Report. This information is attached as Appendix II.

23. On August 27th, 2024, the Board requested further clarification from the Elections Committee regarding its investigation, the evidence relied on and its recommendation. The Elections Committee provided responses, along with additional documents upon which it relied on during its investigation, on August 27, 2024. These questions and responses are attached as Appendix III.

24. The following section of this decision document summarizes the Election Committee's analysis and findings in respect of each alleged violation set out in the Complaint.

Allegation 1 – Launching of Application by the Gwichya Gwich'in Council against the GTC

25. With respect to Allegation 1, the Elections Committee did not find “any connection between the proceeding and a violation” of the By-law or the Policy. The reasons for the Election Committee's finding are set out at paras. 24 – 27 of the EC Report.

26. As part of its investigation, and in making such findings, the Elections Committee reviewed and considered certain press releases and other social media posts regarding the court proceeding. These documents are attached to the EC Report.

Allegation 2 – Social Media Posts by Named Participant Members in the EC Report

27. With respect to Allegation 2, the Elections Committee determined that the content of the social media posts fell “within the scope of allowable campaigning” and that, although the posts were unfavourable to the Complainant, “there is nothing in them that manipulates voters in any prohibited sense” (para. 35 of the EC Report). The reasons for the Elections Committee's finding are set out at paras. 28 – 35 of the EC Report.

28. As part of its investigation, and in making such findings, the Elections Committee obtained and reviewed screenshots of the social media posts referred to in the Complaint. These documents are attached to the EC Report.

Allegation 3 – Bullying and Intimidation of the Electorate

29. With respect to Allegation 3, the Elections Committee found that “in the absence of corroborative evidence from at least one of the individuals identified by [the Complainant], the allegation is unfounded” (para. 39 of the EC Report). The reasons for such finding are set out at paras. 36 – 39 of the EC Report.

30. The Elections Committee, as part of its investigation, requested that the Complainant provide names of voters who may have had signs in favour of Mr. Blake attached to their homes without their permission. The Elections Committee received names of three

individuals from the Complainant, two of which the Elections Committee was able to reach during its investigation.

31. One individual confirmed that the sign was posted with their permission, while the other individual did not wish to comment on the matter. Despite the Elections Committee's efforts to reach the third individual by phone, as evidenced on pg. 33 of Appendix III, the Elections Committee was not able to reach the third individual.
32. Based on such conversations and evidence, the Elections Committee found that it could not conclude that "there has been an election violation in the form of signs being posted without voters' permission" (para. 39 of the EC Report).

Allegation 4 – Campaign Expense Limits

33. With respect to Allegation 4, the Elections Committee found that it could not conclude "that Mr. Blake has exceeded the limit on election spending set out" in the By-law. The reasons for such finding are set out at paras. 40 – 46 of the EC Report.
34. In respect of the Complaint regarding third party financial contributions, the Elections Committee determined that Article 8.7 of the By-law prohibited Mr. Blake, as the nominee, from exceeding the election spending limit, but "did not prohibit campaign contributions or donations from anyone else" (para. 45 of the EC Report).
35. In making its findings, the Elections Committee reviewed and took into account, among other things, Mr. Blake's Form 12 – *Candidates Statements of Personal Campaign Spending* ("**Form 12**"), which sets out, pursuant to Section 12.1 of the Policy, an account of Mr. Blake's election-related spending (para. 42 of the EC Report). Mr. Blake provided his Form 12 on August 18, 2024 around 4:00 pm, along with, as further described below, incomplete supporting documents. Mr. Blake's Form 12 and the supporting documents provided with that Form 12 are set out at pgs. 3 to 18 of Appendix III. The Elections Committee followed up numerous times with Mr. Blake on questions pertaining to spending, including in respect of the provision of receipts to support such spending. These emails are included in Appendix II. Mr. Blake's legal counsel responded on August 23rd with limited information.
36. The Elections Committee found, at para. 44 of the EC Report, that the amount set out on Mr. Blake's Form 12 fell within the election spending limit pursuant to Article 8.7 of the EC Report.
37. However, the Elections Committee requested that Mr. Blake provide receipts for his air travel and hotels between July 24 and August 1, 2024, as these receipts were not provided with Mr. Blake's Form 12 (para. 42 of the EC Report, Appendix II and pgs. 28 – 32 of

Appendix III). Included with Mr. Blake's Form 12 was a summary which did not constitute a receipt, as set out in the EC Report.

38. The Elections Committee found "the response delivered through counsel to be inadequate and unresponsive to this request", and the requested receipts remained outstanding at the time the investigation was concluded in accordance with Section 23.2 of the Policy and the EC Report issued to the Board (para. 42 of the EC Report).
39. The Elections Committee found, however, that it would need "compelling evidence of spending over \$10,000.00 before recommending a result that would nullify the will of the electorate" (para. 43 of the EC Report).
40. On August 26, 2024, after the EC Report was made available to Mr. Blake, four of the five requested receipts in respect of Mr. Blake's airfare and hotels were provided by Mr. Blake's counsel to the CRO. Subject to para. 48 and 49 below regarding the consideration of this evidence, Mr. Blake's spending was still under \$10,000 after considering these additional receipts, noting the one receipt requested by the Elections Committee that remain outstanding.¹

Conclusions of the Elections Committee

41. The Elections Committee unanimously concluded that the alleged violations made by the Complainant were unfounded, based on the reasons set out in the EC Report and summarized above (paras. 47 and 52 of the EC Report).
42. The Elections Committee recommended to the Board "that the complaint be dismissed, subject to any further directions the Board may provide Mr. Blake to deliver adequate receipts for his expenses".

D. BOARD PROCESS AND DETERMINATION

Scope of the Board's Decision

43. Article 8.19 of the By-law requires the Board to determine, "upon hearing all information presented": (i) whether the alleged violation(s) occurred; and (ii) if so, the nature of it, who committed it, whether anyone seeking election was aware of or consented to the violations, and what the sanctions or remedial action should be, if any, for such violations.

¹ The Election Committee notes in their August 27th responses set out in Appendix II that Mr. Blake's receipt for his flight from Vancouver to Whitehorse on August 1, 2024 remains outstanding. However, the Board clarifies that this receipt was provided on August 26, 2024.

44. Accordingly, the Board is required to make a final decision on the alleged violations raised by the Complainant in the Complaint. The alleged violations are limited to Allegations 1 to 4 and require the Board to determine whether Articles 8.7 and 8.18(a) of the By-law have been violated and whether the offences set out under Section 1(a) of the Appendix I of the Policy have been committed.
45. If the Board finds that an alleged violation set out in the Complaint did occur or an offence was committed, the Board must determine under Article 8.19 of the By-law the nature of that violation, who committed that violation, whether anyone seeking election was aware of or consented to that violation, and what the sanctions or remedial action should be, if any, for that violation.

Evidence Before the Board

46. Pursuant to Article 8.19 of the By-law and Section 23.2 of the Policy, in making its decision, the Board must rely on the EC Report, the investigation undertaken by the Elections Committee and the evidence before the Elections Committee at the time the Elections Committee made its findings on the validity of the alleged violations set out in the Complaint and its recommendation to the Board.
47. Accordingly, in making its final decision on the alleged violations, the Board reviewed and considered:
- a. the By-law and the Policy;
 - b. the EC Report;
 - c. the Complaint;
 - d. Mr. Blake's response to the Complaint, set out at pgs. 11 – 14 of the EC Report;
 - e. the documents set out at pgs. 15 to 57 of the EC Report;
 - f. the documents set out in Appendix I and II;
 - g. the responses and documents provided by the Elections Committee to the Board's questions set out in Appendix III, other than those identified below.
48. The Board acknowledges that, on August 26, 2024, Mr. Blake provided four of the five receipts in respect of Mr. Blake's airfare and hotels that were requested by the Elections Committee. However, and despite these receipts being included in the Election Committee's responses to the Board's questions at pgs. 19 to 26 of Appendix III, the Board

did not consider such documents in making its final decision on the alleged violations set out in the Complaint for the following reasons:

- a. pursuant to Article 8.19 of the By-law and Section 23 of the Policy, the Board can only consider the evidence before the Elections Committee during its investigation and upon which it made its findings and recommendations set out in the EC Report;
- b. these documents were provided to the CRO after the expiry of the five-day investigation period under Section 23 of the Policy; and
- c. as a result, these documents were not part of the record before the Elections Committee when making its determinations and recommendation in respect of the alleged violations set out in the Complaint.

49. Because the Board determined that it was required to rely on the investigation undertaken by the Elections Committee and the evidence that was before the Elections Committee at the time it made its findings and recommendation, the Board did not issue further directions to Mr. Blake to provide the outstanding receipts.

50. In determining whether or not Allegations 1, 2 and 3 amount to violations of Section 8.18(a) and offences under Section 1(a) of Appendix I of the Policy, the Board considered the common law test for proving defamation (which includes libel) set out in *Grant v. Torstar Corp.*, 2009 SCC 61 at paragraph 28.

Board Final Decision on Allegation 1

51. For the following reasons, the Board finds that Allegation 1 amounts to a violation of Section 8.18(a) of the By-law or the commission of an offence under Section 1(a) of Appendix I of the Policy:

- a. The actions influenced, or were an attempt to influence, voting by Participant Members by means of libel given:
 - i. the timing of the commencement of the action itself and then the Press Release announcing the action three days before the closing of the nomination period was most likely chosen with the intention to influence voters particularly given the most recent amendment to the Bylaw 1 was October 2023 (a full 9 months before the commencement of the action);

- ii. the statements published in the Press Release by GGC dated July 12, 2024 and related published materials were unfounded or untrue and intended to harm or lower the reputation of the Complainant;
- iii. the timing of the Press Release and locations of the public sessions held in respect of the launching of the action and the publishing of materials related to the action and Press Release were chosen with the intent to influence voting by Participant Members; and
- iv. some or all of the Participant Members who carried out the conduct described above were candidate representatives of Mr. Blake.

Board Final Decision on Allegation 2

52. For the following reasons, the Board finds that Allegation 2 amounts to a violation of Section 8.18(a) of the By-law or the commitment of an offence under Section 1(a) of Appendix I of the Policy:

- a. The actions influenced or were an attempt to influence voting by Participant Members by means of libel given:
 - i. The social media posts were posted by Participant Members and contain information that in the Board's view was not factual or was known to be untrue and intended to harm or lower the reputation of the Complainant;
 - ii. The Participant Members that posted the harmful information are candidate representatives of Mr. Blake; and
 - iii. The timing of the posts was right before the closing of electronic voting which was designed to influence voters.

Board Final Decision on Allegation 3

53. In respect of Allegation 3, the Board accepts the finding of the Elections Committee in the EC Report and finds that Allegation 3 does not amount to a violation of Section 8.18(a) of the By-law or the commitment of an offence under Section 1(a) of Appendix I of the Policy. The Elections Committee could not find evidence to substantiate that bullying occurred despite its efforts to interview the individuals involved and as a result, this allegation is too speculative to conclude that a breach occurred.

Board Final Decision on Allegation 4

54. For the following reasons, the Board finds that Allegation 4 amounts to a violation of Section 8.7 of the Policy:

- a. Mr. Blake did not provide receipts or evidence in the manner, and prior to the deadline provided for in Section 8.7 of the By-law and Section 12.1 of the Policy:
 - i. The information being late is a breach of the By-law and the Policy. At the time of this decision there are still outstanding receipts that were required to be provided the day after campaigning closed which was on August 17th, 2024, and some of the other required documents were provided late;
 - ii. The spirit and intent of Section 8.7 of the By-law is to include all campaign expenditures per the definition of “Campaign” and “Campaigning” in the Policy. This limit is in place to ensure an equitable and fair process;
 - iii. The inability to determine in a timely and concrete manner whether or not the spending limit was exceeded creates inequitable circumstance amongst candidates;
 - iv. The CRO provided an email to both candidates on August 7th, 2024, clarifying the consequences of breaching the \$10,000 limit; and
 - v. There was no evidence that other Campaign expenditures were not incurred by the Candidate. The expenditures referred to in the EC Report, such as signs, were a campaign expenditure.

Recommendation of the Elections Committee

55. For the reasons set out above, the Board does not accept the Elections Committee’s recommendation that the Complaint be dismissed.

Decisions of the Board

56. The GTC Board of Directors finds that Allegations 1, 2 and 4 are substantiated and for the reasons set out in this Board Decision Document, the GTC Board of Directors finds that the above-noted violations are sufficient to call the results of the August 19, 2024 election for Grand Chief of the Gwich’in Tribal Council into question and therefore hereby calls a new election to be held as soon as possible in accordance with By-law 1.

Other Matters

57. The GTC Board of Directors encourages all candidates and Participants Members, in accordance with Section 8.18 of the By-law and Appendix I of the Policy, to conduct election campaigns keeping in mind our Gwich’in Values (Respect, Honesty, Our Stories, Honour, Laughter, Kindness, Sharing & Caring).