

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Day v. Tahltan Central Government*,
2025 BCSC 1363

Date: 20250717
Docket: S2463594
Registry: Prince George

Between:

Chad Norman Alexander Day

Plaintiff

And

Tahltan Central Government

Defendant

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Plaintiff:

C.D. Drinovz

Counsel for the Defendant:

M.R. Voell

Place and Dates of Hearing:

Prince George, B.C.
May 13-16, 2025

Place and Date of Judgment:

Prince George, B.C.
July 17, 2025

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I. Introduction

[1] This is a summary trial application in which the plaintiff, Chad Day, seeks a judgment and damages for wrongful dismissal. Mr. Day was the elected president of the defendant, Tahltan Central Government (“TCG”). Upon his election and three subsequent re-elections, Mr. Day was given an employment contract by the TCG which was the mechanism by which he was remunerated as president. He claims he was constructively dismissed when the TCG’s elected board of directors (the “Board”) placed him on administrative suspension with pay pending the investigation of complaints the Board had received about his conduct.

[2] Mr. Day submits the suspension was unlawful and unjustified such that it amounted to a repudiation of his employment contract and a wrongful constructive dismissal. He also alleges the Board created a hostile work environment by allowing a group of Board members opposed to him to actively work against him with animosity. He also claims the Board made unilateral changes to his employment contract by limiting his duties as the “senior officer responsible for the general operation and administration of the Central Government”.

[3] Mr. Day elected to treat the administrative suspension and other conduct as a repudiation of his employment contract by the TCG and accepted it as such on March 29, 2024. He claims compensatory damages for wrongful dismissal and aggravated and punitive damages for a breach of the duty of good faith and fair dealing in carrying out the dismissal.

[4] The TCG submits the suspension was a lawful and reasonable exercise of its governance authority which includes an express power of administrative suspension. It argues there were good reasons to investigate Mr. Day for an alleged conflict of interest that was supported by a legal opinion the Board received from a law firm that practises in Aboriginal law and governance. It argues the suspension was with pay and for the duration of the investigation and thus does not evince an intention not to be bound by the employment contract. It argues Mr. Day was at least equally responsible for animus on the Board because of his own hostile forms of

communication with other Board members, and, in any event, those on the Board opposed to him were merely exercising legitimate tools of board governance and oversight.

[5] For the reasons that follow, I find the Board has the express authority to place a Board member, including the president, on administrative suspension pending the investigation of a complaint under a Director Accountability Process within the TCG's Governance Policy Manual. However, in this case the Board failed to follow the clearly laid-out requirements and procedures that must be met to exercise that power of administrative suspension. Those procedures include important safeguards aimed at ensuring that complaints are timely and supported by evidence so that TCG governance is not unduly disrupted and directors, who are the subject of complaints often made in a political environment, are fairly treated. I find the Board's failure to follow these important procedures rendered its suspension of Mr. Day unlawful and unjustified, and a wrongful constructive dismissal. However, I am not able to conclude that the Board acted in bad faith or reprehensibly, so I make no order for aggravated or punitive damages.

II. Background

A. The TCG and its Governance

[6] The TCG is a governing body for the approximately 4,000 Tahltan people. The Tahltan Nation includes two bands as defined by the *Indian Act*, R.S.C. 1985, c. I-5: the Tahltan Band and the Iskut Band, both of which are governed by their respective band councils. The TCG exercises inherent government authority of the Tahltan Nation in respect of its traditional territory and Aboriginal rights and title. It emerged from the Association of United Tahltans which was established as a tribal council in 1985. It later changed its name to the Tahltan Tribal Council and then to the Tahltan Central Council before taking its current name in 2015.

[7] TCG is a society under the *Societies Act*, S.B.C. 2015, c. 18 and is governed in accordance with its constitution and bylaws. It has also adopted a Governance Policy Manual that, among other things, particularizes TCG's governance processes

and sets out duties, responsibilities, and oversight mechanisms for Board members and senior administrative officers, including the Executive Director, now called the Chief Administrative Officer. The Governance Policy Manual includes the Director Accountably Process where the Board's power of administrative suspension is found.

[8] The governing body of the TCG is an elected board of directors comprised of a President, a Vice-President, a Secretary-Treasurer, and ten Family Representatives. All Tahltan members aged 18 years or older are eligible to vote in TCG elections for the President, Vice-President, and Secretary-Treasurer. Each Family Representative is elected or appointed only by the members of that representative's family.

[9] The President, Vice-President, and Secretary-Treasurer comprise an Executive Committee. The actions of each Executive Committee member, including the President, are subject to oversight by the Board as a whole. Executive Committee decisions are to be reviewed by the full Board at its next meeting after the decision is taken.

[10] The members of the Executive Committee are also responsible for overseeing one another's adherence to the TCG's Code of Conduct. Article IV of the bylaws reads in part:

Each member of the Executive Committee shall be responsible for overseeing each member of the Executive Committee in their adherence to the Code of Conduct and Confidentiality agreements, as may be in place from time to time at the request of the Board of Directors, and shall report any related concerns to the Board of Directors.

[11] The bylaws provide that the President shall, among other things, be the spokesperson for the TCG, be the senior officer responsible for the general operation and administration of the TCG, and supervise the other officers in the execution of their duties. The primary responsibilities of the President include providing strategic advice to the Board of Directors, representing the TCG in negotiations and implementation of government-to-government relationships and

agreements with third parties, and reporting to the Board of Directors with respect to these activities.

[12] Under Part V(f) of the bylaws, the members of the society (not the Board) may remove a director from the Executive Committee for improper conduct likely to endanger the purposes of the government, or for repeated absences from meetings. This power must be exercised by special resolution which, under the *Societies Act*, is a resolution passed at a general meeting by at least 2/3 of the votes cast in person or by proxy. Thus, while the Board and Executive Committee have certain oversight responsibilities for other Executive Committee members, including the President, neither is empowered to remove a member of the Executive Committee. That falls to the members of the society who are Tahltan members of voting age.

B. The Governance Policy Manual

[13] In 2016, the TCG adopted the Governance Policy Manual which serves to guide the work of the Board for all government-related issues. It “applies to each director ... and the Executive Director.” Within a month of being elected, all directors must indicate their agreement to adhere to the Governance Policy Manual, including specifically s. 7 of the Manual which is the Director Accountability Process, by signing the “TCG Governance Policy Manual Declaration Form”.

[14] The Governance Policy Manual includes provisions about conflict of interest that are material to this case. It defines conflicts of interest broadly to include situations where a director not only has or may have a personal interest that conflicts with the director’s duties but also includes situations where a director “may be perceived to” have such a conflict:

3.12 A Director is in a conflict of interest when they have a personal interest that does, may or may be perceived to, conflict with the Director's duties to the TCG, including most fundamentally the Director's fiduciary duty to act in the TCG's best interests at all times.

[Emphasis added]

[15] By contrast, s. 56 of the *Societies Act* provides that a director has a conflict of interest where the director “has a direct or indirect material interest” in a contract

or transaction of the society or in a matter that is subject to consideration by the directors “if that interest could result in the creation of a duty or interest that materially conflicts with that director's duty or interest as a director of the society.” The *Societies Act* does not expressly include “perceived” conflicts.

[16] The Governance Policy Manual also defines “personal interest” very broadly to include the personal and financial interests not only of the director but also of those “closely related to or aligned with the Director” including family:

3.13 A "personal interest" in subsection 3.12 means not only the Director's own interests, personal or financial, but also the personal and financial interests of those who are closely related to or aligned with the Director, including a Director's family, friends and business interests, and who may reasonably be considered to affect the Director's judgment, directly or indirectly.

[Emphasis added]

[17] This too is broader than the *Societies Act* which does not refer expressly to financial interests of close friends or family members.

C. Chad Day’s History as TCG President

[18] Mr. Day was first elected President of the TCG in July 2014. At that time, the TCG was a much smaller organization and the bylaws provided for a two-year term for directors. Upon his election, he entered into an employment agreement with the TCG that provided for his compensation and governed other terms of his “employment”.

[19] The TCG has produced a copy of an employment agreement for that first term that is not signed by Mr. Day. He has no recollection of signing it, but I find nothing turns on that. The agreement provides that Mr. Day was to report to the Board and perform duties outlined in Schedule A to that agreement. It stated that the Board may, in its sole discretion, “make reasonable changes to the President’s assignments, duties, responsibilities, and reporting arrangements in a manner consistent with the bylaws.” The duties in Schedule A included, among others, performing the “day-to-day core work of the Board”, performing “core leadership

functions”, providing “strategic leadership to the Nation, Board and the organization”, and leading “discussions and negotiations with external governmental bodies and/or third parties.”

[20] During that first term, the TCG (which was then still called the Tahltan Central Council or “TCC”) had only four or five full-time employees and operated out of a residential home on a Tahltan Band reserve. It had no executive director and Mr. Day assumed many duties that might ordinarily be given to a chief administrator rather than an elected President. In June 2015, about a year after Mr. Day’s election, TCG hired a General Manager and Chief Financial Officer to take on administrative and financial duties, but Mr. Day states he “remained the operational and executive leader with day-to-day operations outside of administrative and financial functions.”

[21] In July 2015, TCC changed its name to TCG and amended the bylaws to extend the elected Board’s term from two years to three. It also hired a full time Executive Director. By 2016 the TCG had some 12 employees.

[22] As set out in the employment contract and the bylaws, Mr. Day acted as the TCG’s lead representative in negotiations with government and industry, including mining companies operating in Tahltan Territory. In this first term, the TCG concluded a co-management and revenue-sharing agreement with Imperial Metals respecting the Red Chris gold and copper mine.

[23] Mr. Day was re-elected President in July 2016, now to a three-year term. He signed new employment agreement that included a salary increase, a living allowance of \$2,000 per month, and a professional development allowance of \$10,000 per year. The duties were substantially similar to those in the 2014 agreement but one duty described in the 2014 agreement as performing “the day-to-day core work of the Board” was broadened to: “Perform the day-to-day core work of the TCG”. [Emphasis added in both cases.]

[24] The TCG continued to grow during Mr. Day’s second term. Six new departments were established and the staff grew from 12 in 2016 to 25 by 2019.

TCG concluded an impact benefits agreement with Seabridge Gold with financial benefits for TCG, including revenue sharing.

[25] In 2019, Mr. Day was re-elected to a third term. This time his employment agreement stated that his duties are those outlined in the TCG bylaws. Those include being the “senior officer responsible for the general operation and administration of the Central Government” and “supervis[ing] the other officers in the execution of their duties.” The bylaws do not state who the “officers” are but I would think this refers to the Executive Director, the Financial Officer, and persons with similar positions. To my mind, department heads would be classified as managers rather than officers and would not fall within the scope of this supervisory authority.

[26] Mr. Day deposes that as the “senior officer responsible for the general operation and administration”, he organized TCG staff, contractors, and legal counsel in preparation for Board meetings and worked closely with TCG staff and departments. He said some departmental directors reported directly to him while others reported to the Executive Director but, according to Mr. Day, only if he “was comfortable with this delegation”. He said under his leadership, TCG grew to 55 employees, most of whom were Tahltan members who worked full time.

[27] In July 2022, Mr. Day was re-elected to a fourth term as TCG President and signed an addendum to his 2019 contract extending it for another three-year term with a salary increase.

D. Fourth Term Hostilities on the Board

[28] Early in this fourth term, personality conflicts emerged on the Board between Mr. Day and other directors. One of the candidates that Mr. Day had defeated in the 2022 election, Curtis Rattray, was later elected to the Board as a family representative in a byelection. Mr. Day deposed that Mr. Rattray was acrimonious towards him throughout the term. A byelection for another family group elected a candidate who had also been hostile to Mr. Day. During the byelection, Mr. Day made a social media post that this candidate perceived as an endorsement for her opponent and that soured the relationship between her and Mr. Day.

[29] Mr. Day deposes that starting around 2022, there was a group of five Board members, including these two, who were hostile to him and “acted in a co-ordinated and collective manner to undermine” him and his position as President. He describes these hostilities in detail in his affidavit. Much of what he describes involve his adversaries using the TCG governance processes to curtail some of his activities as President. This carried on throughout 2023.

[30] In late 2022 and in 2023, three complaints were submitted under the TCG’s Director Accountability Process: one by a member of the group of five directors hostile to Mr. Day; one by Mr. Day against David Rattray who was one of the group of five that opposed him; and another by Mr. Day against the entire group of five. The complaints were investigated by an outside consultant who issued a report in July 2023.

[31] In the complaint against Mr. Day, it was alleged that he was discourteous in his communications with the complainant, a fellow board member. It was also alleged that Mr. Day failed to report on a business trip he took to Australia. The complaint about the Australia trip was dismissed but the investigators found merit in the complaint about Mr. Day’s communications. While they found Mr. Day’s communications were, to some extent, provoked, they found that as a long-standing and senior member of the TCG, Mr. Day ought to have dealt with the situation in accordance with the Code of Conduct. They also noted a “clear consensus” among the entire Board that Mr. Day needed to moderate the tone of his communications with other board members. The investigators wrote:

After reviewing the witness statements, there is sufficient evidence to support the Complainant's factual allegations, indicating that [Mr. Day] violated TCG's Policy, specifically Section 14.10 of the Director's Code of Conduct. The evidence also indicates a history of animosity between the parties, suggesting that the Complainant may have contributed to the contentious behavior, while [Mr. Day] may have been acting in self-defense. However, the finding points to [Mr. Day] as the individual engaged in discourteous dialogue.

Despite the evident animosity, it is important to note that [Mr. Day], as a long serving and senior leader of the Board, should have responded in accordance with the required code of conduct. Therefore, based on a balance of probabilities, it is concluded that [Mr. Day] indeed breached Section 14.10 of the Director's Code of Conduct. It is worth highlighting that during this

investigation it was found that there was a clear consensus among all board members emphasizing the necessity for [Mr. Day] to modify both his tone and responses. The findings reveal that [Mr. Day] frequently exhibits frustration and engages in discourteous behavior when confronted with challenges.

[32] On Mr. Day's complaint about Mr. Rattray, who was a member of the Board as well as an Elders' Council, the investigators found Mr. Rattray had committed a breach of confidentiality by improperly sharing privileged Board information with the Elders' Council without the Board's permission. They also found there was a potential conflict of interest with Mr. Rattray serving on both the Board and the Elders' Council.

[33] In Mr. Day's second complaint, filed in May 2023, he alleged the group of five hostile directors consistently exhibited a pattern of conduct that constitutes bullying and harassment under the guise of fulfilling their duties as directors. He alleged this behavior created a toxic work environment for him. However, the investigators found this conduct occurred because of "pointed remarks" that Mr. Day had made to or about the group of five. They wrote:

Regarding the allegations of rude, dismissive, or belittling behavior towards [Mr. Day], our findings indicate that such conduct occurred in response to pointed remarks made by [Mr. Day], specifically singling out board members. The presence of animosity among certain members is apparent and contributes to the overall lack of trust and dysfunction within this board.

[34] The investigators made a number of recommendations, including (among others): comprehensive governance training for board members; conflict resolution training for board members that focuses on fostering respectful dialogue, active listening, and finding mutually agreeable solutions; and a mediation session to address animosity amongst board members and foster a more positive working relationship. Apparently, a session was held but it did not stem the acrimony that continued to build throughout 2023.

[35] I have reviewed the many pages of emails and text messages exchanged between Mr. Day and other Board members and the Executive Director in the time before and after this investigation. It is clear there was significant discord between

Mr. Day and several Board members beginning with members of the group of five but then expanding to others, including some with whom Mr. Day had previously enjoyed a good working relationship. In my view, the investigators' account accurately describes the nature and tone of Mr. Day's communications. Whatever the motivations may have been of those hostile to Mr. Day, it is clear that Mr. Day's communications helped fuel the acrimony. Mr. Day's lengthy emails rebuking his fellow directors did not help to lower temperature of the conflict.

[36] In 2023, Mr. Day began having conflicts with the two other members of the Executive Committee (the elected Vice-President and Secretary-Treasurer). He deposes that their relationship had been good but it began to sour in April 2023 when Sandra Marion, the Secretary-Treasurer, began questioning Mr. Day about this father's business activities in the mining industry in the Tahltan Territory.

[37] Tensions also arose over the fact that Ms. Marion was employed by the TCG as the Director of Culture and Heritage and was also a Board member and member of the Executive Committee as the elected Secretary-Treasurer. This gave rise to concerns, mostly on Mr. Day's part, that conflicts of interest would be inevitable. This was something that Mr. Day frequently brought up in his communications with Ms. Marion and other Board members and a reason he offered for resisting oversight of his own activities from Ms. Marion.

[38] A particularly acrimonious exchange occurred in April 2023 when the elected Vice-President, Heather Hawkins, and Ms. Marion questioned Mr. Day in a group chat about his father's business activities. Mr. Day became frustrated and left the group. After that, Ms. Hawkins sent a text message to Mr. Day about whatever had transpired in the group chat. She was clearly upset with something that Mr. Day had said and a heated text exchange followed between the two of them.

[39] During this period of conflict, the TCG Board removed Mr. Day from some initiatives he had previously been active in as President. I provide two examples.

[40] One occurred during a Board meeting on May 15, 2023 when some of the group of five directors suggested that Mr. Day was conflicted out of discussing any wildlife-related issues because his father had inherited a 10% interest in a guide outfitter's licence (the remaining 90% was held by his father's nine siblings, each of whom also had a 10%). Mr. Day himself had no interest in the licence but the broad definition of "personal interest" in the Governance Policy Manual includes interests of family members. Thus, the Board considered Mr. Day to be in a conflict of interest and resolved to exclude him from any discussion on such matters.

[41] The other example was in September 2023 when the Board removed Mr. Day from the Tahltan-Mining Industry Working Group, which serves to foster a working relationship between the Tahltan Nation and the mining industry to advance Tahltan priorities. A majority of the Board asserted that Mr. Day was in a conflict of interest because his father had businesses that contracted with mining companies operating in Tahltan Territory. Mr. Day points out that another director, one of the family representatives, was herself a long-time mining entrepreneur who had catering and cleaning contracts with mining companies operating in Tahltan Territory but the Board did not find her to be in a conflict of interest. Eventually, the Board appointed Ms. Hawkins to be TCG's representative on the working group. Mr. Day deposes that Ms. Hawkins also had family members who worked in the mining industry in Tahltan Territory and he viewed his removal from the group and Ms. Hawkins' appointment to it as a double standard.

[42] In August 2023, Ms. Marion, in her capacity as Secretary-Treasurer, suggested to Mr. Day that he must submit a vacation form for some time he had gone on a hunting trip. Mr. Day responded that this inquiry should come through the Chief Administrative Officer (formerly the Executive Director) in part because of Ms. Marion's "dual role" as an employee of the TCG and a Board member. He also maintained that he was not on vacation during this trip because he had gone out with "three Wildlife staff" and the trip resulted in "major changes to the Wildlife Department". In the balance of his response, Mr. Day asked pointed questions about how Ms. Marion's handled her responsibilities as Secretary-Treasurer followed by

remarks about what he might be able to do in the future to track his time. The tone was sardonic and typical of his other communications to board members. He clearly felt he had better things to do than document his time for Board oversight.

E. Conflict of Interest Allegations

[43] As mentioned, fueling the acrimony on the Board in Mr. Day's fourth term were allegations that he was in a conflict of interest because his father, Norman Day, had businesses that subcontracted with mining companies working in the Tahltan Territory. The issue was brought up in a group chat in April 2023 and it was this issue that led the Board to remove Mr. Day from the Tahltan-Mining Industry Working Group in September 2023.

[44] Mr. Day was clearly resentful and dismissive of conflict of interest suggestions as evidenced by his text communications with the other members of the Executive Committee. However, Mr. Day himself had flagged his father's businesses as a potential source of conflict of interest when he endorsed the Director's Code of Conduct after his election in 2022. On that form, he stated: "The TCG Board may wish to remove me from any decision that impacts any of my Father's businesses in Tahltan Territory." However, Mr. Day also deposes that from the start of his time as President in 2014, Board members were aware that his father was an electrical contractor who often worked in Tahltan communities and in the mining industry. He states in his affidavit:

The Board did not suggest at any time during my First Term that Norman's business activities in Tahltan Territory would compromise my judgment or put me in a conflict of interest with any of my duties as the TCC President. At that time, the majority of the TCC Board members were either personally involved in the mining industry through their own businesses and/or employment or had immediate family members that were involved and receiving benefits directly or indirectly from the mining industry in Tahltan Territory.

He said the same was true of this second and third terms and TCG has led no evidence to the contrary.

[45] In June 2023, the Board retained a law firm (not counsel on this matter) that practises in Aboriginal law and governance to provide an opinion on whether Mr. Day was in a “real or apparent conflict of interest” because of Norman’s businesses (I refer to Norman Day by his first name to distinguish him from Mr. Day, the plaintiff, and I intend no disrespect). The legal opinion, which is dated October 11, 2023, describes the alleged conflict as follows:

It is alleged that entities owned by or affiliated with Norman (**"Family Businesses"**) are subcontracted by some Proponents and that Norman's participation in Proponent Meetings provides the Family Businesses with an unfair advantage by allowing Norman to lobby for business from the Proponents behind closed doors.

It is further alleged that by allowing Norman to take part in Proponent Meetings, the President is in a conflict of interest.

[46] On these alleged conflicts, the opinion states there was no evidence of Mr. Day attending proponent meetings with Norman present and thus “it is not possible to make any firm finding in this regard”. It states that while “the President may well have been in a conflict of interest” there was “no evidence on which an opinion can be based”.

[47] However, the opinion goes on to suggest that Mr. Day was in a conflict of interest due to his participation in two meetings where the Board voted on resolutions relating to a mining project proposed for Tahltan Territory by Skeena Resources Ltd. The first of these meetings was in December 2020, during Mr. Day’s third term in office, when the Board voted to enter negotiations with Skeena towards a potential impact benefits agreement. The second meeting was in March 2022 when the Board resolved to sign an agreement with the provincial government to negotiate an environmental assessment certificate that Skeena required for the project. The opinion states that Mr. Day was in a conflict of interest because one of Norman’s companies had contracted with Skeena in the past, and approval of the Skeena project would provide contracting opportunities for Norman’s company in the future. Since Norman is Mr. Day’s father, the opinion concludes that Mr. Day had a personal interest in the outcome of the two votes and was therefore in a conflict of interest that he ought to have declared. It states that Mr. Day was in a “clear breach

of the conflict of interest requirement under the *Societies Act* and also opines he was in a conflict under the Governance Policy Manual.

[48] TCG argues it is not necessary for me to determine whether the opinion is correct, and I do not propose to do so. However, I would express some hesitation over whether the broad definition of “personal interest” under the Governance Policy Manual can be transposed on s. 56 of the *Societies Act*. As I have discussed, “personal interest” under the Governance Policy Manual includes interests of close friends and family members even if the director themselves will not benefit from the transaction. However, there is authority in the municipal context that this kind of family connection is too remote to give rise to conflict of interest for a municipal councillor, absent evidence that the councillor would actually benefit from the transaction: *Fairbrass v. Hansma*, 2009 BCSC 878 at para. 43-44, aff’d 2010 BCCA 319 at para. 22.

[49] Further, as I understand the legal opinion, Norman did not have a contract in place that would take effect if the Skeena project was approved. Rather, approval of the project would create *opportunities* for Norman (and others) to *pursue* potential work with Skeena in the future. Again, case law in the municipal context has held that the potential for future business is too remote to qualify as a pecuniary interest: *Lorello v. Meffe*, 2010 ONSC 1976; *Yorke et. al. v. Harris*, 2020 ONSC 7361 at paras. 47-48; *Campbell v. Dowdall*, [1992] O.J. No. 1841, 12 M.P.L.R. (2d) 27 (Ont. Ct. Gen. Div.); *Godfrey et al v. Bird and District of North Saanich*, 2005 BCSC 626 at para. 126.

[50] My hesitations aside, there is no doubt that the Board received a legal opinion in which the authors state unequivocally that Mr. Day was in a conflict of interest under both the *Societies Act* and the Governance Policy Manual.

F. New Complaints Against Mr. Day

[51] After the Board received the legal opinion, Ms. Marion made it the subject of a formal complaint against Mr. Day under the Director Accountability Process and attached a copy of the opinion to her complaint. However, she did not confine her

complaint to the conflict suggested in the opinion or to the one company of Norman's mentioned in the opinion but asked for a comprehensive review of all of Norman's businesses.

[52] A second complaint against Mr. Day was submitted by Colleen Parker, a Family Representative, on November 3, 2023. That complaint was premised on Mr. Day instructing the TCG's general legal counsel to provide a legal opinion on the distinction, if any, between his position as elected President and his status as an employee of TCG. The complaint suggests Mr. Day was in a conflict by purporting to instruct TCG's legal counsel on a matter that affected him personally.

[53] The Board also received two other complaints about Mr. Day. One was received on July 3, 2023 from Kyle Risby, a Family Representative, who alleged unprofessional, aggressive, and hostile conduct. The other was received October 26, 2023 from Mindy Henryu alleging a breach of the Director's Code of Conduct. There is no copy of these complaints in evidence but it appears they were in written form as Mr. Day's counsel refers to their content in a February 14, 2024 letter.

G. The Board's Administrative Suspension of Mr. Day

[54] The Board engaged legal counsel to hire an investigator for these four complaints. The Board then met on November 22, 2023 and resolved to put Mr. Day on "administrative leave" with pay "until such time as the Investigations are concluded and dealt with by the Board." The resolution's recitals refer to the Board addressing "several formal complaints against the TCG President Chad Day by investigating those complaints". The resolution also states that it has "come to the TCG Board's attention that President Day appears to be using his position to negatively access and affect the TCG workplace and TCG staff" but there is no reference in the resolution to any evidence respecting that matter and it is not the subject of any of the four complaints against Mr. Day. The resolution passed with an 8-3 vote. A separate motion to limit the suspension to 30 days was defeated by a 7-4 vote.

[55] The next day, November 23, 2023, Vice-President Hawkins gave Mr. Day written notice of the suspension. The letter referred to the “several formal complaints” alleging misconduct and informed him these would be investigated independently. The letter also referred to the allegations of interference with TCG staff:

It has also come to the attention of the TCG Board that you are using your position and influence to spread misinformation among staff of the TCG. This is having a severely negative effect in the workplace and is resulting in resignations, threats of resignation, and numerous complaints to TCG Board members which on their face are demonstrably false. This apparent intentional interference in the TCG workplace seems to be without due regard for the consequences on staff morale, their well-being and the operations of the TCG as a whole. The TCG Board finds your conduct very concerning and distracting from the work we are all trying to accomplish for our communities.

[56] The letter states that in light of this allegation and the several complaints, the Board is “exercising its contractual authority under paragraph 1.1(d) of the employment agreement dated July 1, 2019, to place you on an administrative leave effective today’s date.” Paragraph 1.1(d) of Mr. Day’s employment contract permits the Board to make changes to Mr. Day’s duties and responsibilities. The letter makes no mention of the suspension power in the Director Accountability Process. It states that the suspension is “until further notice” and identifies several things Mr. Day was prohibited from doing while under suspension.

[57] On November 24, 26, and 27, 2024, Mr. Day emailed Ms. Hawkins seeking clarifications on the restrictions placed on him. He did not receive an immediate response. He deposes that he felt “left ... hanging in a state of confusion and uncertainty” about what he could or could not do. He followed up with an email on December 1, 2023 and asked further questions about the restrictions specifically as they relate to events scheduled for the new year. On December 13, 2023, his legal counsel wrote to TCG’s legal counsel demanding responses to Mr. Day’s inquiries and setting out Mr. Day’s position that the suspension is not permitted under the employment contract and is a breach of that contract.

[58] With respect to the allegation of interfering with TCG administration and employees, Mr. Day's counsel wrote:

In the Nov 23 Letter, the Board accuses Mr. Day of "intentional interference" and "spreading misinformation" amongst TCG staff and appears to reach conclusions regarding these allegations. The Board has not provided particulars of these vague allegations nor is it clear that these allegations will be the subject of a complaint, or that Mr. Day will have an opportunity to respond to these allegations.

[59] On December 22, 2023, TCG's counsel responded with particularized answers to Mr. Day's questions. He advised that Mr. Day could participate and vote in Board meetings going forward as long as he did not have a conflict of interest on the matter voted on. He could also participate in Board emails and attend to some of his duties as President, although he would require specific permission to attend certain events in his capacity as President.

[60] Regarding the allegation of interference with TCG administration, counsel advised that the Board received information and correspondence from staff about Mr. Day's email and social media communications and these caused the Board sufficient concern to "warrant taking the steps it has in order to protect staff." It provided no other particulars of that allegation until January 17, 2024 when TCG's legal counsel articulated three incidents and referred to specific text messages and emails associated with them.

[61] In the month or so between receiving notice of the suspension and receipt of the December 22, 2023 letter, Mr. Day missed four Board meetings because he did not know the scope of the suspension and, quite understandably, believed it would exclude him from Board meetings. The letter from TCG's counsel acknowledged the delay in providing this clarification was regrettable.

[62] Mr. Day resumed attending Board meetings in January but even with the terms of the suspension relaxed somewhat, he was still significantly constrained in what he could do. For example, the Board did not permit him to attend an annual conference of the Association for Mineral Exploration in his capacity as President, an event which he had regularly attended as President in the past.

[63] On March 28, 2024, with the suspension still in place after four months, Mr. Day decided to resign his position. He maintained the suspension was unlawful and a repudiation of his employment contract. He purported to accept the repudiation and claimed to have been constructively dismissed.

III. Mr. Day's Status as an Employee

[64] Before addressing the substance of Mr. Day's claim, I will comment on his standing as an elected official to bring a claim in wrongful dismissal. As I have said, once Mr. Day was elected in 2016, he was given an employment contract for a term that coincided with his term of office. It is well recognized in law that a person elected to lead an organization can be characterized as an employee of that organization once elected: *Hokanson v. Sheet Metal Workers International Association, Local 280*, 1985 CanLII 690, 12 C.C.E.L. 231 (B.C.S.C.), *Ferguson v. British Columbia Nurses Union*, 2005 BCSC 982. There is no dispute here that Mr. Day was made an employee of TCG upon his election.

[65] At times, however, both parties sought to parse Mr. Day's position as the elected President of the TCG and his position as an employee of the TCG. I provide three illustrations. One is that both parties suggest Mr. Day carried some duties and responsibilities as elected President and others as an employee. A second is that Mr. Day claims the Director Accountability Process might apply to him as the elected President but not as an employee because it was not incorporated into his employment contract. A third example is TCG's argument that Mr. Day cannot claim constructive dismissal because he resigned from both his elected position and his employment position. This creative argument suggests that once Mr. Day resigned his elected position, he no longer qualified for the contract of employment. TCG argues that if Mr. Day wished to claim constructive dismissal, he should have resigned only as an employee but not as an elected President.

[66] In my view, it is artificial to bifurcate Mr. Day's position into these two distinct roles. He was given a contract of employment only because he was elected President. The employment contract served to remunerate him for the position to

which he was elected. His job duties as stated in his most recent employment contract simply adopt those duties as stated in the bylaws. In other words, his duties as an employee are identical to his duties as elected President. I can find no meaningful way to categorize his activities as President into employment duties versus elected official duties. In my view, the positions are one in the same.

[67] Thus, since Mr. Day had a contract of employment, I find he is entitled to make a claim for constructive dismissal under that contract, even if the suspension by which he claims to have been constructively dismissed was effected through the Governance Policy Manual.

IV. Was the Suspension a Constructive Dismissal?

A. Legal Principles of Constructive Dismissal and Suspensions

[68] A constructive dismissal arises where an employer engages in conduct that evinces an intention to no longer be bound by the employment contract. When that happens, the employee may elect to accept that conduct and continue working, or treat it as the employer's repudiation of the employment contract and sue for wrongful dismissal: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para. 30. *Potter* is the leading case on constructive dismissal, particularly in the context of an administrative suspension. There the court held there are two avenues or "branches" for proving constructive dismissal: one is to show that the employer breached or unilaterally changed an essential term of the employment contract and the other is to show that the employer engaged in conduct more generally that evinces an intention not to be bound by the contract: *Potter* at paras. 32 to 34. The first branch is focused on a single unilateral act of the employer whereas the second branch concerns a series of acts by the employer. Both branches are grounded in the notion that the employer no longer intends to be bound by the contract or one or more of its essential terms: *Potter* at para. 43.

[69] The first branch has two steps. First, it must be shown that the employer unilaterally changed or breached an express or implied term of the contract and

second, it must be shown that the unilateral change or the breach was to an essential term of the contract: *Potter* at paras. 37-42.

[70] In most cases, the onus is on the employee to prove both steps of the first branch. However, in the case of an administrative suspension, like here, the onus is first on the employer to show the suspension is justified: *Potter* at para. 41. If the employer cannot do so, a breach will be established and the onus shifts back to the employee to prove the second step, namely that the unjustified suspension constitutes a material breach: *Potter* at para. 41. However, in most cases where the breach results from an unauthorized administrative suspension, “a finding that the suspension amounted to a substantial change is inevitable”: *Potter* at para. 106.

B. Analysis

1. Overview

[71] The TCG argues Mr. Day’s administrative suspension was a reasonable exercise of the TCG’s express right to suspend a director pending the investigation of a complaint under the Director Accountability Process. Mr. Day argues the authority to suspend does not form part of the employment contract but even if it did, it is not the authority by which the TCG purported to suspend him. Moreover, he argues, the TCG failed to comply with the express procedures set out in the Director Accountability Process such that the suspension cannot be justified under that process in any event.

[72] I find that Mr. Day has accepted the Director Accountability Process, including the suspension authority, as a term of his employment but I agree with Mr. Day that the Board’s failure to comply with the procedures in the Director Accountability Process makes the suspension unjustified. These procedures are prerequisites to exercising the power of suspension and contain important protections for the director who is the subject of a complaint. I find they are material to the Board’s right to suspend a director and the failure to follow them is a breach of an essential term of the employment contract. I find that the Board’s failure to follow the procedures is a substantive breach of the employment agreement that satisfies the first branch of

Potter such that the suspension constitutes a repudiation of the employment contract and a constructive dismissal of Mr. Day. I will now explain these conclusions.

2. The Director Accountability Process is Part of the Contract

[73] I find that Mr. Day accepted the Director Accountability Process as part of the terms of his employment. The Director Accountability Process is in the Governance Policy Manual that was adopted by the TCG Board while Mr. Day was President. On that basis alone he must be taken to have accepted it as defining the scope of his authority as President. Since I have found Mr. Day's elected function cannot be separated from his employment function, I find he accepted this as a term of his employment.

[74] Moreover, Mr. Day signed the TCG Governance Policy Manual Declaration Form after being elected to his fourth term. That declaration expressly binds him to section 7 of the Governance Policy Manual which is the Director Accountability Process:

I, Chad Norman Day, confirm that I have read and understand the Manual and hereby confirm that I will faithfully and honestly fulfill my responsibilities as a Director and I will, at all times, adhere to the Governance Policy of the TCG Board of Directors, including (without limitation) the processes discussed in section 7 of the Manual, and in doing so, I expressly understand and consent to the collection, use and disclosure of my personal information contemplated by subsection 7.11.

[Emphasis added]

[75] He also signed the Director's Code of Conduct which includes a commitment to conduct himself in accordance with the Governance Policy Manual:

4. I will read and familiarize and conduct myself in accordance with the TCG Governance Policy Manual, as amended from time to time.

[Emphasis added.]

[76] In my view, these constitute Mr. Day's acceptance to be bound by the Governance Policy Manual and specifically the Director Accountability Process. This is reinforced by clause 1.2(c) of Mr. Day's employment contract which reads:

It is a material term of this Agreement that the President comply with the Code of Conduct, the Oath of Confidentiality, and any other polices or codes applicable to the Board or to employees of the TCG as may be in effect from time to time.

[Emphasis added.]

[77] Thus, I conclude the Director Accountability Process, including the power of administrative suspension and, for that matter, the entire Governance Policy Manual, applied to Mr. Day as President and as a term of his employment contract.

3. The Director Accountability Process and Suspension Power

[78] The Director Accountability Process applies when the TCG receives a complaint about the conduct of a director. It outlines specific requirements for the content of formal complaints, a vetting process to ensure complaints are in compliance with these requirements, processes for both internal and external investigations of complaints (depending on how the Board elects to proceed), and “accountability measures” that may be implemented if the Board finds wrongdoing after the investigation.

[79] Crucial to this case, the Director Accountability Process also allows the Board to place the director who is the subject of a complaint on administrative suspension while the complaint is investigated. This can be done at any time after the claim has been accepted by a Complaints Committee. As we will see, there are several steps to be followed before a claim can be accepted. Given its importance to this proceeding, I set out the suspension power in full and will then discuss the prescribed procedure for receiving and accepting a complaint.

[80] The power of administrative suspension is found in ss. 7.37 to 7.41 of the Governance Policy Manual:

7.37 At any time after a Complaint is accepted, in whole or in part, by the Complaints Committee pursuant to subsection 7.24(a), the Complaints Committee may recommend that the Board place the Director(s) who is/are subject to the Complaint on paid administrative leave pending conclusion of the applicable Director Accountability Process.

7.38 Upon receipt of the Complaints Committee's recommendation pursuant to subsection 7.37, the Board may:

- a. request further information from the Complaints Committee that the Board considers relevant to its decision whether to place a Director on administrative leave;
- b. deny the Complaints Committee's recommendation;
- c. accept the Complaint Committee's recommendation, in whole or in part, and, by Board resolution, place the applicable Director(s) on administrative leave on terms determined to be appropriate, in the Board's sole discretion.

7.39 The Director(s) who is/are the subject of a potential administrative leave recommendation pursuant to subsection 7.37 or resolution pursuant to subsection 7.38(c) shall be excused from and not participate in any Board deliberation or vote on any matter contemplated by subsections 7.37 to 7.38.

7.40 Administrative leave is not disciplinary in any way but is intended to ensure the effective governance of the TCG pending the conclusion of the Formal Accountability Process.

7.41 A Director who is placed on administrative leave shall be relieved of all or part of their duties, without loss of pay or privileges that the Director would otherwise enjoy but for being placed on leave, except such privileges that are inconsistent with the basis of the administrative leave (e.g. attending Board meetings and/or accessing certain information of the TCG) and on terms determined by the Board.

[81] Since this power of administrative suspension falls within the Director Accountability Process, I find it can only be exercised in accordance with that process. Moreover, because the suspension power and the Director Accountability Process itself can result in the suspension of an elected official, the governing provisions must be strictly construed in favour of the director who is the subject of the complaint. This principle was articulated in *Rex ex rel. Scroggie v. Robb* (1925), 57 O.L.R. 20 at p. 25, [1925] O.J. No. 4 (S.C.), where the court said:

In my view, the right of being chosen to represent his fellows in a representative body, Parliament, Legislature, municipal council, is one of the dearest possessions of a freeman, and it should not be taken away without clear statutory direction.

[82] In *R. ex rel. Glover v. Little and Armstrong*, [1926] 2 D.L.R. 1056, 1926 CarswellOnt 158 (O.N.S.C.), Middleton J.A. expressed the same view:

Our *Municipal Elections Act* (*Consolidated Municipal Act*, 1922 (Ont.), c. 72) and other election Acts are founded on the democratic principle that the people are to govern, and it is for the people to choose who are to be their representatives and it is a very drastic thing to set aside an election by the

people and to interfere with that government of the people by the people which an American prayed should not perish from the face of the earth. This is a serious and real factor when you come to approach the construction of the statute.

[83] The principle has been applied several times in the context of Indigenous governance. In *Bugle v. Lameman*, [1997] F.C.J. No. 560, 71 A.C.W.S. (3d) 417 (F.C.), Justice Campbell of the Federal Court considered the authority of a group of electors to remove an elected Chief under the Beaver Lake Tribal Election Law. He wrote:

[2] First, I find that the Tribal Election Law is the all-encompassing code of legal authority to elect and remove a Chief and Council of the Beaver Lake First Nation. Thus, it is only within the words of this law itself that any authority can be found to remove Chief Lameman from his office. I find that the words of the Tribal Election Law must be strictly construed; that is, I cannot be liberal in interpreting their meaning because, in my view, the results of removal from office are so severe that a strict interpretation is required.

[emphasis added.]

[84] In *Dene Tha' First Nation v. Didzena*, 2005 FC 1292, Justice Layden-Stevenson refused an application to enjoin an elected Chief of the Dene Tha' First Nation from holding himself out as Chief or otherwise exercising the powers of office. She found the Dene Tha' Council had failed to pass a motion calling for the Chief's removal as required by the Termination Provision of the Nation's election regulation. She wrote:

[27] I disagree with the applicant that the absence of a formal motion is essentially just "semantics". The election regulations clearly set out the procedural steps required to disqualify a Chief or a Councillor from holding office. The motion calling for termination is a condition precedent and it must be fulfilled. Failure to do so cannot be characterized as "semantics". The First Nation was cautious, in drafting its election regulations, to explicitly set out the procedure to be followed. The procedure is not ambiguous and it is not complicated.

[28] There exist good reasons for requiring that a motion be presented and passed. A motion allows those members of the community attending the meeting to be informed of what is happening. In the absence of a motion, observers are not able to discern what business their Council is conducting. Further, the removal of an individual from office is a serious matter. It has a profound impact on the individual. Here, the negative consequences for the First Nation community are indisputable. It is appropriate, where such a

serious step is to be taken, that the safeguards articulated in the governing regulations be followed to the letter. For Council to simply place a BCR before its members and proceed to have a majority of them affix their signatures to it does not pass muster.

[29] In sum, Council did not adhere to the procedure for termination as specifically set out in section 9 of the election regulations. Adherence to that procedure is mandatory. It follows that the BCR purporting to terminate Mr. Didzena as Chief is of no force and effect. It is a nullity.

[Emphasis added.]

[85] The principle has also been stated in *Basil v. Moses*, 2009 FC 741 at para. 64 and more recently in *Louie v. Louie*, 2018 FC 550 at para. 42.

[86] As in *Dene Tha'*, there are very good reasons to hold the TCG Board to the strict requirements in the Director Accountability Process when purporting to exercise a suspension power. The suspension has significant consequences for Mr. Day and for the Tahltan electors who elected Mr. Day to be the President. Suspending an elected official is no small matter. I see no reason to treat a suspension any differently than a termination or a removal from office. All interfere with the electors' choice as to who shall govern them.

[87] The Director Accountability Process recognizes that complaints under the process are made in a political climate so care must be taken to ensure they are properly formulated, supported with evidence, and vetted for compliance with the process. It requires that complaints be stated with a high degree of specificity and a reliable evidentiary framework. Section 7.5 reads:

7.5 In light of the potential impact on the TCG's resources and governance, potential broader impacts within the Tahltan Nation, and the personal and political considerations that may be present, complaints made under the Formal Accountability Process (discussed below) require a clear demonstration of reasonable grounds for a complaint, which includes a high degree of specificity and a reliable evidentiary framework, as well as a clear connection to the TCG's interest in Director accountability.

[Emphasis added.]

There is no doubt that the complaints in this case were made in the context of a very difficult political climate on the Board.

[88] Section 7.14 elaborates on the particularity that is expected of complaints:

7.14 Individuals who have reasonable grounds to consider that a Director has contravened the policies identified in subsection 7.13 are expected to maintain a written record of incidents including dates, times, locations, other persons present, and any other relevant information...

[89] Section 7.16 states that complaints are to be submitted to the Executive Director and must include “full details of the alleged conduct” including what was observed or experienced, dates and times, witnesses with contact information, and details of other available evidence.

[90] Section 7.17 places a six-month limitation period on complaints:

7.17 Subject to this Manual, complaints under the Formal Accountability Process may only be made with respect to conduct that is alleged to be in breach of the policies identified in subsection 7.13 and is alleged to have occurred within the six (6) months prior to the complaint being made or, for any alleged continuing contravention, that include an alleged incident of continuing misconduct within the six (6) months prior to the complaint.

[91] Under s. 7.19(a) and 7.22, the Executive Director is responsible for “undertaking a preliminary assessment of all complaints filed pursuant to the Formal Accountability Process” to determine whether the complaint is in compliance with s. 7.15 to 7.18. If it is not, the Executive Director must advise the complainant of why the complaint is out of compliance and that the complaint process will not proceed unless the claim is resubmitted in compliance with ss. 7.15 and 7.18. There is no evidence that the Executive Director (whose title by this time had been changed to Chief Administrative Officer or CAO) received or did any preliminary assessment of any of the four complaints against Mr. Day.

[92] There are patent irregularities with Ms. Marion’s complaint which is based on the legal opinion. First, the complaint concerns matters that happened in December 2020 and March 2022, which are well outside of the six-month limitation period. Ms. Marion acknowledged this in her complaint where she stated, “being that the 6 month time limit has been exhausted, the board will need to fall back on the society’s act [*sic*] conflict of interest clause where there is no time limit.”

[93] There is no evidence the CAO or the Board ever addressed the limitation period issue. The Board has a discretion under s. 7.7 of the Governance Policy Manual to extend the timeline for considering a complaint that falls outside of the limitation period but there is no evidence the Board turned its mind to that question. It either ignored the limitation issue or chose not to address it. Given the need to strictly follow suspension provisions, I find that the Board (or the Complaints Committee as described below) had to expressly address that issue before accepting the complaint, and accepting the complaint is a prerequisite to exercising the suspension authority.

[94] Nor did the Board appear to consider Ms. Marion's suggestion that the complaint be considered under s. 56 of the *Societies Act*. However, even if it did, it is far from clear (and, I would suggest, doubtful) that the expanded definition of conflict of interest in the Governance Policy Manual or the Director Accountably Process could apply to a s. 56 conflict, as I have indicated earlier (see para. 48 above). Thus, if the conflict is based only on potential benefits to Norman Day, I am doubtful that s. 56 would apply, but the Board did not deal with this one way or the other.

[95] Ms. Marion's complaint also lacks the "high degree of specificity and a reliable evidentiary framework" required by s. 7.5 of the Governance Policy Manual. While attaching the legal opinion to her complaint likely met the requirement for an evidentiary framework for the alleged conflicts of interest discussed in that opinion, she sought an investigation into "any enterprises [of Norman's] ... that have been consistently raised as concerns by members of the Tahltan community". She proposed an investigation of the broadest possible scope:

The objective here is to gain a comprehensive understanding of whether any undue advantages have been conferred upon [Norman's] businesses in securing contracts related to mining operations, be it in the stages of exploration, construction, or ongoing mine site operations. The involvement or absence of his father Norman Day in meetings with project proponents should not be a limiting factor in this inquiry.

[96] Ms. Marion offered no new facts in support of this complaint. She provided no evidence of what had "been consistently raised as concerns by members" and

provided no evidence of any businesses of Norman's, other than the one identified in the legal opinion, that might have benefited from Board decisions that Mr. Day participated in. Her allegations, apart from those based on the legal opinion, are supported by speculation rather than "a reliable evidentiary framework".

[97] Had the TCG complied with its own process, including having the CAO do the required preliminary assessment of the complaint, these issues could have been addressed at the outset of the process, before consideration was given to placing Mr. Day on administrative suspension. On the evidence before me, they were never addressed at all.

[98] Ms. Parker's complaint does not appear to have the problems of Ms. Marion's complaint, although it too was not assessed by the CAO. The complaints from Mr. Risby and Ms. Henry are not in evidence so they cannot be assessed for compliance with the Director Accountably Process. Since the burden is on TCG to prove it had the authority to suspend Mr. Day, I find it bears the onus of proving that these complaints were in compliance and must do so to justify the administrative suspension. It has not done so with respect to the complaints filed by Mr. Risby and Ms. Henry.

[99] Continuing with the process, if a complaint meets the requirements set out in ss. 7.15-7.17, the CAO must forward it to a Complaints Committee of the Board pursuant to s. 7.22. The Complaints Committee must meet to determine if the complaint, on its face, complies with and is within the scope of the Accountability Process in accordance with s. 7.24. In other words, the Complaints Committee does a second validation of a complaint after the CAO's. This demonstrates the importance placed on ensuring that complaints comply with the requirements of s. 7.15 through 7.18. If the complaint fails to comply with the requirements in whole or in part, s. 7.24(b) states that the committee is to dismiss the complaint or that portion of it that is out of compliance. If the complaint is accepted for consideration, the Complaints Committee may pursue an internal investigation or recommend to the Board the appointment an external investigator.

[100] There is no evidence that the preliminary vetting by the Complaints Committee occurred here, either before the Board suspended Mr. Day or at all. In fact, there is no evidence that the Board even formed a Complaints Committee, who might be on it, when it met (if at all), what conclusions it reached (if any), or what recommendations (if any) it made to the Board. In the absence evidence on these points, I am left to conclude that no Complaints Committee was formed, but if there was, it did not consider any of the four complaints against Mr. Day or do any of the required preliminary vetting. Instead, the process contemplated in s. 7.24 was simply bypassed and the four complaints went directly to the Board which decided, without a preliminary assessment by either the CAO or the Complaints Committee, that the complaints were to be investigated by an external investigator.

[101] In my view, these missed steps are not mere formalities. They provide for a focused consideration of each complaint to determine whether it meets the strict criteria for a formal complaint under ss. 7.15-7.17 and whether the substance of the complaint merits administrative suspension. As indicated by s. 7.5, these strict requirements exist out of a recognition that complaints can impact “personal and political considerations”. The benefit of having the Complaints Committee do this work is that the Committee may focus in on the details of the complaints without distractions of other business to be conducted at a regular meeting of the Board.

[102] Since the power of administrative suspension can only be exercised under s. 7.3 “after a Complaint is accepted, in whole or in part, by the Complaints Committee pursuant to subsection 7.24(a)”, which was not done here, the Board had no authority to suspend Mr. Day.

[103] These failures to follow the Director Accountability Process are sufficient to invalidate the administrative suspension, but the irregularities did not stop there. Once the external investigation is completed, the investigator’s report is to be submitted to the Complaints Committee which is to make a recommendation to the Board, “with reasons”, that the complaints be dismissed in whole or in part or that one or more “Accountability Measures” set out in s. 7.45 be pursued. There is no

evidence that the external investigator's report went to the Complaints Committee (as opposed to the Board), no evidence of a recommendation by the Complaints Committee under s. 7.34, and no evidence of the required reasons for any such recommendation. Rather, it appears that the Board received the investigator's report, which it has not produced to Mr. Day or in these proceedings, and acted on it without a recommendation or reasons from the Complaints Committee.

4. Did the Board Unilaterally Alter a Term of the Agreement?

[104] I have no hesitation in finding the Board breached or unilaterally altered a term of Mr. Day's employment contract when it placed Mr. Day on administrative suspension without complying with the Director Accountability Process. Substantively, it is clear that at least one complaint, Ms. Parker's, failed to comply with ss. 7.5 and 7.15-7.17 of the process. These are substantive requirements relating to the nature of the evidence that must be given in support of a complaint and the timing of the complaint. Since two of the other three complaints are not in evidence, the TCG has failed to prove those complied with these requirements and thus has failed to meet its burden of establishing that the suspension was justified. The TCG also failed to follow its own process including with respect to a preliminary assessment of the complaints by the CAO or the Complaints Committee, both of which are designed to address the kind of defects found in Ms. Marion's complaint.

[105] The power of administrative suspension is only exercisable within the framework of the Directors Accountability Process. If that process is not followed, the power is not lawfully exercised under the Governance Policy Manual. I therefore find the suspension was a breach of the employment contract.

[106] TCG relies heavily on s. 7.7 of the Governance Policy Manual which allows the Board to deviate from any rule or procedure or extend any timeline set out in the complaints resolution process. It reads:

Notwithstanding the rules, procedures and timelines set out below, the Board retains the right, in its sole discretion, to deviate from or modify any rule or procedure or extend any timeline, in the interests of a proper complaint,

investigation and accountability process and the effective and efficient governance of the TCG.

[Emphasis added.]

[107] I find this section does not assist the TCG for several reasons.

[108] First, it does not give the Board discretion to deviate from or modify s. 7.5 of the Governance Policy Manual, which requires that complaints be stated with “a high degree of specificity and a reliable evidentiary framework”. It is only the rules, procedures, and timelines “set out below” that are subject to this discretion. Section 7.5 is set out above s. 7.7.

[109] Second, there is no evidence that the Board turned its mind to deviating or modifying a rule or procedure and no evidence that it advised Mr. Day that the complaints against him would not follow the procedure. In my view, there is nothing in s. 7.7 that allows the Board to arbitrarily or without notice deviate from or modify the procedures. This is particularly true given that the President (and any director who might be subject to the Director Accountability Process) is an elected official whose position cannot be interfered with “on the whim” of the Board. As stated in *Kaiser v. Baidon No. 131 (Rural Municipality)*, 2023 SKKB 50:

[52] The applicant is a duly elected member of council. What council is doing is removing him from the position to which he has been elected and to which office he is entitled to hold. Rural municipality council members are elected in a general election to hold office. The democratic will of citizens cannot be interfered with lightly and cannot be interfered with on the whim of any authority such as a council or any other elected body.

[Emphasis added.]

[110] The TCG also relies on clause 1.1(d) of Mr. Day’s employment contract which reads:

The President understands and agrees that during the course of his employment with the TCG, the Board reserves the right, in its sole discretion, to make changes to the President’s assignments, duties, responsibilities, and reporting arrangement, including imposing pre-approval requirements for travel and related work activities, in a manner consistent with the Bylaws and that any such changes shall be deemed not to constitute a termination of this Agreement.

[111] I see nothing in this clause that permits the Board to place Mr. Day on administrative suspension. It contemplates changes to Mr. Day's duties, responsibilities, and reporting arrangements but it does not contemplate a suspension of his duties. Again, given that Mr. Day is an elected official, I find this provision must be strictly construed in his favor. I also agree with Mr. Day that, given his position as the senior elected official in the TCG, the Board does not have a right under this or any provision of the employment contract to withhold work from him except under an administrative suspension properly implemented under the Directors Accountability Process: *Potter* at paras. 76-85.

[112] Thus, the TCG, through its Board, breached the employment contract by failing to follow the Director Accountability Process when it purported to suspend Mr. Day. Alternatively, the Board purported to unilaterally change the terms that apply to the exercise of its authority to place Mr. Day on administrative suspension. Either way, I find the first step of the first branch of *Potter* is met.

5. Was the TCG's Breach and/or Unilateral Change Material?

[113] I find the breach or unilateral change was material. An administrative suspension goes to the very heart of the employment contract. It is particularly serious where the Board suspends a person who was duly elected by the Tahltan electorate. Section 7.5 of the Governance Policy Manual expressly recognizes the potential for abuse of the complaints process in the context of governance and "personal and political considerations". Thus, TCG itself recognizes the importance of following its established process. For those reasons, I find the substantive and procedural safeguards expressly set out in the Director Accountability Process are essential to the Board's power of administrative suspension and, referentially, to Mr. Day's terms of employment. A unilateral change to those terms or a failure to abide by them in effecting an administrative suspension is a change to or breach of an essential term of the employment contract.

[114] TCG argues that if there is no express or implied term of the employment contract that allowed the Board to place Mr. Day on administrative leave, the

suspension was nevertheless justified under the second step of the first branch of *Potter*. TCG points to the factors endorsed by Justice MacNaughton, then of this court, in *Parmar v. Tribe Management Inc.*, 2022 BCSC 1675 as follows:

[96] In determining whether a unilateral suspension constitutes a fundamental or substantial change to an employment contract, courts have considered the following factors outlined in *Devlin v. NEMI Northern Energy & Mining Inc.*, 2010 BCSC 1822 at para. 50:

- a. The duration of the suspension;
- b. Whether someone was appointed to replace the suspended employee;
- c. Whether the employee was asked for their keys;
- d. Whether the employee continued to be paid and receive benefits;
- e. Whether there is evidence that the employer intended to terminate the employee at that time; and
- f. Whether the employer suspended the employee in good faith, for example, for *bona fide* business reasons.

[115] I do not consider it necessary to consider these factors. I find that it was at least an implied term of the employment contract that the Board could put Mr. Day on administrative suspension but in doing so it had to comply with the Director Accountability Procedure. The TCG has given no reasonable explanation for its marked departure from that process. I find that is a material breach that constituted a constructive dismissal of Mr. Day's employment.

6. Other Grounds for Suspension

[116] In addition to the four complaints, I have also considered whether the allegation that Mr. Day intentionally interfered with the TCG workplace might support the administrative suspension. The Board alleged that Mr. Day used his position and influence to spread misinformation among staff which resulted in "severely negative" effects in the workplace and "resignations, threats of resignation, and numerous complaints" by staff to the TCG Board. On January 17, 2024, counsel for the TCG provided some particulars of these allegations with references to text messages and emails but the TCG did not go through them during the summary trial. As far as I am aware, they are not in the volumes of evidence filed on this

application. Nor is there evidence from those who were apparently approached by Mr. Day, and no evidence of resignations, threats of resignations or “numerous complaints”. There is no other evidence providing particulars about these complaints and, bearing in mind that the onus is on the TCG to justify the suspension under the first step of the first branch of *Potter*, I find it has failed to do so. I therefore find this allegation does not support the administrative suspension.

V. Other Grounds for Constructive Dismissal

[117] Having found that Mr. Day was constructively dismissed by the Board through an administrative suspension that failed to comply with the Director Accountability Process, it is not strictly necessary for me to address the other grounds on which Mr. Day alleges constructive dismissal but I will nevertheless do so.

A. Hostile Work Environment

[118] Mr. Day alleges that the group of five directors who opposed him created a hostile work environment by engaging in conduct that amounted to bullying. The alleged conduct includes: snickering and rolling their eyes at Mr. Day during board meetings; interrupting him during meetings or making dismissive comments; engaging in accusatory questioning; rejecting board meeting agendas he put forward; putting forward amendments to the agenda so Mr. Day’s matters would not be addressed in a timely way; challenging Mr. Day’s authority to chair board meetings; proposing amendments to the bylaws to reduce Mr. Day’s authority as president; asking for documents to support some reports that Mr. Day gave to the Board; and removing Mr. Day from some of his activities (such as wildlife matters and the Tahltan-Mining Industry Working Group) due to alleged conflicts of interest.

[119] I have no doubt there was considerable conflict on the Board in Mr. Day’s final term. Mr. Day alleges the conflict was driven by persons who were hostile to him in part because they lost to him in the election for President or for other political or personal reasons. That may be true, but, as I have said, the July 2023 independent investigation concluded that Mr. Day engaged in discourteous dialogue and there was a “clear consensus” among all Board members that Mr. Day needed

to modify his tone and responses when dealing with other board members. Based on my read of the record, this certainly rings true. At the end of the day, I am not able to find the facts on this summary trial application to reach a conclusion on who was responsible for the animosity on the Board but there appears to be some fault on all sides.

[120] Regardless, the actions of the Board members who were hostile to Mr. Day largely fall within the scope of the TCG's governance. I am not suggesting this was a good or productive way for anyone to govern the TCG and some of the conduct alleged by Mr. Day as occurring at Board meetings would fall outside of the proper conduct of such meetings but there are governance procedures for addressing that.

[121] With regard to actions taken to restrain Mr. Day's authority, the Board has some liberty to do so within the TCG's bylaws. I will address that point in more detail in discussing aggravated and punitive damages. For the moment I would note that the Board is fundamentally a political body and it is unsurprising that its elected members would use its processes for political objectives. Having served three terms with apparently little or no opposition and with relative freedom to define his role as President, it is unsurprising that Mr. Day would take exception to other members of the Board seeking to constrain his activities. However, apart from the failure to follow the Director Accountability Process, I am not able to conclude that Mr. Day's opponents misused the governing processes open to them to constrain Mr. Day's authority. It follows that I find these efforts do not amount to a constructive dismissal of Mr. Day from a position that was, fundamentally, political.

B. The October 1, 2023 Board Resolution

[122] Mr. Day also alleges he was constructively dismissed by the Board assigning his responsibilities to the CAO through a Board resolution on October 1, 2023. Again, I disagree.

[123] In August 2023, TCG hired a new CAO. Mr. Day was a member of the Board committee that interviewed candidates and recommended the successful candidate. However, he soon ran into conflict with the new CAO over their respective roles in

supervising staff. Mr. Day considered himself to be the senior person responsible for the administration of the TCG and saw the CAO as overstepping his bounds by trying to supervise department heads.

[124] I find this conflict was rooted in the overlapping job descriptions of the President and the CAO and the role Mr. Day had become accustomed to when TCG was a smaller organization. As I have said, one of Mr. Day's duties as outlined in the bylaws was to "be the senior officer responsible for the general operation and administration of the Central Government". At the same time, the Governance Policy Manual, which was adopted during Mr. Day's term in office, provides in s. 3.47 that the Executive Director (now CAO) oversees all aspects of the day-to-day operations, management, and staff of the TCG, and, in s. 3.51, is the lead administrator of the day-to-day affairs of the TCG. The boundary between the President's role and the CAO's is not obvious under these provisions.

[125] Moreover, Mr. Day had served as President through a period of considerable growth in the organization. When he was first elected in 2016, the Executive Director duties of the relatively small organization largely fell to him as President. He became accustomed to functioning as an executive director in overseeing the TCG's operations and supervising senior staff. Arguably, this was recognized as part of his job when he was expressly given administrative oversight of the TCG in his second term contract.

[126] However, by 2023, the TCG was much bigger and organized under the Governance Policy Manual which suggests a more conventional separation of duties between an elected board responsible for governance and executive officers tasked with administration and supervision of staff. In fact, the Governance Policy Manual states in s. 3.57 that all Directors "will respect the Executive Director's choices and decisions on operational and human resource matters, in compliance with applicable policies and laws." The transition to this more conventional governance and administrative structure did not come easily to Mr. Day who still very much viewed

himself as the senior officer responsible for TCG's administration and operations, and he was supported in that view by the duties assigned to him in the bylaws.

[127] It was in this climate that the Board passed a resolution at an October 1, 2023 Board meeting to "reaffirm" the role of the CAO to supervise staff. The meeting was proposed in late September 2023 on a day when Mr. Day was not available. He objected to the meeting due to his unavailability but it proceeded in any event. He states in his affidavit that it was "unprecedented" during his time as President to have the Board overrule him like this and meet against his wishes.

[128] One Board member told Mr. Day the Board would deal only with "low hanging fruit". However, it passed the resolution that Mr. Day views as substantively curtailing his responsibilities as president. That resolution reads:

Hereby resolves to reaffirm that the TCG's CAO is directed and authorized to oversee the day-to-day operations of TCG staff and department directors and that all directors are to report direction to the CAO with respect to the performance of their employment duties and other related human resources matters.

[129] Mr. Day claims he was "shocked" by this resolution. He argues it was a material change to the terms of his employment because, up to this time, he had responsibility to oversee staff and department directors. The TCG argues the resolution simply affirms the CAO's function as stated in the Governance Policy Manual.

[130] On its face, the resolution does not purport to take away Mr. Day's authority as "senior officer responsible for the general operation and administration of the Central Government". However, I accept that, by implication, it puts some bounds on Mr. Day's role. A purported reaffirmation that the CAO is responsible for supervising staff implies this is not (or is no longer) part of Mr. Day's functions.

[131] I find this is an area where clause 1.1(d) of Mr. Day's employment contract becomes applicable. The Board could not remove Mr. Day's authority as senior officer responsible for the general operation and administration of the TCG because that is set out in the bylaws which can only be amended by the members of the

society (i.e., the Tahltan electorate). However, being the “senior officer responsible for general administration of the Central Government” does not necessarily mean directly supervising all staff or even department heads, even if that had been the practice in previous terms. In my view this is an area where the bylaws and the Governance Policy Manual permitted to Board to refine specific elements of the President’s role as the senior officer responsible for administration and to harmonize that role with those of the CAO to “oversee all aspects of the day-to-day operations, management, and staff of the TCG” and be the lead administrator of its day-to-day affairs, pursuant to ss. 3.46 and 3.47 of the Governance Policy Manual.

[132] In most circumstances an executive director (or a CAO) would be responsible for supervising staff while a board president, along with other members of the board, would be responsible for governance of the organization. Largely due to the small size of the TCG when Mr. Day was first elected, that supervisory function fell to him but as the TCG grew into the entity it is today, it is to be expected that the Board would attempt to bring more order to the TCG’s organizational structure. In that respect, I find the refinement in the October 1, 2023 resolution falls squarely within the kind of change contemplated by clause 1.1(d) of Mr. Day’s contract of employment and did not amount to a constructive dismissal.

VI. Damages

[133] Having found that Mr. Day was constructively dismissed due to an unjustified suspension, I turn to the issue of damages. Mr. Day claims ordinary, aggravated, and punitive damages.

A. Ordinary Compensatory Damages

[134] Mr. Day had a fixed term employment contract that extended to June 30, 2025, which was to be the end of his term as elected President. Thus, Mr. Day is entitled to be compensated for the wages and benefits he would have received to the end of the term: *Payne v. The Kimberley Academy Ltd.*, 2020 BCSC 506 at paras. 35, 44-45.

[135] The constructive dismissal is effective March 29, 2024 when Mr. Day accepted TCG's repudiation of the employment contract. The following sets out the damages claimed by Mr. Day and my findings on each:

- a) **Base Salary:** I accept this item as calculated by Mr. Day. Under the 2022 addendum to his employment contract, he was to receive a 3.5% base salary increase on July 1 of each year. Thus, his salary was \$217,350 per annum from March 29, 2024 to until July 1, 2024 and \$224,957 per annum after July 1, 2024. That is three months at \$18,112.50 per month and 12 months at \$18,746.42 per month for a total of **\$279,295.50**.
- b) **Housing Allowance:** Mr. Day's contract provided for a housing allowance of \$2,000 a month. Based on 15 months, he is entitled to damages of **\$30,000** for this item.
- c) **Development Allowance:** Mr. Day was entitled to funding of up to \$10,000 per year for personal or professional development, subject to written approval from the TCG. As this benefit could be for personal or professional development, I accept it need not be related to TCG's business and I accept this item. There is no evidence of whether Mr. Day fully used this entitlement in the 2023-2024 fiscal year so I will award a prorated amount of \$2,500 for that year and \$10,000 for 2024-2025 for a total of **\$12,500**.
- d) **RRSP Matching:** Mr. Day was entitled to have TCG match an RRSP contribution up to 10% of his base salary or 50% of his total eligible RRSP contribution. He claims the 10% figure. TCG does not specifically contest this and therefore accept it. I award **\$27,929.55** for this item.
- e) **Bonus:** While Mr. Day received a bonus in 2022 and 2023, TCG argues there is no evidence bonuses were paid in 2024. Mr. Day's evidence is that he received a bonus each year. I accept that the bonus became an expectation under the contract and was paid out regularly. I accept the amount claimed as based on previous years. I award **\$5,000** for this item.

- f) **Vehicle Repairs and Mileage:** Mr. Day claims that TCG was obligated to cover all his vehicle expenses, both business and personal. However, his contract is clear that TCG provides a vehicle that is “suitable for fulfilling the President’s duties, and will reimburse the President for reasonable work-related expenses” (my emphasis). Mr. Day claims that a practice developed of TCG paying for all his vehicle expenses, including personal use. I do not know who approved such payments or why they were approved. However, as President and “senior officer responsible for general administration of the Central Government”, Mr. Day should not have been taking payments from the TCG for things he was not entitled to and for which there was no legal basis. I decline to award any amount for this item.
- g) **Satellite and Cell Phone:** Mr. Day’s entitlement to reimbursement for cell or satellite phone expenses is also limited to work-related expenses. Since he was not working after March 29, 2024, he could not have incurred any such expenses. I make no award for this item.
- h) **Severance Pay:** The employment agreement provides that “if the President is not re-elected pursuant to the Bylaws, the TCG will, and will only, be required to pay the President” the equivalent of two weeks salary for “each and every full year of service. Mr. Day claims \$77,869.77 for this item. In my view, this entitlement only arises if Mr. Day stands for re-election but is not successful. I do not interpret it as giving him an entitlement if he chose not to run for re-election. I would not award this amount.

[136] The total of the amounts I have accepted (rounded) is \$354,725. Mr. Day concedes that he has earned \$34,000 in the dismissal period and this should be deducted from his compensatory damages as mitigation. TCG did not pursue a claim that Mr. Day otherwise failed to mitigate his losses. I therefore order a total of **\$320,725** in ordinary compensatory damages.

B. Aggravated and Damages

[137] Mr. Day claims aggravated damages for a bad faith dismissal on the principles of *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 1997 CanLII 332 (SCC) and *Honda Canada Inc. v. Keays*, 2008 SCC 39, and punitive damages alleging TCG engaged in reprehensible and malicious conduct in the suspension period and after.

[138] In *Wallace* and *Honda*, it was held that employers have an obligation of good faith and fair dealing in the manner in which they dismiss an employee. Where a dismissal is done in a way that is unfair or exhibits bad faith, aggravated damages can be awarded: *Wallace* at para. 98; *Honda* at para. 57. Examples include conduct that is untruthful, misleading, or unduly insensitive, but does not include the normal upset that can be expected from a dismissal. Maintaining wrongful allegations of dishonest conduct, misrepresenting the reason for the termination, attacking an employee's reputation, and a dismissal meant to deprive an employee of a pension benefit may attract aggravated damages: *Honda* at para. 59.

[139] Aggravated damages are compensatory based on foreseeable injury that results from the breach of duty of good faith and fairness: *Honda* at para. 58.

[140] Conduct leading up to a constructive dismissal may support an award of aggravated damages, at least under the second branch of *Potter. Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26. So too might the employer's dealings with the employee after termination: *Acumen Law Corporation v. Ojanen*, 2019 BCSC 1352.

[141] Punitive damages may be awarded where the employer engages in "highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour": *Johnson v. British Columbia (Attorney General)*, 2022 BCCA 82 at para. 84. Punitive damages should only be awarded where there is a heightened need to punish the wrongdoer because other remedies are insufficient to serve the objectives of denunciation and deterrence: *Hrynkiw v. Central City Brewers & Distillers Ltd.*, 2020 BCSC 1640 at para. 212. The conduct complained of

must itself be an actionable wrong, whether that be a tort, a breach of fiduciary duty, or a failure to meet the obligation of good faith and fair dealing in a dismissal: *Kelly v. Norsemont Mining Inc.*, 2013 BCSC 147 at para. 114.

[142] I deal first with aggravated damages.

[143] Mr. Day argues the October 1, 2023 Board meeting where the Board “reaffirmed” the CAO’s duty to supervise the employees was an act of dishonestly and bad faith because one of the Board members represented to Mr. Day that only “low-hanging fruit” would be addressed at the meeting. Since I have found this meeting and the resolution was not an aspect of Mr. Day’s constructive dismissal, I find it lacks a sufficient connection to the dismissal to fall within the *Wallace/Honda* framework. While conduct leading up to a dismissal may be considered, there should be some link to the dismissal and that is not present here.

[144] Moreover, as I have found earlier, the resolution was within the governance authority of the Board. If Mr. Day had a complaint about a matter being addressed by the Board without proper notice, there are other avenues for challenging that decision.

[145] Next, Mr. Day argues the handling of his suspension was insensitive and lacked good faith because the Board delayed in responding to his inquiries about the scope of the suspension and in reimbursing him for expenses to which he was entitled. I am not persuaded this is the case. I accept there was some delay in the Board answering Mr. Day’s inquiries about the scope of the suspension but he submitted a long list of questions through lengthy emails. A faster response would certainly have been preferable and counsel for TCG, who eventually provided the response, expressed regret that it was not done sooner, but I am not persuaded the delay was in bad faith.

[146] Nor am I persuaded that the Board acted in bad faith in scrutinizing Mr. Day’s expense claims. As I have found earlier, past practice seemed to result in overcompensating Mr. Day for at least his vehicle expenses and it is reasonable for

the Board to take the time to scrutinize his expense claims in fulfillment of their fiduciary obligation to the TCG. Further, I find one of Mr. Day's claims – a \$3,000 "predator harvesting fee" for harvesting three Grizzly bears – is not related to his employment.

[147] Though not specifically argued, I have also considered whether the Board's failure to follow the Director Accountability Process was done in bad faith. While I view that matter as closer to the line than Mr. Day's other allegations, I ultimately find the evidence does not establish this was done in bad faith. I find it likely that Ms. Marion viewed the legal opinion, which was the central piece of her complaint, as presenting an opportunity to suspend Mr. Day, yet, as her examination for discovery evidence shows, she recalled almost nothing about that opinion and how it came about. I therefore have serious doubts that her participation in the suspension decision was motivated by a *bona fide* concern about the content of the legal opinion.

[148] Further, there is no evidence that the Board gave any consideration to how serious Mr. Day's alleged misconduct was or why it necessitated an immediate suspension. The activity impugned in the legal opinion occurred several years before the complaint or the suspension, and the alleged conflict of interest was remote in the sense that if there was any financial benefit at stake, it would have been to Mr. Day's father. There was no evidence cited in the complaint that Mr. Day was participating in profits from his father's businesses. Mr. Day had disclosed his father's business activity on his own 2022 Director Code of Conduct form and the uncontested evidence is that the directors knew of his father's business activities. These points may not negate a conflict of interest if there was one but they contextualize the seriousness of any breach. None of that seems to have been considered by the Board.

[149] Despite these concerns, I am not persuaded the Board as a whole acted in bad faith. It had received a legal opinion on the matter from an experienced law firm and that opinion stated unequivocally that Mr. Day had acted in a conflict of interest.

The Board “cannot be faulted for accepting ... expert advice”: *Honda* at para. 45. In my view, the suspension should have been better handled and in accordance with the Director Accountability Process but I cannot say it crossed the line into bad faith.

[150] Finally, Mr. Day asserts that at an Annual General Assembly of the TCG membership in July 2024, the Board and a TCG officer made untrue statements about him and the TCG’s financial affairs under his leadership. Mr. Day did not attend the meeting but he obtained what appear to be audio recordings of it from an anonymous source. The TCG objected to the admissibility of this unsourced recording and of transcriptions of the audio recordings, but did not press the point with much force nor deny those parts of the discussion that appear to be captured in the transcript.

[151] According to the transcripts, David Dyck, a new interim Chief Financial Officer (CFO) for TCG, gave a report to the Assembly on an analysis he had done of TCG’s “prior operations”, examining its financial statements and “the day-to-day operations of the former CFO and management.” He spoke about problems he identified with the management of TCG’s finances, much of which he attributes to the former CFO, although he suggests that “the former CFO and the President” failed to communicate with the Vice-President and Secretary-Treasurer about the TCG’s financial position.

[152] The issue of “double-dipping” came up with respect to *per diem* meal expense claims made by Mr. Day. Mr. Dyck stated that Mr. Day had claimed a *per diem* amount for meals (presumably when travelling) but had also charged those meals to a Visa account that the TCG paid. By paying Mr. Day the *per diem* meal expense and paying the Visa account, the TCG was double-paying for the meals. Mr. Dyck explained that, having identified that problem, he looked back to March 2020 and found “tens of thousands of dollars” that had been overpaid through what he called “double-dipping”.

[153] Mr. Day states in his affidavit that he was “shocked” to learn of this accusation and he states that he always worked with the TCG’s financial department to manage his expense claims. He says he was “never disciplined or reprimanded for not

following TCG's policies for expenses or otherwise." He states that Mr. Dyck did not speak to him about the issue before presenting to the Annual General Assembly.

[154] I am not persuaded Mr. Dyck's presentation to the Tahltan membership is an act of bad faith related to Mr. Day's dismissal. The meeting occurred well after the suspension and some three months after Mr. Day resigned. Mr. Dyck, who is not a member of the Board, was reporting to the membership about financial matters of the TCG. It is not surprising that Mr. Day's activities would be part of that discussion given his long history with the TCG.

[155] I find Mr. Day's explanation about Mr. Dyck's findings unconvincing, although I make no finding of fact about the "double-dipping". The fact that Mr. Day was never disciplined for failing to follow TCG's expense policies carries little force when Mr. Day also maintains he was the "senior officer responsible for the administration of the Central Government". The fact he was never disciplined by those whom he claimed to supervise is not surprising. Under the bylaws and the Governance Policy Manual, Mr. Day was answerable to the Board, including the Executive. The evidence shows that Mr. Day was resistant to financial oversight of his expense claims by anyone whom he did not purport to supervise and he was certainly unwilling to accept supervision from the elected Secretary-Treasurer because of her "dual role" as a TCG employee as Director of Culture and Heritage. The evidence does not permit me to make findings of fact about the accuracy of Mr. Dyck's analysis but I find by Mr. Day's response to it unconvincing.

[156] Mr. Day also asserts that Mr. Dyck did not accurately report on the TCG's financial circumstances and this resulted in members of the Board and other Tahltan members disparaging Mr. Day over the financial management of the TCG. Mr. Day asserts that the TCG has revenue sources that Mr. Dyck did not consider or account for. Again, I cannot find the necessary facts on this summary trial application to decide if Mr. Dyck's assessment of TCG's finances is accurate. Mr. Day has tendered TCG's financial statements for 2023-2024 but I have not been taken

through them and there is no expert or other evidence to explain how these financial statements might prove Mr. Dyck's analysis wrong.

[157] Regardless, I return to the point that Mr. Day was an elected official and held the highest elected office in the TCG. It is to be expected that his leadership would be scrutinized by the electors, and it is not surprising they might, fairly or unfairly, hold him responsible for TCG's financial circumstances, especially with him having served in that position for almost a decade. That is the way of elected office.

[158] For these reasons, I make no award for aggravated or punitive damages.

VII. Summary and Conclusion

[159] In summary, I find Mr. Day was constructively dismissed from his employment as President of the TCG through an unjustified administrative suspension. The suspension was not justified because the Board failed to adhere to the procedural requirements that give it authority to place a director on administrative suspension. I would award Mr. Day \$320,725 in damages for wrongful dismissal. I find the suspension and the constructive dismissal were not done in bad faith or with reprehensible conduct and I make no order for aggravated or punitive damages.

[160] Subject to any submissions counsel might wish to make on costs, including with respect to any potential settlement offers, I am inclined to award costs to Mr. Day at scale B. If the parties wish to make submissions on costs, they may do so in writing in not more than three pages delivered electronically through Supreme Court Scheduling within 60 days of this judgment.

“Kirchner J.”