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NOTICE TO ALL MEMBERS

September 17, 2024

This Notice is being provided to all members. This is Notice that a quorum of the Band Council has resolved to remove Chief Desjarlais from Office

Attached to this Notice is the Band Council Resolution passed to remove the Chief from office and the Reasons for the removal.

This Notice will be posted on the Blueberry River First Nation member website.

**Blueberry River First Nations
Band Council Resolution
September 13, 2024**

Decision regarding Chief Desjarlais

WHEREAS on December 8, 2023 the Council passed a Band Council Resolution approving a Report made under section 187 of the Blueberry River Custom Election By-Law 2017 (“Bylaws”);

WHEREAS on June 5, 2024, the Council passed a Band Council Resolution under s. 196 of the Bylaws appointing Sugden, Mcfee & Roos LLP (“SMR”) to conduct an independent investigation;

WHEREAS on August 9, 2024, SMR released its report of the investigation which it conducted (“Investigation Report”);

WHEREAS the Investigation Report concluded that Chief Desjarlais engaged in various conduct that was contrary to the Bylaws;

WHEREAS on September 13, 2024, the Band Council met in an in camera meeting to deliberate on the disciplinary action orders under s. 199 of the Bylaws after hearing from Chief Desjarlais;

THEREFORE IT WAS RESOLVED THAT:

As a result of the findings in the Investigation Report, Chief Desjarlais’ response and statements made after the Investigation Report and taking into consideration the factors set out in s.199 of the Bylaws, Chief Desjarlais be removed from office effective noon on Tuesday September 17, 2024.




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137. As a result, Council passed a resolution to remove Chief Desjarlais from office, pursuant to section 199(d) of the *Blueberry River Custom Election Bylaws 2017*, effective the date these Reasons are made public.

Dated: September 17, 2024




Councillor Wayne Yahey



Councillor Shelley Gauthier



Councillor Sherry Dominic



Councillor Troy Wolf



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Decision of Family Councillors Gauthier, Dominic, Wolf and Yahey setting out the Reasons for the removal of Chief Desjarlais from Office



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Introduction

1. On September 13, 2024 Family Councillors Gauthier, Dominic, Wolf and Yahey met at an *in camera* meeting¹, which was a continuation of the duly convened Meeting of Chief and Council on September 10, 2024. In this meeting they passed a resolution to remove Chief Desjarlais from office pursuant to section 199(d) of the *Blueberry River Custom Election Bylaws* 2017 ("**Bylaws**") effective the date these reasons are made public.
2. These are the reasons ("**Reasons**") for the decision to remove Chief Desjarlais from office, published pursuant to sections 201 and 202 of the *Bylaws*.
3. Below we explain the historical and procedural background to these Reasons, the process which led to the Investigation, the Investigation Report findings, the Chief's response and finally, the reasons for our decision.

Historical Background

The Court Decision

4. In 2021, the Supreme Court of British Columbia ("**Court**") in a case indexed at 2021 BCSC 1287 (the "**Court Decision**") ruled that the Province breached Treaty 8 by allowing industrial development in the Blueberry River First Nation ("**BRFN**") territory ("**Claim Area**") at an extensive scale without assessing the cumulative impacts of industrial development.
5. Treaty 8 is a treaty within the meaning of section 35(1) of the *Constitution Act 1982*. BRFN's ancestors, the Fort St. John Beaver Band, entered into Treaty 8 on February 2, 1900.

¹ Family Councillor Wolf appeared via video conference.



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6. Treaty 8 promised the members of the band the right to continue a way of life based on hunting, fishing, and trapping, and that BRFN's way of life would not be forcibly interfered with.
7. In the last several decades, the Claim Area has been subjected to intensive industrial development including, in particular, oil and gas activities and forestry.
8. In 2015, BRFN initiated an action against the Province alleging that the Crown authorized industrial development without regard for the Treaty Rights and that the cumulative effects of industrial development had caused significant adverse effects on the meaningful exercise of the Treaty Rights, breaching the Crown's fiduciary duty and infringing BRFN's constitutionally protected Treaty Rights.
9. The Court issued its decision on June 29, 2021 following a 160-day trial.
10. The Court affirmed Treaty 8 was a promise to BRFN to carry on a way of life based on hunting, trapping, and fishing and further, that the Crown would not significantly impair or destroy the basic elements or features necessary for that way of life to continue.
11. The Court confirmed that the elements necessary to protect BRFN's way of life included the existence of healthy mature forests, wildlife habitats, fresh clean water, and access to those places, as well as healthy populations of moose and wildlife within the Claim Area.
12. The Court found that as of 2018, approximately 85% of the Claim Area was located within 250 metres of an industrial disturbance.
13. The level of disturbance in the Claim Area has had a direct effect on the state and health of wildlife populations such as moose, caribou and smaller furbearers. Further, industrial



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development has significantly and meaningfully diminished BRFN's members' Treaty Rights to hunt, fish and trap. The Court held that there were no longer sufficient and appropriate lands to permit the meaningful exercise of the Treaty Rights and that BRFN's rights under Treaty 8 had been infringed.

14 The Court issued the following declarations:

1. In causing and/or permitting the cumulative impacts of industrial development on Blueberry's treaty rights, the Province has breached its obligation to Blueberry under Treaty 8, including its honourable and fiduciary obligations. The Province's mechanisms for assessing and taking into account cumulative effects are lacking and have contributed to the breach of its obligations under Treaty 8;
 2. The Province has taken up lands to such an extent that there are not sufficient and appropriate lands in the Blueberry Claim Area to allow for Blueberry's meaningful exercise of their treaty rights. The Province has therefore unjustifiably infringed Blueberry's treaty rights in permitting the cumulative impacts of industrial development to meaningfully diminish Blueberry's exercise of its Treaty Rights in the Blueberry Claim Area;
 3. The Province may not continue to authorize activities that breach the promises included in the Treaty, including the Province's honourable and fiduciary obligations associated with the Treaty or that unjustifiably infringe on Blueberry's exercise of its treaty rights; and
 4. The parties must act with diligence to consult and negotiate with the purpose of establishing timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on Blueberry's treaty rights and to ensure these constitutional rights are respected
15. Following the Court Decision, BRFN and the Province completed and entered into an Implementation Agreement (signed on January 18, 2023). This agreement provides for a collaborative approach to land, water and resource stewardship within the Claim Area with the objective of ensuring BRFN's members will be able to meaningfully exercise their Treaty Rights. The Implementation Agreement took a long time to negotiate. The



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negotiations ended and the Implementation Agreement was signed on January 18, 2023. Chief Desjarlais signed the Implementation Agreement on behalf of the BRFN.

16. The Implementation Agreement establishes two primary mechanisms to manage the impacts of oil and gas development activities on the Treaty Rights:
 - a. restoration and land protection measures to govern oil and gas activities in high value areas that are critical to BRFN's culture (the "**HV1 Plans**"); and
 - b. annual limits on oil and gas activity related disturbance on crown land that can occur (the "**New Disturbance Caps**").
17. The HV1 Plans and the New Disturbance Caps are intended to better protect and limit the way land is developed in the Claim Area to enable the restoration of the land and waters and practice of the Treaty Rights.
18. Importantly, the Court Decision and the Implementation Agreement entered into after the Court Decision are intended to provide a mechanism for BRFN to restore and protect its lands and in particular the high-value areas which are critical to BRFN's culture.
19. The Chief's misconduct is closely tied to the legacy of the Court Decision.
20. The Dancing Grounds, which we as BRFN know to be very important to our nation, were a focal point of the court's decision. The Court accepted that the Dancing Grounds are of great cultural importance to BRFN, and that access to it was now impeded by industrial activity in the area, and that it was now surrounded by private land and clearing. The court summarized evidence on this point, at paragraph 646, as follows:



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[646] Blueberry members spoke about the Dancing Grounds near Mile 115 Road, and its cultural significance as the place where Dane-zaa would camp and gather in the summer, share stories, sing, dance and hear from their prophets or dreamers. They also noted that access to the Dancing Grounds was impeded, and that it is now surrounded by private land and clearing.

Implementation Agreement

21. The Implementation Agreement establishes a number of high value areas (“**HV1**” areas) on BRFN territory which would be protected. HV1 areas were further split into areas, categorized as A, B, C, and D, which are subject to differing levels of protection. One of these high value areas is the “**Dancing Ground HV1C Area**” – this is not the Dancing Ground itself, but an area close to the Dancing Ground.
22. Under the Implementation Agreement, Industrial development in the Dancing Ground HV1C Area is subject to a New Disturbance Cap.
23. Clause 14.9 of the Implementation Agreement allows BRFN to waive or amend restrictions to development (including New Disturbance Caps) on a case by case basis (“**Waivers and Exemptions**”).
24. Clause 9.5 of the Implementation Agreement agreed that there would be a schedule to the Agreement that lists 129 permit applications that the BRFN would not oppose (the “**Clause 9.5 Schedule**”).
25. BRFN went through a long and arduous process to negotiate the Implementation Agreement with the Province. The Disturbance Cap was particularly difficult to negotiate. Certain permits sought by Petronas Energy Canada Ltd. (“**Petronas**”) were removed from the Clause 9.5 Schedule because Petronas was seeking to create new disturbance near



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the Dancing Grounds and the Nation wanted that area protected because of its cultural importance.²

26. Following the Implementation Agreement, Chief and Council met weekly with BRFN's lawyers at the time, Ratcliff LLP, to discuss issues related to HV1 permits and planning ("**Implementation Meetings**").

June 9, 2023 BCR

27. The Implementation Agreement does not specify how Waivers and Exemptions could be granted.
28. On June 2, 2023 at an Implementation Meeting, Council discussed the process for agreeing to Waivers and Exemptions to the Implementation Agreement, and agreed to pass a BCR establishing BRFN's internal process for approving Waivers and Exemptions ("**Permit Approvals**").
29. To ensure clarity on how Permit Approvals would be granted, Council, including Chief Desjarlais, voted unanimously in favour of a Band Council Resolution on June 9, 2023 (the "**June 9 BCR**"). The June 9 BCR specified that Permit Approvals could only be granted by a majority decision of Council, and that this majority must include a favourable vote from the Family Councillor in whose Family Group's trapline or area of family interest the development is expected to occur.
30. The June 9 BCR was a key BCR because it made clear that permits could only be granted if at least four Councillors voted in favour of the Permit Approvals.
31. The Chief agreed to and signed the June 9 BCR.

² Investigation Report, paras. 79-83.



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32. In July 2023, the Chief, without the knowledge of the other Councillors wrote to the BC Energy Regulator (“**BCER**”) granting five Permit Approvals to Petronas Energy Canada Ltd. (“**Petronas**” and the “**Petronas Permit Approvals**”) near the sensitive Dancing Grounds.
33. In the Chief’s correspondence with the BCER, she falsely stated that she had approval of Council to grant the Petronas Permit Approvals.
34. At the time, neither the legal counsel representing BRFN (Greg McDade at Ratcliff) or the Councillors knew that the Chief had granted the Petronas Permit Approvals, or that she had falsely stated to the BCER that she had approval of Council for doing so.
35. Mr. McDade only found out in early August 2023 that the Chief had improperly granted the Petronas Permit Approvals and had falsely told the BCER that she had Council approval.
36. Mr. McDade told the rest of Council about this. In response, the Chief then unilaterally and wrongfully purported to fire Mr. McDade and his firm Ratcliff LLP (“**Ratcliff**”). As will be discussed later, the firing of legal counsel made it very difficult for the BRFN to continue negotiations with the government and with industry.
37. As the Council began to find out about what the Chief had done, they raised it with the Chief and her response was that the June 9 BCR was not valid and that she could unilaterally grant Permit Approvals. She also tried to suggest that she had sought approval from Council for the Petronas Permit Approvals, and thought that they had given their approval. This was not true. Subsequent to signing the June 9 BCR, the Chief sought to have her name removed from the resolution. However, the majority of Council affirmed the June 9 BCR at a June 16 Band Council meeting.



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38. As a result of this misconduct, the four Councillors who form the quorum and majority of Council decided to have an investigation conducted under the Bylaws to determine if the Chief had acted inappropriately.

Process that led to the Investigation

39. Under the Bylaws, if any Councillor considers that there has been misconduct by the Chief or any other Councillor, that Councillor can make a report under section 187 of the Bylaws.
40. Section 187 of the Bylaws states that a Council member must make a written report to the Council directly if they have reason to believe that another Council member has participated in conduct that is subject to disciplinary action set out in section 184 of the Bylaws.
41. In November 2023, the four Councillors prepared a section 187 Report (the “**Section 187 Report**”) setting out various allegations against the Chief, including allegations relating to the Petronas Permit Approvals.
42. In summary, the Section 187 Report made the following allegations against Chief Desjarlais:
- a. Chief Desjarlais had no authority to act unilaterally, but did so regardless;
 - b. Acting contrary to the wishes of the majority of Council, in July 2023, the Chief granted the Petronas Permit Approvals, which would allow Petronas to develop in the Dancing Ground HV1C Area. In order to grant the Permit Approvals, the Chief sent letters to BCER in which she falsely stated that Council had been consulted;



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- c. Acting contrary to the wishes of the majority of Council, in August 2023 the Chief granted Permit Approvals for the extension of Prince Rupert Gas Transmission Project (“PRGT”);
 - d. Without Council’s knowledge or approval, the Chief has required that Tourmaline Oil Corp. only contract with her preferred suppliers; and
 - e. The Chief wrongfully fired BRFN’s lawyer (Greg McDade and Ratcliff and paid another lawyer’s (Tom Arbogast) invoices without the authority of Council.
43. The Section 187 Report alleged that the Chief had engaged in conduct which will cause substantial harm to Blueberry River’s ability to conduct business, and that the Chief’s conduct breached:
- a. sections 184(a), (c) and (d) of the Bylaws;
 - b. the Chief’s Oath of Office;
 - c. the Chief’s duty to act in the best interest of Blueberry River, honestly, impartially and in good faith; and
 - d. the Chief’s duty not to act in a conflict of interest and/or in breach of the duty to avoid use of Blueberry assets for personal use.
44. The Section 187 Report was distributed in accordance with section 190 of the Bylaws and received by all Council members, including the Chief, on December 3, 2023. The Section 187 Report was reviewed at a duly convened Council meeting on December 8, 2023, and, in accordance with sections 194 and 195 of the Bylaws, Council considered the Section 187 Report and determined that it was in the best interests of BRFN to initiate an



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investigation into the allegations it set out. This decision was passed by the majority of Council.

The Investigation

45. For various reasons, it took some time to finally appoint an investigator to investigate the allegations set out in the Section 187 Report.
46. By a Band Council Resolution of June 5, 2024, Council passed a BCR to appoint the law firm Sugden, McFee & Roos LLP (“SMR”) to conduct an investigation into the allegations contained in the Section 187 Report. This law firm is independent. The Chief did not take any objection to the appointment of this firm to conduct the investigation.
47. The investigation was conducted by the following lawyers at SMR: Robin McFee, KC, Jessica Lithwick and Elizabeth Janzen (“Investigators”).
48. During the investigation, the Investigators interviewed the following individuals through a combination of in person and virtual interviews and written questions and answers:
 - a. Chief Judy Desjarlais;
 - b. Councillor Sherry Dominic;
 - c. Councillor Wayne Yahey;
 - d. Councillor Troy Wolf;
 - e. Councillor Shelley Gauthier;
 - f. Former Councillor Robin Ewaskow;
 - g. Greg McDade, KC, of Ratcliff LLP, former legal counsel to BRFN;
 - h. Thomas Arbogast, KC, of DG Barristers, former legal counsel to BRFN;
 - i. John Bueckert, former employee of the BRFN Lands Department;
 - j. Norma Pyle, former contractor with the BRFN Lands Department;



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- k. Matthew Dodwell, former employee of the BRFN Lands and Economic Development Departments;
 - l. Scott Kirker, Chief Legal Officer of Tourmaline Oil Corp.; and
 - m. Petronas, via its legal counsel Heather Tanaka.
49. The Investigators considered whether it is more likely than not that the allegations in the Section 187 Report are true and whether grounds for disciplinary action against the Chief exist under section 184 of the Bylaws.
50. The Investigators also reviewed hundreds of documents provided by the Chief, members of Council and various other witnesses.

The Investigation Report

51. On August 9, 2024, pursuant to section 198(g) of the Bylaws, the Investigators delivered a report of their conclusions to Council (the “**Investigation Report**”). Legal counsel for Chief Desjarlais and legal counsel for BRFN agree that certain portions of the Investigation Report are confidential and/or privileged. The legal counsel are still working on determining what parts of the Investigation Report should be redacted before it can be made available to the members. As a result, the Investigation Report will not be disclosed with these Reasons but the Investigation Report with appropriate redactions will be made available shortly. In these reasons we have referred to parts of the Investigation Report; however, the paragraphs referred to are not confidential.
52. The Investigation Report concluded that the following allegations in the Section 187 Report were more likely than not to be true.
53. Chief Desjarlais had no authority to act unilaterally, but did so regardless. Specifically, the Investigation Report found that:



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- a. Chief Desjarlais exceeded the authority of her position³;
 - b. the Chief is a spokesperson for BRFN and cannot make big decisions on behalf of BRFN alone.⁴ It also found that the Chief knew that she should have Council's involvement for important decisions⁵;
 - c. the approvals of the Waivers and Exemptions required for the Petronas Permit Approvals (referred to in the Investigation Report as the "Town East Permits") was a "big decision" which required the approval of the majority of Council.⁶
54. **Acting contrary to the wishes of the majority of Council, the Chief granted the Petronas Permit Approvals.** Specifically, the Investigation Report found that:
- a. the June 9 BCR was valid and codified BRFN's collective decision-making procedures⁷;
 - b. A clear majority of Council was against granting the Petronas Permit Approvals because of their proximity to the Dancing Grounds, which is an area of cultural importance to BRFN⁸;
 - c. Family Councillors were excluded from discussions between Chief Desjarlais and Petronas starting in or around June 2023, and were not consulted regarding the granting of the Petronas Permit Approvals⁹;

³ Investigation Report, para. 299.

⁴ Investigation Report, paras. 46-51, 56.

⁵ Investigation Report, para. 53.

⁶ Investigation Report, para. 290, 322.

⁷ Investigation Report, para. 130, 243, 323.

⁸ Investigation Report, para. 321.

⁹ Investigation Report, para. 268.



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- d. Not only did the Chief act without the authority of Council, but she knew that Council did not support the Petronas Permit Approvals¹⁰.
- e. She differed in opinion but initially agreed to comply with the choices of the majority, including by stating that she would not sign a letter drafted by Petronas dated June 6, 2023¹¹;
- f. While the Chief was vocal in her view that the June 9 BCR was not binding, she was not similarly vocal and forthcoming that she intended to grant the Petronas Permit Approvals without seeking the approval of Council¹²;
- g. While the Chief did not specifically commit at the June 16, 2023 Implementation Meeting that she would never grant an exemption without Council approval, she agreed that she would not meet with Petronas without Mr. Arbogast and Mr. McDade, the latter of whom the majority trusted and relied upon in relation to treaty rights and implementation matters. She also made statements that were reasonably taken as assurances that she was not agreeing to Petronas's requests¹³;
- h. The Chief did not give notice to Council before or after she officially changed course. Instead, she wrote to the BC Energy Regulator on July 7, 2023 (the "**July 7 Letter**"). In this letter she falsely stated that Council had been consulted. She wrote again to the BC Energy Regulator on July 25, 2023 (the "**July 25 Letter**"). In

¹⁰ Investigation Report, paras. 297, 304, 324.

¹¹ Investigation Report, para. 324.

¹² Investigation Report, para. 298.

¹³ Investigation Report, para. 326.



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this letter she falsely stated that she was speaking for Council and that Council had been consulted¹⁴;

- i. When the Chief communicated with BCER in the July 7 Letter and the July 25 Letter, the Chief was in breach of her obligation to accurately, adequately and only where authorized by Council to do so, communicate decisions made by Council to the public¹⁵;
- j. On July 20, 2023 Chief Desjarlais sent text messages to Council (the “**July 20 Text Messages**”) regarding the Petronas Permit Approvals, and these text messages were misleading because the Chief told Council that Petronas was pushing to get 5 permits approved but she did not disclose that she already granted exemptions and waivers for 3 of the permits (which were already granted by the Province by this point)¹⁶;

55. **In acting against the wishes of Council, Chief Desjarlais acted contrary to the June 9 BCR, and failed to act in the best interests of BRFN honestly, impartially and in good faith¹⁷.**

56. Regarding Chief Desjarlais’ failure to act in the best interests of BRFN honestly, impartially and in good faith, the Investigation Report¹⁸ said as follows:

We find that the Chief did not proceed honestly, impartially or in good faith in relation to her discussions with Petronas or her decisions to send the letters of July 7 and 25, 2023. We note the following:

- a. The Chief knew that she was proceeding against Council’s wishes and contrary to their decision on June 9, which was reaffirmed

¹⁴ Investigation Report, paras. 268, 327, 330, 331.

¹⁵ Investigation Report, para. 303.

¹⁶ Investigation Report, paras. 258-261.

¹⁷ Investigation Report, paras. 315, 328.

¹⁸ Investigation, Report, para. 305.



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- by the majority on June 16, that the issue of granting exemptions and waivers should be decided by majority vote.
- b. After the Chief stated that she would not meet with Petronas without counsel, she did so on June 12 and 22, 2023. She did not report these meetings to Council or invite them to attend and neither did Mr. Bueckert.
 - c. While the Chief was vocal that she did not view herself as bound by the June 9 BCR, at no point did she explicitly take issue with the requirement that waivers and exemptions required a majority vote from Council. Instead, her comments focused on other matters and we find that it was not forthright to decline to bring this issue to Council's attention.
 - d. Given that the Chief told Council on June 10 and 16 that she had not signed the Petronas letter, it was incumbent upon her to notify Council that she had subsequently decided to do so. She did not even notify Council after sending the letter. The Chief's statements at the June 16 IA Meeting that no one was "bending the rules" similarly left an impression that required clarification if the Chief decided that she would, in fact, "bend the rules".
 - e. The Chief's July 20 text message is misleading. One element which informs this conclusion is that the text conspicuously does not disclose that she had already granted an exemption to the disturbance cap for three of the five permits. When we asked the Chief about this in her interview, she suggested that the July 7 letter may bear the wrong date; however, that is not the case as we have been provided with the email to which it was attached, which is dated July 7.
 - f. She made representations to BCER regarding consultations with Chief and Council when she knew or was reckless to the fact that Council was not consulted.
 - g. The Chief did not respond to Councillor Yahey's text inquiry on July 20, 2023, asking whether Mr. McDade had been asked for his opinion and, by demanding that Mr. McDade cease and desist, prevented Council from receiving Mr. McDade's advice or the advice of another practitioner sufficiently informed in the treaty issues regarding the Town East Permits. Mr. Arbogast and



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Mr. McDade were clear that the treaty issues were Ratcliff's domain."

57. The Investigation Report did find that there were some mitigating circumstances including: conflicting advice regarding the June 9 BCR; the Chief's lack of governance experience; and pressure on the Chief from Petronas, government, and BRFN members.¹⁹
58. However, the Investigation Report also stated that regardless of the mitigating circumstances, this did not justify the Chief proceeding without notice. In fact, at the time, the Chief sought a second legal opinion from Tom Arbogast, a lawyer that she had retained, about the June 9 BCR which shows that she wasn't misled and that she was acting intentionally against the June 9 BCR.²⁰
59. Importantly, the Investigation Report also found²¹ that the Chief did not candidly apprise the second lawyer (Tom Arbogast) of the actual facts and in fact misled the second lawyer as to what Council had said about the Petronas permits. It appears that the Chief told the second lawyer that Council had been consulted and provided their approval to grant the departments. The Chief knew this was not accurate.
60. From the Investigation Report, it appears that the Chief retained her own lawyer to seek a second legal opinion about the validity of the June 9 BCR but, in seeking that opinion, she gave incorrect facts to her lawyer that she knew were inaccurate.
61. **In summary, the Chief agreed to the June 9 BCR which set out the process for Permit Approvals, but then, without the knowledge of Council, granted the Petronas Permit Approvals by making false statements to the BCER. As a result, the Investigation Report**

¹⁹ Investigation Report, para. 332.

²⁰ Investigation Report, paras. 309-310.

²¹ Investigation Report, para. 312.



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concluded that the Chief failed to act honestly, impartially or in good faith and that she can be disciplined. The Investigation Report states at paragraph 315:

Considering the above, we find that the Chief had sufficient clarity and appreciation of the nature of her actions to substantiate the allegation that she has failed to act honestly, impartially and in good faith such that she is disciplinable pursuant to s. 184(c) of the Bylaw for failing to comply with her obligations under s.19(a) of the Bylaw.

62. The Investigation Report also concluded that the misconduct of the Chief caused substantial harm to BRFN's ability to conduct business. The Investigation Report states at paragraph 319:

Council was deprived of the ability to participate in this important decision and so the Chief engaged in the conduct which avoided the collective decision-making process in the function of acting as a spokesperson for Council with the BCER and this caused substantial harm to BRFN's ability to conduct business. This is conduct that may be subject to disciplinary action pursuant to s.184(d) of the Bylaw.

63. The Investigators then considered whether the Chief breached her obligations by trying to fire Mr. McDade and Ratcliff.
64. Concerning the firing of Mr. McDade, the Investigation Report determined that Mr. McDade was actively involved in complicated and ongoing work and had an in-depth knowledge regarding the subject matter that could not quickly or inexpensively be re-created²². Further, the majority of Council was relying on his advice regarding the Implementation Agreement and treaty matters.
65. The Investigators went on to find that the Chief exceeded her authority by purporting to terminate Mr. McDade's services altogether on August 1²³. The Investigators determined

²² Investigation Report, para. 402.

²³ Investigation Report, para. 403.



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that this caused substantial harm to BRFN's ability to adequately conduct the business arising from implementation issues and negotiations, including developing the HV1 Plans.

66. **As a result of these findings, the Investigation Report concluded that Chief Desjarlais breached her obligations to BRFN in a serious way.**²⁴ The Report concluded, at paragraph 333, that grounds for disciplinary action exist against the Chief under:

- a. Section 184(c) of the BRFN Bylaws, for breaching the June 9 Band Council Resolution;
- b. Section 184(c) of the BRFN Bylaws, for exceeding her scope of authority in unilaterally making the decision to grant Petronas "Waivers and Exemptions" that they required to obtain permits from the BC Energy Regulator;
- c. Section 184(c) of the BRFN Bylaws, for failing to comply with her obligations under section 19(a) of the BRFN Bylaws to act in the best interests of BRFN honestly, impartially and in good faith (in relation to permit decisions);
- d. Section 184(a) of the BRFN Bylaws, for failure to comply with paragraph 5 of the Chief's oath of office when she communicated with BC Energy Regulator;
- e. Section 184(d) of the BRFN Bylaws, for avoiding the collective decision-making process in the function of acting as spokesperson for Council with BCER and in a manner that caused substantial harm to Blueberry River's ability to conduct business; and

²⁴ Investigation Report, paras. 310, 333.



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- f. Section 184(d) of the BRFN Bylaws, for demanding that Ratcliff, BRFN's previous lawyers, cease and desist work on the Implementation Agreement without approval from Council to do so

(**"Findings of Misconduct"**).

67. The Investigation Report did not find that the following allegations in the Section 187 Report were substantiated:

- a. That, acting contrary to the wishes of Council, the Chief allowed the Province to approve the extension of Prince Rupert Gas Transmission Project ("PRGT") permits in August 2023²⁵; and
- b. that the Chief required that Tourmaline Oil Corp. only contract with her preferred suppliers.²⁶

68. The Investigation Report set out its conclusions, at paragraph 429, as follows:

- The interpretation most consistent with the Bylaw is that the Chief cannot make decisions impacting key issues, such as treaty rights, unilaterally.
- A decision to grant the waivers and exemptions sought by Petronas for the Town East Permit could not be made unilaterally by the Chief.
- The June 9 BCR was valid and approved the Exemptions and Amendments Policy specifying that a waiver or exemption to the IA could only be granted by a majority of Council.
- The Chief was aware that a majority of Council opposed granting the waivers and exemptions for the Town East Permits. She nevertheless

²⁵ Investigation Report, paras. 334-365.

²⁶ Investigation Report, paras. 366-395.



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granted the approvals and waivers sought by Petronas without notification or proper consultation with Council.

- Some mitigation circumstances exist regarding the Chief's decision to approve the Petronas waivers/exemptions, including conflicting legal advice on the validity of the BCR, Mr. Arbogast's broad interpretation of her powers as Chief (although he advised her that Council approval for the waivers/exemptions was required), the pressures the Chief faced from multiple fronts, and her lack of governance experience.
- The allegations regarding the PRGT pipeline are unfounded. The Chief actively opposed the PRGT pipeline and took steps to try to prevent the permit extensions from being granted.
- The Top Notch/Tourmaline allegations are unfounded. The evidence does not establish that the Chief demanded Tourmaline pay fees to Top Notch or that the Chief would only allow Tourmaline to contract with her preferred suppliers.
- The Chief did not have authority to demand that Mr. McDade cease and desist acting for the Nation on June 21, 2023 and she did not have approval from Council in doing so.
- The Chief's approval of the Arbogast invoice technically contradicted Council's decision to terminate Mr. Arbogast's services "effective immediately" on August 16, 2023.

69. The Investigation Report concluded that there were grounds for discipline and stated²⁷:

We have concluded grounds for potential disciplinary action have been established under:

1. S. 184(c), for breaching the June 9 BCR.
2. S. 184(c), for exceeding her scope of authority in unilaterally making the waiver and exemption decisions.

²⁷ Investigation Report, para. 430.



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3. S. 184 (c), for failing to comply with her obligations under s. 19(a) of the Bylaw to act in the best interests of BRFN honestly, impartially and in good faith in relation to the Town East Permits.
4. S. 184(a), for failure to comply with paragraph 5 of her oath of office when she communicated with BCER on July 7 and 25 regarding the Town East permits.
5. S. 184(d), for avoiding the collective decision-making process in the function of acting as spokesperson for Council with BCER and in a manner that caused substantial harm to Blueberry River's ability to conduct business.
6. S. 184(d), for demanding that Ratcliff cease and desist work on the IA without approval from Council to do so."

Responses to the Investigation Report

70. On August 30, 2024 and September 10, 2024, the Chief released her version of the findings of the Investigation Report.
71. It is our view that, in spite of the findings in the Investigation Report that the Chief misconducted herself seriously, and the Chief's summaries which she sent out do not take responsibility and accountability for her misconduct. For example, her August 30, 2024 summary acknowledges that she issued five permits to Petronas and attempted to fire Ratcliff but instead of taking accountability for this misconduct, she tries to justify her misconduct by stating, in part:

I never denied at any time that I had taken these two actions because pre-engagement and other meetings had taken place with all council who were in attendance at meetings and we travel to engage with Producers on applications to seek a path forward. In both cases, I believe that my actions were in the best interest of BRFN and reflected members' desires: to bring in millions of dollars of much-needed financial and economic activity, and to free ourselves from lawyers that do not live and work within our community... [emphasis added]



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72. In an email dated September 10, 2024, the Chief again takes no accountability for her misconduct. Concerning the findings that she inappropriately approved five permits for Petronas, and firing Ratcliff she states, in part:

I still think both decisions were in BRFN's best interest.

73. Family Councillors Gauthier, Dominic, Wolf and Yahey published a detailed summary of the Investigation Report to BRFN Members on September 3, 2024.

September 13, 2024 Band Council Meeting

74. On September 13, 2024 Chief and Council met to consider the appropriate sanction to be imposed on Chief Desjarlais as a result of the Findings of Misconduct in the Investigation Report. This was a continuation of the duly convened meeting of Chief and Council of September 10, 2024.
75. At the beginning of the meeting Chief Desjarlais was given the opportunity to speak and to share with Council her views on the appropriate sanction against her. Prior to the meeting, Chief Desjarlais was asked to respond to the following six questions:
- a. Does she stand by the written statements she has made since the Investigation Report including her statements made on August 30, 2024 and September 10, 2024?
 - b. Has the Chief distributed the Investigators' Report to anyone?
 - c. Does the Chief agree with the findings made in the Investigation Report?
 - d. Does the Chief consider that she has done anything wrong?



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- e. Has the Chief taken any steps to address the findings made in the Investigation Report?
- f. What does the Chief consider should be the consequences arising from the findings in the Investigation Report in the context of sections 199(1) and (2) of the Bylaws and provide reasons for her views in this regard.
76. The Chief made an oral statement at the September 13, 2024 meeting and also handed out a written statement. We attach the written statement as **Appendix 1** to these Reasons.
77. In her oral statement, the Chief first raised that she considered that there were many conflicts and that this entire process was an attempt by Mr. Wayne Yahey to step in as Chief and stated that Shelley Gauthier's daughter was going to become a Councillor. These allegations are entirely based on rumors and are not true.
78. She made these statements as a suggestion that Council was acting in bad faith and that she did nothing wrong. She wrongly suggests that the entire matter is a conspiracy. This ignores that independent investigators have found that she breached her oath of office and acted contrary to the Bylaws.
79. The Chief set out various names of persons she considered to be in a conflict. Her legal counsel then provided a document which sets out the various persons she considers to be in a conflict. She did not explain why she considered these persons to be in a conflict. We attach as **Appendix 2** the documents her legal counsel provided as those persons the Chief says are in a conflict.
80. The Chief then responded to the six questions previously provided to her. She followed the comments at Appendix 1, but also added that she felt she didn't have proper training



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as to what her duties were and that she was simply trying to work with the strategic plan. On a number of occasions, she stated that she felt she did nothing wrong.

81. She continued to state that she felt that Mr. McDade and Ratcliff are not good for the Nation and that, as a result, she did nothing wrong in terminating their services.
82. Following the Chief's statement, as required by the BRFN Bylaws Council went *in camera* (which means that they conducted a private meeting) to consider the appropriate sanction against Chief Desjarlais.
83. As can be seen from Appendix 1 (the Chief's statement responding to the six questions), she states that she stands by the statements she made on August 30 and September 10, 2024.
84. She does not agree with all of the Investigator's findings but does not state specifically which parts she agrees with and she doesn't agree with. She does state that she does not agree with the conclusion that the investigators reached that the June 9, 2023 BCR was validly passed.
85. She states that she doesn't understand how her opinion on the specific findings in the Investigation Report are relevant at this point. She also states that she may bring the matter to Federal Court for judicial review
86. She continues to take no responsibility for her misconduct and states on page 2 of her statement (at Appendix 1):

Generally I do not agree with SMR's finding that I committed misconduct.



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87. Regarding the finding that the Chief improperly granted the five Petronas Permit Approvals, she states that even now she would not withdraw those permits. She states:

I cannot withdraw my approval of the Town East Permits at this stage and frankly I would not if I could – BRFN cannot afford further conflict or litigation with Petronas, but should be working to restore a mutually beneficial relationship under Petronas' collaboration agreement.
[emphasis added]

88. Concerning what the misconduct should be, she says that she should receive simply a warning.
89. It is noteworthy that the Chief has not apologized or acknowledged her wrongdoing that was found in the Investigation Report. She maintains that what she did was in the best interests of BRFN.
90. After the comments from the Chief, Councillor Chipesia stated that, as she was not a Councillor at the time of the Section 187 Report, she felt it was not appropriate for her to be part of the decision on what should be the sanction against the Chief. As a result, she stated that she would excuse herself from the meeting.
91. As a result, the remaining Councillors, Yahey, Gauthier, Dominic and Wolf deliberated and arrived at a decision to remove Chief Desjarlais from office.
92. In arriving at their decision to remove the Chief, the four Councillors considered section 199(1) of the Bylaws which states that, when an investigator's report concludes that the evidence shows it is more likely than not that grounds for disciplinary action exist under section 184, Council must make one or more the following orders:
- a. that the Chief be suspended for a specified period of time, not exceeding 60 days;
 - b. that the Chief be issued a verbal warning;



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- c. that the Chief be issued a written warning;
 - d. that the Chief be removed from office; and/or
 - e. that Blueberry River's legal counsel take legal action against the Chief.
93. The four Councillors also considered section 199(2) of the Bylaws which list the factors that Council must consider in coming to a decision regarding the appropriate sanction. These factors are:
- a. the need to ensure the membership's confidence in the integrity of Council;
 - b. the responsibility of Council as a whole to act in the best interests of the membership;
 - c. the need to deter the Council member, and all members of current and future Councils, from committing similar actions;
 - d. the nature and gravity of the action that has been proven;
 - e. the impact upon any specific and direct victims to the Council member's actions;
 - f. whether similar allegations have been proven against the Council member in the past and the number and frequency of such similar proven allegations;
 - g. whether the Council member has acknowledged their actions and taken independent steps to disclose and redress their wrong.
94. Giving consideration to all of the above factors, as stated above, Councillors Gauthier, Dominic, Wolf and Yahey ("**Council**") unanimously voted to remove Chief Desjarlais from office, pursuant to section 199(d) of the BRFN Bylaws.



95. The reasons for the decision of Council are set out below and are organized in order of the factors that Council must consider under section 199 of the Bylaws.

(a) *The need to ensure the membership's confidence in the integrity of Council*

96. The Investigation Report found that the Chief did not act honestly, impartially or in good faith. These are the cornerstones of integrity. If members of Council, and especially the Chief, do not act honestly, Council will not be seen to be acting with integrity.

97. The Investigation Report found that Chief Desjarlais was dishonest, including in the following instances:

- a. The Investigation Report found that the Chief knew that she did not have authority from Council to grant the Petronas Permit Approvals which Petronas was seeking in order to start development in the Dancing Ground HV1 Area. Despite knowing this, the Chief met with Petronas and subsequently sent the July 7 Letter to the BC Energy Regulator granting three of the Petronas Permit Approvals. In this letter the Chief falsely stated that Council had been consulted.²⁸
- b. The Chief then wrote again to the BC energy Regulator (the July 25 Letter) in which she falsely stated that she was speaking for Council, and that Council had been consulted.²⁹

98. In addition to these instances of blatant dishonesty, the Investigation Report also found that, in other instances, Chief Desjarlais was intentionally not forthcoming. For example:

²⁸ Investigation Report, paras. 268, 330.

²⁹ Investigation Report, para. 331.



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- a. The Chief was vocal about the fact that she did not think that the June 9 BCR was valid and binding. However, she did not tell Council that, as a result of her view, she intended to grant the Petronas Permit Approvals without Council's authority.
 - b. Having sent the July 7 Letter the Chief then sent Council the July 20 Text Messages which were misleading because the Chief said that Petronas is pushing to get five permits approved, but did not disclose that she had already granted three of the five Petronas Permit Approvals, and that the Province had already granted the permits as a result.
99. This factor weighs in favour of a serious sanction, up to and including removal, but must be weighed together with the other section 199 factors considered below.
- (b) *The responsibility of Council as a whole to act in the best interests of the membership***
100. Paragraph 5 of the Chief's Oath of Office states that the Chief must commit to "accurately, adequately and only where authorized by Council to do so, communicate decisions made by Council to Blueberry River members and the public...". The Report found that the Chief breached this paragraph of her Oath of Office when she communicated with BC Energy Regulator in the July 7 Letter and the July 25 Letter.
101. More generally, the Investigation Report found that the Chief made big decisions alone and that those decisions were against the consensus of Council. The Investigation Report also found that the Chief's actions caused BRFN "substantial harm". Therefore, it is absolutely clear that the Chief's actions gravely undermined the responsibility of Council as a whole to act in the best interests of the membership.
102. The Investigation Report found that the Chief's actions caused the following harms to BRFN:



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- a. The Chief's avoidance of the collective decision-making process in the function of acting as spokesperson for Council when communicating with the BC Energy Regulator caused "substantial harm to Blueberry River's ability to conduct business".
 - b. By excluding Mr. McDade (BRFN's previous lawyer) from important discussions and then firing him altogether, the Chief "caused substantial harm" to BRFN's ability to adequately conduct the business arising from Implementation Agreement issues and negotiations, including developing the HV1 plans.
103. This factor considered alone weighs in favour of a serious sanction, up to and including removal, but must be weighed together with the other section 199 factors.
- (c) *The need to deter the Council member, and all members of current and future Councils, from committing similar actions***
104. This factor speaks for itself and is directly related to the seriousness of the Chief's misconduct. If the Investigation Report had found that the Chief had made a mistake, then deterrence would not be as important a consideration. However, in this case the Investigation Report found that Chief Desjarlais intentionally mislead Council and dishonestly told the BC Energy Regulator that she had the support of Council for the Petronas Permit Approvals, which led to the issuance of permits to Petronas which Council strongly opposed.
105. We must set a clear example that a Chief of BRFN (or indeed any modern First Nation) cannot get away with breaching her Oath of Office, acting dishonestly and acting against the best interest of the Nation.



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106. The Oath of Office is a fundamental part of our values and must be taken seriously. If someone breaches it like the Chief has, at the very least that person must take some accountability for the breach. The Chief has not done so.
107. It is impossible for us to govern ourselves cohesively, collaboratively and prosperously as a Nation if the word of the Chief, our figurehead, cannot be trusted by industry, government, and most importantly of all, by BRFN members.
108. This factor weighs strongly in favour of condemning the Chief's actions by imposing a serious sanction, up to and including removal. As with each section 199 factor, this factor must be weighed together with the other factors.

(d) *The nature and gravity of the action that has been proven*

109. After considering a large volume of evidence, the Investigation Report made very serious findings of misconduct against Chief Desjarlais and ultimately concluded that she acted contrary to the BRFN Bylaw, breached her Oath of office, did not act in the best interests of BRFN, and did not act honestly, impartially or in good faith.
110. While the Chief says she takes issue with some of the findings in the Investigation Report, she does not set out why the findings in the Investigation Report are incorrect. On a review of the Investigation report, the Investigators considered all the relevant information and arrived at rational conclusions based on the evidence they were presented with. There is no reason to question their findings and conclusions.
111. These are among the most serious of findings against a Chief.
112. These findings are aggravated by the fact that the Chief's misconduct directly relates to, and undermines, the long, expensive and arduous process that BRFN has endured, in order to govern our own lands. Specifically:



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- a. In the Court Decision, after a 160-day trial the BC Supreme Court found that the Province of British Columbia breached Treaty 8 by allowing extensive industrial development on our lands which breached BRFN's Aboriginal rights. The Court Decision reinforced BRFN's ability to protect our Treaty rights and say no to development.
- b. Following the Court Decision, BRFN and the Province entered into the Implementation Agreement. This Agreement provides for a collaborative approach to land, water and resource stewardship within BRFN territory with the objective of ensuring BRFN's members will be able to meaningfully exercise their Treaty Rights.
- c. The Implementation Agreement established annual limits on oil and gas activity.
- d. The Clause 9.5 Schedule to the Implementation Agreement lists permit applications that the BRFN would not oppose. Petronas wanted some of the permit applications that Chief Desjarlais subsequently approved to be on this list, but BRFN did not agree and they were removed. These permits were removed from the Clause 9.5 Schedule because Petronas was seeking to create new disturbance near the Dancing Grounds and the Nation wanted that area protected because of its cultural importance.
- e. In 2017, after a long process, BRFN enacted its Bylaws. We are in our second term operating under these Bylaws. The Bylaws includes clear processes for meetings and decisions of Chief and Council. On June 9, 2023, all members of Council, including the Chief, unanimously passed the June 9 BCR.
- f. By granting the Petronas Permit Approvals against the wishes of Council and contrary to the process set out in the June 9 BCR, Chief Desjarlais undermined the



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long and well-deliberated process emanating from the Court Decision and leading to the Implementation Agreement, as well as BRFN's own laws.

113. As a community we know that the Dancing Grounds are an area of great cultural importance. This truth is reflected in the Court Decision which recounted that Blueberry members spoke about the Dancing Grounds as the place where Dane-zaa would camp and gather in the summer, share stories, sing, dance and hear from their prophets or dreamers.
114. The Chief had no authority to unilaterally grant the Petronas Permit Approvals which allowed for development close to the Dancing Grounds, and the fact that she did so in an area of cultural importance, all in the interests of financial gain, demonstrate a grave lack of understanding of the meaning of collective property, and lawful governance in the interests of BRFN.
115. As a result, this factor weighs very strongly in favour of removal of Chief Desjarlais from office.

(e) *The impact upon any specific and direct victims to the Council member's actions*

116. BRFN lands, and BRFN's rights, as recognized in the Court Decision, belong to every BRFN member. However, in addition to the collective impact of the Chief's actions, section 199 requires that we consider any specific or direct victims.
117. The Court Decision was significant in that it changed how the Province can impact lands belonging to the BRFN. The Court Decision gave the BRFN a say in how development on its treaty land would take place. The Chief's conduct undermined this victory as she gave the government the impression that there was a governance dispute when there wasn't.



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The problem was that the Chief was acting contrary to her Oath of Office and contrary to the best interest of the BRFN and contrary to the Bylaws.

118. The Chief's granting of the Petronas Permit Approvals without the proper process undermines the rights of BRFN's future generations to the lands belonging to the BRFN.
119. The Investigation Report considered the specific impact of the Chief's approval of the waivers and exemptions (leading to Petronas's Permit Approvals) on the Yahey family. At page 47 of the Report it says "Councillor Yahey's text responses show concern for protecting the Dancing Grounds buffer. Further, his support for the June 9 BCR, his continuation of traditional practice as discussed by the Court in *Yahey 2021*, and his particular family connection to the Dancing Grounds".
120. The Chief's failure to recognize the distinct impact of her actions on the Yahey family aggravate her general failure to recognize the impact of her unilateral decision to cause permits to be issued close to the Dancing Grounds, and the corresponding impact on the Treaty Rights of every BRFN member. Considered together, this factor adds to the serious nature of the misconduct.
- (f) *Whether similar allegations have been proven against the Council member in the past and the number and frequency of such similar proven allegations***
121. This Investigation Report is the first time that Chief Desjarlais has been investigated and found to have engaged in misconduct. However, the findings against the Chief in the Investigation Report are numerous and show a consistent pattern of acting unethically and contrary to our Bylaws to achieve her desired result.
122. An example of this sustained misconduct can be seen in the series of events described at pages 50 - 51 of the Investigation Report which include the following:



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- a. In granting Petronas Permit Approvals, the Chief knew that she was proceeding against Council's wishes and contrary to the June 9 BCR, which required a majority vote.
- b. After the Chief stated that she would not meet with Petronas without Council, she did so on June 12 and 22, 2023.
- c. After meeting with Petronas, the Chief did not report these meetings to Council or invite them to attend.
- d. The Chief made a statement at a Council meeting that no one was "bending the rules", which the Investigation Report found left an impression that required clarification if the Chief decided that she would, in fact, "bend the rules".
- e. Having told Council on June 10 and 16 that she had not signed the letter to Petronas (granting their requested waivers and exemptions) she then did so, sending the July 7 letter without notifying Council that she had done so.
- f. The Chief did not even notify Council after sending the July 7 Letter.
- g. The Chief then sent the July 20 Text Messages to Council which were misleading. When the investigators asked the Chief about this in her interview, she suggested that the July 7 letter may bear the wrong date; however, the Investigation Report found that this was not the case.
- h. The Chief did not respond to Councillor Yahey's text inquiry on July 20, 2023, asking whether Mr. McDade (BRFN's lawyer at the time) had been asked for his opinion on the Petronas Permit Approvals. By then demanding that Mr. McDade cease and desist work for BRFN, the Chief prevented Council from receiving Mr.



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McDade's advice or the advice of another practitioner sufficiently informed in the treaty issues regarding the relevant permits.

- i. The Chief sent the July 25 Letter where she falsely stated that she was speaking for Council, and that Council had been consulted. This was false.

(g) *Whether the Council member has acknowledged their actions and taken independent steps to disclose and redress their wrong*

123. Since the publication of the Investigation Report, the Chief has made three statements: one official statement on August 30, one statement via email to members on September 10 and a statement at the Meeting of Chief and Council on September 13. She has also sent a number of other emails to BRFN members.
124. Chief Desjarlais has failed to acknowledge or apologize for the serious findings against her. Instead she has doubled down on her actions – continuing to attempt to justify them and continuing to assert that they were in the best interests of BRFN, when the Investigation Report found that this was not the case. She has failed to acknowledge that she acted dishonestly and breached her Oath of Office.
125. The Chief's statement that she still believes that the June 9 BCR was invalid is unbelievable. This was a BCR which she approved of and signed. Her attempt to say that the meeting at which we passed the BCR was invalid has no merit. The Investigation Report dealt with this at length and found that the Chief's suggestion that the June 9 BCR was not valid has no merit.
126. The Chief's argument regarding the validity of the June 9 BCR shows a lack of integrity. She voted in favour of the BCR and signed it. Her attempt to state later that it was not valid on some technical grounds, because she breached it, demonstrates a complete lack of honesty and integrity.



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127. The Chief's suggestion (in her August 30, September 10 written statements, and again in her oral statements on September 13) that she did not know that she needed Council's approval in important decisions is untrue. The Investigation Report dealt with this at length in paragraph 53.
128. The report made mention of a few mitigating factors, including Chief Desjarlais' lack of governance experience and pressure from Petronas, which the Chief could have raised in tandem with an acknowledgement of wrongdoing and a humble apology³⁰. She hasn't done this.
129. Instead, the Chief's statements since the publication of the Investigation Report have actively caused division in the community and have further undermined the confidence of members in the integrity of Council. Specifics of these statements include the following.
130. In the Chief's August 30 Statement she attempted to justify her firing of the law firm Ratcliff, which the report found caused substantial harm to BRFN, by saying that she was trying to "free ourselves from lawyers that do not live and work within our community". This statement echoes the divisive tone with which she has responded to other criticism since the publication of the report. In one instance, a BRFN member who lives off-reserve emailed the Chief regarding her disappointment in the Chief's August 10 statement. In response, the Chief insincerely responded "thanks for sharing your thoughts and biased opinion". She went on to say, "you have never lived here nor have you ever contributed to any community event" and, later in that email "you don't live here and you never engage with our members".

³⁰ Investigation Report, para. 332.



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131. In respect of the investigation procedure and Council's procedure since the publication of the Investigation Report, Chief Desjarlais' public statements have included the following:
- a. "the councilors decided long ago to remove me, no matter what the investigation might find".
 - b. (Council is) "pretending that these steps are required by confidentiality concerns when they are not".
 - c. "I also suspect the Councillors would say that any description I give is false or misleading".
 - d. "since the Councillors have stopped cooperating with Petronas, they are now withholding millions of dollars from the Nation"
132. These comments are not reflective of a Chief that is able or willing to move on from the Findings of Misconduct in the Investigation Report with newfound respect for BRFN laws. Instead, these comments are demonstrative of the fact that the Chief is blinded by financial considerations and remains steadfast in her view that she has done nothing wrong. Further, the Chief has produced no evidence that the if BRFN doesn't give permits as she did, that the BRFN would suffer the financial consequences which she suggests would occur.
133. The Chief has demonstrated that she has the capacity and the motivation to act dishonestly, in bad faith, without Council's support, and contrary to BRFN laws in order to achieve her own agenda. We as Council have no confidence that this will change. In fact, we can see that more than a month after the Investigation Report has been handed down, the Chief has remained of the view that she has done nothing wrong. Our conclusion that she will not change is justified.



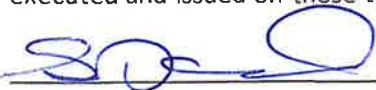
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134. In considering this factor, we must consider whether the Chief has acknowledged her actions and taken independent steps to disclose and redress her wrong. Here, the Chief has done exactly the opposite. She does not acknowledge her wrong and she continues to sow division among members.
135. Accordingly, this factor weighs heavily in favour of removal of Chief Desjarlais from office.

Conclusion

136. Council has considered each of the factors listed in section 199 of the Bylaws. As explained above, the following five factors weigh strongly in favour of removal of Chief Desjarlais from office:
- a. the need to ensure the membership's confidence in the integrity of Council;
 - b. the responsibility of Council as a whole to act in the best interests of the membership;
 - c. the need to deter the Council member, and all members of current and future Councils, from committing similar actions;
 - d. the nature and gravity of the action that has been proven;
 - e. whether the Council member has acknowledged their actions and taken independent steps to disclose and redress their wrongs.


The Council made this resolution at a duly convened Band Council meeting on September 13, 2024 with a quorum of the present Council who approves its terms and resolves that it shall be executed and issued on those terms.




Councillor Sherry Dominic



Councillor Shelley Gauthier



Councillor Troy Wolf



Councillor Wayne Yahey

APPENDIX 1

CHIEF DESJARLAIS'S STATEMENT TO COUNCIL 13 SEPTEMBER 2024

I have prepared a statement I would like to read to you. It addresses the six questions Mr. Mitha sent my lawyers.

1. Does she stand by the written statements she has made since the Investigation Report including her statements made on August 30, 2024 and September 10, 2024?

Yes, I stand by my written statements about the investigation report made on 30 August and 10 September. I have made no other written statements.

2. Has the Chief distributed the Investigators Report to anyone?

I don't see how this question is relevant to the purpose of this meeting. I am not required to tell you what steps I have taken, together with my lawyers, to respond to the report and prepare for the next steps in this investigation.

But I can tell you that I have not distributed the report to BRFN members, or shared it publicly, or posted it anywhere, other than sharing it with Councillor Chipesia.

I wish that we, or our lawyers, all would have sat down to address any concerns regarding its confidentiality much earlier.

3. Does the Chief agree with the findings made in the Investigation Report?

4. Does the Chief consider that she has done anything wrong?

5. Has the Chief taken any steps to address the findings made in the Investigation Report?

I will address these three questions together.

The report is 73 pages, single spaced. I agree with many of SMR's findings. I do not agree with all of them.

One particular conclusion from SMR that I do not understand, for instance, is their determination that the June 9th BCR was validly passed. I do not agree with this conclusion, and I expect a Federal Court judge would not agree with it either.

APPENDIX 1

Otherwise, I feel that it would not be appropriate for me to go through, paragraph by paragraph, and confirm which specific findings I agree and disagree with when: (a) I do not understand how my opinion about specific findings is relevant at this point, especially regarding any legal determinations that SMR reached; and (b) as I have said, depending on your decision, I may bring the matter to Federal Court for judicial review.

Generally I do not agree with SMR's finding that I committed misconduct. Of course I can look back on it all and see things I could have done differently. I wish that we all had done things differently; that BRFN had been managed differently, that we did a better job of hiring, retaining and working with staff. But playing the blame game is not going to get us anywhere.

BRFN has so many serious problems. There are the issues with administration, the Gundy Plan, fulfilling obligations under the Implementation Agreement, economic development. I could go on.

One of the biggest problems BRFN faces is governance. It has been a problem for years, as all the cases before the courts show. SMR found that as Chief I did not have the power to make "big" decisions. It is unclear what that even means, though. I cannot understand how it was a proper use of BRFN's time and money to spend several hundred thousand dollars on an investigation that gave so little guidance on our governance issues. This is the problem with BRFN: lawyers keep profiting from our dysfunction. It's an utter disaster for our members. I've been saying that for as long as I've been Chief.

I would like to work together with you all to agree on governance policies and procedures. Even if the issues related to the June 9 BCR are resolved, that policy only deals with a narrow set of decisions regarding permitting, and there are many other issues that remain uncertain. What is a "big" decision that Chief and Council need to make together, vs what can be done by the Chief alone, a councillor alone, or staff alone? We should have policies and procedures that clarify these issues.

Otherwise, I do not see what I can meaningfully do to "address" the report's findings.

I cannot withdraw my approval of the Town East Permits at this stage, and frankly I would not if I could – BRFN cannot afford further conflict or litigation with Petronas, but should be working to restore a mutually beneficial relationship under Petronas' collaboration agreement.

Regarding Ratcliff, they are still working for BRFN. There is nothing for me to "fix". I maintain my belief that Greg McDade and Ratcliff are not good for BRFN, and the findings of the investigation have only confirmed that. I can confirm that I will not try to fire them again on my own, but that is all I can do.

APPENDIX 1

6. What does the Chief consider should be the consequences arising from the findings in the Investigation Report in the context of sections 199(1) and (2) of the Bylaws and provide reasons for her views in this regard.

The section 187 report said I should be removed from office as a result of all of the conduct alleged in it. But the SMR report did not uphold all of the allegations. In particular, the allegations of me benefitting personally from decisions I made as Chief were rejected.

The allegations that SMR did uphold have to do with governance issues: whether the June 9th BCR was validly passed, whether I as Chief could make permitting decisions without going through Council, and whether I could dismiss Ratcliff without going through Council.

Uncertainty about those issues—especially given what the Implementation Agreement says and the position the Province is currently taking in court on this same point—is not enough to warrant my removal from office. Removing me from office based on this report, would be unreasonable. It would be an overreaction. The Code's discipline provisions are not intended to be a way of carrying on political disagreements. They are for serious misconduct.

Removing me from office would undermine BRFN members' confidence in the integrity of Council. I think you know that the members support me, and that they do not want me to be removed. The members could make their voices heard in this regard – for and against me – if members were permitted to attend this meeting. But you have wrongfully kept them out of this meeting. That is telling.

Removing me would not be in the best interests of the membership. My removal would not help anything, and on the contrary would lead BRFN further from the trajectory and direction it needs to go for economic and social prosperity.

If I am not removed, I will abide by SMR's report (despite my disagreement with parts of it). Like I said, I want to move forward and work with Council to pass, and then follow, good governance procedures and policies.

Regarding the misconduct itself, as I have noted, I genuinely believed that I had the power to make those decisions, as BRFN's proper governance requirements were less than certain and the Implementation Agreement identifies the Chief as BRFN representative. I also do not believe that my actions caused damage to anyone. Ratcliff is still working for the band, and the Town East Permits have resulted in much needed payments and economic benefits for the band, including many of your family members.

This was my "first offence" and I think, at most, a warning would be sufficient.

APPENDIX 2

BRFN Suppliers Used By PETRONAS Canada on Town East Projects		
Description of Services	BRFN Suppliers	BRFN Subcontractors
Town c-78-E/94-A-13 to a 30-I/94-B-16 sales connection		
ROW Clearing	GOLDEN BASE CONTRACTING LTD.	
Monitoring	BRFN	
Pipeline Construction	TRIPLE J PIPELINES INC.	Brothers HDD Inc; GFL Environmental, J.S.D Construction LTD.
	Yuuse Industries Inc.	
Rentals	Subcontracted via TRIPLE J PIPELINES INC.	
Camps	RED DIAMOND LODGE LTD.	
Camps	BRFN ROYAL CAMP	
Medics	Supplied via Golden base	
Security	Split between Golden Base and Yuuse	
d-71-H/94-B-16 to c-78-E/94-A-13 pipeline		
ROW Clearing	GOLDEN BASE CONTRACTING LTD.	
Monitoring	BRFN	
Pipeline Construction	TRIPLE J PIPELINES INC.	
Rentals	Subcontracted via TRIPLE J PIPELINES INC.	
	Yuuse Industries Inc.	
Camps	RED DIAMOND LODGE LTD.	
Camps	BRFN ROYAL CAMP	
Medics	GOLDEN BASE CONTRACTING LTD.	
Security	Split between Golden Base and Yuuse	
b-78-E/94-A-13 to c-78-E/94-A-13 pipeline tie in		
ROW Clearing	GOLDEN BASE CONTRACTING LTD.	
Monitoring	BRFN	
Pipeline Construction	TRIPLE J PIPELINES INC.	
Rentals	Subcontracted via TRIPLE J PIPELINES INC.	
	Yuuse Industries Inc.	
		Epscan Industries LTD.
Camps	RED DIAMOND LODGE LTD.	
Camps	BRFN ROYAL CAMP 109/147	
Medics	Golden base	
Security	Golden Base	
b-78-E/94-A-13 Padsite		
Civil Pad construction	GOLDEN BASE CONTRACTING LTD.	
C-78-E/94-A-13 compressor		
Civil Pad construction	GOLDEN BASE CONTRACTING LTD.	
Mechanical Construction	Strait (Letter of Support)	G. Yahey Contracting Yahey Brothers Ent. LTD.
Pre-Fab	Yuuse	
Inlet Risers	Yuuse	

APPENDIX 2

PR Modules	Yuuse	
E&I Construction	Epscan	
Cranes	LaPrairie Crane	
Camps	BRFN Royal Camp 109/147	
Camps	RED DIAMOND LODGE LTD.	
Rentals	JSD Rentals	
disposal	GFL Environmental Inc.	

APPENDIX 2

Update December 6, 2023

BRFN Monitoring on PETRONAS Canada Town East Projects:	
B-78-E Pad and C-78-E Compressor	
Aug 16 to 31	Virginia Apsassin and Susan Dumas
Sept 3 to 16	Irene and Sylvester Apsassin
D-71-H to C-78-E Pipeline	
Sep 19 to 24	Walter Apsassin & Waylon Davis
Sep 27 to 30, Oct 5	Ed & Cloud Apsassin
Oct 29 to 31	Norman Apsassin & Austyn Adekat
Nov 4 to 7	Virgina & Stephanie Apsassin
Nov 13	Jerri Lynn Apsassin & Chris Chipesia
Nov 20 to 23, Nov 14	Louise & Kale Cardinal
Nov 25 to 30	Ralph Wolt & Garnet Davis
C-78-E to A-30-I Sales Pipeline	
Sep 14 to 18	Walter Apsassin & Waylon Davis
Sep 26 to Oct 1, Oct 4	Ed & Cloud Apsassin
Oct 12 to 21	Geogina Yahey & Lane Chipesia
Oct 22 to 28	Norman Apsassin & Austyn Adekat
Nov 9 to 12	Jerri Lynn Apsassin & Chris Chipesia
Nov 15 to 19	Louise & Kale Cardinal
Nov 30 to Dec 4	Ralph Wolt & Garnet Davis