



## **Huu-ay-aht First Nations Tribunal**

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**October 23, 2012**

### **HUU-AY-AHT FIRST NATION TRIBUNAL**

**Application No. 2012-01**

**Date: February 17, 2012**

**Date(s) of Hearing: May 1 and 2, 2012**

**Location: Anacla**

**Date(s) of Hearing: May 3, 2012**

**Location: Port Alberni**

**Written Submission Received: May 14, 2012**

**Application for Additional Evidence: June 14, 2012**

**New Evidence Admitted: June 29, 2012**

#### **Tribunal Members Hearing Application:**

**John Rich, Chair**

**Hugh Braker, Vice Chair**

**Marie Nookemus, Member**

**Trudy Warner, Member**

**Florence Wylie, Member**

#### **Tribunal Decision of Chair, John Rich**

##### **Agreed to by Members:**

**Marie Nookemus**

**Trudy Warner**

**Florence Wylie**

##### **Dissenting Reasons by Vice-Chair, Hugh Braker**

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**A. SUMMARY OF FINDINGS AND RECOMMENDATIONS**

1. This application was brought to the HFN Tribunal by the Executive Council, seeking interpretation of HFN Laws and recommendations respecting communications from two HUU-ay-aht citizens which have resulted in complaints of discrimination and harassment by HFN employees.
2. The facts relating to this application are set out below in Section F, and are not repeated in this summary.
3. Although these findings and recommendations arise from the specific circumstances of harassment by two HUU-ay-aht citizens, the Tribunal intends that this decision be applied broadly, and to be of assistance to HUU-ay-aht Government, administration and citizens in dealing with HUU-ay-aht affairs.
4. The findings and recommendations of the Tribunal, summarized below, are set out in detail at Sections F, H and I of this Decision.

**1. Findings**

*The Principles of Ii-saak*

5. The principle of *ii-saak*, which is made part of HFN law by s.1.5(c) of the *Constitution Act*, requires respectful behavior by both government members and citizens in all citizen and government dealings.
6. The Tribunal finds that members of the Executive Council followed the principles of *ii-saak* in dealing with, or attempting to deal with Norman and Rita Dennis. However, Norman and Rita Dennis failed to respect the principle of *ii-saak*, as demonstrated in the content, tone and persistence of their communications.

*Obligations of Executive Council*

7. Members of Executive Council are bound by the *Code of Conduct and Conflict of Interest Act* to treat HFN citizens equitably and impartially, and to make reasonable efforts to meet regularly with citizens.

8. The Tribunal finds that these obligations of government members have been met, both through formal meetings such as the People's Assembly and through informal communications. HFN law does not place a legal requirement on government members to meet with individual citizens at their request or demand.
9. The Executive Council has responsibilities as the employer of the HFN administration, including a duty to ensure a safe workplace environment, free from harassment or discrimination.
10. The Tribunal finds that, although the Executive Council has recognized its obligations respecting the work place environment, it did not act in a timely manner in 2011 to address issues of harassment and discrimination.

*Obligations of Chief Councillor*

11. The Chief Councillor has additional duties respecting communications with citizens and ensuring proper management and administration of government.
12. The Tribunal finds that the legal obligation on the Chief Councillor is to ensure that citizens are provided reasonable opportunities to be informed respecting Huu-ay-aht issues. The Tribunal further finds that this obligation was met, however, the Tribunal notes that not all communication with citizens has been effective.
13. The Tribunal finds that the Chief Councillor ought to have intervened and dealt with Norman Dennis in the summer of 2011, at which time the Executive Council was aware of the harassing behaviour of Norman Dennis.

*Ha'wiih Council*

14. The Tribunal finds that the Ha'wiih Council does not have legislated obligations relating to this application. However, the Tribunal finds that the Ha'wiih Council could play a significant role in resolving issues between citizens and government.

Executive Director

15. The Executive Director is responsible for administering Human Resource Policy, including that employees have the right to work in a safe and respectful environment.
16. The Tribunal finds that in the circumstances of the harassing communications in 2011, the Executive Director should have exhausted administrative options to prevent the harassment, and failing success in that regard should have referred the matter formally to the Chief Councillor and Executive Council.

Employees

17. All employees have rights under HFN Law to a safe and respectful work environment, free from harassment and discrimination.
18. The Tribunal finds that these rights were interfered with by the harassing and discriminatory communications of Norman and Rita Dennis in 2011–12.

Citizens

19. Citizens have rights set out in the HFN *Constitution Act*, including the right to be informed and the right to express opinions. However, the *Constitution Act* also requires citizens to accept the responsibility adhering to the teachings of *ii-saak* (respect).
20. The Tribunal finds that there is a point at which the failure to act respectfully will outweigh those citizens' rights to obtain information and provide opinion. In the present case the extent of the disrespectful communications by Norman and Rita Dennis has been such to disentitle those citizens from relying on the rights established by the *Constitution Act*.

Sanctions - Fines

21. Existing sanctions against inappropriate citizen behaviour towards employees are found in the *Code of Conduct and Conflict of Interest Act*, which provides for a \$1,000 fine for interfering, hindering or obstructing a public officer in the performance of his or her

duties. However, it appears that this sanction was not considered by HFN Government in dealing with the harassing behaviour of 2011-12.

Sanctions - Access

22. The other sanction available with respect to harassing conduct is found in the Human Resources Policy Regulation, which provides for a prohibition against attendance at the HUU-ay-aht Government Offices in the event of harassing behaviour. However, such a restriction has little effect on persons who are engaged in harassing behaviour through telephone and email, rather than personal appearance.

Balancing Rights

23. The Tribunal finds that the right to be informed and express opinions must be balanced against the obligation to adhere to teachings related to *ii-saak*. The failure to act respectfully in seeking information or expressing opinions may lead to the loss or diminution of citizen rights.

Inappropriate Communications

24. The Tribunal finds that the communications from Norman and Rita Dennis in 2011-12 were inappropriate, and inconsistent with the principles of *ii-saak*. The Tribunal also finds that Norman and Rita Dennis failed to take advantage of appropriate opportunities to obtain information and provide opinion, such as the Peoples' Assembly.

Harassment

25. The Tribunal finds that communications from Norman and Rita Dennis amounted to harassment of HFN employee Rodney Murray and Executive Director Connie Waddell.
26. The Tribunal finds that the delay by the Chief Councillor and Executive Council, from summer 2011 to February 2012, in becoming directly involved in the issue of harassment by Norman Dennis, contributed significantly to the negative impact on the HFN workplace.

Discrimination

27. The Tribunal finds that the communications from Norman and Rita Dennis involved unlawful discrimination.
28. Again, the Tribunal finds that the Chief Councillor and Executive Council should have been aware of this serious situation at least by the summer of 2011 and should have taken responsibility for dealing with Norman Dennis at that time.

Consequences

29. The Tribunal finds that the communications of Norman and Rita Dennis over the period February 2011 to February 2012 were a significant factor in the decisions of Connie and Waddell and Rodney Murray to leave their positions on stress leave.
30. The Tribunal also finds that the communications of Norman and Rita Dennis were significant in disrupting the HFN workplace and contributing to a low morale during 2011-12.

**2. Recommendations**

Tribunal Jurisdiction

31. The jurisdiction of the Tribunal is focused on HFN legal matters, and does not extend to administrative or political matters. Administrative and political matters should be dealt with by HFN Government.

Sanctions - Fines

32. Consideration should be given to amending the *Code of Conduct and Conflict of Interest Act* to provide for fines which could be proportional to the seriousness of the offence, fines should be progressive, increasing on the basis of further offences, and should take into consideration the ability of citizens to pay.

Sanctions - Restrictions on Citizen Access

33. Sanctions under the Human Resources Policy should be expanded to deal with harassing behaviour by telephone, email and correspondence. Policy should be expanded to prevent harassing communications from reaching employees, by declining telephone calls, blocking emails and providing correspondence directly to the Executive Director or the Chief Councillor, whichever is appropriate.

Sanctions – Withdrawal of Benefits

34. At this time, HFN law and policy does not provide for the withdrawal of benefits as a sanction against inappropriate citizen behaviour. Such sanctions may be more effective than fines or refusal of access, and should be considered.

Traditional Remedies

35. Traditional remedies for inappropriate citizen behaviour, should be considered, including the involvement of Ha’wiih Council or individual Ha’wiih.

Communications

36. Steps should be taken to ensure that the consequences of engaging in harassing behaviour are known to all citizens.
37. The point that rights and responsibilities must be balanced, and that the principle of *ii-saak* applies to all HFN dealings between government and citizens should be made clear to all citizens, government members and employees.

Executive Council

38. As an employer, Executive Council should take steps to ensure that appropriate administrative policies are in place to reduce the potential for harassment in the workplace. It will be responsibility of the Executive Director and the Chief Councillor, to ensure that such policies are adhered to.

Conclusion

39. All HUU-ay-aht citizens should be aware that HFN Government has no obligation to cater to citizens who harass. The requirement of respect which flows from the principle of *ii-saak* must be followed and failure to do so must have consequences.

**B. APPLICATION 2012-01**

40. This application was brought by the HUU-ay-aht Executive Council following a series of communications from two HUU-ay-aht citizens that have disrupted the HFN Government work place and resulted in complaints to Government of Discrimination and Harassment from HUU-ay-aht employees.

41. The application is brought pursuant to the *Tribunal Act*, ss. 17(1)(b), (g) and 28.

42. The application sets out matters to be determined:

(a) Under s. 17(1)(g) of the *Tribunal Act* Executive Council asks the Tribunal to inquire into the circumstances of the two citizens' communications with government and administration and the consequences of those communications, and to make findings of fact as the Tribunal sees fit and necessary. (Application para. 22)

(b) Under s. 17(1)(b) and s. 28 of the *Tribunal Act* Executive Council asks the Tribunal to interpret the obligations of HUU-ay-aht government and HUU-ay-aht citizens in light of these facts and HUU-ay-aht law, including the principles of *ii-saak*; and under s. 17(1)(g) of the *Tribunal Act* to make such consequential recommendations to Executive Council as the Tribunal sees fit respecting communications from citizens to employees or government. (Application para. 23)

43. The application states that the Tribunal is not asked to make any finding of wrongdoing.

44. In submissions at the hearing, counsel for the Executive Council submitted that the Tribunal should address:

- (a) investigating a series of events that have caused disruption to HUU-AY-AHT administration and concern to the HUU-AY-AHT Council;
- (b) defining particular legal obligations of HUU-AY-AHT Government and citizens under HUU-AY-AHT law;
- (c) what the principles of *ii-saak* require of citizens in their communications with government members and HUU-AY-AHT employees,
- (d) what the role of government is when communications which do not meet the standard *ii-saak* requires are received, and in particular,
  - (i) what are government's obligations to employees, and
  - (ii) what are government's obligations to citizens in such instances.
- (e) making recommendations to assist the HUU-AY-AHT Government in upholding its obligations to employees and citizens.

45. At the conclusion of the hearing, counsel for the Executive Council was invited to consider amendments to the determination sought, on the basis of the evidence which had been heard. In further written submissions of Executive Council, dated May 14, 2012, (Part E), the Executive Council addressed its request, declining to seek to amend the application, but providing a rationale for seeking extensive findings on the basis of the application as filed.

## **C. NEW EVIDENCE APPLICATION**

### **1. June 11<sup>th</sup> Email**

46. On June 11, 2012, Norman Dennis sent an email to members of the Executive Council and Connie Waddell, Executive Director and Law Clerk. This email sought the resignation of Connie Waddell, making various allegations of mismanagement and wrongdoing.

## **2. June 14<sup>th</sup> Application**

47. On June 14, 2012, counsel for the Executive Council applied to the Tribunal to have the June 11<sup>th</sup> email from Norman Dennis admitted as evidence in this application. The Executive Council argued that the email is relevant to the matter before the Tribunal as being part of the course of communication which the Tribunal is considering in this application. The Executive Council pointed to the list of recipients, including Executive Director Connie Waddell, the contents of the email, and the timing of the email, which occurred after the meeting between representatives of Executive Council, which occurred May 6, 2012, and about which the Tribunal heard evidence.

## **3. Tribunal Decision**

48. By email communication among the Tribunal members, the Tribunal considered the application to add the June 11<sup>th</sup> email to the record. In the result, the Tribunal, by a majority, agreed to admit the new evidence.

49. Accordingly, the Affidavit #2 of Jeff Cook, including the June 11<sup>th</sup> email from Norman Dennis is added to the record of this application as Exhibit 11.

## **4. Majority Reasons**

50. The majority of the Tribunal agreed that the new evidence should be accepted. The majority noted that it is not desirable to re-open a hearing when it is closed, and also that courts are generally reluctant to allow new evidence once a trial has been concluded. However, the majority concluded that the usual considerations which would restrict the consideration of fresh or new evidence after a hearing is closed, are largely inapplicable in this case, making the following observations:

- (a) The evidence sought to be introduced is “new”, not having been in existence at the time of the hearing. Thus there is no issue respecting any lack of diligence on the part of Executive Council or counsel.
- (b) The finality of the proceeding is not affected as the Tribunal has not yet come to a decision.

- (c) The new evidence does not raise new issues.
- (d) The evidence is relevant, in that, it appears to demonstrate continuity of the course of conduct raised by the application, and may assist the Tribunal in its consideration of the context of the communications.
- (e) There is no issue of prejudice to any party, since this is not an adversarial proceeding but rather a reference.
- (f) Adding the evidence to the record will involve minimal work for the Tribunal.

51. This majority ruling was agreed to by Chair John Rich and Tribunal Members Trudy Warner, Florence Wylie and Marie Nookemis.

## **5. Dissent**

52. Vice Chairman Hugh Braker dissented from the majority view, in separate reasons, finding that the new evidence should not be allowed.

## **D. TRIBUNAL JURISDICTION**

### **1. This Application**

53. The HFN Tribunal is established by the *Tribunal Act*. The jurisdiction of the Tribunal is established at Section 17 of the *Act*. In relation to the present application, the following sections are relevant:

17 (1) Subject to this Act, the tribunal has jurisdiction to inquire into and

...

(b) hear and decide challenges to the validity of and references regarding Huuay-aht law,

...

(g) perform other duties or exercise other powers assigned to the tribunal by Executive Council or by Huu-ay-aht law.

### **2. Reference (s. 17(1)(b))**

54. Under s. 17(1)(b), the Tribunal is asked to interpret laws applicable to HFN Government, HFN Administration and HFN citizens. Counsel submitted that this reference was

broader than the mere application of law to the specific facts before the Tribunal, and sought general guidance on these matters.

55. Counsel referred the Tribunal to the Supreme Court of Canada decision in *Reference re Secession of Quebec*, [1998] 2 SCR 217. In the *Quebec Reference*, the Supreme Court of Canada considered the role of the court to undertake advisory functions. The court held: “even though the rendering of advisory opinions is quite clearly done outside the framework of adversarial litigation, and such opinions are traditionally obtained by the executive from the law officers of the Crown, there is no constitutional bar to this Court’s receipt of jurisdiction to undertake such an advisory role.”

### **3. Perform Other Duties (s. 17(1)(g))**

56. Under Section 17(1)(g) of the *Tribunal Act*, the Tribunal is given jurisdiction to “perform other duties” assigned by the Executive Council. Counsel cites this section as empowering the Tribunal to conduct an inquiry into citizens’ communications with Government and Administration and the consequences of those communications, in a non-adversarial setting.

### **4. Conclusion on Jurisdiction**

57. The Tribunal acknowledges the broad jurisdiction conferred by s. 17(1)(b) and (g) which form the basis for this inquiry by the Tribunal.
58. The request of the Executive Council for advice from the Tribunal respecting the interpretation of Huu-ay-aht law under s.17(1)(b) is consistent with the approach of the Supreme Court of Canada in the *Quebec Secession Reference*. Following the guidance of the court, the Tribunal is not restricted to dealing only with adversarial proceedings or “live” issues, but may engage in consideration of hypothetical matters involving the interpretation or clarification of HFN law.
59. Thus, the Tribunal intends this decision, although arising from a limited set of facts, to be of broad application, and to be of assistance to Huu-ay-aht Government, Administration and citizens in the administration of Huu-ay-aht affairs.

60. Having come to this conclusion, however, the Tribunal observes that to some extent the issues raised in this application relate to administrative and management matters. The jurisdiction of the Tribunal does not extend to providing management advice. Thus, although the Tribunal makes some observations and recommendations respecting management and administrative procedures, the analysis of HFN Administrative Procedure is largely beyond the expertise and jurisdiction of the Tribunal.

**E. THE HEARING**

61. The hearing of this matter was held over three days at Anacla and Port Alberni. The Tribunal heard the evidence of five witnesses and received into evidence an affidavit and several pieces of correspondence. The Executive Council was represented by counsel. The Ha'wiih Council appeared as an intervener in the proceeding, represented by Tyee Ha'wiih Derek Peters. Additional correspondence was submitted into evidence on application by the Executive Committee June 14, 2012.

**1. The Evidence**

*Affidavit #1 of Jeff Cook sworn April 19, 2012*

62. In his affidavit, Chief Councillor Jeff Cook provided a series of correspondence between Norman and Rita Dennis and HFN representatives. Chief Cook also recounted the concerns expressed by Director of Public Works, Rodney Murray, Director of Finance and Government Services, Alan Legg, and Executive Director, Connie Waddell respecting issues of harassment and racism directed at HUU-ay-aht Administration.

*Witness: Rodney Murray*

63. Mr. Murray holds the position of Director of Public Works with the HFN Government, which he has held for approximately six years. As such, he is the senior Government employee working at Anacla. He has an office in the Government offices building at Anacla, but spends significant working time in the village. He also resides in the village.

64. Mr. Murray is not an HFN citizen, and is non-aboriginal.

65. As of March 11, 2012, Mr. Murray has been on medical leave as a result of job related stress and health issues.
66. Mr. Murray testified respecting various matters which interfered with his ability to do his job, and affected his health. These included a series of communications from Norman and Rita Dennis, incidents in the village, and incidents at the Anacla Government offices, involving racism and intimidation.

Witness: Alan Legg

67. Alan Legg has held the position of Director of Finance and Government Services with the HFN Government for approximately three years. He is currently on vacation leave, pending his retirement in the summer of 2012.
68. Mr. Legg testified respecting circumstances and incidents at the HFN Government offices in Port Alberni involving racism, disrespect and low morale.

Witness: Connie Waddell

69. Connie Waddell is the Executive Director of the HFN Government. She has held that position since the effective date of the Maa-nulth Treaty, April 1, 2011. She has worked for the HFN Government for 12 years, most of that time in a senior position.
70. Since February 17, 2012, Ms. Waddell has been on medical leave as a result of job related stress.
71. Ms. Waddell testified respecting a series of communication from Norman and Rita Dennis spanning the period summer 2011 to February 2012, which involved harassment and racism directed toward HFN Government staff. She also testified respecting her attempts to deal with the harassment and racism, which led to frustration, and eventually her job related stress leave.

Witness: Tom Happynook

72. Tom Happynook is a hereditary chief of the HFN. He testified on behalf of the intervener Ha'wiih Council.

73. Mr. Happynook had a traditional upbringing, being raised from an early age to become a hereditary chief.
74. Mr. Happynook testified respecting the traditional law of *ii-saak*, and its relevance to the interpretation of HUU-ay-aht law.

Witness: Jeff Cook

75. Chief Councillor Jeff Cook was called as a witness for the limited purpose of describing recent dealings with Norman and Rita Dennis and the prospect of a meeting between members of Executive Council and the Dennises.

Documentary Evidence

76. Documentary evidence was submitted with the Affidavit #1 of Jeff Cook; in the course of testimony of witnesses; and the application to admit new evidence June 14, 2012. A summary of the documentary evidence is set out in Schedule A to this decision.

Norman and Rita Dennis

77. The Tribunal notes that Norman and Rita Dennis, whose communications with HFN Administration and Government formed the basis of this application, did not appear before the Tribunal and did not submit evidence. The Tribunal was advised that Norman and Rita Dennis had been advised of the application by Executive Council, including the opportunity to intervene in the hearing, and were aware of the place and date of the hearing.
78. This application is not an adversarial proceeding and no finding of wrongdoing or sanctions against Norman and Rita Dennis are sought.
79. Thus, the failure to hear from Norman and Rita Dennis does not prevent the Tribunal from assessing the content, circumstances and consequences of their course of communication with HFN Administration and Government.

**2. Issues**

80. In the course of submissions made on behalf of Executive Council, the Tribunal questioned the breadth of the application before the Tribunal, and the consequent determinations to be made.
81. The thrust of submissions of counsel for Executive Council is that the Tribunal should take a broad view of its jurisdiction and the inquiry mandated by the Application. In Supplementary Written Submissions, May 14, 2012, counsel clarified the expectations of Executive Council:

This is not an adversarial proceeding. Executive Council does not make submissions to “defend” any actions it did or did not take during the relevant time period. Nor does Executive Council seek findings of “culpability” with respect to the communications at issue in this proceeding. But Executive Council does want to know what standard of conduct was required of the parties involved, and whether the parties’ conduct met that standard or fell short. And, in so far as this chain of events has culminated in the employee consequences about which the Tribunal has heard evidence, what should be done differently in the future?

82. The matters to be determined by the Tribunal are framed by paragraphs 22 and 23 of the Application and may be broken down as follows:
- (a) an inquiry into the circumstances of the two citizens communications with government and administration, including whether the communications were appropriate and whether they amounted to harassment or discrimination under HFN law;
  - (b) an inquiry into the consequences of those communications, including the effect on the HFN work place, employees, Connie Waddell and Rodney Murray, and the functioning of the HFN Government;
  - (c) definition and application of the principles of *ii-saak*;
  - (d) the content and application of customary law;

- (e) an interpretation of rights and obligations of HUU-ay-aht Government and citizens in light of HUU-ay-aht law, including the standard of conduct required and whether that standard was met or not; and
- (f) recommendations to Executive Council in respect of these matters, including what should be done differently in the future.

**F. FACTS**

83. The Tribunal finds the relevant facts as follows.

**1. Background**

84. The issues before the Tribunal arise from a course of communications between two HUU-ay-aht First Nation citizens, Norman and Rita Dennis, and the HFN Administration and Government, that are alleged to have disrupted the work place of and resulted in complaints of discrimination and harassment from HFN employees to government.
85. The Affidavit of Chief Councillor Jeff Cook (Exhibit 1) sets out correspondence from Norman and Rita Dennis to HUU-ay-aht Government and Administration over a period from December 2011 to February 2012. The Tribunal also heard evidence of other communications from the Dennises to HUU-ay-aht employees in 2011 and 2012, as well as evidence respecting dealings between members of Executive Council and the Dennises in 2012.
86. The apparent impetus of the communications from Norman and Rita Dennis, at least initially, was the expectation on the part of Norman Dennis that he was to be awarded a contract to replace the floor in the House of HUU-ay-aht. This expectation was based on dealings between Norman Dennis and previous (pre-Treaty) Chief Councillor. The evidence is clear that Norman Dennis had a firmly held expectation of a contract. However, Executive Director Connie Waddell explained in her evidence that there was no specific budget allocation for the floor replacement nor was there any written agreement that the work be carried out. At the effective date, any contract as significant as a floor replacement became subject to the legislated purchasing policy which required a competitive bidding process.

87. In the course of the hearing of this matter, the Tribunal heard evidence of other incidents involving harassment and discrimination by other persons than Norman and Rita Dennis. This evidence was received as helping to establish the context of the communications from Norman and Rita Dennis, and their consequences.
88. The evidence dealt with events which spanned the period of over a year, from February 2011 to June 2012, although some underlying issues appear to go back to 2010 or earlier.
89. A date which is fundamental to the matters before the Tribunal is April 1, 2011, the effective date of the Maa-nulth Treaty. As of this date, laws and policies binding the HFN Administration in financial matters came into effect. The newly effected laws also established responsibilities for HFN government and citizens.

## **2. Chronology**

### 2010 – Flooring Contract

90. During 2010 there were discussions between Norman Dennis, former Chief Councillor Robert Dennis, and Executive Director Connie Waddell, respecting a contract to replace the floor in the House of HUU-ay-aht. These discussions led to different understanding on the part of Mr. Dennis on the one hand, and the HUU-ay-aht Administration on the other.
91. Norman Dennis' understanding, which may be gleaned from his correspondence, was that he had, or was to be given, a contract to replace the floor in the House of HUU-ay-aht, which had been damaged. In his email of February 7, 2011 to Connie Waddell, he provides a price for the project, and makes reference to discussions of the project on June 24, 2010 and September 15, 2010. He also asserts that "you requested this project to begin in 2010 on the month of April". In his email of July 26 to Rodney Murray, Mr. Dennis asserts "this project was given to me July 2010 by Robert Dennis then Chief, and Connie Waddell, current Band Manager." On the other hand, the evidence of Connie Waddell was that there was no contract. She testified that the previous Council approved a budget which included enough for flooring, but flooring was not specifically mentioned. It was her evidence that the previous Council would have had to take further

steps of approving this specific project. After the effective date, April 1, 2011, any significant contract required competitive bids to be accepted.

92. Despite the discussions in 2010 respecting replacement of the floor, an alternative solution was found and the floor of the House of HUU-ay-aht was never replaced.
93. The Tribunal accepts the evidence of Connie Waddell that there was never a contract in place, and that subsequent to April 1, 2011, a contract could only be let having first obtained competitive bids. Nevertheless, the Tribunal notes the firmly held expectation of Norman Dennis that the flooring project had been given to him in 2010.

#### February 2011 – Flooring Contract Inquiry

94. On February 7, 2011, Norman Dennis emailed Connie Waddell, providing his quote for the flooring project (Exhibit 4). The next day, Connie Waddell replied that she did not have funds for the project until the start of the new fiscal year and that she would need a breakdown of the cost so that she could draft a contract. Ms. Waddell also stated that she would have to show that the quote provided by Mr. Dennis was the best one out of three. (Exhibit 4)
95. The Tribunal finds that the conditions identified by Connie Waddell respecting contracts would put a reasonable person on notice that there could be no assurance of a contract award. However, the Tribunal also observes that the fact that Mr. Dennis could no longer be assured of a contract award could have been more expressly stated.

#### April 1, 2011 - Effective Date

96. April 1, 2011 was the Effective Date for the Maa-nulth Treaty. This had various consequences relevant to the present matter.
97. On this date HUU-ay-aht laws came into effect, establishing HUU-ay-aht Government and terminating the previous structure under the *Indian Act*. Excerpts of laws relevant to this application, which came into effect April 1, 2011, are set out in Section F, below.

98. In respect of any substantial contracts, which would have included floor replacement for the House of HUU-ay-aht, a binding policy came into effect that such contracts could only be let on the basis of competitive bids.
99. Connie Waddell testified that prior to Effective Date there was a lot of harassment which was hard to manage without any laws or policies in place. It was her expectation that after Effective Date the Oath and Code of Conduct would rectify that situation.
100. Although HFN Administration employees expected that harassment of staff by HFN members would decrease or be eliminated as of the effective date, that expectation was overly optimistic.
101. The evidence established that Norman Dennis made numerous telephone calls of a harassing nature to HFN Administration, however, there is no evidence that any formal steps were taken in 2011 to bring the issue of the flooring contract to a head, nor to seek to have Norman Dennis cease his telephone calls.

Summer 2011

102. In the late spring or early summer of 2011, Norman Dennis made enquiries by telephone respecting his expectation of receiving a contract for replacing the floor in the House of HUU-ay-aht. Apparently there were many calls in this regard. Connie Waddell testified that "Norman called on a very regular basis". She also characterized his calls as "harassment".
103. In response to the numerous calls, and after conferring with Connie Waddell, on June 27, 2011, Rodney Murray sent a brief email to Norman Dennis to explain the Purchasing Policy Regulation, which required competitive bids for major contracts.
104. On July 18, 2011, Norman Dennis sent an email to Connie Waddell referring to the flooring project. The identical email was sent to Rodney Murray July 22<sup>nd</sup>. The email is somewhat cryptic, but written in an angry and disrespectful tone. Mr. Dennis asserted "I don't know what part you don't understand Rodney, I will tell you again for the tenth time the House of HUU-ayt was giving [sic] to me". (Exhibit 3, 5). The evidence of

Connie Waddell was that there were numerous emails from Norman Dennis, apparently of similar content.

105. Connie Waddell forwarded the email, the same day received, to members of the Executive Council, with the statement “keeping you in the loop”. (Exhibit 6)
106. Rodney Murray responded to the email from Norman Dennis that he could not answer questions about the Administration Building because he was not included in the process. He also referred to Government administration under the Treaty. (Exhibit 3)
107. Norman Dennis responded July 26 with an email to Rodney Murray, Connie Waddell and Chief Councillor Jeff Cook. (Exhibit 7) The email again asserts that the flooring project was given to Mr. Dennis in July 2010 by former Chief Robert Dennis and Connie Waddell. Again the tone is disrespectful. It concludes “when was the last time you helped anyone off reserve or on reserve other than a friend or relative”.
108. The evidence makes it clear that, by the summer of 2011, the assertions and demand of Norman Dennis respecting the flooring contract had become a significant issue for the HUU-AY-AHT Administration. As a consequence, Connie Waddell had a number of discussions on and off the record with Executive Council about how they could answer Norman Dennis’ questions, in order to “put an end to the flurry of emails and poor behavior”. However, there is no evidence that the Executive Council, nor any individual Councillor, became involved in communications with Norman Dennis at this time. Connie Waddell’s evidence, which the Tribunal accepts, was that Council was aware of the issues with Norman Dennis but chose not to do anything.

### September 2011

109. In or about September 2011, Rodney Murray made a presentation to Executive Council respecting an alternative plan for the House of HUU-AY-AHT. One alternative was to deal with the skylights directly above the damaged floor, for a cost of \$2,000.00, rather than the \$100,000.00 cost of a new floor. The Executive Council directed Rodney Murray to research the skylight option. To date the floor has not been replaced.

110. Although the Executive Council was aware that Norman Dennis had expectations of receiving a contract to replace the damaged floor, and that his expectations were at least partially to blame for his harassing communications with HFN Administration, Norman Dennis was not advised of the consideration of alternatives which involved not replacing the floor.

October – November 2011 – People’s Assembly

111. On October 25, 2011, a package of material was provided to all Huu-ay-aht members respecting the People’s Assembly scheduled for November 26, 2011. This package included an Agenda, Financial Statements and information on bringing citizen motions to the Assembly.
112. Norman and Rita Dennis attended the People’s Assembly. They did not take advantage of this opportunity to obtain information or raise issues respecting HFN finances and plans, although the materials provided to all members made these opportunities clear. They asked no questions in respect of the presentation of the financial statements, nor did they take part in the discussion of the strategic plan put forward by the Executive Council.
113. The evidence of Connie Waddell was that the only contribution the Dennises made to the Assembly was a complaint in regard to the number of white people working at the HFN. There was no response made to these assertions by government members.
114. Although there was an opportunity to do so, the Dennises did not make any motion at the People’s Assembly.
115. The Tribunal finds that the People’s Assembly provided a reasonable opportunity for Norman and Rita Dennis for both obtaining information and having input into HFN affairs. Their failure to do so suggests that their correspondence with HFN Government and Administration, both before and after the People’s Assembly, was not in good faith.

November 2011

116. It is apparent from Tom Happynook's email to Executive Council, dated January 12, 2012 that on November 19, 2011 there was a meeting with Vancouver citizens where the process for getting contracts was explained (Affidavit of Jeff Cook, Exhibit "D").
117. It is apparent that Norman Dennis attended that meeting. This meeting should have resolved any uncertainty or misunderstanding which Norman Dennis had previously held respecting the flooring contract he sought.

December 2011

118. On December 14, 2011, Norman Dennis made a posting on Facebook, which included criticism of Rodney Murray, criticism of the HUU-AY-AHT Administration and negative comments about the HFN financial situation (Affidavit of Jeff Cook, Exhibit "B"). The posting included complaints that "white people are on our payroll" and "I and most members will not answer to a white CEO".
119. This posting included advocacy of discrimination based on race. Also, by posting the communication on Facebook, the communication was intended to and would have reached a significant audience including HFN members and administrative staff.

January 3, 2012

120. On January 3, 2012, HUU-AY-AHT Administration received an email from Norman Dennis with an attachment which repeated the Facebook posting of December 14, 2012, and contained additional allegations respecting expenditures approved by Connie Waddell. (Affidavit of Jeff Cook, Exhibit "C"). In addition to the HUU-AY-AHT Administration reception, the email was addressed to several members of Executive Council and Connie Waddell.
121. Both Connie Waddell and Rodney Murray testified that they felt harassed by the Facebook posting, which was repeated in the January 3<sup>rd</sup> letter.

January 11, 2012

122. On January 11, 2012, Norman Dennis called Councillor Tom Happynook to discuss a number of issues. This discussion is recounted in an email from Tom Happynook to Executive Council members, and copied to Norman Dennis, January 12, 2012 (Affidavit of Jeff Cook, Exhibit “D”). Mr. Dennis’ concerns included the hiring of non-Huu-ay-aht, not dealing with his recent letter, and holding meetings in Anacla. Tom Happynook provided explanations and clarification in response to these points. Mr. Dennis also raised the issue of the flooring contract. On this point Councillor Happynook stated “I mostly only listened to him on this issue. I didn’t have anything to add as we had explained the process for getting contracts when we met with Vancouver citizens on November 19, 2011”.

January 18, 2012

123. On January 18, 2012, the monthly Executive Director’s Report to Executive Council was presented. The report included a section written by Rodney Murray respecting discrimination and harassment. Mr. Murray advised that “it is my goal in writing this report to bring light to the fact that, constituents need reminding of these laws. It is also helpful to all staff to know and hear when issues are dealt with”. (Affidavit of Jeff Cook, Exhibit “E”)
124. As a result of the communications from Norman and Rita Dennis, and the staff report to Executive Council, it was determined that Councillor John Jack and Connie Waddell would draft a letter to address the Dennis correspondence, to be sent by the Executive Council. The final draft of this letter was approved toward the end of January, and was to be sent to the Dennises on February 3, 2012.
125. The Tribunal notes that, although the Executive Council had not previously addressed the Norman and Rita Dennis issues, the Executive Council acted on employee complaints, once they have been raised formally by the Executive Director report.

February 2, 2012 – Further Communications

126. On February 2, 2012, a letter was faxed to the Huu-ay-aht Administration, with no addressee, but including statements directed to Connie Waddell and Chief Councillor Jeff Cook. The letter was written in a disrespectful tone and raised issues demanding an explanation of the NORA grant, criticized construction of the Administration Building and hiring of Rodney Murray, and criticized hiring white people (Affidavit of Jeff Cook, Exhibit “F”).
127. Connie Waddell testified that her reaction to the February 2<sup>nd</sup> letter was “more frustration, more inaccurate information and another attack...same things over again”. Chief Councillor Jeff Cook directed Connie Waddell to respond to the letter.

February 3, 2012 – Response

128. On February 3, 2012, the previously drafted letter in response to the Dennises letter of January 3<sup>rd</sup> was sent. This letter responded in detail to the matters raised by the Dennises in their letter of January 3, 2012. The letter was written in a very respectful tone, making no criticism of the persistent communications from Norman and Rita Dennis. The letter was signed by all members of the Executive Council as well as Executive Director Connie Waddell (Affidavit of Jeff Cook, Exhibit “G”).
129. The February 3<sup>rd</sup> response to Norman and Rita Dennis by the Executive Council was the first time that the Executive Council had become directly involved in dealing with the criticisms and questions of Norman and Rita Dennis. Previous to this date responses had been left to HFN Administration.

February 14, 2012 – Further Communications

130. On February 14<sup>th</sup>, Norman Dennis sent another email to Connie Waddell and Jeff Cook, again in an accusatory tone, concerning burial expenses (Affidavit of Jeff Cook, Exhibit “H”).
131. This time, Jeff Cook responded the same day with an explanation (Affidavit of Jeff Cook, Exhibit “I”).

132. Following the February 14<sup>th</sup> email from Norman Dennis, Connie Waddell testified that she “gave up” and “walked out”. She said she was not doing her job anymore but “catering to Norman and Rita Dennis”. Ms. Waddell went to the doctor who put her on medication and prescribed a series of medical tests. As of the date of the hearing, she has been on medical leave since February 14<sup>th</sup>.

February 17, 2012 – Staff Response

133. On February 17<sup>th</sup>, Ms. Waddell provided an email to the members of Executive Council, referring to the reasons for her leave. She expressed her concerns about harassment and the lack of consequences for the harassers so she could not protect her staff. She referred to a “small minority who behaved poorly but yet dominate” (Affidavit of Jeff Cook, Exhibit “J”).
134. Also on February 17<sup>th</sup>, Alan Legg, Director of Finance and Government Services, sent a letter to Chief and Council, making references to February 2, 2012 letter from Norman and Rita Dennis, asserting their communications were harassment and violated employee rights. Mr. Legg requested the Executive Council to address the harassers. (Affidavit of Jeff Cook, Exhibit “K”).

February 17, 2012 – Executive Council Response

135. On the same day as the letter from Alan Legg was received, a letter was sent to Norman and Rita Dennis signed by Chief Councillor Jeff Cook and Ta’yii Hawilth Derek Peters, asserting that the communications from the Dennises amounted to harassment, were racist and discriminatory and stated “on behalf of the Huy-ay-aht Council we are directing to immediately cease communicating with HUU-ay-aht employees, both in writing and verbally”. The letter also cited the HFN Harassment Policy and the Constitution. (Affidavit of Jeff Cook, Exhibit “L”).
136. Three days later, on February 20, 2012, an open letter was sent to all HUU-ay-aht citizens signed by Chief Councillor Jeff Cook and Ta’yii Hawilth Derek Peters. The letter referred to harassment, racism and discrimination in citizen communications and stated

that the Executive Council would take necessary steps to enforce HUU-ay-aht laws (Affidavit of Jeff Cook, Exhibit "M").

February 29, 2012 – Further Communications

137. On February 29, 2012, a letter was sent by email from Norman and Rita Dennis to the members of the Executive Council, Connie Waddell and former Chief Councillor Robert Dennis. The letter denied racism and denied communications with employees (Affidavit of Jeff Cook, Exhibit "M").
138. On February 29, 2012, Councillor Tom Happynook sent an email to Executive Council Members regarding a telephone discussion with Norman Dennis. Claims by Norman Dennis that he has support of members, that he is not racist, that Connie Waddell "has just hired her friends", HFN should be trained to fill jobs, says "we have not answered one of their questions", and they want their letters to be made public making the other side of the story available to HUU-ay-aht members (Affidavit of Jeff Cook, Exhibit "P").
139. The Tribunal finds that Norman Dennis' denials are clearly false. For example, emails were directed to staff member Rodney Murray on July 22 and 26, 2011. Racist comments are contained in the December 14<sup>th</sup> Facebook posting and January 3<sup>rd</sup> letter.

March – April 2012

140. On March 12, 2012, Chief Councillor Jeff Cook emailed Norman Dennis advising that future correspondence should be sent to HFN legal counsel and requested that Norman Dennis' legal counsel contact HFN legal counsel. (Affidavit of Jeff Cook, Exhibit "O").
141. At some time in March 2012, Rodney Murray received medical advice to take stress leave. He attributed this to the various problems he had experienced in the HUU-ay-aht community involving discrimination and racism.
142. On March 31, 2012, Tom Happynook sent another email to Executive Council members, recounting another telephone discussion with Norman Dennis. Norman Dennis advised that he is going to the media; complains about HFN expenditures; complains about scheduling meetings on weekdays; asserts that nepotism is worse now than ever;

complains that advertising of employment opportunities is not good enough. (Affidavit of Jeff Cook, Exhibit “Q”).

143. On April 13, 2012, Tom Happynook recounted a further discussion with Norman Dennis, setting out numerous complaints of Norman Dennis. (Affidavit of Jeff Cook, Exhibit “R”).

#### April – May 2012

144. In April and May 2012, the Executive Council, following the facilitation of former Chief Councillor Robert Dennis, attempted to resolve the issues with Norman and Rita Dennis by traditional means.
145. In late April 2012, former Chief Councillor Robert Dennis emailed Executive Council members, Jeff Cook, Derek Peters, Tom Happynook and John Jack, regarding a potential meeting with Norman and Rita Dennis. In the result, a meeting was confirmed for May 6, 2012 “beginning with a lunch as per our custom”.
146. The Tribunal did not receive evidence of the May 6<sup>th</sup> meeting, however, the attempt to resolve Mr. Dennis’ issues and behavior through the traditional process appears to have been unsuccessful, based on the email from Norman Dennis received by Executive Council and Connie Waddell on June 11, 2012.

#### June 2012

147. On June 11, 2012, Norman Dennis sent an email to Executive Council members and Executive Director Connie Waddell seeking Connie Waddell’s resignation as Executive Director and Law Clerk, and making various allegations of mismanagement and wrongdoing by Connie Waddell.
148. The Tribunal finds this email to be a continuation of the course of communications from Norman Dennis which commenced in the spring of 2011, both in tone and content.

### **3. General**

149. The Tribunal notes additional facts that do not fit neatly in the chronology above.

150. The Tribunal received a significant amount of evidence respecting harassment and racism directed at HFN Government employees. The Tribunal also heard evidence of attempts by HFN Government administration as well as HFN Executive Council to deal with harassment and racism.

Effective Date

151. Connie Waddell testified that, prior to effective date, Norman Dennis had been successful in achieving his objectives through aggressive and harassing behavior. She gave an example of a generator purchased from Norman Dennis by the HFN which had been unnecessary and was unused. She attributed this purchase to acquiescence by the previous Council to the aggressive and harassing behavior of Norman Dennis, as opposed to following procedures now established by the purchasing policy which became effective with the Treaty.
152. The Tribunal finds that the changes to HFN law, policy and procedures which came into effect on Effective Date are not well understood by Norman and Rita Dennis and possibly other HFN members.

Harassment and Discrimination Generally

153. Rodney Murray testified that he experienced racism and intimidation in the Anacla village. He testified that he had sought assistance of the Acting Executive Director in the spring of 2012, seeking a plan to protect him and his employees from discrimination and harassment, but received a response that the Acting Executive Director would do nothing, but would wait for Executive Council.
154. Rodney Murray also testified about an incident of harassment where the Executive Director acted promptly to deal with his concern. In that case, a letter was written by the Executive Director that outlined the respective responsibilities of him as a staff member and the harassing individual as a community member, clarifying Huu-ay-aht policies and the consequences of engaging and harassing activity. Rodney Murray characterized this as a success story, stating that since that time he and the formerly harassing individual had been able to deal in a respectful manner with one another.

Disruption of Work Place

155. Alan Legg testified regarding his experience of the HFN Administration work place in the winter of 2011-12. Mr. Legg's evidence was that the communications from Norman and Rita Dennis negatively affected the work place. The departure of Connie Waddell on stress leave meant more workload. Morale was low. Mr. Legg also identified incidents with other citizens, which he considered disrespectful and hostile. He expressed serious concern about racism in the community.
156. The Tribunal finds that the communications of Norman and Rita Dennis with HFN Administration, together with the actions of small minority of HFN members, had significantly disrupted the workplace by the winter of 2011-12, if not before.
157. The Tribunal finds that the medical leave of absence of Executive Director Connie Waddell and Director of Public Works Rodney Murray in the winter/spring of 2012 disrupted the HUU-AY-AHT administration, increased work load and resulted in low morale.

Communications from Norman and Rita Dennis Generally

158. With respect to the communications from Norman and Rita Dennis, the Tribunal finds:
- (a) the tone of communications was generally disrespectful;
  - (b) the intention of the communications was to pressure the HFN Government and Administration, as evidenced by a posting to a broad audience through Facebook and a threat to go to the media (Affidavit #1 of Jeff Cook, Exhibits B, Q);
  - (c) the communications were repetitious, with assertions being repeated regardless of whether responses and further information had been provided to the Dennisses. (Affidavit #1 of Jeff Cook, Exhibits B, C, F, H; Exhibits 3, 4, 5, 6, 7).
  - (d) communications were directed to administration and staff as well as HFN Government (e.g., Affidavit #1 of Jeff Cook, Exhibit F, Exhibit 3);

- (e) at least some of the communications contained racially discriminatory statements and advocated discrimination on the basis of race (e.g., Affidavit #1 of Jeff Cook, Exhibits B, C)
159. The Tribunal finds that the threat by the Dennises to continue communications, in spite of having received substantive responses to previous communications, indicates an intention on the part of the Dennises to harass HFN Government and Administration (Affidavit #1 of Jeff Cook, Exhibit F).
160. This conclusion is strengthened by the fact that Norman and Rita Dennis did not avail of themselves of opportunities to raise their concerns respecting contracts and financial matters at the People's Assembly in November 2011.

Response to Communications

161. The Tribunal finds that the concerns raised in the correspondence from Norman and Rita Dennis were substantially responded to by either administration or government, throughout the course of the correspondence from spring of 2011 to February 2012. The exception to this was the issue of the NORA grant, regarding which Norman Dennis raised questions and made assertions beginning in February 2012.
162. The Tribunal finds by the summer of 2011 at the latest:
- (a) persistent communications from Norman Dennis were having a negative effect on the work of Connie Waddell and Rodney Murray;
  - (b) dealings with Norman Dennis by Rodney Murray were made worse by the community atmosphere which Rodney Murray perceived as racist; and
  - (c) Executive Council was aware that the communications of Norman Dennis were considered to be a problem, but took no action.
163. The Tribunal finds that at this point the Chief Councillor and Executive Council should have been aware of the seriousness of the situation for Connie Waddell and other employees, and thus should have taken responsibility for dealing with Norman Dennis.

164. Despite the awareness of the problems being caused by Norman Dennis' communications, neither the Executive Council nor individual Councillors had direct involvement with Norman Dennis until November 2011, at which time Council or Councillors provided information to members, including Norman Dennis about contracting with the HFN. There was no direct engagement with Norman Dennis to indicate disapproval of his conduct until February 2012.
165. The Tribunal finds that the letter of February 17<sup>th</sup> to Norman and Rita Dennis, and the open letter of February 20, 2012 to all Huv-ay-aht citizens were appropriate in the circumstances, but were too late in supporting the HFN Administration.

**G. RELEVANT LEGAL PRINCIPLES**

**1. General**

166. There are several sources of law relevant to this Application:

**(a) *HFN Legislation***

167. Legislation enacted pursuant to the Maa-nulth Treaty includes: Constitution Act, Interpretation Act, Government Act, Code of Conduct and Conflict of Interest Act, Financial Administration Act.
168. These acts deal with legal issues raised in this Application. They establish government structure, the roles and responsibilities of Executive Council, Councillors, the Chief Councillor, and employees, and the right and responsibilities of citizens.
169. HFN Government has also enacted a regulation, having the force of law, dealing with workplace harassment (the Human Resource Policy).

**(b) *Customary Law***

170. Customary law is incorporated into HFN law by legislation and is also applicable on common law principles.

171. *Ii-saak*, the concept of respect, is incorporated into HFN law by legislation and is an element of HFN customary law.

(c) ***Canadian Law Generally***

172. The Maa-nulth Treaty provides that the laws of Canada continue to apply to the HFN and HFN members. Canadian law relevant to the present application includes the Charter of Rights and Freedoms, the Canadian Human Rights Act, the Common law relating to employment, and the Common law relating to customary law.

173. These laws, and their application, are discussed more thoroughly below.

**2. Constitution Act**

174. The HFN *Constitution* is set out as a schedule to the *Constitution Act*.

175. Chapter 1 of the *Constitution* deals with the individual rights, freedoms and responsibilities of Huu-ay-aht citizens and provides:

1.3 Every Huu-ay-aht citizen enjoys all of the individual rights and freedoms guaranteed under the Constitution of Canada and by the various instruments of human rights in international law.

1.4 Subject to paragraph 1.2 and to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, all Huu-ay-aht citizens are equal under this Constitution and, based on this equality and in accordance with Huu-ay-aht customary law, possess:

- (a) the right to participate in Huu-ay-aht First Nations political activities, elections and government as set out in Huu-ay-aht First Nations law;
- (b) the right to be informed about Huu-ay-aht First Nations affairs;
- (c) the right to be consulted regarding Huu-ay-aht First Nations affairs;
- (d) the right to express opinions and views on Huu-ay-aht First Nations affairs;

- (e) the right to equal employment opportunities within the Huu-ay-aht First Nations public administration;
- (f) the right to equal provision of public services by the Huu-ay-aht First Nations;

...

1.5 Every Huu-ay-aht citizen, through participation in the Huu-ay-aht community, accepts the responsibilities of citizenship including:

- (a) upholding and respecting this Constitution and Huu-ay-aht First Nations laws;
- (b) fulfilling personal obligations with respect to the care and guidance of our children and families;
- (c) adhering to the teachings related to ii-saak (respect); and
- (d) promoting a healthy and vibrant community for all citizens.

### **3. Interpretation Act**

176. The *Interpretation Act* clarifies what is included in Huu-ay-aht law.

“Huu-ay-aht law” includes Huu-ay-aht Acts, regulations, orders, written policies, customary laws and common law in relation to those Huu-ay-aht Acts, regulations, orders, written policies and customary laws;

177. It is noteworthy that this definition includes customary laws expressly, so that it is unnecessary to determine whether Huu-ay-aht customary law is part of the common law of Canada (discussed below).

### **4. Government Act**

178. The *Government Act* provides that the Chief Councillor has certain responsibilities respecting Huu-ay-aht administration and communication with citizens:

“government member” means an individual who holds an elected, appointed, or hereditary position on Executive Council, the Huu-ay-aht Council, the Legislature, the Ha’wiih Council or the People’s Assembly, or any of their committees, or is within a prescribed class of individuals deemed to be government members;”

“Huu-ay-aht law” includes Huu-ay-aht Acts, regulations, orders, written policies, customary laws, and common law in relation to those Huu-ay-aht Acts, regulations, orders, written policies and customary laws;”

13 (1) The Chief Councillor has the authority and responsibility for all of the following in addition to powers, duties and functions established by other Huu-ay-aht legislation:...

- (c) ensuring Huu-ay-aht citizens are fully informed on Huu-ay-aht issues;
- (d) developing and maintaining effective systems of communication with Huu-ay-aht citizens and other governments;
- ...
- (f) ensuring adherence to, and enforcement of,
  - (i) the Constitution,
  - (ii) Huu-ay-aht legislation, and
  - (iii) Huu-ay-aht policies;
- ...
- (h) promoting Huu-ay-aht values, culture, traditions, and language;
- (i) ensuring proper management and administration of government;

## **5. Code of Conduct and Conflict of Interest Act**

### **(a) *Obligations of Public Officers***

179. The *Code of Conduct and Conflict of Interest Act* provides that all public officers, which include government members and Huu-ay-aht employees and contractors, have obligations:

- 4 (1) Public officers must do all of the following:
- (a) fulfill the Huu-ay-aht oath;
  - (b) uphold, respect, and obey Huu-ay-aht laws;
  - (c) uphold and respect lawful decisions of Huu-ay-aht bodies;
  - (d) uphold the highest ethical standards of conduct when carrying out their official duties;
  - (e) treat Huu-ay-aht citizens, other public officers, and members of the public equitably and impartially;
  - (f) perform their official duties in a conscientious, professional and timely manner;

### **(b) *Huu-ay-aht Oath***

180. The Huu-ay-aht oath is a schedule to the *Code of Conduct and Conflict of Interest Act*. It is attached to these Reasons as Schedule B.

181. For the purpose of this application, the relevant provision of the oath is the obligation of public officers of “following the principle of *ii-saak* (conducting myself honestly and respectfully).”

(c) ***Obligations of Government Members***

182. Government members, as distinct from public officers, are under the following additional specific obligations:

4(2) Government members must make every reasonable effort to meet regularly with HUU-ay-aht citizens to respond to their questions and discuss any issues related to government raised by those citizens.

(3) Government members must avoid making commitments under subsection (2) that exceed their authority to fulfill.

(d) ***Protection of Public Officers***

183. Public officers are also protected under the law against interference in the performance of their duties:

34 (1) A person must not interfere with, hinder or obstruct a public officer in the exercise or performance of his or her powers, duties or functions.

(2) A person who contravenes (1) may be ticketed under Division 3 of Part 3 of the Offence and Law Enforcement Act.

184. The *Compliance Notice and Ticket Regulation*, 20/2011, s. 6(1)(b), provides that the penalty amount for a ticket issued under s. 34(2) of the *Code of Conduct and Conflict of Interest Act* is \$1,000.

**6. Financial Administration Act**

185. The *Financial Administration Act* establishes that the role of the Executive Director in relation to issues raised in this Application:

87 (1) The Executive Director has the power and duty to do all of the following:

- (a) administer government finances and operations;
- (b) ensure the efficient and effective operation of government;

- (c) establish and implement administrative policies, practices and procedures necessary to effectively implement
  - (i) Huu-ay-aht laws,
  - (ii) government policies and programs, and
  - (iii) contracts and agreements entered into on behalf of the Huu-ay-aht;
- (d) administer human resource policies;

## **7. Citizenship and Treaty Enrolment Act**

- 186. The *Citizenship and Treaty Enrolment Act* provides for Huu-ay-aht citizens to take an oath, which is a schedule to that Act, and is attached to these Reasons as Schedule C.
- 187. The question arose in the course of the hearing whether HFN citizens who had not taken the oath were in a different position from those who had.
- 188. For the purpose of this application, the significant provision of the citizen declaration is the requirement that the citizen “adhere to the teachings related to *ii-saak* (respect)”.
- 189. Since the adherence to *ii-saak* is required of citizens by the *Constitution Act*, a failure to take the oath has no effect on that obligation.

## **8. Human Resources Policy Regulation**

- 190. The Human Resources Policy Regulation is enacted pursuant to the *Financial Administration Act*.
- 191. The Regulation (Policy E 1.0) states that all employees have the right to work in a safe and respectful environment, free from and protected from harassment.

### **(a) Definition**

- 192. The Regulation provides a general definition of harassment:
  - Harassment is any improper behaviour by a person that is directed at and offensive to an employee, and which the harasser knew or ought to have reasonably known would be unwelcome.

- Harassment can consist of a single and serious incident or several incidents over a period of time, and which tend to create a negative or hostile work environment. It includes:

- threats, intimidation or verbal abuse;
- unwelcome remarks or jokes about subjects such as race, religion, disability or age;
- displaying sexist, racist or offensive pictures or posters;
- unnecessary physical contact.

- Discrimination with respect to an employee's or person's age, race, colour, nationality, ancestry, religious affiliation, family or marital status, disability, sex, sexual orientation or criminal conviction for which a pardon has not been granted also constitutes harassment and is covered by this Harassment Policy.

- Psychological harassment means any vexatious behavior in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affect an employee's dignity or psychological integrity and that results in a harmful work environment for the employee. A single serious incident of such behavior that has a lasting and harmful effect on an employee may also constitute psychological harassment.

**(b) Policies**

193. The Regulation adopts specific policies respecting harassment:

1. The employer will not accept harassment in any form, and considers harassment to be a serious offence subject to discipline.
2. This policy applies to harassment committed within the course of employment by an employee against another employee and occurring at or away from the workplace, and during or outside normal working hours. It also applies to harassment by a community member against an employee while the employee is working.
3. Allegations of harassment will be dealt with in a fair, unbiased and timely manner.

194. The Regulation includes policy on what to do if harassment occurs:

5. An employee who feels harassed must immediately make the alleged harasser aware of their disapproval and/or uneasiness. To avoid any misunderstanding, the employee should clearly state to the alleged harasser that their action or behaviour amounts to harassment under the terms of the Harassment Policy and should request that the alleged harasser immediately stop the offensive behaviour.

7. An employee who feels harassed may, if unable to resolve the matter directly with the alleged harasser, make a harassment complaint to their Director.

If the complaint relates to the Director, it should be brought to the Executive Director. If it relates to the Executive Director, it should be brought to the Chief Councillor of Executive Council, or his designate.

**(c) *Consequences of Harassment***

195. The consequences of harassment are specified:

16. If harassment is found to have occurred and the harasser is an employee, the discipline policy will be followed. If the harasser is a member of the public, the following penalties will be imposed:

- i. First occurrence – the harasser will be warned in writing that such conduct is unacceptable and must not reoccur;
- ii. Second occurrence – the harasser will not be permitted on the premises where the harassment took place for one month. During the one month period, any contact with the HUU-ay-aht administration will be through another person;
- iii. Third occurrence – the requirement to communicate with the HUU-ayaht administration through another person will be made permanent.

17. This policy does not preclude an employee from filing a complaint of harassment under Section 8 of the Canadian Human Rights Act.

**9. Customary Law**

*Customary Law Under Common Law*

196. Under English law, a custom is a rule or principle of some certainty that has existed since time immemorial. From the earliest times, English common law has recognized that customs are legally enforceable. Customary law is more commonly referred to in the jurisprudence simply as “custom”. It is “an unwritten law or right, established through long use”: *The Dictionary of Canadian Law*, 4th ed. The Supreme Court of Canada has indicated that Aboriginal customary law existing when the Crown asserted sovereignty over the lands of Canada continues in force in Canada except to the extent that it was incompatible with the Crown’s sovereignty, surrendered under treaty, or extinguished by

the government: *R. v. Van der Peet*, [1996] 2 SCR 507; *Mitchell v. M.N.R.*, [2001] 1 SCR 911.

197. Customary law is also expressly made part of HFN law by the *Interpretation Act* (set out above).

#### *Ii-saak*

198. The obligation of HUU-ay-aht citizens to adhere to the principles of *ii-saak* is made clear by paragraph 1.5 of the *Constitution* (cited above). However, the principle of *ii-saak* is not defined in HUU-ay-aht legislation.

#### *Ii-saak as Customary Law*

199. Counsel for the Executive Council submits that *ii-saak* is part of HFN Law as a matter of statutory interpretation (Supplementary Submissions, paras. 8-9). Executive Council does not seek determination as to whether *ii-saak* is part of HUU-ay-aht customary law independent of its incorporation through statute, preferring to reserve that matter for another day (Supplementary Submissions, para. 11).
200. The Tribunal finds that the obligation to adhere to the teachings related to *ii-saak* found in the Constitution, s. 1.5, is sufficient to make *ii-saak* applicable in all respects to this Application. Thus, it is unnecessary to consider the content or scope of HFN customary law in this application.

### **10. Common Law Relating to Employment**

201. The common law of Canada relating to employment is applicable to the HFN. The case of *Stamos v. Annuity Research* (2002) CanLii 49618 (Ont. SC) sets out the relevant standard required of employers:

60 An employer owes a duty to its employees to treat them fairly, with civility, decency, respect and dignity. An employer who subjects employees to treatment that renders competent performance of their work impossible or continued employment intolerable exposes itself to an action for constructive dismissal.

61 In this case, I have concluded that the plaintiff was subjected to treatment that made the performance of her work impossible and her continued employment intolerable. The direct cause of this, however, was not the actions of the employer. Her work environment was poisoned by the disruptive presence of a new employee who subjected her to verbal harassment, threatening and intimidating tactics, unjustifiable attacks on her job performance, unreasonable demands, sexist and bigoted language, hostility toward women and more... But that does not deprive the plaintiff of her remedy or immunize the employer from this claim.

62 Not only is an employer obliged not to treat an employee in a manner that renders competent work performance impossible or continued employment intolerable. An employer has a broader responsibility to ensure to that the work environment does not otherwise become so hostile, embarrassing or forbidding as to have the same effect. As Chadwick J. put it in *Robinson v. Royal Canadian Mint*, [1992] O.J. No. 2270 (Ont. Gen. Div.), aff'd [1997] O.J. No. 1966 (Ont. C.A.), an employer owes a duty "to see that the work atmosphere is conducive to the well being of its employees." An employer's failure to prevent the harassment of an employee by co-employees is an obvious breach of this duty, and has been held to be capable of amounting to constructive dismissal (see *Sheppard v. Sobeys Inc.*, at para. 25.)

63 In this case, the employer consistently failed to fulfil its obligation to the plaintiff to ensure that changes to the work environment brought about by Mr. Hammami did not render competent work performance by Ms. Stamos impossible, or her continued employment intolerable. Mr. Faiz's obsessive zeal to treat Mr. Hammami and Ms. Stamos "equally" meant the Ms. Stamos did not get the support and protection she was entitled to, and Mr. Hammami did not get the progressive discipline he deserved. Instead, Ms. Stamos had her job title changed at the behest of this disruptive employee, and became a virtual prisoner in her own office, living in fear of aggressive behaviour and hostile language. She lost her stature and her dignity in the office, and was left physically, mentally and emotionally drained.

64 Undoubtedly, as in the schoolyard, there are trivial disputes that are best handled by equal treatment of the protagonists, despite the fact that fault may truly lie with one or the other. But to treat an ongoing problem of this nature in that way is nothing less than an abdication of responsibility. To treat the perpetrator of abuse and his victim identically is unjust and unconscionable. The sending of mirror image memoranda in response to the incident of January 21, 2000 was the last straw. The plaintiff was quite entitled to treat the employment relationship as terminated that day.

## **11. Charter of Rights and Freedoms**

202. The Maa-nulth Treaty provides:

1.3.2 The Canadian Charter of Rights and Freedoms applies to each Maa-nulth First Nation Government in respect of all matters within its authority.

203. The Charter of Rights and Freedoms provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
2. Everyone has the following fundamental freedoms:  
...  
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;...
15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

## **12. Canadian Human Rights Act**

204. The *Canadian Human Rights Act* is expressly recognized by the Maa-nulth Treaty at Sections 1.8.7 and 1.8.11.

205. The Act provides:

s. 2 The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

s. 3

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

- 3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.
7. It is a discriminatory practice, directly or indirectly,  
(a) to refuse to employ or continue to employ any individual, or  
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.
12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that  
(a) expresses or implies discrimination or an intention to discriminate, or  
(b) incites or is calculated to incite others to discriminate if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.
13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.
- (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.
14. (1) It is a discriminatory practice,  
...  
(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.  
...

## H. RESOLUTION OF ISSUES

### 1. Principle of *ii-saak*

206. The principle of *ii-saak* is incorporated into Huu-ay-aht law by statute. The *Constitution Act*, Section 1.5(c) provides that “every Huu-ay-aht citizen...accepts the responsibilities of citizenship, including...adhering to the teachings related to *ii-saak* (respect)”.
207. As *ii-saak* applies to “every citizen”, it applies to both Norman and Rita Dennis as well as to the members of the HFN Government.
208. The Tribunal concludes that there is insufficient evidence in this application to fully define *ii-saak*. However, the Tribunal also concludes that the evidence is sufficient to determine that at a minimum, the principle of *ii-saak* requires respectful behaviour by both government members and citizens in all citizen and government dealings.
209. Since *ii-saak* is expressly made part of HFN law by the *Constitution Act*, it is unnecessary, at least in this instance, to determine whether *ii-saak* is independently applicable as customary law.
210. The Tribunal finds that members of the Executive Council followed the principles of *ii-saak* in dealing with, or attempting to deal with, Norman and Rita Dennis. In this regard, the Tribunal notes the several lengthy telephone discussions with Norman Dennis, testified to by Executive Council member Tom Happynook, the comprehensive written responses provided to Norman Dennis in February and March 2012, and the attempt to resolve matters in a traditional manner May 6, 2012.
211. On the other hand, the Tribunal finds that Norman and Rita Dennis failed to respect the principle of *ii-saak*. This lack of respect was demonstrated in the content, tone, and persistence of the communications from Norman and Rita Dennis.

### 2. Customary Law

212. Customary law is incorporated into HFN law, both expressly and as a matter of common-law. However, notwithstanding that customary law may relate to the citizen

communications which are at issue in this application, there was insufficient evidence before the Tribunal to determine the content of that customary law. In any event, the statutory law, including the incorporation of the principle of *ii-saak* is sufficient for the Tribunal to determine the issues raised on the application.

### **3. Rights and Obligations of Government and Citizens**

213. Issues respecting the obligations of Government and citizens under HFN law may be broken down:

- (a) Obligations of Executive Council;
- (b) Obligations of Chief Councillor;
- (c) Obligations of Ha'wiih Council;
- (d) Rights and Obligations of Executive Director;
- (e) Rights and Obligations of employees;
- (f) Rights and Obligations of citizens;

#### *Obligations of Executive Council*

214. The Executive Council has statutory obligations for conducting its business, including obligations toward its citizens. As an employer, the Executive Council has obligations toward employees.

215. As public officers, members of the Executive Council are bound by the *Code of Conduct and Conflict of Interest Act*, Section 4(1) that “public officers must treat HUU-ay-aht citizens, other public officers and members of the public equitably and impartially”. That section also requires that public officers must fulfill the HUU-ay-aht oath, which includes the obligation to follow the principle of *ii-saak*.

216. The *Code of Conduct and Conflict of Interest Act* also requires of government members that “they make every reasonable effort to meet regularly with HUU-ay-aht citizens to

respond to their questions and discuss any issues related to government raised by those citizens” (Section 4(2)).

217. The Tribunal finds that the requirement on government members to meet regularly with Huu-ay-aht citizens may be met by formal meetings such as the People’s Assembly, or *ad hoc* meetings to discuss particular topics such as the meeting which was held in November 2011 to discuss contracting with the HFN. The Tribunal is of the view that this section does not place a legal requirement on government members to meet with individual citizens at their request or demand.
218. Notwithstanding that the Code of Conduct and *Conflict of Interest Act* does not require meetings on demand, the principle of *ii-saak*, which applies to government members as to other citizens, requires that respectful consideration be given to concerns raised by citizens.
219. The Executive Council has further responsibilities with respect to its role as the employer of the HFN Administration generally, and specifically with respect to the Executive Director who reports directly to Executive Council.
220. The Human Resources Policy Regulation, Policy E1.0 states that “all employees have the right to work in a safe and respectful environment, free from and protected from harassment”.
221. The Policy sets out a broad definition of harassment, which is set out above (in Section F), and includes improper and unwelcome behaviour directed at an employee, discrimination with respect to race and conduct which would affect an employee’s dignity or psychological integrity.
222. The regulation specifically states that the employer “will not accept harassment in any form” and expressly applies to harassment by a community member while the employee is working.
223. As an employer, the Executive Council also has a duty to employees under the common law, which is incorporated into Huu-ay-aht law. Excerpts from the case of *Stamos v.*

*Annuity Research* are set out above (in Section F). Essentially, it is the employer's obligation to ensure a safe work place environment.

224. The Executive Council also has obligations which flow from the rights of citizens, established by the *Constitution Act*, Section 1.4, which provides that citizens have rights to be informed and express opinion. These rights, and resulting responsibility, are discussed below.

225. The Tribunal finds that the Executive Council was late in recognizing the problems caused in the HFN workplace by harassment, in particular in respect to Executive Director Connie Waddell and Director of Public Works Rodney Murray. Although the Executive Council was aware of the issues with communications from Norman Dennis at the latest, in the summer of 2011, no substantive action was taken until February 2012, by which time the level of frustration on the part of the employees had increased substantially.

#### *Obligations of Chief Councillor*

226. In addition to obligations as a member of the Executive Council, the Chief Councillor has further responsibilities, set out in the *Government Act*, Section 13(1). These responsibilities are onerous and include:

- (a) ensuring HUU-ay-aht citizens are fully informed on HUU-ay-aht issues;
- (b) developing and maintaining effective systems of communications with HUU-ay-aht citizens and other governments; and
- (c) ensuring proper management and administration of government.

#### *Ensuring that Citizens are Fully Informed*

227. Section 13(1)(c) of the *Government Act* makes the Chief Councillor responsible for ensuring HUU-ay-aht citizens are fully informed on HUU-ay-aht issues. The Tribunal interprets this to mean that the Chief Councillor must ensure that citizens are to be provided reasonable opportunities to be informed respecting HUU-ay-aht issues.

228. The Tribunal finds that, through holding the Peoples' Assembly and the related information provided, the HFN Government has met the obligation to provide a reasonable opportunity for citizens to be fully informed. In the context of Norman and Rita Dennis seeking a contract with the HFN, a further opportunity to be informed was provided by the holding of a special meeting regarding contracts with HFN Government, in November, 2011.
229. However, the Tribunal observes that Norman and Rita Dennis appear not to have taken advantage of the opportunities to be informed provided by the Peoples' Assembly and the November 2011 meeting on contracts.

*Effective Systems of Communication*

230. The Tribunal finds that systems have been put in place for communication with HUU-ay-aht citizens, including the Peoples' Assembly and the November 2011 meeting, noted above.
231. The Tribunal also finds that citizens are able to communicate with HFN Government, as evidenced by the frequent communications received from Norman and Rita Dennis and acknowledged by various parties within the HFN Government.
232. However, the Tribunal notes that the communications by Government to citizens appear to have been ineffective, in particular respecting the obligations of citizens and the roles and responsibilities within HUU-ay-aht Government.

*Proper Management and Administration*

233. Proper management and administration includes the obligation on HFN Government to provide a safe workplace for employees, free from discrimination and harassment.
234. The Tribunal finds that, at the point where citizen communications become unacceptable for employees, including the Executive Director, the primary responsibility for dealing with the matter falls to the Chief Councillor.

235. The Tribunal finds that, having had knowledge, at the latest, in the summer of 2011, that there were harassment issues involving the communications from Norman Dennis to the Executive Director and staff, a requirement arose for the Chief Councillor to take steps to enforce the Hui-ay-aht Harassment Policy and intervene to insure proper management and administration of Government.
236. These steps were not taken by the Chief Councillor until several months later, in February 2012, by which time the situation had deteriorated substantially.

Obligations of Ha'wiih Council

237. The Tribunal finds that the Ha'wiih Council does not have legislated obligations relating to the present application.
238. Nevertheless, the evidence of Tom Happynook, presented on behalf of the Intervenor Ha'wiih Council, suggests that the Ha'wiih Council, or individual Ha'wiih, could play a significant role in resolving issues between citizens and Government. The Tribunal did not receive sufficient evidence in this regard to make any specific findings regarding a potential role for the Ha'wiih.

Rights and Obligations of Executive Director

239. Pursuant to the *Financial Administration Act*, the Executive Director administers HFN government operations. Specific to this application, Section 87(1)(d) of the *Financial Administration Act* specifies that the Executive Director has the power and duty to administer human resource policy.
240. As noted above, the Human Resources Policy Regulation specifies that all employees have the right to work in a safe and respectful environment.
241. The Human Resources Policy Regulation also sets out a process for employees dealing with harassment sets out consequences to those guilty of harassing. These provisions are set out above at Section G.

242. The Executive Director is also an employee, and thus, as with other employees, has the right to a safe and respectful work environment.
243. Given the responsibilities of the Executive Director to administer Human Resources Policy, the Executive Director is primarily responsible for ensuring that employees enjoy a harassment-free workplace.
244. By the summer of 2011, at the latest, Executive Director Connie Waddell was aware that Director of Public Works Rodney Murray was the subject of harassment. However, on the evidence, the only action taken at this time was to advise the Chief Councillor of the problem “keeping you in the loop” (Exhibit 6). It appears that other measures, such as instructing employees not to take calls from Norman Dennis, blocking emails, etc., were not considered.
245. Connie Waddell’s obligations as Executive Director were complicated by the fact that she was also being harassed by Norman Dennis, and, equally with other employees, had a right to a workplace free of harassment.
246. The Tribunal finds that, in the circumstances, Connie Waddell should have exhausted administrative options to prevent the harassment, and failing that should have referred the matter formally to the Chief Councillor and Executive Council in the summer of 2011.
247. The Tribunal notes that one of the difficulties in enforcing the Harassment Policy is the lack of effective sanctions, discussed below.

*Rights and Obligations of Employees*

248. As noted above, all employees have rights under the Human Resources Policy and Regulation as well as at common law to a safe and respectful work environment, free from harassment and discrimination.
249. HFN employees must deal with citizens in the course of their work. Where those communications become harassment, there is an administrative policy in place which provides for the employee to first attempt to deal with the harasser, and failing that, to report the matter to superiors.

250. The Tribunal notes that it is important that persons in charge: supervisors; the Executive Director; and finally the Chief Councillor, take responsibility immediately when citizen communication becomes harassment.

*Rights and Obligations of Citizens*

251. The rights and responsibilities of citizens established by the HFN Constitution and Legislation must be balanced. While citizens have many express rights, they also have responsibilities. In the present case, these rights and responsibilities clash and must be interpreted.

252. The *Constitution Act*, Section 1.4 provides that citizens have various rights, including:

- (a) the right to be informed about Huu-ay-aht First Nation affairs; and
- (b) the right to express opinions and views of Huu-ay-aht First Nation affairs.

253. The Tribunal finds that the Peoples' Assembly, together with the information provided in conjunction with the Peoples' Assembly, generally fulfils the citizen's right to be informed. The Peoples' Assembly also provides an opportunity for citizens to express opinions and views. Citizens also have the opportunity to provide their opinions and views through direct communication to government and administration.

254. However, every citizen is required by the *Constitution Act*, Section 1.5 to accept the responsibility of adhering the teachings related to *ii-saak* (respect). Thus, while citizens have the right to express their views and opinions, they also have an obligation to do so in a respectful manner.

255. The Tribunal finds that there is a point at which the failure to act respectfully will outweigh or diminish the rights established by Section 1.4. At that point, the HFN Government is no longer obligated to provide information or hear the opinions of disrespectful citizens. This point was met in the case of the communications from Norman and Rita Dennis in 2011-12.

Sanctions

256. Citizen rights are further constrained by Section 34(1) and (2) of the *Code of Conduct and Conflict of Interest Act*, which provides that “a person must not interfere, hinder or obstruct a public officer in the exercise or performance of his or her powers, duties or functions”, and provides for a \$1,000 fine in the event of contravention of this requirement.
257. Citizens are also subject to the harassment provisions of the Human Resources Policy Regulation, which provides consequences for harassment, including suspension or removal of rights to communicate with the Huu-ay-aht Administration.
258. The Tribunal finds, however, that the sanctions provided by the *Code of Conflict and Conflict of Interest Act* and the Human Resources Policy Regulation have not been used in the case of Norman and Rita Dennis.
259. There was no evidence respecting whether a charge under Section 34 was considered, however, the Tribunal infers that the fixed fine of \$1,000 may have been a substantial reason why it was not. The Tribunal considers that this provision would be more effective if the penalty involved some flexibility, and perhaps varied in the event of continued violations. The Tribunal further notes that \$1,000 is a significant fine and infers that this also may have been a reason that the provision was not considered.
260. With respect to the consequences spelled out in the Human Resources Policy Regulation, the evidence received by the Tribunal was that the sanctions, which involve prohibition against attendance at the Huu-ay-aht Government Offices were ineffective in dealing with people who did not live in the community, and were ineffective in dealing with communications by telephone and email.
261. Traditional Huu-ay-aht law may provide a further method by which inappropriate behaviour may be sanctioned. This was alluded to in the testimony of Tom Happynook, on behalf of the Ha’wiih Council, however, the Tribunal did not receive sufficient evidence to be in a position to comment on the adequacy of traditional sanctions in the present circumstances.

262. Given the inadequacy of available sanctions for harassing behaviour, a strict refusal to respond to harassing citizens may be the only appropriate sanction at this time.

### Balancing Rights

263. The Tribunal observes that under Canadian law generally, and Huu-ay-aht law specifically, rights are not absolute. The rights of citizens, such as those in Section 1.4 of the *Constitution Act* (set out at Section F.2 above) are subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

264. Thus, the right to be informed and express opinions must be balanced against the obligation to adhere to the teachings related to *ii-saak*. The failure to act respectfully in seeking information or expressing opinions may reasonably lead to the loss or diminution of those rights.

265. As observed by counsel for the Executive Council, the reasonableness of limits on rights will be determined on a case by case basis.

266. In the present case, the Tribunal finds that the extent of the disrespectful communications by Norman and Rita Dennis has been such to disentitle those citizens to rely on the rights established by Section 1.4 of the *Constitution Act*.

## **4. Circumstances of Communications**

### Communications Were Inappropriate

267. The Tribunal finds that the communications from Norman and Rita Dennis were not appropriate, given their obligation to conform to the principles of *ii-saak*, and the opportunities they had to raise their concerns in a more respectful and orderly manner. Although the series of communications may have started from a genuine expectation of a business contract with the HFN, the communications rapidly departed from that issue and adopted a completely inappropriate tone. The Tribunal notes the alternative opportunities the Dennises had both to obtain appropriate information and to make their views known in an appropriate and respectful manner, and their failure to take advantage of those opportunities. These include the opportunity afforded at the People’s Assembly in

November 2011 and Norman Dennis' several telephone conversations with Executive Council member Tom Happynook.

Harassment

268. The Tribunal finds that the communications from Norman and Rita Dennis amounted to harassment of HFN employee Rodney Murray and HFN Executive Director Connie Waddell.
269. The communications:
- (a) included unreasonable derogatory comments respecting Executive Director Connie Waddell and Director of Public Works Rodney Murray (e.g., Affidavit #1 of Jeff Cook, Exhibits B, F);
  - (b) contained allegations which were repeated numerous times despite responses having been provided by HFN Administration (Affidavit #1 of Jeff Cook, Exhibits B, C, F, H, N);
  - (c) at least in one instance were purposely made available to a broad audience through a Facebook posting (Affidavit #1 of Jeff Cook, Exhibit B).
  - (d) at least in one instance were directed to the HFN Administration generally, so that numerous HFN employees read them. (Affidavit #1 of Jeff Cook, Exhibit F);
  - (e) included a disrespectful tone, which did not meet the standards of *ii-saak*,. (Affidavit #1 of Jeff Cook, Exhibits B, C, F; Exhibits 3, 5, 6, 7).
270. The Tribunal notes the evidence of Connie Waddell who testified that Rodney Murray came to her on a number of occasions respecting harassment he was receiving. She also observed that there were a number of times where employees have felt that they were harassed by Norman and Rita Dennis, specifically referring to a social worker, fisheries department employees, the bookkeeper and the eligibility and enrolment clerk. Her evidence was that other citizens caused problems as well but Norman and Rita Dennis were the "loudest".

271. The Tribunal finds that Executive Director Connie Waddell advised the Executive Council and Chief Councillor of the harassment issues, at least informally, in the summer of 2011. For instance, on July 18, 2011, she forwarded a communication from Norman Dennis to the Councillors with the remark “keeping you in the loop” (Exhibit 6). The Tribunal infers from this comment that there must have been ongoing discussions respecting the communications from Norman Dennis.
272. The Tribunal finds that, by the summer of 2011, the Chief Councillor and Executive Council were aware of the harassing nature of the communications from Norman Dennis, and at that time the Chief Councillor should have become directly involved. However, the Chief Councillor did not become involved until many months later, in February, 2012. The Tribunal finds that this delay contributed significantly to the negative impact of the harassment on the HFN workplace.

Discrimination

273. The Tribunal finds that the communications involved unlawful discrimination, both in respect of general complaints about “white people” and specific comments about Rodney Murray.
274. The communications contained statements that implied an intention to discriminate based on race and were calculated to incite others to discriminate based on race. Further the communications were likely to have exposed Rodney Murray, Director of Public Works, to contempt based on his race, and may have exposed other HUU-ay-aht employees similarly (Affidavit #1 of Jeff Cook, Exhibits B and C).
275. The Tribunal finds that the allegations of Alan Legg that there was a “culture of racism” to be overstated. However, the Tribunal recognizes that racism was a significant factor in the communications from Norman and Rita Dennis, and was present among various members of the community, as evidenced by the experiences of Rodney Murray working at Anacla. The Tribunal notes the evidence of Connie Waddell that it is a “small minority” of HUU-ay-aht members who caused problems.

276. In respect of the racism, the Tribunal notes that Huu-ay-aht government members made no response to racist comments at the People's Assembly in November 2011. In fact, there was no substantial reaction to racism until February 2012. Tribunal finds that HFN Government representatives ought to have responded to the racist statements at the People's Assembly.
277. The Tribunal also finds that the Chief Councillor and Executive Council should have been aware of the serious situation for Connie Waddell and other employees, at least by the summer of 2011 and should have taken responsibility for dealing with Norman Dennis at that time. By the time the Executive Council became directly involved, it was too late to avoid the consequences of stress leave for Connie Waddell and Rodney Murray and the morale problems in the HFN Administration.

## **5. Consequences**

### Connie Waddell Stress Leave

278. The Tribunal finds that the communications of Norman and Rita Dennis over the period February 2011 to February 2012 were a significant factor in the decision of Connie Waddell to leave her position on stress leave. The Tribunal notes the evidence of Connie Waddell that by February 2012, her "whole job became about dealing with Norman and Rita Dennis". She also expressed concern about her inability to protect her staff from harassment (Affidavit #1 of Jeff Cook, Exhibit J). The Tribunal also notes the evidence of Connie Waddell that Executive Council was aware of the issues with Norman and Rita Dennis, but "chose not to do anything".

### Rodney Murray Stress Leave

279. The Tribunal finds that the communications of Norman and Rita Dennis over the period February 2011 to February 2012 were a significant factor in the decision of Rodney Murray to leave his position on stress leave. The Tribunal notes the evidence of Rodney Murray that he experienced substantial racial discrimination in his interaction in the Anacla community, which would have exacerbated the stress caused by the Norman and Rita Dennis communications. The Tribunal also notes that Mr. Murray made a point of

expressing his concerns to Executive Council through the report of the Executive Director in January 2012. The Tribunal also notes Rodney Murray's evidence that in March 2012, he inquired of the Acting Executive Director whether there was a plan to deal with discrimination in the work place but was told that there was not.

Work Place Morale

280. The Tribunal finds that the communications of Norman and Rita Dennis were significant in disrupting the HFN workplace and contributing to low morale. These communications were received in the context of other incidents of harassment and discrimination. The departure of Connie Waddell and Rodney Murray on stress leave increased the work load on other staff. Morale was also affected by the absence of any known government response to the communications. (Evidence of Alan Legg; Affidavit #1 of Jeff Cook, Exhibit K).

Effect on Executive Council

281. The Tribunal finds that, although the Executive Council did not come to terms with the communications from Norman and Rita Dennis for many months, by January 2012, the communications had become an issue for Executive Council, having an effect on the Council's ability to carry on HFN business. This was exacerbated by the departure of key employees Connie Waddell and Rodney Murray on stress leave.

Effect on Norman and Rita Dennis

282. The Tribunal finds that Norman and Rita Dennis persisted in harassing communications for over a year, despite substantive responses from HFN Administration and latterly Executive Council. The persistent communications continued despite their opportunity to raise issues and obtain information at the Huu-ay-aht People's Assembly in November 2011, and Norman Dennis' extensive discussions with Executive Council Member Tom Happynook, as well as the initiative of Executive Council members to meet in a traditional manner on May 6, 2012. Despite this, Norman and Rita Dennis appear to have suffered no negative consequences, and have continued their harassing behaviour as established by the email of June 11, 2012 (Exhibit 11).

**I. RECOMMENDATIONS**

**1. Tribunal Jurisdiction**

283. The issues placed before the Tribunal in this application involve legal, administrative and political considerations.

284. The jurisdiction of the Tribunal is broad, but it is focused on HFN legal matters. Tribunal jurisdiction does not extend to administrative or political matters, other than to identify legal constraints or make findings of fact where administrative or political actions have had a bearing on the issues raised in the application.

285. Thus, the Tribunal makes no recommendations respecting the HFN administrative structure or procedures, nor upon political matters. However, it is hoped that those responsible for the administrative and political guidance of the HFN will benefit from the Tribunal's analysis of the relevant facts and the law in this application.

**2. Sanctions**

286. The Tribunal finds that existing sanctions to deal with harassment are inadequate.

Fines

287. Consideration should be given to making violation of Section 34 of the *Code of Conduct and Conflict of Interest Act*, which now provides a \$1,000 fine for interfering with public officers in the exercise of their duties, subject to a more flexible approach.

288. In this regard, fines could be made proportional to the seriousness of the offence, and could be made progressive, increasing on the basis of first, second and further offences, which may serve a greater deterrent effect, as well as having a greater opportunity of being applied.

289. The amount of fines should be considered in the context of the ability of citizens to pay.

Restrictions on Citizen Access

290. Sanctions under the Human Resources Policy respecting harassment should be broadened, in order to be effective against persons who do not attend at HFN Government Offices.
291. Existing policy provides that citizens who engage in harassing behaviour may be barred from attendance at the HFN Government Offices. However, harassing behaviour does not require attendance, and as demonstrated by the evidence before the Tribunal, may occur through email and telephone communications.
292. Policy respecting harassment should be expanded to include provisions that would prevent harassing communications from reaching employees. For instance, telephone calls could be declined, emails blocked and undesirable correspondence forwarded directly to the Chief Councillor.

Withdrawal of Benefits

293. At this time, HFN law and policy does not provide for the withdrawal of benefits as a sanction against inappropriate citizen behaviour. Such sanctions may be more effective than fines or refusal of access, and should be considered.

Traditional Remedies

294. Traditional remedies for inappropriate citizen behaviour, including the involvement of Ha'wiih Council or individual Ha'wiih should be considered.

Making Sanctions Known

295. Steps should be taken to ensure that the consequences of engaging in harassing behaviour are known to all citizens.

**3. Executive Council and Chief Councillor Responsibility**

296. The Executive Council, as an employer, must recognize the legal responsibilities under HFN law to maintain a safe workplace for employees.

297. Given the evidence that there is a group in the community, although a small minority, which persistently harasses HFN administration, the Executive Council should ensure that administrative procedures are in place to bring harassment affecting employees and the workplace to the attention of Executive Council and the Chief Councillor in a timely fashion. This observation applies with even greater force to the Chief Councillor, given the onerous responsibilities placed on the Chief Councillor by the *Government Act*.
298. When harassment issues affecting employees are not resolved in a timely manner through administrative procedure, the Executive Council and Chief Councillor must take appropriate steps to protect employees.
299. Since the Executive Director reports directly to the Executive Council, where the Executive Director is a victim of harassment, the Executive Council and Chief Councillor must take immediate steps to protect the Executive Director.

#### **4. Ha'wiih Council**

300. While the issue of *ii-saak*, and its application in the particular circumstances of this case was an issue before the Tribunal, the more general issue of traditional or customary law was not.
301. However, the Tribunal understands that the Ha'wiih Council could play a significant role in matters governed by traditional law and believes that the involvement of Ha'wiih and the application of traditional law may provide an opportunity to resolve some of the difficult issues which are raised in the present application.

#### **5. Harassment Policy**

302. The Tribunal recommends that the Harassment Policy established by the Human Resources Policy Regulation (in Section G.8 above) should be reviewed in the context of the difficulties faced by HFN Administration since effective date.

## **6. Clarification of Responsibilities**

303. The point that rights and responsibilities must be balanced, and that the principle of *ii-saak* applies to all HFN dealings between Government and citizens, should be made clear to all involved. Guidelines and administrative procedures could be appropriately designed in this regard.
304. Efforts should be made to communicate to all HFN citizens the obligation to act respectfully when dealing with administration, and that failure to do so has consequences.
305. Administrative procedures should be reviewed to ensure that problems relating to harassment are identified early and moved to the appropriate level before they fester. This is substantially an administrative matter, the details of which are beyond the jurisdiction of the Tribunal.
306. Finally, all Huu-ay-aht citizens should be aware that HFN Government has no obligation to cater to citizens who harass. Those citizens retain their rights to attend the Peoples' Assembly and obtain information or raise concerns in that formal context. However, the requirement of respect which flows from the principle of *ii-saak* must be followed, and failure to do so must have consequences.

### **Reasons by:**

John Rich, Chair

### **Agreed to by:**

Marie Nookemus, Member

Trudy Warner, Member

Florence Wylie, Member

### **Dissenting Reasons by:**

Hugh Braker, Vice-Chair (To Be Issued Separately)

## SCHEDULE A

### DOCUMENTARY EVIDENCE

|  | <b>YY/MM/DD</b> | <b>Description</b>  |
|--|-----------------|---|
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit A | 2011/10/25      | Letter to Huu-ay-aht citizens enclosing Agenda for People’s Assembly scheduled for November 26, 2011, including financial statements and information on the forms for citizen motions;  |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit B | 2011/12/14      | Facebook posting by Norm Dennis. Includes criticism of Rodney Murray. Criticizes administration. Makes negative comments about financial situation  |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit C | 2012/01/03      | Handwritten version of Exhibit B, with additional allegations respecting expenditures approved by Connie Waddell.   |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit D | 2012/01/12      | Email from Tom Happynook to Executive Council reporting on phone call from Norman Dennis. Copied to Norman Dennis. Issues discussed: hiring non-Huu-ay-aht; not dealing with Norman’s concerns; complaint about meetings being held in Anacla; Norman’s issue of a flooring contract for the Administration Building. Tom Happynook states that he “only listened to” Norman on the flooring issue and that “I didn’t have anything to add as we had explained the process for getting contracts when we met with our Vancouver citizens on November 19, 2011”. |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit E | 2012/01/18      | Executive Director’s Report, section written by Rodney Murray respecting discrimination and harassment. Rodney Murray advises that “it is my goal in writing this report to bring light to the fact that, that constituents need reminding of these laws. It’s also helpful to all staff to know and hear when issues are dealt with”.  |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit F | 2012/02/02      | Letter from Norman and Rita Dennis sent by fax to the HFN Administration office. Not addressed, but includes statements to Connie Waddell and Jeff Cook. Raises issue of NORA Grant, requesting explanation; criticizes construction of Administration Building and hiring of Rodney Murray; criticizes hiring of   |

|  | <b>YY/MM/DD</b>        | <b>Description</b>   |
|--|------------------------|--|
|  |                        | white people.  |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit G | 2012/02/03             | Letter to Norman and Rita Dennis signed by Executive Council members and Executive Director responding in detail to matters raised by Norman and Rita Dennis in their letter of January 3, 2012.   |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit H | 2012/02/14 @ 8:22 a.m. | Email from Norm Dennis to Connie Waddell enquiring about “burial funds”  |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit I | 2012/02/14 @8:49 a.m.  | Response by Jeff Cook to Norm Dennis respecting the issue of burial funds (note response is prompt, polite)  |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit J | 2012/02/17             | Email from Connie Waddell to Members of Executive Council referring to reasons for her leave. Expresses concerns about harassment. Says no consequences, can’t protect staff. Refers to “small minority who behave poorly but yet dominate”.   |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit K | 2012/02/17             | Letter to Chief and Council from Allan Legg, Director of Finance and Government Services. Says the February 2, 2012 letter from Norman and Rita Dennis was circulated at their request to staff. Asserts their communications are harassment and violate employee rights. Requests Executive Council to address the harassers.   |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit L | 2012/02/17             | Letter to Norman and Rita Dennis signed by Chief Councillor Jeff Cook and Ta’yii Hawilth Derek Peters. Letter asserts that communications from Norman and Rita Dennis have amounted to harassment, are racist and discriminatory. States “on behalf of the Huu-ay-aht Council we are directing you to immediately cease communicating with Huu-ay-aht employees, both in writing and verbally”. Sets out harassment policy and cites Huu-ay-aht Constitution regarding citizens responsibilities. Advises that the course of communication and its consequences are being referred to Huu-ay-aht Tribunal. |

|  | <b>YY/MM/DD</b> | <b>Description</b>  |
|--|-----------------|---|
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit M | 2012/02/20      | Open letter to HUU-ay-aht Citizens signed by Chief Councillor Jeff Cook and Ta'ii ha'wilth Derek Peters. Refers to harassment, racism and discrimination in citizen communication. States Executive Council will take necessary steps to enforce HUU-ay-aht laws. Invites comments and questions.   |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit N | 2012/02/29      | Letter sent by email from Norman and Rita Dennis to Members of Executive Council, Connie Waddell and Robert Dennis. Denies racism. Denies communication with employees.   |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit O | 2012/03/01      | Email from Jeff Cook to Norm Dennis. Advises that future correspondence should be sent to HFN legal counsel and requests that Norman Dennis' legal counsel contact HFN legal counsel.   |
| Exhibit 1 – Affidavit #1 of Jeff Cook, Exhibit P | 2012/02/29      | Email from Tom Happynook to Executive Council Members regarding a telephone discussion with Norman Dennis. Claims by Norman Dennis that he has support of members, that he is not racist, that Connie Waddell “has just hired her friends”, HFN should be trained to fill jobs, says “we have not answered one of their questions”, they want their letters to be made public making the other side of the story available to HUU-ay-aht members. |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit Q | 2012/03/31      | Email from Tom Happynook to Executive Council Members. Recounts telephone discussion with Norman Dennis. Norman Dennis advised that he is going to the media; complains about HFN expenditures; complains about scheduling meetings on weekdays; asserts that nepotism is worse now than ever; complains that advertising of employment opportunities is not good enough;   |
| Exhibit 1 - Affidavit #1 of Jeff Cook, Exhibit R | 2012/04/13      | Email from Tom Happynook to Members of Executive Council reporting on a telephone discussion with Norman Dennis. Sets out complaints of Norman Dennis in point form. Concludes with request “will someone please explain to Norman where the money is, how  |

|           | <b>YY/MM/DD</b>           | <b>Description</b>  |
|-----------|---------------------------|---|
|           |                           | much there is and what the plan is”.  |
| Exhibit 2 | 2011/06/27                | Email from Rodney Murray to Connie Waddell enclosing draft email to Norman Dennis to explain the processes that surrounds the purchase of goods and services and offers to answer any questions. (Rodney Murray that the email was sent to Norman Dennis)   |
| Exhibit 3 | 2011/07/22<br>@ 16:14     | Email Norm Dennis to Rodney Murray refers to flooring project . “I don’t know what part you don’t understand Rodney, I will tell you again for the 10 <sup>th</sup> time the House of Huu-ay-aht was giving[sic] to me”. Asks why his name was taken out from the flooring project for the Administration Building. Refers to connection between various persons.                                       |
| Exhibit 3 | 2011/07/22<br>@ 4:54 p.m. | Email from Rodney Murray to Norm Dennis says he was not involved in the Admin Building process. Refers to administration of HFN affairs under the Treaty.   |
| Exhibit 4 | 2011/02/07                | Email from Norman Dennis to Connie Waddell “I am pleased to provide the following for the house of Huu-ay-aht...” Refers to discussion June 24, 2010 and September 15, 2010 respecting the project. Asserts “as in our previous conversations you requested this project to begin in 2010 on the month of April”.   |
| Exhibit 4 | 2011/02/08                | Email from Connie Waddell to Norm Dennis, responding. States “thanks for the information but unfortunately I don’t have the funds until the start of the new fiscal year”. States “I will also need a breakdown of the cost...” Concludes “to be consistent with the policy this is required I also have to show the quote is the best one out of three. These factors are not only price but quality”. |
| Exhibit 5 | 2011/07/18                | Email Norm Dennis to Connie Waddell. Identical to email to Rodney Murray in Exhibit 3, but sent to Connie Waddell four days earlier.  |

|   | <b>YY/MM/DD</b>                | <b>Description</b>  |
|---|--------------------------------|---|
| Exhibit 6   | 2011/07/18                     | Email from Connie Waddell to Members of Executive Council, enclosing the email from Norm Dennis of July 18, 2012 (Exhibit 5). "Keeping you in the loop".  |
| Exhibit 7   | 2011/07/26                     | Email from Norm Dennis to Rodney Murray, Connie Waddell and Jeff Cook asserts "one more time, this project was given to me July 2010 by Robert Dennis then Chief and Connie Waddell current Band Manager. Today is the end of July 2011. It's like you don't want to share the wealth with anyone else other than friends and relatives". |
| Exhibit 8   | 2009/11/17                     | Policy on "harassment when serving the public and member".  |
| Exhibit 9   | 2012/04/21<br>to<br>2012/04/25 | Email correspondence between Robert Dennis and Executive Council Member s Jeff Cook, Derek Peters, Tom Happynook and John Jack regarding a potential meeting with Norman and Rita Dennis. Conclusion that meeting be held May 6, 2012 at Norman and Rita's home.  |
| Exhibit 10  | 2012/05/01                     | Email from Robert Dennis to Derek Peters, Jeff Cook, Tom Happynook and John Jack confirming meeting with Norman and Rita Dennis "beginning with a lunch as per our custom" and setting agenda for discussion.   |
| Exhibit 11 – Affidavit #2 of Jeff Cook, Exhibit A | 2012/06/11                     | Email from Norman Dennis to Members of Executive Council and Connie Waddell, seeking Connie Waddell's resignation as Executive Director and Law Clerk, making various allegations of mismanagement and wrongdoing   |

**SCHEDULE B**

**Huu-ay-aht Oath**

I, \_\_\_\_\_, do solemnly affirm (or swear) that:

I will act in the best interests of present and future generations of Huu-ay-aht citizens,

I will honour the vision, values, and sacred principles of Huu-ay-aht –

**Uu-a-thluck** (taking care of future generations), and

**Hish-uk-tsawak** (everything is one),

I will be a positive role model, following the principle of **ii-saak** (conducting myself honestly and respectfully), and

I will uphold the Constitution and obey Huu-ay-aht laws.

Affirmed/Sworn Before Me at \_\_\_\_\_  
\_\_\_\_\_ in the Province of British  
Columbia this . day of \_\_\_\_\_, 20  
\_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of British Columbia

\_\_\_\_\_  
Name of Public Officer

**SCHEDULE C**

**CITIZENSHIP DECLARATION**

I, \_\_\_\_\_, do solemnly affirm (or swear) that I will:

- (a) uphold and respect the Constitution and HUU-AY-AHT laws,
- (b) fulfill my personal obligations with respect to the care and guidance of HUU-AY-AHT children and families,
- (c) adhere to the teachings related to ii-saak (respect),
- (d) promote a healthy and vibrant community for all HUU-AY-AHT citizens, and
- (e) fulfill all my duties and responsibilities as a HUU-AY-AHT citizen.

Affirmed/Sworn Before Me at \_\_\_\_\_  
\_\_\_\_\_ in the Province of British  
Columbia this \_ day of \_\_\_\_\_, 20  
\_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Name