

Huu-ay-aht First Nations

Report to Executive Council

Date – May 15, 2013

Title – Executive Director / Law Clerk

Type of Decision – Approval to separate the Executive Director and Law Clerk positions

Submitted by: Councilor Tom Mexsis Happynook

Issue:

Executive Director acting as the Law Clerk

Background:

Several months ago Executive Council started talking about separating the Executive Director and Law Clerk duties.

After two years of Treaty Implementation, it has become clear that this separation is needed to distribute the authority from one position. Having the Executive Director act as the Law Clerk gives too much power to the E.D. position.

Further, the Directors need a law clerk that they can turn to and guide them in their day to day work activities.

Discussion:

To discuss, the option of taking this briefing note to the June People's Assembly and changing the Government Act to make the law clerk into a separate position within the administration.

Options

Option 1 – make the law clerk a separate position within the administration

Option 2 – Status Quo

Implications

There will be a financial implication to separating the Executive Director and Law Clerk duties.

Recommendation

I am recommending option 1 as I believe that it will be better for the organization and administration if we separate the Executive Director and Law Clerk duties into two separate positions.

Decision

Approval _____

Disapproval _____

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MEMORANDUM

To: Jeff Cook, Chief Councillor & Executive Council Members

Copy: James Edwards, Acting Executive Director and Law Clerk

From: Robert H. Botterell, Legal Counsel

Date: May 7, 2013

Issue: Background Information on Law Clerk Position

The purpose of this memorandum is to provide Executive Council with background information on the Law Clerk position.

BACKGROUND

Section 102 and 103 of the *Government Act* set out the provisions regarding the designation of the Law Clerk:

Law Clerk designation

102 The Executive Director is the Law Clerk.

Delegation

- 103**
- (1) The Law Clerk may, in writing, delegate any of his or her powers, duties or functions under this Act, to
 - (a) one or more government employees, and
 - (b) Huu-ay-aht legal counsel.
 - (2) Despite subsection (1), the Law Clerk must not delegate custody or responsibility for registry documents under section 107 (2).
 - (3) A delegation under subsection (1), does not relieve the Law Clerk of the responsibility of ensuring that the delegated powers, duties or functions are properly carried out.
 - (4) If a delegation is made under subsection (1), a reference to the Law Clerk includes a reference to the Law Clerk's delegate.

The Law Clerk position is not a political position; it is part of the administration. The position was structured in the way it is for several reasons:

- To provide flexibility - The skills and background required to discharge the law clerk's responsibilities vary depending on the matter being handled and over time should become more routine. Section 103 gives the Executive Director the flexibility to delegate powers, duties and functions where it is efficient and effective to do so.
- To manage costs – To balance the budget and maximize the amount going into government programs and services, it was felt that the Law Clerk position should not be a stand alone position. As well, the workload can vary quite significantly.
- To ensure clear reporting lines - Other First Nations have experienced problems where there is in reality, or in appearance, more than one head of the administration. By having this position report to the Executive Director, as is the case with other senior administrative positions, this risk is eliminated.

I understand that Executive Council may wish to consider changing the provisions related to the Law Clerk position. To do so, it would be necessary to make amendments in accordance with Section 114 of the *Government Act*:

Amendments to this Act

- 114** An amendment or repeal of this Act must be approved by the People's Assembly before that amendment or repeal is brought into force.

I am happy to answer any questions you may have on May 16th, 2013.