



**HUU-AY-AHT TRIBUNAL NOTICE OF RESPONSE
RESPONSE OF ADMINISTRATIVE DECISION MAKER**

FORM B1

NOTES: This form is to be used for a Response by or on behalf of an administrative decision maker responding to an Application.

If there is not sufficient space on this form for any of the information required, you may attach a schedule and reference it in the space provided. You may also attach documents if necessary.

Responses must be filed with the Tribunal within 14 days of service of the Notice of Application.

APPLICATION RESPONDED TO

This is the Amended Response to Application # **2013-002**.

RESPONSE TO GROUNDS Briefly set out your position on the Grounds for Appeal advanced in the application, including any relevant additional facts.

See attached Amended Schedule "A".

RESPONSE TO RELIEF SOUGHT Set out your position on the relief sought in the Application.

See attached Amended Schedule "A".

**THIS FORM HAS TWO SIDES
YOU MUST COMPLETE BOTH**

SCHEDULE “A”

Notice of Response to Application #2013-002

This is the Amended Response of the Huu-ay-aht First Nation Executive Council and Executive Director/Law Clerk (hereinafter the “Executive Director”) to the Application of Charlene (Shawn) Kruse to appeal five administrative decisions made by Executive Council and/or the Executive Director. Executive Council and the Executive Director file a single Response as they are each named as Respondents in the Application and one or both of them are responsible for each of the purported decisions at issue in the Application (collectively the “Decisions”).

This Response follows the same format as the Application. In Part A, each “Decision” identified in the Application is set out. The Respondents’ position on each of the grounds identified in the Application is then provided, followed by any additional facts. In Part B, the Respondents’ position on the relief sought is provided.

PART A - DECISIONS

DECISION #1 Changes made to Huu-ay-aht Administrative Organizational Structure (“Decision 1”)

Response to Grounds

1. Decision 1 was not a single decision. Rather changes to the administrative organizational structure are part of an ongoing process that has involved a series of decisions and actions by each of the Respondents. As is discussed in greater detail in the section that follows, Executive Council decided to:
 - (a) Approve a report to the People’s Assembly that included an organizational structure chart summarizing the actual state of administration staffing and reporting structures at the time of the preparation of the report; and

- (b) Approve a contract with a consultant to conduct a formal organizational review process.
- 2. Finance Committee review of Decision 1 was not required.
- 3. People's Assembly review of Decision 1 was not required.

Additional Facts

The Executive Director & Director of Finance and Government Services

1. In April 2013 the former Executive Director left the organization. On April 15, 2013 Executive Council filled the position on an interim basis by promoting the Director of Finance and Government Services, James Edwards, to the role of Executive Director. Executive Council did not direct the new interim Executive Director to fill the position of Director of Finance and Government Services. Rather Mr. Edwards was asked—in addition to taking on the role of Executive Director—to also continue on an interim basis to be responsible for the powers, duties and functions of the Director of Finance and Government Services.
2. After a job posting and recruitment process, Executive Council offered Mr. Edwards the position of Executive Director, on a probationary and then permanent basis.
3. The Executive Director initially continued to maintain responsibility for matters for which he had been responsible as Director of Finance and Government Services, but delegated some of the functions of that position to other staff, in particular the Finance Officer, Finance Clerk and the Executive Assistant and Deputy Law Clerk.
4. On November 19, 2013 the Executive Director posted a job advertisement for the position of temporary Director of Finance and Government Services. On December 3, 2013, following a recruitment process, a new Director of Finance and Government Services was hired on a temporary basis pending the outcome of the organizational review process described below.

Organizational Review Process

5. At the December 8, 2012 People's Assembly a resolution was adopted recommending that in light of several factors, including that the government administrative structure was said to be costly and top-heavy at the upper administration level, Executive Council take a number of steps relating to a review and change of the administration's organizational structure.
6. Throughout much of 2013 a review of the administration's organizational structure has been conducted. This work—which has included a number of activities and processes in which Executive Council, senior administration, staff and outside consultants have participated—is ongoing.
7. The Executive Director has implemented some changes to the organizational structure to the extent that when positions were awarded internally, the vacating position was reviewed to determine if it was necessary to refill it or if the workload could be delegated pending the outcome of the review of the organizational structure.
8. At its June 4, 2013 meeting, Executive Council approved the "Report of Executive Council on People's Assembly on Administration Organizational Structure" for presentation to the Huu-ay-aht First Nations People's Assembly on Saturday, June 22, 2013. In that report Executive Council provides an information update on work that has been done since the December 8, 2012 People's Assembly resolution. Also included in the report is a chart that shows the actual state of the reporting structure within the Huu-ay-aht administration at the time the report was prepared.
9. The organizational structure shown on the chart has members of the Finance and Government Services Department reporting directly to the Executive Director. In all other respects it conforms with the departmental structure outlined in the *Human Resources Policy Regulation* (as amended by the *Human Resources Policy Amendment Regulation, 2011*), s.5(1)-5(5)).

10. On August 27, 2013 Executive Council approved hiring a consultant to conduct a formal organizational review process. Administration and Executive Council are in the process of considering the outcome of the review and making decisions around implementing organizational changes flowing from it. ~~The Respondents anticipate that the outcomes of this process will result in amendments to the *Human Resources Policy Regulation* to be made at the same time as the Spring sitting of the Huu-ay-aht Legislature.~~
11. On February 3, 2014 the *Human Resources Policy Regulation Amendment Regulation, 2014* came into force. This regulation puts in place a new organizational structure for the Huu-ay-aht administration under which the position of Director of Finance has been eliminated.

DECISION #2 – Failures to post Meeting Minutes and Materials on HUU-AY-AHT Website (“Decision 2”)

Response to Grounds

1. It is agreed that the Law Clerk has certain obligations with respect to preparing and maintaining accurate records of proceedings of government and providing access to same, however these obligations do not relate to Decision 2, as the Law Clerk is not legally required to post meeting minutes and materials on the HUU-AY-AHT website, in a timely fashion or otherwise. The deputy Law Clerk posts much of the materials and minutes for Executive Council meetings on the HUU-AY-AHT website. This is done in the interests of openness and transparency and as a service to and for the convenience of HUU-AY-AHT citizens, not because of a legal requirement to do so.

Additional Facts

1. The Law Clerk is required to post public notice of Executive Council meetings at least 10 days in advance (*Government Act*, s. 45(1)) and does so. Posting on the HUU-AY-AHT website is one of the means by which the Law Clerk fulfils the duty to provide Public Notice (*Interpretation Act*, s. 36(1)(a)).

2. The Law Clerk is required to maintain a registry of the original records of proceedings for any session or meeting of government including committees and to make copies of these records available for public inspection during regular office hours (*Government Act*, s. 54(5); s. 106(2)(a)(b)) and does so.

DECISION #3 – Failures to Validate the Accuracy and Integrity of Certified Registry Documents (inaccurate dates) (“Decision 3”)

Response to Grounds

1. It is agreed that the Law Clerk is responsible for ensuring the accurate preparation of motions, resolutions, minutes and other records of government proceedings (*Government Act*, s. 104(j)).

The Applicant has not set out a particular instance of an inaccuracy in dates that she seeks to appeal. The Respondents are aware of an instance in which the Applicant was reviewing records of an Executive Council meeting held in the Registry of Laws and Official Records and she noticed an error in a date recorded on one of the records of motion. The Applicant brought this error to the attention of the Deputy Law Clerk, who: a) explained that the error was the result of a date not being updated on a written motion template; and b) corrected the error. To the extent that this error forms the basis for an appeal, the Application in respect of Decision 3 is moot as the issue has been corrected.

DECISION #4 – Appointment of Economic Development Officer (“Decision 4”)

Response to Grounds

1. It is agreed that it is not within Executive Council’s authority to appoint the economic development officer. The Applicant brought this concern to the attention of Executive Council, following which Executive Council decided to rescind the resolution appointing the Executive Director as the economic development officer.
2. The Executive Director has not appointed himself as economic development officer.

Additional Facts

1. The requirement in the *Economic Development Act*, s, 12(2) that the Executive Director appoint an economic development officer is subject to spending authority. Spending authority has not been granted in a budget or by Executive Council. As such, the position of economic development officer is vacant and the Executive Director must assign a director or manager to carry out the powers, duties and functions of the economic development officer in addition to the existing powers, duties and functions of that director or manager (*Economic Development Act*, s.12(3) & (4)).
2. The Executive Director has, with the express approval of Executive Council, assigned the powers, duties and functions of the economic development officer to himself on an interim basis, pending a decision of Executive Council or the Legislature to grant spending authority.
3. On February 3, 2014 the *Human Resources Policy Regulation Amendment Regulation, 2014* came into force. This regulation puts in place a new organizational structure for the Huv-ay-aht administration under which the functions of the Economic Development Officer are assigned. Spending authority for the position has been approved in principle by Executive Council in the *Budget Act 2014*, which will be considered by the Legislature in its Spring 2014 session. A hiring process to select a candidate is underway.

DECISION #5 – Waiving Section 56 Requirements for Report (“Decision 5”)**Response to Grounds**

1. It is agreed that, subject to its powers to waive reporting requirements as set out in the *Government Act*, s. 56(4), Executive Council must not decide any substantive matter until a report has been received and considered by Executive Council (*Government Act*, s. 56(3)).
2. (a) It is not within the Executive Director’s ability to use the *Government Act*, s. 56 at all, nor has he purported to use it. As such he cannot be said to be overusing it.

Executive Council can and does use its abilities to waive the requirements of the *Government Act*, s. 56 (1)-(3) when it reasonably believes that a delay in consideration of the matter is not in the best interests of the HUU-ay-aht, as required by *Government Act* s. 56(4).

2. (b) It is agreed that Executive Council may use the *Government Act*, s. 56 as described by the Applicant. Section 57 of the *Government Act* is not applicable.

PART B – RESPONSES TO RELIEF SOUGHT

Relief Sought

The Respondents oppose the granting of relief under the *Tribunal Act*, s. 23(c) in respect of all the Decisions, on the bases that follow.

A) Set aside the changes made to Huu-ay-aht Organizational Structure including removing Executive e(sic) Director/Law Clerk as Director of Finance:

1. The present organizational structure is in compliance with the lawful requirements of the *Financial Administration Act* and the *Human Resources Policy Regulation*.
2. Further, to the extent that the Application relates to relief stopping the Executive Director from also carrying out the responsibilities of the Director of Finance and Government Services it is moot, as a new Director of Finance and Government Services has now been appointed.

B) Remove Executive Director/Law Clerk as the Economic Development Officer:

3. The Application is moot as it relates to this relief, as the Executive Director is no longer appointed as the economic development officer.
4. The Executive Director's assignment of the powers, duties and functions of the economic development officer to himself on an interim basis, was done in accordance with the *Economic Development Act* and with the approval of Executive Council.

C) Provide recommendations making the Law Clerk and the Executive Director separate positions in order to maintain continuity and integrity of the Huu-ay-aht Laws and Records:

5. The Executive Director is the Law Clerk pursuant to the *Government Act*, s. 102. This is not an administrative decision subject to appeal under the *Tribunal Act*, s. 17(1)(a) or relief under s. 23.

D) Ensure that all information is distributed to citizens in a timely manner:

6. The Applicant has not alleged a decision that is subject to appeal or any failing to distribute materials in accordance with HUU-AY-AHT law that would give rise to this relief.