



**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 Further 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 Schedule "A".

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

See attached Schedule "A".

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

**SCHEDULE "A" to Form B1
to Further Amended Response to Application #2013-002**

Response to Grounds:

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 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 and staffed positions 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. Following an organizational review process on August 27, 2013 Executive Council approved hiring a consultant to conduct a formal organizational review process. Following that process, Executive Council decided to implement significant organizational changes, which resulted in amendments to the *Human Resources Policy Regulation*.
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 and Government services has been eliminated.

Response to Relief Sought:

The Respondents oppose the granting of the relief sought on the following bases:

1. The Executive Director is not required to fill every vacancy in the organizational chart. While the *Human Resources Policy Regulation* includes an organizational chart setting out the structure of the HUU-AY-AHT government's administration, it does not mandate that every position identified in the chart be filled at all times. In circumstances where a position is not filled, it is prudent and appropriate that the Executive Director ensure that the responsibilities of that position are carried out by someone with the necessary qualifications, as was done in this instance with the knowledge and approval of Executive Council.
2. The Application is moot, as the position of Director of Finance and Government Services has been filled and the organizational structure of the HUU-AY-AHT administration significantly changed since the events at issue took place. There is no compelling reason for the tribunal to exercise its discretion to hear the matter nonetheless.
3. Declaratory relief is not an appropriate remedy as: there is no justiciable issue to be tried; no right or interest of the Applicant that is affected by the impugned decision is raised in the factual situation; and the declaration sought would be of no practical value.

4. The Application was filed over five months after the decision at issue was made. The time limit for an appeal of this type is 60 days. The reasons for the late filing provided by the Applicant do not constitute special circumstances that would warrant granting an extension of time of over three months for the submission of a notice of appeal.