



**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 # 2013-005.

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 #2013-005**

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. While it is true that a key value that the *Economic Development Act* seeks to uphold is to allow HUU-ay-aht business enterprises to operate free from political interference, the decision to appoint the Executive Director as the economic development officer does not offend this goal, as under the *Economic Development Act* that the economic development officer is a member of the HUU-ay-aht administration.

Additional Facts:

3. 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 had not during the relevant timeframe been granted in a budget or by Executive Council. As such, the position of economic development officer was vacant and the Executive Director was required under the *Economic Development Act* to 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)).
4. After the Resolution appointing the Executive Director as the economic development officer was rescinded, the Executive Director, 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. This assignment is within the Executive Director's authority and the Applicant does not challenge it. The practical effect of this assignment was the same as the appointment of the Executive Director as economic development officer.
5. 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 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*, and is in the process of being considered by the Legislature in its Spring 2014 session and is expected to be enacted on March 31, 2014. A hiring process to select a candidate is underway.

Response to Relief Sought:

The Respondents object to the granting of the relief sought on the following bases:

1. Executive Council acknowledges that it is bound by HUU-ay-aht laws and did not follow the correct procedure in appointing the Executive Director as economic development officer and was responsive to the Applicant's request as soon as the issue was brought to its attention. In these circumstances, the declaration sought is not an appropriate remedy as it would be of no practical value, there is no justiciable issue between the parties and no right or interest of the Applicant that is affected by the impugned decision is raised in the factual situation.
2. Furthermore, the Application is moot, as the Executive Director is no longer appointed as the economic development officer and the position has been created under the *Human Resources Policy Regulation* (as amended) and is in the process of being filled. There is no compelling reason for the tribunal to exercise its discretion to hear the matter nonetheless.