

HUU-AY-AHT FIRST NATIONS



Report of Executive Council on Law Clerk position

**For consideration at the session of the
Huu-ay-aht First Nations People's Assembly
on November 26, 2011**

Prepared By: Legal Counsel

Date: November 9, 2011

BACKGROUND

The following Citizen's Motion will be presented by Molly Clappis for consideration of the Assembly:

“BE IT RESOLVED to recommend that Executive Council direct Legal Counsel to prepare a report to Executive Council reviewing and setting out options regarding the length of time that the position of Law Clerk is filled by the Executive Director. Such report to be completed by January 31st, 2012.”

Huu-ay-aht First Nations enacted the *Government Act* and the *Financial Administration Act* on April 1st, 2011 which have the force of law. The *Financial Administration Act* establishes the position of Executive Director and the *Government Act* establishes the position of Law Clerk. Both *Acts* and other Huu-ay-aht laws, set out various duties, powers and responsibilities for both positions.

The *Government Act* expressly provides that “The Executive Director is the Law Clerk” (s. 102).

The **Executive Director** is the senior administrative officer of the Huu-ay-aht government, and is directly accountable to Executive Council for the exercise of his or her powers, duties and functions (*Financial Administration Act* s. 86). The Executive Director has the power and duty, under s. 87 of the *Financial Administration Act* to:

- (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;
- (e) provide Executive Council and committees with the information and advice needed to fulfill their roles under Huu-ay-aht law;
- (f) ensure that decisions of Executive Council are implemented;
- (g) supervise and manage government employees;
- (h) hold government contractors accountable for meeting their contractual obligations;
- (i) perform any other duties and responsibilities assigned to the Executive Director by Executive Council or the Legislature or required under Huu-ayaht law.

The responsibilities of the **Law Clerk** are set out at s. 104 of the *Government Act*:

- (a) advising the Speaker and members of the Legislature on the interpretation and application of this Act and the rules of the Legislature;
- (b) advising the chair and members of Executive Council on the interpretation and application of Huu-ay-aht legislation and Executive Council rules;
- (c) advising the chair and committee members on the interpretation and application of Huu-ay-aht legislation and committee rules;
- (d) advising the Ta'yii Hawilth and members of the Ha'wiih Council on the interpretation and application of Huu-ay-aht legislation and any rules applicable to the Ha'wiih Council;

- (e) advising the Speaker and the People’s Assembly on the interpretation and application of Huu-ay-aht legislation and any rules of the Legislature or the People’s Assembly, as applicable;
- (f) fulfilling other responsibilities of the Law Clerk under Huu-ay-aht legislation;
- (g) advising on the form and content of motions and resolutions;
- (h) maintaining a record of any restrictions ordered by the tribunal against a former Council member holding government office and forwarding a copy of that record to an Election Commissioner appointed under the *Election Act*, and, on request, to any Huu-ay-aht body;
- (i) ensuring the accurate preparation and safe preservation of motions, resolutions, minutes and other records of government proceedings under this Act;
- (j) carrying out other related duties.

Both the Executive Director and the Law Clerk can delegate their duties (with some limited exceptions), but remain ultimately responsible for their proper performance.

DISCUSSION

The *Government Act* and the *Financial Administration Act* are structured based upon on the Executive Director being directly accountable to Executive Council and responsible for carrying out the direction of Executive Council, and the Law Clerk ensuring that the legal requirements for the proper functioning of government are carried out. The legal requirement that the two roles be carried out by the Executive Director seeks to capture an efficiency that recognizes that in practice there is a significant overlap between these two roles in terms of ensuring the proper functioning of government.

To date the duties and responsibilities of both roles are being met by the Executive Director/Law Clerk. From a workload perspective there has not been an apparent need to have different people filling the two roles. This is supported by the Executive Director’s and the Law Clerk’s ability to delegate certain tasks under the legislation to legal counsel and Huu-ay-aht employees while maintaining a consistent oversight.

OPTIONS

The Assembly has several options regarding the motion:

Option 1 – Approve the motion.

Option 2 - Approve the motion with amendments.

Option 3 – Not approve the motion.

IMPLICATIONS

Any initiative to separate the two roles would need to be the subject of a detailed legal and operational review to determine what complexities or inefficiencies could result from splitting the two positions up, and conversely, what advantages could be gained. A legal opinion would also be required to determine what various legislative amendments would need to be made to enable the separation of the two roles (beyond merely the amendment of s. 102 of the *Government Act*) and the procedure and timelines for such amendments.