



## **Huu-ay-aht First Nations Tribunal**

Government Office: 170 Nookemus Rd, Anacla, BC

**Mailing Address: 3483 - Third Ave., Port Alberni, BC V9Y4E4**

Chair: John R. Rich

Registrar: Deborah Smith

*tribunal@huuayaht.org*

May 29, 2015

### **HUU-AY-AHT FIRST NATION TRIBUNAL**

**In the Matter of the Challenge by Molly Clappis  
to the Nomination of Duane Nookemis  
Pursuant to Section 36(2) of the *Election Act***

**Date of Hearing: May 27, 2015**

**Location: Port Alberni**

### **Tribunal Member Hearing Application:**

**John Rich, Chair**

**Decision of Tribunal**

**A. THE ELECTION**

1. Pursuant to the Huu-ay-aht First Nations (“HFN”) *Election Act*, an election for councillor to sit on the HFN Executive Council is scheduled to be held June 20, 2015.

**B. THE NOMINATION**

2. HFN citizen, Duane Nookemis, has been nominated to run for the position of councillor. The nomination of Mr. Nookemis has been accepted by the Election Commissioner.

**C. THE CHALLENGE**

3. By email dated May 18, 2015, Ms. Clappis delivered a challenge to the nomination of Mr. Nookemis to the Tribunal. The challenge asserted that Mr. Nookemis was not qualified to be nominated under Section 5 of the *Election Act* on grounds that he is:

- (i) In default of a prescribed contractual obligation to government or any other prescribed entity;
- (ii) Convicted of criminal offence; and
- (iii) Convicted of a prescribed category of criminal offence for which five years have not been elapsed from the date of conviction.

4. Mr. Nookemis has disputed the challenge.

5. Pursuant to Section 36(8) of the *Election Act*, the Tribunal determined that the application would be dealt with at a hearing to be held May 27, 2015. The parties were duly notified and requested to provide to the Tribunal any documents on which they intend to rely by May 25, 2015.

**D. THE HEARING**

6. The hearing of the matter was held May 27, 2015 at the offices of the HFN. The Tribunal was constituted as a panel of one, being the Tribunal Chair.

**E. THE ELECTION ACT**

7. Section 5 provides for disqualification of a nominee:

(2) An eligible voter is disqualified from being nominated as a candidate if that individual is any of the following:

...

(f) disqualified or prohibited from holding elected office under this Act, another HUU-AY-AHT Act or otherwise disqualified by law;

8. Section 36 deals with challenges to nominations by a citizen:

(2) Subject to this section, an eligible voter may challenge a nomination by applying to the tribunal under section 17 (1) (c) of the Tribunal Act.

9. Section 36 also directs the Tribunal:

(9) Within 10 days of receiving the application, the tribunal must determine the matter and issue an order with written reasons, either:

(a) confirming the nominee is qualified to be nominated, or

(b) declaring the nominee is disqualified from nomination.

(10) The onus is on the applicant to establish that a nominee is not qualified to be nominated.

(11) If the tribunal finds that the evidence supports 2 or more different findings and that evidence is evenly weighted, the tribunal must resolve the matter in a manner that favours the nominee.

(12) Until the tribunal determines otherwise, a nominee is qualified for nomination or a candidate in the election, as applicable.

**F. SUBMISSION OF MS. CLAPPIS**

10. Ms. Clappis relied on the conviction of Mr. Nookemis for an offence under the B.C. *Forest Act*, for which Mr. Nookemis had been sentenced to a fine and the provision of community service.

11. On questioning by the Tribunal, Ms. Clappis acknowledged that she did not have evidence of a “default of contractual obligation” as alleged in her original challenge, thus, her challenge was based solely on the allegation of a criminal conviction.

12. Ms. Clappis also raised an additional issue with respect to non-compliance by Mr. Nookemis with the Huu-ay-aht oath, however, she conceded that was a matter for the HFN Government to decide rather than the Tribunal.
13. The Tribunal determined that the offence under the B.C. *Forest Act* was not a criminal offence and thus it was not necessary to hear submissions from Mr. Nookemis.

**G. CONCLUSION**

14. The challenge to the nomination of Duane Nookemis is dismissed. The Tribunal confirms that Mr. Nookemis is qualified to be nominated. Mr. Nookemis remains a candidate for the position of councillor in the June 20, 2015 election.

Dated: May 29, 2015

A handwritten signature in black ink, appearing to read "J R Rich". The signature is written in a cursive, flowing style.

John R. Rich, Tribunal Chair