



HUU-AY-AHT TRIBUNAL NOTICE OF APPLICATION
REFERENCE RE: QUESTION OF LAW
TRIBUNAL ACT (s.17(b), 28).

FORM A4

APPLICATION # _____
(for registry use only)

NOTES: 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.

QUESTION OF LAW

Set out question(s) of Law referred to Tribunal.

See attached Schedule A.

APPLICATION DATE

March 2, 2012

DATE

EXECUTIVE COUNCIL AUTHORIZATION

This Application is made pursuant to Executive Council Resolution # 2012-037

dated February 17, 2012.

DATE

For Office Use Only

Date Received: _____

SCHEDULE A

1. Huu-ay-aht Executive Council brings this Application before the Huu-ay-aht Tribunal following a series of communications from two Huu-ay-aht citizens that have disrupted the workplace of and resulted in complaints to government of discrimination and harassment from Huu-ay-aht employees.
2. On the face of it, Huu-ay-aht law establishes obligations and standards of conduct that are particular, and may in some instances be unique, to Huu-ay-aht law. Some of these standards attach to citizens, while some attach to government members in dealing with citizens and others to government in relation to Huu-ay-aht employees.
3. The purpose of this Application is not to seek from the Tribunal declarations of wrongdoing. Rather, it is to seek the Tribunal's assistance in:
 - a. defining particular legal obligations of Huu-ay-aht government and citizens under Huu-ay-aht law;
 - b. investigating a series of events and course of conduct that have caused significant disruption to Huu-ay-aht administration and concern to the Huu-ay-aht Council; and
 - c. making recommendations to assist the Huu-ay-aht government in upholding its obligations to employees and citizens.
4. Executive Council brings this Application before the Tribunal under the following sections of the *Tribunal Act*: 17(1)(b) and 28 (Reference regarding Huu-ay-aht Law) and 17(1)(g) (exercise of powers and duties assigned by Executive Council). The circumstances giving rise to the Application and into which the Tribunal is asked to inquire are summarized below. These are then followed by the specific questions and directions being put to the Tribunal by Executive Council.

I. STATEMENT OF FACTS

SERIES OF COMMUNICATIONS

5. A series of communications by two Huu-ay-aht citizens have been received in recent months by members of government and employees in the Huu-ay-aht administration. These communications have been delivered by a variety of means: postings to Facebook, letters and emails delivered to members of government and the administration, and telephone calls made to members of government and Huu-ay-aht employees.

6. These communications have included a number of statements expressing dissatisfaction with several issues relating to HUU-ay-aht policies, government and administration. In particular, they express dissatisfaction with the number of “white” people on the HUU-ay-aht payroll, and make specific mention of Rodney Murray (Director of Public Works and Community Infrastructure), including a statement that “I and most members will not answer to a white CEO”.
7. The communications also include statements which appear to hold the Executive Director responsible for HUU-ay-aht laws and government policies and to accuse the Chief Councillor of favoritism in hiring practices. They also included a statement that the recipient “might as well get use to this.”
8. On February 3, 2012, the HUU-ay-aht Council and Executive Director sent a letter to the two citizens seeking to address the issues they had raised. The letter from Council and the Executive Director also warned that the citizens’ communications to and regarding employees are not appropriate and stated that harassment and discrimination are not tolerated under HUU-ay-aht law. The letter also reminded the citizens of their right to bring matters before the Tribunal if they thought laws and policies were not being followed.
9. However, the citizens’ communications continued after that.

CONSEQUENCES OF COMMUNICATIONS

10. These communications appear to have had at least the following consequences (it is recognized that inquiry by the Tribunal may reveal other consequences not set out here):
11. In his January 2012 report to the Executive Director and to Executive Council, Director of Public Works and Community Infrastructure Rodney Murray raised concerns about the effect of discrimination and harassment on the workplace and stated that his intention in raising the issue was to remind the Executive Director and HUU-ay-aht Council that there are laws in place, including the principle of *ii-saak*, to protect workers’ human rights and to bring to light the fact that constituents need to be reminded of those laws.
12. On February 16, 2012, Executive Director Connie Waddell, cleared out her office at the HUU-ay-aht administrative offices. On February 17, 2012 Ms. Waddell advised Executive Council that she would be absent from the office effective immediately and delegated all of her lawfully delegable authority. She later advised Executive Council that her leave was the result of the continued harassment and racism directed at HUU-ay-aht administration.

13. On February 17, 2012 Director of Finance and Government Services Alan Legg wrote to Executive Council setting out excerpts regarding harassment from the HUU-AY-AHT First Nations Human Resources Policy and stating:

Because, in my opinion, the harassment is directed at more than one employee, I would anticipate that the Executive Council would immediately address the alleged harassers on behalf of all employees, both Native & Caucasian.

Should no significant action be taken by Executive Council in the immediate future, this complaint will be forwarded to the Canadian Human Rights Commission on behalf of all HUU-AY-AHT employees.

14. On February 17, 2012 Executive Council added the issue of harassment of HUU-AY-AHT employees by the two citizens to its agenda on an urgent basis and resolved, *inter alia*, to bring this application before the Tribunal. Executive Council also resolved to write again to the two citizens, and to write and post an open letter to HUU-AY-AHT citizens regarding the course of communications (Executive Council Resolution Attached).

II. REFERENCE AND DIRECTION TO THE TRIBUNAL

15. This course of communication and the apparent effect it has had on at least some HUU-AY-AHT employees is a matter of significant concern for Executive Council. It also engages several provisions of HUU-AY-AHT law which intersect upon these particular facts and which may be unique to HUU-AY-AHT law.

HUU-AY-AHT LAW: COROLLARY OBLIGATIONS OF GOVERNMENT MEMBERS AND CITIZENS

16. HUU-AY-AHT law puts an express obligation upon members of government to meet with HUU-AY-AHT citizens and to “respond to their questions and discuss any issues related to government raised by those citizens” (*Code of Conduct and Conflict of Interest Act* s. 4(2)).
17. At the same time, HUU-AY-AHT law contains particular provisions that are distinct from broader Canadian law relating to the conduct of citizens. Article 1.5 of the HUU-AY-AHT *Constitution Act* states:

Every HUU-AY-AHT citizen, through participation in the HUU-AY-AHT community, accepts the responsibilities of citizenship including:

- (a) upholding and respecting this Constitution and HUU-AY-AHT First Nations laws;
- (b) fulfilling personal obligations with respect to the care and guidance of our children and families;

- (c) adhering to the teachings related to *ii-saak* (respect); and
 - (d) promoting a healthy and vibrant community for all citizens.
18. In addition, under the *Huu-ay-aht Citizenship and Treaty Enrolment Act*, all citizens are bound by solemn declaration to uphold and respect *Huu-ay-aht* laws, and to adhere to the principle of *ii-saak* (respect) (s. 5(1)(b)).
19. No definition of the principle of *ii-saak* is written in *Huu-ay-aht* law. However, it is a core principle upon which *Huu-ay-aht* law is founded.

HUU-AY-AHT LAW: EMPLOYMENT FREE OF HARASSMENT AND DISCRIMINATION

20. *Huu-ay-aht's Human Resource Policy Regulation* also states that all employees have the right to work in a safe and respectful environment, free from and protected from harassment (Policy E 1.0). This includes "harassment by a community member against an employee while the employee is working."

DETERMINATIONS FOR TRIBUNAL:

21. By resolution dated February 17, 2012, Executive Council resolved to refer the matter of the two citizens' communications to government and administration, and the consequences of those communications, to the *Huu-ay-aht* Tribunal for review, adjudication and determination.
22. Under s. 17(1)(g) of the *Tribunal Act* Executive Council asks the Tribunal to inquire into the circumstances of the two citizens' communications with government and administration and the consequences of those communications, and to make findings of fact as the Tribunal sees fit and necessary.
23. Under s. 17(1)(b) and s. 28 of the *Tribunal Act* Executive Council asks the Tribunal to interpret the obligations of *Huu-ay-aht* government and *Huu-ay-aht* citizens in light of these facts and *Huu-ay-aht* law, including the principles of *ii-saak*; and under s. 17(1)(g) of the *Tribunal Act* to make such consequential recommendations to Executive Council as the Tribunal sees fit respecting communications from citizens to employees or government.
24. With respect to the investigation directed under s. 17(1)(g), relevant written communications have been gathered and can be submitted to the Tribunal. The Tribunal may also determine that it should hear evidence from individuals involved in the course of communication, including employees referred to in or affected by it. It is also anticipated that the Tribunal may wish to hear from members of *Ha'wiih* Council and others who have knowledge on the teachings of *ii-saak*. Executive Council awaits the

Tribunal's direction as to how it wishes to conduct its investigation and/or receive evidence.

Huu-ay-aht First Nations – Written Motion

(Government Act, s. 52)

For ease of reference, this motion may be referred to as:

Motion Regarding Addressing Harassment of Huu-ay-aht employees by Norman and Rita Dennis

Motion

Whereas

- 1) Huu-ay-aht citizens, Norman and Rita Dennis, have on several occasions sent communications to members of Huu-ay-aht government and administration that constitute harassment and contain discriminatory statements, contrary to Huu-ay-aht Law;
- 2) Huu-ay-aht has an obligation to, and the Huu-ay-aht Government is committed to, providing employees with a workplace that is safe and respectful and free of harassment;
- 3) Huu-ay-aht Citizens are required to uphold and respect Huu-ay-aht Law and to conduct themselves in accordance with the principles of ii-saak;
- 4) Huu-ay-aht Government members are obligated to respect and uphold Huu-ay-aht Law;

Be it resolved that Executive Council will, as soon as possible:

- 1) Write and send a letter from the Huu-ay-aht Council to Norman and Rita Dennis:
 - a. Advising them that their communication to members of Huu-ay-aht government and administration constitutes harassment and contain discriminatory statements, which are serious violations of Huu-ay-aht and Canadian law.
 - b. Directing them to immediately cease communicating with Huu-ay-aht employees, both in writing and verbally.
 - c. Advising them that Executive Council is referring the matter of their conduct and communication to the Huu-ay-aht Tribunal for review and adjudication under Huu-ay-aht Law.
 - d. Stating that their actions have constituted serious violations of law, and recommending that they seek legal advice.
 - e. Copying the letter to Connie Waddell, and to the Acting Executive Director, and the Huu-ay-aht Directors.
- 2) Refer the matter of their communications to government and administration, and the consequences of those communications, to the Huu-ay-aht Tribunal for review, adjudication and determination:
 - a. Under s. 17(1)(b) and s. 28; and
 - b. Under s. 17(1)(g), directing the Tribunal to investigate the circumstances of their communications to government and administration and the consequences of those communications, and to make any recommendations to Executive Council toward addressing and preventing future discriminatory and harassing communication from

Huu-ay-aht First Nations – Written Motion

(Government Act, s. 52)

Huu-ay-aht citizens to employees.

3) Draft and circulate an open letter to Huu-ay-aht Citizens

- a. Stating that over the last few months Huu-ay-aht government and administration have received concerning communication from Huu-ay-aht citizens directed at Huu-ay-aht employees. The communications contain discriminatory statements and constitute harassment. These are serious violations of Huu-ay-aht and Canadian law.
- b. Advising that Executive Council has an obligation to and will ensure that it provides its employees with a safe, respectful, and harassment-free workplace.
- c. Advising that Executive Council has directed the citizens to cease the harassing communication.
- d. Advising that Executive Council is referring the matter of the harassing communication, and its consequences, to the Huu-ay-aht Tribunal for an independent determination of the matter under Huu-ay-aht Law.
- e. Reminding citizens that citizen correspondence with Government is welcome, but that all Huu-ay-aht Citizens are bound to follow the principles of *ii-saak*, and to uphold and respect the Huu-ay-aht Constitution and Laws. The letter will remind citizens of the proper means to bring questions, comments and criticism to the attention of Government.

Appendices attached to Motion:

Written report prepared by _____.

Note: Section 56 of the *Government Act* requires that the report on any substantive matter to be considered by Executive Council must be provided to Executive Council at least 4 working days in advance of its consideration.

The following documents:

Note: Any documents or records referred to in the motion MUST be attached (*Government Act*, s. 52(5)).

Introduced by:

Jeff Cook

EXECUTIVE COUNCIL MEMBER

Date:

February 17, 2012

DATE OF EXECUTIVE COUNCIL MEETING

Huu-ay-aht First Nations – Record of Motion
If passed, becomes
Record of a Resolution of Executive Council
(Sections 52 and 53, Government Act)

Motion		
Introduced by:		
<u>Jeff Cook</u> Executive Council member	_____ Councillor's portfolio (if applicable)	
<u>Feb 17 / 2012</u> Date	 Signature of Councillor	
Decision to be made:		
Adopt or reject motion regarding: <u>Addressing Harassment of Huu-ay-aht employees by Norman and Rita ^{Dennis}, attached.</u>		
Record of decision:		
<input checked="" type="checkbox"/> Adopted by consensus OR		
<input type="checkbox"/> Recorded vote called by _____ Executive Council member		
Record of vote:		
Councillors in Favour:	Councillors Opposed:	Abstentions:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Resolution Number		
<input type="checkbox"/> Did not pass		
<input checked="" type="checkbox"/> Passed by Executive Council		
Resolution #: <u>2012-037</u>		
Date effective: <u>Feb. 17, 2012</u>		
<u>Feb. 17 / 2012</u> Date	 Signature of Chair	