

## **FINDINGS OF HUU-AY-AHT FIRST NATIONS TRIBUNAL**

### **DECISION #2012 -01**

#### *The Principles of Ii-saak*

1. The principle of *ii-saak*, which is made part of HFN law by s.1.5(c) of the *Constitution Act*, requires respectful behavior by both government members and citizens in all citizen and government dealings.
2. The Tribunal finds that members of the Executive Council followed the principles of *ii-saak* in dealing with, or attempting to deal with Norman and Rita Dennis. However, Norman and Rita Dennis failed to respect the principle of *ii-saak*, as demonstrated in the content, tone and persistence of their communications.

#### *Obligations of Executive Council*

3. Members of Executive Council are bound by the *Code of Conduct and Conflict of Interest Act* to treat HFN citizens equitably and impartially, and to make reasonable efforts to meet regularly with citizens.
4. The Tribunal finds that these obligations of government members have been met, both through formal meetings such as the People's Assembly and through informal communications. HFN law does not place a legal requirement on government members to meet with individual citizens at their request or demand.
5. The Executive Council has responsibilities as the employer of the HFN administration, including a duty to ensure a safe workplace environment, free from harassment or discrimination.
6. The Tribunal finds that, although the Executive Council has recognized its obligations respecting the work place environment, it did not act in a timely manner in 2011 to address issues of harassment and discrimination.

### Obligations of Chief Councillor

7. The Chief Councillor has additional duties respecting communications with citizens and ensuring proper management and administration of government.
8. The Tribunal finds that the legal obligation on the Chief Councillor is to ensure that citizens are provided reasonable opportunities to be informed respecting Huu-ay-aht issues. The Tribunal further finds that this obligation was met, however, the Tribunal notes that not all communication with citizens has been effective.
9. The Tribunal finds that the Chief Councillor ought to have intervened and dealt with Norman Dennis in the summer of 2011, at which time the Executive Council was aware of the harassing behaviour of Norman Dennis.

### Ha'wiih Council

10. The Tribunal finds that the Ha'wiih Council does not have legislated obligations relating to this application. However, the Tribunal finds that the Ha'wiih Council could play a significant role in resolving issues between citizens and government.

### Executive Director

11. The Executive Director is responsible for administering Human Resource Policy, including that employees have the right to work in a safe and respectful environment.
12. The Tribunal finds that in the circumstances of the harassing communications in 2011, the Executive Director should have exhausted administrative options to prevent the harassment, and failing success in that regard should have referred the matter formally to the Chief Councillor and Executive Council.

### Employees

13. All employees have rights under HFN Law to a safe and respectful work environment, free from harassment and discrimination.

14. The Tribunal finds that these rights were interfered with by the harassing and discriminatory communications of Norman and Rita Dennis in 2011–12.

#### Citizens

15. Citizens have rights set out in the HFN *Constitution Act*, including the right to be informed and the right to express opinions. However, the *Constitution Act* also requires citizens to accept the responsibility adhering to the teachings of *ii-saak* (respect).
16. The Tribunal finds that there is a point at which the failure to act respectfully will outweigh those citizens' rights to obtain information and provide opinion. In the present case the extent of the disrespectful communications by Norman and Rita Dennis has been such to disentitle those citizens from relying on the rights established by the *Constitution Act*.

#### Sanctions - Fines

17. Existing sanctions against inappropriate citizen behaviour towards employees are found in the *Code of Conduct and Conflict of Interest Act*, which provides for a \$1,000 fine for interfering, hindering or obstructing a public officer in the performance of his or her duties. However, it appears that this sanction was not considered by HFN Government in dealing with the harassing behaviour of 2011-12.

#### Sanctions - Access

18. The other sanction available with respect to harassing conduct is found in the Human Resources Policy Regulation, which provides for a prohibition against attendance at the HUU-ay-aht Government Offices in the event of harassing behaviour. However, such a restriction has little effect on persons who are engaged in harassing behaviour through telephone and email, rather than personal appearance.

### Balancing Rights

19. The Tribunal finds that the right to be informed and express opinions must be balanced against the obligation to adhere to teachings related to *ii-saak*. The failure to act respectfully in seeking information or expressing opinions may lead to the loss or diminution of citizen rights.

### Inappropriate Communications

20. The Tribunal finds that the communications from Norman and Rita Dennis in 2011-12 were inappropriate, and inconsistent with the principles of *ii-saak*. The Tribunal also finds that Norman and Rita Dennis failed to take advantage of appropriate opportunities to obtain information and provide opinion, such as the Peoples' Assembly.

### Harassment

21. The Tribunal finds that communications from Norman and Rita Dennis amounted to harassment of HFN employee Rodney Murray and Executive Director Connie Waddell.
22. The Tribunal finds that the delay by the Chief Councillor and Executive Council, from summer 2011 to February 2012, in becoming directly involved in the issue of harassment by Norman Dennis, contributed significantly to the negative impact on the HFN workplace.

### Discrimination

23. The Tribunal finds that the communications from Norman and Rita Dennis involved unlawful discrimination.
24. Again, the Tribunal finds that the Chief Councillor and Executive Council should have been aware of this serious situation at least by the summer of 2011 and should have taken responsibility for dealing with Norman Dennis at that time.

Consequences

25. The Tribunal finds that the communications of Norman and Rita Dennis over the period February 2011 to February 2012 were a significant factor in the decisions of Connie and Waddell and Rodney Murray to leave their positions on stress leave.
  26. The Tribunal also finds that the communications of Norman and Rita Dennis were significant in disrupting the HFN workplace and contributing to a low morale during 2011-12.
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