



huu ay aht

ANCIENT SPIRIT, MODERN MIND

Tribunal

Anacla Government Office, 170 Nookemus Road, Anacla, BC
Mail: Port Alberni Government Office, 4644 Adelaide Street,
Port Alberni, B.C., V9Y 6N4
Chair: John R. Rich,
Registrar: Kim Chretien
Email: Tribunal@huuayah.org

ANNUAL REPORT OF THE HUU-AY-AHT FIRST NATIONS TRIBUNAL November 2, 2015

TO: EXECUTIVE COUNCIL
TO: HA'WIIH COUNCIL
TO: PEOPLE'S ASSEMBLY
TO: TRIBUNAL MEMBERS

This annual report is written pursuant to Section 16 of the Tribunal Act, covering the period from the date of the last Annual Report, November 6, 2014 to November 2, 2015.

Establishment and Term of the Tribunal

The Tribunal is established by Section 3 of the *Tribunal Act*. The Tribunal consists of the Chair, the Vice-Chair, three members and one alternate member.

Chair

Chair, John Rich (five year term expires 2016, Tribunal Act, Sections 3(2)(a), 6(1)(a)).

Vice Chair

The Tribunal Vice Chair from 2011 to date has been Hugh Braker. However, his four-year term expires this year (*Tribunal Act*, Section 3(2)(b), 6(1)(b)). A new Vice Chair is to be appointed by the Executive Council, after consultation with the Chair (*Tribunal Act*, Section 3(2)(b)).

Members

Three Members of the Tribunal were appointed in November 2015:

- Florence Wylie, was appointed by the Ha'wiih Council (three year term expires 2017, Tribunal Act, Sections 3(2)(c), 6(1)(c))
- Trudy Warner, was appointed by the Ha'wiih Council (three year term expires 2017, Tribunal Act, Sections 3(2)(d), 6(1)(c))
- Bryan Happynook, was appointed by the People's Assembly (three year term expires 2017, Tribunal Act, Sections 3(2)(c), 6(1)(c))

Alternate Member

The *Tribunal Act* (Section 3(3)) provides that the People's Assembly may appoint an alternate member. For the period ending November 2014, the Alternate Member was Bryan Happynook, who is now an appointed full Member of the Tribunal. It is open to the People's Assembly to appoint another alternate member.

Tribunal Administration

1. *Freedom of Information and Protection of Privacy Act*
 - (a) Pursuant to Section 26 of the Freedom of Information and Protection of Privacy Act, the Chair must appoint an Independent Review Commissioner to assess whether the Act ensures that Huu-ay-aht bodies are open, accountable and transparent and that individual personal privacy is protected. The Independent Review Commissioner is to conduct research and write a report in this regard, including recommendations as appropriate.
 - (b) Following consultation with the Executive Council, and researching suitable candidates, the Tribunal Chair appointed David Loukidelis, Q.C. to the position of Independent Review Commissioner in October 2014. Mr. Loukidelis has extensive experience in the area of Freedom of Information and Privacy, having served as commissioner of Freedom of Information and Privacy for the Province of British Columbia for several years.
 - (c) Mr. Loukidelis delivered his report to the Executive Council on July 17, 2015.
 - (d) The *Freedom of Information and Protection of Privacy Act* mandates that the report of Commissioner Loukidelis be presented to the People's Assembly following delivery of the report.

2. The Tribunal issued Directive 2015 respecting filing new applications to the Tribunal, on August 10, 2015.
3. Kim Chretien was appointed as Tribunal Registrar by the Executive Director, in consultation with the Chair, on August 2015.

Adjudication Matters

There were several matters brought before the Tribunal for adjudication in 2015.

Nomination Challenges

Two challenges were brought against the nomination of candidates for the election to the Executive Council, in May 2015.

1. The nomination of Duane Nookemis was challenged by Molly Clappis, pursuant to Section 36(2) of the *Election Act*.

A hearing was held May 27, 2015 to determine the challenge.

The basis of the challenge was that Mr. Nookemis had been convicted of an offence under the *BC Forest Act*. The Tribunal determined that the offence under the *BC Forest Act* was not a criminal offence. Consequently, the challenge to the nomination was dismissed and the Tribunal confirmed that Mr. Nookemis was qualified to be nominated.

2. The nomination of Johnson Ginger was challenged by the Election Commissioner, on the basis of advice from HFN Executive Director, James Edwards, that Mr. Ginger was disqualified from holding public office pursuant to Section 43 of the *Code of Conduct and Conflict Interest Act* and Section 5 of the *Election Act*.

A hearing was held May 27, 2015 to determine the challenge.

At the hearing, the Election Commissioner advised that he was obliged by Section 36(3) of the *Election Act* to challenge the nomination of Mr. Ginger on the basis that Mr. Ginger was disqualified from holding a position of a public officer. The basis of the disqualification was provided by Executive Director, James Edwards. Mr. Edwards advised that in the fall of 2014 he had conducted an investigation which concluded that Mr. Ginger's conduct contravened Section 12(3) of the *Code of Conduct and Conflict of Interest Act*. On the basis of that finding, Mr. Edwards notified Mr. Ginger that he was disqualified under Section 23(1)(a) of the *Code of Conduct and Conflict of Interest Act* from holding any position as a public officer.

In response to the challenge, Mr. Ginger sought to dispute the basis for his dismissal on disqualification. However, he confirmed that he had not appealed Mr. Edwards' decision in December 2014 to disqualify him. Consequently, his disqualification was not open to question at the hearing challenging his nomination in May 2015.

The Tribunal determined that Mr. Ginger had been disqualified by Mr. Edwards under Section 23(1)(a) of the *Code of Conduct and Conflict of Interest Act*, and had not appealed that decision. The "disqualification" imposed by Mr. Edwards was in addition to the dismissal of Mr. Ginger from his position. As a consequence of the disqualification, Mr. Ginger was not entitled to be nominated.

James Edwards' Applications

Former Executive Director, made two applications to the Tribunal in July 2015, the first respecting his suspension as Executive Director by the new Executive Council, and the second, a challenge to the decision of the Executive Council to rescind a previous decision barring Sheila Charles from the HFN Offices.

Both applications progressed toward hearing, but a settlement was reached in October 2015, so that the applications were dismissed by consent of both parties.

Submitted: November 2, 2015

A handwritten signature in black ink, appearing to read "J. R. Rich". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John R. Rich, Tribunal Chair