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ANCIENT SPIRIT, MODERN MIND

Huu-ay-aht First Nations Tribunal

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September 26, 2018

TRIBUNAL APPLICATION 17-01

DECISION OF TRIBUNAL

Application 17-01, filed October 30, 2017 by Johnson Ginger, is hereby dismissed pursuant to Tribunal Rule J.1.(e). Reasons for dismissal are set out below.

REASONS FOR DECISION

Application 17-01 was filed by Johnson Ginger on October 30, 2017, seeking a determination that he be eligible to hold public office. Mr. Ginger was previously disqualified from holding public office in December 2014, pursuant to section 23 of the Code of Conduct and Conflict of Interest Act, by a decision of former Executive Director James Edwards.

Background

Mr. Ginger was employed by HFN as Director of Government Services between 2011 until his dismissal in December 2014. In December 2014, Mr. Ginger was dismissed, for cause, by Executive Director James Edwards.

In dismissing Mr. Ginger, Executive Director James Edwards determined that Mr. Ginger had contravened the Code of Conduct and Conflict of Interest Act, and disqualified Mr., Ginger from holding public office.

Section 23 of the Code of Conduct and Conflict of Interest Act provides:

- (1) Subject to this Act, public officers who contravene this Act may be subject to one or more of the following:
 - (a) disqualification from holding their position,
 - (b) dismissal or removal from their position, or
 - (c) termination of their contract.
- (2) An individual disqualified under subsection (1) is disqualified from holding any position as a public officer.
- (3) After a prescribed period of time, an individual disqualified under subsection (1) may apply to the tribunal to be eligible to become a public officer.

Mr. Ginger did not appeal his disqualification.

In May 2015, Mr. Ginger filed a nomination to run in the election for Executive Council, however, the Election Commissioner rejected his nomination on the basis of his prior disqualification by Mr. Edwards. Mr. Ginger appealed the decision of the Election Commissioner to the Tribunal, however, since Mr. Ginger had not appealed his disqualification the Tribunal was obligated to uphold the decision of the Commissioner.

Time for Application for Reinstatement

Section 23 (3) of the Code of Conduct and Conflict of Interest Act, cited above, provides that an individual who has been disqualified may apply to the Tribunal to be eligible to become a Public Officer.

In October 2017, the Executive Council prescribed the length of time after which a person disqualified could apply to the Tribunal to become a Public Officer, to be six months following disqualification. (*Time limit for eligibility to be Public Officer following disqualification regulation 2017*)

Application 17-01

Mr. Ginger filed his application for reinstatement with the Tribunal in October 2017, over six months after his disqualification. Thus, the Tribunal had jurisdiction to restore his eligibility to become a Public Officer (Code of Conduct and Conflict of Interest section 23 (3))

In order for the Tribunal to decide on Mr. Ginger's application for reinstatement, it was necessary for Mr. Ginger to provide an explanation of the basis for his application and for the Tribunal to conduct a hearing to consider his explanation (Tribunal Rule M)

Mr. Ginger was advised by the Tribunal, November 2, 2017, that in order to deal with the application the Tribunal would require information from Mr. Ginger:

1. the reason for his disqualification, and
2. his explanation as to why his eligibility should be reinstated. (Email November 2, 2017)

On November 21, 2017, Mr. Ginger was further advised by the Tribunal Chair:

The time limit for intervention in your Application has expired and there have been no interventions filed.

The Tribunal will now schedule a hearing to consider your application and make a decision. I have determined that a Summary Hearing, pursuant to Part M of the Tribunal Rules is appropriate in this situation. The Rules require a hearing, open to the public, regardless of whether an Application is opposed. Thus, I am proposing that a hearing be held in Port Alberni one day next week (Nov.27 – Dec. 1). I expect the hearing to be brief, no more than half an hour.

Please advise if you are not available any day next week. Once I hear from you, I will schedule the time and place for the hearing.

I remind you of my advice below, that you will have to explain your reasons for seeking entitlement to reinstatement for eligibility to hold public office. (Email HFN Tribunal to Johnson Ginger November 21, 2017)

Mr. Ginger failed to provide information requested, and failed to advise of his availability to have the matter heard by the Tribunal.

On November 27, 2017, the Tribunal again emailed Mr. Ginger to advise of the requirements that he submit information and appear before the Tribunal, failing which his application would be dismissed. Mr. Ginger did not respond.

On September 11, 2018, the Tribunal, having received no communications from Mr. Ginger in response to the November 27, 2017 email, or otherwise, again emailed Mr. Ginger to advise that the Tribunal would formally dismiss his application pursuant to Rule J.1.(e) unless he provided, within 7 days, an explanation in writing to explain why his application for reinstatement should not be dismissed. Mr. Ginger did not respond to this email.

Dismissal

Tribunal Rule J.1.(e) provides:

1. At any time after an application is filed, the Tribunal may dismiss all or part of it if the Tribunal determines:
 - ...
 - (e) the Applicant has failed to diligently pursue the Application, failed to comply with an Order of the Tribunal or failed to attend a Case Management Conference or a Hearing.

In the opinion of the Tribunal, Mr. Ginger's failure to respond to the Tribunal's emails and failure to provide information to support his application constitutes a failure to diligently pursue the application as contemplated in Rule J.1.(e).

Accordingly, application 17-01 is dismissed.



John R. Rich
Tribunal Chair