

Huu-ay-aht First Nations Tribunal

Tribunal Application #2022-01
April 19, 2022

BETWEEN:

Huu-ay-aht First Nations Executive Director, Connie Waddell

APPLICANT

And:

Government Member, Trevor Cootes

RESPONDENT

TRIBUNAL DECISION RESPECTING *PRIMA FACIE* EVIDENCE

Decision Pursuant to *Code of Conduct* and *Conflict of Interest Act* s. 26(1)

Application #2022-01 has been submitted by the HFN Executive Director, April 12, 2022, seeking the disqualification of Councillor Trevor Cootes for alleged breaches of the *Code of Conduct* and *Conflict of Interest Act* (“COCCIA”).

Section 29 of the *Tribunal Act* provides:

- 29** A proceeding under section 17 (1) (c) must
- (a) begin in accordance with the procedure set out in the Huu-ay-aht law that establishes the tribunal’s authority in the proceeding, and
 - (b) be investigated, heard or determined by the tribunal in accordance with the applicable Huu-ay-aht law and this Act.

Thus the Tribunal procedure is governed by both the *Tribunal Act* and COCCIA and provides in s. 24(4) that an application to disqualify a government member must:

- (c) be in writing,
- (d) set out the facts on which the application is based, and
- (e) be supported by a solemn declaration of the applicants.

Application #2022-01, as submitted, fulfills those requirements.

Section 26 of COCCIA further provides for initial consideration of the Application by the Tribunal:

- 26 (1) Within 5 days of receiving an application under section 24, the chair of the tribunal must decide whether the application presents prima facie evidence for disqualification of a government member or former government member.
- (2) If the chair decides there is prima facie evidence under subsection (1), the tribunal must hear the application and make a determination in accordance with section 17 (1) (c) of the Tribunal Act.
- (3) The determination of the chair is final and cannot be appealed.

The law respecting *prima facie* evidence is well settled.

Black's Law Dictionary, 11th ed (Thomson Reuters, 2019) defines "*prima facie* evidence" as Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.

Barron's Canadian Law Dictionary defines "*prima facie* evidence" as evidence which, if accepted by the tribunal, establishes a fact in the absence of acceptable evidence to the contrary." (citing *Halsbury's Laws of England*, (3rd ed.), para. 506).

The interpretation of the term "*prima facie* evidence" is discussed in *R v. Proudlock*, [1978] 1 S.C.R. 525:

Prima facie evidence, that which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour that it must prevail if believed by the jury unless rebutted or the contrary proved; conclusive evidence, on the other hand, is that which excludes or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established. (at 548)

...

The standard of evidence required for a conviction, including the standard of the evidence required to overcome a *prima facie* case against the accused, is just as basic a principle as the right of the accused to remain silent. In fact, it may be considered as a qualification of this principle. The accused may remain silent but, when there is a *prima facie* case against him and he is, as in the instant case, the only person who can give "evidence to the contrary" his choice really is to face certain conviction or to offer in testimony whatever explanation or excuse may be available to him. [emphasis added] (at 550)

Application #2022-01 describes the alleged conduct of the Respondent Councillor Cootes in detail. The Application includes an investigative report citing evidence obtained from interviews, electronic communications and documents. While this evidence is hearsay, which might not be admissible in a court of law, no such restriction applies to the Tribunal. Section 40 of the *British Columbia Administrative Tribunals Act*, which is expressly incorporated in the *HFN Tribunal Act* (s. 33) provides expressly that "the Tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law."

The Tribunal finds that the evidence provided in Application #2022-01 is sufficient to meet the standard for a *prima facie* evidence as required by s. 26 of COCCIA.

Although the Tribunal has concluded that the evidence presented in Application #2022-01 is sufficient to establish a *prima facie* case, this does not mean that the evidence is conclusive, rather that it is sufficient to allow the Application to proceed.



John Rich
Tribunal Chair
April 19, 2022