



**HUU-AY-AHT TRIBUNAL NOTICE OF RESPONSE
RESPONSE OF ADMINISTRATIVE DECISION MAKER**

FORM B1

NOTES: This form is to be used for a Response by or on behalf of an administrative decision maker responding to an Application.

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. You may also attach documents if necessary.

Responses must be filed with the Tribunal within 14 days of service of the Notice of Application.

APPLICATION RESPONDED TO	
This is a Response to Application #2022-2.	
RESPONSE TO GROUNDS	Briefly set out your position on the Grounds for Appeal advanced in the application, including any relevant additional facts.
See Schedule 1 attached.	
RESPONSE TO RELIEF SOUGHT	Set out your position on the relief sought in the Application.
See Schedule 1 attached.	

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YOU MUST COMPLETE BOTH**



**HUU-AY-AHT TRIBUNAL NOTICE OF RESPONSE
RESPONSE OF ADMINISTRATIVE DECISION MAKER**

FORM B1

RESPONDENT

Rayner Cynthia Acting Executive Director
LAST NAME GIVEN NAME(S) POSITION

4644 Adelaide Street Port Alberni V9Y 6N4
MAILING ADDRESS CITY/TOWN POSTAL CODE

250-723-0100 executivedirector@huyuayht.org
PHONE FAX EMAIL ADDRESS

RESPONDENT'S AGENT

To be completed only if an agent will be acting on behalf of the Respondent.

Skeels Melinda
LAST NAME GIVEN NAME(S)

500-221 West Esplanade North Vancouver V7M 3J3
MAILING ADDRESS CITY/TOWN POSTAL CODE

604-988-5201 604-988-1452 mskeels@ratcliff.com
PHONE FAX EMAIL ADDRESS

ADDRESS FOR DELIVERY

This will be used to deliver any notices in relation to the Application.

Note: the Tribunal's preferred means of communication is through email.

CHECK ONE: Applicant's Email Applicant's Fax Applicant's Mailing Address
 Agent's Email Agent's Fax Agent's Mailing Address Use Email or Fax or Address **provided in space below:**

SIGNATURE

This notice must be signed by the Respondent or Respondent's agent.

Melinda Skeels
FIRST AND LAST NAMES OF PERSON SIGNING

December 12, 2022
DATE


SIGNATURE

For Office Use Only

Date Received: _____

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Schedule 1 – Response to application 2022-2

Response to Grounds

Introduction

1. The application is deficient and should be dismissed pursuant to Rule J (1) (a). Crucial information is missing. The purported decisions that are appealed from are not described in sufficient detail to allow for a meaningful response and the applicant has not provided the particulars required under the *Tribunal Act*. Most are not administrative decisions that are subject to review by this Tribunal and, in some cases, are not decisions at all. Further, the relief sought is not available under this application.
2. To the extent the Tribunal is inclined to allow the applicant to cure the deficiencies in the application, this is not an appropriate situation in which to do so. The application should be dismissed pursuant to Rule J (1) (g) or, in the alternative, Rule J (1) (f), as there is an adequate administrative review process already underway in relation to the same or very similar subject matter.
3. In the event that the Tribunal does not accept the respondent’s submissions with respect to summary dismissal of the totality of the application, the defects in the application must be cured to allow the respondent to provide a substantive response to the grounds alleged and relief sought.

Facts

4. Huu-ay-aht First Nations Executive Council created the Huu-ay-aht Public Complaints Policy (the “**Complaints Policy**”) on March 2, 2015.
5. The purpose of the Complaints Policy is to “establish a process for the receipt, investigation and resolution of complaints, as a preliminary step to the more formal process contemplated under the *Tribunal Act*, and to ensure procedural fairness in the handling of complaints.”¹ The Complaints Policy applies as a preliminary step before an application to the Tribunal unless “another Huu-ay-aht First Nations law or policy establishes a complaints process as a preliminary step to a Tribunal application” in which case, “that law or policy prevails to the extent of any conflict with this Policy.”²
6. The ambit of the policy is broad. A complaint is defined as:
 - an expression of dissatisfaction or concern regarding a policy, decision, act or omission of or the provision of a service by
 - (a) the Huu-ay-aht First Nations government,
 - (b) a government member in his or her capacity as a government member, or
 - (c) a government employee in his or her capacity as a government employee.³

¹ *Public Complaints Policy*, <https://huyuayht.org/wp-content/uploads/2015/09/2015-03-02-public-complaints-policy-01114401.pdf> [“*Complaints Policy*”], s. 2

² *Complaints Policy*, s. 3 (b)

³ *Complaints Policy*, s. 1

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The Complaints Policy applies to:

all complaints, including complaints by

- (i) a Huu-ay-aht citizen,
- (ii) a government employee,
- (iii) a government member,
- (iv) a contractor of the Huu-ay-aht First Nations, or
- (v) a member of the public.⁴

7. The individual or body responsible for the handling of a complaint under the Complaints Policy is directed to consider:

what remedial action may be appropriate and what systems improvements may be required, for example:

- (a) an explanation;
- (b) a change of decision;
- (c) formal or informal dispute resolution;
- (d) an apology;
- (e) correction of misleading or incorrect records; or
- (f) whistleblower protection.⁵

8. On October 28, 2022, the applicant made a complaint under the Complaints Policy (the “**Complaint**”) against the respondent acting Executive Director Cynthia Rayner and the Director of Child and Family Wellness (**CFW**) to the Chief Councillor.

9. In the Complaint, the applicant raises issues very similar to those raised in this application, including:

- a) the sharing with CFW staff of a PowerPoint presentation that the applicant had sent to Executive Council and the respondent;
- b) the applicant’s view that she was falsely accused of harassing CFW staff;
- c) that the respondent has required her to deal directly with the respondent instead of with CFW staff; and
- d) the applicant’s desire to get assistance in obtaining guardianship of her grandson.

10. An independent investigation into the Complaint has been undertaken in accordance the Complaints Policy. No outcome has yet been reached.

Defective Application

11. The applicant seems to have brought her application under section 17 (1) (a) of the *Tribunal Act*, under which the Tribunal has jurisdiction to decide appeals from administrative decisions made under Huu-ay-aht law.

⁴ *Complaints Policy*, s. 3 (a)

⁵ *Complaints Policy*, s. 8

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12. A notice of appeal in respect of an administrative decision must “identify the decision being appealed, including the date of the decision” (*Tribunal Act*, s. 12 (3) (b), emphasis added).
13. “Administrative decision” is defined in section 2 of the *Tribunal Act*, as “the exercise, refusal to exercise, or proposed or purported exercise of a statutory power under Huu-ay-aht law.”
14. No dates in relation to any of the purported decisions are provided in the application. Unless corrected, this flaw alone is fatal to the application.
15. Furthermore, the first and second “Decisions Appealed” are not administrative decisions, while the fifth and sixth are not alleged to have been made by the respondent, making them unsuitable for disposition in this application.
16. To the extent that the application may challenge any administrative decisions that are alleged to have been made by the respondent, these are not articulated in a way that permits the respondent to provide a response to their substance.
17. While section 20 (4) of the *Tribunal Act* gives the chair discretion to allow the applicant to cure the defect within a reasonable length of time, it is submitted that in this instance it would not be appropriate to do so for the reasons set out below.

Dismissal related to Complaint process

18. The application should be dismissed pursuant to Rule J 1 (f) or (g) because its subject-matter is currently being addressed through the Complaints Policy. The Complaints Policy is an administrative process that was designed to be a prerequisite to the Tribunal process, provides an adequate remedy and is better-suited to address the applicant’s concerns in the first instance (see paras. 5-7 above).
19. Although Rule J 1 (g) states that it applies where “the substance of the Application has been appropriately dealt with in another proceeding”, it is submitted that this provision must be read broadly to include circumstances where “another proceeding” has been commenced in respect of the substance of the application, even if that proceeding has not yet concluded. Failing to interpret the provision this way would result in allowing applicants to simultaneously bring complaints under the Complaints Policy and Tribunal applications about the same subject matter, which would result in inefficient use of judicial resources, an unnecessary multiplicity of proceedings and the risk of inconsistent outcomes in different forums.
20. The issues listed under “Decision Appealed” and discussed under “Grounds for Appeal” in the application overlap significantly with the subject matter of the Complaint. In particular, both the application and the complaint seem to raise the following:
 - a) the applicant is concerned that a presentation she made about the CFW department and provided to Executive Council and the respondent was shared with CFW staff;

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- b) the applicant alleges that she has been wrongly accused of acting in an abusive or harassing manner towards CFW employees;
 - c) the applicant wishes to communicate directly with CFW department staff and not through the respondent; and
 - d) the applicant alleges that the CFW department is not working with her appropriately to pursue guardianship of her grandson.
21. The Policy was designed to establish an administrative process for the investigation and resolution of complaints such as those raised by the applicant as a preliminary step to the more formal process *Tribunal Act* process.⁶ It is submitted that an individual in the circumstances of the applicant should be required to follow the process under the Complaints Policy before bringing an appeal of administrative decision to the Tribunal. The chair need not decide that question here, as in this case the applicant has already availed herself of that process.
22. Permitting this application to proceed at this time would circumvent the adequate remedial administrative process that is not only available⁷ but actually underway, that is specifically designed to deal with concerns of this nature, and that may well result in a satisfactory remedy for the applicant. Both the process and available remedies under the Complaints Policy are more flexible and accessible than the Tribunal process.⁸
23. Moreover, the Complaint Policy process will result in one or more decisions that are more amenable to consideration by the Tribunal (if necessary) than the issues raised here. If the process under the Policy is allowed to conclude first, it will undoubtedly create a record and evidentiary foundation upon which any eventual appeal to the Tribunal could be much more efficiently based. Dismissing the application at this time would thus promote judicial economy.⁹
24. In addition, the Tribunal should avoid hearing applications where doing so would result in a multiplicity of proceedings, a risk of inconsistent outcomes, and an inefficient use of judicial resources.¹⁰ Hearing the application at this point risks the Tribunal and the Complaints Policy process reaching inconsistent results on the same subject matter, undermining confidence in the integrity of the administration of justice.¹¹ Furthermore, if the Tribunal hears this application, the applicant might nonetheless choose to appeal any decisions made in relation to her Complaint, and the Tribunal could then be asked to deal with many of the same issues a second time.

⁶ *Complaints Policy*, s. 2, 3 (b)

⁷ *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at para 30.

⁸ See *Complaints Policy*, s. 2, 3 (a), 8; *Tribunal Act*, s. 2, 17 (1) (a), 20, 23.

⁹ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, para. 37

¹⁰ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, paras. 37-38; *British Columbia (Workers Compensation Board v British Columbia (Human Rights Tribunal))*, 2011 SCC 52, paras. 33-34

¹¹ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, paras. 37, 51

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25. The application should therefore be dismissed under Rule J 1 (g), or if the Tribunal does not accept the respondent’s submission in para. 19, above, under Rule J 1 (f) for the reasons set out under paras. 20 - 24.
26. A further, independent, reason to dismiss the application under J 1 (f) is that, as is discussed below, none of the relief sought is available on an application of this type and the application is therefore bound to fail on that basis as well.

Response to Relief Sought

27. For the purposes of an appeal under section 17 (1) (a) in respect of an administrative decision the Tribunal may:
- (a) affirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision, and
 - (i) substitute its own decision on the matter, or
 - (ii) send the matter back to the decision maker for reconsideration.¹²
28. The deficiencies in the application discussed above with respect to delineating the purported administrative decisions under appeal make it challenging to provide a substantive response with respect to the relief sought. Numbers 1, 2, 5 and 6 under “Decisions Appealed” do not describe administrative decisions made by the respondent and therefore the relief available under the *Tribunal Act*—to affirm, vary or set aside the decision—does not apply to these matters. But even if that was not a bar, striking the presentation from the record, requiring specific staff to provide services to the applicant, conducting an investigation for which there is no statutory basis and recording something in the respondent’s employment record are not forms of relief available on an appeal under section 17 (1) (a).
29. Without conceding that these “Decisions Appealed” are administrative decisions, the relief sought in respect of numbers 3 and 4 is not within the Tribunal’s jurisdiction to grant. The Executive Director is the senior administrative officer of government, reports directly to Executive Council and has broad responsibility for the operation of the entire Huu-ay-aht administration.¹³ The remedies available under section 23 of the *Tribunal Act* do not extend to keeping information from the very person with ultimate responsibility for the operation of government or precluding her from being involved in the administration of the CFW department, as is sought under 3 and 4.

¹² *Tribunal Act*, s. 23

¹³ *Financial Administration Act*, s. 86, 87