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ANCIENT SPIRIT, MODERN MIND

**HUU-AY-AHT FIRST NATIONS
TRIBUNAL**

TRIBUNAL APPLICATION #2022-02

BETWEEN:

Jennifer Thomas

APPLICANT

And:

Huu-ay-aht First Nations Acting Executive Director, Cynthia Rayner

RESPONDENT

Date: January 3, 2023

DECISION – SUMMARY DISMISSAL

1. In Application 2022-02, the Applicant, Jennifer Thomas, appeals decisions of the Acting Executive Director, described in the Application:
 - “1. AED concern about the presentation I have created that is extremely critical of the CFW Department, which has caused a high stress level among CFW employees.
 2. CFW endured abusive and harassing language which they are entitled to be protected from.
 3. The Acting Executive Director asks that any further calls to CFW be made directly to her, and she [sic] handle them.
 4. CFW will be instructed to forward any calls or emails, from myself, to Active Executive Director’s attention going forward.
 5. No evidence of Pekoe being neglected or abused.
 6. “We will remain willing to support you in having visits with Pekoe, and further supports will depend on how those visits go”
2. The Respondent, the Acting Executive Director, has filed a response submitting that Application #2022-02 should be dismissed summarily pursuant to Rule J of the *Tribunal Rules of Practice and Procedure* on the basis that the Application is deficient (Rule J.1(g)) and that there is an adequate review process already underway in relation to this same or very similar subject matter (Respondent’s submission, paragraphs 1, 2).



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Defective Application

3. The Respondent argues that Application #2022-02 is defective, for various reasons:
- No dates in relation to any of the purported decisions are provided in the Application, contrary to the requirement of s. 12(3)(b) of the *Tribunal Act*.
 - The first and second “decisions appealed” are not administrative decisions.
 - The fifth and sixth “decisions appealed” are not alleged to have been made by the Respondent.

Duplicative Proceedings

4. The Respondent also argues that the complaint the Applicant, Ms. Thomas, made under the *Huu-ay-aht Complaints Policy* raises issues very similar to those raised in Application #2022-02:
- The Respondent argues that the Application should be dismissed pursuant to Rule J.1(g), because the subject matter is currently being addressed through the *Complaints Policy*
 - Tribunal Rule J.1(g) should be read to include dismissal of an application, where the substance of the Application is in the process of being dealt with in another proceeding.
 - Both the Application and the complaint under the *Complaints Policy* raise essentially the same issues.

Rule J

5. Rule J of the *Tribunal Rules of Practice and Procedure* provides:

“J. Summary Dismissal of Application

1. At any time after an application is filed, the Tribunal may dismiss all or part of it if the Tribunal determines:
 - (a) the Notice of Application is incomplete or otherwise defective;
 - ...
 - (g) the substance of the Application has been appropriately dealt with in another proceeding.
2. Before dismissing all or part of an Application under sub-rule S1, the Tribunal must give the Applicant an opportunity to make written submissions or otherwise be heard.



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3. If the Tribunal dismisses all or part of an Application under sub-rule S1, the Tribunal must inform the Applicant, any other parties, and any intervenors of its decision in writing and give reasons for the decision.”

Intention to Dismiss

6. Having received the Respondent’s submissions, the Tribunal formed the view that the Application should be dismissed for the reasons put forth by the Respondent. Therefore, by letter of December 19, 2022 in accordance with Rule J.2, I provided the Applicant with an opportunity to respond to the submissions of the Respondent, by December 28, 2022.
7. The Applicant failed to provide any response to my letter of December 19, 2022. Nor did the Applicant file any reply to the submissions of the Respondent, the Executive Director.
8. Consequently, I have confirmed my preliminary view, expressed in my December 19, 2022 letter, that the Application should be dismissed.

Conclusion – Summary Dismissal

9. The Tribunal concludes that Application #2022-02 should be dismissed in its entirety pursuant to Rule J.1(g), as duplicative. The Tribunal also concludes that the Application is defective, in part, as argued by the Respondent.
10. The Tribunal also notes that the Applicant, having been given an opportunity to make submissions respecting summary dismissal pursuant to Tribunal Rule J.2, has failed to do so.

Decision

11. Application #2022-02 is dismissed.

John Rich
Tribunal Chair
January 3, 2023