



huu ay aht

ANCIENT SPIRIT, MODERN MIND

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

Tribunal Application #2024-01

BETWEEN:

Huu-ay-aht Executive Director Karen Haugen on behalf of Huu-ay-aht First Nation, Ha'wiih
Council and Executive Council

APPLICANT

And:

Derek Peters

RESPONDENT

REASONS FOR DECISION

TRIBUNAL MEMBERS: John Rich, Chair
Andrea Pettigrew, Tribunal Member
Peter Colenbrander, Tribunal Member

DATE OF DECISION: June 18, 2024

DATE OF HEARING: May 28, 2024

PLACE OF HEARING: Hospitality Inn
3835 Redford Street, Port Alberni

APPEARANCES: Nazeer Mitha, KC for the Applicant
Derek Peters, Respondent

THE ISSUE

1. Application 2024-01 is an application by the Huu-ay-aht First Nations (“HFN”) Executive Director, Karen Haugen, on behalf of the HFN Executive Council and Ha’wiih Council, pursuant to the HFN *Code of Conduct and Conflict of Interest Act* (“COCCIA”). The Executive Director seeks a determination by the Tribunal that Derek Peters be disqualified from holding the position of Public Officer.
2. The Application alleges that the conduct of Mr. Peters constituted an assault and intimidation and thereby violated section 4(1)(a) and (e) and section 12(3) of COCCIA.
3. The Application alleges specific facts:
 - (a) In or about March or April 2020, Mr. Peters physically assaulted the complainant by pushing her in the chest and then with his forearm pressed against her chest, threatened the complainant by stating words to the effect: Do you fucking know who I am? I can take your house away. I can take your husband away. I can make sure you never work. I can rape you. (“Allegation 1”)
 - (b) In or about November 2021, Mr. Peters, against the wish of the complainant, forcibly named the complainant with an indigenous name. (“Allegation 2”)
 - (c) In or about the summer of 2022, Mr. Peters gathered his family and the complainant together and told them he had received a letter from Ha’wiih Council which stated that there were allegations against him by a female. Mr. Peters, in an intimidating fashion, directed his family and the complainant on what to say if any of them were ever asked about the allegations. He required that they all be loyal to him no matter what. (“Allegation 3”)

THE PARTIES

4. The Executive Director claims on behalf of the HFN, the Executive Council and Huu-ay-aht Council.
5. Derek Peters is, or was, a government member. The evidence regarding his status is ambiguous;
 - (a) Until the spring of 2022, Mr. Peters was the Tayii Ha’wiih for the HFN, a member of the Ha’wiih Council, and sat on the Executive Council in the role of Ha’wiih Councillor;
 - (b) Mr. Peters’ evidence at the hearing was that he had “[removed himself] from where I was active in my Nation”, and later “I removed myself when I was representing the Nation as a whole”;
 - (c) Correspondence entered as evidence at the hearing was also ambiguous;

- (d) On May 5, 2022, the Ha'wiih Council wrote to Mr. Peters requesting that he resign from his role with the Executive Council, but noting "We cannot compel you to resign from that role". In his email reply, May 6, 2022, Mr. Peters stated, "I will be leaving and retiring from my position at all levels and duties. Effective immediately I will apply for my retirement." On the same date, Mr. Peters wrote to the HFN Law Clerk stating, "I will be leaving and retiring from my position at all levels and duties effective immediately";
 - (e) However, on June 16, 2022, Mr. Peters emailed the Law Clerk again, this time stating, "I will remain in my position and continue in my role as Tayii";
 - (f) Over a year later, the Ha'wiih Council issued a letter to various parties stating, "[We] have decided to remove [Derek Peters] from the Ha'wiih Council and from his role as Tayii Ha'wiih";
 - (g) On August 31, 2023, the Ha'wiih Council wrote to Derek Peters stating, "We have decided to permanently remove you from the Ha'wiih Council and from your role as Tayii Ha'wiih".
6. The Tribunal has determined that it has jurisdiction under COCCIA, ss. 24(1), 27(2) to consider this disqualification application, regardless of whether Mr. Peters has actually resigned any or all of his public officer positions. The provisions of COCCIA are discussed below.

SUMMARY OF DECISION

Facts

Allegation 1

7. The Complainant, Ms. Carwithen, alleges:

In or about March or April 2020, Mr. Peters physically assaulted her by pushing her in the chest and then with his forearm pressed against her chest, threatened the complainant by stating words to the effect: Do you fucking know who I am? I can take your house away. I can take your husband away. I can make sure you never work. I can rape you.

- 8. Ms. Carwithen was questioned about this allegation. She described the incident in detail in a calm and straightforward manner.
- 9. Mr. Peters, in response, testified that he did not recall the incident as a result of his abuse of alcohol and drugs.
- 10. The Tribunal accepts the evidence of Ms. Carwithen and finds that the incident did occur as she described it.

11. The Tribunal also accepts the evidence of Ms. Carwithen that Mr. Peters never apologized and that the incident had a serious negative impact on her life.

Allegation 2

12. Ms. Carwithen alleges:

In or about November 2021, Mr. Peters, against her wishes, forcibly named her with an indigenous name.

13. Ms. Carwithen was questioned about this allegation. She described the incident in detail in a calm and straightforward manner.
14. Mr. Peters, in response, testified that he did not recall the incident as a result of his abuse of drugs and alcohol.
15. The Tribunal accepts the evidence of Ms. Carwithen.
16. The Tribunal also accepts the evidence of Ms. Carwithen that she felt intimidated and humiliated by the naming in these circumstances.

Allegation 3

17. Ms. Carwithen alleges:

In or about the summer of 2022, Mr. Peters gathered his family and the complainant together and told them he had received a letter from Ha'wiih Council which stated that there were allegations against him by a female. Mr. Peters, in an intimidating fashion, directed his family and her on what to say if any of them were ever asked about the allegations. He required that they all be loyal to him no matter what.

18. Ms. Carwithen was questioned about the meeting. She testified that Mr. Peters had told her that she was invited to the meeting because she was the assistant to Chief Robert Dennis and was expected to provide information about the allegations against Mr. Peters, but on further questioning by the Tribunal, she confirmed that this was her impression.
19. In his response, Mr. Peters claimed that the reason Ms. Carwithen was invited to the meeting was that she was in a relationship with his cousin, Kevin, and thus part of the family, and that the reason for having the meeting was to prevent the spread of rumours.
20. The Tribunal finds that Ms. Carwithen's evidence was largely based on her impressions and interpretation of the meeting and it is quite possible that Mr. Peters' evidence is accurate. Consequently, the Tribunal finds there is insufficient evidence to conclude that Ms. Carwithen was intimidated by Mr. Peters' conduct at the meeting.

Conclusions

21. The Tribunal finds that Mr. Peters has breached s. 12(3) of COCCIA which provides that public officers must not intimidate, harass or assault anyone.
22. The Tribunal finds that Mr. Peters' conduct in Allegation 1 was an assault of Ms. Carwithen.
23. The Tribunal finds that Mr. Peters' conduct in Allegations 1 and 2 involve intimidation and harassment of Ms. Carwithen.
24. The Tribunal finds that Mr. Peters' conduct in respect of Allegations 1 and 2 was in breach of the Huu-ay-aht Oath in all respects.

Disposition

25. The Tribunal considers the assault, intimidation and harassment of Ms. Carwithen to be particularly serious given Mr. Peters' status in the community as Tayii Ha'wiih.
26. The Tribunal notes that Mr. Peters does not accept responsibility for his conduct and has failed to apologize or exhibit remorse.
27. The Tribunal also notes that Mr. Peters' conduct toward Ms. Carwithen has had consequences on her life beyond the incidents themselves.
28. The Tribunal declares that Mr. Peters is disqualified from holding any position as a public officer for a period of eight (8) years and must pay a fine in the amount of \$4,000 to the Huu-ay-aht government.

THE HEARING

29. The Tribunal heard the application at Port Alberni on May 28, 2024. Both the Complainant, who had made the allegations, and Mr. Peters testified. A number of documents, including correspondence with Mr. Peters and public notices respecting Mr. Peters were entered into evidence.

Preliminary Issue

30. At the outset of the hearing, the Tribunal considered the preliminary issue whether Mr. Peters should be entitled to participate in the hearing on account of his failure to comply with Tribunal Rules:
 - (a) The Application was delivered to Mr. Peters by email April 22, 2024, with a message advising him that he must file a Response according to the Tribunal Rules within 14 days;
 - (b) The Tribunal, not having received an acknowledgement from Mr. Peters, had a process server deliver the application to Mr. Peters personally on April 25, 2024;

- (c) On May 14, 2024, the Tribunal advised the Applicant and Mr. Peters that the Tribunal intended to schedule a hearing of the application on May 28, 2024.
 - (d) Between April 22 and May 27, 2024, the Tribunal received no communication from Mr. Peters, despite the 14-day period for response, which had expired May 6, 2024;
 - (e) On May 23, 2024, Mr. Peters delivered a Response to the Tribunal.
31. On May 24, 2024, the Tribunal again wrote to Mr. Peters, advising that his recently delivered Response was not in compliance with the Tribunal Rules and should be rejected. However, the Tribunal advised Mr. Peters that, if he attended the hearing, he would be provided with an opportunity to explain:
- (a) Reasons for his failure to deliver a Response in accordance with the Rules;
 - (b) Why his Response should be considered by the Tribunal; and
 - (c) Why he should be permitted to participate in the portion of the Hearing dealing with the substantive issues in the Application and, if so, to what extent.

Submissions of Parties

32. Counsel on behalf of the Executive Director submitted that Mr. Peters had extensive notice of the allegations against him, but had failed to follow the Rules in response to the application to the Tribunal. He also argued that it was not appropriate to accept the late filed Response from Mr. Peters, who had ample opportunity to respond, and it would not be appropriate for him to participate in the hearing.
33. Mr. Peters responded that he had removed himself and his family from the community for personal health and wellness reasons and was heavily involved in a family law matter. He said he had not read the communications from the Tribunal that were sent in April.

Decision on Preliminary Issue

34. The Tribunal decided that Mr. Peters should be permitted to participate in the hearing of the application, including that he could:
- (a) Question witnesses;
 - (b) Call witnesses;
 - (c) Testify himself and;
 - (d) Argue that the application be dismissed.
35. However, the Tribunal also ruled that:

- (a) Mr. Peters' participation could not involve questions or allegations that would be unfair to the Applicants, given the lack of notice;
- (b) Any evidence presented by Mr. Peters considered to be unfair to the Applicant would be disallowed and ignored by the Tribunal;
- (c) There would be no adjournment of the hearing.

36. Accordingly, Mr. Peters was permitted to participate on this basis in the hearing.

THE EVIDENCE

37. Mr. Mitha, on behalf of the Executive Director, called three witnesses:

- Jennifer Carwithen, the alleged victim of the allegations made against Mr. Peters;
- Sherri Cook, member of the Ha'wiih Council; and
- Karen Haugen, HFN Executive Director.

38. Derek Peters testified on his own behalf. He did not call any other witnesses.

Evidence of Jennifer Carwithen

- 39. Ms. Carwithen testified that she lived with Mr. Peters' cousin, Kevin Peters, from approximately 2017 to 2023, and consequently had dealings with Mr. Peters in social settings.
- 40. Ms. Carwithen testified that each of the allegations in the Notice of Application was accurate. She then testified in detail respecting each allegation.

Allegation 1 – Assault, Threat and Intimidation

- 41. Ms. Carwithen testified that in or about March or April 2020, Mr. Peters assaulted her, by pushing her in the chest and then with his arm pressed against her chest, said words to the effect: Do you fucking know who I am? I can take your house away. I can take your husband away. I can make sure you never work. I can rape you.
- 42. Ms. Carwithen testified that this incident occurred at Kevin Peters' house late in the evening when she, Kevin Peters, Derek Peters, and Derek Peters' niece had been socializing and drinking.
- 43. She testified that Mr. Peters cousin Kevin, and his niece, were in the room when the incident took place, and that following the incident she remained in the kitchen for approximately an hour while the others went to another room.
- 44. She testified further that she was "absolutely terrified" following the assault by Mr. Peters. Her evidence was that Derek Peters' position as Tayii Ha'wiih made the incident much bigger than just a man attacking a woman. She also testified that her

partner, Kevin, told her the next day that he “couldn’t protect” her, because of who Derek was – that is, the Tayii Ha’wiih.

45. Ms. Carwithen testified that she sent Derek Peters a Facebook message following the incident indicating that his conduct was not ok and that she was not ok, but received no reply. In answer to further questioning, she said that Derek Peters never apologized for the incident.
46. Ms. Carwithen went on to explain that the impact of the incident was extensive. She described being harassed by members of Derek Peters’ family, and believing it was “not safe” to discuss the matter with others in the community, on account of Derek Peters’ position.
47. Ms. Carwithen testified that since the incident, her safety and security has been “touch and go”. She received threats at home and at work, had to move from Anacla to Port Alberni and felt forced to quit her job with HFN.

Allegation 2 - Forcible Naming, Intimidation, Harassment

48. Ms. Carwithen testified that in or about November 2021, Mr. Peters, forcibly named her with an Indigenous name.
49. Ms. Carwithen’s evidence was that she was socializing at Derek’s mother’s place at Anacla, having a few drinks, when Derek Peters said to her he was going to welcome her into the family. He then gave her the Indigenous name, *Simtu*, meaning squirrel. He told her that was now her Indigenous name.
50. Ms. Carwithen testified that at a later date, she attended a ceremony for Victoria Williams, where she (Ms. Carwithen) was introduced as *Simtu*.
51. She testified that, although she had limited understanding, she felt that this naming in a social situation was disrespectful to her and to others in the community and she was humiliated. She felt that Mr. Peters was using his position and power to intimidate her.

Allegation 3 - Family Meeting, Intimidation

52. Ms. Carwithen testified that in or about the summer of 2022, Mr. Peters gathered his family and the complainant together and told them he had received a letter from the Ha’wiih Council which stated that there were allegations against him of sexual harassment.
53. Ms. Carwithen testified that the letter accused him of sexual harassment and sexual assault, and that he told the family not to discuss it with anyone and let it blow over. Ms. Carwithen testified that she believed the reason she was invited to the family meeting was that she was the assistant to Chief Robert Dennis, and was expected to provide information about the allegations against Mr. Peters. She recalled Mr. Peters saying, “That’s why you’re here”. However, when questioned by the Tribunal, Ms. Carwithen clarified that it was her impression that she was invited to the meeting for that reason.

Evidence of Sherri Cook

54. Sherri Cook holds the position of Ha'wiih in Huu-ay-aht First Nation and is a member of the Ha'wiih Council.
55. She testified respecting the obligation of Ha'wiih to conduct themselves appropriately. She discussed the importance of the Ha'wiih tradition and the role of the Tayii Ha'wiih.
56. Ms. Cook testified that Mr. Peters was the Tayii Ha'wiih of the HFN- that is the "Chief of Chief's", and consequently was in a position of great power, influence and responsibility.
57. Ms. Cook was questioned about the giving of Huu-ay-aht names, and testified that the giving of names involved a formal system and was a serious matter, involving respect.

Evidence of Karen Haugen

58. Ms. Haugen is the Executive Director of the Huu-ay-aht First Nation.
59. Ms. Haugen explained that there had been inquiries as to Mr. Peters' conduct over a lengthy period of time, but names of complainants and details of allegations were kept confidential until late 2023.

Evidence of Derek Peters

60. Mr. Peters testified on his own behalf with respect to each of the allegations.

Allegation 1 – Assault, Threat and Intimidation

61. Derek Peters' evidence respecting the allegation of assault was that he had no memory of the incident. He stated that, at the time, he was abusing alcohol and drugs.
62. When asked about his knowledge of the incident he said he had been told that he had been "disrespectful" but was given no details.
63. Although Ms. Carwithen has testified that Mr. Peters' cousin, Kevin, and his niece, had been present at the incident, Mr. Peters did not call either of them to challenge Ms. Carwithen's evidence.
64. Mr. Peters claimed he had apologized when he was communicating with his cousin, Kevin, through Facebook Messenger. He stated that he understood that Kevin had passed his phone to Jen, so that Derek could apologize.

Allegation 2 - Forcible Naming, Intimidation, Harassment

65. As with the first allegation, Mr. Peters relied on his drug and alcohol abuse and stated he had no memory of where or when the alleged naming happened.

66. He testified that when names are given there is a lot of planning and consultation with Elders and knowledge-holders. He acknowledged that naming “while having beers” would be improper.

Allegation 3 - Family Meeting, Intimidation

67. Mr. Peters testified that the family meeting was called because of the allegations being made against him at the time, spring of 2022, and the fact that no details of the allegations were being released.
68. He stated that the reason Ms. Carwithen was invited to the meeting was because she was part of the family, given her relationship with his cousin, Kevin.
69. Mr. Peters testified that he did not speak aggressively, but rather respectfully asked that his family not participate and feed into rumors.

Credibility Issues

70. Jennifer Carwithen provided her evidence in a straightforward and calm manner, despite the apparent emotional impact of these incidents. She was able to explain the incidents in detail, and there were no substantial inconsistencies in her evidence. The Tribunal found Ms. Carwithen to be a credible witness.
71. There were no issues of credibility with respect to the evidence of Sherri Cook and Karen Haugen.
72. The Tribunal found much of Derek Peter’s evidence to lack credibility, in particular with respect to Allegation 1. Mr. Peters’ claim that he was told that he had been disrespectful, but failed to inquire about details is not believable, nor is his claim of making an apology to Ms. Carwithen in the course of a Messenger exchange with his cousin.

Documentary Evidence

73. The Applicants submitted a Book of Documents, consisting of correspondence with Mr. Peters over the period 2022-24, dealing with allegations of misconduct on his part.
74. However, allegations of misconduct are just that – allegations – they are not evidence. Consequently, the allegations made in the correspondence have been disregarded by the Tribunal.

FINDINGS OF FACT

Allegation 1 – Assault, Threat and Intimidation

75. The Tribunal accepts the evidence of Jennifer Carwithen and finds that Mr. Peters assaulted, threatened, and intimidated her in or about March or April, 2020.

76. The Tribunal finds that Mr. Peters never apologized to Ms. Carwithen. The Tribunal further finds that the assault, threats and intimidation had a serious negative impact on Ms. Carwithen. Having been threatened and feeling unsafe, she felt compelled to move her place of residence and her employment.

Allegation 2 - Forcible Naming, Intimidation, Harassment

77. The evidence of all witnesses, including the Respondent Derek Peters, was that naming is a serious matter, involving formality and respect.
78. In particular, the Tribunal notes Mr. Peters' admission that, naming "while having beers" would be improper.
79. The Tribunal accepts Jennifer Carwithen's evidence that she felt intimidated and humiliated by the naming incident.

Allegation 3 - Family Meeting, Intimidation

80. Ms. Carwithen testified that she believed she was invited to the family meeting by Mr. Peters for the improper purpose of having her divulge confidential information. She further testified that she believed it was clear that he was warning her and his family that they were obligated to support him.
81. On the other hand, Mr. Peters testified that Ms. Carwithen was invited to the meeting because of her relationship with his cousin, Kevin, making her part of the family. He also testified that his reason for asking the family not to talk about the letter from the Ha'wiih Council was to avoid the spreading of rumours.
82. The Tribunal notes that, although there were 10 or 12 other people at the meeting, neither party called any of them to testify.
83. The Tribunal finds there is some evidence of improper conduct, but it is inconclusive. There is also a direct conflict between the evidence and Ms. Carwithen and Mr. Peters.
84. The Tribunal notes that Ms. Carwithen's evidence is essentially based on her impressions and interpretation of the meeting. Despite these impressions, it is quite possible that Mr. Peters' evidence is accurate – that he was concerned about rumours spreading and wished to prevent that.
85. The Tribunal finds there is insufficient evidence to conclude that Ms. Carwithen was intimidated by Mr. Peters' conduct at the family meeting.

LEGAL PRINCIPLES

86. This Application is based on the provisions of the *Huu-ay-aht Code of Conduct and Conflict of Interest Act* ("COCCIA").

87. The importance and scope of COCCIA is described in the “Note to Reader” found on page 2 of the *Act*:

Note to Reader

The *Code of Conduct and Conflict of Interest Act* sets out the manner in which Huu-ay-aht public officers are expected to conduct themselves in carrying out their duties and exercising their powers.

The failure to act with the highest ethical standards or to manage a conflict of interest appropriately, could result in the removal of the public officer and other penalties ordered by the Huu-ay-aht Tribunal.

The term “public officer” includes a broad category of persons elected, appointed, contracted or hired by any branch of government including committee members, as well as employees, contractors, and directors of any Huu-ay-aht body. This Act also covers individuals who inherit their position in government and designated volunteers.

Public officers must take the Huu-ay-aht oath which includes the requirement to honour the principles of ii-saak (respect), uu-a-thluck (taking care of future generations) and hish-uktsawak (everything is one).

88. Section 1 of COCCIA provides:

Purpose

1. The purpose of this Act is to establish a code of conduct to ensure that in carrying out their duties, Huu-ay-aht public officers
 - (a) Adhere to the highest standards,
 - ...
 - (d) Act in the best interests of present and future generations of Huu-ay-aht citizens

89. Section 4 of COCCIA provides:

“4(1) Public Officers must do all of the following:

- (a) Fulfill the Huu-ay-aht Oath
- ...
- (e) Treat Huu-ay-aht citizens, other public officers, and members of the public equitably and impartially”

90. Section 12(3) of COCCIA provides:
- “12(3) Public officers must not intimidate, harass, assault... anyone”
91. Section 23(1) of COCCIA provides:
- “23 (1) Subject to this Act, public officers who contravene this Act may be subject to ...:
- (a) disqualification from holding their position,
- ...:
- (2) An individual disqualified under subsection (1) is disqualified from holding any position as a public officer.”
92. Paragraph 24 of COCCIA sets out the procedure to apply to disqualify a government member and makes it clear that disqualification applies to “a government member or former government member”. (emphasis added)
93. Section 27 of COCCIA provides:
- (1) After hearing an application for disqualification under section 26 (2), the tribunal may make one or more orders, including any of the following:
- ...
- (f) requiring the government member to do one or more of the following:
- (i) make restitution in an amount determined by the tribunal;
- (ii) pay a fine not exceeding \$5,000;
- (iii) pay damages;
- ...
- (2) The tribunal may make a decision under this section whether or not the government member has ceased acting in his or her position.
94. The Huu-ay-aht Oath which all government members are required to take, is set out as a schedule to COCCIA, and provides:

SCHEDULE

Huu-ay-aht Oath

I, _____, do solemnly affirm (or swear) that:

I will act in the best interests of present and future generations of Huu-ay-aht citizens,

I will honour the vision, values, and sacred principles of Huu-ay-aht – Uu-a-thluck (taking care of future generations), and Hish-uk-tsawak (everything is one),

I will be a positive role model, following the principle of ii-saak (conducting myself honestly and respectfully), and

I will uphold the Constitution and obey Huu-ay-aht laws.

95. Intimidation is defined at section 12(3) of COCCIA:

“...to do or threaten to... use force, violence or restraint against a person...”
96. The Applicants’ counsel also relied on a previous decision of the Huu-ay-aht Tribunal, *Executive Director v. Trevor Cootes* (Tribunal Application 2022-01), where the Tribunal relied on Canadian statutes and common law to interpret provisions of COCCIA. Further, in the *Cootes* decision, the Tribunal found that the Huu-ay-aht Oath embodies traditional HFN values and customary laws and should be given its plain meaning.
97. The Applicant relied on the definition of assault in the Criminal Code of Canada to argue that “a person who directly or indirectly applies force intentionally to another person or who attempts to threaten to do so, has committed an assault.”
98. The Applicant relied on Canada Arbitration law for the definition of harassment, which was submitted to include “objectionable conduct or comment directed towards a specific person which serves no legitimate purpose and has the effect of creating an intimidating, humiliating, hostile or offensive environment”.
99. In his submissions, Mr. Peters made no reference to Huu-ay-aht law as stated in COCCIA, nor the Huu-ay-aht Oath.
100. The Tribunal accepts the definitions of intimidation, assault, and harassment submitted by the Applicant’s counsel.

ARGUMENT OF PARTIES

101. Counsel for the Applicant argued that the conduct of Derek Peters in each of the three allegations constituted intimidation, harassment or assault under section 12(3) of COCCIA, and that the conduct described in the three incidents constituted a breach of the Huu-ay-aht Oath.
102. The Respondent Derek Peters relied on his use of drugs and alcohol to explain and excuse his behaviour respecting Allegations 1 and 2. He relied on his denial of inappropriate motive to argue that there was no breach in respect of Allegation 3.

ANALYSIS AND CONCLUSION

103. COCCIA, section 12(3) provides that public officers must not intimidate, harass or assault anyone.

Intimidation

104. The Tribunal has found that both Allegations 1 and 2 involved intimidation of Ms. Carwithen by Mr. Peters, while he was a government member. Accordingly, Mr. Peters has breached COCCIA s. 12(3).

Harassment

105. Mr. Peters' conduct in respect of both Allegation 1 and Allegation 2 can readily be classified as "objectionable conduct directed toward Ms. Carwithen, having the effect of creating an intimidating, humiliating or offensive environment", as harassment has been defined by the Applicant's counsel. Accordingly, the Tribunal finds that Mr. Peters, while in the position of a public officer, harassed Ms. Carwithen.

Assault

106. The Tribunal has found that Mr. Peters' conduct in Allegation 1 was an assault of Ms. Carwithen.
107. Consequently, the Tribunal finds that Mr. Peters has breached s. 12(3) of COCCIA while holding a position of public officer.

Breach of Oath

108. The Tribunal finds that Mr. Peters' conduct in respect of Allegations 1 and 2 was in breach of the Huu-ay-aht Oath in all respects.
109. Mr. Peters' conduct was not in the best interest of present and future generations.
110. Mr. Peters' conduct did not honour the vision, values and sacred principles of Huu-ay-aht.
111. Mr. Peters, by his conduct, was not acting as a positive role model and was disrespectful.
112. Mr. Peters did not obey Huu-ay-aht laws, in particular COCCIA.

Impact on Ms. Carwithen

113. The Tribunal considers the impact of Mr. Peters' conduct on Ms. Carwithen to be extremely serious.
114. As a consequence of his conduct, Ms. Carwithen felt unsafe and was threatened by people in the community. She was forced to leave the community and relocate to Port Alberni. She was also forced to change her employment.
115. These impacts were made substantially worse by Mr. Peters' abuse of his position as Tayii Ha'wiih.

DISPOSITION

Considerations

116. Having found that Mr. Peters' conduct to be in breach of several sections of COCCIA, including s. 4(1), s. 12(3), and the Huu-ay-aht Oath, the Tribunal has considered a number of factors in determining the appropriate consequences.
117. The Tribunal considers the assault, intimidation and harassment of Ms. Carwithen to be serious, and particularly so, given Mr. Peters' status in the community as Tayii Ha'wiih.
118. The Tribunal notes that Mr. Peters does not accept responsibility for his conduct, relying on lack of memory, drug and alcohol abuse, and general good intentions.
119. The Tribunal further notes that Mr. Peters has failed to apologize or exhibit remorse. The Tribunal also notes that the intimidation and harassment of Ms. Carwithen has had longer term consequences for her life.
120. In his defence, Mr. Peters testified that, subsequent to the issues raised in this application, he had undergone rehab and was now sober. The Tribunal accepts that this is a mitigating factor, but of minor importance given his serious breaches of HFN Law.
121. Sanctions against Mr. Peters must reflect a strong condemnation of his conduct as found by the Tribunal, and must also act as a deterrent to other persons in positions of power in the community.
122. Complying with the Huu-ay-aht Oath is a fundamental requirement of all public officers in the Huu-ay-aht Government, and the Tribunal finds that the multiple breaches of that Oath by Mr. Peters are extremely serious and should be condemned in the strongest terms.

Decision on Disposition

123. Taking these considerations into account, the Tribunal declares that, pursuant to COCCIA, s. 27(1)(c), that Mr. Peters is disqualified and prohibited from holding any position as a public officer for a period of eight (8) years, and that pursuant to s. 27(1)(f), Mr. Peters pay a fine of \$4,000.

ORDERS

124. The Tribunal orders that:
 - (a) Mr. Peters is disqualified from holding any position he may now hold as a public officer;
 - (b) Mr. Peters is prohibited from holding a position as a public officer for a period of eight (8) years from the date of this Decision; and

- (c) within 30 days of the date of this Decision, Mr. Peters pay a fine in the amount of \$4,000.00 to the Huu-ay-aht Government.



John Rich
Tribunal Chair

“I AGREE”

Peter Colenbrander
Tribunal Member

“I AGREE”

Andrea Pettigrew
Tribunal Member