

TA'AN KWÄCH'ÄN JUDICIAL COUNCIL
BOX 31735
WHITEHORSE, YUKON Y1A 6L3
Phone (867) 667-7500
Fax (867) 393-3904

December 20, 2011

Jacqueline Bazett
509 Jarvis Street
Whitehorse, Yukon Y1A 2H7

Chief Brenda Sam
Ta'an Kwäch'än Council
117 Industrial Road
Whitehorse, Yukon Y1A 2T8

Dear Ms. Bazett and Chief Sam:

Re Bazett complaint to the Ta'an Kwäch'än Judicial Council

As you are both aware from Ms. Bazett's correspondence to the Judicial Council, dated October 26, 2011, Ms. Bazett is requesting that the Ta'an Kwäch'än Judicial Council (Judicial Council) use its powers under Section 12.1.2 of the Ta'an Kwäch'än Council Constitution to mediate an evolving conflict between herself and Chief Brenda Sam and the Ta'an Kwäch'än Council.

As the Judicial Council understands it, the conflict revolves around the minutes taken at a meeting of members of the Jenny Lebarge Traditional Family held on September 20, 2011. These minutes were then e-mailed to a recipient list for review and approval at a future meeting of this traditional family. According to Ms. Bazett, these minutes, in draft form, were private and confidential.

This record of the September 20 meeting, however, came to be more widely circulated. The e-mail distribution of these minutes resulted in Chief Sam sending Ms. Bazett a letter on October 18 requesting a "clear, unequivocal and unqualified apology for, and retraction of, the libel contained in the minutes." This letter was to be written by Ms. Bazett, and was to be addressed to various individuals and bodies associated with the Ta'an Kwäch'än government.

In response to Ms. Bazett's request that the Judicial Council mediate this dispute, Chief Sam responded in a letter dated November 7, 2011, asking the Judicial Council to dismiss Ms. Bazett's complaint. Chief Sam's reasoning, as the Judicial Council understands it, is that Ms. Bazett did not satisfy section 12.1.2 of the Ta'an Kwäch'än Council Constitution which states that the Judicial Council shall have the responsibility to: where the parties agree, mediate or arbitrate any disputes in relation to the Citizens and the Ta'an Kwäch'än Council.

Following Chief Sam's November 7 letter to the Judicial Council, Ms. Bazett responded on November 20, 2011, suggesting that the Judicial Council has the ability to modify its own Rules of Procedure at any time and urged it to do so in this case so that it could arbitrate or mediate this dispute.

While it is clear to the Judicial Council that it may arbitrate and mediate conflicts arising between citizens and the government of the Ta'an Kwäch'än, the Constitution, under Section 12.1.2, requires that parties jointly agree to this request. In this case, it is clear that no such agreement has been reached. The Judicial Council cannot modify the Constitution in the way it can modify its own Rules of Procedure.

Although the Judicial Council does exist to assist in the resolution of conflicts, it can only do so within the limits set out in the Constitution. Individual citizens or groups may certainly access the Judicial Council when an issue arises that is within the scope of the Judicial Council's powers.

The Judicial Council is ready and able to arbitrate or mediate a dispute when both parties agree to place a concern before it. Other mechanisms for reconciliation of differences do exist, as noted in Judge Hume's comments in the decision rendered in the case of Alice McGuire, (TKJC 11-01). At the end of that hearing, Judge Hume offered his thoughts on "the importance of healing and respect. If the aduli, the traditional laws and customs of the Tutchone people, are to be adhered to, it demands respect for the role of the traditional family elder." Judge Hume suggested, "This core tradition must not be sacrificed in challenging times. When stress and conflict create breaks in family relations, it is again necessary to consider traditional practices for healing them." In the same spirit as suggested by Judge Hume, the current situation may be one in which the kokon, a gathering seeking forgiveness, or a potlatch for overcoming grievances, should be considered as a way to assist in the healing process within the Jenny Lebarge traditional family. This could also apply more broadly to the whole of the Ta'an Kwäch'än when required.

It is the Judicial Council's determination that in this specific request for arbitration or mediation, it is bound by Section 12.1.2 of the Ta'an Kwäch'än Council Constitution, which requires that both parties to a dispute agree to present the issue to the Judicial Council for arbitration or mediation. Since no such agreement exists, in this case, the Judicial Council does not have the jurisdiction to provide mediation or arbitration for the dispute presented to it.

Sincerely,
TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

A handwritten signature in black ink, appearing to read "M. Dougherty", written in a cursive style.

Judge Michael Dougherty