

Ta'an Kwäch'än Judicial Council

Decision on Requests to Appoint a Financial Investigation Committee and to Remove a Board Member

Date: 09 November 2005

Case Number: TKJC 05-01

Applicant: Diane Graham
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Whitehorse, Yukon Y1A 3H2

The Ta'an Kwäch'än Judicial Council received an undated submission from the applicant on October 25, 2005. In our view, the submission raises two issues for consideration: 1. A request that the Judicial Council exercise its authority under 12.1.3 of the Constitution of the Ta'an Kwäch'än to appoint an investigative committee to review financial irregularities; and 2. A request that a member of the Board be removed under 12.2 of the Constitution.

1. Request that the Judicial Council appoint an investigative committee to review financial irregularities of the Ta'an Kwäch'än Council.

We have considered the circumstances under which it would be appropriate to exercise our authority under 12.1.3 of the Constitution to appoint an investigative committee. We note that this is an extraordinary power and that the general responsibility for the financial affairs of the Ta'an Kwäch'än rests elsewhere. We also acknowledge that the cost of operating such an investigative committee may be quite substantial and will be borne by the Ta'an Kwäch'än Council on behalf of all Citizens. It is clear to us that the decision to appoint an investigative committee cannot be taken lightly. Taking these matters into consideration, it is our view that, while not a requirement, an important factor in deciding whether to appoint an investigative committee will be whether the request is being made by the Board or the Elders Council, or through a resolution of the General Assembly.

A request from a Ta'an Kwäch'än Citizen or group of Citizens for the Judicial Council to exercise its authority under 12.1.3 raises additional considerations. First, it is our view that the applicant has a burden to establish a *prima facie* case of financial irregularities on the part of the Ta'an Kwäch'än Council. The appointment of an investigative committee under 12.1.3 cannot be made merely to answer a curiosity, or to facilitate a fishing trip into the financial affairs of the first nation. If a *prima facie* case is established, there may be other factors that, on the facts of a particular case, are relevant to the decision to be made by Judicial Council. For example, the magnitude of the alleged financial irregularity, when it is alleged to have occurred, whether the

issue has already been satisfactorily addressed in another forum or, if there are other more appropriate forums for the matter to be addressed.

The Judicial Council concludes that this application, including the attachments, does not establish a *prima facie* case of financial irregularities on the part of the Ta'an Kwäch'än Council. In reaching this conclusion we have taken a number of matters into consideration.

First, most of the allegations in the submission are based on hearsay and innuendo with no supporting evidence provided and are primarily the applicant's assumptions and conclusions regarding events or motives. Other statements in the submission are clearly not relevant to whether there have been financial irregularities committed by the Ta'an Kwäch'än Council.

Second, according to the application, all or most of the concerns raised respecting past employment issues have already been dealt with through other, more appropriate processes. We would add that, in many instances, these employment issues have no relevance to the applicant's request under 12.1.3.

Third, the Judicial Council notes that many of the financial irregularity allegations are not directed at the Ta'an Kwäch'än Council, but rather solely at the Mundessa Development Corporation. The Judicial Council has no jurisdiction for those matters.

Finally, the statement or request that certain issues should be referred to the RCMP is outside the scope of an application under 12.1.3. We are concerned about a request under 12.1.3 being used as a forum to suggest or allege the commission of a criminal offence. These comments are not appropriate to include in an application under 12.1.3.

Decision – The request to appoint an investigative committee under 12.1.3 is denied.

The applicant notes in the submission that 15.2 of the Constitution requires that financial records, accounts and reports related to the activities of the Ta'an Kwäch'än Council be available for review by any Citizen. However, this provision entitles a Citizen to view these documents at the offices of the Ta'an Kwäch'än Council upon reasonable notice. It does not require the TKC to provide copies of any of these documents. The Judicial Council suggests that, should the applicant wish to review these financial records, the Ta'an Kwäch'än Council be contacted to make arrangements to do so at their offices.

2. Request that the Judicial Council remove a Board member under 12.2 of the Constitution.

Under 12.2 of the Constitution, the Judicial Council has the authority to remove a Board member in response to a charge that the member has compromised the dignity and effectiveness of his or her office. The Judicial Council takes this authority very seriously. A charge under 12.2 must provide reasonable details and particulars of the facts relied upon for making the charge. In this case there are no details supporting the charge and only conjecture and personal opinion are cited as reasons for it. The applicant also states that she does not believe that the Board is legitimately established, which also calls into question her request to remove one of its members. Considering these features of the application, the Judicial Council concludes that the application does not contain a proper charge contemplated by 12.2 of the Constitution.

Decision – The Judicial Council summarily dismisses the request that a member be removed from the Board.

Amlemke
per: _____
Chuck Hume
Judge

M. Dougherty
Michael Dougherty
Judge

J. Bailey
John Bailey
Judge