

Ta'an Kwäch'än Judicial Council

DECISION

Date: November 14, 2016
Case Number: TKJC 16-08
Complainant: Bonnie Harpe
Respondent: Kristina Kane

ISSUE

The Ta'an Kwäch'än Judicial Council (TKJC) is in receipt of a letter from Ms. Bonnie Harpe dated July 7, 2016 asking the TKJC to remove Chief Kane from office on the basis that that Chief Kane continues to prevent her from attending and participating at TKC meetings as the Susie Jim Family Councilor based on a new definition of "traditional territory and surrounding area" which she believes is not constitutionally correct.

At issue is the refusal of the Ta'an Kwäch'än Council to accept Ms. Bonnie Harpe as a Family Councilor who resides in Sherwood Park, Alberta on the basis of a Resolution passed by the Elders Council, dated April 1, 2016, which states:

"WHEREAS all boards and committees struck as a result of the business necessary as directed from Chief and Council of the Ta'an Kwäch'än Council that they reside within the traditional territory or surrounding area.

"BE IT THEREFORE RESOLVED THAT the Elders Council has defined the traditional territory and surrounding area as being specific to the maps of the of the Ta'an Kwäch'än Council traditional territory with a radius of 12,800 square kilometres.

"BE IT FURTHER RESOLVED THAT the Elders Council further defines the surrounding area to be the boundaries of the Yukon Territory."

In support of this request, one of the pieces of correspondence submitted was addressed to the Elders Council, identified as "Re Traditional Territory" and relates to three areas of concern:

1. The TKC refusal to accept Bonnie Harpe as the Susie Jim traditional family representative on the Council and failure to provide access to TKC meetings by means other than "in person" attendance;

2. The definition of “Traditional Territory and Surrounding Area” within the *Constitution* and its applicable meaning in regards to membership on the TKC was defined by the Elders Council by Resolution at the request of Chief Kane;
3. The actions of Chief Kane leading to the Elders’ Resolution constitutes “compromising the dignity or effectiveness of that office” and she should be removed as Chief.

The TKJC closed the complaint from Chief Kane against Ms. Harpe as being ineligible to sit as Family Councilor for failure to respond to clarification requests from the TKJC. However, prior to closing the file, Harpe correspondence dated July 7, 2016 in response to the Kane complaint brought to the attention of the Ta’an Kwäch’än Judicial Council that a Resolution from the April 1, 2016 meeting of the Elder’s Council has clarified and defined the limits of the traditional territory of the Ta’an Kwäch’än First Nation in order to more precisely address the eligibility question raised by Section 8.10 of the Ta’an Kwäch’än *Constitution*.

LEGAL FRAMEWORK

A Family Councilor is defined in the *Constitution* as: “...the person identified by a Traditional Family pursuant to section 8.0 of this Constitution”.

The *Constitution* states that a Family Councilor must be at least sixteen years of age and a Citizen of its Traditional Family and “Citizen” is defined as “a person enrolled as a citizen of the TKC pursuant to the citizenship code attached to this *Constitution*.”

Further, at 8.10 the *Constitution* stipulates: “A Family Councilor, Chief and Deputy Chief must be resident within the traditional territory or surrounding area of the TKC during his or her term. A Family Councilor, Chief and Deputy Chief must resign his or her position if he or she relocates outside the traditional territory or surrounding area.”

The definition of Traditional Territory has been set in the definitions of the Ta’an Kwäch’än legislation, specifically the *Elections Act* as “includes the geographic area within the Yukon identified in the final agreement as the Ta’an Kwäch’än Council traditional territory.”

ANALYSIS

The TKJC reviewed the April 1, 2016 Resolution by the Elders Council and finds it contains a number of errors in setting the definition of traditional territory and surrounding area as being “specific to the maps of the TKC traditional territory with a radius of 12,800 square kilometers”. It does, however, go on to state a specific limitation to the definition of ‘surrounding area: “BE IT FURTHER RESOLVED THAT the Elders Council further defines the surrounding area to be the boundaries of the Yukon Territory.”

The Resolutions and Motions Regulation of 2007 sets out procedures for accepting a resolution into the register of laws and applies in respect to all resolutions and motions made by the Elders Council.

Section 13 of the TK *Constitution* deals with legislative processes including any amendment to a law or regulation. It requires that any proposed law or regulation shall be reviewed at two meetings of the Board (the Ta'an Kwäch'än Council) and may be approved at the third meeting. The proposed law or regulation shall be submitted to the Elders Council for review and approval with $\frac{3}{4}$ vote majority. A proposed law or regulation will be brought into effect in accordance with a resolution from each of the Elders Council and Board that approved that proposed law or regulation in accordance with the *Constitution*.

Section 14 of the TK *Constitution* deals with Legislative Review. Ms. Harpe's complaint is directly related to the Resolution by the Elders Council which impacts the interpretation within an existing Act and therefore falls within the procedures outlined in Section 14. In Section 14, a family spokesperson or Elder may raise a challenge of a regulation or law with Council. Once a decision of Council has been made, the family spokesperson or Elder, if they are not in agreement with it, may then appeal to the TKJC.

CONCLUSION

The Ta'an Kwäch'än Judicial Council sees its authority to act in this matter as flowing from Section 14. Therefore, it will adjudicate a decision only when a decision by Ta'an Kwäch'än Council has been made following the challenge by a family spokesperson or Elder of a regulation or legislation to Council and when presented with the appeal of this decision by the family spokesperson or Elder who raised the initial challenge.

DECISION

The Ta'an Kwäch'än Judicial Council does not have the authority to adjudicate this complaint as presented and therefore it is dismissed.

Issued by the Ta'an Kwäch'än Judicial Council this 14th day of November 2016.



Michael Dougherty, Judge



Barbara Evans, Judge