

# TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

BOX 31735

WHITEHORSE, YUKON Y1A 6L3

Phone (867) 335-2839


Fax (867) 633-2749

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November 14, 2016

TKJC 16-07

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

Bonnie Harpe  


Dear Chief Kane and Ms. Harpe:

**RE: TKJC 16-07 – Kane v Harpe**

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On February 23, 2016 the Ta'an Kwäch'än Judicial Council received a letter from Ms. Kristina Kane, Chief of the Ta'an Kwäch'än First Nation, in which she appears to be writing on behalf of the Ta'an Kwäch'än Council.

In the letter she requests that the Ta'an Kwäch'än Judicial Council address the question of the eligibility of Ms. Bonnie Harpe to sit on Ta'an Kwäch'än Council. The constitutional references on which she based her concern were:

- Section 8.5 of the Ta'an Kwäch'än Constitution which deals with the manner in which a Traditional Family representative to the Ta'an Kwäch'än Council may be replaced; and
- Section 8.10 which states that a Family Councilor must be resident "within the traditional territory or surrounding area of the Ta'an Kwäch'än Council during his or her term".

The Ta'an Kwäch'än Judicial Council responded to this letter on March 16, 2016, reminding the parties that the Ta'an Kwäch'än Judicial Council has consistently and repeatedly stated that it has no role in the selection or appointment of Family Directors to the Ta'an Kwäch'än Council. It does, however, hold the constitutional responsibility to adjudicate any violations of the laws of the Ta'an Kwäch'än Council. This power is derived from Section 12.1.1 of the Ta'an Kwäch'än Constitution.

In the March 16<sup>th</sup> letter, the procedural issue of Section 8.5 and the substantive issue of eligibility under Section 8.10 were recognized as being within the jurisdiction of the Ta'an Kwäch'än Judicial Council. The letter referenced the TKJC 11-01 Decision of the Ta'an Kwäch'än Judicial Council which reflected the TKJC position on the procedural issue raised by the complaint under Section 8.5.

In that matter, the issues set before the Judicial Council were:

- The procedures for Family Director selection within one of the family lines in order to ascertain if Section 8.4 of the *Constitution* was followed; and
- Whether or not the removal of a representative to the Ta'an Kwäch'än Council, and appointment of another was done in a manner that violated section 8.5 of the *Constitution*.

While that matter was fundamentally based on 'family line' concerns, the Judicial Council, in its decision, stated: *"Transparency and openness...will clearly assist in the evolution of a functioning and effective system of governance which can only assist in engendering more support for and participation in the affairs of the Ta'an Kwäch'än First Nation by its citizenry.*

*"The Judicial Council also sees the need for increased clarification of the process and supports any efforts of ...a traditional family to this end. As well, it must be understood that the appointments as Family Director under the Constitution are for four years. There is no need for periodic or annual reaffirmations of these Family Director appointments by the Board as has happened in the past. The process of naming alternates when the Family Director is not able to attend must be clarified."*

The March 16<sup>th</sup> letter from the Ta'an Kwäch'än Judicial Council to Ms. Kane further requested clarification on whether the complaint originates from Ms. Kane as an individual, or as Chief on behalf of the Ta'an Kwäch'än Council.

A response to our correspondence has not been received.

Further correspondence from Ms. Harpe on July 7, 2016 in response to this matter brought to the attention of the Ta'an Kwäch'än Judicial Council that a resolution from the April 1, 2016 meeting of the Elders 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 10 of the Ta'an Kwäch'än *Constitution*.

Given this development and the lack of a response to the TKJC from Chief Kane regarding the requested clarification identifying the Complainant, the Ta'an Kwäch'än Judicial Council deems this application to be abandoned and will take no further action on it.

Sincerely,

**TA'AN KWÄCH'ÄN JUDICIAL COUNCIL**

Barbara A. Evans  
Judge

Michael Dougherty  
Judge

c. TKC