

Ta'an Kwäch'än Judicial Council

Decision on Complaint Regarding Removal of Board Members

Date: April 23, 2013

Case Number: TKJC12-01

Applicant: Brenda Sam

Complaint

The Ta'an Kwach'än Judicial Council (TKJC) received a complaint from the applicant, former Chief Brenda Sam, dated April 5, 2012, alleging that Lori Duncan and James MacDonald had conducted themselves in a manner that compromised their dignity and effectiveness as Directors of the Ta'an Kwach'än Board. Ms. Sam requested their dismissal from the Ta'an Kwach'än Board under the powers granted to the TKJC by Article 12.2 of the Constitution of the Ta'an Kwach'än Council.

Response

In response to this complaint, the TKJC received correspondence from Ms. Duncan and Mr. MacDonald dated May 4, 2012. In it, they argued that Ms. Sam's complaint is frivolous and vexatious and "based on erroneous information, dubious arguments and retaliatory motives." They call for the complaint's dismissal. This request is pursuant to section 19 of the Rules of Procedure for the TKJC.

These two documents, former Chief Sam's complaint and Ms. Duncan and Mr. MacDonald's response, constitute the body of information upon which the TKJC based its determination of this complaint.

Background

On November 14, 2011 the TKJC received a complaint from Ms. Duncan and Mr. MacDonald (TKCJC 11-02) raising serious concerns about a number of governance and financial issues involving the Ta'an Kwach'än Council and former Chief Sam. In May of 2012, following the filing of Ms. Sam's complaint on April 5, 2012, the TKJC determined that it would not decide the Sam complaint until it had dealt with the complaint filed by Ms. Duncan and Mr. MacDonald, given the connection between the subject matter of the two complaints. In response to the complaint by Ms. Duncan and Mr. MacDonald, the TKJC ordered a financial investigation to look into the allegations raised. The TKJC expected that the findings of this investigation could impact both complaints. This investigation and subsequent procedural issues lengthened the delay in rendering this decision.

Consideration:

The heart of former Chief Sam's complaint revolved around issues raised or not raised by both the respondents at a meeting of the Jenny Lebarge Traditional Family on September 20, 2011, of which Ms. Sam had knowledge from Jacqueline Bazett's personal notes. Ms. Sam also raised concerns about Mr. MacDonald's use of information available to him in his capacity as the Ta'an Kwach'än Council's Executive Director in 2010, which she alleged should have informed his work as a director of the Ta'an Kwach'än Council in 2011.

In response to these allegations, Ms. Duncan and Mr. MacDonald argued that Ms. Sam's complaint was an attempt by her to limit their right of "free expression." Ms. Duncan and Mr. MacDonald also raised the possibility that Ms. Sam's complaint was a way of retaliating against them for filing their November 14, 2012, complaint about governance and financial issues, and a conflict of interest allegation implicating her.

The TKJC carefully considered the two documents presented to it by the parties. The key matters raised in the Sam complaint relied heavily on a third party document (Jacqueline Bazett's notes) which all parties agree contained erroneous information. Additionally, the allegation that Mr. MacDonald had prior knowledge of matters that should or should not have influenced his decisions as a member of the Ta'an Kwach'än Council was not corroborated beyond conjecture. Mr. MacDonald argued, as well, that former Chief Sam was privy to the same information and under the same obligations as he was, if these obligations existed at all. Given the vagueness of the allegations in Ms. Sam's complaint, the TKJC finds that it cannot proceed on this matter.

Decision

The TKJC finds that the matters raised in Ms. Sam's complaint are based solely on the notes of the September 20, 2011, meeting and lack substantiation. The allegation that Mr. MacDonald had prior knowledge that should or should not have influenced his decision on Ta'an Kwach'än Council matters has also not been substantiated.

Having found no factual basis to the allegations, the TKJC dismisses the complaint by Ms. Sam against Ms. Duncan and Mr. MacDonald pursuant to section 19 of the Rules of Procedure and it will take no further action on this complaint (TKCJC 12-01).

Issued by the Ta'an Kwäch'än Judicial Council this 23rd day of April 2013.



Chuck Hume
Judge

Michael Dougherty
Judge

Barbara Evans
Judge