

**Ta'an Kwäch'än Judicial Council  
Report on Appeal of  
April 30, 2004 Election**

**Case Number:** TKJC 04-04

**Appellant:** Bonnie Harpe  
16-606 Main Street  
Whitehorse, Yukon Y1A 2C1

This is an appeal under the Election Rules in respect of the April 30, 2004, election for the office of Chief of the Ta'an Kwäch'än Council.

The appellant, Bonnie Harpe, is a Ta'an Kwäch'än Council citizen and was a candidate for Chief in the election. The appellant has submitted five election appeal documents to the Judicial Council. The initial appeal was dated and submitted on May 8, 2004. There were four subsequent supplemental or additional appeals dated as follows: May 9, 2004, May 11, 2004, May 24, 2004, and May 26, 2004.

The issues raised in these appeal documents were divided into two categories by the Judicial Council. The appellant alleges:

1. That an unsuccessful candidate for Chief in the April 30, 2004, election may not have been eligible to run for that office as his criminal record check ambiguously reported that he "may or may not have" a criminal record. The appellant further asserts that, had this candidate been ruled ineligible to run for Chief, his absence from the ballot might have affected the outcome of the election.
2. That there were a number of irregularities respecting the conduct of the election that affected its outcome.

**Category 1 – Certified Criminal Record Check**

The Judicial Council notes that under 5.2.2 of the Election Rules each candidate undertook to provide the Board with a certified criminal record check. Unfortunately, this was not done in the case of the candidate Sam Broeren. Perhaps more regrettably, it does not appear that the Board followed-up with Mr. Broeren to ensure that this requirement under 5.2.2 was fulfilled. As a result, in response to the request of the Judicial Council, the Board was unable to provide a certified criminal record check. This has caused substantial delays in the investigation of the Judicial Council. The Judicial Council would like to acknowledge and thank Mr. Broeren for his very timely cooperation and

assistance in completing the supporting documentation required by the RCMP in order for the Judicial Council to obtain the certified criminal record check contemplated by 5.2.2 of the Election Rules. The Judicial Council has been advised by the RCMP that the certified criminal record check should be received by the Judicial Council by late August or early September. This report, therefore, will not address the allegations set out in Category 1 above. The Judicial Council will conclude its investigation and make its report in respect of the “certified criminal record check” matter as soon as practical following receipt of the information from the RCMP.

### **Category 2 – Irregularities Respecting the Conduct of the Election**

The Judicial Council confirms that it has completed its investigation into all matters raised in this appeal except for the criminal record matter noted above. The report of the Judicial Council into these matters is set out below.

The appellant has alleged that 8.3 of the Election Rules was violated by the Elections Committee in that in some cases, mail-in ballot packages did not contain ballots, while in others cases, the entire package was not sent to potential electors. There was a further contention that a staff member of the Board was inappropriately involved in the preparation of the packages. It was also suggested that, as a consequence, there may have been tampering with the packages.

With respect to the Elections Committee’s preparation and distribution of ballot packages, the Judicial Council has concluded from its investigation that there were no irregularities that affected the outcome of the election. The Judicial Council also concluded that the Election Rules provide remedies for electors to obtain replacement mail-in ballots had this been an issue. Finally, there is nothing in the Election Rules precluding the Elections Committee from using clerical support to assist with the preparation of election packages. However, in recognition of the potential sensitivities in this regard, the Judicial Council recommends that future Elections Committees exercise great care in the preparation and distribution of election packages.

The appellant raises concerns that mail-in ballots arrived after the election date had passed, and were not counted. The point is very clear in 8.10 of the Election Rules, stating that mail-in ballots received after the polls close on the date of the election are void. The Judicial Council also reviewed the instructions that accompanied the mail-in ballots. The instructions were quite clear on the deadline for receipt of the ballots, and remedies were provided for voters who were concerned they would not get their ballots in on time. The Judicial Council finds there was no violation of the Election Rules regarding the late receipt of mail-in ballots.

The appellant makes a number of allegations related to the count of the ballots. There is no evidence that any of the alleged irregularities respecting the counting of ballots represented violations of the Election Rules that might have affected the results of the election. The relevant ballot count was the official signed-off Poll Report obtained by the Judicial Council as part of its investigation.

While there may have been some minor irregularities in the election process, the Judicial Council is satisfied that these did not affect the outcome of the election. However in the view of the Judicial Council, the Elections Committee should exercise the utmost care when conducting future elections. The Election Rules are clear and detailed and it is recommended they be carefully followed in the future in order to avoid procedural concerns being raised by Ta'an Kwäch'än Citizens. As an example, the alleged recount of the ballots on May 3, 2004, should not have been conducted without an opportunity for the candidates or their representatives to be present.

**In summary, the Judicial Council has concluded that, with respect to the election irregularities alleged by the appellant, there was no corrupt practice in connection with the election (11.1.1 Election Rules), nor was there a violation of the Election Rules that might have affected the result of the election (11.1.2 Election Rules). Therefore, the Judicial Council orders that the results of the April 30, 2004, election for Chief stand, pending the outcome of the investigation and final report regarding the certified criminal record check matter noted above.**

per: Omdemke  
Chuck Hume  
Judge

John Bailey  
John Bailey  
Judge

per: Omdemke  
Michael Dougherty  
Judge