

Ta'an Kwäch'än Judicial Council
Reasons for Decision on Appeal of November 20, 2006 Election

Case Number: TKJC 06-24

Appellant: Barbara Hare
16-606 Main Street
Whitehorse, Yukon Y1A 2C1

On February 23, 2007, the Judicial Council issued its decision in the matter of TKJC06-24, an appeal of the results of the November 20, 2006 Ta'an Kwäch'än election for Chief and Deputy Chief. The Judicial Council declared that the results of the November 20, 2006 Ta'an Kwäch'än election for Chief and Deputy Chief are valid. The following are the reasons for that decision:

This is an appeal under the *Ta'an Kwäch'än Council Elections Act* (2006) (*Elections Act*) in respect of the November 20, 2006 election for the offices of Chief and Deputy Chief of the Ta'an Kwäch'än Council. The appellant, Barbara Hare, is a Ta'an Kwäch'än Council citizen and was a candidate for Deputy Chief in the election. The appellant submitted an appeal to the Judicial Council dated and received on December 19, 2006, within the 30 consecutive days provided for in subsection 142.(1) of the *Elections Act*. Submissions in response to the appeal were received from the Chief Returning Officer (Ms. Jennifer Mauro), members of the Election Committee [Ms. Louise Clethero, Ms. Michele Telep and Ms. Amy Grenier (formerly known as Ms. Amy Burdek)] and Ms. Ruth Massie.

Submissions

In her appeal, Ms. Hare submits that there was bias and misconduct on the part of those selected or hired to conduct the November 20, 2006 election. She presents many questions about why certain actions were or were not taken by the Chief Returning Officer, Election Committee and others in respect of the election. She also alleges several violations of the *Elections Act* during the

conduct of the election. For the purpose of this appeal, the Judicial Council considered the allegations of bias and misconduct as a single issue. In our view, many of the comments and questions set out in the appeal are based merely on innuendo and unfounded conjecture as opposed to constituting specific allegations of irregularities or wrongdoing. We will not address these matters further. The specific allegations of violations of the *Election Act* that we have considered for the purposes of this appeal are as follows:

1. Irregularities respecting the handling of mail-in ballots. Specifically, Ms. Hare alleges irregularities that resulted in eligible voters not receiving their ballots in time to vote.
2. Irregularities respecting the voters list, including the posting of lists and the addition and removal of names on the lists.
3. Irregularities in the conduct of the election, including advance and early polling, conduct and presence of scrutineers, and counting of ballots.

In her submission, Ms. Mauro generally denies all allegations set out in the appeal respecting her conduct and argues that the majority of the allegations are frivolous, vexatious and based on conjecture and speculation with no foundation in fact. Ms. Mauro goes on to specifically rebut each allegation in the appeal directed towards her conduct related to the election. The gist of Ms. Mauro's submission is that she neither exhibited nor held any bias in respect of the election and carried out her duties as Chief Returning Officer consistent with the requirements of the *Elections Act* and to the best of her abilities.

In their submission, the members of the Election Committee address the allegations respecting their bias and those allegations of irregularities that relate to the compilation of the voters list. They argue that they neither exhibited nor held any bias in respect of the election and carried out their duties as prescribed by the *Elections Act* to the best of their abilities. They also argue that revisions to the voters list were carried out consistent with the *Elections Act*. Finally, they point out that many of the allegations directed towards them were about matters they were not responsible for or that relate to issues that may have arose prior to their Committee being constituted.

Ms. Massie submitted that, based on her experience as a candidate and as Acting Chief, the November 20, 2006 election was conducted consistent with the *Elections Act*. She also submitted information regarding the selection of the Chief Returning Officer and Election Committee members and the selection of her own scrutineers for the election day.

Analysis

The first matter considered by the Judicial Council was that of alleged bias and misconduct on the part of Ms. Jennifer Mauro, the Chief Returning Officer. The Judicial Council finds that all of Ms. Hare's allegations of bias and misconduct on Ms. Mauro's part – which were potentially damaging to her personally and professionally - are completely without foundation in fact, based solely on conjecture and speculation and appear to merely reflect displeasure with the outcome of the election. No evidence was submitted to support any of these allegations, while there was considerable evidence to support Ms. Mauro's argument that she conducted herself properly and professionally throughout the election process and in a manner consistent with the requirements of the *Elections Act*. This includes the appointment of Ms. Mauro as Chief Returning Officer which, based on the facts presented, the Judicial Council finds was done properly.

In the matter of alleged bias of the members of the Election Committee, these allegations appear to be primarily based on observations of who was related to whom and speculation and conjecture on how this could affect the members of the Election Committee in performing their duties. Again no supporting evidence was provided respecting these allegations, and the Judicial Council found nothing to support a conclusion other than that the Election Committee members conducted themselves professionally and properly and in a manner consistent with the relevant provisions of the *Elections Act*.

Respecting allegations pertaining to hiring staff and securing office space for the conduct of the election, the Judicial Council finds no evidence of improper conduct in these matters, and all hiring of staff and retention of space was done consistent with the *Elections Act* and with the principal interest of conducting the election in a fair manner.

The appellant provided little more than conjecture, speculation and unsupported accusations regarding the involvement of the Election Committee members in the preparation of mail-in ballot packages. Conversely, Ms. Mauro and the Election Committee submit that the Committee played no role in this process, and the Judicial Council is satisfied that they did not. In addition, the Judicial Council finds that there is no evidence supporting the allegation that the mail-in ballot packages were not prepared in a manner consistent with the *Elections Act*. The *Elections Act* places the onus on a voter to ensure his or her name appears on the voters list, and it follows that it is also a voter's responsibility to ensure that changes in address are reflected in that list for the purpose of receiving election information and ballots along with other material from the First Nation. While perhaps not a national or international news story, it is reasonable to conclude that anyone with any level of interest in the affairs of the Ta'an Kwäch'än First Nation should have been aware of the 2006 election and ensured that, if they were interested in voting, they were on the voters list with a correct mailing address. It is not reasonable to expect the Chief Returning Officer to provide preferential priority post mailing for voters who only identified address changes shortly before the day of the election.

Ms. Hare argues that it is the responsibility of the Election Committee, and Chief and Deputy Returning Officers to ensure that names and addresses appear correctly on the voters list. Subsection 28.(2) of the *Elections Act* provides that it is the responsibility of the voter to ensure his or her name appears on the voters list. While the *Act* only requires voters lists to be posted at “the Ta’an Kwäch’än Council principal place of business”, the Judicial Council notes in the appeal submission that this requirement was exceeded by also posting the lists at the Lake Laberge office in order to facilitate access to them. No evidence was provided to support any allegation that the voters list was compiled or revised in any way inconsistent with the relevant provisions of the *Elections Act*.

The allegations in the appeal respecting the conduct of the election range from those related to the conduct of advance and early polls, through the appointment and conduct of scrutineers, to the process of counting the ballots. It is difficult to tease these out from the speculative and unsupported allegations of misconduct by those conducting the election. The early voting provisions in the *Elections Act* are there presumably to facilitate voting to a relatively mobile and widely dispersed electorate. In the view of the Judicial Council, early voting was conducted properly and in accordance with the *Elections Act*. The *Elections Act* provides for a candidate to act as a scrutineer at a voting station under subsection 50.(2) and, with consideration of Ms. Mauro’s sworn statement that Ms. Gail Anderson made the required declaration, the Judicial Council is satisfied that Ms. Anderson was a lawful scrutineer for the 2006 election. Further, no evidence was provided to support an allegation that Ms. Anderson actively influenced voters at the voting station, and the Judicial Council does not find that her mere presence would have such an effect.

The allegations in the appeal respecting the counting of votes are again primarily based on speculative and unfounded charges that the election officials were involved in misconduct. There is also considerable innuendo based on who was where during the vote counting procedure, but there was an absence of any evidence to support an allegation of misconduct. On review of all of the submissions provided, the Judicial Council is satisfied that the vote-counting

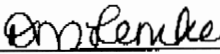
procedure was carried out properly and consistently with the relevant provisions of the *Elections Act*.

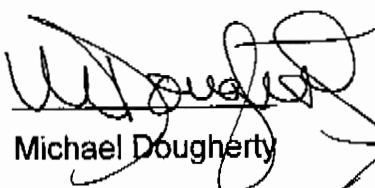
Summary

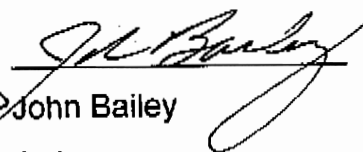
The Judicial Council finds that the November 20, 2006 Ta'an Kwäch'än Election for Chief and Deputy Chief was conducted properly and in accordance with the *Ta'an Kwäch'än Council Elections Act (2006)*. The Chief Returning Officer, Elections Committee and all other staff retained to conduct the election all acted legally, properly and professionally to ensure that the election was conducted in a fair manner. The allegations of misconduct raised in the appeal are largely based on conjecture and speculation, with no foundation in fact.

In conclusion, the Ta'an Kwäch'än Judicial Council declares the results of the November 20, 2006 Ta'an Kwäch'än Election for Chief and Deputy Chief are valid.

Issued by the Ta'an Kwäch'än Judicial Council this 28th day of March 2007.


for: Chuck Hume
Judge


Michael Dougherty
Judge


John Bailey
Judge