

HUU-AY-AHT FIRST NATIONS



Report of Executive Council on Amendments to the Government Act Regarding the Law Clerk

**For consideration at the session of the
Huu-ay-aht First Nations People's Assembly
on November 21, 2015**

Prepared on behalf of Executive Council
by Melinda Skeels, Legal Counsel

Date: November 2, 2015

BACKGROUND

Executive Council has approved amendments pertaining to the Law Clerk in sections 2 and 102 of the *Government Act*, HFNA 3/2011 and recommends these amendments to the People's Assembly.

Amendments to the *Government Act* need to be approved by the People's Assembly before they can come into force.

If the People's Assembly approves these amendments, they will be put forward for consideration by the Legislature at its Spring sitting.

DISCUSSION

The *Government Act* provides that the Executive Director is the Law Clerk. Executive Council, on the recommendation of the Law and Policy Development Committee, considered it desirable that the Executive Director be given discretion to appoint someone other than him or herself to the position of Law Clerk. This would allow for the responsibility for the Law Clerk's duties to rest with the person to whom those duties are assigned and would reduce the powers, duties and functions associated with the Executive Director's role.

These proposed amendments were brought along with other proposed amendments to the *Government Act* before the 2014 People's Assembly, which recommended they be made the subject of community rounds and discussions prior to this year's People's Assembly. No concerns about this amendment were raised during community rounds.

Attached to this report are proposed amendments to the *Government Act* that would allow the Executive Director to designate a Huu-ay-aht employee other than him or herself as the Law Clerk.

OPTIONS AND IMPLICATIONS

The People's Assembly may or may not approve these amendments. If not approved, they will not go before the Legislature to be enacted. If the proposed amendments are not made, the *Government Act* will remain as is with respect to the designation of the Executive Director as Law Clerk.



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ANCIENT SPIRIT, MODERN MIND

**PROPOSED AMENDMENTS TO THE
GOVERNMENT ACT, HFNA 3/2011**

Re: Appointment of Law Clerk

For consideration at the
2015 People's Assembly

November 20-22, 2015

Proposed Amendment

The *Government Act*, HFNA 3/2011 is amended:

- (a) *in section 2, by striking out the definition of “Law Clerk” and substituting the following:*

“**Law Clerk**” means the individual appointed or designated under section 102;”

- (b) *by striking out section 102 and substituting the following:*

Law Clerk position

- 102 (1) The position of Law Clerk is established.
- (2) Subject to spending authority, the Executive Director must appoint an individual to the position of Law Clerk.
- (3) If the position of Law Clerk is vacant, the Executive Director must designate a Huu-ay-aht employee to carry out the powers, duties and functions of the Law Clerk.
- (4) The powers, duties and functions of a Huu-ay-aht employee designated under subsection (3) are in addition to the existing powers, duties and functions of that Huu-ay-aht employee.”

Effects of Proposed Amendments

Once amended, the relevant portions of the *Government Act*, HFNA 3/2011 would read as follows (additions are underlined, deletions are ~~crossed out~~):

Definitions

2 In this Act:

...

“**Law Clerk**” means the ~~Law Clerk~~ individual appointed or designated under section 102;

Law Clerk designation

~~102~~ The Executive Director is the Law Clerk.

Law Clerk position

- 102 (1) The position of Law Clerk is established.
- (2) Subject to spending authority, the Executive Director must appoint an individual to the position of Law Clerk.
- (3) If the position of Law Clerk is vacant, the Executive Director must designate a Huu-ay-aht employee to carry out the powers, duties and functions of the Law Clerk.
- (4) The powers, duties and functions of a Huu-ay-aht employee designated under subsection (3) are in addition to the existing powers, duties and functions of that Huu-ay-aht employee.



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ANCIENT SPIRIT, MODERN MINE

WRITTEN MOTION of the PEOPLE'S ASSEMBLY

(Government Act, s. 86)

For ease of reference, this motion may be referred to as:

Motion Regarding Approval of Amendments to the *Government Act* re Law Clerk

Whereas:

- a) Pursuant to the *Government Act*, s. 104, amendments to the *Government Act* must be approved by the People's Assembly before they can be brought into force;
- b) The 2014 People's Assembly considered a proposed act to amend the *Government Act* that included amendments in respect of the appointment of the Law Clerk and recommended that the proposed amendments be the subject of further community engagement;
- c) Further community engagement in respect of the proposed amendments to the *Government Act* has occurred over the past year;
- d) Executive Council has approved for presentation to People's Assembly the attached proposed amendments to the *Government Act* regarding the appointment of the Law Clerk (the "proposed amendments regarding the appointment of the Law Clerk");
- e) Executive Council recommends that the People's Assembly approve the proposed amendments regarding the appointment of the Law Clerk; and
- f) If the proposed amendments regarding the appointment of the Law Clerk are approved by the People's Assembly, it is the intention of Executive Council that legislation effecting those amendments will be introduced to the Legislature at its next session.

Be it resolved that the People's Assembly hereby approves the proposed amendments to the *Government Act* regarding the appointment of the Law Clerk.

Appendices attached to Motion:

Written report prepared by Melinda Skeels, legal counsel, on behalf of Executive Council.

The following documents:

- Proposed Amendments to the *Government Act*, HFNA 3/2011 re: Law Clerk

Introduced by: _____

Date: November 21, 2015

DATE OF PEOPLE'S ASSEMBLY

Administrative Requirements