

## WRITTEN DECISION ON ELECTION APPEAL

**Appeal filed by Ms. Janine Sheard (Dandenault) (the "Appellant") concerning the April 22, 2025 Election of the Gwa'sala-Nakwaxda'xw Nation (the "Nation")**

### INTRODUCTION:

The Gwa'sala-Nakwaxda'xw Nation Custom Election Code (the "Code") governs elections, including the election appeals process. The Appeals Committee (the "Committee") was appointed in accordance with the Code, and is empowered by the Code to make determinations on appeals.

Following the election, in accordance with section 23.8 of the Code, the Appeals Committee determined that it received a validly submitted appeal from the Appellant. While the Appellant submitted several issues in their appeal, the Committee framed the appealable issue as follows:

**Was the Appellant incorrectly determined to be not a member in Good Financial Standing in accordance with the Code, resulting in her exclusion from the ballot?**

All other issues were deemed to be outside of the scope of the Committee's authority.

The Appeals Committee conducted further investigations per s. 23.13 of the Code in order to assess the merit of the appeal.

### DECISION:

The Appeal is allowed. The Nation made an error in applying s.6.1(f) of the Code in determining that the Appellant was not in good standing, when in fact, she was. Therefore, the Nation was wrong to disallow the appellant from the ballot. Per s.23.17(a) of the Code, the Committee has decided to order that a by-election occur for one Council seat, which shall be a run-off style vote between the Appellant and the Councillor who received the lowest number of votes in the Election, conducted in the same manner as if they had tied under section 20.4 of the Code. This by-election must occur as soon as practicable and not be unreasonably delayed.

The Committee considers this order to be a balanced measure which corrects the violation of the Code without unnecessary disruption.

### REASONS:

#### **Definition of Good Financial Standing**

A Candidate for the office of Councillor must be in Good Financial Standing under s.6.1(f) of the Code. The definition of **Good Financial Standing** in the Code is "A person who is not behind or in default on their payments for housing to GN." The Code also provides that Council may clarify wording, and Council has provided that being in Good Financial Standing under the Code includes those Candidates who have an arrears, but who have an "approved payment plan with GNN and have kept up their agreed-upon payment for at least 12 months."

#### **Factual Background**

The Committee used its powers under the Code to collect and review evidence from the Appellant, above that which was contained in the Appeal, as well as from the Housing and Finance Departments of the Nation.

The Committee accepts historical evidence presented by the Appellant that she had at least plausible reason to believe that there had been errors in the calculation of her arrears by the Nation, specifically that there may have not been adequate explanation provided for the gross amount of arrears applied to her account, and also that there may have been issues with correctly applying the amounts being deducted from her income to her arrears account. The Committee accepts that the Appellant has been requesting a reconciliation of the arrears account since at least 2020.

In April of 2021, the Appellant sent an email to the Nation to request that additional deductions from her income for arrears be held until a reconciliation occurred (the "Reconciliation Request"). Importantly, in this email the Appellant expresses her concern that deductions from her income may not have been properly applied to her account, and also that she was willing to pay arrears once the account was reconciled.

The Committee received no evidence of a direct written reply to the Reconciliation Request, though it is noted that the Nation complied with the Reconciliation Request—from receipt of the Reconciliation Request to March 18, 2025, only rent was being deducted from the Appellants pay. The Committee accepts evidence that during the period of time between the Reconciliation Request and March 18, 2025, the Appellant made multiple requests to have her account reconciled.

**The Committee has not received any evidence which suggests a reconciliation of the account having occurred.** Incidentally, the Committee received a copy of a letter sent to the Appellant from the Housing Department dated January 19, 2023 relating to the issues of arrears. The Committee interprets this letter as supporting the Appellant's contention that her account was not reconciled in response to her April 2021 request. This is so in part because of a lack of mention of the April 2021 request as well as the Department's acknowledgement that the Appellant's arrears should have gone down, but did not, as a result of the additional amount being deducted from her pay between 2019 and 2021.

The Committee accepts evidence that the Appellant, during the 12 months prior to the Election, was duly deducted rental payment from her income from the Nation, and on March 18, 2025, the Appellant and the Nation entered into a new agreement for additional rental arrears payments to be applied, though the Appellant is persistent in asking for a reconciliation.

### **Determination on Facts**

The Committee has determined that the Nation, by immediately complying with the request to deduct only rent from the Appellants income in 2021, accepted the Reconciliation Request, and that the status of the Appellant's arrears account at that time was on hold for uncertainty awaiting a reconciliation of the Appellants account. In other words, it is **incorrect** to say that the Appellant and the Nation did not have an agreement or payment plan from the period of April 2021 to March, 2025. Instead, the Appellant and the Nation did have an agreement during that entire period, which was that the base rent was payable, and additional arrears payments were on hold until a reconciliation occurred, and during that entire period, the Appellant duly paid each month her rent. Therefore, the Appellant was in Good Financial Standing, and should not have been disallowed from the ballot by virtue of S.6.1(f) of the Code.

NOTE ON SCOPE OF DECISION:

The Committee wishes to clarify that this decision is only a decision on the Appeal. The Committee only reviewed evidence as necessary and only determined facts as necessary to make a decision in accordance with the Code. No other issue was determined. For example, without limitation: the Committee did not make any determination as to the actual correctness of the Appellant's arrears account prior to the Reconciliation Request, or that there were or were not problems in the application of income deductions to the arrears account, only that there was a reasonable concern; the Committee did not make any determination as to any other arrears account; and the Committee did not make any determination as to any other candidates' eligibility or non-eligibility.

The Committee also wishes to clarify that it did not make a determination or finding that there was any malice in the error of the Nation in its application under s.6.1(f) to exclude the Appellant from the Election.

NOTE ON APPEAL FEE

The Committee notes that under s. 23.2(b) the appeal fee should be refunded to the Appellant.

Dated June 25, 2025



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Benjamin J.F. Esau

Election Appeal Committee Chair