



**Tla'amin Nation
Review & Appeal Panel**

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August 31, 2024

Review or Appeal Request No. 2024-01

In the Matter of the Appeal by Brandi Marriott of the Decision
of Jordon Loose, elections officer
Pursuant to section 30(2) of the *Election Law*

Date of Hearing: August 19, 2024
Date of Order: August 19, 2024
Date of Written Reasons: August 31, 2024

Hearing Location: Video Conference

Panel members hearing the appeal:
Peter D. Larlee, Panel Chair
Brooke Vagelatos, Standing Panel Member
Melanie Vivier, Standing Panel Member

Panel Order and Written Reasons



ORDER OF THE REVIEW AND APPEAL PANEL

Review or Appeal Request Order No. 2024-01

Ordered: August 19, 2024

Order

The Review and Appeal Panel orders that the appeal of Brandi Nicole Desiree Marriott is allowed. The Panel rescinds the original decision of Mr. Loose and issues its own decision that Ms. Marriott may be certified as a candidate for the office of legislator in the Tla'amin Nation General Election on September 14, 2024.

Written reasons for this decision will follow as soon as possible.

Authority

This order is made under the authority of section 16(4) of the *Review and Appeal Law*.

By the following members of the Review and Appeal Panel:

Peter D. Larlee, Chair
Brooke Vagelatos, Standing Member
Melanie Vivier, Standing Member

Signed this 31st Day of August 2024:

Peter D. Larlee, Panel Chair

WRITTEN REASONS

The Election

1. An election for Hegus and Legislative Assembly members will be held for the Tla'amin Nation on September 14, 2024 (the Election).
2. Pursuant to section 13(1) of the *Election Law*, the Legislative Assembly appointed Mr. Jordan Loose (Elections Officer), with the indigenous services organization, OneFeather, as the elections officer for the Election.
3. Pursuant to section 24(1) of the *Election Law*, a nomination meeting was held for Hegus and Legislative Assembly members on June 27, 2024 (the Nomination Meeting).

The Nomination

4. Tla'amin Citizen, Brandi Marriott, was nominated as a candidate for the Election at the Nomination Meeting. Ms. Marriott accepted this nomination.

Certification of Candidacy

5. All nominated candidates are required to complete a Certification Package and return it to the elections officer within seven days of the Nomination Meeting. This package must include:
 - (i) Schedule C – Acceptance of Nomination for Tla'amin Election Form;
 - (ii) Schedule D – Certificate of Qualification; and
 - (iii) Schedule E – Nominee Disclosure Statement.

(All being schedules to the *Nomination Regulation*)
6. As required by section 10 of the *Election Law*, to be eligible for nomination as a candidate, an individual must provide evidence to the elections officer that they meet the established criteria to qualify as a candidate. Furthermore, section 9(1)(d) of the *Election Law* requires a nominee who wishes to accept their nomination and stand as a candidate to provide evidence that they have submitted a request for a criminal records check.

Election Officer's Decision

7. Ms. Marriott received Mr. Loose's decision by way of email on July 11, 2024 at 12:46 p.m., this email was sent through Mr. Loose's Outlook account <Jordan@onefeather.ca> to Brandi Marriott's Gmail account <salishcedars@gmail.com> (the Election Officer's Decision Email), as follows:

Good afternoon Brandi,

On the morning of June 28th following the Nomination Meeting I had sent you an email to this current address, informing you that I had received your Candidate Acceptance, Certificate of Qualification and Candidate Code of Fair Campaign Practices during the Nomination Meeting.

I then stated the remaining requirement, that a Criminal Record Check or proof that a Criminal Record Check was being processed, will need to be submitted by end of day July 4th, as this is required for candidacy and declared to be included in your signed Certificate of Qualification.

Online resources for obtaining a Criminal Record Check was posted at the nomination meeting at the nomination table as well as included with my email.

As the Criminal Record Check or proof of Criminal Record Check was not provided to me by the July 4th Candidate deadline, you are no longer eligible for candidacy.

Your Candidate fee will be refunded back to you.

Best regards.

The Appeal Request

8. Pursuant to section 30(2) of the *Election Law*, Ms. Marriott submitted her appeal request to the Review and Appeal Panel (the Panel) on July 12, 2024. In her request, Ms. Marriott appealed Mr. Loose's decision to not certify her as a candidate in the Election.
9. Ms. Marriott's appeal request focused on the lack of information and communication from OneFeather, including the incomplete delivery of an email dated June 28, 2024 from Mr. Loose pertaining to the Certification Package (the Certification Package Instruction Email). The relief sought by Ms. Marriott is to be placed on the Final Candidates List for the Election.
10. Ms. Marriott provided a written statement with her appeal request whereby she stated that:
 - The Nomination Meeting was conducted in a disorganized manner.
 - OneFeather staff were inexperienced and lacked the knowledge necessary to properly inform and communicate with the candidates.
 - At the Nomination Meeting, Ms. Marriott submitted her Certification Package and asked an election official if any remaining information was required to complete her application. The election official accepted her package and informed her that nothing further was needed and that her package was complete. She believed and trusted this direction.
 - At the end of the Nomination Meeting, Ms. Marriott was not provided with copies of her Certification Package or any other materials to review and understand the expectations or requirements of the candidate certification process.

- Ms. Marriott did not receive any communication from OneFeather following the Nomination Meeting.
- She did not receive a Certification Package Instruction Email dated June 28, 2024 from Mr. Loose informing her that she needed a criminal record check to complete her application. In Ms. Marriott's Form RAP-2 she included a screenshot of her email account displaying search results for any emails from Mr. Loose. The only result is the Election Officer's Decision Email of July 11, 2024.
- She did not receive any email, text message, phone call or visit to her residence from Mr. Loose to request her criminal record check.
- Other candidates also did not receive an email from Mr. Loose pertaining to the Certification Package.
- On July 10, 2024 she emailed Mr. Lawrence Lewis, of OneFeather, to ask why her name was not included on the Final Candidates List. In this email, she noted that only after talking with others did she learn that a criminal record check was required. She asked why she was not informed of this requirement when she submitted her package at the Nomination Meeting and that as a result she relied on the advice and answer of an election official and thought she had done all she needed to be a part of the final candidate pool. She also noted that she was not provided with any paperwork to review any relevant policies or guidelines. Ms. Marriott stated that the paperwork was difficult to understand, and that staff were withholding information. Furthermore, she noted that she was not the only candidate who was not informed of the required criminal record check. She also noted that she was not provided with any notification that her name had been withdrawn from the Final Candidates List.
- On July 11, 2024 at 07:44 a.m. Ms. Marriott emailed Mr. Loose and Mr. Lewis of OneFeather as well as Mr. Russell Brewer, Mr. Davis McKenzie, Ms. Losa Luaifoa and Mr. John Hackett of Tla'amin Nation to announce her intention to appeal the Final Candidates List.
- On July 11, 2024 at 12:46 p.m. Mr. Loose provided Ms. Marriott with a response noting his decision that Ms. Marriott was not eligible for candidacy (see the Election Officer's Decision Email set out above in paragraph 7).
- On July 11, 2024 at 1:57 p.m. Ms. Marriott responded to Mr. Loose's email stating that she has no record of any email, phone call or text message from Mr. Loose.

The Notice of Response

11. Mr. Loose submitted his Notice of Response on July 25, 2024. In his response, Mr. Loose stated clearly that the sole reason for the refusal to certify Ms. Marriott as a candidate was due to Ms. Marriott's failure to file the criminal record check (or evidence that she had submitted a request for a criminal record check) within the stipulated seven day period ending July 4, 2024.
12. In a written statement, Mr. Loose referred to sections 10 and 29 of the *Election Law*, which provide the eligibility requirements for candidates and the documents that must be filed with the Elections Officer, respectively.
13. Mr. Loose also provided a copy of a Web Form submission (supported by Zendesk Software) dated June 28, 2024 (the Certification Package Instruction Email). The submission states that Ms. Marriott's candidate submissions were received at the Nomination Meeting and that a criminal record check (or proof that one is being processed) needs to be submitted by end of day July 4, 2024. The submission also included instructions on how to request a criminal record check.
14. Mr. Loose included a screenshot from the client management system called Zendesk which includes an email received via Mail from Ms. Marriott on July 10, 2024 at 9:32 p.m. This email states:

...
I was nominated on June 27, 2024 for the Tla'amin Nation Nomination for Hegus and Legislator, I had accepted, signed and paid my fee that night. I am wondering why my name was not on the final list or candidates? Please reach out to me via phone or email:

...
The screenshot also includes an "internal note" from Mr. Loose on July 11, 2024 at 1:01 p.m. which states:

email through outlook sent to Brandi, informing of prior communications, missing criminal record check and no longer eligible for candidacy

15. In his cover letter submitted with the RAP-5 form, Mr. Loose objects to the jurisdiction of this Panel. He wrote:

Our review would suggest the Election Law provides no mechanism for Nominees to appeal the decision of the Electoral Officer concerning Candidate Eligibility non-compliance.

The Hearing

16. The hearing of the appeal was held by video conference on August 19, 2024. The Panel was constituted of three panel members being the Panel chair Peter Larlee, standing panel member Brooke Vagelatos and standing panel member Melanie Vivier.

The Review and Appeal Law

17. Section 16 provides authority for the Panel to hear the appeal of the election officer's decision:

16.(2) *The Review and Appeal Panel may, subject to the limits set out in section 25, hear appeals of decisions made by an elections officer in accordance with section 30(2)(b) [sic] of the Election Law with respect to whether an individual is a qualified candidate in an election.*

...
(4) *Following the hearing of an appeal under subsection (1), (2) or (3), the Review and Appeal Panel must issue a panel order*

(a) *dismissing the appeal and upholding the original decision; or*

(b) *upholding the appeal, rescinding the original decision and issuing its own decision.*

The Election Law

18. The sections provided below are taken from the *Election Law*, as amended by the *Election Amendment Law*, TNO-LA 09/2020, May 27, 2020, and are relevant to this proceeding:

- Section 10 sets out the eligibility requirements to be a candidate for Hegus or an elected member of the Legislative Assembly:

10.(1) *To be eligible to be nominated as a candidate for the office of Hegus or to be nominated as a candidate for any elected office of the Tla'amin Government to be filled in an election or by-election, an individual must*

...

(e) *sign in the prescribed form, a certificate of qualification;...*

- Section 13.(3) sets out the obligations of the elections officer:

13.(3) *The elections officer is responsible for the fair, efficient and proper conduct of an election in accordance with this Law.*

- Section 28 sets out the requirement imposed on the elections officer following the Nomination meeting:

28. *The elections officer **must send** a certification package which includes a notice of nomination in the prescribed form to each nominee no later than one day after the nomination meeting.[emphasis added]*

- Section 29 imposes a requirement that the Nominee for office file with the elections officer required documents and that the elections officer may not certify the nomination unless the nominee meets the eligibility requirements:

29.(1) *A nominee who wishes to stand as a candidate in the election must file the following documents with the elections officer no later than seven days after the nomination meeting:*

(a) *a statutory declaration in the prescribed form accepting the nomination;*

(b) *a deposit payable to the Tla'amin Nation in an amount prescribed by the Executive Council;*

(c) *a certificate of qualification in the prescribed form;*

(d) *evidence that they have submitted a request for a criminal records check to be forwarded to the elections officer; and*

(e) *a signed copy of the Tla'amin Nation Candidate Code of Fair Campaign Practices in the prescribed form....*

(4) *If a nominee does not meet the eligibility criteria set out in section 10 or comply with any requirements set out in this Law, the elections officer may not certify the nominee as a candidate in the election under section 35.*

- Section 35 calls on the elections officer to declare the names of the certified candidate for the election:

35. *Within 15 days of a nomination meeting, the elections officer must declare the names of individuals who are eligible to be certified as candidates for the election in accordance with this Law and any relevant policies.*

The Nomination Regulation

19. Section 13 of the *Nomination Regulation* sets out the process for certification of a candidate:

Certification package

13. *The elections officer **will provide** each nominee with a certification package no later than one day after the nomination meeting that contains*

(a) *a notice of nomination in the form prescribed in Schedule B (Notice to Individuals Nominated);*

(b) *a declaration constituting an acceptance of nomination in the form prescribed in Schedule C (Declaration of Acceptance of Nomination for Tla'amin Nation Election) to be completed by the nominee;*

- (c) a certificate of qualification in the form prescribed in Schedule D (Declaration of Qualification) to be completed by the nominee;
- (d) instructions on how to authorize a criminal records check to be forwarded to the elections officer and provide evidence that this request for a criminal records check to be forwarded to the elections officer has been submitted;
- (e) instructions on how to pay the non-refundable deposit, that is payable to the Tla'amin Nation and submitted in a form acceptable to the elections officer, in the amount of \$100.00 for the office of Hegus and \$50.00 for the office of Legislator; and
- (f) such other information that is required by the Law to be provided to a nominee or that the elections officer determines should be provided to a nominee. [emphasis added]

Elections Officer Regulation

20. Section 3 of the *Elections Officer Regulation* requires that the elections officer swear an Elections Officials Oath of Office which is found in Schedule A to that *Regulation* and includes the following commitments:
- 1. *To strive to faithfully and impartially, exercise the powers and perform the duties identified in the Elections Law, regulations and policies; ...*
 - 4. *To act in good faith, and with due care, competence, and diligence, without representing material facts; ...*
 - 9. *To make decisions and carry out responsibilities in compliance with Tla'amin laws;*
 - 10. **To develop and maintain communications with the community** in order to ensure accessible, accountable and transparent elections practices and processes;
 - 11. *To strive to **be effective and professional in my communication** with Tla'amin government officials, employees, and Tla'amin Citizens; [emphasis added]*

Submissions of Ms. Marriott

- 21. Ms. Marriott gave testimony at the hearing and was questioned by panel members. Ms. Marriott did not call a witness.
- 22. Ms. Marriott attended the Nomination Meeting. She was nominated as a candidate in the Election.

23. Ms. Marriott testified that she received, completed and submitted her Certification Package at the Nomination Meeting. She also testified that she paid the candidate fee at the same time.
24. Ms. Marriott testified that when she submitted her Certification Package to the election official she asked if there was any further information required and the election official informed her that the application was complete. Ms. Marriott testified that she relied on this statement and believed that her Certification Package had been accepted as complete and that she would be placed on the Final Candidates List.
25. Ms. Marriott further testified that she was not provided with a copy of her Certification Package, a receipt for the payment of her candidate fee, or any resource materials to take home following the Nomination Meeting.
26. Ms. Marriott submitted that she did not know anything was wrong with her Certification Package until she saw that her name was not on the Final Candidates List.
27. Ms. Marriott testified that on July 10, 2024 she emailed Mr. Lewis of OneFeather to ask why her name was not included on the Final Candidates List. On July 11, 2024 she received a response from Mr. Loose (the Election Officer's Decision Email).
28. Ms. Marriott testified that prior to the Election Officer's Decision Email, she did not receive any correspondence from Mr. Loose or any other OneFeather staff member. She testified to searching her trash bin and spam folders to confirm that she did not receive an email from Mr. Loose. She further noted that there was no phone call or text message, or other communication, to confirm receipt of the Certification Package Instruction Email.
29. Ms. Marriott further testified that she spoke with other candidates who also did not receive any correspondence from OneFeather on the day after the Nomination Meeting (i.e. on June 28, 2024).

Submissions of Mr. Loose

30. In his cover letter submitted with the RAP-5 form, Mr. Loose objects to the jurisdiction of this Panel. He wrote:

Our review would suggest the Election Law provides no mechanism for Nominees to appeal the decision of the Electoral Officer concerning Candidate Eligibility non-compliance.

Mr. Loose testified at the hearing that he maintains his objection to the lack of jurisdiction of the Panel. This is an issue in this appeal and will be a preliminary decision by the Panel in this hearing.

31. In his further disclosure, Mr. Loose has provided a copy of the Certification Package Instruction Email sent to Ms. Marriott via Web Form through Zendesk Software Support on June 28, 2024. The Certification Package Instruction Email acknowledged receipt of Ms. Marriott's candidate submissions at the Nomination

Meeting and indicated that one more document needed to be submitted by end of day on July 4, 2024, that being a receipt or proof that a criminal record check is being processed. It also included instructions for how to request a criminal record check.

32. In the RAP-5 form and in a cover letter, Mr. Loose states that Ms. Marriott did not provide a criminal record check within the time allotted and thus failed to fulfil her Candidate Eligibility as required in section 10 of the *Election Law*.
33. Mr. Loose provided documentary evidence of the interaction between the Election Officer's office and Ms. Marriott.
34. OneFeather operates a client management system that summarizes each email or contact for each "client". All email is run through this system. Mr. Loose has disclosed this report as it relates to Ms. Marriott. The report includes a copy of the Certification Package Instruction Email sent on June 28, 2024, at 11:19 am.
35. The next entry is from Ms. Marriott dated July 10, 2024 at 9:32 pm, and reads as follows:

...

*I was nominated on June 27, 2024 for the Tla'amin Nation Nomination for Hegus and Legislator, I had accepted, signed and paid my fee that night. I am wondering why my name was not on the final list or candidates?
Please reach out to me via phone or email:*

...

36. The next entry is an "internal note" from Mr. Loose on July 11, 2024 at 1:01 pm, which states:

email through outlook sent to Brandi, informing of prior communications, missing criminal record check and no longer eligible for candidacy

37. What follows is an email from Ms. Marriott dated July 11, 2024 at 1:57 pm, addressed to Mr. Loose and Mr. Lewis of OneFeather as well as Mr. Russell Brewer, Mr. Davis McKenzie, Ms. Losa Luaifoa and Mr. John Hackett of Tla'amin Nation and reads, in part, as follows:

...

Thank you for your response Jordan.

As you will see from my screen shot below I have no record whatsoever of your email.

I had not received any email in regards to a criminal record check.

I have search my trash bin and spam folder. I have absolutely nothing in my email from you.

There was no phone call or text message to confirm your email, contact or communication in any way.

...

38. The next document shows a screenshot of Ms. Marriott's email inbox displaying search results for Jordan Loose. The only result is the Election Officer's Decision

Email sent at 12:46 pm on July 11, 2024 informing Ms. Marriott of Mr. Loose's decision not to certify her as a candidate in the Election. That email is provided in full in Mr. Loose's evidence (see paragraph 7 above).

39. The next two emails are from Ms. Marriott. The email dated July 11, 2024 at 7:44 am reads as follows:

...

I wrote Lawrence from OneFeather last night and that email is below. I would like to appeal the final candidate list as the election was disorganized and I hope that it wasn't intentional that only certain people were told the information they needed to complete their application for nomination.

I would like to note that since the session was recorded on live stream there is evidence that the gentlemen working the event did not state that there was additional paperwork needed.

I am understandably upset with no communication in any form from either the Nation or OneFeather. The ball was dropped and we that were removed from the final candidate list suffered the consequences.

Please see my previous email below, ...

40. The email dated July 10, 2024 at 10:45 pm reads as follows:

...

I had sent a previous email to the general email asking as to why my name was not registered on the final list. After asking around tonight, I realized that I needed to complete a criminal record check. As this was not done, my name must have been withdrawn.

My objection to this is that I was not informed that I needed to complete a criminal record check.

On June 27, I accepted the nomination, immediately signed the papers and paid my fee that night because I had been planning this for months. I asked the gentleman if there was anything else I needed to complete my nomination and he said no.

Would this not be the opportunity to state I needed a criminal record check?

I trusted his answer and followed his advice. I thought I was within the final candidate pool and I was ready to start my campaign.

I was not given any paperwork to take home to review that reflect any requests, guidelines or policies. As well I stayed until 7:00 pm which was ample time to announce any information.

I have brought this to the attention of Tla'amin legislators as I feel this has already been a corrupt election. The paperwork was intentionally difficult for some individuals to understand, and the staff were withholding information that directly affected the final nomination results. I have heard through community members that only a few individuals were informed they needed additional paperwork although I am not the only one who wasn't informed of the required criminal record check.

I am upset with my name being withdrawn and no form of notification was provided to me in any way. ...

41. On July 26, 2024 Ms. Marriott submitted her criminal record check to Mr. Loose via email.

Mr. Loose's evidence also included a marked-up copy of Ms. Marriott's signed Certificate of Qualification, dated June 27, 2024. On this document, Mr. Loose highlighted the following paragraph:

I have submitted a request for a criminal records check and a request to authorize the criminal records check to be forwarded to the election officer. I am attaching evidence that a request for a criminal records check to be forwarded to the elections officer has been submitted.

42. Mr. Loose testified that he was not present at the Nomination Meeting. In his place, two election officials, who he referred to as "field staff", were present.
43. Mr. Loose testified that on occasion OneFeather will receive Certification Packages from candidates at a nomination meeting. He further testified that two or three Certification Packages were received at the Nomination Meeting.
44. On questioning by the Panel, Mr. Loose acknowledged that all of the Certification Packages that were received at the Nomination Meeting were accepted by the election officials even though none of the candidates had, at that time, completed the requirement to submit a request for a criminal record check or to have provided evidence thereof. Mr. Loose acknowledged that the election officials accepted those nominees' Certificates of Qualification even though they were inaccurate and incomplete. He further testified that it is OneFeather's practice to accept Certificates of Qualification, even where the criminal record check requirement is not satisfied, because it is his belief that section 29 of the *Election Law* gives candidates seven days from the Nomination Meeting to file the required documentation.
45. Mr. Loose states that he does not understand how Ms. Marriott did not receive the Certification Package Instruction Email of June 28, 2024, a copy of which was disclosed and appears in the client management system. Mr. Loose testified that the Certification Package Instruction Email was the sole manner of communication regarding the Certification Package and required instructions regarding the criminal records check.
46. Mr. Loose testified that when there is no response to this email, there is no further follow-up as sometimes nominees fail to proceed with their candidacy.
47. Mr. Loose states that he was required to follow the *Election Law*. The required criminal record check was not delivered to his office within the required time period as set out in the *Election Law* and thus Ms. Marriott could not be certified as a candidate for the Election.

Analysis:

48. The Panel has determined that it has the authority to hear this appeal. That authority derives from subsection 30(2) of the *Election Law* which reads:
- 30(2) If the elections officer decides that an individual **may not be**, or should not have been, certified as a candidate, that individual may, within three days after receipt of the elections officer's decision, appeal the decision to the Review and Appeal Panel.[emphasis added]*
49. The Panel is of the view that this is a stand-alone subsection of the *Election Law* and is not modified by any other provisions of that Law. The subsection provides a right of appeal and that right of a citizen to appeal must be sustained by this Panel to ensure proper and full participation by citizens in the election process.
50. The Panel is of the view that there must be compliance with the principles of fairness in administrative law. Decision makers must act fairly when interacting with those affected by their decisions. This is consistent with Tla'amin law and is a requirement set out in Sections 9, 10 and 11 of the Elections Officials Oath of Office (See paragraph 20, above).
51. The Panel notes the recitals included in the *Election Law* and other Tla'amin laws:
- F. Through our written Constitution and this Election Law, we reinforce our Nation's objectives including Tla'amin unity, good faith engagement among ourselves and with our neighbours and maintaining enduring connections to our lands and resources;*
- G. Further, we are committed to pursuing the economic, social and cultural wellbeing of our Nation with the aim of sustaining and improving the quality of life for present and future Tla'amin generations;*
- H. It is our intention to accomplish this through a democratically elected government that is accessible, accountable, transparent and adheres to the principle of fairness;*
- I. We vow to keep our Ta'ow (teachings) and these principles in mind in all that we do as Tla'amin people. The Tla'amin Nation adopts this Law based on these values and principles;*
52. As a quasi-governmental official, the elections officer has a duty to act fairly in his or her decision-making capacity.
53. The Panel acknowledges that Section 33 of the *Election Law* imposes on the elections officer an obligation to strictly adhere to the Law. However, strict adherence does not relieve the elections officer from the duty to act fairly.
54. However, the application of principles of fairness, does not relieve the individual concerned with obligations to adhere to requirements imposed by the applicable laws and regulations. Ms. Marriott had an obligation to file a full and complete

Certification Package within the required time. The evidence is clear that she did not do so.

55. The Panel must then balance the failure to comply on the part of Ms. Marriott with any breach of administrative fairness by the Elections Officer.
56. In this case before us, we have concluded that the appropriate standard of fairness was not met.
57. The Panel acknowledges that Mr. Loose attempted to deliver an email to Ms. Marriott on June 28, 2024 (the Certification Package Instruction Email), the day following the Nomination Meeting. This email acknowledged receipt of Ms. Marriott's Certification Package and included instructions on how to access a criminal records check. However, the Panel takes issue with the way the Certification Package Instruction Email was "provided to each nominee" as required in section 13 of the *Nomination Regulation* and section 28 of the *Election Law* which requires that the Elections Officer "must send a certification package... to each nominee..." no later than one day after the Nomination Meeting. The *Nomination Regulation* also requires that the Certification Package contain instructions on how to request a criminal records check.
58. After carefully reviewing all the documentary evidence and hearing testimony from the parties, the Panel has concluded that, on a balance of probabilities, a Certification Package Instruction Email was not sent to or provided to Ms. Marriott on June 28, 2024. This is a violation of Section 28 of the *Election Law* and Section 13 of the *Nomination Regulation*. We note that the Elections Officer has retained a copy of the cover email purporting to send the Certification Package in his client management system, but this is not sufficient evidence that the Certification Package Instruction Email was effectively sent or provided to Ms. Marriott.
59. Given the conclusion that the Certification Package Instruction Email was not provided to Ms. Marriott we must place greater importance on the communications Ms. Marriott had with the election officials at the Nomination Meeting. It is not contested that at that meeting Ms. Marriott's Certification Package was accepted by the election officials (despite it being incomplete and containing a false Certificate of Qualification due to Ms. Marriott's failure to include a criminal record check or evidence of her request for one). The Panel accepts Ms. Marriott's testimony that she asked whether anything further was required of her following submission of her Certification Package and that she relied on the election official's statement that there was nothing else she needed to do. These actions by the election officials combined with the failed delivery of the Certification Package Instruction Email resulted in Ms. Marriott believing that she had done all that was required to become certified as a candidate.
60. Additionally, communication with the candidate did not meet a standard that should be applied when interacting with those who wish to engage in the democratic process. The Panel is also of the view that the Elections Officer did not engage effectively with Ms. Marriott. Before the close of the period for accepting Certification Packages, Mr. Loose did not attempt to reach out to Ms. Marriott by any means other than the June 28, 2024 Certification Package Instruction Email (sent via Zendesk). Furthermore, Mr. Loose delayed in informing Ms. Marriott of his

decision not to certify Mr. Marriott's candidacy until July 11, 2024, only after Ms. Marriott had emailed OneFeather asking why her name was not included on the Final Candidates List. This is a further indication of a lack of transparency and openness.

61. Our conclusion is that this is a breach of the Elections Officials Oath of Office (See paragraph 20 above), notably the requirements to act with due care, competence, and diligence, to ensure effective communications and to carry out responsibilities in compliance with Tla'amin laws.
62. The Panel notes that the *Election Law* and the *Nomination Regulation* do not require the attendance of a nominee at the Nomination Meeting and that OneFeather does not require any in-person meetings with candidates prior to their certification. The Panel is of the view that this imposes on the Elections Officer greater responsibility to ensure that election officials perform their duties with due care and diligence and that the office of the Elections Officer is accessible and accountable to nominees.
63. Further, we note that not only did the Elections Officer object to the jurisdiction of the Panel once the decision was made by the Panel to proceed with the appeals, the Elections Officer did not respond in a timely way to correspondence from the Panel when asked to do so. This conduct impeded the process and showed a lack of understanding and respect for Tla'amin laws.

Conclusion:

64. For the reasons set out above, on August 19, 2024, the Panel issued an order allowing the appeal of Ms. Marriott and directing that Ms. Marriott be certified as a candidate in the Election.
65. As a final comment, the Panel would like to note that in reaching its final decision, the Panel has attempted to find a balance between the constitutional principles of fairness and accountability. The Panel acknowledges the importance of accountability, especially in the position of elected office, but it also places due weight on the principle of fairness in its consideration and interpretation of the facts at hand in this case.