



TSAWWASSEN FIRST NATION
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2009

ADMINISTRATIVE REVIEW
AND JUDICIAL PROCEEDINGS ACT

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Tsawwassen Legislature enacts as follows:

Citation

- 1 This Act may be cited as the *Administrative Review and Judicial Proceedings Act*.

Definitions

- 2 In this Act:
 - “**adjudicatory body**” means the adjudicatory body that may be established by Executive Council;
 - “**application**” includes an appeal, a review or a complaint to Judicial Council or the adjudicatory body, or an application to the Supreme or Provincial Court, but excludes any interim or preliminary matter of Judicial Council or the adjudicatory body;
 - “**appointee**” means a person, including the chair, appointed to Judicial Council or the adjudicatory body under this Act;
 - “**chair**” means the chair of Judicial Council or the adjudicatory body;
 - “**chief administrative officer**” means a person appointed in that capacity under the *Government Organization Act*;
 - “**clerk**” means the clerk of Judicial Council;
 - “**decision**” means a decision of the chief administrative officer referred to in Part 1;
 - “**employee**” has the same meaning as in the *Government Employees Act*;
 - “**Executive Council**” has the same meaning as in the *Government Organization Act*;
 - “**final order or decision**” means a final order or decision of Judicial Council or the adjudicatory body;
 - “**Judicial Council**” means the Judicial Council established by Executive Council;
 - “**judicial proceeding**” means any proceeding in any provincial, state, superior or federal court inside or outside of British Columbia;
 - “**Tsawwassen Member**” has the same meaning as in the *Government Organization Act*;
 - “**Non-Member**” has the same meaning as in the *Government Organization Act*;
 - “**panel**” means a panel consisting of 3 or more appointees of Judicial Council;
 - “**proceeding**” means a matter, cause, hearing or appeal before Judicial Council or the adjudicatory body;
 - “**Provincial Court**” means the Provincial Court of British Columbia;
 - “**Supreme Court**” means the Supreme Court of British Columbia;
 - “**Tsawwassen First Nation**” has the same meaning as in the *Government Organization Act*;
 - “**Tsawwassen Government**” has the same meaning as in the *Government Organization Act*;
 - “**Tsawwassen Lands**” has the same meaning as in the *Land Act*.

PART 1 – COMPLAINTS

Tsawwassen employees

- 3** (1) Any person may make a complaint in respect of a decision or action taken by a Tsawwassen employee.
- (2) Complaints must be first directed to the chief administrative officer who may take any action that he or she deems necessary in all the circumstances, including but not limited to the matters set out in this Act, or in any other Tsawwassen enactment, or regulations to them.
- (3) A complaint referred to in subsection (1) must be made by filing the forms and doing the other things, within the prescribed time limits, as determined by regulation.
- (4) If a decision of the chief administrative officer may be appealed, as set out in the regulations made under this Act or any other Tsawwassen enactment, the appeal must be made to Judicial Council.

PART 2 – ADJUDICATORY BODY

Authority to establish

- 4** (1) Executive Council may establish an adjudicatory body.
- (2) If Executive Council establishes an adjudicatory body, Executive Council
 - (a) may assign it some or all the matters listed in section 8 (e) to (g), or any other additional matters Executive Council deems appropriate, and
 - (b) must appoint one person as chair, whose term of office, duties and remuneration will be set by regulation.

PART 3 – JUDICIAL COUNCIL

Judicial Council established

- 5** (1) Judicial Council is established and constitutes a branch of the Tsawwassen Government.
- (2) Executive Council is responsible for the administration of this Act, and may not delegate any of the powers conferred under this Act.

Appropriation of funds

- 6** Executive Council may, from the Tsawwassen Government annual budget, make an appropriation of funds for the operation of Judicial Council.

Judicial Council composition

- 7** Judicial Council consists of 5 appointees, including the chair, each of whom must be appointed by Executive Council.

Responsibilities

- 8** Judicial Council is responsible for

- (a) determining the validity of Tsawwassen laws,
- (b) resolving disputes between Tsawwassen Members and elected officials,
- (c) making recommendations to courts on the sentencing of Tsawwassen Members, if requested,
- (d) investigating any financial irregularities that may occur,
- (e) hearing appeals of administrative decisions,
- (f) resolving disputes between Tsawwassen Members,
- (g) resolving disputes between government bodies, and
- (h) other duties that Executive Council may assign to it from time to time under this Act or any other Tsawwassen enactment.

Term of office

- 9** (1) The first sitting members of Judicial Council are appointed for terms from 1 to 5 years respectively.
- (2) The members referred to in subsection (1) may be reappointed for an additional term, the length of which will be determined by regulation.
- (3) Executive Council must, by regulation, determine the length of terms for new member appointments.

Chair's initial term

- 10** (1) The chair of Judicial Council may be appointed by Executive Council to hold office for an initial term of 1 to 3 years.
- (2) The chair may be reappointed by Executive Council for an additional term, the length of which must be determined by regulation.

Duties of the chair

- 11** The duties of the chair are to
- (a) oversee Judicial Council process,
 - (b) ensure proper application of the rules of procedure of Judicial Council,
 - (c) assign duties to members of Judicial Council, including determining the composition of a panel to convene a proceeding,
 - (d) prepare an annual report which will be provided to the Executive Council; and
 - (e) take any other administrative steps that he or she considers necessary for the proper functioning of Judicial Council.

Lawful holding

- 12** Any one member of Judicial Council, as determined by the chair, or vice-chair, as the case may be, may lawfully hold and convene the Judicial Council.

Panel

- 13** (1) Any 3 members of Judicial Council, including the chair or the vice-chair, as the case may be, constitutes a panel.

- (2) The chair of Judicial Council may direct that all 5 members of Judicial Council must discharge a particular responsibility specified in section 8.

Chair's absence or incapacitation

- 14** (1) If the chair expects to be absent or is absent, the chair may designate a person to serve as vice-chair.
- (2) If the chair expects to be absent or is absent and there is no vice-chair who has been designated under subsection (1), the chair may appoint another member of Judicial Council to serve as acting chair.
- (3) Despite subsections (1) and (2) if the chair is absent or incapacitated for an extended period of time and cannot designate a vice-chair, Executive Council may designate a vice-chair to serve as acting chair.
- (4) A vice-chair designated under any of subsections (1) to (3) has all the powers, and may perform all the duties, of the chair.

Alternative dispute resolution

- 15** (1) Judicial Council must encourage the use of consensual alternative dispute resolution methods for the purpose of resolving disputes relating to its functions and duties under this Act or another Tsawwassen enactment.
- (2) The chair on his or her own initiative or at the request of an interested person may authorize one or more persons to facilitate settlement, by a process of consensual alternative dispute resolution, of a dispute relating to the carrying out of Judicial Council's functions and duties under this Act.
- (3) If the consensual alternative dispute resolution process does not resolve the matter, the chair must direct the procedures the party or parties must follow for hearing of the proceeding.

PART 4 – OFFICE OF JUDICIAL COUNCIL

Oath of office and confidentiality

- 16** (1) Before a member of Judicial Council may take office, he or she must take the oath set out in the Schedule.
- (2) Members of Judicial Council who cease to hold office, other than due to death, must not divulge or in any way release confidential information obtained during their term in office.

No other office to be held

- 17** A member of Judicial Council must not while under appointment hold any other office, or collect fees or a salary from the Tsawwassen Government other than remuneration referred to in section 21.

General power to make rules

- 18** (1) Judicial Council has the power to control its own processes and, subject to the principles of judicial independence and fairness, may make rules respecting practice and procedure to facilitate the just and timely resolution of matters before it.

- (2) Without limiting subsection (1), Judicial Council may make rules respecting the following:
- (a) pre-hearing conferences, including confidential pre-hearing conferences;
 - (b) consensual alternative dispute resolution processes;
 - (c) evidentiary matters, including pre-hearing receipt and disclosure, and the pre-hearing examination of a party on oath, by affirmation or by affidavit;
 - (d) the exchange of records and documents by the parties;
 - (e) the filing of written submissions by the parties;
 - (f) the filing of admissions by the parties;
 - (g) the form of notice to be given to a party by another party or by Judicial Council and the time within which, and the manner in which, the party must respond;
 - (h) the service, including substituted service, and filing of notices, documents and orders;
 - (i) the procedures for preliminary or interim matters;
 - (j) amendments to an application or responses to it;
 - (k) the addition of a party to an application;
 - (l) adjournments;
 - (m) the extension or abridgement of time limits provided for in the rules;
 - (n) the transcribing or tape-recording of its proceedings and the process for fees for reproduction of a tape-recording if requested by a party;
 - (o) the forms it considers advisable;
 - (p) the exclusion of witnesses from proceedings;
 - (q) the effect of a party's non-compliance with the rules specified by Judicial Council or an adjudicatory body;
 - (r) the extent of access to Judicial Council documents by any person;
 - (s) witness fees and expenses;
 - (t) applications to set aside any summons served by a party;
 - (u) any other rules Judicial Council considers advisable for the proper functioning and performance of its duties under this Act.
- (3) In an application, the chair of Judicial Council may waive or modify one or more of its rules in exceptional circumstances, as may be determined by the chair.

Amendments to rules

- 19** Subject only to this Act, Judicial Council may amend its rules respecting practice or procedure.

Public access

- 20** Any rules respecting practice or procedure, or amendments to them must be made known to the public in the manner specified by the chair.

Remuneration and expenses

- 21** Executive Council must establish by regulation the remuneration of members of Judicial Council.

Clerk

- 22** Judicial Council may employ a clerk whose responsibilities will be specified by regulation.

Resignation or removal

- 23** (1) If a member of Judicial Council or of an adjudicatory body dies or resigns before the end of his or her term of appointment or Executive Council determines that due to infirmity, he or she is not able to perform his or her duties, Executive Council may if practicable, appoint a substitute member, on the advice of the chair of Judicial Council.
- (2) A member of Judicial Council or of an adjudicatory body may be removed from office or suspended for cause or incapacity on the recommendation of 2/3 of the members present in Tsawwassen Legislature.

Ceasing to hold office

- 24** (1) A member of Judicial Council who has resigned or has ceased to hold appointment under section 23 is deemed to have ceased office
- (a) on the date of his or her death or resignation, or
 - (b) upon receipt of an official resolution issued by Tsawwassen Legislature of that member's removal or suspension pursuant to section 23 (2).
- (2) Any proceeding before a panel on which a member of Judicial Council, excepting the chair, has participated before that member's resignation or removal, does not render any decision, final or otherwise, invalid by virtue of that member's resignation or removal.
- (3) If a member of Judicial Council, excepting the chair, resigns or is removed from office and,
- (a) that person has participated in a proceeding on his or her own, and
 - (b) no interim or final decision has been rendered in the proceeding,
- the chair must immediately fill that vacancy with another member of Judicial Council, and issue any direction, including an extension of any time limits, to the parties to the proceedings, in order to facilitate the timely disposition of the matter.
- (4) If the chair ceases to hold office pursuant to section 23, but has not rendered a decision in a proceeding in which he or she participated on his or her own, Executive Council must appoint an acting chair in accordance with section 14, who must immediately assume the duties of the chair.

PART 5 – REFERENCE POWER

Referring certain questions for opinion

- 25** Executive Council, on the advice of Tsawwassen Legislature, may refer to Judicial Council for hearing and consideration important questions of law concerning
- (a) the interpretation of the *Constitution Act*,
 - (b) the constitutionality or interpretation of any Tsawwassen enactment, or

- (c) the powers of Tsawwassen Legislature or Tsawwassen Government bodies, whether or not a particular power in question has been exercised.

Opinion of Judicial Council

- 26** If a reference is made to Judicial Council under section 25, it is the duty of Judicial Council to hear and consider it and to answer each question so referred, and Judicial Council must certify its opinion on each question, providing the reasons for each answer.

PART 6 – NON-MEMBERS

Right of appeal

- 27** If a right of appeal or review of an administrative decision is provided under Tsawwassen law to Non-Members, the appeal must be heard and determined by Judicial Council.

PART 7 – PENALTIES

General

- 28** Tsawwassen law may provide for the imposition of penalties, including fines, restitution and imprisonment, for violation of Tsawwassen law.

PART 8 – ADJUDICATION

Prosecutions

- 29**
- (1) Executive Council may retain a prosecutor to conduct prosecutions and appeals of offences under Tsawwassen law.
 - (2) Prosecutions must be prosecuted in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia.
 - (3) The prosecutor is responsible for charge approval.
 - (4) Prosecutions must be conducted in the Provincial Court.
 - (5) Appeals must be conducted in accordance with the rules of the Provincial Court or the Supreme Court, as applicable.
 - (6) Executive Council must, by regulation, set rates of remuneration, expenses, and ancillary matters relating to the position of prosecutor.

Collection of fines

- 30** Executive Council must establish a process to facilitate the receipt of any fine collected in respect of a penalty imposed upon a person by the Provincial Court or the Supreme Court, as applicable, in relation to an offence under a Tsawwassen law.

Disputes between individuals

- 31** The Provincial Court or the Supreme Court, as applicable, has jurisdiction to hear legal disputes arising between individuals under Tsawwassen law.

PART 9 – ENFORCEMENT

Final orders or decisions

- 32 The Provincial Court or the Supreme Court, as applicable, has jurisdiction to enforce final orders or decisions of Judicial Council, which, when filed, have the same force and effect, and proceedings may be taken under them, as if they were orders or decisions of the court.

Contravention of Tsawwassen law

- 33 The Supreme Court has jurisdiction to enforce, prevent or restrain the contravention of Tsawwassen law.

PART 10 – APPEALS

Final orders or decisions

- 34 Any final order or decision by Judicial Council made pursuant to this Act or any other Tsawwassen enactment which provides for a right of appeal must be appealed to the Supreme Court.

PART 11 – JUDICIAL REVIEW

Supreme Court has jurisdiction

- 35 (1) The Supreme Court has jurisdiction to hear any appeal or review of an administrative decision made pursuant to this Act or any other Tsawwassen enactment.
- (2) Unless this Act or any other Tsawwassen enactment otherwise provides, an application for judicial review of a final order or decision must be commenced within 60 days of the issuance of the final order or decision.
- (3) No application may be made to the Supreme Court under this Act or any other Tsawwassen enactment until all procedures for appeal or review provided for pursuant to this Act or any other Tsawwassen enactment have been exhausted.

Judicial Review Procedure Act (British Columbia) applies

- 36 The *Judicial Review Procedure Act (British Columbia)* applies with the necessary changes to an application for judicial review under this Act or any other Tsawwassen enactment.

PART 12 – STANDING IN JUDICIAL PROCEEDINGS

Standing to represent Tsawwassen First Nation

- 37 On the breakdown of a marriage, involving at least one Member, Executive Council may exercise a right
- (a) to commence an action,
 - (b) to intervene in an action, or

(c) of standing, representation or appearance provided by or under Tsawwassen law or an enactment of British Columbia, Canada, or other jurisdiction inside or outside Canada,
with respect to the treatment of interests in dispute in Tsawwassen Lands.

PART 13 – REGULATIONS

Regulations

38 Executive Council may make any regulations it considers necessary and advisable for the purposes of this Act.

PART 14 – INTERPRETATION AND COMMENCEMENT

Interpretation

39 The *Interpretation Act (British Columbia)* applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Commencement

40 This Act comes into effect on the day of its enactment by Tsawwassen Legislature.

SCHEDULE

Each person who is appointed to serve as a member of Tsawwassen First Nation Judicial Council must swear or affirm to perform their responsibilities appropriately by answering the following questions:

“Do you solemnly swear or affirm that you will faithfully, truly and impartially, without fear or favour and to the best of your judgment, skill and ability, perform the office of member of Tsawwassen First Nation Judicial Council, and that you will not, except in the discharge of your duties, disclose to any person any of the evidence or other matters brought before Judicial Council.”

Member to say “I will”.