



scəwáθən məsteyəx^w

TSAWWASSEN FIRST NATION

Tsawwassen First Nation

Indemnity Policy

Date Enacted: July 25, 2023

Order Number: O.056-2023

X

Kim Baird
Interim Chief Administrative Officer

Table of Amendments

Section(s) Amended	Date	Order number	Come Into Force Date

Table of Contents

1. Authority.....	1
2. Definitions.....	1
3. Purpose	1
4. Application	1
5. Indemnities	1
6. Payment and recovery on an indemnity	2

1. Authority

This Policy is made under the authority of s.59(4) of the *Financial Administration Act*.

2. Definitions

In this Policy

- a) “Act” means the *Financial Administration Act*; and
- b) “Indemnity” means a legally binding promise to make another party financially whole in the event of specified losses or damages.

3. Purpose

The purpose of this Policy is to ensure that:

- a) the Tsawwassen Government manages and controls the contingent liabilities created by the giving of indemnities through consistent approval and payment processes; and
- b) the underlying risks associated with indemnities are assessed, understood and mitigated to the extent possible.

4. Application

This Policy applies to all contractual indemnities to be entered into by Tsawwassen First Nation.

5. Indemnities

In accordance with the Act, the following apply to all indemnities given by Tsawwassen First Nation:

5.1. When Indemnities can be given without EC Approval

Tsawwassen First Nation may give an indemnity without separate explicit approval of Executive Council if such indemnity:

- 1. Meets the requirements set out in s.59(3) of the Act; and
- 2. Is approved by General Counsel, or their designate, as contemplated in this Policy.

5.2. Approval of indemnities by General Counsel

Approval of an indemnity occurs when a person designated under this Policy provides written confirmation that the proposed indemnity is satisfactory.

- 5.3. The giving of an indemnity occurs when an authorized person formally binds Tsawwassen First Nation to the legally binding indemnity.

- 5.4. Unless the power to give an indemnity is conferred in an enactment other than the Act and a different approval process is set out in that enactment, staff must submit to General Counsel, for review, all proposed indemnities.
- 5.5. Proposed indemnities may be approved by General Counsel where:
- 5.5.1. the underlying risk has been assessed,
 - 5.5.2. the indemnity wording, and the terms of the instrument in which the indemnity is included, are satisfactory to General Counsel;
 - 5.5.3. giving the indemnity is necessary or desirable for a Tsawwassen Government activity or program, and
 - 5.5.4. in the opinion of General Counsel, either:
 - 5.5.4.1 the liability is not greater than the liability that would be imposed on Tsawwassen First Nation in the absence of the indemnity; or
 - 5.5.4.2 any incremental contingent liability is reasonable for the activity or program, or results in a greater benefit to Tsawwassen First Nation.
- 5.6. Executive Council may, in its discretion, specify additional terms or conditions under which an indemnity may be given.
- 5.7. Copies of indemnities shall be kept in accordance with the normal practices of Tsawwassen First Nation for copies of contracts.
- 5.8. When an indemnity is given, General Counsel will advise Executive Council.

6. Payment and recovery on an indemnity

- 6.1. If staff receive a request from a third party for a payment, or for Tsawwassen First Nation to defend the third party in a legal proceeding, to satisfy an indemnity, staff must immediately exercise any rights to mitigate Tsawwassen First Nation's liability in consultation with legal counsel.
- 6.2. Requests for payment under an indemnity must be approved by the Director of Finance.