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TSAWWASSEN FIRST NATION

## **Tsawwassen First Nation**

### **Indemnity Policy**

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**Date Enacted: July 25, 2023**

*Order Number: O.056-2023*

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Kim Baird  
Interim Chief Administrative Officer

Table of Amendments

<b>Section(s) Amended</b>	<b>Date</b>	<b>Order number</b>	<b>Come Into Force Date</b>

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## **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.