



TSAWWASSEN FIRST NATION
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2009

CONSTITUTION ACT

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TSAWWASSEN FIRST NATION

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CONSTITUTION ACT

Contents

- 1 Citation
- 2 Force of law
- 3 Interpretation
- 4 Commencement

SCHEDULE

Preamble

WHEREAS the Members of Tsawwassen First Nation participated in the development of a Constitution;

AND WHEREAS the Members of Tsawwassen First Nation ratified the Tsawwassen First Nation Constitution on July 25, 2007 with 72 % voting in favour;

AND WHEREAS certain amendments were considered by Members and ratified in a vote on Feb 3, 2009 with 87% voting in favour;

NOW THEREFORE the Tsawwassen Legislature enacts as follows:

Citation

- 1** This Act may be cited as the *Constitution Act*.

Force of law

- 2** The Tsawwassen First Nation Constitution set out in the Schedule to this Act is enacted and has the force of law.

Interpretation

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

Commencement

- 4** This Act comes into force on the date of its enactment.

SCHEDULE

TSAWWASSEN FIRST NATION CONSTITUTION

CHAPTER 1 – FOUNDING PROVISIONS

- 1.1** The Tsawwassen First Nation, by virtue of having the inherent right provided by the Creator, exercises its responsibility for the well being of its Members, as the ancestors of our Nation have exercised this as a matter of right since time immemorial.
- 1.2** The Tsawwassen First Nation people are Coast Salish people who speak a dialect of the Hun'qum'i'num language and our heritage, history and culture including our language and religion are tied to the Tsawwassen Territory, the lands and waters surrounding Roberts Bank, Fraser River, Fraser River estuary, Pitt Lake, Pitt Lake River, Serpentine River, Nicomekl River, Boundary Bay and the Gulf Islands.
- 1.3** The Tsawwassen First Nation and the Tsawwassen Government are committed to the principle of honouring and respecting the traditions of our ancestors and our oral history.
- 1.4** The oral traditions of the Tsawwassen First Nation can be used in interpreting this Constitution.

CHAPTER 2 – OBJECTIVES

- 2.1** The Tsawwassen Government is the voice of the Tsawwassen First Nation in representing the Tsawwassen First Nation to other governments.
- 2.2** The Tsawwassen Government is to make best efforts to improve the quality of life for all the Members of the Tsawwassen First Nation.
- 2.3** The Tsawwassen Government should strive to:
 - (a) keep the Tsawwassen First Nation together as a people;
 - (b) protect the lands, waters and resources of the Tsawwassen First Nation; and
 - (c) protect and develop the language, culture and traditions of the Tsawwassen First Nation.
- 2.4** This Constitution is the basis for the governance of Tsawwassen First Nation.

CHAPTER 3 – TSAWWASSEN MEMBERS AND BENEFICIARIES

- 3.1** The Tsawwassen First Nation will have a Tsawwassen Membership Act, which will set out:
 - (a) the criteria for individuals being entitled to membership in Tsawwassen First Nation and the associated rights, privileges and responsibilities of membership and under the Tsawwassen Final Agreement;
 - (b) the processes and procedures for applying for membership and for enrolment under the Final Agreement; and
 - (c) the processes and procedures for appealing decisions about entitlement to membership and enrolment under the Final Agreement.
- 3.2** After the Effective Date, enrolment under the Final Agreement will be the same as membership in the Tsawwassen First Nation.

- 3.3** After the Effective Date, every Tsawwassen individual that is enrolled under the Tsawwassen Final Agreement and entitled to the associated rights, privileges and responsibilities of the Final Agreement is entitled to membership in Tsawwassen First Nation.
- 3.4** On the Effective Date, the Membership Act most recently approved in accordance with Tsawwassen Law will be enacted and put into effect by Tsawwassen Government and read as amended to the extent necessary to apply to Tsawwassen membership and eligibility for membership, until the Act is amended or enacted in accordance with the provisions of this Constitution and the Membership Act.

CHAPTER 4 – RIGHTS AND FREEDOMS

- 4.1** Members of the Tsawwassen First Nation are entitled to the recognition and protection of rights and freedoms under the governance of Tsawwassen First Nation including:
- (a) fundamental freedoms of conscience, religion, belief, opinion, expression, association and peaceful assembly;
 - (b) political rights, including the right to vote and to publicly voice their opinions and to run for office in an election of the Chief, Legislature or other government bodies, as arise from time to time;
 - (c) legal rights to life, freedom and security of person;
 - (d) equality rights and equal protection and benefit of the law;
 - (e) access to information, including the right to access Tsawwassen Laws;
 - (f) electoral rights, including participation in elections and referenda;
 - (g) entry and exit on Tsawwassen Lands;
 - (h) appeal of administrative decisions;
 - (i) collective rights including, rights to participate in traditional and cultural activities and fishing and gathering and use of the land and water and resources of Tsawwassen; and
 - (j) equal access to programs and services delivered by the Tsawwassen Government.

CHAPTER 5 – TSAWWASSEN GOVERNMENT

- 5.1** The Tsawwassen Government consists of the form set out in this Constitution and may reflect some traditional form of governance.
- 5.2** The Tsawwassen Government consists of the legislative body (the “Tsawwassen Legislature”), the Chief, the Executive Council, the Judicial Council and the Advisory Council.
- 5.3** Each year the Tsawwassen Government will be accountable at an open meeting of the General Assembly of Tsawwassen Members.
- 5.4** The Tsawwassen Government will provide an opportunity for Tsawwassen Members to be consulted about the enactment of Tsawwassen Laws, revenue and expenditure measures, and the adoption of major policies, through community information meetings and other activities as determined by the Executive Council.
- 5.5** The Tsawwassen Government has the authority to establish Tsawwassen Public Institutions.

Legislature

- 5.6** Each member of the Tsawwassen Legislature is elected to the position of Legislative Member from within the community of Members as provided for under the Election Act.
- 5.7** At a minimum, there will be twelve (12) elected Legislative Members, not counting the Chief, excepting that if there is a vacancy due to death, resignation, dismissal or any other cause, Tsawwassen Law may provide for a lesser number of members of the Legislature unless or until a replacement is provided for.
- 5.8** Once there are greater than three hundred and fifty (350) Members, the Tsawwassen Government may, before an election, increase by one Legislative Member per one hundred (100) Members the number of Legislative Members to be elected.
- 5.9** In any case, the Tsawwassen Legislature will not exceed sixteen (16) Legislative Members.
- 5.10** The size of the Tsawwassen Legislature and the formula for increasing the size of the Legislature will be reviewed no later than 10 years after this Constitution comes into effect.
- 5.11** The Tsawwassen Legislature will meet a minimum of once a year, and more often at the request of the Executive Council or the Advisory Council, or by decision of the Legislature.
- 5.12** The Tsawwassen Legislature is responsible for:
- (a) hearing and considering the advice of the Advisory Council;
 - (b) debating and considering the merits of proposed Tsawwassen Laws, resolutions and motions;
 - (c) enacting Tsawwassen Laws; and
 - (d) approving the annual budget.
- 5.13** Either the Chief or another member of the Tsawwassen Legislature may introduce a bill into the Legislature.

Chief

- 5.14** The Chief is elected by a majority of Tsawwassen Members as provided for under the Election Act.
- 5.15** The Chief is the head of the Tsawwassen Government and as such, is the head of the Tsawwassen Legislature and is accountable for, among other matters, the day-to-day functioning of the Tsawwassen Government.

Executive Council

- 5.16** Subject to section 5.18, a minimum of four (4) of the elected Legislative Members with the highest number of votes in the General Election will be appointed as members of the Executive Council.
- 5.17** The Chief is a member and head of the Executive Council.
- 5.18** The Executive Council will:
- (a) be formally appointed by the Chief from the elected Legislative Members referred to in 5.16 and members of Council may be assigned executive duties by the Chief;

- (b) undertake responsibilities assigned to it by the Legislature in its law making capacity, including the responsibility for directing the programs and services provided by the Tsawwassen Government; and
- (c) act in the capacity of employer of Tsawwassen Employees, and subject to Tsawwassen Laws, in this capacity will establish such policies as it deems necessary.

Judicial Council

5.19 The Judicial Council is composed of five members appointed from the following groups:

- (a) a minimum of one appointee must be a Member of the Tsawwassen First Nation;
- (b) two appointees must not be members of the Tsawwassen First Nation and should not have a direct interest in the Tsawwassen First Nation;
- (c) two appointees should have some legal background and may or may not be members the Tsawwassen First Nation; and
- (d) at least two appointees described above should have a degree of familiarity with Tsawwassen traditions and culture. When seeking appointees to meet this criterion, the Executive Council will seek advice from the Longhouse.

5.20 Appointments to the Judicial Council will be made by the Executive Council.

5.21 Appointees to the Judicial Council will be appointed for a term of 5 years and will not serve two consecutive 5 year terms.

5.22 Despite section 5.21, the first sitting Judicial Council will be appointed for the following terms to allow for continuity on this Council:

- (a) one appointee will be a appointed for a term of 1 year;
- (b) two appointees will be a appointed for a term of 3 years; and
- (c) two appointees will be a appointed for a term of 5 years.

5.23 Within Tsawwassen Government, the Judicial Council is responsible for:

- (a) hearing challenges to the validity of Tsawwassen Laws;
- (b) resolving disputes between Members and elected officials;
- (c) making recommendations to courts on the sentencing of Members where requested;
- (d) investigating financial irregularities; and
- (e) other duties assigned by the Tsawwassen Government, which may include but are not limited to, those duties described under Chapter 13 Adjudicatory Bodies of this Constitution.

Advisory Council

5.24 The Advisory Council is composed of Members who represent various interests of the Tsawwassen First Nation as determined from time to time at a Tsawwassen General Assembly.

5.25 The Advisory Council is to be available from time to time, to hear ideas and concerns of Members, and to prepare and present these to the Tsawwassen Legislature and the Executive Council. At a minimum, the Advisory Council will meet and provide advice to the Tsawwassen Legislature before the Legislature finalizes Tsawwassen Law.

CHAPTER 6 – ELECTIONS

- 6.1** The Tsawwassen Government will be democratically accountable and will hold elections at least every five years.
- 6.2** The Tsawwassen First Nation will have an Election Act which will set out the:
- (a) criteria for Members holding public office;
 - (b) criteria for Members being eligible to vote;
 - (c) processes and procedures for nomination for election;
 - (d) procedures and requirements for all candidates meeting;
 - (e) processes and procedures for application for voter status;
 - (f) processes and procedures for election to public office;
 - (g) processes and procedures for appealing decisions about holding public office, eligibility to vote, nominations, voter status applications and elections; and
 - (h) processes and procedures for the removal of elected officials.

CHAPTER 7 – FEDERAL AND PROVINCIAL LAWS

- 7.1** Federal and Provincial Laws will apply to Tsawwassen First Nation, Tsawwassen Members and Tsawwassen Lands unless otherwise provided for in Tsawwassen Law. The Tsawwassen Government may adopt Federal or Provincial Laws as Tsawwassen Law.

CHAPTER 8 – TSAWWASSEN LAWS

- 8.1** The Tsawwassen First Nation has the inherent authority to govern and the powers and authorities of the Tsawwassen Government are those which it has as a matter of right in accordance with its inherent right.
- 8.2** The exercise of these powers and authorities may from time to time be subject to agreements entered into with Canada and British Columbia.
- 8.3** The Final Agreement sets out the powers of the Tsawwassen Government to make Tsawwassen Law.
- 8.4** If there is a conflict between a law passed by the Tsawwassen Government and this Constitution, then this Constitution prevails.
- 8.5** Tsawwassen Laws enacted by the Tsawwassen Government will be subject to review by the Judicial Council following a challenge as provided for under Chapter 5 Tsawwassen Government section 5.23 of this Constitution.
- 8.6** Only Tsawwassen Law enacted by the Tsawwassen Government for which the Government does not have the authority to enact shall be found to be beyond the power of the Tsawwassen Government.
- 8.7** Where there is a conflict between Tsawwassen Law and Federal or Provincial Law, the applicable paramountcy rules established in the Final Agreement or any other agreement in effect between Tsawwassen First Nation and Canada or British Columbia will apply.

CHAPTER 9 – DELEGATION OF POWERS AND AGREEMENTS

- 9.1 In accordance with Tsawwassen Law, the Tsawwassen Government may delegate any of its powers to a body or official established by Tsawwassen Law, another government, a board or public body established under legislation or a First Nation or Tribal Council.
- 9.2 Pursuant to an agreement entered into by Tsawwassen Government, the Tsawwassen Government may receive, by delegation, any power, including the power to enact laws.

CHAPTER 10 - FINANCIAL ADMINISTRATION

- 10.1 The Tsawwassen Government will establish standards regarding the collection and spending of Public Money that are comparable to the standards generally accepted by other governments in Canada.
- 10.2 All Public Money collected by Tsawwassen First Nation will be deposited into a single public revenues fund.
- 10.3 Public Money will only be spent in accordance with duly enacted Tsawwassen Law providing for such expenditure.
- 10.4 Each year, the Executive Council will present spending plans and revenue measures to the Tsawwassen Legislature in the form of a budget which must contain planned revenues and expenditures for all Public Money of the Tsawwassen Government.
- 10.5 Any Tsawwassen official authorized to spend Public Money will be held accountable for that money and will be required to provide records of such expenditure.
- 10.6 Each year the Tsawwassen Government will perform an external audit of all programs and services of Tsawwassen First Nation supported by any Public Money.

CHAPTER 11 – TSAWWASSEN EMPLOYEES

- 11.1 Programs and services provided by the Tsawwassen Government will be administered by a professional service and will be administered without bias according to policies set out by each department of Tsawwassen Government.
- 11.2 Professionals within the public service of Tsawwassen Government will be hired and promoted based on merit, suitability and ability to perform the requirements of the job.
- 11.3 Rates of pay will be determined by a standardized scale to be developed by the professional body in charge of hiring.
- 11.4 Members will be given the first opportunity in hiring.

CHAPTER 12 - CONFLICT OF INTEREST

- 12.1 The Tsawwassen Government will develop and maintain conflict of interest rules that are generally accepted for governments in Canada of similar size to Tsawwassen First Nation and that are in keeping with the culture, traditions and customs of Tsawwassen First Nation.

CHAPTER 13 - ADJUDICATORY BODIES

- 13.1 In addition to the Judicial Council, the Tsawwassen Government may establish one or more bodies to carry out one or more of the following functions:
 - (a) hear appeals of administrative decisions;
 - (b) resolve disputes between Members; and

- (c) resolve disputes between government bodies.

CHAPTER 14 – REFERENDUM

- 14.1** In order to provide for the participation of members in decision-making:
- (a) The Tsawwassen Government will establish a referendum process as described in section 14.3 and section 14.4.
 - (b) The Tsawwassen Legislature may decide through a resolution that certain matters will be put to a referendum and these may include matters to do with land, membership, and elections.
 - (c) The referendum process as set out in section 16.1 will be used to amend the Constitution.
- 14.2** The Tsawwassen Government must not sell any of Tsawwassen Lands to a non-member without ratification by the referendum process set out in section 16.1.
- 14.3** At a minimum, the Referendum Process must include provisions for:
- (a) notice of referenda to be given at least 30 days prior to the scheduled date;
 - (b) at least two Tsawwassen First Nation community information meetings to be held within the 30 day time period, to ensure that the community has adequate information regarding the matter in question; and
 - (c) notice of these information meetings and the referenda to be made available to all Members including those who live outside Tsawwassen Lands.
- 14.4** A referendum under the Referendum Process will not be considered passed unless a referendum wins the approval of at least a majority (50%+1) of Eligible Voters.

CHAPTER 15 – TSAWWASSEN LANDS

- 15.1** The Tsawwassen Government will work to preserve the land base of the Tsawwassen First Nation.
- 15.2** Tsawwassen First Nation will have a Land Act which will be enacted and put into effect by Tsawwassen Government to apply to Tsawwassen Lands. The Land Act will be reviewed within 10 years after the Effective Date to determine if any amendments are required.
- 15.3** Any change to land use and any acquisition of new land by Tsawwassen First Nation must include a community consultation process as set out in the community consultation legislation and the Land Act.
- 15.4** Any proposal for the disposition of Tsawwassen Lands must be approved in accordance with the provisions of the Land Act.

CHAPTER 16 – AMENDMENT PROCESS

- 16.1** All provisions of this Constitution can only be amended pursuant to the Referendum Process with approval from a majority (50%+1) of Eligible Voters.

CHAPTER 17 – TRANSITIONAL TSAWWASSEN GOVERNMENT PROVISIONS

- 17.1** The Chief and Council in power at the time of the Effective Date will continue as the Tsawwassen Government with such changes as are necessary to this Constitution until such time as elections can be held in accordance with this Constitution and Tsawwassen Law.

- 17.2** For greater clarity, Chief and Council will have the authority to act as both the Tsawwassen Legislature and Executive Council during the transition period.
- 17.3** The term of the transitional Tsawwassen Government will not be longer than six months after the Effective Date.
- 17.4** Before the Effective Date, Chief and Council may follow the Referendum Process in order to be in compliance with this Constitution to be able to enact Tsawwassen Laws on the Effective Date.

CHAPTER 18 – FORCE AND EFFECT

- 18.1** Ratification of this Constitution requires a majority (50%+1) of Eligible Voters in the referendum held for that purpose vote in favour of the Constitution.
- 18.2** If ratified in accordance with section 18.1 this Constitution is in force and takes effect on the Effective Date.
- 18.3** In the event that the Constitution is ratified but the Final Agreement is not, this Constitution will come into effect when declared in effect by Chief and Council.

CHAPTER 19 – DEFINITIONS

- “Effective Date”** means the date on which the Final Agreement takes effect;
- “Election Act”** means the Tsawwassen Election Act or any successor Tsawwassen Law;
- “Eligible Voter”** means, for the purposes of Chapter 18 Force and Effect, an individual whose name is entered on the Eligible Voters List in accordance with the Eligibility and Enrolment Chapter of the Tsawwassen Final Agreement and means, for the purposes of the rest of this Constitution, an individual whose name is entered on the Voters List in accordance with the Election Act;
- “Executive Council”** means those Legislative Members appointed to the Executive Council by the Chief;
- “Federal and Provincial Laws”** mean federal and provincial statutes, regulations, ordinances, orders in council and the common law;
- “Final Agreement”** means the Tsawwassen First Nation Final Agreement between Tsawwassen First Nation, Canada, and British Columbia;
- “Land Act”** means the Tsawwassen Land Act or any successor Tsawwassen Law;
- “Legislative Member”** means an individual elected to the Tsawwassen Legislature in an election;
- “Member”** means an individual whose name is entered on the Tsawwassen Members List in accordance with the Tsawwassen Membership Act or, after the Effective Date, entered on the Tsawwassen Enrolment Register;
- “Participating Voters”** means those Eligible Voters who cast ballots in an election, referendum or other vote according to Tsawwassen Law;
- “Public Money”** means all money collected by the Tsawwassen Government including, but not limited to, fines, levies, taxes and user fees;
- “Referendum Process”** means the information and voting process to determine whether the Eligible Voters approve of a question put to them to consider;

- “Tsawwassen Lands”** means the lands identified in the Final Agreement as Tsawwassen Lands and Other Tsawwassen Lands;
- “Tsawwassen Law”** means a law made by Tsawwassen Government, including Chief and Council, under the Final Agreement or any other authority, including this Constitution;
- “Tsawwassen Legislature”** means the Legislative Members elected for the purposes of debating and passing laws as described in sections 5.6 through 5.10 of Chapter 5 of this Constitution; and
- “Tsawwassen Public Institution”** means a body, board, commission or other similar entity established by the Tsawwassen Government.