



TSAWWASSEN FIRST NATION
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Tsawwassen First Nation

Policy for Judicial Council Firewall

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Table of Contents

1)	Authority.....	1
2)	Purpose.....	1
3)	Process.....	1

1) Authority

The authority for this policy is found in subsections 41 (2) (c) of the *Government Organization Act*, which provides that the Chief Administrative Officer is responsible for establishing and overseeing administrative policies, practices and procedures necessary to effectively implement Tsawwassen Laws.

2) Purpose

The *Administrative Review and Judicial Proceedings Act* provides that the Judicial Council is responsible for its own internal rules of procedure. The Rules of Procedure were promulgated on June 12, 2009. The Judicial Council Clerk, with offices within Tsawwassen Administration, takes direction and guidance from the Judicial Council Chair, or his or her designate with respect to Judicial Council operations. However, there is no process in place to deal with ensuring there is a sufficient information barrier in place to separate and isolate Tsawwassen First Nation (“TFN”) staff and other persons from communications or documents between the judicial clerk and Judicial Council Members on one hand, and TFN staff and other persons, on the other hand.

This firewall policy outlines the rules and procedures to ensure that a sufficient information barrier exists within Tsawwassen Administration for the protection of judicial communications and matters related to a filed claim.

It is also essential that matters related to a potential action or commenced action not be discussed as among TFN staff in order to preserve a level of confidentiality for the litigants.

3) Process

The Judicial clerk duties are set out in section 3 of regulation (No. 107-2009), which provides, among other things, that the clerk will

- (a) conduct herself or himself with the utmost integrity and care and will ensure the confidentiality of the matters which come before him or her;
- (b) maintain all Judicial Council documents and other records in a manner which is consistent with the practices ordinarily employed by the courts and must ensure that all documents and other records will be stored in a secure area which is kept locked outside of business hours and when the judicial clerk is otherwise not in attendance.

On the basis of the above, and for sound operational processes, the following is the policy with respect to ensuring the confidentiality of information.

Inquiries

1.1 Litigants or potential litigants may request information or ask process questions related to commencing an action to the judicial clerk, and upon any of these events, the judicial clerk, or his or her alternate, will ensure the following process is followed.

- 1.1.1 Inquiries will be answered in person or over the phone.
- 1.1.2 A log will be maintained setting the name of the requesting party, and the essence of their inquiry.
- 1.1.3 The clerk will not divulge the name of the requesting party or the nature of their inquiry to any person, including Tsawwassen First Nation (“TFN”) staff, other than to the chair or vice – chair of Judicial Council.

Commencement of an action

1.2 Where a litigant files an action, the clerk should not discuss the filing with TFN staff, other TFN Members or persons excepting the chair or vice chair of Judicial Council; or the TFN in-house legal counsel, where appropriate.

1.2.1 Any discussion with the In-house legal counsel must be limited to process questions and not the merits of the action.

1.2.2 The clerk will take all necessary precautions to ensure that other TFN staff do not have access to judicial documents or communications and will do so by ensuring that they are:

1.2.2.1 Printed on a private printer available only to the clerk; and

1.2.2.2 Kept or filed in the clerk’s office in a manner that protects them from view of TFN staff or other persons.

1.2.3 If any TFN staff inadvertently receives judicial documents or communications from the judicial clerk, that staff member will not read those documents or communications and will immediately destroy them or delete the email.

1.2.4 If the in-house legal counsel inadvertently receives a judicial document outside of the process set out in the Rules of Procedure, or inadvertently receives communication not intended for that office, those documents or communications will be immediately destroyed, or in the case of an email, deleted.

1.2.5

Requests for email or written confirmation

1.3 The Rules of Procedure guide any litigant or interested person with respect to the process to be followed for the commencement of an action or other interlocutory¹ procedures.

¹ Incidental to the major intent of an action; temporary or provisional, not final. *The Dictionary of Canadian Law*, third edition (Thomson Carswell, 2004) at 654.

- 1.3.1** Where a litigant or any interested person attends at the clerk's office with inquiries related to an action or potential action, the clerk will answer questions related to process only and will also provide that person with a copy of the Rules of Procedure.
- 1.3.2** Where a litigant or interested person contacts the judicial clerk by phone with respect to questions related to an action or potential action, the clerk will answer questions related to process only and will advise the person that the Rules of Procedure can be picked up from the judicial clerk's office during posted office hours, or that they can be obtained from the Tsawwassen First Nation web page.
- 1.3.3** If the judicial clerk is asked by a litigant or any other person to confirm information related to an action or Judicial Council process by email or any other written format, the clerk must decline to provide that written confirmation on the basis that Rules of Procedure guide the litigant.