



TSAWWASSEN FIRST NATION  
s'cəwaθən məsteyəx<sup>w</sup>

## Tsawwassen First Nation Judicial Council

### CONSOLIDATED RULES OF PROCEDURE: MAY 2010

#### Power to Make Rules

1. These rules are made by the Judicial Council established by Chapter 5 of the Tsawwassen First Nation *Constitution Act* and are made under the power conferred under s.18 of the Tsawwassen First Nation *Administrative Review and Judicial Proceedings Act*.

#### Objective of these Rules

2. The objective of these Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

#### Starting Proceedings by Notice

3. Where a person proposes to appeal to the Judicial Council (for example under s.25 or s.30 of the *Laws Enforcement Act* or s.5.23 and s.13.1(a) of the *Constitution Act*), the appeal will be started
  - (a) by filing a **Notice of Appeal** with the Clerk of the Judicial Council, and
  - (b) by serving a copy of the filed Notice of Appeal
    - (i) on every person who participated directly in the proceeding leading to the making of the decision appealed from, and
    - (ii) on every person named or described in the decision appealed from as being directly affected by it.
4. Where a person proposes to apply to the Judicial Council for a declaration or other remedy which may be granted by the Judicial Council under direct application (for example, s.96 of the *Election Act* or s.19 of the *Conflict of Interest Act*), the application will be started
  - (a) by filing a **Notice of Application** with the Clerk of the Judicial Council, and

(b) by serving a copy of the filed Notice of Application on every person who would be directly affected by the declaration or other remedies sought if they were to be granted.

5. Where a person proposes to seek a review by the Judicial Council of an order or decision (for example, ss.5 and 6 of the *Community Safety and Security (Land Use and Prohibited Substances) Act*), the review process will be started

(a) by filing a **Notice of Review** with the Clerk of the Judicial Council, and

(b) by serving a copy of the filed **Notice of Review**

(i) on the entity whose order or decision is to be the subject of the requirement for review, and

(ii) on every person described in the order or decision as being directly affected by it.

6. Where a Member proposes to bring a dispute with another Member or with elected officials before the Judicial Council, (for example, as authorized by s.5.23(b) of the *Constitution Act*) or where a dispute arises between government bodies (for example under s.5.23(e) and 13.1(c) of the *Constitution Act*) the proceeding will be started

(a) by filing a **Notice of Dispute** with the Clerk of the Judicial Council and

(b) by serving a copy of the filed Notice of Dispute on the other Member or elected official or government that is an opposing party to the dispute.

7. Where a person wishes to bring a matter before the Judicial Council that is within its jurisdiction, then if that matter is not covered by Rules 3, 4, 5 or 6, it may be started by filing an **Originating Notice** with the Clerk of the Judicial Council and by serving a copy of the filed Originating Notice on all persons directly affected by that matter or against whom any remedy, order or decision is sought.

8. (1) A Notice under Rules 3, 4, 5, 6 or 7 must be served on each Respondent named in the Notice within 30 days of the date of filing of the Notice.
- (2) An Affidavit of Service with respect to each Respondent served with a Notice must be filed within 7 days of the date of Service.
- (3) Subject to a contrary order by the Judicial Council, every Respondent not served within 30 days after the date of filing of a Notice, or with respect to

whom an Affidavit of Service is not filed within 7 days after the date of Service of the Notice, will be deemed to be struck from the proceedings 40 days after the filing of the Notice.

(4) Where a Respondent is deemed to have been struck from the proceedings under Sub-rule (3), the person filing the Notice may not issue another Notice naming the Respondent with respect to substantially the same complaint without leave of the Judicial Council.

9. A Notice under Rules 3, 4, 5, 6 or 7 must
  - (a) specify the Tsawwassen First Nation Act and section number relied on;
  - (b) include a concise statement of the matter in dispute; and
  - (c) state the remedy being sought.
  
10. A person filing an initiating Notice under Rules 3, 4, 5, 6 or 7 must state his or her name, address, business telephone, if any, home telephone and e-mail address, if any, and specify an address for service.

### **Filing Fee**

11. (1) A person filing a Notice under Rules 3, 4, 5, 6 or 7 must, at the time of filing, pay a filing fee of \$100.
- (2) The requirement to pay a filing fee does not apply
  - (a) to the Tsawwassen Government;
  - (b) to a person who obtains an order that they are unable to pay the fee;
  - (c) in any proceeding where the amount at stake is less than \$1000 or if no monetary amount is at stake, where the person filing the Notice obtains an Order that the issue in the proceedings has a significance that is less than the financial significance of \$1000.
  
- (3) If a filing fee is payable at the time of filing, but is not paid, the Notice will be accepted for filing and filed, and, subject to Sub-rule (4), the proceedings will continue in accordance with the time limits set by these Rules.
  
- (4) In any proceedings where the filing fee has not been paid, the Respondent, or the Tsawwassen Government, may apply to the Judicial Council for an Order that

the proceedings be struck out for failure to pay the filing fee, unless an Order has been obtained under Sub-rule (2) exempting the person filing the Notice from the requirement to pay the filing fee.

### **Answer to a Notice**

12. Any person who has been served with a Notice under Rules 3, 4, 5, 6 or 7 and who wishes to dispute the matter must file an **Answer** with the Clerk of the Judicial Council within 30 days after service of the Notice, but unless an extension of time is granted, not thereafter; and if an answer is filed, it must be served on the person giving the initiating Notice within that 30 day period or any extension granted by the Judicial Council.
  
13. An Answer under Rule 12 must
  - (a) include a concise statement in response to the subject matter of the Notice;
  - (b) if the jurisdiction of the Judicial Council to decide the subject matter of the Notice is being disputed, provide a concise statement of the basis for the dispute; and
  - (c) state the remedy being sought.
  
14. If a person filing an Answer proposes to make a claim requesting a remedy as part of the Answer then the claim must be made in an initiating Notice as if under Rules 3, 4, 5, 6 or 7, and that Notice must form a separate part of the Answer and create, in turn, a requirement for an Answer from the party who filed the initial Notice.
  
15. No new party may be added in an Answer, except by order of the Judicial Council.
  
16. A person filing an Answer must state his or her name, address, business telephone, if any, home telephone and e-mail address, if any, and specify an address for service.

### **Sittings of the Judicial Council**

17. (1) In accordance with s.13 of the *Administrative Review and Judicial Proceedings Act*, and subject to Rule 18 (2), the Judicial Council sits in a Panel of 3 or a Panel of 5, where it holds a hearing at which it might make a final decision on the merits of the matter brought before it.
- (2) A Panel of 3 or a Panel of 5 is referred to in these Rules as a “Panel”.
18. (1) A Single Member of the Judicial Council designated to do so by the Chair may hear any application on a question of procedure or on the application of these Rules to the circumstances of a case, and may make Orders or give Directions on that question.
- (2) Where the Chair designates a proceeding as being suitable for final decision by a Single Member rather than a Panel, a Single Member selected to do so by the Chair may make a final decision in that proceeding.
- (3) A member of the Judicial Council selected by the Chair to hear an application described in s-ss.(1) or (2) is referred to in these Rules as a “Single Member”.
- (4) Any application which may be heard by a Single Member may be heard by a Panel.

### **Questions of Law**

19. (1) Where an important question of law is referred to the Judicial Council under ss.25 and 26 of the *Administrative Review and Judicial Proceedings Act*, the Chair may make an Order or give Directions with respect to the hearing and consideration of that question by the Judicial Council, including Directions with respect to the persons entitled to be heard on the question and the procedure for ensuring that all points relevant to the question are brought forward fairly and equitably.
- (2) The Chair may designate a proceeding as being suitable for final determination on an agreed point of law, or an agreed statement of facts, or by affidavit alone without oral testimony, and where such a designation is made the Panel or Single Member making any interim or final determination may conduct the proceeding in accordance with the designation.
- (3) Except as provided in Sub-rules (1) and (2), the Judicial Council will not entertain any reference for an advisory opinion on a question of law.

### **The Clerk, Filings, and Hearings**

20. The Clerk employed in accordance with s.22 of *The Administrative Review and Judicial Proceedings Act* has an office within the Administrative Offices of the Tsawwassen First Nation, and any Notice, Answer, or other document to be filed under these Rules must be filed with the Clerk at the Clerk's Office within the Tsawwassen First Nation Administrative Offices at 1926 Tsawwassen Drive, Tsawwassen, B.C., V4M 4G2.
21. The hours of business of the Clerk's Office are 10:00 a.m. to 4:00 p.m., Monday to Friday on all those days when the Tsawwassen First Nation Administrative Offices are open for business.
22. Every document should be presented to the Clerk for filing in duplicate; both copies will be stamped showing the date of receipt and a Judicial Council file number; and one copy will be retained by the Clerk and the other copy by the person doing the filing.
23. The party initiating a proceeding by a Notice under Rule 3, 4, 5, 6 or 7 must file a Certificate of Readiness and serve it on all other parties to the proceeding when the case is ready for hearing, and the other parties so served will have 7 days after service on them of a Certificate of Readiness to file an application before a Single Member for a postponement of the hearing on the ground of unreadiness.
24. After more than 7 days from the filing of a Certificate of Readiness the Clerk, in consultation with the Chair of the Judicial Council and in consultation with the parties to the proceeding, will set a date, time and place for a Hearing before a Panel of the Judicial Council, or a Single Member, as the case may be.

### **Pre-Hearing Conferences**

25. A Single Member may direct that a pre-hearing conference be held before a Single Member or before a Panel and may order that the proceedings at any pre-hearing conference that is ordered must remain confidential.
26. A Single Member or a Panel holding a pre-hearing conference may give directions or make orders about any issue of procedure in relation to the holding of a hearing or in relation to matters arising preliminary to the holding of a hearing, in order to aid in the speedy, effective, and just disposition of the matter before the Judicial Council.

### **Alternative Dispute Resolution**

27. A party to a matter before the Judicial Council may apply to a Single Member for a direction that the matter be referred to a Mediator who may be a member of the Judicial Council, but need not be, for the purpose of determining whether the matter in dispute can be resolved by a consensual settlement agreement within a time set by the member giving the direction, which time may be made subject to extension at the request of the Mediator.
28. A Panel may make a direction referred to in Rule 27, on its own motion, after first holding a hearing at which the parties to the matter in dispute may address the question of whether the matter in dispute is suitable for a Mediation Process.
29. The fees and expenses of a Mediator who is not a member of the Judicial Council will be borne by the Parties in the proportions ordered by the Single Member or the Panel.

### **Striking out Proceedings**

30. A Panel, or a Single Member designated by the Chair, may strike out a proceeding, either on the motion of a party or on the motion of the Judicial Council itself, on the ground that the proceeding
  - (a) is repetitious or systematic in nature
  - (b) is outside the jurisdiction of the Judicial Council
  - (c) discloses no proper basis of claim, or
  - (d) is frivolous or vexatious.

### **Interim Orders and Directions**

31. Where proceedings have begun, a party to those proceedings may seek an Interim Order or Directions on any matter of practice or procedure that does not entail a final disposition of the proceedings on the merits.
32. A person seeking an Interim Order or Directions under Rule 31 must file with the Clerk a **Notice of Motion** stating the nature of the Order or Direction sought, together with whatever affidavit and other supplementary material, if any, on which the Interim Order or Directions sought is based; and a copy of the Notice of Motion and the affidavit and the other supplementary material, if any, must be served on all other parties to the proceedings within seven days of being filed.

33. The Clerk, in consultation with the Chair of the Judicial Council and in consultation with the Parties to the proceedings, will set a date, time and place for a hearing before a Single Member or a Panel.
34. Any party to the proceedings may file, and serve on all other parties, affidavits or other supplementary material in relation to the Interim Order or Directions sought, up to but not later than 2 days before the date set for the hearing.

### **Consent Final Orders**

35. Where every Party to a proceeding consents to the making of a final Order disposing of a matter, a Single Member may make a final Order in the terms of the consent.

### **Entry of Orders and Directions**

36. (1) The successful party on any proceeding or on any interim matter must draft the Final Order or Direction or Interim Order or Direction, with the assistance of the presiding Member of the Panel or the Single Member if they agree to do so; must obtain approval as to form by all other Parties; and must file the Order or Direction with the Clerk for endorsement by the presiding Member of the Panel or by the Single Member, and after endorsement must serve the Order or Direction on all other Parties within 7 days of the endorsement.  
  
(2) A form of Order and a form of Direction are appended to these Rules as guidance.

### **Non-Compliance with Rules**

37. (1) Where a Party to a proceeding fails to comply with these Rules, or with any Order or Direction made under them, any other Party to the proceeding may apply by Notice of Motion for whatever Order or Direction that other Party considers is appropriate.  
  
(2) Where an application is made under Sub-rule (1), the Judicial Council may make whatever Order or Direction it considers appropriate, including an Order dismissing the proceedings or an Order for judgment in favour of the person initiating the proceedings.
38. Where a party to a proceeding fails to file an Answer to an initiating Notice within the time limited, a final Order of Judgment may be made against that person, which may be set aside only if the interests of justice to all parties require it to be set aside.

39. If the Order or Direction sought is an Order or Direction that finally disposes of the proceedings then the motion must be heard by a Panel unless the Chair directs that it may be heard by a Single Member.

### **Adjournments**

40. Any hearing in a proceeding, whether by a Panel or a Single Member, may be adjourned, with the consent of the Panel or Single Member and with the consent of all Parties to the proceeding, to a date not set, and the Clerk, after consulting with the Parties and with the Chair may set a date, time, and place for the adjourned hearing.
41. Any party may apply to a Single Member for an adjournment of a hearing in the proceeding, whether the hearing is to be by a Panel or by a Single Member, and the Single Member may order the adjournment to a date not set and, if the Order is made, the Clerk, after consultation with the Parties and with the Chair may set a date, time, and place for the adjourned hearing.

### **The Content of Interim Orders**

42. A Panel or a Single Member may make any Order or Direction with respect to the Parties that the exigencies of the particular proceeding may require, and without restricting the generality of that power, may make an Order or Direction dealing with
- (a) evidentiary matters, including pre-hearing receipt and disclosure, and the pre-hearing examination of a party on oath, by affirmation or by affidavit;
  - (b) the exchange of records and documents by the parties;
  - (c) the filing of written submissions by the parties;
  - (d) the filing of admissions by the parties;
  - (e) amendments of an initiating Notice, an Answer or a Motion;
  - (f) the addition of a party to a proceeding;
  - (g) the extension or abridgement of time limits provided for in these Rules;
  - (h) the transcribing or tape-recording of proceedings and the process for payment of fees for reproduction of a tape-recording if requested by a party;
  - (i) the exclusion of witnesses from proceedings;

- (j) the extent of access to Judicial Council documents by any person;
- (k) witness fees and expenses;
- (l) service of documents, including substituted service, and including any significant variation of the form of Affidavit of Service appended to these Rules;
- (m) dispensing with a filing fee on the ground of inability to pay;
- (n) the preservation, retention, safeguarding and protection of property, real or personal.
- (o) Compelling the attendance of witnesses who are Tsawwassen Members at any Judicial Council hearing;
- (p) setting time limits for a hearing or submissions.

### **Costs**

- 43. A Panel or a Single Member may, in connection with the making of a final or an interim Order or Direction, order that a party must pay to another party an amount as costs and disbursements that does not exceed the actual expenses incurred by that other party in the proceedings.

### **Supreme Court Rules**

- 44. In dealing with any matter under these Rules, reference to the Supreme Court Rules, and to the Practice and Procedure in the Supreme Court of British Columbia, will be regarded as relevant but not determinative.

### **Interpretation and Nomination of Parties**

- 45. In interpreting and applying these Rules:
  - (a) The singular includes the plural, and the other way around;
  - (b) The masculine includes the feminine, and the other way around;
  - (c) Where the last day for any action under the Rules falls on a day when the Tsawwassen First Nation Administrative Offices are not open for business, the time is extended to the next business day at the Tsawwassen Administrative Offices;
  - (d) In calculating days for performing any action, the day in which the event occurred which started the running of time is excluded and the last day before the time is set to have expired is included.

(e) A reference to the Chair incorporates a reference to the Vice-Chair and either the Chair or the Vice-Chair may perform the function in question whether the Chair is absent or not.

(f) Where there is an inconsistency between an enactment and these Rules, the enactment will prevail.

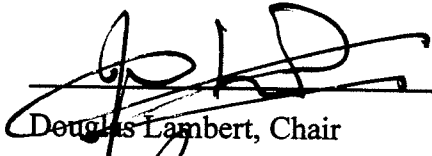
(g) Where an enactment imposes a time limit for the same action as the time limit imposed by these Rules, the time limit in the enactment will apply.


46. In describing the Parties to a proceeding, the terms used should be:

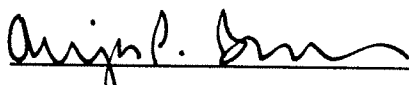
- (a) Plaintiff and Defendant;
- (b) Petitioner and Respondent;
- (c) Appellant and Respondent;
- (d) Intervener

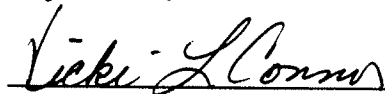
whichever is appropriate for the particular proceeding.

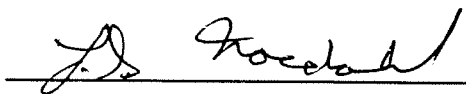
**These Consolidated Rules are made by the Judicial Council on the 28th day of May 2010**

  
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 Douglas Lambert, Chair

  
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 Paul Fraser, Vice-Chair

  
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 Anja Brown, Member

  
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 Vicki Connor, Member

  
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 Leif Nordahl, Member