



TSAWWASSEN FIRST NATION
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2009

CONFLICT OF INTEREST ACT

Date Enacted: 3 April 2009

Last Consolidation: 6 April 2016

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Table of Legislative Changes

Name of Act	Bill Number	Date Enacted	Section(s) Amended	Comes Into Force Date
Conflict of Interest Amendment Act	005-2013	19/11/2013	s.9(2) repealed and replaced s.9(2.1) added	19/11/2013
Dual Roles Amendment Act	002-2016	29/02/2016	s.10 amended	29/02/2016

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Tsawwassen Legislature enacts as follows:

Citation

- 1 This Act may be cited as the *Conflict of Interest Act*.

Definitions

- 2 In this Act:

“**chief administrative officer**” means the person appointed to that position under the *Government Organization Act*;

“**director**” means an individual who is

- (a) a member, commissioner, director or trustee of a Tsawwassen Public Institution,
- (b) a director or officer of a Tsawwassen Corporation, or
- (c) a member of the Finance and Audit Committee established under the *Financial Administration Act*;

“**elected member**” means a member of the Legislature, including the Chief;

“**employee**” means an individual appointed as an employee of Tsawwassen Government in accordance with the *Government Employees Act* and an individual appointed as the chief administrative officer in accordance with the *Government Organization Act*;

“**Executive Council**” means the Executive Council of the Tsawwassen First Nation established under the *Government Organization Act*;

“**Judicial Council**” means the Judicial Council established under the *Administrative Review and Judicial Proceedings Act*;

“**Legislature**” means the Tsawwassen First Nation Legislature;

“**public official**” means the Chief, any other elected member, an employee or a director;

“**Tsawwassen Corporation**” means a Tsawwassen corporation, as defined in Chapter 1 [*Definitions*] of the Tsawwassen First Nation Final Agreement or a corporation in which Tsawwassen Government or a Tsawwassen Corporation owns more than one quarter of the common voting shares;

“**Tsawwassen Government**” means the government of Tsawwassen First Nation as referred to in clause 2 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement;

“**Tsawwassen Institution**” means Tsawwassen Government or a Tsawwassen Public Institution;

“**Tsawwassen Member**” means a Tsawwassen Individual who is enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the Tsawwassen First Nation Final Agreement;

“**Tsawwassen Public Institution**” means a Tsawwassen public institution as defined in the Tsawwassen First Nation Final Agreement.

PART 1 – CONFLICT OF INTEREST

Conflict of interest

- 3** A public official has a conflict of interest if he or she exercises an official power or performs an official function knowing that in so doing there is the opportunity to further his or her private interest.

Conflict of interest prohibition

- 4** A public official must not exercise an official power or perform an official duty or function if he or she has a conflict of interest.

Acceptance of gifts or personal benefits

- 5** (1) Without limiting the generality of section 3, a public official is in a conflict of interest if he or she accepts a gift or personal benefit that might reasonably be seen to have been given to influence him or her in the exercise of his or her powers or the performance of his or her duties or functions.
- (2) Despite subsection (1), a public official may accept a gift or benefit if the gift or benefit
- (a) would be considered within
 - (i) normal protocol exchanges or social obligations associated with the person's office or duties,
 - (ii) normal exchanges common to ordinary business relationships, or
 - (iii) normal exchanges common at public cultural events of Tsawwassen First Nation or other First Nations,
 - (b) is of nominal value,
 - (c) is given by a friend or a relative solely as an element of that relationship, or
 - (d) is of a type that is permitted under the policies or directions issued by Executive Council.
- (3) A public official is not in a conflict of interest if engaged in the conduct of business with another party if the party, by agreement, assumes costs which otherwise would be costs to Tsawwassen Government or a Tsawwassen Corporation as a result of the business relationship.
- (4) If a gift or benefit with a value greater than \$500 is given to a public official, he or she is not in a conflict of interest provided he or she makes a written disclosure of the gift or benefit to the chief administrative officer, who may require that the gift or benefit be made the property of Tsawwassen First Nation.

Exception

- 6** A public official must not be found to be in a conflict of interest if the matter with respect to which he or she has an interest is the payment of an account, the introduction of a tax, or the creation or alteration of a Tsawwassen Government benefit generally available to Tsawwassen Members, about which he or she as a taxpayer, a Tsawwassen Member or as a property owner, has a right to be heard.

PART 2 – DISCLOSURE DUTIES, CONTRACTS, AND USE OF RESTRICTED INFORMATION

Disclosure statement

- 7** (1) The Chief and elected members must each file with the chief administrative officer an affidavit in the prescribed form, setting out the following:
- (a) the names of all corporations in which they have an interest as shareholder, director or officer;
 - (b) the names of each proprietorship, partnership or other business entity in which they have an interest and the names of each of the other persons who have a substantial financial interest in that proprietorship, partnership or other business entity.
- (2) Every person to whom this section applies must
- (a) make a supplemental affidavit in the form set out by the chief administrative officer and file it with him or her as soon as is reasonably possible if any of the matters set out in the affidavit provided under subsection (1) are not or are no longer true, accurate and complete, and
 - (b) provide any additional information about such matters that the chief administrative officer may require.
- (3) The chief administrative officer must maintain a permanent record of affidavits and supplemental affidavits required and made under this Part.

Responsibility to disclose when in conflict of interest

- 8** A public official must not be found to be in a conflict of interest if he or she, at the first available opportunity
- (a) discloses the particulars of a real or apparent conflict of interest, and
 - (b) abstains from being involved in any discussion regarding the matter and from voting on any question relating to it.

Quorum where disclosure occurs

- 9** (1) The absence of the Chief, an elected member, or a director from a meeting because of the requirements of section 8 must not be taken into account in determining whether a quorum is present for that meeting and for this purpose the elected member must be counted as being present, even though he or she is absent from part or all of the meeting.
- (2) If, because of the operation of section 8 there are fewer than 3 members of Executive Council able to be involved in any discussion on a particular matter or to vote on any question relating to that matter, then a 3-member committee composed of:
- (a) the remaining members of Executive Council; and,
 - (b) the Legislator(s) who received the highest number of votes in a general election under the *Election Act*, who are not themselves conflicted, and who accept the appointment,
- must be convened and empowered to discuss the particular matter and vote on any question relating to it in the place of Executive Council.

[Amended by Bill 005-2013; Enacted on November 19, 2013]

- (2.1) In the event that the process outlined in subsection (2) fails to result in a quorum, then so long as their real or apparent conflicts of interest and the reasons they believe they are in the conflicts of interest are disclosed, recorded, and made publicly available on request, all members of Executive Council may nevertheless participate and vote.

[Amended by Bill 005-2013; Enacted on November 19, 2013]

- (3) If, because of the operation of section 8 there are fewer than 50% of the members of the Legislature able to discuss and vote on a particular matter, then so long as their real or apparent conflicts of interest and the reasons they believe they are in the conflicts of interest are disclosed and recorded, all members of the Legislature may nevertheless participate and vote.

Approved employment

10 Despite anything contained in this Part, elected members, with the approval of the chief administrative officer, may be employed by Tsawwassen Institutions or Tsawwassen Corporations or may act as consultants or advisors to them in accordance with section 39.1 of the *Government Organization Act*, provided that the chief administrative officer

- (a) is satisfied that a full and accurate job description relating to the employment or personal services contract in question has been published before such engagement and that an open and fair competition for the employment or contract has first been carried out,
- (b) reviews and approves the salaries, benefits or fees payable and is satisfied that they are reasonable, having regard to the salaries, benefits or fees paid to other employees doing similar work and having similar qualifications or to individuals engaged under personal services contracts by Tsawwassen Institutions or other governments in Canada, and
- (c) is satisfied that those individuals are at least as well qualified to satisfactorily perform the work required as are any of the other applicants for the position.

[Amended by Bill 002-2016; Enacted on February 29, 2016]

Contracts

11 A public official may not directly or indirectly enter into a contract with Tsawwassen Government while he or she is acting in an official capacity or for 6 months following the date on which that person ceases to act in that capacity, unless

- (a) the contract is awarded in accordance with the procurement policies of Tsawwassen Government,
- (b) the interest is disclosed, and
- (c) the work to be performed under the contract is reasonably necessary to Tsawwassen First Nation and the fees payable for performing the work stipulated in the contract are fair and reasonable in relation to the fees that would be paid to charged by an independent person for the same work .

Unauthorized use of restricted Information

- 12** A public official may not use information that is
- (a) supplied in confidence to Tsawwassen Government,
 - (b) not generally available to all Tsawwassen Members, and
 - (c) obtained while that person serves in an official position or at any time after he or she ceases to serve in that position,
- if the information at issue could result in, or could appear to have resulted in, a financial benefit to him or her.

Implications for agreements in which restricted information used

- 13** Any financial benefit received in contravention of section 12 may be recovered by Tsawwassen Government from the person who received the financial benefit, unless it involved doing something required to be done because of the existence of an emergency, if it could be reasonably concluded that compliance with the requirements of section 12 would have been impracticable.

Affidavits of directors

- 14** Before being appointed and assuming their duties, all directors must make an affidavit in the prescribed form disclosing the following:
- (a) if they have been convicted of an indictable offence within the preceding 5 years;
 - (b) the names of all corporations in which they have an interest because they or members of their families are shareholders, directors or officers;
 - (c) the names of each partnership in which they have an interest because they or members of their families are partners, and the names of each of the partners in the partnership;
 - (d) the names of all proprietorships or other business entities in which they have an interest because they or members of their families have a substantial financial interest,

and must undertake in that affidavit to inform the chief administrative officer in writing as soon as possible if any of the matters set out in it were inaccurate or are no longer true, accurate and complete, and, if so, to provide such additional information concerning those matters as the chief administrative officer may require, and to provide a supplementary affidavit to that effect if requested to do so by the chief administrative officer.

PART 3 – ENFORCEMENT

Reporting to the chief administrative officer

- 15** Any Tsawwassen Member who believes, on reasonable grounds, that information contained in an affidavit is untrue, incomplete or inaccurate, may report in writing that belief and the reasons for it to the chief administrative officer.

Breach of terms of employment

- 16** An employee is in breach of his or her terms of employment, and subject to disciplinary action including dismissal, if he or she acts in contravention of any provision of this Act.

Reporting to Judicial Council

- 17** (1) If the Chief, an elected member or a director becomes aware that he or she is or may be in contravention of this Act, he or she must report the matter to the chair of Judicial Council immediately upon becoming aware of the possible contravention.
- (2) On receiving a report under subsection (1), the chair of Judicial Council must expeditiously review the matter and determine whether it should be considered as an application and heard by Judicial Council.

Reporting

- 18** (1) If a Tsawwassen Member, an employee or a director reasonably believes that the Chief, an elected member, or a director is in contravention of this Act, he or she must immediately report the matter to the chief administrative officer.
- (2) The chief administrative officer must make such enquiries as he or she considers necessary into any matter arising under this Part and if he or she is of the opinion that the Chief, an elected member, or a director is in contravention of this Act, he or she must make an application to Judicial Council.
- (3) If it is the chief administrative officer who reasonably believes that there is a contravention by the Chief, an elected member or a director, the process set out in subsection (2) must be followed.
- (4) If a Tsawwassen Member, an employee or a director reasonably believes that the chief administrative officer is in contravention of this Act, he or she must immediately report the matter to the Chief, who must determine what action, if any, is to be taken.

Application to Judicial Council

- 19** A Tsawwassen Member who files an affidavit, setting out reasonable grounds for believing that the Chief, an elected member or director is in contravention of this Act, may make an application to Judicial Council.

Responding to an application

- 20** An application under this Part must be heard within 30 days of the date on which the application was filed and a decision must be rendered within the 14 days following the day on which the hearing ends.

Continuing to act

- 21** The Chief, an elected member or a director who is alleged to be disqualified may continue to act in his or her official capacity, unless Judicial Council makes a declaration under section 23 (a) to (d).

Timing of application

- 22** (1) An application under this Part may only be made within one year from the date the disqualification is alleged to have occurred.
- (2) In the case of the Chief or an elected member, an application under this section may be brought or continued whether or not an election has been held between the time the disqualification is alleged to have occurred and the time the application is or was commenced and whether or not the individual in respect of whom the application is being brought was re-elected in an election.

PART 4 – DECISIONS OF JUDICIAL COUNCIL

Powers of Judicial Council

- 23** After hearing an application, Judicial Council may declare that the Chief, the elected member or the director, as applicable,
- (a) is disqualified and order that position to be vacated,
 - (b) is disqualified as a member of Executive Council,
 - (c) must make restitution in an amount determined by Judicial Council,
 - (d) must pay a fine not to exceed \$5000,
 - (e) may remain in the position, subject to such conditions as Judicial Council may determine, or
 - (f) is not in contravention of this Act, in which case the matter must be dismissed.

Award of damages

- 24** If Judicial Council declares a person to be in conflict of interest because information obtained in contravention of section 12 was used to gain a monetary benefit, Judicial Council may order that person to pay an appropriate amount of money in damages to Tsawwassen First Nation.

Reimbursement of costs and expenses

- 25** Judicial Council, if it makes a declaration under section 23 (f), may order that any costs and expenses incurred by the defendant are reimbursed.

PART 5 – MISCELLANEOUS

Policies

- 26** Executive Council must establish policies consistent with this Act, including a conflict of interest policy for employees.

Regulations

- 27** (1) Executive Council may make regulations
- (a) considered necessary and advisable, ancillary to this Act and not inconsistent with it, and
 - (b) to provide for administrative and procedural matters for which no express, or only partial, provision has been made.

- (2) Without limiting the generality of subsection (1), Executive Council may make regulations as follows:
- (a) to define a word or expression used but not defined in this Act;
 - (b) to specify the content and form of affidavits required by this Act;
 - (c) to designate any Tsawwassen Institutions, Tsawwassen Corporations or other entities that it may wish to subject to all or part of this Act.

Interpretation

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

Commencement

- 29** This Act comes into force on the date of its enactment by Tsawwassen Legislature.