

KWANLIN DÜN FIRST NATION

Judicial Council Act

2016

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Kwanlin Dün First Nation

JUDICIAL COUNCIL ACT

The Council of the Kwanlin Dün First Nation hereby enacts as follows:

Preamble

- A.** The Kwanlin Dün have traditionally resolved disputes so as to preserve unity and harmony within the community.
- B.** The Kwanlin Dün traditions and values relating to justice are based on personal and clan responsibility for misconduct and redress and the importance of the common good of the community.
- C.** The Judicial Council must be an accessible, fair and respectful process in order to have community credibility to resolve disputes and enforce compliance with the laws made by the Kwanlin Dün First Nation.
- D.** The Judicial Council ensures accountability and transparency for the operation of the Kwanlin Dün First Nation government and this will enhance the effectiveness and integrity of the branches of the Kwanlin Dün First Nation government and promote public respect and confidence in the institutions of the Kwanlin Dün First Nation government.

Short title

- 1. This Act may be cited as the *Judicial Council Act*.

Definitions

- 2. (1) In this Act,

“Council” means the branch of the Kwanlin Dün First Nation established under Chapter 5 of the *Constitution of the Kwanlin Dün First Nation*.

“constitution” means the *Constitution of the Kwanlin Dün First Nation*, as amended from time to time;

“former Act” means the Judicial Council Act (Kwanlin Dün First Nation) passed by the Council on October 4, 2005; and

- (2) In addition to subsection (1), the definitions of the constitution shall also apply to this Act.

Binding on the Kwanlin Dün First Nation

3. This Act is binding on the Kwanlin Dün First Nation.

PART ONE
GENERAL PROVISIONS

Purpose

4. The purpose of this Act is to bring the Judicial Council into operation in accordance with the constitution and ensure that it is independent and impartial and operates in a manner consistent with Kwanlin Dün's traditional principles and values.

Conflicts with other Acts

5. In the event of a conflict or inconsistency between this Act and any other law of the Kwanlin Dün First Nation, this Act prevails to the extent of the inconsistency or conflict, unless the other Kwanlin Dün First Nation law contains a provision that it, or a provision of it, applies despite this Act.

6. In the event of a conflict or inconsistency between this Act and the constitution, the constitution prevails to the extent of the inconsistency or conflict.

PART TWO
JURISDICTION OF THE JUDICIAL COUNCIL

Jurisdiction

7. The Judicial Council may exercise any authority assigned to it in the constitution or in any law made by the Kwanlin Dün First Nation.

Negotiations

8. Upon the agreement of the parties, the Judicial Council may facilitate mediation services to negotiate a resolution in accordance with the rules made by the Judicial Council.

Resolved matters

9. The Judicial Council may not hear or make an order in respect of any matter that was resolved by mediation or negotiation without the consent of the parties or it appears that there

has been a material change in the facts or circumstances that formed the basis of the mediated or negotiated resolution.

Hearings

10. Upon an application made to the Judicial Council in accordance with its rules, the Judicial Council may hear matters and make a decision or an issue an order with respect to

- (a) matters assigned to the Judicial Council in the constitution or in any law made by the Kwanlin Dün First Nation; and
- (b) any other dispute where the parties to that dispute have agreed in writing that the Judicial Council may determine a matter.

Matters not raised

11. The Judicial Council may not make an order in respect of a matter that is not raised by any of the parties.

PART THREE APPLICATIONS AND HEARINGS

Informal and expeditious

12. An application before the Judicial Council shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit in accordance with the traditions and values of the Kwanlin Dün.

Hearing in absence of party

13. The Judicial Council may not hear an application in the absence of any party unless that party consents to the holding of the hearing in their absence or notice of the hearing was given to that party in accordance with the rules made by the Judicial Council or, in the absence of rules respecting the giving of such notice, in a manner satisfactory to the Judicial Council.

Constitutional questions

14. (1) Where the constitutional validity, application or operation of a law of the Kwanlin Dün First Nation, or a regulation of such a law, is in question before the Judicial Council in a proceeding under this Act, the law or regulation will not be found to be invalid, inapplicable or inoperable unless notice has been served on the Council.

(2) Except where otherwise ordered by the Judicial Council, the notice will be served at least ten days before the day on which the constitutional question is to be argued.

Continuation of hearing

15. Where a member of the Judicial Council dies, resigns or for any other reason is absent during all or part of a hearing, the remaining members shall continue the hearing.

Vexatious proceedings

16. The Judicial Council may order

- (a) the discontinuation of a proceeding if that proceeding is trivial or has been conducted in a vexatious manner; or
- (b) the prohibition of further proceedings commenced by a person if that person has persistently instituted trivial or vexatious proceedings, except without the consent of the Judicial Council.

Information made available

17. Before disposing of an application, the Judicial Council shall make any information that it intends to use in the disposition available to the parties and provide them a reasonable opportunity to respond to the information.

Conflict of interest

18. A member shall not hear an application, or continue to hear, if doing so would place the member in a conflict of interest within the meaning of the constitution.

PART FOUR DECISIONS OF THE JUDICIAL COUNCIL

Conditional orders

19. The Judicial Council may direct that an order, or any provision of an order, come into force at a future time or on the happening of a specified contingency, event or condition or on the performance to the satisfaction of the Judicial Council, or a named person, of any terms that the Judicial Council may impose on any interested party, and the Judicial Council may direct that the order or any part of the order has force for a limited time or until the happening of a specified contingency, event or condition.

Interim orders

20. The Judicial Council may make interim orders that it considers appropriate pending the final disposition of an application.

Stay of proceedings

21. The Judicial Council may, in its discretion, stay proceedings in any matter
- (a) if the matter has been commenced by the applicant in another court; or
 - (b) where it is in the interest of justice that the proceedings be stayed.

Costs

22. The costs relating to an application to or a hearing before the Judicial Council that are incurred by the parties are in the discretion of the Judicial Council and the Judicial Council may, by order, award such costs on or before the final disposition of the application.

Reasons for decisions

23. The Judicial Council shall give written reasons for every decision that it makes in relation to an application.

Copies

24. As soon as practicable after making a decision in relation to an application, the Judicial Council shall give copies of the decision and the reasons for it to the parties.

Proof of orders

25. A document purporting to be an order of the Judicial Council, or to be certified by the Chair or any other person authorized by the rules as a true copy of such an order, is evidence of the making of the order and of its contents, without proof of the signature or official character of the person appearing to have signed the order or certified the copy.

Enforcement of orders

26. An order of the Judicial Council may be made an order of the Supreme Court of the Yukon Territory by filing a certified copy of the order with the registrar of the Court and, when so made, the order is enforceable in the same manner as an order of that Court.

PART FIVE
REVIEW OF ORDERS

Appeal

27. Subject to section 28, a decision or order of the Judicial Council is final and not subject to appeal.

Judicial review of order

28. On application for judicial review, the Supreme Court of Yukon may
- (a) order the Judicial Council to do any act or thing that it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
 - (b) prohibit, restrain, declare invalid or unlawful, quash, set aside and refer back for determine in accordance with such directions as it considers appropriate, any decision, order, act or proceeding of the Judicial Council.

Grounds of review

29. The Supreme Court may grant relief if it is satisfied that the Judicial Council
- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - (b) failed to observe a principle of natural justice, procedure fairness or other procedure that it was required by law to observe;
 - (c) erred in law in making a decision or order, whether or not the error appears on the face of the record;
 - (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
 - (e) acted, or failed to act, by reason of fraud or perjured evidence; or
 - (f) acted in any other way that was contrary to law.

Technical irregularity

30. The Supreme Court may refuse any application for judicial review founded solely on a defect in form or other technical irregularity if it finds that no substantial wrong or miscarriage of justice has occurred and, if the technical irregularity was in a decision or order, it may make an order validating the decision or order, effective from such time and on such terms as it considers appropriate.

Interim orders

31. On an application for judicial review, the Supreme Court may make such interim orders as it considers appropriate pending final disposition of the application.

Limitation

32. An application for judicial review in respect of a decision or order of the Judicial Council must be made within thirty days after the day on which the decision or order was issued.

PART SIX RULES

Power to make rules

33. The Judicial Council may make rules for the operation of the Judicial Council and the conduct and management of its administrative affairs consistent with the Kwanlin Dün's traditional principles and values set out in Schedule "A" of this Act, including rules

- (a) respecting the conduct of pre-hearing, negotiation and mediation sessions;
- (b) respecting the practice and procedure in relation to applications to and hearings before the Judicial Council, including the service of documents, the imposition of reasonable time limits and the orderly conduct of hearings;
- (c) prescribing the powers, duties and functions of the Chair;
- (d) in the case of a member whose term has expired, respecting the member's ability to continue to perform their functions in relation to a matter for which a hearing is held;
- (e) establishing procedures that may be followed in the mediation of matters in dispute;
- (f) establishing procedures for the conduct of hearings;
- (g) respecting the maintenance and operation of the registry, including the treatment of confidential documents; and
- (h) respecting the allowance of costs.

Consultation with citizens and the Council

34. Prior to approval of a rule or amendment of a rule, the Judicial Council shall consult with citizens and the Council with respect to the proposed rule or amendment to a rule.

Notice of proposed rules

35. Each rule made by the Judicial Council and any amendment of a rule shall be laid before the next meeting of the General Assembly following the Judicial Council's approval of the rule or amendment of the rule.

PART SEVEN
REGISTRY

Establishment of registry and materials to be maintained in the registry

36. The Judicial Council shall maintain a public registry for the custody and care of all documents filed with the Judicial Council, including

- (a) any written documents or correspondence filed with the Judicial Council;
- (b) any decisions or orders made by the Judicial Council relating to an application;
- (c) any correspondence from the Judicial Council to the parties or a party relating to an application;
- (d) reasons for a decision;
- (e) agreements amongst the parties;
- (f) transcripts of the proceedings, if any; and
- (g) all other material as may be required in the rules made by the Judicial Council.

Access to the documents in the registry

37. Upon reasonable notice, a person may examine any document during regular business hours that has been filed in the registry and request copy of such document in accordance with the rules made by the Judicial Council, unless a law made by the Kwanlin Dün First Nation or an order otherwise provides.

Confidentiality

38. The Judicial Council may order that a document filed in the registry or produced at a hearing be treated as confidential, be sealed and not form part of the public record.

PART EIGHT
HEAD OFFICE AND MEETINGS

Head office

39. The head office of the Judicial Council shall be located at Whitehorse.

Business meetings

40. The meetings of the Judicial Council shall be held at such times and at such places as the Judicial Council considers necessary or desirable for the proper conduct of its business.

Participation by telephone

41. Subject to any rule made by the Judicial Council, any member of the Judicial Council may participate in a business meeting by means of telephone or other communication facilities that are likely to enable all persons participating in the meeting to hear each other and a member so participating is deemed for all purposes of this Act to be present at that meeting.

PART NINE GENERAL

Staff

42. The Judicial Council may employ such officers and employees and engage the services of such agents, advisors and consultants as are necessary for the proper conduct of its business and may fix the terms and conditions of their employment or engagement and pay their remuneration.

Absence of the Chair

43. The Chair may designate another member of the Judicial Council, in accordance with any rules made by the Judicial Council, to carry out the duties and responsibilities of the Chair in his or her absence.

Resignation

44. A member of the Judicial Council may resign by providing written notice to the Judicial Council.

Complaints

45. (1) A member of the Judicial Council holds office during good behavior.

(2) A person may make a written complaint to the Chair or to the members of the Judicial Council, if the complaint relates to the Chair, that the conduct or competency of that member is compromising the repute of the Judicial Council or obstructing its operation.

(3) Upon review of a complaint, the Chair or members of the Judicial Council, as appropriate, may

- (a) require the complainant to provide further information;
- (b) make a recommendation in writing to the Council, including suspension or removal of the member from the Judicial Council, with reasons;

- (c) dismiss the complaint if it is frivolous, vexatious or trivial; or
- (d) take any other action that they consider appropriate.

(4) The member of the Judicial Council subject to a complaint shall not be part of the Judicial Council's review or deliberation of that complaint. The member may make a submission to the Judicial Council in response to the complaint and that submission shall be provided to the complainant, unless the Council orders otherwise.

(5) Upon receipt of a recommendation under paragraph (3)(b), the Council, including the Elders Council, shall give it full and fair consideration and accept, reject or vary it.

(6) If the Council rejects or varies the recommendation made by the members of the Judicial Council, the Council and Chair or members, as appropriate, shall convene a meeting and then the Council shall make a final decision.

(7) The Chair or members of the Judicial Council, as appropriate, shall notify the complainant in writing if they decide not to act on a complaint or not to continue acting. They are not required to give reasons for the decision.

Acts done in good faith

46. No action lies against a member or an officer or employee of the Judicial Council for anything done or omitted to be done in good faith in the performance, or purported performance, of any function under this Act.

Regulations

47. The Council may make regulations generally for carrying the purposes and provisions of this Act into effect, including the establishment of a process to set the remuneration rates and payment of expenses for members of the Judicial Council.

48. The Council may make regulations for the purposes of this Act by an ordinary order in Council.

PART TEN FINANCIAL PROVISIONS

Annual budget

49. The Judicial Council, in consultation with the Director of Justice for the Kwanlin Dün First Nation, shall annually submit a budget for the next following fiscal year to the Council for consideration and, taking into account that budget, the Council shall provide funding to the Judicial Council for its operation and administration during the following fiscal year.

Accounts

50. The Kwanlin Dün First Nation shall maintain books of account and records of the Judicial Council in accordance with accounting principles recommended by the Canadian Institute of Chartered Accountants or its successor.

Consolidated financial statements

51. The Kwanlin Dün First Nation shall prepare consolidated financial statements of the Judicial Council in respect of that fiscal year in accordance with the accounting principles referred to in section 49 and shall include in them such information or statements as are required in support of the consolidated financial statements.

Audit

52. The auditor of the Kwanlin Dün First Nation shall audit the accounts, financial statements and financial transactions of the Judicial Council annually and shall make a report of the audit to the Judicial Council and to the Council.

PART ELEVEN TRANSITION

Administration of justice agreement

53. (1) Any provision of this Act that provides for matters respecting the administration of justice shall be deemed to be inoperative

- (a) until an administration of justice agreement is reached pursuant to section 13.6.3 of the Kwanlin Dün Self-Government Agreement, or
- (b) the time described in section 13.6.6 of Kwanlin Dün Self-Government Agreement expires or whichever event occurs first.

(2) Upon the occurrence of the event provided for in paragraph (1), that paragraph shall be spent and all provisions of this Act shall be of full force and effect.

Repeal

54. The former Act is repealed.

Completion of matters commenced under the former Act

55. Any mediation or hearing commenced under the former Act before the day on which this Act comes into force must be continued as if the former Act had not been repealed.

56. This Act comes into legal force on a day to be fixed by the Council.

SCHEDULE "A"

(Section 33)

Kwanlin Dün's traditional principles and values relating to justice

- A. Personal responsibility
- B. Clan responsibility
- C. Accountability of offenders
- D. Re-establishment of community harmony
- E. Healing and renewal
- F. Community forgiveness