



Huu-ay-aht First Nations Tribunal

Government Office: 170 Nookemus Rd, Anacla, BC

Mailing Address: 3483 - Third Ave., Port Alberni, BC V9Y4E4

Interim Chair: John R. Rich

Registrar: Connie Waddell

tribunal@huyuayht.org

TRIBUNAL DIRECTIVE #2011-2

TRIBUNAL RULES OF PRACTICE AND PROCEDURE

November 28, 2011

Effective immediately, applications to the Tribunal and procedure before the Tribunal will be governed by the *Rules of Practice and Procedure* dated November 28, 2011, attached hereto.

**John R. Rich
Interim Chair Transitional Tribunal**



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RULES OF PRACTICE AND PROCEDURE

PART I – RULES

A. Guiding Principles

1. These Rules are to be read together with the *Tribunal Act*, including those sections of the *BC Administrative Tribunals Act* which are adopted pursuant to Section 33 of the *Act*, and other relevant HFN legislation.
2. These Rules consist of:

Part I – Rules
Part II – Table of Forms
Part III - Concordance
Schedule A – Forms
3. The purpose of these Rules is to ensure:
 - (a) the fair and just resolution of matters brought before the Tribunal;
 - (b) the conduct of a proceeding is proportional to the complexity of the matter before the Tribunal;
 - (c) flexibility in the conduct of matters before the Tribunal; and
 - (d) matters before the Tribunal are resolved in a timely manner.

B. Interpretation

1. In these rules “Tribunal” means any of the chair, acting chair, panel of members, or a panel of one member, as the case may be.
2. Non-compliance with these rules does not nullify an Application or a response to an Application unless the Tribunal rules otherwise.
3. The Tribunal may issue Practice Directives and Public Notices, which will be available for review at the Tribunal Registry and posted on the Tribunal website.

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4. Where these Rules do not provide sufficient guidance on procedure, the Tribunal may make reference to the British Columbia Supreme Court Civil Rules for guidance.

C. Applications to Tribunal

1. Matters may be brought before the Tribunal by filing in the Tribunal Registry the appropriate Notice of Application form specified in Part II and III of these Rules.
2. A Notice of Application may be filed by delivery to the Tribunal Office at Anacra, to the attention of the Tribunal Registrar, or as directed by Public Notice or Practice Directive of the Tribunal.
3. Where a Notice of Application submitted to the Tribunal is not complete, the Tribunal may:
 - (a) provide the Applicant with an opportunity to complete the Application; or
 - (b) reject the Application.
4. Upon receipt of a Notice of Application, or upon receipt of a Response, Reply, amendment or further Application, the Tribunal may:
 - (a) dismiss the Application pursuant to Rule J Summary Dismissal;
 - (b) convene a Case Management Conference in accordance with Rule K Case Management Conference;
 - (c) refer the Application to a Dispute Resolution Process in accordance with Rule L Dispute Resolution Process;
 - (d) issue a Direction on Procedure pursuant to Rule K Case Management Conference or the Tribunal's powers pursuant to the *Tribunal Act*; or
 - (e) set the Application for a Summary Hearing pursuant to Rule M Summary Hearing and Disposition.

D. Service & Delivery of Documents

1. Upon receipt of a complete Notice of Application, the Tribunal Registrar will deliver a copy of the Notice of Application to the Executive Council by leaving a copy with the Executive Director.
2. The Tribunal will not further consider an Application until service has been effected in accordance with this Rule.
3. Where a Notice of Application identifies a Respondent, the Registrar must serve the Notice of Application on that Respondent.
4. Where an Application is brought pursuant to the *Election Act*, the Commissioner is responsible for service of the Application on all persons having a direct interest in the Application who have not been otherwise served.

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5. Service on a Respondent is to be effected by leaving a copy of the Notice of Application with him or her.
6. Where an Applicant or Respondent has provided an address for delivery, service or delivery of a document may be effected by delivering a copy of that document to that address.
7. Proof of service or delivery may be established by:
 - (a) acknowledgment in writing by the person served; or
 - (b) a solemn declaration of the person serving or delivering the document in Form D1.
8. Notwithstanding sub-rule D2, the Tribunal may proceed with consideration of an Application where service has not been properly effected if there is no prejudice to any party or if any such prejudice can be addressed by an adjournment or other means.
9. Notwithstanding sub-rule D3, in the case of an Application pursuant to Section 17(1)(e) of the *Tribunal Act*, the Applicant is responsible for service of the Application on the Respondent(s).

E. Notice of Response

1. Where a Notice of Application is served on a Respondent, the Respondent must file a Notice of Response in Form B1 or B4 within 14 days of service of the Notice of Application.
2. The Notice of Response by the Respondent must be delivered to the Applicant by the Tribunal Registrar forthwith upon the Notice being filed in the Tribunal Registry.
3. In the event that the Respondent fails to file a Notice of Response, the Tribunal may proceed to consider the Application and render a decision without further notice to the Respondent, as the case may be.
4. In an Application pursuant to Section 17(1)(e) of the *Tribunal Act*, a Notice of Response may include a claim by the Respondent against the Applicant.

F. Notice of Reply

1. An Applicant may file a Notice of Reply in Form C1 to a Notice of Response when the Response raises new issues of fact or law, or includes a claim by the Respondent against the Applicant.
2. An Applicant is not required to file a Notice of Reply.
3. A Notice of Reply must be filed in the Tribunal Registry within 14 days of delivery of the Notice of Response to the Applicant.

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4. A Notice of Reply must be delivered to the Respondent or the Executive Council, as the case may be, by the Tribunal Registrar forthwith upon the Notice being filed in the Registry.

G. Intervenor

1. A person, including the Executive Council, wishing to intervene in a proceeding before the Tribunal may file a Notice of Application to Intervene, in Form B2, in the Tribunal Registry.
2. The Tribunal Registrar will deliver copies of the Notice of Application to Intervene to all parties. Any party wishing to support or oppose the intervention may file a Notice of Response to Application to Intervene in Form A12 within 14 days of delivery.
3. At the expiry of time for filing Notices of Response to the Application to Intervene, the Tribunal may:
 - (a) allow the intervention;
 - (b) allow the intervention on terms; or
 - (c) deny the intervention.

H. Extension or Abridgment of Time

1. The Tribunal may extend or abridge time limits specified in these rules where such extension or abridgment is not contrary to legislation, special circumstances exist, and there is no injustice or prejudice to another party.

I. Amendments

1. A party who has filed a Notice of Application, Notice of Response, or Notice of Reply may at any time apply to the Tribunal to amend that Notice.
2. An application for amendment must be served on the Applicant, Respondent(s) or Executive Director, and intervenors, as the case may be.
3. On receipt of an application for amendment, the Tribunal may hear from the parties and intervenors either orally or in writing, and may:
 - (a) allow the amendment;
 - (b) allow the amendment on such terms as the Tribunal may determine; or
 - (c) dismiss the application for amendment.

J. Summary Dismissal of Application

1. At any time after an application is filed, the Tribunal may dismiss all or part of it if the Tribunal determines:

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- (a) the Notice of Application is incomplete or otherwise defective;
 - (b) the Notice of Application was not filed within the applicable time limit;
 - (c) the Application is not within the jurisdiction of the Tribunal;
 - (d) the Application is frivolous, vexatious or trivial, made in bad faith or filed for an improper purpose or motive;
 - (e) the Applicant has failed to diligently pursue the Application, failed to comply with an Order of the Tribunal or failed to attend a Case Management Conference or a Hearing;
 - (f) there is no reasonable prospect that the Application will succeed; or
 - (g) the substance of the Application has been appropriately dealt with in another proceeding.
2. Before dismissing all or part of an Application under sub-rule S1, the Tribunal must give the Applicant an opportunity to make written submissions or otherwise be heard.
 3. If the Tribunal dismisses all or part of an Application under sub-rule S1, the Tribunal must inform the Applicant, any other parties, and any intervenors of its decision in writing and give reasons for that decision.

K. Case Management Conference

1. At any time, whether or not requested by a party, the Tribunal may convene a Case Management Conference and will notify the parties of the time and place of the conference.
2. The Tribunal may direct that the Case Management Conference be held by telephone conference.
3. All parties are obligated to attend a Case Management Conference convened by the Tribunal.
4. If an Applicant fails to attend a Case Management Conference without reasonable excuse, the Tribunal may dismiss the Application.
5. If a Respondent fails to attend a Case Management Conference without reasonable excuse, the Tribunal may proceed to render a decision on the Application and grant the remedy sought by the Applicant in whole or in part.
6. The Tribunal may make orders or directions at or following a Case Management Conference in respect to the following:
 - (a) procedure at Hearings or Summary Hearings, including, without limitation:
 - (i) order of presentation of evidence and argument;
 - (ii) the exclusion of witnesses from proceedings;

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- (iii) setting time limits for a hearing or submissions;
- (iv) the filing of written submissions by the parties; and
- (v) the transcribing or tape-recording of proceedings;
- (b) evidentiary matters;
- (c) the exchange of records and documents by the parties;
- (d) the exchange of witness lists;
- (e) directions to require an Applicant or Respondent to provide further information
- (f) the addition of a party to a proceeding;
- (g) witness fees and expenses; and
- (h) compelling the attendance of witnesses at any Hearing.

L. Dispute Resolution Process

1. With the agreement of the parties, the Tribunal may hold a Settlement Conference, to be presided at by the chair or a single Tribunal member.
2. With the agreement of the parties, the Tribunal may refer the matter to mediation before a member of the Tribunal or an independent mediator.
3. If the matter is not resolved through the Settlement Conference or mediation, as the case may be, a Tribunal member who has participated in the Settlement Conference or mediation may not, without the consent of the parties, take part in a subsequent hearing.

M. Summary Hearing and Disposition

1. Where the Tribunal is of the view that the legal and factual issues raised by a Notice of Application are such that the issues of fact and law are not complex and that Case Management is not required, the Tribunal may order that the Application be dealt with by Summary Hearing.
2. The Tribunal will notify the parties of the time and place of the Summary Hearing.
3. Appeals of tickets and compliance notices will be dealt with by Summary Hearing, unless special circumstances exist.
4. Where the Tribunal determines that an Application will be dealt with by a Summary Hearing, the Tribunal will notify the Applicant of that determination.
5. An Applicant whose Notice of Application has been determined to be a matter for Summary Hearing by the Tribunal, or who is appealing a ticket or compliance notice, may apply to the Tribunal for a full hearing pursuant to Rule N.

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6. On an Application under sub-rule M5 the Tribunal may order:
 - (a) that the matter be dealt with in a full Hearing; or
 - (b) that the matter be dealt with by Summary Hearing.
7. Summary Hearings will be held before the Tribunal chair or a single member of the Tribunal.
8. Summary Hearings are open to the public.
9. The procedure at a Summary Hearing will be at the discretion of the Tribunal with the objective of having a simple procedure to ensure that facts are appropriately determined and the parties are given an opportunity to be heard.
10. In the case of an appeal of a ticket or compliance notice, the Peace Officer or authority issuing the ticket or compliance notice is to be present.
11. In the event that the Applicant or the Respondent, as the case may be, fails to appear at a Summary Hearing, the Tribunal may proceed to consider the Application and render a decision without further notice to the party which has failed to appear.

N. Hearings

1. Except where a matter is dismissed or directed to a Summary Hearing, all Applications to the Tribunal are subject to a Hearing.
2. The Tribunal will notify the parties of the location and time of the Hearing.
3. At a Hearing, the Tribunal will sit as a panel of three or five members, except in exceptional circumstances.
4. The Tribunal chair or vice-chair will preside at Hearings and may make directions or orders respecting the procedure at a Hearing.
5. Hearings are open to the public.
6. In the event that the Applicant or the Respondent, as the case may be, fails to appear at a Hearing, the Tribunal may proceed to consider the Application and render a decision without further notice to the party which has failed to appear.

O. Evidence at Hearings

1. The Tribunal may receive and accept as evidence information that it considers relevant, necessary and appropriate, whether or not that information would be admissible in a Court of Law.

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2. Nothing is admissible before the Tribunal that is inadmissible in a Court of Law because of privilege under the law of evidence.
3. Witnesses giving oral evidence will do so under oath or affirmation.

P. Costs

1. The Tribunal may make orders for payment of costs, requiring a party to pay part or all of the costs of another party or an Intervenor in connection with the Application, or requiring an Intervenor to pay part or all of the costs of the party or another Intervenor in connection with the Application.
2. In considering the amount of costs to award, the Tribunal will consider:
 - (a) success of a party on the matter before the Tribunal;
 - (b) success of any party on a significant issue before the Tribunal;
 - (c) conduct which has unduly increased the length or expense of a hearing;
 - (d) conduct which has been improper, vexatious, frivolous or abusive; and
 - (e) other factors which in the opinion of the Tribunal are relevant to the amount of costs.
3. When awarding costs, the Tribunal will provide reasons in writing respecting the decision to award costs and the amount.

PART II – TABLE OF FORMS

A. Notice of Application

- Form A1** – Appeal of Compliance Notice or Ticket
- Form A2** – Appeal of Administrative Decision
- Form A3** – Challenge to Validity of Huu-ay-aht Law
- Form A4** – Reference re Question of Law
- Form A5** – Complaint about Conduct of Peace Officer *[yet to be enacted]*
- Form A6a** – Application for Disqualification of a Government Member (by individual)
- Form A6b** – Application for Disqualification of a Government Member (by group of at least 10 eligible voters)
(Note: to be complete, an Application in Form A6b must include one completed Form A6bi and separate declarations in A6bii completed by at least 10 individuals)
- Form A7** – Recall Petition Application
(Note: to be complete, an Application in Form A7 must include one completed Form A7i and separate declarations in A7ii completed by at least 10 individuals)
- Form A8** – Application for Constitutional Amendment Petition
(Note: to be complete, an Application in Form A8 must include one completed Form A8i and separate declarations in A8ii completed by at least 10 individuals)
- Form A9a** – Application for Sentencing Recommendations (by Prosecutor, Court or Executive Council)
- Form A9b** – Application for Sentencing Recommendations (by Individual)
- Form A10** – Application for Dispute Resolution
- Form A11** – Application to Lay an Information
- Form A12** – Application to Intervene
- Form A13a** – Application for Election Recount (by individual) *[yet to be enacted]*
- Form A13b** – Application for Election Recount (by group of at least 10 eligible voters) *[yet to be enacted]*

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Form A14a – Application for Declaration of Invalid Election (by individual)
[yet to be enacted]

Form A14b – Application for Declaration of Invalid Election (by group of at least 10
eligible voters) *[yet to be enacted]*

Form A15 – Challenge to Nomination *[yet to be enacted]*

Form A16 – General Notice of Application

B. Notice of Response

Form B1 – Response of Administrative Decision Maker

Form B2 – Response to Application to Intervene

Form B3 – Response to Application for Dispute Resolution

Form B4 – General Notice of Response

C. Notice of Reply

Form C1 – Reply to Notice of Response

D. Proof of Service

Form D1 – Proof of Service

PART III – CONCORDANCE

Act	Form
<i>Code of Conduct and Conflict of Interest Act</i> , s. 24	<p>Form A6a – Application for Disqualification of a Government Member</p> <p>Form A6bi – Application for Disqualification of a Government Member (List of Applicants)</p> <p>Form A6bii – Application for Disqualification of a Government Member (Solemn Declaration of Applicant)</p> <p>(Note: to be complete, an Application in Form A6b must include one completed Form A6bi and separate declarations in A6bii completed by at least 10 individuals)</p>
<i>Election Act</i> , s. 67	Form A13 – Application for Election Recount [<i>yet to be enacted</i>]
<i>Election Act</i> , s. 70	Form A14 – Application for Declaration of Invalid Election [<i>yet to be enacted</i>]
<i>Election Act</i> , s. 36	Form A15 – Challenge to Nomination [<i>yet to be enacted</i>]
<i>Offence and Law Enforcement Act</i> , s. 20	Form A1 – Appeal of Ticket or Compliance Notice
<i>Offence and Law Enforcement Act</i> , s. 29	Form A1 – Appeal of Ticket or Compliance Notice
<i>Offence and Law Enforcement Act</i> , s. 40	Form A5 – Complaint about Conduct of Peace Officer [<i>yet to be enacted</i>]
<i>Referendum and Recall Act</i> , s. 25	<p>Form A7i – Recall Petition Application</p> <p>Form A7ii – Declaration in Support of Recall Petition Application</p> <p>(Note: to be complete, an Application in Form A7 must include one completed Form A7i and separate declarations in A7ii completed by at least 10 individuals)</p>
<i>Referendum and Recall Act</i> , s. 33	<p>Form A8i – Application for Constitutional Amendment Petition</p> <p>Form A8ii – Declaration in Support of Application for Constitutional Amendment Petition</p> <p>(Note: to be complete, an Application in Form A8 must include one completed Form A8i and separate declarations in A8ii completed by at least 10 individuals)</p>
<i>Tribunal Act</i> , s. 17(a)	Form A2 – Appeal of Administrative Decision

<i>Tribunal Act</i> , s. 17(d)	Form A9a – Application for Sentencing Recommendations (by Prosecutor, Court or Executive Council) Form A9b – Application for Sentencing Recommendations (by Individual)
<i>Tribunal Act</i> , s. 17(e)	Form A10 – Application for Dispute Resolution
<i>Tribunal Act</i> , s. 17(f)	Form A11 – Application for Laying an Information
<i>Tribunal Act</i> , s. 26	Form A3 – Challenge to Validity of Huu-ay-aht Law
<i>Tribunal Act</i> , s. 28	Form A4 – Reference re Question of Law
<i>Tribunal Act</i> , s. 33	Form A12 – Application to Intervene

John R. Rich
Interim Chair Transitional Tribunal
November 28, 2011

SCHEDULE A – FORMS