



# REVIEW AND APPEAL LAW

TNL 11/2016

Enacted on April 5, 2016  
Corrected on June 23, 2016

  
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Hegus [SIGNATURE]

CLINT WILLIAMS  
\_\_\_\_\_  
Hegus [NAME]

DEPOSITED IN THE TLA'AMIN  
REGISTRY

ON 19 / 07 / 16  
(day/month/year)

  
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Signature of Law Clerk

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**PREAMBLE**

**WHEREAS:**

- A. Tla'amin Ta'ow (*teachings*) are our traditional teachings and unwritten laws that our Ancestors lived by. In creating written laws, we continue to honour and uphold our Ancestral practices, teachings and core values. Through our laws, we reinforce the principles of respect, unity and connection to our lands and resources. We vow to keep these teachings and principles in mind in all that we do as Tla'amin people;
- B. Through this Law and other Tla'amin enactments, we are continuing to exercise our inherent right of self-determination. The Tla'amin Government will govern in an accessible, accountable and transparent manner;
- C. As we have always done, we continue to occupy our lands and carry out our Ta'ow (*teachings*) that require us to be stewards of our lands and resources today and always, and we are committed to the responsible, sustainable stewardship of lands, waters, air and other resources. In upholding our responsibilities, we will continue to seek the guidance of the Creator, our Ancestors and the knowledge of Tla'amin Elders as we protect and make decisions about managing our lands and resources;
- D. Our vision of self-government and of a healthy, self-sufficient Tla'amin Nation began long ago with our Ancestors and our leadership of the past. Many of those who were involved in shaping and advancing our vision have passed on and we acknowledge their contributions and sacrifice. They put in place the foundation that we have built upon today. Those respected ones have cleared the path so that we, the Tla'amin Nation, could achieve our vision of "one heart, one mind, one Nation";
- E. It is on this basis that we accept the obligations and responsibilities inherent in governing and work to blend our traditional and modern-day governing approaches, including the development of review and appeal laws;
- F. Through our written *Constitution* and this *Review and Appeal Law*, we reinforce our Nation's objectives including Tla'amin unity, good faith engagement among ourselves and with our neighbours and maintaining enduring connections to our lands and resources;
- G. Further, we are committed to pursuing the economic, social and cultural wellbeing of our Nation with the aim of sustaining and improving the quality of life for present and future Tla'amin generations;
- H. It is our intention to accomplish this through a transparent and responsible process for reviews and appeals of administrative decisions carried out by the Review and Appeal Panel;
- I. We vow to keep our Ta'ow (*teachings*) and these principles in mind in all that we do as Tla'amin people. The Tla'amin Nation adopts this Law based on these values and principles;
- J. Under section 31 of the *Constitution*, the Tla'amin Government may exercise any right, power, privilege or authority, and may carry out any duty, function or obligation, of the

Tla'amin Nation or Tla'amin Government in accordance with Tla'amin law, the *Constitution* and the Final Agreement including making any law within the authority of the Tla'amin Government;

- K. Under paragraph 1 of Chapter 15 [*Governance*] of the Final Agreement, the Tla'amin Nation has the right to self-government, and the authority to make laws, as set out in the Final Agreement;
- L. Under paragraph 47 of Chapter 15 [*Governance*] of the Final Agreement, the Tla'amin Nation has the authority to make laws in relation to the administration, management and operation of the Tla'amin Government; and
- M. Under paragraph 3 of Chapter 15 [*Governance*] of the Final Agreement, the authority of the Tla'amin Nation to make laws in relation to a subject matter under the Final Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising its authority.

**NOW THEREFORE** the Legislative Assembly enacts as follows:

## PART 1 - GENERAL

### Citation

1. This Law may be cited as the *Review and Appeal Law*.

### Application

2. This Law applies to reviews and appeals carried out by the Review and Appeal Panel and establishes the administrative decision review and appeal policy which applies to reviews and appeals carried out by administrative decision makers.

### Definitions

3. In this Law,

“Administrative Decision Review and Appeal Policy” means the policy established under section 7;

“alternate panel member” means an individual appointed under section 10(1)(b) as an alternate member of the Review and Appeal Panel;

“applicant” means an individual who has submitted an application for a review or appeal under this Law;

“chair” means the chairperson of the Review and Appeal Panel;

“committee” includes the Finance Committee, the Economic Development Committee, the Citizenship Committee and any other Tla'amin committee;

“Complaints and Whistleblower Policy” means the Complaints and Whistleblower Policy approved by the Executive Council in accordance with the *Administration and Finance Law*;

“Economic Development Agreement” has the meaning given to that term in the *Economic Development Law*;

“oath of office” means the oath of office for panel members set out as Schedule A to this Law;

“panel member” means a member of the Review and Appeal Panel, and includes standing panel members and alternate panel members;

“panel order” means an order of the Review and Appeal Panel made under sections 16 to 23;

“panel recommendation” means a recommendation of the Review and Appeal Panel made under section 19(4);

“rules of procedure” means the rules of procedure made by the Review and Appeal Panel under section 28;

“standing panel member” means an individual appointed under section 10(1)(a) as a standing member of the Review and Appeal Panel; and

“wrongdoing” has the meaning given to that term in the *Administration and Finance Law*.

### **Interpretation**

4. (1) In addition to the terms defined in this Law, terms used in this Law may be defined in the *Interpretation Law*.
- (2) Only those defined terms that are capitalized in section 3 or in the *Interpretation Law* are presented capitalized in the text of this Law, and all other defined terms are presented in lower case.
- (3) References to “this Law” include any regulations made under this Law.

### **Severability**

5. The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

### **Validity**

6. Nothing under this Law must be rendered void or invalid by
  - (a) an error or omission in a notice, form or other document given or authorized under this Law; or
  - (b) a failure of the Tla’amin Nation or a Tla’amin official to do something within the required time.

## **PART 2 - ADMINISTRATIVE DECISION REVIEW AND APPEAL POLICY**

### **Establishment of administrative decision review and appeal policy**

7. (1) The Executive Council must establish a policy for the review and appeal of specified administrative decisions.
- (2) The policy established under subsection (1) will not apply to decisions that may be reviewed by or appealed to the Review and Appeal Panel, except in accordance with section 24.
- (3) The policy established under subsection (1) will
  - (a) specify the administrative decisions that are subject to review or appeal under that policy;
  - (b) describe the procedures to be followed by applicants for the review and appeal of specified administrative decisions; and

- (c) include the forms to be used for appeals of specified administrative decisions.

### **PART 3 - REVIEW AND APPEAL PANEL**

#### **Review and Appeal Panel established**

8. The Review and Appeal Panel is established.

#### **Appropriation of funds**

9. The Executive Council may make an appropriation of funds from the Tla'amin Government annual budget for the operation of the Review and Appeal Panel.

#### **Composition**

10. (1) The Review and Appeal Panel consists of
- (a) three standing panel members, and
  - (b) two alternate panel members,
- each of whom is appointed by the Legislative Assembly.
- (2) One of the standing panel members must have a law degree from a Canadian university or be authorized to practice law in Canada.
- (3) One of the standing panel members and one of the alternate panel members must be a Tla'amin individual.
- (4) One of the standing panel members will be appointed as chair by the Legislative Assembly.
- (5) In the event of temporary absence of a standing panel member, an alternate panel member will fill the vacancy until the standing member returns, unless the acting alternate panel member is involved in a review or appeal, in which case the alternate panel member will continue to serve until the review or appeal is concluded.

#### **Appointment**

11. (1) The Legislative Assembly will appoint the first panel members within two months of the Effective Date.
- (2) The Legislative Assembly will fill any vacancies on the Review and Appeal Panel within three months of being advised of the vacancy.
- (3) When an individual is appointed to replace a panel member who did not complete a full term, that individual's appointment will end at the end of the initial panel member's term.
- (4) The Legislative Assembly will appoint panel members within two months of the second general election of the Tla'amin Nation, and thereafter within two months after every general election.



**Term**

12. (1) The term of office of panel members shall be as follows:
- (a) the first panel members shall serve from the date of their appointment until two months after the second general election of the Tla'amin Nation,
  - (b) panel members appointed following the second general election and every subsequent election shall serve until two months after the next general election,
  - (c) subject to paragraph (d), standing panel members may be reappointed for one additional full term, but may not sit for more than two consecutive full terms, and
  - (d) if a standing panel member is appointed to complete another panel member's term, this partial term is not considered for the purposes of determining how many full terms they have served,
- unless their terms are extended under subsection (2) or they are removed under section 13.
- (2) If standing panel members have started, but not completed, a review or appeal under this Law at the time their term would ordinarily end, their terms will be extended until the review or appeal is concluded.
  - (3) Despite the extension of standing panel members' terms under subsection (2), new standing panel members will take office in accordance with section 11(4) and assume responsibility for any new reviews or appeals.

**Removal of panel member**

13. (1) A panel member may be removed by the Legislative Assembly if the Legislative Assembly determines that
- (a) they have breached their oath of office;
  - (b) they have committed a wrongdoing; or
  - (c) they are unable to perform their duties in accordance with this Law.
- (2) A panel member who ceases to hold office under subsection (1) is deemed to have ceased holding office on the date
- (a) of their death or resignation; or
  - (b) the Legislative Assembly passes a resolution removing the panel member.
- (3) Any proceeding before the Review and Appeal Panel in which a standing panel member has participated before their death, resignation or removal does not render that decision invalid by virtue only of their death, resignation or removal.

### **Duties of chair**

- 14.** The role of the chair is to oversee the review and appeal process and includes the following duties:
- (a) chairing meetings and hearings;
  - (b) ensuring the proper application of the rules of procedure;
  - (c) assigning duties to panel members;
  - (d) reviewing application for reviews and appeals to determine if they fall within the scope of this Law and, if they do not, advising applicants accordingly; and
  - (e) taking any administrative steps that they consider necessary for the proper functioning of the Review and Appeal Panel.

### **Chair's absence**

- 15.** (1) In the event the chair is absent or expects to be absent, they may designate another standing panel member to serve as vice-chair for the duration of the absence.
- (2) If the chair is incapacitated or otherwise unable to designate a vice-chair under subsection (1), the Executive Council may designate a standing panel member to serve as vice-chair.
- (3) If the chair is absent for an extended or indefinite period of time, the designated vice-chair will serve until the chair returns to duty or until the end of the term, whichever occurs first.
- (4) A vice-chair designated under subsection (1) or (2) has all the powers and may perform all the duties of the chair.

## **PART 4 - AUTHORITY OF THE REVIEW AND APPEAL PANEL**

### **Appeals of decisions**

- 16.** (1) The Review and Appeal Panel may, subject to the limits set out in section 25, hear appeals, of decisions made by the Citizenship Committee to
- (a) refuse an individual's application to enroll or re-enroll under section 18(1) of the *Citizenship and Enrolment Law*,
  - (b) revoke an individual's enrolment as a Tla'amin Citizen under section 23 of the *Citizenship and Enrolment Law*,
- in accordance with section 52 of the of the *Citizenship and Enrolment Law*.
- (2) The Review and Appeal Panel may, subject to the limits set out in section 25, hear appeals of decisions made by an elections officer in accordance with section 30(2)(b)

of the *Election Law* with respect to whether an individual is a qualified candidate in an election.

- (3) The Review and Appeal Panel may, subject to the limits set out in section 25, hear appeals of decisions made by an elections officer in accordance with section 65 of the *Election Law* with respect to whether the results of an election are valid.
- (4) Following the hearing of an appeal under subsection (1), (2) or (3), the Review and Appeal Panel must issue a panel order
  - (a) dismissing the appeal and upholding the original decision; or
  - (b) upholding the appeal, rescinding the original decision and issuing its own decision.

**Disputes regarding removal of members of Economic Development Committee or Operating Board**

17. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, hear disputes regarding a decision made by
  - (a) the Legislative Assembly to remove a member of the Economic Development Committee under section 14 of the *Economic Development Law* in accordance with the process set out in section 15 of that law; and
  - (b) the Holdings Board to remove a member of the Operating Board under section 2.7 of the Economic Development Agreement in accordance with the process set out in section 9.3 of that agreement.
- (2) In hearing a dispute under subsection (1), the Review and Appeal Panel will determine whether the conditions for removal have been met under
  - (a) section 14 of the *Economic Development Law*, in the case of a member of the Economic Development Committee; or
  - (b) section 2.7 of the Economic Development Agreement in the case of a member of the Operating Board.
- (3) Following a hearing under subsection (1), the Review and Appeal Panel must issue a panel order
  - (a) upholding the decision to remove the member; or
  - (b) setting aside the decision to remove the member and reinstating the member.

**Determination with respect to conflict of interest**

18. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, hear requests from an elected official or a member of a committee for a determination under section 15 of the *Conflict of Interest Law* and the *Tla'amin Nation Conflict of Interest*

*Regulation* regarding whether they have a conflict of interest or an apparent conflict of interest.

- (2) After a review of all the evidence that it has received, the Review and Appeal Panel must determine whether
  - (a) the evidence is not sufficiently substantive to determine that the individual has a conflict of interest or an apparent conflict of interest; or
  - (b) the evidence is sufficiently substantive to reach a reasonable conclusion that the individual has a conflict of interest or an apparent conflict of interest.
- (3) Once the Review and Appeal Panel has made its determination under subsection (2), it must issue a panel order setting out its determination.

### **Appeals of findings with respect to wrongdoing**

19. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, hear appeals of decisions made by the Executive Council or the Legislative Assembly under the Complaints and Whistleblower Policy with respect to allegations of wrongdoing by
  - (a) elected officials; and
  - (b) members of committees.
- (2) After a review of all the evidence that it has received, the Review and Appeal Panel must determine whether
  - (a) the evidence is not sufficiently substantive to determine that a wrongdoing has occurred or the decision was unreasonable, and dismiss the appeal; or
  - (b) the evidence is sufficiently substantive to reach a reasonable conclusion that a wrongdoing has occurred or the decision was reasonable, and uphold the appeal.
- (3) Once the Review and Appeal Panel has made its determination under subsection (2), it must issue a panel order setting out its determination.
- (4) Where the Review and Appeal Panel issues a panel order confirming that an individual has committed a wrongdoing under paragraph (2)(b), it may also make a panel recommendation to the Legislative Assembly or the Executive Council, as the case may be, regarding the imposition of penalties on that individual, including suspension, paying restitution or fines up to a maximum of \$5,000.
- (5) The Review and Appeal Panel must provide a copy of any panel recommendation it makes under subsection (4) to the Legislative Assembly or Executive Council, as the case may be.

### **Reviews – dispositions and trespass under *Land Law***

20. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, carry out a review of

- (a) an order made by the Executive Council with respect to land dispositions or compensation under section 34 or 35 of the *Land Law*, in accordance with section 36 of the *Land Law*; and
  - (b) an order to require the removal of structures or to seize personal property in relation to trespasses made by the Executive Council under section 39(3)(e), (f) or (g) of the *Land Law*, in accordance with section 43 of the *Land Law*.
- (2) After completing its review of an order described in paragraph (1)(a), the Review and Appeal Panel must issue a panel order in accordance with section 36(2) of the *Land Law*.
  - (3) After completing its review of an order described in paragraph (1)(b), the Review and Appeal Panel must issue a panel order in accordance with section 43(2) of the *Land Law*.
  - (4) The Review and Appeal Panel must provide a copy of its panel order under subsection (2) or (3) to the Executive Council and to the Director of Lands and Resources.

#### **Reviews – compensation for expropriation under *Land Law***

- 21. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, carry out a review respecting the amount of compensation payable to the owner of an estate or interest expropriated by the Tla'amin Nation under section 61 of the *Land Law*, in accordance with section 62 of the *Land Law*.
- (2) After completing its review as described in subsection (1), the Review and Appeal Panel must issue a panel order in accordance with section 62(2) of the *Land Law*.
- (3) The Review and Appeal Panel must provide a copy of its panel order under subsection (2) to the Executive Council and to the Director of Lands and Resources.

#### **Determinations – recall petitions**

- 22. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, make determinations regarding whether the process to file a petition under the *Recall Law* and the *Recall Regulation* has been followed and the requirements set out in section 15(2) of the *Recall Law* have been met.
- (3) Following the hearing regarding a petition under subsection (1), the Review and Appeal Panel must issue a panel order confirming whether or not a petition is complete and carry out its responsibilities under section 16(1) of the *Recall Law*.

#### **Dispute Resolution – among Tla'amin Entities**

- 23. (1) The Review and Appeal Panel may, subject to the limits set out in section 25, hear questions provided to it in relation to disputes between the Tla'amin Nation, the Holdings Board and other Tla'amin Businesses.
- (2) The parties to the dispute must provide the Review and Appeal Panel with a specific question that may be answered in the affirmative or negative.

- (3) Following the hearing regarding a dispute under subsection (1), the Review and Appeal Panel must issue a panel order that responds to the question it was asked to address or advise the parties that additional information is required for it to respond to their question.

#### **Responsibilities – other**

24. (1) Subject to subsection (2) and to the limits set out in section 25, the Review and Appeal Panel may make any other determinations of fact or review any other decisions at the request of the Executive Council or the Legislative Assembly.
- (2) The Review and Appeal Panel may refuse to undertake other responsibilities assigned to it by the Executive Council or the Legislative Assembly on the basis that it does not have the necessary expertise or resources to do so.

#### **Limits on power**

25. (1) The Review and Appeal Panel may not
  - (a) resolve disputes between Tla'amin Citizens;
  - (b) make determinations respecting the validity of Tla'amin laws or regulations, or laws of general application;
  - (c) make determinations respecting the validity or applicability of the *Criminal Code* (Canada), the *Constitution Act, 1982* (Canada), the *B.C. Human Rights Code* (British Columbia), the *Final Agreement* or the *Constitution*;
  - (d) make determinations respecting Aboriginal rights, title or self-governance; or
  - (e) impose fines or penalties, other than costs under section 35.
- (2) If a question concerning the matters set out in paragraphs (1)(b) to (d) is raised by a party in a Review and Appeal Panel hearing, the Review and Appeal Panel must refer that issue to a court of competent jurisdiction.
- (3) The Review and Appeal Panel may not establish new policy or vary existing policy, but it may make recommendations to the Executive Council or Legislative Assembly with respect to policy or legislative matters.

### **PART 5 - OFFICE OF THE REVIEW AND APPEAL PANEL**

#### **Oath of office and confidentiality**

26. (1) Before a panel member may take office, they must take the oath of office.
- (2) Panel members who cease to hold office must not divulge or in any way release confidential information obtained during their term in office.

**No other office to be held**

27. Panel members must not, while under appointment, hold any other public office within the Tla'amin Government, or collect fees exceeding \$6,000 per year or a salary from the Tla'amin Government, other than the remuneration set out in section 29.

**Rules of procedure**

28. (1) The Review and Appeal Panel has the power to control its own processes and, subject to the principles of natural justice and procedural fairness, the standing panel members must establish rules of procedure to facilitate the just and timely resolution of matters before it.
- (2) The rules of procedure must be consistent with this Law, the regulation passed under section 37(2) and any other regulations passed under this Law.
- (3) The Review and Appeal Panel must ensure that the rules of procedure are
- (a) filed in the Tla'amin Registry;
  - (b) forwarded to the Executive Council and the Legislative Assembly; and
  - (c) made available to the public.

**Remuneration**

29. (1) The Executive Council will establish the remuneration of panel members by order.
- (2) Panel members will be remunerated for carrying out reviews and appeals under this Law and if they are required to participate in any judicial review of their decisions.

**Clerk**

30. The Review and Appeal Panel may employ a clerk to take minutes of proceedings and assume any responsibilities as set out in the rules of procedure.

**PART 6 - GENERAL**

**Right to appear before the Review and Appeal Panel**

31. A person may not bring an application for review or appeal to the Review and Appeal Panel until all procedures for review or appeal under the Complaints and Whistleblower Policy, this Law or any Tla'amin enactment providing for a right of review or appeal have been exhausted.

**Hearings**

32. (1) Subject to subsection (3), the Review and Appeal Panel will hold any review or appeal by way of oral hearings.
- (2) Parties to a review or appeal may make written submissions.

- (3) Where all of the parties to a review or appeal agree, a review or appeal may be held by way of written submissions with no oral hearing.
- (4) The Review and Appeal Panel may make any interim order for the just and timely resolution of matters before it.

#### **Other information**

33. The Review and Appeal Panel may, if the evidence before it is not adequate for determining the merits of the review or appeal, request such other information as it deems necessary from the parties to the review or appeal before making a determination.

#### **Judicial review**

34. (1) The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by Tla'amin Institutions, including the Review and Appeal Panel, under a Tla'amin Law.
- (2) An application for judicial review under subsection (1) may not be brought until all processes for appeal or review established by the Tla'amin Nation, and applicable to that decision, including any appeal or review process under this Law, have been exhausted.
- (3) The *Judicial Review Procedure Act* (British Columbia) applies to an application for judicial review under subsection (1) as if the Tla'amin law were an enactment within the meaning of the *Judicial Review Procedure Act* (British Columbia).

#### **Costs**

35. The Review and Appeal Panel may award costs up to a maximum of \$2,000.

#### **Good faith performance**

36. No action lies against the Review and Appeal Panel or any of its members for anything done or omitted to be done in good faith in the performance or intended performance of a duty under this Law.

### **PART 7 - REGULATIONS**

#### **Regulation-making authority**

37. (1) The Executive Council may make any regulations it considers necessary and advisable for the purposes of this Law.
- (2) The Executive Council must make regulations setting out those matters that must be addressed in the Review and Appeal Panel's rules of procedure.



**PART 8 - COMING INTO FORCE**

**Coming into force**

- 38.** (1) This Law comes into force on the date it is enacted by the Legislative Assembly.
- (2) For greater certainty, this Law is in effect as of April 5<sup>th</sup>, 2016 and the corrections dated June 23<sup>rd</sup>, 2016 apply as of April 5<sup>th</sup>, 2016.

**THIS LAW IS HEREBY DULY ENACTED by the Legislative Assembly on the 5th day of April, 2016 and IS HEREBY DULY AMENDED WITH CORRECTIONS on the 23rd day of June, 2016 on Tla'amin Lands, in the Province of British Columbia.**

**SCHEDULE A - OATH OF OFFICE**

I, [insert name], solemnly swear or affirm that:

- (a) I will faithfully, truly and impartially, without fear or favour and to the best of my judgment, skill and ability, carry out my duties as a member of the Tla'amin Nation's Review and Appeal Panel in accordance with the *Review and Appeal Law* and its regulations and policies;
- (b) I will not, except in the discharge of my duties, disclose to any person any of the information or other matters brought before the Review and Appeal Panel;
- (c) I will avoid any actual, potential or apparent conflict of interest; and
- (d) I will be accountable for adhering to this oath to the best of my knowledge and ability for the duration of my term in office.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**LEGISLATIVE HISTORY**

(Note: The Legislative History is for administrative purposes only and is not part of the Law.)

*Review and Appeal Law* [TNL 11/2016] enacted April 5, 2016.

**Amendments and Corrections**

Table of Legislative Changes

Name of Law or Order	Law or Order Number	Date Amended or Corrected	Section(s) Amended
Order correcting the <i>Review and Appeal Law</i>	TNO- LA ____/2016	June 23, 2016 (corrections in effect April 5, 2016)	Clerical corrections to sections 2, 20, 21 and 38.

**Regulations enacted under this Law:**

*Review and Appeal Panel Forms Regulation* [TNReg 11/2016]

*Review and Appeal Panel Rules of Procedure Regulation* [TNReg 10/2016]