

**NAK'AZDLI WHUT'EN IMMUNITY AND INDEMNITY LAW, 2018**

## NAK'AZDLI WHUT'EN IMMUNITY AND INDEMNITY LAW, 2018

### WHEREAS

A. Pursuant to subsection 6(3) of the *First Nations Land Management Act* and clause 6.1 of the *Framework Agreement*, a First Nation may enter into an *Individual Agreement* with the Minister that brings the First Nation into the land management regime set out in the *First Nations Land Management Act*.

B. An *Individual Agreement*:

- describes the land that must be subject to a land code;
- provides for the transfer and administration of that land;
- describes the interests or rights and licences that have been granted by Canada to the First Nation in relation to that land;
- describes the date and other terms of the transfer to the First Nation of Canada's rights and obligations as grantor of those interests or rights and licences; and
- sets out the environmental assessment process that must apply to projects on that land until the enactment of a First Nations law in relation to that subject;

C. Pursuant to section 6 of the *First Nations Land Management Act* a First Nation that wishes to establish a land management regime in accordance with the *Framework Agreement* and the *First Nations Land Management Act* must adopt a land code applicable to all land in a reserve of the First Nation;

D. Nak'azdli Whut'en signed an *Individual Agreement* with Canada on October 22, 2016;

E. Nak'azdli Whut'en enacted the *Nak'azdli Whut'en Reserve Land Code* on October 22, 2016;

F. Pursuant to section 7.1 of the *Nak'azdli Whut'en Reserve Land Code*, the Council of Nak'azdli Whut'en may enact Nak'azdli Whut'en Land Laws respecting the management of Nak'azdli Whut'en Reserve Land;

G. Nak'azdli Whut'en wishes to enact a Nak'azdli Whut'en Land Law concerning the personal immunity from liability of Nak'azdli Whut'en public officials in their exercise of powers or performance of duties or functions in accordance with the *Nak'azdli Whut'en Reserve Land Code*, and Nak'azdli Whut'en Land Laws enacted in accordance with the *Nak'azdli Whut'en Reserve Land Code*, and the process by which those individuals may be indemnified by Nak'azdli Whut'en; and

H. The Council of Nak'azdli Whut'en believes it is in the best interests of Nak'azdli Whut'en to enact a Nak'azdli Whut'en Land Law that covers those matters set out in recital (I), above,

**NOW THEREFORE** Council of Nak'azdli Whut'en enacts the following law as a law of Nak'azdli Whut'en.

- 3 -  
**PART 1**  
**CITATION**

1. This Law may be cited as the *Nak'azdli Whut'en Immunity and Indemnity Law, 2017*.

**PART 2**  
**DEFINITIONS, INTERPRETATION AND APPLICATION**

**Definitions**

2. Unless the context indicates the contrary, in this Law the following definitions will apply:

“Council” means the Chief and Councillors of Nak'azdli Whut'en or any successor elected government of Nak'azdli Whut'en;

“exercise of powers or performance of duties or functions” means the exercise of a power or performance of a duty or function of a public official in their carrying out of:

- (a) a power or duty assigned to them in the *Nak'azdli Whut'en Reserve Land Code* or a Nak'azdli Whut'en Land Law; or
- (b) a duty or function of which they are responsible for in the *Nak'azdli Whut'en Reserve Land Code* or a Nak'azdli Whut'en Land Law;

“Law” means this *Nak'azdli Whut'en Immunity and Indemnity Law, 2018*;

“member” means a person whose name appears on Nak'azdli Whut'en Membership List;

“Nak'azdli Whut'en” means the Nak'azdli Whut'en First Nation and its members;

“Nak'azdli Whut'en council resolution” means a formal, documented decision made by a majority of Council at a duly convened meeting of Council;

“public official” means:

- (a) a member of Council;
- (b) an officer or employee of the Nak'azdli Whut'en Reserve Lands Office;
- (c) the Nak'azdli Whut'en Reserve Capital and Lands Manager;
- (d) a member of the Nak'azdli Whut'en Reserve Lands Advisory Committee; and
- (e) any person who is responsible for the exercise of powers or performance of duties or functions under either the *Nak'azdli Whut'en Reserve Land Code* or a Nak'azdli Whut'en Land Law.

## **Interpretation**

3. This Law shall be interpreted in a fair, large and liberal manner.

4. In this Law:

(a) the use of the word “shall” denotes an obligation that, unless this Law provides to the contrary, shall be carried out as soon as practicable after this Law comes into effect or the event that gives rise to the obligation occurs;

(b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

(c) headings and subheadings are for convenience only, do not form a part of this Law and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Law;

(d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

(e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and

(f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

5. Where any law or regulation of Canada or the Province of British Columbia or any other Nak’azdli Whut’en Land Law applies to any matter covered by this Law, compliance with this Law does not relieve any person from also complying with the provisions of the other applicable laws or regulations.

6. This Law does not abrogate or derogate from any Aboriginal or Treaty rights or freedoms that pertain to Nak’azdli Whut’en or its members.

## **Application**

7. This Law applies in respect of any public official’s exercise of powers or performance of duties or functions.

8. This Law does not apply to the fiduciary duties that Council owes to members.

9. If any provision of this Law is held invalid by a court of competent jurisdiction, the invalid provision shall be severed from and shall not affect the remaining provisions of this Law.

- 5 -  
**PART 3**  
**IMMUNITY**

**Immunity for Public Officials**

**10.** (1) No action for damages lies or may be instituted against a public official or former public official:

- (a) for anything said or done or omitted to be said or done by that person in their real or intended exercise of powers or performance of duties or functions; or
- (b) for any alleged neglect or default in their exercise of powers or performance of duties or functions.

(2) Subsection (1) does not provide a defence if:

- (a) the public official has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
- (b) the cause of action is libel or slander.

(3) Subsection (1) does not absolve Nak'azdli Whut'en from vicarious liability arising out of a tort committed by a public official for which Nak'azdli Whut'en would have been liable had this section not been in force.

**Limitation Period for Actions Against Nak'azdli Whut'en**

**11.** All actions against Nak'azdli Whut'en for the unlawful doing of anything that

- (a) is purported to have been done by Nak'azdli Whut'en under the powers conferred by either the *Nak'azdli Whut'en Reserve Land Code* or a Nak'azdli Whut'en Land Law; and
- (b) might have been lawfully done by Nak'azdli Whut'en if acting in the manner established by either the *Nak'azdli Whut'en Reserve Land Code* or a Nak'azdli Whut'en Land Law, must be commenced within six months after the cause of action first arose.

**Immunity Unless Notice Given To Nak'azdli Whut'en after Damage**

**12.** (1) Nak'azdli Whut'en is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Nak'azdli Whut'en within two months from the date on which the damage was sustained.

(2) In case of the death of a person injured, a person's failure to give notice required by subsection (1) is not a bar to the maintenance of the action.

(3) A person's failure to give the notice to Nak'azdli Whut'en in accordance with subsection (1) is not a bar to the maintenance of an action if the court believes:

- (a) there was reasonable excuse for that failure to give notice; and
- (b) Nak'azdli Whut'en has not been prejudiced in its defence by the person's failure to give notice.

### **Immunity against Certain Nuisance Actions**

**13.** Nak'azdli Whut'en is not liable in any action based on nuisance or on the rule in the *Rylands v. Fletcher* case if the damages arise, directly or indirectly, out of the breakdown or malfunction of any of the following located on Nak'azdli Whut'en Reserve Lands:

- (a) Sewer system;
- (b) water or drainage facility or system: or
- (c) dike or a road.

### **Immunity In Relation To Failure to Enforce Land Laws**

**14.** Neither Nak'azdli Whut'en nor a public official is liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to enforce, by the institution of a civil proceeding or a prosecution, a Nak'azdli Whut'en Land Law.

### **Limitation on Nak'azdli Whut'en Liability Regarding Building Plan Approval**

**15.** (1) If Nak'azdli Whut'en issues a building permit for a development that does not comply with a Nak'azdli Whut'en Land Law or other applicable law respecting building safety, Nak'azdli Whut'en must not be held liable, directly or vicariously, for any damage, loss or expense caused or contributed to by an error, omission or other neglect in relation to its approval of the plans submitted with the application for the building permit if:

- (a) a person representing himself or herself as a professional engineer or architect registered as such under the laws of British Columbia certified, as or on behalf of the applicant for the permit, that the plans or the aspects of the plans to which the non-compliance relates complied with the Nak'azdli Whut'en Land Law or other applicable law to which the non-compliance relates; and
- (b) Nak'azdli Whut'en, in issuing the building permit, indicated in writing to the applicant for the permit that it relied on the certification referred to in paragraph (a).

(2) Subsection (1) does not apply if Nak'azdli Whut'en knew that the person making the certification referred to in that subsection was not, at the time of certification, registered as a professional engineer or architect under the laws of British Columbia.

#### **PART 4 INDEMNIFICATION**

**16.** Nak'azdli Whut'en will indemnify public officials against a claim for damages against a public official arising out of their exercise of powers or performance of duties or functions, and in addition shall pay legal costs incurred in a court proceeding arising out of the claim, provided such claim is not a result of dishonesty, gross negligence, malicious or willful misconduct on the part of the public official.

**17.** Where indemnity under this Law is or may be claimed by a public official, that public official must immediately upon receipt thereof, forward to the Chief Operating Officer every Writ, Statement of Claim, letter or other document or advice and advise of any communication both verbal and written relating to a claim against them in respect of which indemnity is or may be claimed under this Law.

**18.** Where indemnity under this Law is or may be claimed by a public official, that public official must not:

- (a) voluntarily assume any liability or settle any claim except at their own cost and in such case no indemnification will be paid in relation thereof; or
- (b) interfere with Nak'azdli Whut'en in any negotiation, settlement or in any legal proceedings with respect to such claim.

**19.** Whenever requested by Nak'azdli Whut'en, a public official who is claiming indemnity under this Law must:

- (a) aid in the securing of information and evidence and the attendance of witnesses and shall himself or herself, where required by Nak'azdli Whut'en, give evidence; and
- (b) cooperate with Nak'azdli Whut'en in the defence of any action or proceedings or in the prosecution of any appeal taken by Nak'azdli Whut'en on behalf of a public official.

**20.** Compliance by public officials with the provisions of sections 18 and 19 constitute a condition precedent to Nak'azdli Whut'en's responsibility to indemnify public officials.

**21.** This Law shall apply to any existing claim for damages against a public official arising, initiated or outstanding prior to the adoption of this Law.

#### **PART 5 PROOF OF LAW AND ACCESS TO COPIES OF LAW**

**22.** A copy of this Law appearing to be certified as a true copy by an officer of Nak'azdli Whut'en is proof of the original without proof of the officer's signature or official character.

**23.** The Council shall ensure that a copy of this Law, as amended from time to time, is on Nak'azdli Whut'en website and is available for public inspection at locations designated by the

Council and may make it public by any other means of communication that the Council considers appropriate.

**PART 6  
COMING INTO FORCE**

**24.** This Law will come into force and have the force of law on the date that it is both:

(a) approved by Nak'azdli Whut'en members in accordance with the *Nak'azdli Whut'en Reserve Land Code*; and

(b) approved by Council.

THIS LAW IS HEREBY DULY APPROVED by the Council on \_\_\_\_ day of \_\_\_\_, 2018, at Nak'azdli Whut'en, British Columbia.

Voting in favor of the law are the following members of the Council:

\_\_\_\_\_  
(Chief **Alexander McKinnon**)

\_\_\_\_\_  
(Councillor **Ramona Joseph**)

\_\_\_\_\_  
(Councillor **Nancy Elsa Berland**)

\_\_\_\_\_  
(Councillor **Harold Prince**)

\_\_\_\_\_  
(Councillor **Fred Sam**)

\_\_\_\_\_  
(Councillor **Howard Sam**)

\_\_\_\_\_  
(Councillor **Wayne Sam**)

Being the majority of those members of the Council of Nak'azdli Whut'en present at the aforesaid meeting of the Council.