

TOQUAHT NATION GOVERNMENT

INTEGRITY ACT

TNS 4/2011



OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

This is a certified true copy of the consolidated Integrity Act TNS 4/2011, Current to June 10, 2014

Date: July 31, 2014

Kristen Jensen

Signed: _____
Law Clerk

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PREAMBLE

As a treaty first nation, the Toquaht Nation assumes the responsibility of providing transparent and accountable government, blending hereditary and modern-day governing institutions. This requires Toquaht officials to perform their duties and exercise their powers with honesty, integrity, impartiality and regard to the common good of all Toquaht citizens.

To assist with realizing these goals, the Toquaht Nation wishes to establish rules of conduct that all Toquaht officials must abide by, as well as disclosure and enforcement processes aimed at ensuring Toquaht officials abide by those rules and, if they do not, they are sanctioned appropriately.

The Toquaht Nation adopts this Act based on these values.

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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Integrity Act.

Executive oversight

1.2 The member of the Executive holding the community services portfolio is responsible for the executive oversight of this Act.

Application

1.3 This Act applies to all Toquaht officials.

Definitions

1.4 In this Act,

“director” means the director of operations;

“immediate family” means, when used in reference to a Toquaht official,

- (a) the Toquaht official’s spouse, or
- (b) a son or daughter of the Toquaht official or the Toquaht official’s spouse who
 - (i) has not attained the age of eighteen, or
 - (ii) has attained the age of eighteen but is primarily dependent on the Toquaht official or the Toquaht official’s spouse for financial support;

“private interests” includes, when used in reference to a Toquaht official, the interests of the Toquaht official’s immediate family;

“public office” means the office of a Toquaht government representative or a Toquaht public employee;

“Toquaht official” includes, for the purposes of this Act,

- (a) a member of a committee as defined in the Council Rules of Order and Procedure Act, and
- (b) a volunteer who participates in the delivery of programs or services by a Toquaht institution.

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PART 2 - RULES OF CONDUCT

General duties

- 2.1** (a) A Toquaht official must exercise his or her official powers and perform his or her official duties in such a manner as to maintain public confidence and trust in the integrity of the Toquaht official.
- (b) A Toquaht official must act honestly and in good faith with a view towards the best interests of the Toquaht Nation.
- (c) A Toquaht official must demonstrate high ethical standards in personal and professional dealings.

Conflict of interest

- 2.2** A Toquaht official must not exercise an official power or perform an official duty knowing that in doing so there is an opportunity to further his or her private interests.

Insider information

- 2.3** (a) A Toquaht official must not use information that is obtained in the execution of his or her position as a Toquaht official and is not available to the general public to further or seek to further the Toquaht official's private interests.
- (b) A Toquaht official must not communicate information referred to in subsection (a) to another person if the Toquaht official knows, or reasonably ought to know, that the information may be used to further or seek to further the Toquaht official's private interests.

Influence

- 2.4** A Toquaht official must not use his or her position as a Toquaht official to influence or seek to influence a decision of another person so as to further the Toquaht official's private interests.

Acceptance of gifts or personal benefits

- 2.5** (a) A Toquaht official must not accept a gift or personal benefit that might reasonably be seen to have been given to influence the Toquaht official in the exercise of his or her official powers or the performance of his or her official duties.
- (b) Despite subsection (a), a Toquaht official may accept a gift or personal benefit that is received
- (i) in his or her personal capacity, or

- (ii) as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of his or her position.

PART 3 - PROCEDURE ON CONFLICT OF INTEREST

Disclosure and withdrawal

- 3.1** (a) A Toquaht official who has reasonable grounds to believe that he or she has a conflict of interest in any matter must, if present at a meeting considering the matter,
- (i) disclose the general nature of the conflict of interest, and
 - (ii) withdraw from the meeting without participating in the discussion or voting on the matter.
- (b) The absence of a Toquaht official from a meeting because of the requirement under subsection (a)(ii) must not be taken into account in determining whether a quorum is present for that meeting and, for the purposes of this subsection, the Toquaht official must be counted as being present even though he or she is absent from all or a portion of the meeting.
- (c) Despite subsection (a)(ii), if a Toquaht official who discloses a conflict of interest under subsection (a)(i) is the only person present at the meeting with the information necessary to make a decision on the matter, then the Toquaht official may participate in the discussion but must not vote on the matter.
- (d) Despite subsections (a)(ii) and (c), if the operation of those subsections would result in there being fewer than three Toquaht officials present at the meeting who can vote on the matter, then so long as they have complied with subsection (a)(i), all Toquaht officials present at the meeting may participate in the discussion and vote on the matter.

Invitation to disclose and withdraw

- 3.2** A person who has reasonable grounds to believe that a Toquaht official has a conflict of interest in any matter may, if present at a meeting considering the matter, invite the Toquaht official to disclose his or her conflict of interest and to withdraw from the meeting.

Record of disclosure and withdrawal

- 3.3** (a) If a Toquaht official has complied with section 3.1, the secretary of the meeting must record both
- (i) the disclosure, and
 - (ii) the withdrawal.

- (b) If the meeting referred to in section 3.1 is a meeting of Council, the Executive or a committee of either of them, the secretary of the meeting must file the information referred to in subsection (a) with the director as soon as practicable after the meeting.

Access to disclosure and withdrawal records

- 3.4** The director must make all information filed under section 3.3(b) available to any Toquaht citizen for inspection at the Toquaht administrative office during regular business hours.

PART 4 - DISCLOSURE REQUIREMENTS

Private interests disclosure statement

- 4.1** Each Toquaht government representative must file with the director a private interests disclosure statement in the prescribed form
- (a) within 60 days after the earlier of the date on which he or she was elected, appointed or sworn in to office, and
 - (b) within 30 days after the second anniversary of the date referred to in subsection (a).

Content of private interests disclosure statement

- 4.2** The private interests disclosure statement required under section 4.1 must identify
- (a) the name of each for-profit corporation, partnership, proprietorship or other business entity in which the Toquaht government representative or his or her immediate family has an interest,
 - (b) the name of each not-for-profit organization or charity in which the Toquaht government representative or his or her immediate family holds a membership, and
 - (c) the name of each for-profit corporation, not-for-profit organization or charity of which the Toquaht government representative or his or her immediate family is an officer or director.

Supplemental disclosure statement

- 4.3** Each Toquaht government representative must file with the director a supplemental disclosure statement in the prescribed form within 30 days after a change in the circumstances of the Toquaht government representative or his or her immediate family occurs which results in the private interests disclosure statement filed under section 4.1 no longer being complete or accurate.

Disclosure statement for gifts or personal benefits

- 4.4** Each Toquaht government representative must file with the director a disclosure statement for gifts or personal benefits in the prescribed form within 30 days after the receipt of a gift or personal benefit referred to in section 2.5(b)(ii) that exceeds the prescribed value.

Access to disclosure statements

- 4.5** The director must make

- (a) private interests disclosure statements filed under section 4.1,
- (b) supplemental disclosure statements filed under section 4.3, and
- (c) disclosure statements for gifts or personal benefits filed under section 4.4

available to any Toquaht citizen for inspection at the Toquaht administrative office during regular business hours.

PART 5 - INCOMPATIBLE OFFICES

Incompatible offices

- 5.1**
- (a) Subject to this section, the Government Personnel Act and any other Toquaht enactment, an individual may simultaneously hold more than one public office.
 - (b) An individual must not simultaneously hold two public offices that are incompatible unless the simultaneous holding of those public offices is compelled or expressly authorized by Toquaht law.
 - (c) Public offices are incompatible when any of the following circumstances are present:
 - (i) one public office may remove or exercises supervisory powers over the other;
 - (ii) based on the powers and duties of the public offices, there is a possibility of a significant clash of duties or loyalties between the public offices; or
 - (iii) public policy considerations make it improper for one individual to hold both public offices.
 - (d) Despite subsections (b) and (c), the offices of the director and the director of finance may be held by the same individual and, if such offices are held by the same individual, the director of finance reports to the Executive and the Financial Administration Act is deemed to be amended to the extent necessary to reflect this reporting requirement.

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PART 6 - ENFORCEMENT

Definition

6.1 In this Part, “respondent” means the individual complained against.

Complaints

- 6.2** (a) Subject to subsection (b), if any person has reason to believe that a Toquaht government representative or a Toquaht director other than the director has engaged in conduct contrary this Act, that person may file a written complaint with the director.
- (b) If a Toquaht government representative becomes aware of any circumstances described in subsection (a), that individual must file a written complaint with the director.

Inquiry into complaint

- 6.3** (a) If a complaint is made to the director under section 6.2, the director must
- (i) inquire into the complaint, and
 - (ii) within 30 days after receipt of the complaint, provide a written report to Council, with a copy to the respondent, respecting the complaint, including the director’s findings and recommendations.
- (b) If the director’s report under subsection (a)(ii) has the potential to adversely impact the respondent, the director must
- (i) inform the respondent of the particulars of the complaint, and
 - (ii) give the respondent a reasonable opportunity to make submissions, before finalizing the report.

No contravention or inadvertent contravention found

- 6.4** If, after inquiring into the complaint, the director finds that there has been no contravention of this Act or that there has been a contravention of this Act but
- (a) the respondent took all reasonable measures to prevent the contravention, or
 - (b) the contravention was trivial, committed through inadvertence or an error of judgment made in good faith,
- the director must recommend that no sanction be imposed.

Contravention found

- 6.5** If, after inquiring into the complaint, the director finds that the respondent has contravened this Act, the director must recommend one or more of the following:
- (a) that no sanction be imposed;
 - (b) that the respondent be reprimanded;
 - (c) that the respondent publically acknowledge his or her wrongful conduct;
 - (d) that the respondent pay the Toquaht government the amount of any gains realized as a result of the contravention;
 - (e) that the respondent be required to pay a fine not exceeding \$5,000;
 - (f) that the respondent be removed from public office;
 - (g) that the respondent be disqualified from holding public office for a period of up to 10 years; or
 - (h) that any other sanction the director considers appropriate be imposed.

Determination by Council

- 6.6** (a) Council must, within 30 days after receipt of the director's report under section 6.3(a)(ii),
- (i) consider the report, and
 - (ii) make a determination as to
 - (A) whether the respondent has contravened this Act, and
 - (B) what sanction, if any, should be imposed on the respondent.
- (b) If the director's report under section 6.3(a)(ii) recommends that a sanction be imposed on the respondent, Council must give the respondent a reasonable opportunity to make submissions before making a determination under subsection (a)(ii).
- (c) For certainty, the respondent may be present when Council considers the director's report under section 6.3(a)(ii), but must not be present when Council makes a determination under subsection (a)(ii).
- (d) Council may impose any of the sanctions referred to in section 6.5 or any other sanction Council considers appropriate on the respondent.

Complaints against the director

- 6.7** (a) Subject to subsection (b), if any person has reason to believe that the director has engaged in conduct contrary this Act, that person may file a written complaint with the chairperson of Council.
- (b) If a Toquaht government representative becomes aware of any circumstances described in subsection (a), that individual must file a written complaint with the chairperson of Council.
- (c) If a complaint is made to the chairperson of Council under subsection (a) or (b),
- (i) the chairperson of Council must
 - (A) inquire into the complaint, and
 - (B) within 30 days after receipt of the complaint, provide a written report to Council, with a copy to the director, respecting the complaint, including the chairperson of Council’s findings and recommendations,
 - (ii) Council must, within 30 days after receipt of the chairperson of Council’s report under paragraph (i)(B)
 - (A) consider the report, and
 - (B) make a determination as to
 - (I) whether the director has contravened this Act, and
 - (II) what sanction, if any, should be imposed on the director,
 - (iii) the chairperson of Council and Council must give the director the same information and opportunity to make submissions as the director and Council are required to give a respondent under sections 6.3(b), 6.6(b) and 6.6(c), and
 - (iv) Council may impose any of the sanctions referred to in section 6.5 or any other sanction Council considers appropriate on the director.

Whistleblower protection

- 6.8** (a) A person who makes a complaint in good faith under section 6.2 or 6.7 must not be subjected to any form of reprisal by the Toquaht Nation, a Toquaht official or a contractor of the Toquaht Nation as a result of making that complaint.

- (b) The director and the Executive must take all necessary steps to ensure that subsection (a) is not contravened and must report any contravention or suspected contravention to Council.

PART 7 - GENERAL PROVISIONS

Regulations

- 7.1** The Executive may make regulations which it considers necessary or advisable for the purposes under this Act.

Limitation on actions

- 7.2** (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Toquaht official or former Toquaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Toquaht institution, Toquaht official or former Toquaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

Commencement

- 7.3** This Act comes into force on the Maa-nulth Treaty effective date.

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LEGISLATIVE HISTORY

Integrity Act TNS 4/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
6.5(e)	TNS 8/2014, s.4.10	June 10, 2014

Amending Acts:

TNS 8/2014 Enforcement Framework Amendment Act No. 2 enacted June 10, 2014

Regulations:

TNR 2/2011 Disclosure Forms Regulation enacted April 1, 2011