

THE RULES OF PROCEDURE FOR
THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

January 2021

These Rules of Procedure for the Ta'an Kwäch'än Judicial Council are hereby adopted by the Council on the 28th day of January 2021.

(Signatures on File)

Barbara Evans
Judge

Michael Dougherty
Judge

Darla-Jean Lindstrom
Judge

Table of Contents

PART 1 – TA'AN KWÄCH'ÄN JUDICIAL COUNCIL	4
1.0 DEFINITIONS	4
2.0 TITLE.....	5
3.0 TA'AN KWÄCH'ÄN JUDICIAL COUNCIL.....	5
4.0 COMMUNICATIONS WITH THE TKJC	5
5.0 JURISDICTION OF THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL	6
6.0 RESPONSE TO AN APPLICATION	7
7.0 MOTION FOR THE DISMISSAL OF AN APPLICATION	7
8.0 CONSIDERATION OF A MATTER	8
PART 2 – HEARINGS	8
9.0 PRE-HEARING CONFERENCES.....	8
10.0 CONDUCT OF HEARINGS.....	8
11.0 EVIDENCE AT HEARINGS.....	9
12.0 DECISIONS OF THE JUDICIAL COUNCIL.....	9
PART 3 – ALTERNATIVE DISPUTE RESOLUTION	10
13.0 AGREEMENT TO ALTERNATIVE DISPUTE RESOLUTION	10
PART 4 – GENERAL	11
14.0 RECORDS OF THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL.....	11
15.0 INTERPRETATION OF THE RULES AND TECHNICAL OBJECTIONS.....	11
16.0 APPLICATION OF RULES.....	11
17.0 NON-COMPLIANCE WITH THE RULES	12
18.0 FORMS	12
APPENDICES.....	13
1.0 INVESTIGATION OF FINANCIAL IRREGULARITIES	13
2.0 APPEAL OF A FAMILY LINE FAILING TO PROVIDE CONSENT TO A CANDIDACY FOR CHIEF	14
3.0 APPEAL OF ELECTION RESULTS	15
4.0 CHARGE OF COMPROMISING THE DIGNITY AND EFFECTIVENESS OF OFFICE	16

FORMS:

Application to the TKJC
Subpoena Template

THE RULES OF PROCEDURE FOR THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

PRINCIPLES

The Ta'an Kwäch'än Judicial Council has made these rules of procedure pursuant to 12.1.6 of the *Constitution of the Ta'an Kwäch'än Council*. These rules have been prepared with the guidance of the following principles:

- to make the Judicial Council accessible to all Ta'an Kwäch'än Citizens;
- to conduct the Judicial Council's hearing and decision-making processes in a safe, respectful and trusting environment;
- to ensure the Judicial Council's proceedings are fair, honest and transparent;
- to ensure that the Judicial Council's decisions are made in an impartial and neutral manner;
- to consider Ta'an Kwäch'än Council customs and traditions; and
- to maintain respect for Ta'an Kwäch'än Council, its Citizens, and culture.

PART 1 – TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

1.0 Definitions

1.1 In these rules:

“Council”, “Citizen”, “Chief”, “Elders Council”, “Family Director”, Family Counsellor, Family Spokesperson”, “Judicial Council”, “Ta'an Kwäch'än Council”, and “Traditional Family” have the same meaning as that under the *Constitution of the Ta'an Kwäch'än Council*;

“Constitution” means *Constitution of the Ta'an Kwäch'än Council*;

“Applicant” is the person requesting action by the TKJC; “Respondent(s)” is/are the persons named by the Applicant.

“Application” means a notice under Appendix 1, an appeal under Appendix 2 and 3 or a charge under Appendix 4, as the case may be, and the term “applicant” has a corresponding meaning.

“Matter” means an application that has been accepted as a appeal, call, charge, complaint, issue or request accepted by the TKJC for resolution by adjudication, alternative dispute resolution or investigation.

“Complainant” refers to the person who brought an Application that has been accepted by the TKJC as a Matter.

2.0 Title

2.1 These rules may be cited as the *Ta'an Kwäch'än Judicial Council Rules of Procedure*.

3.0 Ta'an Kwäch'än Judicial Council

3.1 The Ta'an Kwäch'än Judicial Council (TKJC) is an entity of the government of the Ta'an Kwäch'än Council (TKC) that interprets the laws of the Ta'an Kwäch'än Council enacted under the Ta'an Kwäch'än (TK) *Constitution* in light of TKC customs and traditions, resolves disputes arising from interpretation and execution of TKC laws, resolves alleged violations of TKC laws and any other duties legally required of it.

3.2 The TK Elders Council appoints members to the TKJC in accordance with section 11 of TK *Constitution*.

3.3 Members of the TKJC serve five-year terms not co-terminal.

3.4 The TKJC will endeavour to issue an annual report to the TK Elders Council.

3.5 The TKJC shall seek to achieve consensus, but in the absence of consensus, decisions will be by majority vote of the judges. Dissenting minority opinions by a judge or judges may be appended to a majority decision.

3.6 The TKJC may establish a panel to consider any matter brought before it and such panels may consist of one or more judges.

4.0 Communications with the TKJC

4.1 Communications to the TKJC or Registrar may be sent by regular mail or electronic mail (e-mail) to the following addresses:

If by mail:

Ta'an Kwäch'än Judicial Council
c/o Registrar
PO Box 31735
Whitehorse, Yukon
Y1A 6L3

If by e-mail:

registrar@tkjc.ca

E-mail is the preferred method of communication.

4.2 Once jurisdiction of an application has been accepted by the TKJC as a Matter before it, any communication to the TKJC by a party must be copied to all other parties to the matter. (See 5.4 and 5.6)

Ta'an Kwäch'än Judicial Council Rules of Procedure

- 4.3 All parties to a matter for which the TKJC has accepted jurisdiction must provide their e-mail address to all other parties and the TKJC. Where a party does not have email, alternative contact information must be provided to all parties.
- 4.2 Documents, notices and other written material required to be submitted to the TKJC or to another party in a proceeding must be served by e-mail or registered mail.
- 4.3 Except during a public hearing, communication related to all TKJC proceedings must be addressed to the Office of the Ta'an Kwäch'än Judicial Council or to a person designated by the TKJC.
- 4.4 All correspondence with the TKJC prior to the acceptance of an application deemed to be within the jurisdiction of the TKJC and accepted as a matter for consideration by the TKJC shall be deemed unofficial and held as confidential.

5.0 Jurisdiction of the Ta'an Kwäch'än Judicial Council

- 5.1 Matters under the jurisdiction of the TKJC include:
- adjudication of any alleged violations of Ta'an Kwäch'än Council laws;
 - challenge to the validity of a law or regulation of the Ta'an Kwäch'än Council;
 - call to investigate any financial irregularities of the Ta'an Kwäch'än Council;
 - appeal of a family line failing to provide consent to a candidacy for Chief;
 - appeal of election results;
 - charge of compromising the dignity and effectiveness of an elected office;
 - appeals of a citizenship committee decision;
 - requests to assume any additional authorities and responsibilities as are prescribed by TK law.
- 5.2 An Application to the TKJC requires that the applicant or complainant comply with the following steps in a submission to the Registrar:
- a) submit to the Registrar an outline of the complaint;
 - b) cite the relevant TK Constitutional section, law or regulation underpinning the requested action;
- 5.3 Incomplete applications may be returned to the applicant with an explanation of the inadequacies, and shall not be considered by the TKJC until deemed complete.
- 5.4 The TKJC may request further information from the applicant or the TKC, as appropriate, prior to proceeding with consideration of the application.
- 5.5 Once completed, the application will be provided by the Registrar to the TKJC for their determination of jurisdiction.
- 5.6 The decision on an application to accept jurisdiction by the TKJC will result in a case file number being assigned and a letter will be sent to all parties from the TKJC office stating the application is now a matter before the TKJC.

5.7 If the TKJC refuses jurisdiction, a letter to the Complainant will be sent to indicate that the application falls outside of TKJC jurisdiction. No further action will be taken.

6.0 Response to an application

6.1 Once a Matter is accepted by the TKJC, the Respondent(s) shall have the opportunity to file a written response to the Matter with the TKJC within 30 days, which must include proof that such response has been copied to the applicant.

6.2 A response under 21.1 shall include:

6.2.1 the respondent's name, address and contact information;

6.2.2 if applicable, the name, address and contact information of the person designated as the contact person or agent for the respondent;

6.2.3 a concise statement of the response to the matter set out in the application and any relevant references in the *Constitution* or other laws or regulations of the Ta'an Kwäch'än Council.

6.3 The TKJC will consider the response under 6.2 and may:

6.3.1 request additional information from any or all parties; or

6.3.2 confirm its intention to proceed with the Matter;

6.3.3 call a Pre-hearing Conference;

6.3.4 reconsider its decision to accept jurisdiction of a Matter.

6.4 All decisions by the TKJC will include reasons.

7.0 Motion for the Dismissal of an Application

7.1 A party named in a matter may file a motion with the TKJC to have it determine whether the application is frivolous, vexatious, or outside the jurisdiction of the TKJC to consider.

7.2 Where a party files a motion under 7.2, the TKJC shall, within 10 days unless it determines otherwise, convene a hearing to consider this matter.

7.3 At a hearing on the motion to dismiss a matter:

7.3.1 the party filing the motion shall speak to the matter;

7.3.2 the other party or parties named in the motion may speak to the matter;

7.3.3 no other witnesses or evidence respecting the substance of the matter addressed in the application may be presented without leave of the TKJC;

7.4 At the conclusion of the hearing referred to in 7.2 and 7.3 the TKJC shall:

- 7.4.1 grant the motion and dismiss the matter if it determines that it is frivolous, vexatious or outside its jurisdiction to consider; or
- 7.4.2 deny the motion and set a date for a hearing to consider the matter as soon as practicable.

8.0 Consideration of a Matter

- 8.1 When the TKJC deems a matter is complete and no motion has been filed under 7.1, it shall set a hearing date within 60 days to consider the matter and provide the affected parties at least 14 days' notice of the date of the hearing or call a pre-hearing conference within this time frame.

PART 2 – HEARINGS

9.0 Pre-hearing Conferences

- 9.1 The TKJC may require the applicant and other parties to a matter to participate in a pre-hearing conference.
- 9.2 The purposes of a pre-hearing conference include:
- 9.2.1 to clarify, and where possible, narrow the issues to be determined;
 - 9.2.2 to explore possible admission of facts, the proof of facts or the use of any public documents;
 - 9.2.3 to identify any need for additional information;
 - 9.2.4 to review the procedures to be followed in preparing for the hearing and at the hearing; and
 - 9.2.5 Examine alternative dispute resolution options as established in Part 3 including:
 - Peacemaking Circle
 - Mediation;
 - Other method.

10.0 Conduct of Hearings

- 10.1 Unless the TKJC determines otherwise, hearings shall be open to the public.
- 10.2 A party may be added to the proceeding on application to the TKJC or the TKJC may identify an additional party to the proceeding without application.
- 10.3 The TKJC shall set the conditions of participation of a party added to the proceeding under 10.2

Ta'an Kwäch'än Judicial Council Rules of Procedure

- 10.4 No person other than the Applicant, a party named in the application, a party added to the proceeding under 10.2, or their legal counsel shall make a representation at a hearing except with the permission of the TKJC.
- 10.5 Participation in any proceeding of the TKJC may be by means of telephone or other communications facilities that are likely to enable all persons participating to hear each other, and a person so participating is deemed to be present at the proceeding.
- 10.6 Unless otherwise determined by the TKJC, the order of appearance and the process for the hearing shall be as follows:
- 10.6.1 Introduction
 - 10.6.2 Opening Prayer;
 - 10.6.3 Applicant's submission which includes calling witnesses;
 - 10.6.4 Questions on the Applicant's submission by the Respondent(s);
 - 10.6.5 Questions on the Applicant's submission by other parties as determined by the TKJC;
 - 10.6.6 Questions on the Applicant's submission by the TKJC;
 - 10.6.7 Submission by the Respondent(s);
 - 10.6.8 Questions on the Respondent(s) submission by the applicant;
 - 10.6.9 Questions on the Respondent(s) submission by other parties as determined by the TKJC;
 - 10.6.10 Questions on the Respondent(s) submission by the TKJC;
 - 10.6.11 Closing comments by the Respondent(s);
 - 10.6.12 Closing comments by the Applicant; and
 - 10.6.13 Closing comments by the TKJC Judge(s)
 - 10.6.14 Closing Prayer.

11.0 Evidence at Hearings

- 11.1 Written evidence not addressed in the application, response from the party named in the application or written submission by a party added to the proceeding under 10.2 shall not be introduced at a hearing without the agreement of the TKJC.
- 11.2 Subject to determinations of the TKJC, evidence may be presented at a hearing whether or not it would be admissible in any other court.

12.0 Decisions of the Judicial Council

- 12.1 At any time during a hearing, if the TKJC concludes that the application is frivolous, vexatious, or is outside the jurisdiction of the TKJC to consider, it may dismiss the application.

- 12.2 A decision of the TKJC following a hearing shall be made in writing with reasons, signed by all presiding judges and issued within 30 days of the hearing. Dissenting minority opinions by a judge or judges may be appended to the majority decision.
- 12.3 Copies of a written decision shall be provided to the parties to the proceeding as soon as practicable.

PART 3 – ALTERNATIVE DISPUTE RESOLUTION

13.0 Agreement to Alternative Dispute Resolution

- 13.1 Where the Parties agree to refer a dispute to an alternative dispute resolution process pursuant to 9.2.5, which may be a peacemaking circle, mediation or other process, they shall provide a written agreement to the TKJC that includes a description of the matter under dispute.
- 13.2 Within 21 days of receipt of an agreement as set out in 13.1, the TKJC shall appoint a Peacekeeper who may be one or more judges, a qualified mediator or other person agreed to by all parties to facilitate the process.
- 13.3 Alternate Dispute Resolution procedures under this Part shall be conducted in accordance with such guidelines as may be agreed to by the Peacekeeper and the parties, which may address:
- 13.3.1 the confidentiality of discussions held and information shared in the course of the mediation, including, where appropriate, the protocol for contact with the media;
 - 13.3.2 the requirements and process for disclosure of all pertinent information;
 - 13.3.3 the timelines for the Alternate Dispute Resolution process;
 - 13.3.4 the ability of either party to terminate the Alternate Dispute Resolution process at any time; and
 - 13.3.5 such other matters as agreed to.
- 13.4 The Peacekeeper may, at any time in the course of the Alternative Dispute Resolution process, issue directions on procedure to the parties.
- 13.5 Where a dispute or part of a dispute is resolved by Alternative Dispute Resolution the terms of the resolution shall be set out in writing and signed by the parties. A rendered agreement shall be reviewed and affirmed by the TKJC to ensure that it is in accordance with the TK *Constitution* and laws.
- 13.6 Where a dispute is not resolved through Alternative Dispute Resolution, or where any outstanding matters remain unresolved, the Matter returns to the TKJC for hearing.

- 13.7 A judge participating in the Alternative Dispute Resolution process shall not participate in any subsequent proceedings related to the matters in the dispute.
- 13.8 A member of the TKJC involved in the Alternative Dispute Resolution process under this section shall not be called as a witness in litigation or other proceeding relating to the matters in the dispute.

PART 4 – GENERAL

14.0 Records of the Ta'an Kwäch'än Judicial Council

- 14.1 Records of all official applications made to the TKJC, including copies of all documents filed in proceedings and written decisions, shall be maintained by the Registrar. Citizens may request digital copies from the Registrar at cost.
- 14.2 All written decisions of the TKJC will be forwarded to the TKC Administrative office to be posted on the Ta'an Kwäch'än Council's TKJC Case/Activity List webpage.

15.0 Interpretation of the Rules and Technical Objections

- 15.1 These rules will be interpreted liberally to achieve a fair and efficient determination of every matter before the TKJC.
- 15.2 No TKJC proceeding is invalid because of an objection based only on a technical irregularity or a defect in form.

16.0 Application of Rules

- 16.1 These rules apply to all proceedings of the TKJC.
- 16.2 Where any matter of procedure is not provided for in these rules, the TKJC may, at any time, issue a direction on procedure to deal with the matter.
- 16.3 The TKJC may, by its own motion, or on application by a party in any proceeding, dispense with, vary or supplement these rules.
- 16.4 Where there is a conflict between the rules and a specific direction given by the TKJC on procedure, the direction on procedure prevails over the rules.
- 16.5 To address the requirements of fairness, the TKJC may, upon notice to the parties to a proceeding, shorten or extend the time fixed by these rules for any action.
- 16.6 Directions issued by the TKJC shall be done in writing and provided to all parties to a matter except where directions are issued at pre-hearing conference or hearing where all parties to a matter are present.

17.0 Non-Compliance with the Rules

- 17.1 Where a party to a proceeding has not complied with these rules or a direction on procedure issued by the TKJC, the TKJC may adjourn the proceeding until satisfied that the requirement has been complied with or take such other steps as it considers just and reasonable to ensure compliance.

18.0 Forms

- 18.1 The TKJC may specify that any document or communication must be submitted to the Council in a particular form and such forms will from time to time be appended to these rules.
- 18.2 Where a Party requires that a subpoena be issued to a witness, such Subpoena may be provided by that Party or their Counsel for signature by the TKJC; in the alternative, upon written request, the TKJC may provide a subpoena to that Party.

APPENDICES

NOTE: The person from TKC who did the review changed everything from "Appendix" to "schedule". Are these, in fact "schedules" or do we care?

1.0 Investigation of Financial Irregularities

- 1.1 The TKJC shall appoint a committee referred to in 12.1.3 of the *Constitution* to investigate alleged financial irregularities of the Ta'an Kwäch'än Council, upon the request of the Board (replace with?), Elders Council or General Assembly.
- 1.2 A request by the Board, Elders Council or the General Assembly in Appendix 1.1 must be accompanied by a copy of the resolution to make the request and specify the matter to be investigated.
- 1.3 Within 30 days of the receipt of a request under Appendix 1.1, the TKJC shall establish a committee to investigate the matter and establish its terms of reference.
- 1.4 A committee established under Appendix 1.3 must be comprised of a person or persons with relevant expertise in financial management.
- 1.5 An investigation of financial irregularities conducted under Appendix 1.3 shall be conducted in a timely manner.
- 1.6 The Board shall provide all financial records, accounts and reports reasonably required by the committee to complete its investigation.
- 1.7 The TKJC shall require that, on completion of its investigation, the committee shall provide its report to the Board and the Elders Council and shall notify the TKJC that it has done so.

2.0 Appeal of a Family Line Failing to Provide Consent to a Candidacy for Chief

- 2.1 An appeal of a Traditional Family line refusing to consent to the candidacy of a Citizen for Chief, submitted under 35 of the *Elections Act*, shall be provided in writing to the TKJC and shall include a copy of the reasons for the refusal provided by the Family Director(s) to him or her.
- 2.2 The TKJC shall consider the appeal and all documents submitted, and may conduct a hearing with respect to the matter, and then will render a decision in accord with sections 36 and 37 of the *Elections Act*.
- 2.3 Where the TKJC decides to conduct a hearing under Appendix 2.2, Part 2 shall apply, with such changes as are necessary in the circumstances.
- 2.4 Following its consideration, the TKJC shall, as soon as practicable, affirm the decision of the family line or order that the Citizen shall be a candidate for the office of Chief.

3.0 Appeal of Election Results

- 3.1 A candidate or Citizen eligible to vote in an election may submit a written appeal of the result of the election to the TKJC as provided under 142(1) of the Elections Act.
- 3.2 The TKJC shall forward a copy of the appeal and all supporting documents to the Chief Returning Officer, the elections committee and to each candidate affected by the appeal within 5 business days of receipt of an appeal under Appendix 3.1.
- 3.3 As provided under 143(2) of the Elections Act, within 14 days of receipt of a copy of an appeal, the Chief Returning Officer, the elections committee or a candidate may provide a written submission including support documents to the TKJC addressing the details of the appeal.
- 3.4 The TKJC will provide copies of all documents referred to in Appendix 3.3 to the appellant and all other parties to the appeal within 10 days of their receipt.
- 3.5 Where the TKJC determines that the documents referred to in Appendix 3.1 and 3.3 are not adequate for deciding on the validity of the election, the TKJC shall conduct further investigation of the appeal that it considers necessary, which may include a hearing.
- 3.6 Where the TKJC decides to conduct a hearing under Appendix 3. 5, Part 2 shall apply, with such changes as are necessary in the circumstances.
- 3.7 As provided in 148 of the Elections Act, upon completion of its review, the TKJC shall submit a report to the Board and provide reasons, and that the election stands or is voided and that a new election be held.
- 3.8 The TKJC may permit, pursuant to Section 145 of the Elections Act, the application for an appeal to be withdrawn if the candidate affected by an application files a written statement renouncing all claim to the office to which he or she was elected.
- 3.9 The TKJC may, upon application of a candidate who has been declared elected, authorize, pursuant to Section 149(3) of the Elections Act, that candidate to take the oath of office if the TKJC is satisfied that the candidate's election will not be affected by the results of a judicial recount.

4.0 Charge of Compromising the Dignity and Effectiveness of Office

- 4.1 A charge against a member of the Board brought under 12.2 of the *Constitution* shall be made by written notice and shall specify in reasonable detail the matters which form the basis of the charge.
- 4.2 As required by 12.2.2 of the *Constitution*, the written notice referred to in Appendix 4.1 shall be delivered to the TKJC and the Board member.
- 4.3 The TKJC may require evidence in writing from a Citizen confirming that the written notice referred to in Appendix 4.1 has been delivered to the Board member.
- 4.4 As provided in 12.2.3 of the *Constitution*, within 30 days of receiving the written notice, a Board member shall provide the TKJC with his or her written response to the charge. A motion for dismissal of this matter as frivolous or vexatious under section 7 may be considered.
- 4.5 Following receipt of a response as in Appendix 4.4, or after the 30 days referred to in Appendix 4.4 have expired, the TKJC shall convene a hearing as soon as practicable.
- 4.6 The Board member and the Citizen making the charge are entitled to be parties at the hearing.
- 4.7 Part 2 shall apply to a hearing under Appendix 4.5 with such changes as are necessary in the circumstances.
- 4.8 The final determination of the TKJC shall be made in writing with reasons.

TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

APPLICATION FORM

A person wishing to have the Judicial Council review and accept a complaint from a Citizen shall complete this form and submit to the TKJC along with any supporting documents to:

BY MAIL: BOX 31735, WHITEHORSE, YUKON Y1A 6L3

BY FAX: (867) 633-6954

BY EMAIL: registrar@tkjc.ca

DATE:	
NAME OF APPLICANT:	
EMAIL:	
ADDRESS:	
When did this happen (Date)	
COMPLAINT AGAINST: Name of Person(Persons)	
SUMMARY OF COMPLAINT	<i>Briefly describe what has happened</i>
JURISDICTION – Section of the Constitution breached	
SUMMARY OF COMPLAINT:	<i>Describe why the Judicial Council should accept the Complaint</i>

TA'AN KWÄCH'ÄN JUDICIAL COUNCIL
APPLICATION FORM – Page 2

List of Documents attached:	
OTHER COMMENTS:	
I affirm that the information I have provided in this document to be true to the best of my knowledge	
DATED:	
SIGNATURE:	

DO NOT WRITE BELOW THIS LINE:
RECEIVED ON:

REVIEWED BY JUDICIAL COUNCIL ON: _____

DECISION/ACTION TO BE TAKEN: _____

TA'AN KWÄCH'ÄN JUDICIAL COUNCIL

P.O. Box 31735
Whitehorse, Yukon Y1A 6L3

Email: registrar@tkjc.ca
Fax: (867) 633-6954

TKJC File #. _____

Between

Complainant

and

Respondent

SUBPOENA

To *[name and address]*:

TAKE NOTICE that you are required to attend to testify as a witness at the time, date, and place set out below. You are also required to bring with you all documents in your possession or control relating to the matters in question in this proceeding *[and, where applicable, the following physical objects]*:

Time: _____

Date: _____

Place: _____

Dated _____

Party *[or party's lawyer]*