

TOQUAHT NATION GOVERNMENT

GOVERNMENT PERSONNEL ACT

TNS 5/2011



OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

This is a certified true copy of the consolidated Government Personnel Act TNS 5/2011, Current to June 10, 2014

Date: July 31, 2014

Kristen Johnson

Signed: _____
Law Clerk

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PREAMBLE

Through the act of governing and as a treaty first nation, the Toquaht Nation assumes the responsibility of providing responsible, efficient and effective government, blending hereditary and modern-day governing institutions. In doing so, our governing structures honour our past and embrace the future ensuring the continued existence of the Toquaht Nation as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant peoples.

As such, the Toquaht Nation requires a Toquaht administration that is responsive to the changing requirements of our nation. It is important that we recruit and develop well qualified, efficient and effective personnel to be part of a Toquaht administration that encourages creativity and initiative. In doing so, the Toquaht Nation needs to facilitate the long term employment of our Toquaht citizens, foster long-term career development and promote harmonious relations between the Toquaht government and its personnel. The public must have trust and confidence in the integrity of the Toquaht administration and the Toquaht government.

To assist with realizing these goals, the Toquaht Nation desires to establish rules and procedures concerning the recruitment, selection, management, discipline, suspension and dismissal of Toquaht government employees. The values of the Toquaht Nation require a hiring process that is consistent, fair and based on merit, but which allows priority to be given to Toquaht citizens. These values also require rules and procedures that promote the fair and consistent handling of all employment matters and provide for the review of employment decisions.

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 Government Personnel 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 governs

- (a) the employment of Toquaht personnel, and
- (b) the Department of Community Services.

Definitions

1.4 In this Act,

“just cause” means just cause under federal law or provincial law;

“personnel” means a person employed by a Toquaht institution regardless of the method of employment, but does not include

- (a) the director of operations, or
- (b) an employee of a for-profit Toquaht corporation unless designated by the Executive by regulation as personnel for the purpose of this definition;

“Review Board” means the Administrative Decisions Review Board.

Executive as employer

- 1.5
- (a) The Executive, on behalf of the Toquaht government, is the employer for the purposes of this Act.
 - (b) For purposes of this Act, the term “Toquaht government” is deemed to include Toquaht public institutions and Toquaht public corporations.

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PART 2 - EMPLOYMENT PRINCIPLES

Purposes of Act

- 2.1** The purposes of this Act are to
- (a) facilitate the provision of service to Toquaht citizens and persons ordinarily resident on Toquaht lands in a manner that is responsive to the changing requirements of the Toquaht Nation,
 - (b) by means of internal advancement and external recruitment of personnel, recruit and develop well qualified, efficient and effective personnel that are representative of Toquaht citizens,
 - (c) facilitate the long term employment of Toquaht citizens,
 - (d) encourage the training and development of personnel to foster long term career development and advancement of personnel,
 - (e) encourage creativity and initiative among personnel, and
 - (f) promote harmonious relations between the Toquaht government and its personnel.

Hiring of personnel

- 2.2**
- (a) Subject to section 2.3, hiring personnel under this Act must
 - (i) be based on the principle of merit, and
 - (ii) be the result of a process designed to assess the knowledge, skills and abilities of eligible applicants.
 - (b) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed and the powers to be exercised, include the applicant's education, skills, knowledge, experience, past work performance and personal suitability.
 - (c) Subject to section 2.3, all regulations, standards, policies and procedures respecting recruitment, appointment, transfer and promotion of personnel must be consistent with the principle of merit set out in subsection (a) and must facilitate the purposes of this Act set out in section 2.1.
 - (d) Hiring personnel under this Act must not be based on
 - (i) personal favouritism,
 - (ii) political considerations,

- (iii) nepotism, or
- (iv) any other consideration that is made in bad faith.

Priorities and limitations in relation to hiring

- 2.3** (a) For a vacancy or class of vacancies, applicants for a vacant position are to be given priority or limited, as the case may be, in a manner described in paragraphs (i), (ii) or (iii) or in any combination of any of those paragraphs as follows:
- (i) giving
 - (A) first priority to Toquaht citizens, and
 - (B) second priority to members of other first nations;
 - (ii) encouraging the career development and advancement of personnel; or
 - (iii) limiting the appointment to personnel of a stated occupational group, position level or organizational unit.
- (b) A vacancy may be filled by means of
- (i) a lateral transfer, or
 - (ii) a promotion of current personnel.
- (c) In determining merit under section 2.2(b), consideration of a Toquaht citizen's skills as required by that section may include consideration of that Toquaht citizen's ability to develop the skills necessary for the position in circumstances where that Toquaht citizen does not at that time possess the requisite skills but education and training are readily available for that Toquaht citizen to develop the requisite skills for the position.

Exceptions to section 2.2

2.4 Subject to any regulations

- (a) section 2.2(a) does not apply to an appointment that is a lateral transfer or a demotion, and
- (b) section 2.2(a)(ii) does not apply to the following:
 - (i) a temporary appointment of not more than six months in duration;
 - (ii) a direct appointment by the director of operations in

- (A) the unusual or exceptional circumstances contemplated in section 4.1(c), or
- (B) in the circumstances contemplated in section 4.1(d).

Probation

- 2.5**
- (a) If an individual who is not a member of the Toquaht administration is appointed to a position in and becomes personnel, the individual is on probation until he or she has worked the equivalent of three months' full time employment.
 - (b) If the appointment is made from within the Toquaht administration, a probation period in the new position not exceeding the equivalent of three months' full time employment may be imposed by the director of operations.
 - (c) A Toquaht director may reject personnel on probation during the probation period if the Toquaht director considers that the personnel on probation is unsuitable for the position to which he or she was appointed.

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PART 3 - DIRECTOR OF OPERATIONS

Office of director of operations

- 3.1** (a) The office of director of operations is established.
- (b) The Executive must appoint an individual to hold the office of the director of operations.
- (c) The director of operations reports to the Executive.

Policy leadership

- 3.2** The director of operations is responsible for providing policy leadership and overall policy direction to personnel.

Personnel responsibilities

- 3.3** (a) The director of operations is responsible for all matters relating to personnel recruitment, hiring, promotion, training, discipline, suspension, termination and overall personnel management matters.
- (b) The general authority in subsection (a) includes
- (i) advising the Toquaht government respecting regulations, standards, policies and procedures relating to personnel,
 - (ii) developing and implementing personnel standards, policies and procedures,
 - (iii) providing direction, advice or assistance to Toquaht directors in the carrying out of regulations, standards, policies and procedures relating to personnel,
 - (iv) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of personnel to or within the Toquaht government subject to the annual budget,
 - (v) developing, providing, assisting in or coordinating staff training, educational and career development programs,
 - (vi) developing, establishing and maintaining job evaluation and classification plans,
 - (vii) developing, establishing and maintaining occupational health and safety programs,

- (viii) developing and implementing employment equity policies and programs,
- (ix) conducting studies and investigations respecting staff utilization,
- (x) carrying out research on compensation and working conditions,
- (xi) developing and implementing mechanisms to ensure effective human resource planning and organizational structures,
- (xii) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 3.5 to ensure compliance with this Act,
- (xiii) establishing and maintaining a personnel management information system, and
- (xiv) performing any other duties and exercising any other powers assigned by the chairperson of Council respecting personnel consistent with this Act.

Administrative responsibilities

- 3.4** (a) Without limiting section 3.3, the director of operations is also responsible for the general management and administration of the Toquaht government.
- (b) The general authority in subsection (a) includes
- (i) exercising control and management of the administrative business and affairs of Toquaht government in accordance with Toquaht law,
 - (ii) ensuring the efficient and effective operation of the Toquaht government,
 - (iii) establishing and overseeing administrative policies, practices and procedures necessary to effectively implement Toquaht laws and the policies and programs of the Toquaht government, including preparing and maintaining a current organizational chart and making it available to the public,
 - (iv) advising the chairperson of Council and the Executive,
 - (v) ensuring that decisions of the Executive are implemented,
 - (vi) ensuring that the annual budget is prepared and implemented,
 - (vii) safeguarding the financial integrity of the Toquaht government by identifying, assessing, monitoring and reporting on financial risks, fraud risks and mitigating measures,

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- (viii) ensuring the accountability of the operations of the Toquaht government, including the activities of management,
 - (ix) directing persons who are retained to provide services for the Toquaht government,
 - (x) developing, overseeing and administering contracts and agreements entered into on behalf of the Toquaht Nation, and
 - (xi) performing any other duties and exercising any other powers given, delegated or assigned under Toquaht law or by the Executive.

Delegation authority

- 3.5** (a) Upon the approval of the Executive, the director of operations may delegate, in writing, the performance of any of the director of operations' duties or the exercise of any of the director of operations' powers to
- (i) another Toquaht director,
 - (ii) a Toquaht government employee, or
 - (iii) an independent contractor of the Toquaht Nation.
- (b) Despite the delegation of any duties or powers under subsection (a), the director of operations remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

Operations manual

- 3.6** (a) The director of operations must prepare and maintain a current operations manual respecting every element of the Toquaht Nation's administrative system, including any financial administration systems.
- (b) The operations manual must be made available to Toquaht government representatives, committees of Council and all personnel.
- (c) If any part of the operations manual is relevant to the services being provided by a contractor or agent of the Toquaht Nation, that part of the operations manual must be made available to that contractor or agent.

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PART 4 - GOVERNMENT PERSONNEL

Hiring of personnel

- 4.1 (a) Subject to subsection (b) and sections 2.2, 2.3 and 2.4, the director of operations is responsible for the recruitment, hiring, promotion, transfer and training of all government personnel.
- (b) Subject to Toquaht legislation providing otherwise, the Executive must appoint an individual to hold the office of a Toquaht director after considering the recommendation of the director of operations on the appointment.
- (c) In unusual or exceptional circumstances, the director of operations may limit to one the number of applicants for a vacant position in the Toquaht administration.
- (d) The director of operations may transfer or promote personnel by way of direct appointment if the appointment is otherwise consistent with section 2.2.

Confidentiality Agreement

- 4.2 All new personnel must, prior to the commencement of their employment, sign a confidentiality agreement containing their confidentiality requirements and other matters the Executive may prescribe.

Personnel integrity

- 4.3 For certainty, all personnel are subject to the provisions of the Integrity Act applicable to personnel.

Discipline, suspension and dismissal of personnel

- 4.4 (a) The director of operations or, in relation to personnel within the Department he or she is a director of, a Toquaht director, may
- (i) discipline personnel for just cause,
 - (ii) suspend personnel from the performance of their duties or the exercise of their powers for just cause, or
 - (iii) dismiss personnel for just cause.
- (b) For certainty, the Tye Ha'wilth, chairperson of Council and any other Toquaht government representative must not discipline, suspend or dismiss any personnel.

Political activity of personnel

- 4.5** (a) Personnel must not be required to participate in partisan political activity, including actively supporting a candidate for elected office.
- (b) Personnel must not be prohibited from participating in partisan political activity.

PART 5 - REVIEW OF EMPLOYMENT DECISIONS

General

5.1 For certainty, no

- (a) civil remedy, or
- (b) remedy under federal law or provincial law

is available to an individual against the Toquaht government as employer if suspended or affected by this Part.

Review by director of operations

5.2 (a) An individual who is

- (i) a Toquaht citizen whose application for an advertised position in the Toquaht administration is not accepted, or
- (ii) dismissed from a position in Toquaht administration

may apply to the director of operations for a review of the decision of non-acceptance or dismissal, as the case may be.

(b) The director of operations must expeditiously review the decision with the applicant and may, by directive,

- (i) reverse or modify the decision with or without conditions, or
- (ii) confirm the decision.

(c) As soon as practicable after completion of the review, the director of operations must deliver to the applicant written notice

- (i) stating the outcome of the review, and
- (ii) advising the applicant of the right to request a review of the directive, as described in section 5.3.

Review by Review Board

5.3 (a) No later than 10 days after receipt of the written notice under section 5.2(c), the applicant may request a review of the directive made under section 5.2(b) to the Review Board.

- (b) The grounds for a review under this section are that the directive is inconsistent with this Act or the standards, policies and procedures referred to in section 3.3(b)(ii).
- (c) After conducting a review, the Review Board may
 - (i) dismiss the review request, or
 - (ii) if it determines that the directive is inconsistent with this Act or the standards, policies and procedures referred to in section 3.3(b)(ii), either
 - (A) reverse the decision, or
 - (B) alter the decision to include a remedy.

PART 6 - DEPARTMENT OF COMMUNITY SERVICES

Department of Community Services established

6.1 The Department of Community Services is established as a division of the Toquaht administration.

Mandate

- 6.2** (a) The mandate of the Department of Community Services is to provide the services set out in subsection (b) to
- (i) Toquaht citizens, and
 - (ii) those persons ordinarily resident on Toquaht lands who are not Toquaht citizens and entitled to receive those services in accordance with a Toquaht enactment.
- (b) The following services will be provided by the Department of Community Services in accordance with subsection (a):
- (i) the citizenship and enrolment services contemplated in the Citizenship Act;
 - (ii) any services necessary or desirable in accordance with Chapter 13 Governance of the Maa-nulth Treaty or any other Toquaht enactment relative to
 - (A) adoption,
 - (B) child protection, custody or care,
 - (C) health services,
 - (D) social development,
 - (E) solemnization of marriages,
 - (F) language and culture education,
 - (G) kindergarten to grade 12 education,
 - (H) post secondary education,
 - (I) public order, peace and safety,
 - (J) emergency preparedness, and

- (K) community correctional services;
- (iii) any other services as required by the Executive by regulation; and
- (iv) any other services as required by the director of operations by Order.

Office of the director of community services established

- 6.3**
- (a) The office of the director of community services is established as an office within the Department of Community Services.
 - (b) The Executive must appoint an individual to hold the office of the director of community services after considering the recommendation of the director of operations.
 - (c) The director of community services reports to the director of operations.

Duties of the director of community services

- 6.4**
- (a) The director of community services is responsible for the general management and administration of the Department of Community Services.
 - (b) The general authority in subsection (a) includes the following duties and powers:
 - (i) to ensure that Toquaht government employees within the Department of Community Services carry out the duties assigned to them
 - (A) under this or any other Toquaht enactment,
 - (B) by the director of operations, or
 - (C) by the director of community services;
 - (ii) to report, as required by the director of operations, to the Executive on the Department of Community Services and its activities;
 - (iii) to perform any other duties or exercise any other power assigned to the director of community services
 - (A) under this or any other Toquaht enactment, or
 - (B) by the director of operations by Order.

Delegation authority

- 6.5**
- (a) Upon the approval of the chief administrative officer, the director of community services may delegate, in writing, the performance of any of the director of

community services' duties or the exercise of any of the director of community services' powers to

- (i) another Toquaht director,
 - (ii) a Toquaht government employee, or
 - (iii) an independent contractor of the Toquaht First Nations.
- (b) Despite the delegation of any duties or powers under subsection (a), the director of community services remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

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PART 7 - GENERAL PROVISIONS

Annual report

7.1 The director of operations must

- (a) prepare a report annually on matters related to this Act, and
- (b) present the report to the Executive no later than two months after the end of each fiscal year.

Regulations

7.2 (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

(b) Without limiting subsection (a), the Executive may make regulations

- (i) respecting all or any of the following:
 - (A) classifications of positions;
 - (B) remuneration of personnel;
 - (C) applications and selection of personnel;
 - (D) appointment of personnel;
 - (E) internal advancement of personnel;
 - (F) the giving of first priority to Toquaht citizens and second priority to members of other first nations;
 - (G) lateral transfers of personnel;
 - (H) short term or casual appointments;
 - (I) benefits;
 - (J) terms of employment;
 - (K) review and evaluation of performance;
 - (L) leaves of absence;
 - (M) competitions and exclusions from competitions;
 - (N) position titles and job descriptions;

- (O) promotions;
- (P) disciplinary action;
- (Q) training and human resource development;
- (ii) defining words and expressions that are used but not defined in this Act;
and
- (iii) generally for the purpose of giving effect to this Act.

Commencement

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

LEGISLATIVE HISTORY

Government Personnel Act TNS 5/2011 enacted April 1, 2011

Amendments

| Section | Amendment | In Force |
|----------------|----------------------|-----------------|
| 5.2(b) | TNS 8/2014, s.4.9(a) | June 10, 2014 |
| 5.2(c)(ii) | TNS 8/2014, s.4.9(b) | June 10, 2014 |
| 5.3 | TNS 8/2014, s.4.9(b) | June 10, 2014 |
| 6.2(b)(iv) | TNS 8/2014, s.4.9(c) | June 10, 2014 |
| 6.4(b)(iii)(B) | TNS 8/2014, s.4.9(c) | June 10, 2014 |

Amending Acts:

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

Regulations: