



KWANLIN DÜN JUDICIAL COUNCIL RULES

JULY 4, 2017

INTRODUCTION

These Rules are to guide the Judicial Council's proceedings issued under Part 6 of the *Kwanlin Dün Judicial Council Act (2016)*. These Rules are to provide a process to ensure claims can be resolved in an accessible, fair and respectful manner.

The Kwanlin Dün Judicial Council hereby adopts these Rules on this _____ day of _____, 2017.

Linda Moen, Chair
Kwanlin Dün Judicial Council

INDEX

<u>PRINCIPLES AND OBJECTIVES</u>	1
<u>PART 1 – GENERAL</u>	1
TITLE.....	1
DEFINITIONS AND INTERPRETATION	1
NON-COMPLIANCE WITH THE RULES	2
APPLICATION OF THE RULES	2
FORMS.....	3
REGISTRY	3
FEES	3
ALTERATION OF TIME PERIODS	3
COMMUNICATING WITH THE JUDICIAL COUNCIL.....	4
CHAIR OF THE JUDICIAL COUNCIL	4
DELIVERY OF DOCUMENTS	5
<u>PART 2 – COMMENCEMENT OF AN APPLICATION</u>	5
APPLICATION	5
REQUEST FOR ADDITIONAL INFORMATION	6
ACCEPTANCE OR REJECTION OF AN APPLICATION	6
CONSOLIDATION OF APPLICATIONS	6
ADDING OR SUBSTITUTING A PARTY	6
APPLICATION BY WRITTEN CONSENT OF THE PARTIES.....	6
<u>PART 3 – RESPONDING TO AN APPLICATION</u>	7
NOTICE OF RESPONSE	7
<u>PART 4 – MEDIATION</u>	7
OFFER OF MEDIATION	7
MEDIATION	7

MEDIATION SETTLEMENT	8
MEDIATION STATEMENTS NOT ADMISSIBLE AT HEARINGS.....	8
<u>PART 5 – HEARINGS</u>	8
PROCEEDING TO A HEARING	8
PRE-HEARING CONFERENCE	9
NOTICE OF HEARING TO THE PARTIES.....	9
NOTICE OF HEARING TO THE PUBLIC	9
PUBLIC HEARING	9
ORDER OF PROCEDURE	9
SUBMISSIONS AT A HEARING	10
EVIDENCE AT A HEARING	10
MOTIONS.....	10
MOTION TO DISMISS AN APPLICATION.....	11
CHALLENGES TO THE CONSTITUTION OR A KWANLIN DŪN LAW	11
REASONS FOR DECISIONS	11
APPEAL OF A DECISION OF THE KWANLIN DŪN FIRST NATION	11
CONFIDENTIAL INFORMATION	12
<u>PART 6 – COSTS</u>	12
AWARDING COSTS.....	12
CRITERIA FOR ASSESSING COSTS	12

PRINCIPLES AND OBJECTIVES

The Kwanlin Dün Judicial Council issues these Rules under section 33 of the *Kwanlin Dün Judicial Council Act (2016)*. These Rules have been prepared to achieve the following principles and objectives:

- to make the Judicial Council accessible to all Kwanlin Dün First Nation Citizens and other persons who wish to use the Judicial Council's dispute resolution processes;
- to encourage the use of informal dispute resolution processes as an alternative to hearings before the Judicial Council;
- to conduct the Judicial Council proceedings in a just, fair and cost-effective manner;
- to ensure the Judicial Council decisions are made in an impartial and neutral manner;
- to consider, where appropriate, Kwanlin Dün customs and traditions; and
- to maintain respect for the Kwanlin Dün First Nation, its Citizens and the Kwanlin Dün culture.

PART 1 – GENERAL

Title

1. These Rules may be cited as the *Kwanlin Dün Judicial Council Rules*.

Definitions and Interpretation

2. In these Rules

"Act" means the *Kwanlin Dün Judicial Council Act (2016)*;

"Administrator" means the person appointed by the Chair of the Judicial Council;

"applicant" means the person applying to the Judicial Council for an order;

"Chair" means the person appointed by the Judicial Council;

"Constitution" means the *Constitution of the Kwanlin Dün First Nation*;

"decision" includes a judgment or order of the Judicial Council under section 53 of the Constitution;

“document” includes any notice, written communication, written evidence or any information recorded or stored by means of any device;

"hearing" means a hearing in any proceeding, but does not include a pre-hearing conference;

“motion” means an application for an order that is not a final order to decide a matter within a proceeding;

"moving party" means a person who makes a motion;

"proceeding" means a proceeding to which these Rules apply and includes an application, motion, hearing, appeal and judicial review;

"Registry" means the Registry maintained by the Judicial Council where its records are stored; and

“Rules” means the *Kwanlin Dün Judicial Council Rules*.

3. In addition to Rule 2, the definitions of the Constitution and the Act also apply to these Rules.
4. In any matter, the Judicial Council shall apply the Rules in a manner consistent with the legal requirements, principles and values expressed in the Constitution and the Act.

Non-Compliance with the Rules

5. These Rules shall be interpreted liberally to achieve a just, fair and cost-effective determination of every matter before the Judicial Council on its merits.
6. Judicial Council proceedings shall not be invalid because of an objection based on a technical irregularity or a defect in form.
7. Despite Rule 6, where a party refuses to comply with these Rules, the Judicial Council may dismiss an application, response or motion.

Application of the Rules

8. These Rules apply to all proceedings of the Judicial Council, including where an application is made to the Judicial Council to exercise its powers or perform a duty under legislation other than the Act or the Constitution.

9. Where any matter of procedure requires clarification or is not provided for in these Rules, the Judicial Council may issue practice directives to deal with the matter.
10. In a proceeding, the Judicial Council may omit, vary or supplement any of these Rules.
11. Where there is a conflict or inconsistency between these Rules and a practice directive given by the Judicial Council on procedure, the directive on procedure prevails to the extent of the conflict or inconsistency.
12. Where there is a conflict or inconsistency between these Rules and the Act, the Act prevails to the extent of the conflict or inconsistency.

Forms

13. The Judicial Council may create, add to, amend or discontinue using forms as the circumstances of the proceeding require, and shall publish promptly any such changes.

Registry

14. The Judicial Council shall file in the Registry all documents as required under section 36 of the Act.
15. Any information declared by the Judicial Council to be confidential under Rule 77 shall be maintained in the Registry but shall be sealed and not form part of the public record.
16. The Registry shall be located at [*for discussion*] and, upon reasonable notice, shall be accessible to the public during regular business hours.
17. The Judicial Council may prescribe a fee for obtaining copies of information contained in the Registry.

Fees

18. The Judicial Council shall establish, and may amend, the fees charged by the Judicial Council and shall publish the schedule of fees promptly.

Alteration of Time Periods

19. The Judicial Council may shorten or extend the time fixed by these Rules for any action.

Communicating with the Judicial Council

20. Except during a proceeding, all communications with the Judicial Council shall be addressed to the Administrator.
21. Unless otherwise directed by the Judicial Council, all correspondence to the Administrator may be delivered personally, by mail, by fax or by email at the head office of the Judicial Council.

Chair of the Judicial Council

22. The Chair shall preside generally over proceedings and may make procedural orders as she or he sees fit.
23. The Chair, acting alone, may exercise the powers of the Judicial Council in respect of the following procedural matters:
 - (a) altering time requirements; (Rule 19)
 - (b) delivering documents to the Judicial Council or another party; (Rule 25)
 - (c) requesting additional information and supporting documents; (Rule 29)
 - (d) rejecting an application it considers incomplete or lacking sufficient information; (Rule 31)
 - (e) adding or substituting a party; (Rule 35)
 - (f) appointing a mediator where the parties do not agree on a mediator; (Rule 43)
 - (g) directing the parties to participate in a pre-hearing conference; (Rule 50)
 - (h) issuing directions, conditions or restrictions regarding access to a hearing by the public, media or any other person; (Rule 56)
 - (i) issuing directions in relation to order of procedure at a hearing; (Rule 57 and 58)
 - (j) granting adjournments;
 - (k) granting permission and setting conditions for a person other than a party to make submissions at a hearing; (Rule 61)
 - (l) issuing conditions it considers appropriate to protect confidential information; (Rule 77) and
 - (m) other procedural matters as circumstances require.

Delivery of Documents

24. A party shall, in all documents delivered in a proceeding, set out the following information:
 - (a) the party's name;
 - (b) the party's mailing address;
 - (c) an address for delivery of documents;
 - (d) fax number or email address; and
 - (e) telephone number where the party can be reached, or a message can be left for the party, during business hours.
25. At any time, the Judicial Council may give directions as to how documents may be delivered to a party.
26. Unless otherwise ordered by the Judicial Council, documents may be delivered in a proceeding personally, by mail, by fax or by email.
27. Where a party delivers a document personally to another party, they may do so by leaving the document with anyone who appears to be an adult at the address for delivery of documents.

PART 2 – COMMENCEMENT OF AN APPLICATION

Application

28. To commence a proceeding, an applicant shall provide the Administrator with an application that includes:
 - (a) the applicant's name;
 - (b) an address for delivery of documents;
 - (c) fax number or email address;
 - (d) telephone number where the applicant can be reached, or a message can be left for the applicant, during business hours;
 - (e) if applicable, the name, address and contact information of the person designated as the contact person or agent for the applicant;
 - (f) the name of the other party or parties to the dispute and their address for delivery of documents, mailing address, telephone number, fax number and email address;
 - (g) a summary of the nature of the dispute and the order the applicant is seeking from the Judicial Council; and
 - (h) any other information that may be of assistance to the Judicial Council.

Request for Additional Information

29. At any time after an application has been provided, the Judicial Council may require a party to provide additional information and supporting documents.

Acceptance or Rejection of an Application

30. Where an application has been provided to the Administrator, the Judicial Council shall review the application to determine if the application is complete.
31. Where the Judicial Council considers an application is incomplete or lacks sufficient information, it may reject the application, explaining in writing to the applicant the nature of the deficiencies.
32. An applicant whose application to the Judicial Council was rejected under Rule 31 may resubmit an application after rectifying the deficiencies identified by the Judicial Council.
33. On accepting an application, the Judicial Council shall:
 - (a) provide the applicant and the other party with written notice that the application was accepted;
 - (b) provide a copy of the application to the other party; and
 - (c) set a hearing date as soon as practicable.

Consolidation of Applications

34. Where the Judicial Council considers that two or more applications are related to each other for any reason, the Judicial Council may:
 - (a) order the applications be consolidated, heard at the same time, or heard one immediately after the other; or
 - (b) stay or adjourn any application until the determination of any other application.

Adding or Substituting a Party

35. At any time during a proceeding, the Judicial Council may order that a person be added to the proceeding, or substituted for a party in the proceeding, on such terms that the Judicial Council considers just and convenient.

Application by Written Consent of the Parties

36. Where the Judicial Council receives an application to have a dispute dealt with under section 10(b) of the Act, the Judicial Council may give directions as to procedure.

PART 3 – RESPONDING TO AN APPLICATION

Notice of Response

37. A person who is named in an application as a party shall provide the Administrator with a notice of response no later than 21 days after receiving the application from the Judicial Council.
38. The notice of response should include:
 - (a) the party's name, address for delivery of documents, mailing address, telephone number and fax number or email address;
 - (b) if applicable, the name of the person designated as the party's contact person or agent and this person's address for delivery of documents, telephone number and fax number or email address;
 - (c) a concise statement of the party's response to the application;
 - (d) whether the party consents to a hearing being held in their absence; and
 - (e) information and documents that may support the party's position.
39. After a notice of response is provided to the Administrator, the Judicial Council shall deliver a copy of the notice of response to the applicant and any other parties no later than 21 days before the date set for the hearing.

PART 4 – MEDIATION

[The following section addressing Mediation requires further discussion regarding the potential cost implications for the Judicial Council for arranging mediation services for parties.]

Offer of Mediation

40. *The Judicial Council shall offer to assist the parties in facilitating mediation of the dispute between the parties as soon as practicable after accepting an application under Rule 33.*
41. *Where a party accepts the Judicial Council's offer to facilitate mediation of the dispute, the party shall confirm his or her consent in writing to the Administrator as soon as practicable.*

Mediation

42. *Where all parties consent to mediation, they may select a mutually agreeable mediator.*

43. *Where the parties do not agree on a mediator, the Judicial Council shall appoint a mediator.*
44. *Subject to any financial assistance the Judicial Council may offer, the parties shall bear the cost of mediation equally. [The Judicial Council may consider offering a limited number of hours paid by the Judicial Council (eg. 4 hours), and the remainder would be paid by the parties if they require more time with the mediator.]*
45. *Members of the Judicial Council shall not participate in a mediation session with the parties.*

Mediation Settlement

46. The Judicial Council may, upon a request by all parties, make all or part of a mediation settlement an order of the Judicial Council.
47. Where the parties resolve the dispute through mediation, but the parties do not consent to the mediation settlement being made an order of the Judicial Council, the parties shall advise the Administrator, and the relevant application shall be considered withdrawn.

Mediation Statements Not Admissible at Hearings

48. Any statement or document provided by a party while participating in mediation are not admissible as evidence at any hearing before the Judicial Council unless the party making the statement otherwise consents.

PART 5 – HEARINGS

Proceeding to a Hearing

49. A hearing shall be held if:
 - (a) any party notifies the Judicial Council of their desire to proceed to a hearing;
 - (b) any party does not accept the Judicial Council's offer to facilitate a mediator to resolve the dispute;
 - (c) the parties fail to reach a mediation settlement within a reasonable period of time; or
 - (d) the parties reach a mediation settlement, however there has been a material change in facts or circumstances that formed the basis of the mediation settlement.

Pre-Hearing Conference

50. The Judicial Council may direct the parties to participate in a pre-hearing conference.
51. The Chair, or a Judicial Council member delegated by the Chair, shall reside over pre-hearing conferences.
52. The purposes of a pre-hearing conference include:
 - (a) to clarify and narrow the issues;
 - (b) to explore admission of facts and proof of facts;
 - (c) to review the procedures to be followed at the hearing;
 - (d) to determine the readiness of the parties to proceed to a hearing; and
 - (e) any other matter that may assist in the just, expeditious and cost-effective determination of the proceedings.

Notice of Hearing to the Parties

53. The Judicial Council shall deliver a notice of a hearing to the parties at least 10 days before the date of the hearing, setting out the time, date and place of the hearing.
54. A notice of hearing shall be delivered to all parties, regardless of whether a party may have consented to the hearing being held in their absence.

Notice of Hearing to the Public

55. The Judicial Council shall provide notice of a hearing to the public at least 10 days before the hearing by posting the notice of hearing in a prominent location in the main administration office of the Kwanlin Dün First Nation.

Public Hearing

56. A hearing shall be open to the public, subject to directions from the Judicial Council in relation to:
 - (a) exclusion of witnesses prior to giving testimony;
 - (b) confidential information identified under Rule 77;
 - (c) attendance of media personnel; or
 - (d) any other conditions or restrictions regarding access to hearings as the Judicial Council deems appropriate.

Order of Procedure

57. Unless the Judicial Council directs otherwise, a hearing shall:
 - (a) commence with an opening prayer; and
 - (b) conclude with a closing prayer.

58. Unless the Judicial Council directs otherwise, each party may:
- (a) make an opening statement;
 - (b) examine and cross-examine witnesses;
 - (c) submit other relevant evidence; and
 - (d) make a closing statement.

Submissions at a Hearing

59. At a hearing, any party that has provided an application or a notice of response may make submissions at a hearing.
60. The Judicial Council may permit a party who is named in an application, but who did not provide a notice of response under Rule 37, to make submissions at a hearing.
61. The Judicial Council may permit a person other than a party with standing to make submissions at a hearing according to conditions the Judicial Council considers appropriate.
62. A party that participates in a proceeding before the Judicial Council by telephone or other communication facilities is considered to be present at the proceedings.
63. The Judicial Council may conduct a hearing wholly or partially in writing.

Evidence at a Hearing

64. At a hearing, the Judicial Council may limit written evidence not addressed in an application, response or written submissions from a party.
65. The Judicial Council may admit evidence at a hearing that would not be admissible in a court of law.

Motions

66. Either the Judicial Council or a party to a proceeding may make a motion.
67. Except for a motion made at a hearing, a motion is initiated when the moving party provides the Administrator with a notice of motion in the prescribed form along with any information that the moving party is submitting in support of its motion.
68. Once the Administrator has been provided with a notice of motion by the moving party, the Administrator shall provide all the parties with a copy of the notice of motion and the notice of hearing setting the date for the hearing of the motion.
69. The Judicial Council may direct that a motion be heard orally, in writing or both.

Motion to Dismiss an Application

70. At any time before or during a hearing, the Judicial Council or a party may file a motion to dismiss the application on the grounds that it is frivolous, vexatious, or outside the jurisdiction of the Judicial Council.
71. Where a party or the Judicial Council files a motion under Rule 70 to dismiss an application, the Judicial Council shall convene a hearing with the parties as soon as practicable to consider the motion.
72. Where the Judicial Council convenes a hearing under Rule 71 to consider a motion to dismiss an application, the Judicial Council shall make any information on which it intends to base its decision available to the parties and shall provide them with a reasonable opportunity to respond to that information.
73. At the close of a hearing referred to in Rule 71, the Judicial Council may:
 - (a) allow the motion and dismiss the application if the Judicial Council determines it to be frivolous, vexatious or outside its jurisdiction; or
 - (b) deny the motion and proceed with the hearing as soon as practicable.

Challenges to the Constitution or a Kwanlin Dün Law

74. Where a party makes an application to the Judicial Council challenging the Constitution or the constitutional validity, application or operation of a Kwanlin Dün law, the Judicial Council shall provide to the Council at least 10 days before the hearing:
 - (a) written notice that the application was accepted by the Judicial Council;
 - (b) a copy of the application; and
 - (c) a notice of hearing.

Reasons for Decisions

75. The Judicial Council shall give written reasons, as soon as practicable, for every decision that it makes in relation to an application.

Appeal of a Decision of the Kwanlin Dün First Nation

76. A party may make an application under Rule 28 for the Judicial Council to hear an appeal of a decision of the Kwanlin Dün First Nation of any matter within the Judicial Council's jurisdiction under the Constitution or under any Kwanlin Dün law.

Confidential Information

77. At any time, the Judicial Council may order that a written submission, document or reference to oral information filed in the Registry or produced at a hearing be treated as confidential, be sealed and not form part of the public record, subject to such conditions as the Judicial Council considers appropriate.

PART 6 – COSTS

Awarding Costs

78. The Judicial Council may make an order regarding costs or fees at any time in a proceeding.
79. A party may only request the award of costs against another party in relation to matters of a dispute considered by the Judicial Council.
80. A party may make a request to the Judicial Council for an award of costs prior to the closing of the hearing.
81. Before making an order respecting costs, the Judicial Council shall allow all the parties to make submissions regarding costs.

Criteria for Assessing Costs

82. The Judicial Council may include the following criteria in assessing costs:
 - (a) the final decision of the Judicial Council on the application for an order;
 - (b) the complexity of the proceeding;
 - (c) the importance of the issue to any party;
 - (d) the conduct of any party that unnecessarily lengthened the duration of the proceeding;
 - (e) the success of each party on the issues before the Judicial Council; and
 - (f) any other matter relevant to the question of costs.