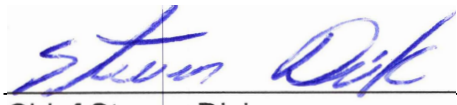




**KWIAKAH FIRST NATION
DISPUTE RESOLUTION LAW**

The enactment is hereby certified by the members of the Council on September 10, 2026.



Chief Steven Dick



Councillor Andrean Dick

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WHEREAS Kwiakah First Nation has the authority under section 31 of the *Kwiakah First Nation Land Code* (the "Land Code") to enact a dispute resolution law establishing a fair and efficient process consistent with the principles of fundamental justice for resolving disputes that may arise under its land code;

NOW THEREFORE this Kwiakah First Nation Dispute Resolution Law is hereby enacted at a duly convened Council meeting.

1. INTENT AND PURPOSE

- 1.1 The intent of this Law is to ensure that all Persons entitled to reside upon, use or otherwise occupy Lands do so harmoniously with due respect to the rights of others and of Kwiakah and with access to Kwiakah procedures to resolve disputes.
- 1.2 All Persons involved in a dispute under the Land Code and related laws shall be:
 - (a) treated fairly;
 - (b) given a full opportunity to present their case; and
 - (c) given written reasons for a decision made under this Law.
- 1.3 The purpose of this Law is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

2. SHORT TITLE

- 2.1 This Law may be cited as the *Dispute Resolution Law*.

3. APPLICATION

- 3.1 This Law applies to the whole area of Lands as defined in the Land Code.
- 3.2 Disputes that arose before the Land Code took effect may be referred to the dispute resolution processes in this Law.
- 3.3 Dispute resolution under this Law is not available for disputes related to:
 - (a) the administration or distribution of an estate;
 - (b) decisions on expropriation under section 15 of the Land Code;
 - (c) subdivision approval under the *Subdivision, Development and Servicing Law*;
 - (d) prosecution or conviction of an offence under a Land Law or under criminal law; and
 - (e) challenges to the validity of any Land Law.

- 3.4 If a Land Law sets out a dispute resolution procedure which is specific to disputes arising under that Land Law, then the dispute resolution procedure in the Land Law applies despite anything to the contrary in this Law.

4. INTERPRETATION

Land Code Interpretive Principles Apply

4.1 In this Law,

- (a) the principles of interpretation in sections 5.1 to 5.7 of the Land Code apply to this Law;
- (b) the use of the words “will”, “must” or “shall” denotes an obligation that, unless the Law provides otherwise, must be carried out as soon as practicable after the event that gives rise to the obligation;
- (c) where the Law contains a reference to a number of days or a number of days between two events, the days on which the events happen are excluded in calculating that number of days;
- (d) unless it is otherwise clear from the context,
 - (i) 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”;
 - (ii) the use of the singular includes the plural, and the use of the plural includes the singular;
 - (iii) the use of the neuter gender includes the masculine and the feminine;
- (e) a reference to a statute, including the Land Code and any law, includes every amendment to it, every regulation made under it, and any law enacted in substitution of it or replacement for it; and
- (f) the headings of sections in this Law have been inserted as a matter of convenience and reference, and in no way define or limit any provision.

Definitions

4.2 In this Law, capitalized words and expressions have the same meaning as in the Land Code, and:

“Arbitration” means a process where a neutral third party considers the facts and arguments presented by the parties and renders a decision that binding;

“Arbitrator” means an arbitrator selected in accordance with Part 12;

“Court” means the Supreme Court of British Columbia;

“Kwiahah” means the Kwiahah First Nation;

“Mediation” means the process where a neutral third party who has no authoritative decisionmaking power assists the parties to a dispute in voluntarily reaching a mutually acceptable resolution of the dispute;

“Mediator” means a mediator selected in accordance with Part 11;

“Officer” means:

- (a) any Person designated in writing by Council to enforce this Law;
- (b) peace officers; and
- (c) any other Person charged by Canada or British Columbia with the duty to preserve and maintain the public peace in accordance with their laws.

“Person” means any natural person, corporation, or government (including Kwiahah);

5. DISPUTE PREVENTION

- 5.1 All Persons shall use best efforts to prevent disputes from arising and shall consider the use of dispute resolution processes in this Law at the earliest possible stage of any conflict.
- 5.2 Nothing in this Law shall be construed to limit the ability of a Person to reach agreement or settle a dispute without recourse to this Law.

6. SETTLEMENTS MUST BE IN WRITING

- 6.1 Any settlement reached through dispute resolution in this Law in which Kwiahah or Council is a party to the dispute shall not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

7. STAGED PROCESS

- 7.1 A dispute in relation to Land, except as otherwise provided in this Law, shall progress through the following stages provided for in this Law:
 - (a) negotiation;
 - (b) mediation; and
 - (c) final arbitration.

8. SUSPENSIONS AND TERMINATION OF PROCESSES

- 8.1 Negotiations and mediations may be suspended for a maximum of 30 days upon any of the following occurrences:

- (a) the parties reach an agreement;
- (b) one of the parties refuses to continue with the negotiation or mediation; or
- (c) upon the request of both parties.

8.2 A notice of termination is required when the mediator determines that mediation shall not resolve the dispute. The dispute will then progress to final arbitration, unless the parties reach an agreement.

9. NEGOTIATION

9.1 Wherever possible, a dispute in relation to Lands shall be resolved by negotiation through informal discussion by the parties to the dispute prior to filing a notice of dispute and entering the dispute resolution process in this Law.

10. PROCEDURE TO FILE A DISPUTE

10.1 A Person who wishes to resolve a dispute with another Person or Kwiakah in relation to the use or occupation of Land may file a written notice of dispute with the Lands Department setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

10.2 The limitation period for submitting a notice of dispute is:

- (a) three months after the day the decision was made, or act or omission being referred was discovered; or
- (b) 30 consecutive days after the breakdown of negotiations.

11. MEDIATION

11.1 Kwiakah shall establish and maintain a roster of Mediators that may hear disputes under this Law.

11.2 Any Mediator who is added to the roster of Mediators under section 11.1 must have experience dealing with disputes in relation to First Nation land.

11.3 The parties to the dispute shall jointly select a Mediator to mediate the dispute.

11.4 If the parties are unable to agree on a Mediator and Kwiakah is not a party to the dispute, Kwiakah shall select a Mediator.

- 11.5 If the parties are unable to agree on a Mediator, and Kwiakah is a party to the dispute, Council, in accordance with Kwiakah custom, shall select an elder who will select a Mediator.
- 11.6 A Mediator selected under this Part must be in good standing on one or more Mediate BC or ADR Institute of BC rosters.
- 11.7 The Mediator has no authority to decide the dispute without the agreement of the parties to the dispute.
- 11.8 At the conclusion of the mediation, the Mediator shall submit a written report on the mediation proceedings to the parties to the dispute and to the Lands Department.
- 11.9 If the Mediator is of the opinion that the dispute cannot be resolved through mediation, the Mediator shall prepare a notice of termination pursuant to section 8.2.
- 11.10 The parties to the dispute shall jointly and equally bear the costs of mediation.

12. ARBITRATION

Selection of Arbitrator

- 12.1 In this part, "Person" includes Council.
- 12.2 Kwiakah will establish and maintain a roster of Arbitrators that may hear disputes under this Law.
- 12.3 Any Arbitrator who is added to the roster of Arbitrators under section 12.2 must have experience dealing with disputes in relation to First Nation land.
- 12.4 The parties to the dispute shall jointly select an Arbitrator.
- 12.5 If the parties are unable to agree on an Arbitrator and Kwiakah is not a party to the dispute, Kwiakah shall select an Arbitrator.
- 12.6 If the parties are unable to agree on an Arbitrator, and Kwiakah is a party to the dispute, Council, in accordance with Kwiakah custom, shall select an elder who shall select an Arbitrator.
- 12.7 An Arbitrator selected under this Part must be in good standing on the Arbitrators Association of British Columbia roster or hold a Chartered Arbitrator (C.Arb) or Qualified Arbitrator (Q.Arb) designation.
- 12.8 Subject to section 12.51, the parties to the dispute bear their own costs of participating in Arbitration, and jointly and equally bear the cost of retaining the Arbitrator.

Manner of Submissions

- 12.9 Before making a determination on a matter, the Arbitrator must provide the parties to the dispute with an opportunity to be heard.

12.10 For the purposes of section 12.9, a party may be heard:

- (a) in writing, including by electronic mail; or
- (b) by video conference, audio conference, telephone or other electronic means, if available.

12.11 Despite section 12.10, at the request of a party to the dispute, the Arbitrator may permit oral submissions where the Arbitrator considers such submissions necessary in order to facilitate the just and timely resolution of the dispute.

12.12 If the Arbitrator permits oral submissions under section 12.11, the Arbitrator must provide appropriate facilities in which to conduct the oral hearing.

12.13 A party to the dispute may be represented by counsel or an agent during Arbitration and such counsel or agent may make submissions as to facts and law under sections 12.10 and 12.11.

12.14 Any party to the dispute who chooses to be represented by counsel at a hearing under this Law is responsible for their own legal costs.

Powers of the Arbitrator to Control Procedure

12.15 Subject to this Law and the Land Code, the Arbitrator has the power to control the Arbitrator's own process and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before the Arbitrator.

12.16 The Arbitrator may make any order:

- (a) for which a rule is made by the Arbitrator under section 12.15;
- (b) in relation to any matter that the Arbitrator considers necessary for the purposes of controlling proceedings;

including any interim order in a proceeding which they are authorized to make at the conclusion of a proceeding.

Adjournment

12.17 The Arbitrator may adjourn a hearing on the Arbitrator's own motion or if a party shows to the satisfaction of the Arbitrator that the adjournment is required to permit an adequate hearing to be held.

12.18 In considering whether a hearing should be adjourned, the Arbitrator must have regard to the following factors:

- (a) the reason for the adjournment;
- (b) whether the adjournment would cause unreasonable delay; and

- (c) the impact of granting or refusing the adjournment on the parties, Kwiakah and its Members.

Orders to Attend Hearing or Produce Documents

12.19 At any time during a hearing the Arbitrator may make an order requiring a Person:

- (a) to attend an oral hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in the dispute; or
- (b) to produce for the Arbitrator or a party a document or other thing in the Person's possession or control, as specified by the Arbitrator, that is admissible and relevant to an issue in the dispute.

12.20 The Arbitrator may apply to the Court for an order:

- (a) directing a Person to comply with an order made by the Arbitrator under section 12.19; or
- (b) directing any directors or officers of a Person to cause the Person to comply with an order made by the Arbitrator under section 12.19.

Evidence

12.21 The Arbitrator may receive and accept information and evidence in any form that the Arbitrator considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law, including notes and records kept by a Person who conducted mediation under this Law in relation to the dispute.

12.22 Despite section 12.21, the Arbitrator may not receive and accept any evidence that is inadmissible in a court because of a privilege under the law of evidence.

12.23 The Arbitrator may direct that all or part of the evidence of a witness or documentary evidence be received by the Arbitrator in confidence to the exclusion of a party or parties to the dispute, on terms the Arbitrator considers necessary, if the Arbitrator is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Examination of Witnesses

12.24 Subject to 12.25, in an oral hearing, a party to the dispute may call and examine witnesses and cross-examine witnesses as reasonably required by the Arbitrator for a full and fair disclosure of all matters relevant to the issues in dispute.

12.25 The Arbitrator may reasonably limit further examination or cross-examination of a witness if the Arbitrator is satisfied that the examination or cross-examination has been sufficient to disclose fairly and fully all matters relevant to the issues in dispute.

12.26 The Arbitrator may question any witness who gives oral evidence in an oral hearing.

Attendance at Oral Hearings

12.27 Subject to sections 12.28 and 12.30, the following persons are entitled to be present at an oral hearing:

- (a) Members;
- (b) persons residing on Lands;
- (c) persons holding an interest or licence on Lands; and
- (d) persons who have a direct interest in the dispute being heard.

12.28 Despite section 12.27, the Arbitrator may direct that all or part of the information be received to the exclusion of any persons listed in section 12.27 if the Arbitrator is of the opinion that:

- (a) the desirability of avoiding disclosure in the interests of any Person or party affected or in the public interest outweighs the desirability of adhering to the principle that oral hearings be open to the public; or
- (b) it is not practicable to hold the oral hearing in a manner that is open to the public.

12.29 The Arbitrator must make a document in the hearing accessible to the public unless the Arbitrator is of the opinion that section 12.28 or 12.23 applies to that document.

Maintenance of Order at Hearings

12.30 At a hearing, the Arbitrator may make orders or give directions that the Arbitrator considers necessary for the maintenance of order at the hearing, including imposing restrictions on a Person's participation in or attendance at a hearing.

12.31 If any Person fails to comply with any order or direction, the Arbitrator may call on the assistance of any Officer to enforce the order or direction.

12.32 An Officer called on under section 12.31 may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

Contempt Proceedings for Uncooperative Witness or Other Person

12.33 The failure or refusal of a Person summoned as a witness to do any of the following makes the Person, on application to the Court by the Arbitrator, liable to be committed for contempt as if in breach of an order or judgment of the Court:

- (a) attend a hearing;
- (b) take an oath or affirmation;
- (c) answer questions; or
- (d) produce the records or things in their custody or possession.

12.34 Section 12.33 does not limit the conduct for which a finding of contempt may be made by the Court in respect of conduct by a Person in a proceeding.

Recording Hearings

12.35 The Arbitrator may transcribe or tape-record a hearing, and such transcription or tape recording must be considered to be correct and to constitute part of the record of the hearing.

12.36 If, by mechanical or human failure or other accident, the transcription or tape recording of a hearing is destroyed, interrupted or incomplete, the validity of the hearing is not affected.

Arbitrator's Determination

12.37 The standard of proof for determining a dispute is proof on a balance of probabilities.

12.38 When making a determination respecting a dispute under this Law, the Arbitrator must take notice of:

- (a) Council's specialized knowledge and experience relating to the Kwiakah community, land base, and culture; and
- (b) Council's role in balancing competing interests when making decisions respecting Land.

12.39 After providing the parties with an opportunity to be heard, the Arbitrator must render a determination in writing and give reasons for the determination.

12.40 If the Arbitrator makes an order for the payment of money as part of a determination, the Arbitrator must set out in the order the principal sum, and the rate of interest and the date from which it is to be calculated.

12.41 The Arbitrator may attach terms or conditions to a determination.

12.42 The Arbitrator must provide a written determination to Kwiakah:

- (a) for an oral hearing or hearing by telephone, video conference or other electronic means, within ten (10) business days after the hearing; and
- (b) for a hearing in writing, within ten (10) business days after the date the Arbitrator receives all written materials from the parties to the dispute and others, if applicable.

12.43 The Arbitrator's determination is effective on the date on which it was issued, unless otherwise specified by the Arbitrator.

12.44 The Arbitrator must send a copy of the determination to each party to the dispute.

12.45 Kwiakah must keep on file at its administration offices any determination of an Arbitrator under this Law.

- 12.46 An Arbitrator's determination under this Law is accessible to any Person upon request to Kwiakah.
- 12.47 If a party to the dispute applies, or on the Arbitrator's own initiative, the Arbitrator may amend a determination to correct a clerical, typographical or other inadvertent error or an arithmetical error made in a computation, but only if the amendment is made within 30 days after the parties have been served with the determination.
- 12.48 Within 30 days of being served with the determination, a party may apply to the Arbitrator for clarification of the determination and the Arbitrator may amend the determination only if the Arbitrator considers that the amendment will clarify the determination.
- 12.49 A party in whose favour the Arbitrator makes a determination, or a Person designated in the determination, may file a certified copy of the determination with the Court, and such filed determination has the same force and effect as if it were a judgment of the Court.
- 12.50 The determination of an Arbitrator is final and binding, and not open to review.

Power to Award Costs

- 12.51 The Arbitrator may make orders requiring a party to pay part or all of the costs of another party in connection with the dispute.
- 12.52 An order made under section 12.51, after filing in the Court registry, has the same effect as an order of the Court for the recovery of a debt in the amount stated in the order against the Person named in it, and all proceedings may be taken on it as if it were an order of the Court.

Limitation on Arbitrator's Jurisdiction

- 12.53 The Arbitrator must not decide any of the following:
- (a) a matter involving the *Canadian Charter of Rights and Freedoms*;
 - (b) a matter for which notice under section 8 of the *Constitutional Question Act* is required;
 - (c) a matter involving the *Criminal Code*;
 - (d) a matter involving the *Canadian Human Rights Act*;
 - (e) a matter involving a determination of aboriginal title and rights; and
 - (f) a challenge to the validity of the law that is alleged to have been contravened, if applicable.

13. IMMUNITY

- 13.1 Subject to section 13.1, no legal proceeding for damages lies or may be commenced or maintained against:
- (a) an Arbitrator, Mediator or a Person acting on behalf of or under the direction of an Arbitrator or Mediator;
 - (b) Council, employees, servants, agents or officers of Kwiakah; because of anything done or omitted to be done:
 - (c) in the performance or intended performance of any duty under this Law or any other Kwiakah Law; or
 - (d) in the exercise or intended exercise of any power under this Law or any other Kwiakah Law.
- 13.2 Section 13.1 does not apply where past or present Council members, Kwiakah employees, servants, agents or officers:
- (a) are guilty of dishonesty, gross negligence, malicious or wilful misconduct;
 - (b) act in bad faith; or
 - (c) where the cause of action is in defamation.
- 13.3 Kwiakah, its present or past Council, officers, employees, servants or agents are not 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 discover or detect any contravention of this Law or any other Kwiakah Law or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Kwiakah Law.
- 13.4 All actions against Kwiakah for the unlawful doing of anything that:
- (a) is purported to have been done by Kwiakah under the powers conferred by this Law or any other Kwiakah Law; and
 - (b) might have been lawfully done by Kwiakah if acting in the manner established by law,

must be commenced within 60 days after the cause of action first arose, and Kwiakah 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 Kwiakah, within 30 days from the date on which the damage was sustained.

14. FORMS AND FEES

- 14.1 In this Part, “Forms and Fees” includes schedules of fines and fees, forms, and other supporting documentation for use in the administration of this Law.

- 14.2 Council may prescribe Forms and Fees.
- 14.3 Council may, by resolution, establish, correct, revise or update the terms of any applicable Forms and Fees, and will post notice of same in a public area of the Kwiakah administration building and make a copy of same available for viewing free of charge at the administrative offices of Kwiakah and available for distribution at a nominal charge.
- 14.4 If Council creates or modifies any Forms and Fees under this Law, the Administrator must ensure that the register of laws maintained under section 12.1 of the Land Code, and any notice of those fees or forms made available via Kwiakah offices or website, are updated accordingly as soon as practicable.

15. SEVERABILITY

- 15.1 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.

16. VALIDITY

- 16.1 Nothing under this law will be rendered void or invalid by:
- (a) an error or omission in a notice, form, or other document given or authorized under this Law; or
 - (b) a failure of Kwiakah, a Kwiakah official or delegate to do something within a required time.

17. AMENDMENT

- 17.1 Council may make non-substantive amendments to this Law in the same manner as that prescribed in section 34.1 of the Land Code.

18. COMING INTO FORCE

- 18.1 This Law comes into force on the day after it is approved by Council by Resolution, or such other date as is specified in the Resolution.