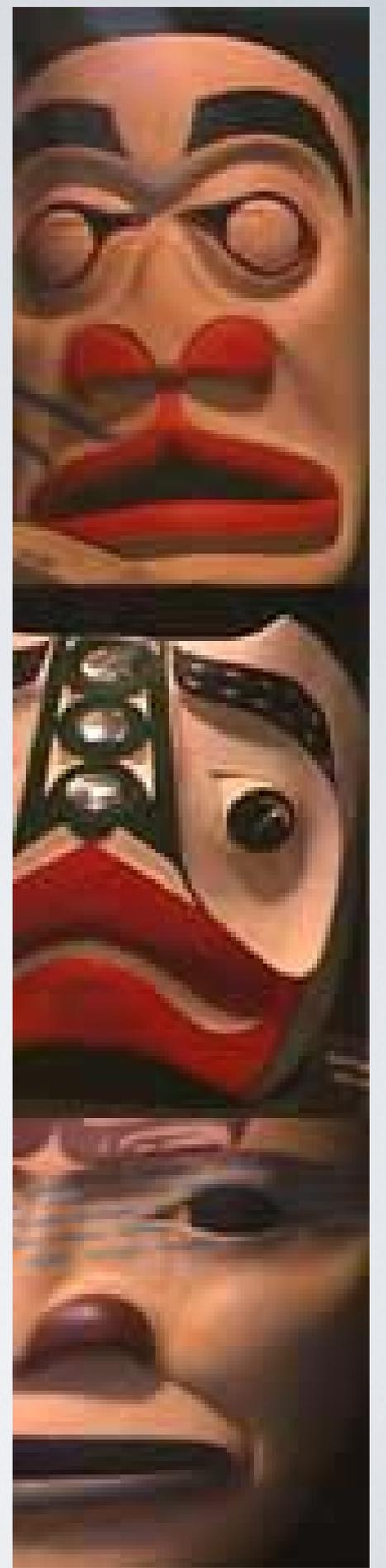


**TESLIN TLINGIT COUNCIL:  
PEACEMAKER COURT & JUSTICE COUNCIL ACT  
CONSULTATION SUMMARY**



## PURPOSE

The purpose of the consultation is to

- (a) build the Clans' awareness of the proposed Peacemaker Court & Justice Council Act;
- (b) address any questions; and
- (c) identify recommendations to bring forward to the Executive Council to consider before tabling the draft act to the General Council (proposed November 23-25, 2011).

Clan consultations are required by the Teslin Tlingit Administration & Interpretation Act outlined in section 48(2)(b) which states:

- 48(2) Upon submission of a proposed act as set out in subsection (1) the Chief Executive shall direct the Executive Council members to as soon as possible
- (b) ensure that each clan of the Teslin Tlingit Council has had the opportunity to meet and review the proposed act with their clan representatives on the Executive Council;

## BACKGROUND

- Section 13.3.17 and 13.6.0 of the TTC SGA (1993) confirms Teslin Tlingit Council's jurisdiction and authority over administration of justice.
- Following 16 years of administration of justice negotiations Teslin Tlingit Council signed their Administration of Justice Agreement (AJA) on February 21, 2011.
- The AJA provides for the establishment of a Teslin Tlingit justice system that provides for courts, corrections and enforcement services over Teslin Tlingit matters.
- Section 5.0 of the AJA provides for the establishment and jurisdiction of the Teslin Tlingit court. Section 5.1 confirms that the Teslin court will be established by Teslin Tlingit Law.
- Legislation drafting of the proposed Peacemaker Court & Justice Council Act ("Act") began in March 2005. Drafting on the proposed Act was suspended from January 2006 to February 2009 in order to focus on completing the AJA implementation negotiations. A draft Act was tabled with the Teslin Tlingit General Council in July 2009.
- The Teslin Tlingit General Council passed a Resolution (July 12, 2009) authorizing the Executive Council to bring the Act into force and effect upon satisfying the following conditions: (a) consistency with the Teslin Constitution (b) consultation requirements with YG and (c) any final technical drafting requirements.

# SUMMARY OF PEACEMAKER COURT & JUSTICE COUNCIL ACT

The Act is organized in 5 Chapters :

## A. Chapter 1:

Provides for the definitions and the purpose of the Peacemaker Court & Justice Council Act (“Act”).

## B. Chapter 2:

Organized in 3 Parts this Chapter primarily outlines:

- Peacemaker Appointments
- Peacemaker Court’s jurisdiction
- Peacemaker Court’s powers
- Limitations on Peacemaker’s powers
- Guiding Principles when dealing with matters
- Extraordinary considerations (Tlingit principles)
- Difference between a Stage One Court Order and a Stage Two Court Order
- Friend of the Court

## SUMMARY OF PEACEMAKER COURT & JUSTICE COUNCIL ACT II

### C.Chapter 3:

Provides for the recognition of the Justice Council (as established by the Teslin Tlingit Constitution) and for the Council's operations.

The Chapter is organized in two Parts and provides for:

- Composition of the Justice Council (Clan appointments)
- Justice Council term of service (4 years)
- Justice Council's jurisdiction and authorities
- Process to address and resolve complaints against Peacemakers

### D.Chapter 4:

Provides for the enforcement of Peacemaker Court orders, the establishment of offences under the Act (failure to comply with a Peacemaker Court order) and penalties if an offence is committed under the Act.

### D.Chapter 5:

Identifies amendments to other Teslin Tlingit laws for operational consistency with the new law and when the law will come into force.

## PEACEMAKER APPOINTMENTS

1. Peacemakers are required to be Teslin Tlingit citizens who can be a positive role model within the community and who have a working knowledge of the Teslin Tlingit traditional values and customs, a willingness to learn the Tlingit language, be a resident within the Teslin Tlingit traditional territory and satisfy the requirements prescribed by the Justice Council.
2. The Justice Council is responsible to appoint the Peacemakers following a process of working with the Clans.
3. The Court will be served by: (a) a full time Chief Peacemaker whose initial term is 7 years and (b) other Peacemakers who can serve either on a part time or case by case basis.
4. Peacemakers can be automatically reappointed following the expiry of their terms.
5. Peacemakers will be required to follow a code of ethics (prescribed by the Justice Council) and be of good behavior during their term of service.

## COURT'S JURISDICTION

The Court's can hear matters:

- (a) brought by individuals and/or Clans who seek mediation;
- (b) that are violations under Teslin Tlingit laws;
- (c) contrary to Teslin Tlingit constitution;
- (d) based on customary law;
- (e) governed by either territorial or federal laws when there is an agreement in place with Teslin Tlingit Council; and
- (f) appeals.

There are limitations to the Court's jurisdiction. The Court cannot:

- (a) hear matters that are within the exclusive jurisdiction of the Supreme Court; or
- (b) deal with matters that have value in excess of \$25,000.00 (breach of agreement, damage to property, restitution).

There may be some circumstances in which a Court's order can be appealed to the Supreme Court which include:

- (a) Challenge under the Canadian Charter of Rights & Freedoms; or
- (b) Court exercised authority beyond its jurisdiction.

## COURT'S POWERS

The Court's powers are outlined in section 6 of the proposed Act which includes:

- Stay or dismiss actions that are considered to be an abuse of the Court's process;
- Issue administrative orders, such as warrants or summons to appear before the Court;
- Set aside default judgments;
- Grant new trials;
- Apply sanctions for contempt of Court;
- Adjourn its proceedings; and
- Make Court orders under Stage One or Stage Two.

There are some limitations to the Court's powers. In particular the Court cannot impose a sentence on a non Citizen that is beyond what is normally imposed by the Yukon courts, unless the non Citizen consents otherwise.

## GUIDING PRINCIPLES

Section 8 of the Act outlines the general principles for the Peacemaker's consideration when hearing matters. In particular the Court is required to consider and recognize the following principles when carrying out its powers:

- Values of respect, integrity, honesty and responsibility;
- The collective nature of Teslin Tlingit;
- Preservation of the land, environment and all resources within the Teslin Tlingit traditional territory for the well being of both present and future Teslin Tlingit; and
- Importance of Teslin Tlingit traditional knowledge, customs, language and history.

Further the Court is to give effect to:

- The purpose, objectives and principles expressed in the Teslin Tlingit Constitution and laws;
- Principles of natural justice;
- Justice with without unreasonable delay;
- Sentencing principles when sentencing offenders;
- Promote healing, rehabilitation and harmony within Teslin Tlingit;
- Provide reasonable compensation to victims where appropriate; and
- Apply traditional Teslin Tlingit Clan practices and principles when addressing disputes, following the consultation with the affected Clan or Clans.

## EXTRAORDINARY CONSIDERATIONS

In addition to the general principles the Court can also apply principles that will bind either the family and/or the clan of an individual who has to account for their offensive behavior.

In particular the Court can hold the family and/or Clan responsible for the actions of a young person (14 years or younger).

This responsibility may take the form of:

- (a) Providing compensation to the victim;
- (b) Holding the family/Clan responsible while the young person is serving a sentence; or
- (c) Release the young person in the care and supervision of the family or Clan.

The Court can provide remedial sanctions to promote healing and accountability, while also considering the underlying contributing factors to a person's unlawful behaviour and where appropriate consider programs that can address a person's offensive or other anti-social behaviour.

## STAGE ONE & STAGE TWO COURT ORDERS

The Court can issue Court orders under a Stage One process or a Stage Two process.

1. A Stage One process can address all consent based disputes where the persons involved agree. These will be closed to the public unless the parties agree otherwise.

A Stage One Court order can be filed with the Supreme Court and be enforced as a Supreme Court order.

2. A Stage Two process includes all other matters, which can also include a referral to Stage One. These proceedings are open to the public unless the Court orders otherwise.

A Stage Two Court order can be for:

- a violation of a Teslin Tlingit law (or a territorial or federal matter);
- Appeal of an administrative decision; or
- Judicial review of a General Council or Executive Council decision.

Proceedings will be recorded for public record, subject to the rules of confidentiality and protection of privacy.

## FRIEND OF THE COURT

The Justice Council appoints the “Friend of the Court.”

This position is to assist the Supreme Court to understand Teslin Tlingit laws and principles.

In appeals to the Supreme Court the Friend of the Court is separate from any other representative who may appear for Teslin Tlingit Council.

The appointment is not necessarily served by a single person. The appointments can be made on a case by case basis and be determined by the nature of the case. The best Teslin Tlingit knowledgeable about Teslin Tlingit laws, principles and values will be considered.

## JUSTICE COUNCIL

The Justice Council will have the authority to:

- (a) appoint Peacemakers;
- (b) determine the Peacemakers' remuneration (salary);
- (b) consider and make any recommendations for court reform and justice improvements;
- (c) address complaints concerning a Peacemaker; and
- (d) perform any other function assigned to it under Teslin Tlingit law.

The Justice Council will be a body of five clan representatives appointed by the General Council.

The Justice Council members will each serve an initial term of 4 years and can automatically be reappointed. The original recommendation was 7 years; however, it was considered to be a high expectation of public service.

The Justice Council Chair will be responsible to receive and manage all complaints against a Peacemaker.

## COMPLAINTS PROCESS

Any person can issue a written complaint to the Chair of the Justice Council against a Peacemaker (inclusive of the Chief Peacemaker) on the grounds:

- Failed to comply with the code of conduct;
- Was convicted of a crime under the Criminal Code of Canada; or
- Displayed behaviour in public that undermines public confidence in the Teslin Tlingit or the office of the Peacemaker.

Complaints are issued to the Chair of the Justice Council who then will:

- (a) where appropriate, will take steps to investigate the complaint;
- (b) Dismiss the complaint with written notice to the complainant if the complaint is considered frivolous, without merit or trivial or does not allege facts that would constitute grounds for a complaint;
- (c) attempt to resolve the complaint between the parties through mediation;
- (d) failure to resolve by mediation to refer the matter to a Discipline Panel.

## THE DISCIPLINE PANEL

The Discipline Panel will consist of a Justice Council member and an Elder, appointed by the Elders Council.

The Discipline Panel will have the authority to: (a) investigate and determine if the allegation against the Peacemaker is substantially true (b) order the complainant and/or Peacemaker to appear before them (c) issue a written decision outlining their findings with reasons.

The Discipline Panel can make one or more of the following decisions:

- (a) Terms of an agreement in which both the complainant and Peacemaker consent in writing to resolve the matter;
- (b) Written warning to the Peacemaker;
- (c) Peacemaker to undertake counseling, engage in educational programs or comply with probationary conditions;
- (d) Suspension of the Peacemaker;
- (e) Removal from office.

The Justice Council has the authority of review of the Discipline Panel's decisions. The Justice Council can overturn a Discipline Panel's decision when a Peacemaker has been removed from office if the order is considered excessive.

## ENFORCEMENT

### 1. Enforcement of Peacemaker Court Orders:

The Court can suspend its own order on any terms or conditions.

If the Court is not satisfied that the terms and conditions of its orders are being upheld, the Court can recall the parties to Court and issue another order to ensure proper compliance with the original order.

### 2. Offences:

It is an offence

- (a) to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty under Teslin Tlingit law;
- (b) Fail to appear before the Peacemaker Court or Discipline Panel when summoned, without sufficient cause;
- (c) Attends but refuses to be sworn in;
- (d) Fails to provide documentation when ordered;
- (e) Fails to comply with a Peacemaker Court order;
- (f) Defames the court or a member of the Court;
- (g) Willfully interrupts the proceeding or attempts to improperly influence the Court;

## FINAL NOTES

It is important to identify that during the first 4 years of the Peacemaker Court, only Stage One court processes will be available. During this time Teslin Tlingit Laws will be enforced by the Yukon territorial courts under the interim measures outlined in the Administration of Justice Agreement.

Stage Two court processes are expected to begin once the Peacemakers on the Court obtain the experience and skill required to deal with the adjudication of matters. Adjudication of matters would be governed by rules of evidence and procedures and includes:

- (a) Providing notice to all interested parties (all parties with a legal interest in, or legal right affected by, the dispute); and
- (b) Opportunity for all parties to present evidence and arguments.

As a result there will be a provision added under the Commencement of the Act to ensure that those provisions that relate to Stage Two Court proceedings and orders are suspended until either a specific date or a set of circumstances are satisfied.

## CONSTITUTIONAL CONSIDERATIONS

Enactment of the Peacemaker Court & Justice Council Act will require some amendments to the Teslin Tlingit Constitution.

1. Approval of the Peacemaker Court's jurisdiction to conduct judicial reviews of either General and/or Executive Council decisions will require changes to section 8 of the Teslin Tlingit Constitution.
2. Confirmation of the Justice Council's composition, authorities and responsibilities under the Peacemaker Court Act will require changes to section 16.2 and 16.3 of the Teslin Tlingit Constitution.

The Peacemaker Court will have jurisdiction over Teslin Tlingit Citizens for both citizenship and land based laws. The court will also have jurisdiction over Non Citizens for land based matters.

The Court cannot impose a sentence on a Non Citizen different in nature to those court orders provided in the mainstream court system.

There are approximately 170 Teslin Tlingit individuals who are not considered Citizens according to the current definition of Citizen under the Teslin Tlingit Constitution, because not all Teslin Tlingit belong to a Clan. This matter requires Teslin Tlingit Council's immediate consideration.

## NEXT STEPS

**A. Executive Council needs to complete the Teslin Tlingit Peacemaker Court & Justice Council Act consultations in September 2011.**

**A. Executive Council will need to determine whether additional consultations to the September sessions are required. All Teslin Tlingit consultations should be completed on or before November 4, 2011.**

**A. A final draft of the Peacemaker Court & Justice Council Act, supported by the Chief Executive Officer's recommendation will be filed with the General Council for their review, consideration and approval at the Teslin Tlingit General Council meeting scheduled for November 23-25, 2011.**

**A. Subject to the Chief Executive Officer's recommendation, the TTC AJA Caucus can provide proposed language (on or before November 4, 2011) to support the recommended changes to sections 8 and 16 of the Teslin Tlingit Constitution to ensure operational consistency between the Constitution and the proposed Act.**