

**KWANLIN DŪN FIRST NATION**  
**THE TERMS OF REFERENCE**  
**FOR THE ADMINISTRATION OF JUSTICE AGREEMENT**  
**WORKING GROUP**

**02 April 2012**

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Duly accepted by the Council on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

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**Chief Rick O'Brien**

**1.0 Authority**

- 1.1 These terms of reference have been approved and the Administration of Justice Agreement Working Group (the "AJA Working Group") has been established by Council Resolution 2012-11, dated the 02 day of April 2012.

**2.0 Background**

- 2.1 Under section 13.3.17 of its Self-Government Agreement, the Kwanlin Dün First Nation (the "KDFN") has the power to enact a law of a local or private nature on settlement land in relation to the administration of justice. Administration of justice refers to the constitutional power of a government to make laws related to the establishment and operation of civil and criminal courts. It generally means prosecutions, enforcement and sanctions, such as fines and imprisonment. It does not include criminal law powers.
- 2.2 Until KDFN negotiates an Administration of Justice Agreement (the "AJA") with the federal and territorial governments under section 13.6.1 of the KDFN Self-Government Agreement, KDFN agreed not to exercise its power to enact any administration of justice laws under section 13.3.7. As a result, the KDFN Self-Government Agreement establishes "interim provisions" that provide mechanisms and processes for the enforcement of KDFN laws until an AJA is brought into effect.
- 2.3 Under the interim provisions, fines up to \$5,000 and imprisonment for a maximum of six months may be imposed for the violation of KDFN laws. In addition, KDFN may impose fines up to \$300,000 for the violation of a KDFN law in relation to the use of KDFN settlement land and of natural resources on KDFN settlement land or the control or prevention of pollution and the protection of the environment on KDFN settlement land. The interim provisions also confirm that the Territorial Court of the Yukon will deal with offences of KDFN laws and oblige territorial prosecutors to deal with alleged offences. Moreover, they confirm that any imprisonment for a violation of a KDFN law would be served at a territorial facility.

- 2.4 Under section 13.6.1 of its Self-Government Agreement, KDFN and the federal and territorial governments are required to enter into negotiations with respect to an AJA. It specifies that those negotiations will deal with such matters as adjudication, civil remedies, punitive sanctions including fine, penalty and imprisonment for enforcing any KDFN law, prosecution, corrections, law enforcement, the relation of any KDFN courts to other courts and any other matter related to aboriginal justice to which KDFN and the federal and territorial governments agree.
- 2.5 KDFN and the federal and territorial governments commenced preliminary discussions with respect to the negotiation of an AJA in 2011. KDFN held a community workshop in March 2011, met periodically with the negotiators of other self-governing Yukon First Nations and undertook some initial work in order to prepare for the negotiation of the AJA.
- 2.6 The KDFN negotiation team is comprised of Victoria Fred, a KDFN citizen who has practices law in the Yukon and participated in AJA negotiations with another Yukon First Nation, and staff from the KDFN Justice Department. As required, the negotiation team will retain other technicians and resources, such as legal counsel and researchers, from time to time.
- 2.7 The KDFN negotiation team will recommend a proposed AJA and any framework agreement or agreement-in-principle related to such an AJA, to the Council for its review and, if appropriate, approval.

### **3.0 Purpose, role and responsibilities of the AJA Working Group**

- 3.1 The AJA Working Group is an internal KDFN advisory body and, upon request of the KDFN negotiation team, shall carry out the following:
  - (a) meet with the KDFN negotiation team and provide advice and guidance with respect to the AJA negotiation processes and issues;
  - (b) provide input and comments to the KDFN negotiation team in relation to specific AJA negotiation approaches and topics, including the identification of key KDFN priorities;
  - (c) review community consultation processes, materials and documents and provide feedback to the KDFN negotiation team;
  - (d) consider updates and reports from the KDFN negotiation team and provide comments and suggestions, where appropriate;
  - (e) participate in the consultation processes with KDFN citizens, including community meetings and updates, facilitated by the KDFN negotiation team;
  - (f) promote effective and timely communication with KDFN citizens with respect to the AJA negotiations; and

(g) be involved in any other matter agreed to by the AJA Working Group and the KDFN negotiation team.

3.2 The AJA Working Group shall not be a decision-making body and its advice, guidance and recommendations shall not bind the KDFN negotiation team. The AJA Working Group shall not have the authority to represent KDFN in negotiations or discussions with the federal and territorial governments.

#### **4.0 Membership, appointment and term**

4.1 The AJA Working Group shall be comprised of five KDFN citizens, including at least one Elder who shall be nominated by the Elders Council.

4.2 Any KDFN citizen interested to be a member of the AJA Working Group may submit an application to the KDFN Justice Department. This application shall include a letter of interest that sets out the applicant's experience and education relevant to KDFN justice matters. Each applicant must be prepared to submit a criminal record check upon the request of KDFN.

4.3 Taking into account recommendations made by the KDFN negotiation team, the Council shall appoint the members of the AJA Working Group for a term of two years.

4.4 The members of the AJA Working Group are subject to the provisions of Schedule "A", Code of Conduct, which is attached to and forms part of these terms of reference. The Code of Conduct is based on the principles of the *Constitution of the Kwanlin Dün First Nation*.

4.4.1 Any allegation that a member of the AJA Working Group has breached a provision of Schedule "A", Code of Conduct, shall be made in writing to the Chair of the AJA Working Group in a timely manner.

4.4.2 Upon receipt of a complaint under subsection 4.4.1, the affected member shall not participate in the proceedings of the AJA Working Group until the matter is resolved in accordance with this section.

4.4.3 The Chair of the AJA Working Group shall facilitate a mediation process, if appropriate, to address the alleged breach. If the matter is resolved by the parties by way of mediation, the Chair shall provide a report to the Council with respect to the allegation and resolution.

4.4.4 If the alleged breach is not resolved in a mediation process or it is not appropriate to refer the matter to mediation or the affected parties refuse to participate in a mediation process, the Chair of the AJA Working Group shall make a recommendation to the Council with respect to the alleged breach. The Chair of the AJA Working Group may recommend that the Council remove the affected member from the AJA Working Group, suspend the member for a period of time or dismiss the allegation.

## **5.0 Chair**

- 5.1 The Chair of the AJA Working Group shall be the lead KDFN AJA negotiator. The Chair of the AJA Working Group may designate a staff member of the KDFN Justice Department to assume the responsibilities of the Chair for a specific meeting in his or her absence.

## **6.0 Meetings**

- 6.1 It is anticipated that meetings of the AJA Working Group and the KDFN negotiation team shall be convened approximately every two months during the negotiation of the AJA. Given the nature of negotiations, it may be necessary to convene more frequent meetings.
- 6.2 The AJA Working Group may invite other representatives, including other Yukon First Nations, to attend and participate in its meetings as appropriate.

## **7.0 Notice of meetings**

- 7.1 The meetings of the AJA Working Group shall be called by the Chair of the AJA Working Group who shall provide at least seven calendar days notice to the members of the AJA Working Group, unless otherwise agreed. The Chair of the AJA Working Group shall prepare a draft agenda for the consideration of the AJA Working Group and, if appropriate, approve it.

## **8.0 Quorum**

- 8.1 The quorum of a meeting of the AJA Working Group shall be three of its members and the Chair of the AJA Working Group.

## **9.0 Administrative support**

- 9.1 The KDFN Justice Department shall provide administration support for the AJA Working Group, including the preparation of written summaries of the meetings of the AJA Working Group.

## **10.0 Rules and procedure**

- 11.1 The AJA Working Group may establish written rules and procedures necessary to carry out its business. Such rules and procedures shall be consistent with these terms of reference.

**11.0 Honoraria**

11.1 The members of the AJA Working Group shall be entitled to receive honoraria in accordance with KDFN policy and practice.

**12.0 Amendments**

12.1 The AJA Working Group may recommend to the Council to amend these terms of reference as it deems appropriate.

**Schedule "A"**  
**CODE OF CONDUCT**

**Conduct at Meetings**

1. Each member of the AJA Working Group shall
  - (a) treat each AJA Working Group member, employee or contractor of KDFN in a respectful manner;
  - (b) respect the responsibility of the KDFN negotiation team and the Council to carry out the AJA negotiations on behalf of KDFN; and
  - (c) respect the responsibility of the KDFN managers and administrators to direct and instruct employees and contractors as it pertains to the AJA negotiations.

**Conflict of interest**

2. If a member of the AJA Working Group considers that he or she has a conflict of interest in respect of a matter to be discussed at a meeting, the member shall
  - (a) declare the conflict of interest and its general nature at the meeting;
  - (b) immediately leave the meeting or that part of the meeting during which the matter is to be discussed or voted on;
  - (c) not take part in the discussion or vote on the matter or attempt to influence the discussion or vote on the matter before, during or after the meeting; and
  - (d) not execute any document in relation to the matter unless specifically directed to do so by the body concerned.
3. A person responsible for recording the proceedings of a meeting referred to in section 2 shall record any member's of the AJA Working Group declaration of a conflict of interest and the time when the member was absent from the meeting.
4. The Chair of the AJA Working Group or another member of the AJA Working Group may invite any member to consider whether he or she has a conflict of interest in respect of a matter to be discussed or voted on at the meeting.
5. For purposes of this section, a member of the AJA Working Group
  - (a) has a conflict of interest in respect of a matter if his or her direct or indirect private interest would be, or could reasonably be expected to be, affected by a decision on that matter, and if the member AJA Working Group is in a position to use his or her office to make, participate in the making of, influence or attempt to influence that decision; but
  - (b) does not have a conflict of interest in respect of a matter if the member's AJA Working Group direct or indirect private interest in the matter
    - (i) is the same interest as a broad class of KDFN citizens,

Schedule "A"  
CODE OF CONDUCT

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- (ii) relates to the member's of the AJA Working Group compensation or payment of expenses while acting in the member's official capacity;
  - (iii) is so remote or insignificant that it cannot be reasonably be regarded as likely to influence the member of the AJA Working Group in relation to the matter, or
  - (iv) arises out of a gift given or received by the member of the AJA Working Group during a customary celebration or similar public occasion.
6. For purposes of this section, a member's of the AJA Working Group indirect private interest includes the private interest of
- (a) the member's of the AJA Working Group spouse;
  - (b) a minor in respect of whom the member of the AJA Working Group is a parent, acts in a parental capacity or is a guardian;
  - (c) an individual, other than an employee of the member of the AJA Working Group, who is financially dependent upon the member or upon whom the member is financially dependent; and
  - (d) an entity in which the member of the AJA Working Group or the member in combination with a person described in paragraph (a), (b) or (c) has a controlling interest.

**Confidentiality and Discretion**

7. If a member of the AJA Working Group acquires information about a person or matter that is prescribed as confidential information under KDFN law or by the KDFN negotiation team or the KDFN Justice Department, the member shall not use or disclose that information except in accordance with any applicable regulation and
- (a) with the consent of that person; or
  - (b) in so far as is necessary to carry out the member's of the AJA Working Group duties.
8. If during a meeting, an institution of KDFN holds an in-camera discussion of a matter, a person present at that discussion shall not reveal the details of that discussion, except
- (a) in so far as is reasonably necessary to carry out a decision arising from that discussion in accordance with a resolution of that institution; or
  - (b) as specifically authorized by a resolution of that or a later meeting.

**Abuse of Office**

9. A member of the AJA Working Group shall not directly or indirectly accept, demand, or request any personal economic favour, advantage or benefit for any person in exchange for



Schedule "A"  
CODE OF CONDUCT

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- (a) deciding a matter in a particular way;
  - (b) influencing or attempting to influence a decision of any branch of KDFN; or
  - (c) causing or attempting to cause a denial, interruption, or delay of any service provided by KDFN.
10. A member of the AJA Working Group shall not directly or indirectly
- (a) cause an improper denial, interruption, or delay of any service provided by KDFN;
  - (b) attempt to cause such an improper denial; or
  - (c) threaten to cause or attempt to cause such an improper denial.
11. A member of the AJA Working Group shall not engage in any conduct towards an elected or appointed person, or an employee or contractor of KDFN, which, under the laws of Canada and Yukon, amounts to harassment, assault, sexual harassment or sexual assault of that person.