

GOVERNMENT OF CARCROSS/TAGISH FIRST NATION

Passed by Executive Council August 1, 2019

FAIRNESS POLICY

GC/TFN Fairness Policy

Table of Contents

1-1 Purpose of this Policy	1
1-2 Scope of this Policy	1
1-3 Principles and Values	1
a. Principles.....	1
b. Values.....	1
1-4 Delegation by Executive Council	2
1-5 Fairness Coordinator	2
1. The Fairness Coordinator is an independent officer of the Executive Council, under the supervision of the Khà Shâde Héni and Executive Council.	2
2. Role and Responsibilities of the Fairness Coordinator	2
3. Procedures	3
a. <i>Confidentiality</i>	3
b. <i>Hearing a Complaint</i>	3
c. <i>Dealing with a Complaint</i>	3
SCHEDULE A.....	7
CONFLICT RESOLUTION OPTIONS	7
1. Conversation with the Complainant	7
2. Advocacy – Assisting the Complainant	7
3. Facilitated Discussion	7
4. Internal Review of the Decision or Action	7
5. Conciliation.....	7
6. Mediation.....	8
7. Peacemaking Circle or other traditional practices.....	8
8. Investigation & Report.....	8
9. Yukon Ombudsman Act – Section 11(5)	8
10. Executive Council, Justice Councils, or any other form of available arbitration	8
SCHEDULE B.....	9
Fairness Coordinator Oath of Office	9
SCHEDULE C.....	10
Memorandum of Understanding.....	10
Amendment Log	12

GC/TFN Fairness Policy

1-1 Purpose of this Policy

1. This policy exists to ensure a consistent and uniform approach to resolving conflict arising from decisions, actions or recommendations of the Carcross/Tagish First Nation government administration. We recognize that despite best efforts to deliver programs and services in a fair and equitable manner, from time to time there will be disagreement and discontent. This policy is intended to not only respond to complaints and expressions of concern, but also to take a proactive approach to reducing conflict and dissatisfaction.

1-2 Scope of this Policy

1. This policy applies to all Carcross/Tagish First Nation government staff, and all citizens and other residents who are directly affected by decisions, actions or recommendations of the Carcross/Tagish First Nation government administration.
2. This policy does not prevent or hinder the application of other C/TFN policies related to conflict management, conflict resolution, and fairness, such as the Personnel Policy: 1-531 Workplace Anti-Violence and Harassment Prevention Policy, 1-535 Workplace Conflict Resolution Policy and 1-1090 Whistleblower Policy. To the extent it is reasonable and practical, these other policies may be applied using any of the provisions in this policy.

1-3 Principles and Values

1. This policy is based on the Constitutional Virtues and Values of the Carcross/Tagish First Nation and, in the context of peacemaking, the following Principles and Values:

a. Principles

- i. Striving to make good government better
- ii. Welcoming constructive criticism and looking for opportunities to make positive changes when complaints or concerns are brought forward
- iii. “Doing the RIGHT thing, while Doing things RIGHT”

b. Values

- i. Selflessness
- ii. Honour
- iii. Respect
- iv. Courage
- v. Integrity
- vi. Knowledge
- vii. Compassion
- viii. Honesty

GC/TFN Fairness Policy

1-4 Delegation by Executive Council

1. The Executive Council, under this policy, delegates the responsibility for responding to all complaints and expressions of concern about administrative actions, decisions and recommendations of the Carcross/Tagish government to the office of the Fairness Coordinator, and to any available remedies by way of reviews under C/TFN policies.
2. This policy does not prevent the Executive Council to act as the final dispute settling mechanism as set out in other C/TFN policies.

1-5 Fairness Coordinator

1. The Fairness Coordinator is an independent officer of the Executive Council, under the supervision of the Khà Shâde Héni and Executive Council.
2. **Role and Responsibilities of the Fairness Coordinator**
 - a. Is responsible for the implementation and continuing administration of this policy
 - b. Is not an advocate for a complainant, or a defender of government programs or actions. He/she is an advocate for fairness.
 - c. Provides public education about conflict resolution and the application of this policy.
 - d. Ensures that 'fairness audits' are carried out at regular intervals. This involves a review of all programs and services, identifying the decision points to confirm that decisions are made fairly and avenues of review or appeal are available.
 - e. Actively promotes fair administrative practices.
 - f. Maintains the central repository for information related to complaints or concerns brought forward about administrative decisions or actions, and referrals from other C/TFN policy provisions.
 - g. Is authorized under this policy to receive complaints or expressions of concern about administrative actions, decisions and recommendations and may conduct enquiries as necessary to determine an appropriate response.
 - h. May deal with complaints and concerns by applying a range of dispute resolution options set out in Schedule A of this policy.
 - i. Shall report quarterly to the Khà Shâde Héni and/or Executive Council on the work of the office including
 1. public education efforts;
 2. proactive measures taken to reduce or prevent complaints;
 3. fairness audits conducted;
 4. number of complaints received, the number resolved successfully, the number resolved otherwise, and the number in progress;
 5. the nature of complaints by category;

GC/TFN Fairness Policy

6. complaints, if any, about the actions, decisions, or omissions on the part of the Fairness Coordinator;
7. successes and challenges of the work of the Fairness Coordinator; and
8. recommendations to the Khà Shâde Héni and Executive Council to improve and strengthen this policy.

3. Procedures

a. Confidentiality

1. Before beginning the duties of office, the Fairness Coordinator shall take an oath before the Khà Shâde Héni and/or Executive Council that the Fairness Coordinator will faithfully and impartially exercise the powers and perform the duties of office and that the Fairness Coordinator will not, except when permitted by this policy, divulge any information received by the Fairness Coordinator in that capacity. See Schedule B for Oath of Office.

b. Hearing a Complaint

1. A complaint or an expression of concern may be made by a person or a group of persons.
2. Every person who makes a complaint to the Fairness Coordinator shall
 - i. give their full name, address and telephone number, and the full name, address, and telephone number of any other person whose interests are affected by the complaint;
 - ii. state the facts which constitute the basis of the complaint; and
 - iii. provide the Fairness Coordinator with any information or document which the Fairness Coordinator considers necessary for a clear understanding of the facts.
 - iv. The Fairness Coordinator may require that the complaint be made in writing if considered necessary.

c. Dealing with a Complaint

1. The Fairness Coordinator may refuse to begin a process for addressing a complaint if, in the Fairness Coordinator's opinion
 - i. the complainant or person aggrieved knew or ought to have known of the decision, recommendation, action, or omission to which their complaint refers more than one year before the complaint was received by the Fairness Coordinator;
 - ii. the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

GC/TFN Fairness Policy

- iii. a law or an existing administrative procedure provides a remedy adequate in the circumstances for dealing with the complaint, and if the complainant has not availed themselves of the remedy, there is no reasonable justification for their failure to do so;
 - iv. the complaint is frivolous, vexatious, not made in good faith, or concerns a trivial matter;
 - v. having regard to all the circumstances, further action is not necessary in order to consider the complaint; or
 - vi. in the circumstances, initiating a conflict resolution process would not benefit the complainant.
2. The Fairness Coordinator may make initial enquiries as necessary to obtain a complete understanding of the complaint.
 3. If, in the opinion of the Fairness Coordinator there are sufficient grounds to initiate a process to address the complaint, the Fairness Coordinator shall determine what process from the range of options set out in Schedule A of this policy is appropriate in the circumstances, and coordinate/facilitate the carrying out of that option.
 4. If the Fairness Coordinator initiates a process to address a complaint, the Fairness Coordinator shall notify the Director of the department affected and any other person considered appropriate to notify in the circumstances.
 5. The Fairness Coordinator may at any time during or after the conflict resolution process consult with the Director of the department affected to attempt to settle the complaint, or for any other purpose.
 6. If, before the conclusion of a conflict resolution process the Fairness Coordinator receives a request for consultation from the Director of the department affected, the Fairness Coordinator shall consult with the Director.
 7. At the conclusion of a conflict resolution process that has validated the complaint, the Fairness Coordinator may recommend as part of the resolution of the complaint, that
 - i. a matter be referred to the appropriate Director for further consideration;
 - ii. an act be remedied;
 - iii. an omission or delay be rectified;
 - iv. a decision or recommendation be cancelled or varied;
 - v. reasons for a decision or recommendation be given;
 - vi. a practice, procedure, or course of conduct be altered;
 - vii. an apology be offered to the complainant;

GC/TFN Fairness Policy

- viii. a policy or a legislative provision be reconsidered; or
 - ix. any other steps be taken.
8. When the Fairness Coordinator makes a recommendation, the Fairness Coordinator may request to be advised by the Director of the department affected within a specified time of the steps that have been or are proposed to be taken to give effect to the Fairness Coordinator's recommendation, or if no steps have been taken or are proposed to be taken, the reasons for not following the recommendation.
 9. If, after considering a response made by a Director of the affected department, the Fairness Coordinator believes it advisable to modify or further modify a recommendation, the Fairness Coordinator shall notify the Director of the recommendation as modified and may request that the Director notify the Fairness Coordinator of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.
 10. If within a reasonable time after a request by the Fairness Coordinator no action has been taken that the Fairness Coordinator believes adequate or appropriate, the Fairness Coordinator may, after considering any reasons given by the Director, submit a report of the matter to the Khà Shâde Hèni and/or Executive Council.
 11. The Fairness Coordinator shall attach to a report to the Khà Shâde Hèni and/or Executive Council a copy of the Fairness Coordinator's recommendation and any response made to the Fairness Coordinator by the Director, but shall delete from the recommendation and from the response, any material that would unreasonably invade any person's privacy, and may in the Fairness Coordinator's discretion delete material revealing the identity of a member, officer, or employee of the affected department.
 12. If the Fairness Coordinator makes a recommendation following the conclusion of a conflict resolution process, and no action that the Fairness Coordinator believes adequate or appropriate is taken within a reasonable time, the Fairness Coordinator shall inform the complainant of the Fairness Coordinator's recommendation and make any additional comments the Fairness Coordinator considers appropriate.
 13. The Fairness Coordinator shall in every case inform the complainant within a reasonable time of the results of the process.
 14. The Fairness Coordinator shall administer an Evaluation Tool to complainants or individuals involved in a conflict resolution process, as per *Step 3. of C.*

GC/TFN Fairness Policy

Dealing with a Complaint, one month after resolution of complaint or completion of conflict resolution process.

TRANSPIRE/
REVIEW DATE

Annually or as required.

GC/TFN Fairness Policy

SCHEDULE A

CONFLICT RESOLUTION OPTIONS

1. Conversation with the Complainant

This first step in dispute resolution involves a relatively simple process of inviting the complainant to present the concern; to understand it; and determine if the problem can be resolved at this stage.

2. Advocacy – Assisting the Complainant

Sometimes complainants lack the communication skills to make their complaint. There could be extreme frustration, emotionally-charged issues, or personal conflicts with the person receiving the complaint. When any of these factors, or others, are present it is helpful to have someone assist the complainant in making the complaint.

The advocate can help refine the specific issues, and even attend meetings to provide support or speak on behalf of the complainant. The First Nation will make such an advocate available, recognizing that there are barriers to effective communication, including the impacts of trauma and bureaucratic processes that are not well understood, as examples. The Fairness Coordinator can maintain a list of people who are prepared to act as advocates.

3. Facilitated Discussion

Another approach to resolving conflict is to have a trained facilitator – it could be the Fairness Coordinator, if appropriate – engage the parties in a discussion to identify the issue(s) to be resolved; to allow each party to present their points of view; and to resolve the matter in an expedited way, if possible. This works best in situations where there may simply be a misunderstanding or the parties do not have all the facts.

4. Internal Review of the Decision or Action

This is an opportunity for those responsible for the decision or action to ‘reconsider’ – to take another look at the situation and determine whether the decision was correct or if the actions being complained about were appropriate. Decision-making often involves the exercise of discretion, so the decision maker may revisit the decision to determine whether discretion was exercised appropriately and consistent with previous decisions under similar circumstances.

This requires an open mind, and a thoughtful application of the phrase, “Doing the right thing vs Doing things right”. Often, because there is a ‘legal’ right to do something doesn’t mean it’s the right thing to do. Another approach to this option is to have someone not directly connected with the decision or action (perhaps the Executive Director) review the matter and either confirm the decision or action or, if not, to facilitate a resolution or recommend next steps.

5. Conciliation

This approach involves a neutral third party (a person without a stake in the outcome – it could be the Fairness Coordinator, if appropriate, or an independent facilitator) – to ‘shuttle’ between the parties in dispute, communicating each of the party’s interests and facilitating a resolution. This works best in situations where the parties, for whatever reason, are not comfortable or safe in a face-to-face mediation session.

GC/TFN Fairness Policy

6. Mediation

This approach involves a trained mediator as a neutral third party to lead the parties in dispute through an informal but structured mediation process. Through facilitated discussion the parties identify the issue(s) to be resolved; explore each other's interests and build understanding; develop options for resolution; and settle the matter. The parties themselves, with the help of the mediator, determine how the dispute is resolved.

The mediator's role is to facilitate agreement on guidelines for discussion; keep the parties focused; and manage any power imbalances. This option works best when the parties are motivated to settle and are able to engage in a respectful, collaborative, discussion.

7. Peacemaking Circle or other traditional practices

Parties in dispute may be invited to participate in a traditional Peacemaking Circle where concerns can be expressed and heard in a more culturally relevant way. This works best when the participants understand and appreciate the underlying cultural values, and they agree to engage in this process. The overlap between addressing conflict and personal healing is understood, and the Fairness Coordinator can also provide connections to healing practices if the parties are interested.

8. Investigation & Report

This option takes on a more formal aspect, where an independent trained investigator is retained to conduct enquiries. The investigator is given authority to examine all relevant records; to interview individuals; to uncover the facts; to make findings and recommendations to resolve the matter in question. This approach works well when an independent review is required.

9. Yukon Ombudsman Act – Section 11(5)

The Yukon's Ombudsman Act makes specific provision for any Yukon municipality or First Nation government to call on the services of the Ombudsman to conduct an investigation into any matter. The Ombudsman is required to investigate and to report as he or she sees fit. The First Nation government must make the request (not an individual complainant) and the First Nation must pay the cost of the investigation. This option offers a high level of independence and the use of highly qualified resources.

10. Executive Council, Justice Councils, or any other form of available arbitration

This form of dispute resolution involves a formal, structured process where the parties have the opportunity to make full representation and an independent body makes a decision to settle the matter based on the merits of the case and applying rules of procedural fairness (natural justice). Depending on the body's terms of reference, the decision can be final and binding or in the form of recommendations.

GC/TFN Fairness Policy

SCHEDULE B

Fairness Coordinator Oath of Office

The Fairness Coordinator shall, before entering upon the duties of their office, take and subscribe before the Khà Shâde Héni and/or Executive Council the following oath:

OATH OF OFFICE

“I, [NAME] of [ADDRESS AND CITY] accept the appointment as Fairness Coordinator for the Carcross/Tagish First Nation and hereby affirm the following:

- 1) I have read and understood the Fairness Policy (“the Policy”) and am qualified to act as the Fairness Coordinator;
- 2) I will follow the requirements of the Policy and act impartially and professionally in all disputes;
- 3) I will uphold confidentiality of all information received in the performance of my duties as Fairness Coordinator in accordance with the Policy;
- 4) I will uphold the C/TFN Virtues and Values of Selflessness, Honour, Respect, Courage, Integrity, Knowledge, Compassion, and Honesty.

Signed on [DATE] in [LOCATION] by:

_____ in the presence of _____ [WITNESS]

GC/TFN Fairness Policy

SCHEDULE C

Memorandum of Understanding

Between

The Carcross/Tagish First Nation Government
Fairness Coordinator,

and

The Carcross/Tagish First Nation Government,

and

The Carcross/Tagish First Nation Governments
Executive Council.

This Memorandum of Understanding provides the office of the Fairness Coordinator with the independence necessary to fulfill the work of the Fairness Policy.

Background

The Fairness Coordinator is an independent officer of the Carcross/Tagish First Nation (C/TFN) Governments Executive Council, reporting directly to the Khà Shâde Héni or Haa Shaa Du Hen, with support from the Executive Director.

Reporting

Office Administration

- The Fairness Coordinator will be provided a private and safe space for Citizens and employees to present their complaints/concerns;
- Records, notes and files of the Fairness Coordinator office are for the exclusive use of the Fairness Coordinator office;
- The Fairness Coordinator will not disclose the name of a visitor to the office or reveal the substance of discussions without that person's permission, and then will only do so on a need-to-know basis;
- The Fairness Coordinator will be provided a budget by The Carcross/Tagish First Nation Government to adequately perform their duties, including resources to conduct conflict resolution options listed in Schedule A of the Fairness Policy. The budget provided to the office will be spent at the discretion of the Fairness Coordinator;
- The Fairness Coordinator will be provided with training in conflict and dispute resolution, other related training and workshops, and ongoing mentorship;
- The Fairness Coordinator will be provided resources to access C/TFN Legal Counsel or independent legal advice when necessary;
- The Fairness Coordinator's Performance Management and Reviews will be conducted in-camera by Executive Council and the Khà Shâde Héni/Haa Shaa Du Hen, with support of the Human Resources Manager;
- The Khà Shâde Héni/Haa Shaa Du Hen will be the signatory for Fairness Coordinator Entitlements (including Timesheets, Leave);
- The Fairness Coordinator, Executive Director and Khà Shâde Héni/Haa Shaa Du Hen will hold regularly scheduled meetings to ensure office administration needs;
- The Executive Director, or any C/TFN Director or staff, will not interfere in the work of the Fairness Coordinator to carry out the Fairness Policy;

GC/TFN Fairness Policy

- In the event the Fairness Coordinator leaves their position, the officer will provide a transition plan, including the management of confidential information and open investigations. The Fairness Coordinator will be required to do an Exit Interview with Executive Council;

Office Operation

- The Fairness Coordinator and the Khà Shâde Héni/Haa Shaa Du Hen will hold regularly scheduled meetings to discuss office operations, tactics and strategic direction;
- The Fairness Coordinator will be provided access to all Carcross/Tagish First Nation Government personnel, files and information relevant to the issue at hand;
- The Fairness Coordinator will attend Management Board meetings at reasonable periodic intervals to promote administrative fairness, share ‘lessons learned’ from resolved cases, and make recommendations to improve administrative fairness;
- The Fairness Coordinator will report quarterly, or as necessary, to Executive Council on the activities of the office, and recommend changes to administrative practices to improve fairness and reduce conflict,
- The Fairness Coordinator will provide an Annual Report, or report as necessary, to General Council on their work under the Policy, by
 - Reporting the number of complaints/concerns received, the categories of complaints, the approaches used, cases that were resolved and those not resolved or in progress;
 - Identifying the areas of administration that were the subject of complaints/concerns;
- The Fairness Coordinator will attend C/TFN Councils, Boards and Team meetings to promote and make recommendations to improve administrative fairness.

Duration

This MOU shall become effective upon signature by the authorized officials and will remain in effect until modified or terminated by any one of the parties.

_____ Date:
(Partner signature)
Carcross/Tagish First Nation Governments Executive Council, Haa Shaa Du Hen

_____ Date:
(Partner signature)
Carcross/Tagish First Nation Governments, Executive Director

_____ Date:
(Partner signature)
Carcross/Tagish First Nation Governments, Fairness Coordinator

GC/TFN Fairness Policy

Amendment Log

Any amendment to this Policy should be recorded and authorized on this Amendment Log Sheet.

Date	Policy	Change	Explanation
August 1 2019	Fairness Policy	Passed	