



governance toolkit

best practices

Principle: Expansion of Jurisdiction
Government: Tsawwassen First Nation

OPPORTUNITY

Tsawwassen First Nation (TFN) is located in the Metro-Vancouver area of British Columbia. In 2007, following 14 years of negotiations, TFN signed a treaty with Canada and B.C. It was the first treaty reached under the BC Treaty Commission (BCTC) process and the first urban treaty. The Effective Date of the Treaty is April 3rd, 2009.

The treaty asserts TFN law-making authority over several fundamental matters. This required TFN draft and enact 21 core laws within a timeframe of approximately six months, before their Effective Date. Few projects of this magnitude exist in Canada where First Nations take on the task of drafting an entire suite of legislation. TFN set out an aggressive, innovative and comprehensive Implementation Plan. One initiative under their plan is the *TFN Legislation Project* (the Project).

The Project had one basic objective: to permit the Tsawwassen legislature to create a regime of laws with sufficient scope to authorize all TFN government actions. The general principle held is that no executive action should be undertaken by TFN Government without TFN legislative authority.

NCFNG

is a national, independent, First Nations-controlled organization dedicated to supporting First Nations as they work to implement their inherent right to self-governance. The development of a set of shared principles that clearly articulate our approach to effective governance is one way in which we support that work. This NCFNG Effective Governance Case Study profiles a best practice in the principle “Expansion of Jurisdiction”.

To learn more about this case study, contact:
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PRINCIPLE IN ACTION

The Project is similar in both organization and approach to legislative drafting projects undertaken by provinces or local governments.

The Project can be described as a “policy-driven process”. In other words, there is an important distinction between this approach and other law-making processes in recent decades that have been carried out entirely by teams of lawyers.

The scope of the Project was to parallel the range of Tsawwassen Government activity anticipated for the initial two-year period. This required legislation to be enacted to the degree necessary for TFN Government to regulate activity, implement policy, and generally carry out the business of government.

Specifically, TFN were required to establish the branches of their government consistent with their *TFN Constitution*. This included the Legislature (to pass laws), the Executive Council (to carry out the laws), a Judicial Council (to resolve disputes), an Advisory Council (to listen to members’ concerns and act as their advocates to the Legislature), and procedures for the General Assembly of Tsawwassen Members (the checks and balances on the Tsawwassen government).

A Legislative Review Committee was established consisting primarily of policy analysts and legal advisors to undertake research, analysis and key drafting tasks. They reported to a Project Leader who ensured deadlines were met, and that decisions were made at appropriate junctures, including prioritization of legislation during the Review Process.

Each Act had one member of the Legislative Review Committee assigned to the bill as well as those from TFN administration with relevant program knowledge and specialized skills. There were three main stages to the process: Stage 1: research and analysis, Stage 2: preliminary drafting, and Stage 3: final drafting.

During Stage 1 research was undertaken on relevant existing legislation whether from First Nations, federal, provincial, or municipal governments. Creation of policy content included the purpose, scope and objectives, and program and administrative needs to be contained in the legislation. Policy Briefs explained related policy questions, and included analysis and recommendations for policy options.

In Stage 2 drafting instructions for each Act were prepared in a clause by clause format, in consultation with a legal advisor. These were then forwarded to the Review Process.

In Stage 3 experienced legal drafters continued clause by clause drafting to finalize the Acts.

Review Process: The Legislative Review Committee forwarded Policy Briefs and Drafting instructions for each Act for review by a community based Treaty Implementation Advisory Committee and then to Chief and Council. Draft Acts often went through this Review Process more than once. Community

Consultation: Once the Acts were final, TFN hosted ‘Laws Week’ where sessions were held with TFN community members to review the package of laws. Sessions were held with citizens residing both on and off TFN lands.

SUCCESS FACTORS

The *TFN Legislation Project* has emerged as a best practice in law-making. A key strength of the Project was the use of inter-disciplinary teams that combined public policy professionals, legal advisors and administrative officers. The process allowed policy analysts to initiate the work and collaborate with TFN program staff to provide policy options that addressed community needs and values.

Today, the Tsawwassen Government will enact a suite of contemporary laws that are fundamentally based on traditional laws and principles carried through each generation. By enacting Tsawwassen Laws, we reaffirm these traditional principles and transmit them to subsequent generations in a manner that has relevance in modern society.

— Tsawwassen Chief Kim Baird

CHALLENGES

The timeframe to draft and enact 21 Laws was ambitious. The primary challenge was that TFN had limited human and financial resources to implement the Project. This is because, while implementation is the sixth formal stage of the B.C. Treaty Commission process – and of fundamental importance to lay groundwork and to meet legal obligations – it is the only stage of the process where resources are no longer available. Tsawwassen was creative in seeking assistance from diverse sources such as non-profit organizations. They also benefited from the contributions of graduate public policy co-op students who helped carry out the work.

A second challenge was to ensure Coast Salish language and culture was integrated into their institutions and laws. TFN made an official Declaration on the Effective Date of their treaty that explains how traditional principles and values are reflected in contemporary laws.

TFN enacted the *Culture & Heritage Act* and established a *Standing Committee on Culture & Language* in order to protect and promote their language and set both long term and short term goals on cultural matters.

NCFNG GOVERNANCE LESSONS LEARNED

The effective governance principle of *Expansion of Jurisdiction* refers to exercising authority beyond the current limited parameters of the *Indian Act*. The Tsawwassen Government will operate under the *Tsawwassen Constitution* and will enact laws over several fundamental matters.

With the exception of determining Indian status, after a transition period the *Indian Act* will no longer apply to Tsawwassen First Nation, its lands or members. Instead, Tsawwassen will exercise constitutionally-protected self-government over their lands and their citizens.

LINKS AND MORE INFORMATION

Tsawwassen Governance

www.gov.bc.ca/arr/firstnation/tsawwassen/download/factsheet/governance.pdf

Tsawwassen First Nation

www.gov.bc.ca/arr/firstnation/tsawwassen