

YUULU?IL?ATH GOVERNMENT

**CODE OF CONDUCT AND
CONFLICT OF INTEREST ACT**

YFNS 4/2011



OFFICIAL CONSOLIDATION – CURRENT TO MAY 10, 2023

This is a certified true copy of the consolidated Code of Conduct and Conflict of Interest Act,
YFNS 4/2011, current to May 10, 2023

Date: May 4, 2023

Signed: *Hamilton*
Law Clerk

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PREAMBLE

As a treaty first nation, Yuulu?il?ath assumes the responsibility of providing transparent and accountable government, blending hereditary and modern-day governing institutions. This requires Yuulu?il?ath officials to perform their duties and exercise their powers with honesty, integrity, impartiality and regard to the common good of all Yuulu?il?ath citizens.

To assist with realizing these goals, Yuulu?il?ath wishes to establish rules of conduct that all Yuulu?il?ath officials must abide by, as well as disclosure and enforcement processes aimed at ensuring Yuulu?il?ath officials abide by those rules and, if they do not, they are sanctioned appropriately.

Yuulu?il?ath adopts this Act based on these values.

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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Code of Conduct and Conflict of Interest Act.

Executive oversight

1.2 The member of the Executive holding the community services portfolio is responsible for the executive oversight of this Act.

Application

1.3 This Act applies to all Yuulu?i?ath officials.

Definitions

1.4 In this Act,

“director” means the director of operations;

“immediate family” means, when used in reference to a Yuulu?i?ath official, the Yuulu?i?ath official’s spouse, son, daughter, parent or sibling;

“private interests” includes, when used in reference to a Yuulu?i?ath official, the interests of the Yuulu?i?ath official’s immediate family;

“public office” means the office of a Yuulu?i?ath government representative or a Yuulu?i?ath public employee;

“Yuulu?i?ath official” includes, for the purposes of this Act,

- (a) a member of a committee of the Legislature as defined in the Committee Act,
- (b) a member of a committee of the Executive as defined in the Committee Act, and
- (c) a volunteer who participates in the delivery of programs or services by a Yuulu?i?ath institution.

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PART 2 - RULES OF CONDUCT

General duties

- 2.1 (a) A Yuulu?i?ath official must exercise his or her official powers and perform his or her official duties in such a manner as to maintain public confidence and trust in the integrity of the Yuulu?i?ath official.
- (b) A Yuulu?i?ath official must act honestly and in good faith with a view towards the best interests of the Yuulu?i?ath First Nation.
- (c) A Yuulu?i?ath official must demonstrate high ethical standards in personal and professional dealings.

Conflict of interest

- 2.2 A Yuulu?i?ath official must not exercise an official power or perform an official duty knowing that in doing so there is an opportunity to further his or her private interests.

Insider information

- 2.3 (a) A Yuulu?i?ath official must not use information that is obtained in the execution of his or her position as a Yuulu?i?ath official and is not available to the general public to further or seek to further the Yuulu?i?ath official's private interests.
- (b) A Yuulu?i?ath official must not communicate information referred to in subsection (a) to another person if the Yuulu?i?ath official knows, or reasonably ought to know, that the information may be used to further or seek to further the Yuulu?i?ath official's private interests.

Influence

- 2.4 A Yuulu?i?ath official must not use his or her position as a Yuulu?i?ath official to influence or seek to influence a decision of another person so as to further the Yuulu?i?ath official's private interests.

Acceptance of gifts or personal benefits

- 2.5 (a) A Yuulu?i?ath official must not accept a gift or personal benefit that might reasonably be seen to have been given to influence the Yuulu?i?ath official in the exercise of his or her official powers or the performance of his or her official duties.
- (b) Despite subsection (a), a Yuulu?i?ath official may accept a gift or personal benefit that is received
- (i) in his or her personal capacity, or

- (ii) as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of his or her position.

PART 3 - PROCEDURE ON CONFLICT OF INTEREST

Disclosure and withdrawal

- 3.1** (a) A Yuulu?il?ath official who has reasonable grounds to believe that he or she has a conflict of interest in any matter must, if present at a meeting considering the matter,
- (i) disclose the general nature of the conflict of interest, and
 - (ii) withdraw from the meeting without participating in the discussion or voting on the matter.
- (b) The absence of a Yuulu?il?ath official from a meeting because of the requirement under subsection (a)(ii) must not be taken into account in determining whether a quorum is present for that meeting and, for the purposes of this subsection, the Yuulu?il?ath official must be counted as being present even though he or she is absent from all or a portion of the meeting.
- (c) Despite subsection (a)(ii), if a Yuulu?il?ath official who discloses a conflict of interest under subsection (a)(i) is the only person present at the meeting with the information necessary to make a decision on the matter, then the Yuulu?il?ath official may participate in the discussion but must not vote on the matter.
- (d) Despite subsections (a)(ii) and (c), if the operation of those subsections would result in there being fewer than three Yuulu?il?ath officials present at the meeting who can vote on the matter, then so long as they have complied with subsection (a)(i), all Yuulu?il?ath officials present at the meeting may participate in the discussion and vote on the matter.

Invitation to disclose and withdraw

- 3.2** A person who has reasonable grounds to believe that a Yuulu?il?ath official has a conflict of interest in any matter may, if present at a meeting considering the matter, inform the chair of the meeting who must in turn invite the Yuulu?il?ath official to disclose the conflict of interest and to withdraw from the meeting.

Record of disclosure and withdrawal

- 3.3** (a) If a Yuulu?il?ath official has complied with section 3.1, the secretary of the meeting must record both
- (i) the disclosure, and
 - (ii) the withdrawal.

- (b) If the meeting referred to in section 3.1 is a meeting of the Legislature, the Executive or a committee of either of them, the secretary of the meeting must file the information referred to in subsection (a) with the director as soon as practicable after the meeting.

Access to disclosure and withdrawal records

- 3.4** The director must make all information filed under section 3.3(b) available to any Yuulu?il?ath citizen for inspection at the Government House during regular business hours.

PART 4 - DISCLOSURE REQUIREMENTS

Private interests disclosure statement

- 4.1 Each Yuulu?il?ath government representative must file with the director a private interests disclosure statement in the prescribed form
- (a) within 60 days after the earlier of the date on which he or she was elected, appointed or sworn into office, and
 - (b) within 30 days after the second anniversary of the date referred to in subsection (a).

Content of private interests disclosure statement

- 4.2 The private interests disclosure statement required under section 4.1 must identify
- (a) the name of each for-profit corporation, partnership, proprietorship or other business entity in which the Yuulu?il?ath government representative or his or her immediate family has an interest,
 - (b) the name of each not-for-profit organization or charity in which the Yuulu?il?ath government representative or his or her immediate family holds a membership, and
 - (c) the name of each for-profit corporation, not-for-profit organization or charity of which the Yuulu?il?ath government representative or his or her immediate family is an officer or director.

Supplemental disclosure statement

- 4.3 Each Yuulu?il?ath government representative must file with the director a supplemental disclosure statement in the prescribed form within 30 days after a change in the circumstances of the Yuulu?il?ath government representative or his or her immediate family occurs which results in the private interests disclosure statement filed under section 4.1 no longer being complete or accurate.

Disclosure statement for gifts or personal benefits

- 4.4 Each Yuulu?il?ath government representative must file with the director a disclosure statement for gifts or personal benefits in the prescribed form within 30 days after the receipt of a gift or personal benefit referred to in section 2.5(b)(ii) that exceeds the prescribed value.

Access to disclosure statements

- 4.5 The director must make

- (a) private interests disclosure statements filed under section 4.1,
- (b) supplemental disclosure statements filed under section 4.3, and
- (c) disclosure statements for gifts or personal benefits filed under section 4.4

available to any Yuulu?il?ath citizen for inspection at the Government House during regular business hours.

PART 5 - INCOMPATIBLE OFFICES

Incompatible offices

- 5.1** (a) Subject to this section, the Government Personnel Act and any other Yuulu?il?ath enactment, an individual may simultaneously hold more than one public office.
- (b) An individual must not simultaneously hold two public offices that are incompatible unless the simultaneous holding of those public offices is compelled or expressly authorized by Yuulu?il?ath law.
- (c) Public offices are incompatible when any of the following circumstances are present:
- (i) one public office may remove or exercises supervisory powers over the other;
 - (ii) based on the powers and duties of the public offices, there is a possibility of a significant clash of duties or loyalties between the public offices; or
 - (iii) public policy considerations make it improper for one individual to hold both public offices.

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PART 6 - ENFORCEMENT

Definition

6.1 In this Part, “respondent” means the individual complained against.

Complaints

- 6.2** (a) Subject to subsection (b), if any person has reason to believe that a Yuulu?il?ath government representative or a Yuulu?il?ath senior manager has engaged in conduct contrary to this Act, that individual may file a written complaint with the director.
- (b) If a Yuulu?il?ath government representative becomes aware of any circumstances described in subsection (a), that individual must file a written complaint with the director.

Inquiry into complaint

- 6.3** (a) If a complaint is made to the director under section 6.2, the director must
- (i) inquire into the complaint, and
 - (ii) within 30 days after receipt of the complaint, provide a written report to the Legislature, with a copy to the respondent, respecting the complaint, including the director’s findings and recommendations.
- (b) If the director’s report under subsection (a)(ii) has the potential to adversely impact the respondent, the director must
- (i) inform the respondent of the particulars of the complaint, and
 - (ii) give the respondent a reasonable opportunity to make submissions, before finalizing the report.

No contravention or inadvertent contravention found

- 6.4** If, after inquiring into the complaint, the director finds that there has been no contravention of this Act or that there has been a contravention of this Act but
- (a) the respondent took all reasonable measures to prevent the contravention, or
 - (b) the contravention was trivial, committed through inadvertence or an error of judgment made in good faith,
- the director must recommend that no sanction be imposed.

Contravention found

- 6.5** If, after inquiring into the complaint, the director finds that the respondent has contravened this Act, the director must recommend one or more of the following:
- (a) that no sanction be imposed;
 - (b) that the respondent be reprimanded;
 - (c) that the respondent publically acknowledge his or her wrongful conduct;
 - (d) that the respondent pay the Yuulu?il?ath government the amount of any gains realized as a result of the contravention;
 - (e) that the respondent be required to pay a fine not exceeding \$10,000;
 - (f) that the respondent be removed from public office;
 - (g) that the respondent be disqualified from holding public office for a period of up to eight years; or
 - (h) that any other sanction the director considers appropriate be imposed.

Determination by the Legislature

- 6.6** (a) The Legislature must, within 30 days after receipt of the director's report under section 6.3(a)(ii),
- (i) consider the report, and
 - (ii) make a determination as to
 - (A) whether the respondent has contravened this Act, and
 - (B) what sanction, if any, should be imposed on the respondent.
- (b) If the director's report under section 6.3(a)(ii) recommends that a sanction be imposed on the respondent, the Legislature must give the respondent a reasonable opportunity to make submissions before making a determination under subsection (a)(ii).
- (c) For certainty, the respondent may be present when the Legislature considers the director's report under section 6.3(a)(ii), but must not be present when the Legislature makes a determination under subsection (a)(ii).
- (d) The Legislature may impose any of the sanctions referred to in section 6.5 or any other sanction the Legislature considers appropriate on the respondent.

Complaints against the director

- 6.7** (a) Subject to subsection (b), if any person has reason to believe that the director has contravened this Act, that person may file a written complaint with the law clerk.
- (b) If a Yuulu?i?ath government representative becomes aware of any circumstances described in subsection (a), that individual must file a written complaint with the law clerk.
- (c) If a report is made to the law clerk under subsection (a) or (b),
- (i) the law clerk must
 - (A) inquire into the complaint, and
 - (B) within 30 days after receipt of the complaint, provide a written report to the Legislature, with a copy to the director, respecting the circumstances reported, including the law clerk's findings and recommendations;
 - (ii) the Legislature must, within 30 days after receipt of the law clerk's report under paragraph (i)(B),
 - (A) consider the report, and
 - (B) make a determination as to
 - (I) whether the director has contravened this Act, and
 - (II) what sanction, if any, should be imposed on the director,
 - (iii) the law clerk and the Legislature must give the director the same information and opportunity to make submissions as the director and the Legislature are required to give a respondent under sections 6.3(b), 6.6(b) and 6.6(c), and
 - (iv) the Legislature may impose any of the sanctions referred to in section 6.5 or any other sanction the Legislature considers appropriate on the director.

Whistleblower protection

- 6.8** (a) A person who makes a complaint in good faith under section 6.2 or 6.7 must not be subjected to any form of reprisal by the Yuulu?i?ath First Nation, a Yuulu?i?ath official or a contractor of the Yuulu?i?ath First Nation as a result of making that complaint.

- (b) The director and the Executive must take all necessary steps to ensure that subsection (a) is not contravened and must report any contravention or suspected contravention to the Legislature.

PART 7 - GENERAL PROVISIONS

Regulations

- 7.1 The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

Limitation on actions

- 7.2 (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Yuulu?il?ath official or former Yuulu?il?ath official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Yuulu?il?ath institution, Yuulu?il?ath official or former Yuulu?il?ath official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

Commencement

- 7.3 This Act comes into force on the Maa-nulth Treaty effective date.

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LEGISLATIVE HISTORY

Code of Conduct and Conflict of Interest Act YFNS 4/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
6.5(e)	YFNS 44/2015, s.4.3	April 14, 2015
Preamble	YFNS 82/2023, s.3.1(a)	May 10, 2023
1.4	YFNS 82/2023, s.3.1(b)	May 10, 2023

Amending Acts:

YFNS 44/2015 Enforcement Framework Amendment Act No. 2 enacted April 14, 2015
YFNS 82/2023 Committee Structure Amendment Act enacted March 13, 2023

Regulations enacted under this Act:

YFNR 2/2011 Disclosure Forms Regulation

Orders: