

**NISGA'A LISIMS GOVERNMENT**

**WILP SI'AYUUKHL NISGA'A**

**NISGA'A ADMINISTRATIVE  
DECISIONS REVIEW ACT**

**UNOFFICIAL CONSOLIDATION  
CURRENT TO JANUARY 4, 2008**

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## NISGA'A ADMINISTRATIVE DECISIONS REVIEW ACT

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**PART 1 – DEFINITIONS AND INTERPRETATION****Interpretation**

1. In this Act,

**“administrative review officer”** means the person appointed under section 4;

**“board”** means the Nisga'a Administrative Decisions Review Board established by this Act;

**“chairperson”** means the chairperson of the Nisga'a Administrative Decisions Review Board appointed under section 3;

**“complainant”** means a person who has filed a written complaint under section 5;

**“decision”** means a determination that is subject to a review under this Act;

**“decision maker”** means a Nisga'a Public Institution, Nisga'a official, or other person who, under the authority of a Nisga'a enactment, makes a decision to which this Act applies as set out in section 2;

**“member”** means an individual appointed to the board under section 3;

**“panel”** means a panel of the board; and

**“party to a review”** means the complainant, the decision maker responsible for the decision that is the subject of the review under this Act and any other person who has been added as a party to the review under section 13.

**Application**

2. This Act applies to a right under a Nisga'a enactment to request a review of a decision made under that enactment, except to the extent that the enactment that grants the right specifically provides otherwise.

**PART 2 – REVIEW BOARD AND OFFICER****Nisga'a Administrative Decisions Review Board**

3. (1) The Nisga'a Administrative Decisions Review Board is established and is an office reporting to Wilp Si'ayuukl Nisga'a.
- (2) The board consists of a chairperson and not less than two or more than five other members, each of whom must be appointed by the executive.
- (3) The following individuals are not eligible to be members:
- (a) a Nisga'a official who has authority to make a decision that could be subject of a review under this Act;
  - (b) an Officer of Nisga'a Lisims Government; or
  - (c) an elected member of a Nisga'a Public Institution.
- (4) The chairperson must be appointed for a term of three years and each other member must be appointed for a term of not less than one year and not more than three years.
- (5) A member's appointment ends before the member's term of appointment is complete if
- (a) the member resigns,
  - (b) the executive determines that the member is no longer eligible to be a member,
  - (c) the executive determines that the member, due to infirmity, is not able to perform the member's duties, or
  - (d) the member is removed from office as provided under Part 6 of the *Nisga'a Lisims Government Act*.
- (6) Before a member may take up the member's duties, the member must take the oath of office set out in the Schedule to this Act.
- (7) If, due to illness or incapacity, absence from British Columbia or a conflict of interest, the chairperson is unable to perform the chairperson's duties or exercise the chairperson's powers under this Act or another Nisga'a enactment, the chairperson may delegate all or any of those duties or powers to another named board member for a specified period of time or for purposes of the conduct of a particular complaint filed.

**Administrative review officer**

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4. (1) The executive must appoint an administrative review officer.
- (2) The administrative review officer is responsible for
  - (a) disseminating information respecting a review under this Act,
  - (b) assisting persons to request a review under this Act,
  - (c) requesting the relevant records of the decision maker responsible for the decision that is being reviewed under this Act,
  - (d) making a preliminary assessment under section 8 whether a complaint is frivolous, without merit or based upon a technical irregularity,
  - (e) making a review report to the panel as required under section 9,
  - (f) preparing and filing an annual report as required under section 23, and
  - (g) performing any other functions that the executive specifies and that are not inconsistent with the officer's functions under this Act.
- (3) At any time before making a report under section 9 in respect of a request for a review under this Act, the administrative review officer may
  - (a) conduct informal inquiries into the complaint, and
  - (b) provide to the parties to the review any assistance the officer considers appropriate to help to resolve the complaint.

**PART 3 – REQUESTING A REVIEW****Filing of complaint**

5. (1) A person may request the review of a decision by filing a written complaint with the administrative review officer.
- (2) A complaint under subsection (1) must be filed
- (a) within the time specified for requesting a review in the enactment that grants the right of review, or
  - (b) if no time is specified in that enactment, within 15 days after the complainant was notified of the decision that is the subject of the request for a review.
- (3) A complaint under subsection (1) must
- (a) identify the decision, including its subject matter, that is the subject of the request for review,
  - (b) state the date the complainant was notified of the decision,
  - (c) state the basis of the request for review, and
  - (d) give the name of the complainant, an address to which documents may be delivered to the complainant and a telephone number where the complainant may be contacted.
- (4) The administrative review officer
- (a) must, within seven days after receiving a complaint under subsection (1), deliver a copy of the complaint to the decision maker responsible for the decision that is the subject of the request for review, and
  - (b) may request copies of the decision maker's records respecting that decision.
- (5) Within seven days after receipt of a request under subsection (4)(b), the decision maker must submit the following records respecting that decision to the administrative review officer:
- (a) any record of oral evidence received or relied upon;
  - (b) copies of any documentary evidence received or relied upon;
  - (c) any other evidence received; and

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- (d) a copy of the written decision and written reasons, if any.

**Extension of time limits**

6. (1) A person who has the right to request a review of a decision may apply to the chairperson for an order extending the time for filing a complaint in respect of that decision, whether or not the time allowed under section 5(2) for filing a complaint has expired.
- (2) Upon receiving an application under subsection (1) and after giving the decision maker responsible for the decision that is subject of the review a reasonable opportunity to make representations on the application, the chairperson may order an extension of the time for filing a complaint.
- (3) A decision maker may apply to the chairperson to extend the time for submitting records under section 5(5), whether or not the time allowed under that subsection has expired, and the chairperson may, without giving the complainant an opportunity to make representations on the application, order an extension of the time.
- (4) The administrative review officer may apply to the chairperson to extend the time for delivering a review report under section 9(1), whether or not the time allowed under that subsection has expired.
- (5) Upon receiving an application under subsection (4), the chairperson may
- (a) without giving notice of the application to the complainant, extend the time once only for a person not to exceed 15 days, and
- (b) after giving the complainant a reasonable opportunity to make representations on the application, extend the time for a longer time period than permitted in paragraph (a) or for an additional period.
- (6) The chairperson must give a copy of an order made under this section to any party affected by it.

**Stays**

7. (1) The filing of a complaint under section 5 does not operate as a stay of the decision that is the subject of the request for review.
- (2) A complainant may apply to the chairperson for an order staying the decision that is the subject of the request for review.
- (3) Upon receiving an application under subsection (2) and after giving the decision maker

- responsible for the decision that is the subject of the request for review a reasonable opportunity to make representations on the application, the chairperson may order a stay of the decision if the chairperson determines that the complainant
- (a) has an arguable case for requesting a review of the decision, and
  - (b) would suffer irreparable harm if the decision were not stayed.
- (4) In an order under subsection (3), the chairperson may
- (a) specify the period of time that the decision is stayed, and
  - (b) impose any conditions that the chairperson considers appropriate in the circumstances.

### **Preliminary Assessment**

8. (1) Before submitting a review report under section 9, the administrative review officer must make an assessment whether the complaint is frivolous, without merit or based upon a technical irregularity.
- (2) If the administrative review officer makes a preliminary assessment that the complaint is frivolous, without merit or based upon a technical irregularity, the officer must, before delivering the review report under section 9,
- (a) advise the complainant in writing of this preliminary assessment and the possible assessment of costs under section 18 if the complainant continues with the request for review, and
  - (b) give the complainant reasonable opportunity to decide whether to proceed with the request for review.

### **Review report**

9. (1) Within 30 days after receiving a complaint under section 5, the administrative review officer must deliver a review report respecting the complaint to the chairperson unless the complaint has been
- (a) withdrawn by the complainant, or
  - (b) resolved as a result of informal intervention of the administrative review officer under section 4(3).
- (2) A review report under subsection (1) must include



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- (a) a copy of the complaint,
  - (b) a copy of the record submitted under section 5(5), and
  - (c) the administrative review officer's preliminary assessment made under section 8.
- (3) The administrative review officer must provide a copy of the review report under subsection (1) to all the parties to the review.

**PART 4 – BOARD REVIEW****Panel established**

- 10.** (1) Within 15 days after receiving a review report from the administrative review officer under section 9, the chairperson must establish a panel to conduct the review.
- (2) A panel must consist of one or three members of the board.
- (3) In conducting a review, a panel has the powers and authority of the board under this Act.
- (4) The chairperson may terminate an appointment to a panel and may appoint another member to fill a vacancy on the panel.
- (5) A panel must not conduct an oral hearing or carry out its deliberations unless
- (a) in the case of an oral hearing, all the members are present, and
- (b) in the case of panel deliberations, all the members are present in person or by conference telephone call.
- (6) If all the members are not present as required under subsection (5), the chairperson must
- (a) adjourn the oral hearing to another date and give notice of the adjournment under section 11(2) to the parties to the review, or
- (b) suspend or adjourn the panel's deliberations until all the members are present.
- (7) If a member has participated in the review of a decision and the member's term of appointment ends before the review has been completed and an order made under section 17, the member's term of appointment is continued for the purpose only of completing the review and participating in the making of the order under section 17 and an order, if any, under section 18.
- (8) If a member of a panel who has participated in the review of a decision becomes unable, for any reason, to complete the review or to participate in the making of an order under section 17, the remaining members of the panel may complete the review and make the order under section 17 and an order, if any, under section 18.

**Hearings**

- 11.** (1) Within 15 days after receiving a review report from the administrative review officer under section 9, the chairperson must determine

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- (a) whether the review will be conducted on the basis of an oral hearing or written submissions, and
  - (b) the time, date and location of an oral hearing, if applicable.
- (2) The chairperson must give the parties to a review written notice, of not less than 15 days, of the date of any oral hearing.
- (3) An oral hearing is open to the public unless, on application of a party to a review, the chairperson orders the public to be excluded.

**Representation**

12. Parties to a review may, at their own expense, be represented by legal counsel or an agent.

**Other parties**

13. (1) Subject to subsection (2), upon application of any person who is significantly and directly affected by a decision under review and after giving the parties to the review a reasonable opportunity to make representations on the application, the chairperson may, by order, permit the applicant to participate in the review.
- (2) An order may not be made under subsection (1) unless the chairperson determines that
- (a) the review will not be unduly delayed by allowing the applicant to participate,
  - (b) the applicant's interests will not be adequately considered unless the applicant is allowed to participate, and
  - (c) it is in the public interest to make the order.
- (3) An order made under subsection (1) may
- (a) permit the applicant to do one or more of the following:
    - (i) to present evidence;
    - (ii) to be represented, at their own expense, by legal counsel;
    - (iii) if there is an oral hearing, to ask questions; and
    - (iv) to make submissions; and
  - (b) impose conditions on the applicant's participation in the review.

**Language**

- 14.** (1) Subject to subsection (2), a review must be conducted in English.
- (2) If the chairperson is satisfied that a party to the review or a witness is unable to understand evidence or submissions presented in English at an oral hearing, the chairperson may order that simultaneous translation into Nisga'a be provided at the hearing.

**Power to require attendance**

- 15.** (1) On a review, the chairperson may, by reasonable written notice, require the complainant or a Nisga'a official
- (a) to attend as a witness before the panel, at a place and time specified in the notice, and
  - (b) to bring and produce before the panel all records in the person's possession, custody or power relevant to the subject matter of the review.
- (2) A person named in and served with a written notice under subsection (1) must
- (a) attend before the panel,
  - (b) unless the chairperson directs otherwise, answer on oath or affirmation all questions relevant to the subject matter of the review, and
  - (c) produce all records in accordance with the notice.
- (3) If a complainant fails or refuses to attend, take an oath or affirmation, answer questions or produce the records required in the notice under subsection (1), the panel may make
- (a) an order dismissing the complainant's request for review, or
  - (b) an order based upon the information before it.
- (4) If a Nisga'a official fails or refuses to attend, take an oath or affirmation, answer questions or produce the records required in the notice under subsection (1), the panel may make
- (a) an order setting aside the decision that is subject of the review, and
  - (b) an order under section 18 requiring the Nisga'a Nation, the Nisga'a Village or

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Nisga'a Institution, as the case may be, to whom the Nisga'a Official is responsible, to pay the costs of the complainant.

**Conduct of reviews**

- 16.** (1) Subject to this Act and the regulations, the board may determine the practice and procedure for the conduct of a review before a panel.
- (2) The panel must conduct each review as expeditiously and informally as possible but must give each of the parties to the review a reasonable opportunity
- (a) to hear the evidence and submissions of the other parties,
  - (b) to present relevant evidence,
  - (c) to question witnesses, and
  - (d) to make submissions.
- (3) Subject to subsection (4), the panel may receive and accept an oath or by affirmation, by affidavit or otherwise, evidence that the panel considers relevant and credible, whether or not the evidence would be admissible in a court of law.
- (4) Despite any other provisions of this Act, the panel may receive only relevant evidence respecting any of the grounds for a complaint set out in section 17(1) that the complainant is alleging and must not conduct a new hearing into the matter that was subject of the decision under review.
- (5) The panel may retain, call or hear a technical expert or advisor when it is in the public interest to do so.
- (6) The panel must arrange for the recording of an oral hearing and, on request of a party to the review and after payment of any prescribed fees by the party making the request, must provide a transcript of that recording.

**Order**

- 17.** (1) The panel must determine whether a decision under review resulted from the decision maker responsible for the decision
- (a) acting without jurisdiction or beyond its jurisdiction,
  - (b) refusing to exercise its jurisdiction,

- (c) failing to observe procedural fairness,
  - (d) failing to interpret the law correctly, or
  - (e) basing its decision on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the information before it.
- (2) Subject to subsections (3) and (4), if the panel determines that
- (a) the decision did not result from circumstances identified in subsection (1), it must make an order dismissing the review, or
  - (b) the decision did result from circumstances identified in subsection (1), it must make an order setting aside the decision.
- (3) On the request of the complainant and the decision maker responsible for the decision that is subject of the review, the panel may substitute its own decision for the decision under review if the panel has made an order under subsection (2)(b).
- (4) The panel may make an order dismissing the request for review if it determines that the request is based on a technical irregularity and the irregularity has not resulted in an injustice.
- (5) The panel must make its final order as soon as practicable
- (a) after the close of any oral hearing held, or
  - (b) if no oral hearing is held, after receipt of the last written submission by the parties to the review.
- (6) If the panel consists of three members, it must attempt to reach its order by consensus but if consensus is not possible, an order must be made by majority of the members.
- (7) The panel's order must be in writing and signed by the chairperson.
- (8) Copies of all orders made or written reasons given by the chairperson or the panel must be delivered by the administrative review officer to the parties to the review as soon as practicable.
- (9) Subject to subsection (10), neither the chairperson nor the panel is required to give written reasons for an order made under this Act.
- (10) A party to the review may, by written notice, require the chairperson or panel to give written reasons for the order made.
- (11) An order of the panel is binding on the parties to the review.

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**Costs**

- 18.** (1) After conducting a review, the panel may make an order requiring a party to the review to pay all or part of the costs of another party to the review.
- (2) Without limiting subsection (1), the panel may consider an order requiring the complainant to pay all or part of the costs of the panel or another party to the review if
- (a) the administrative review officer made a preliminary assessment under section 8 that the request for a review was frivolous, without merit or based on a technical irregularity,
  - (b) despite the officer's preliminary assessment the complainant wished to proceed with the request for a review of the decision, and
  - (c) after conducting the review, the panel agreed with the officer's preliminary assessment.
- (3) For purposes of this section, the panel may specify the amount of costs or the manner in which they are to be determined and is not limited to costs that a court may award a party in a civil action before the courts of British Columbia.

**PART 5 – GENERAL****Technical irregularity**

19. A proceeding under this Act is not invalid because of any defect in form or any technical irregularity.

**Limitation on actions**

20. The members and the administrative review officer are Nisga'a public officers for the purposes of paragraph 138 of the Nisga'a Government Chapter of the Nisga'a Treaty.

**Not compellable**

21. Except in a judicial review of an order made under this Act, neither the board, a member nor the administrative review officer may be compelled in a civil proceeding to give evidence or to produce a record respecting information obtained in proceedings conducted under this Act.

**Offices of board**

22. The offices of the administrative review officer and the board must be within Nisga'a Lands but a panel may sit at any place the chairperson determines, taking into account the convenience to the parties to the review and cost of the proceedings.

**Report by the administrative review officer**

23. (1) Annually, the administrative review officer must make a written report to the executive advising it generally
- (a) on the nature and incidence of complaints filed with the officer,
  - (b) how the complaints were resolved,
  - (c) the results of reviews conducted by the panels, and
  - (d) any recommendations the officer may have for improving the administration of decision makers to minimize the occurrence of complaints filed under this Act in respect of Nisga'a laws.
- (2) The executive must lay the report before Wilp Si'ayuukhl Nisga'a within 60 days after the earlier of



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- (a) the date the report was received, or
- (b) the date the next sitting of Wilp Si'ayuukhl Nisga'a commences.

**Notices**

- 24.** (1) A document or notice required to be delivered or given under this Act
- (a) to a complainant must be delivered or given in a manner provided in subsections (2) to (5), and
  - (b) to a decision maker must be delivered or given in a manner provided in subsections (2)(a) to (c) and (4) to the attention of the chief executive officer at the offices of Nisga'a Lisims Government.
- (2) A notice must be given in the most efficient and expeditious manner practicable using one of the following methods:
- (a) by mailing or personally delivering the notice to an address provided by the addressee;
  - (b) by sending the notice electronically by facsimile transmission to a facsimile number provided by the addressee;
  - (c) by sending the notice electronically by email address to an email address provided by the addressee;
  - (d) by giving notice orally to the addressee or to an individual whose name has been provided by the addressee for these purposes.
- (3) If notice is given under subsection (2)(d), the notice must also be mailed, delivered or sent as provided in subsection (2)(a) to (c) as soon as practicable.
- (4) Documents must be delivered in the most efficient and expeditious manner practicable using one of the following methods:
- (a) by mailing or personally delivering the documents to an address provided by the addressee;
  - (b) by sending the documents electronically by facsimile transmission to a facsimile number provided by the addressee;
  - (c) by sending the documents electronically by email address to an email address provided by the addressee.

- (5) If, under all of the circumstances, delivery of documents cannot be made using a method permitted in subsection (4), the addressee may be notified by a method permitted in subsection (2)(d) that
- (a) the addressee may take delivery of the documents at the board's offices during normal working hours, or
  - (b) the addressee may make other arrangements for delivery of the documents to the addressee or to another person on behalf of the addressee.
- (6) If a notice or document is sent by mail, it is deemed to have been received on the earlier of
- (a) the date it was actually received by the addressee, and
  - (b) five days after the date of mailing.

### **Regulations**

- 25.** The executive may make regulations it considers necessary and advisable for purposes of this Act, including but not limited to, regulations
- (a) respecting fees for the conduct of proceedings and for production of a transcript of an oral hearing under this Act,
  - (b) prescribing forms for complaints filed under this Act, and
  - (c) establishing rules of procedure for the board.

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**SCHEDULE**

Each person who is appointed to serve the Nisga'a Nation as a member of the Nisga'a Administrative Decisions Review Board must, while holding Ganim Siwileenskw, swear or affirm to perform their responsibilities appropriately by answering the following questions, which will be asked by the Chairperson of the Council of Elders:

“Do you solemnly swear or affirm that you will faithfully, truly and impartially, without fear or favour and to the best of your judgment, skill and ability, perform the office of member of the Nisga'a Administrative Decisions Review Board and that you will not, except in the discharge of your duties, disclose to any person any of the evidence or other matter brought before the Board.”

**“I will.”**

## NISGA'A ADMINISTRATIVE DECISIONS REVIEW ACT

**LEGISLATIVE HISTORY**

*Nisga'a Administrative Decisions Review Act*, NLGSR 2000/04, in force May 11, 2000

**Amendments**

<b>Section</b>	<b>Amendment</b>	<b>In Force</b>
1	definition added [2001/21, s. 5(1)] amended [2001/21, s. 5(4)]	May 11, 2000
3	(7) added [2004/06, s. 1]	June 30, 2004
4	(2)(c) amended [2001/21, s. 5(4)]	May 11, 2000
5	(4)(a) and (b) and (5) amended [2001/21, s. 5(4)]	May 11, 2000
6	(2) and (3) amended [2001/21, s. 5(4)]	May 11, 2000
7	(3) amended [2001/21, s. 5(4)]	May 11, 2000
10	(2) replaced [2004/06, s. 2]	June 30, 2004
15	(4)(b) replaced [2001/21, s. 5(2)]	May 11, 2000
17	(1) and (3) amended [2001/21, s. 5(4)]	May 11, 2000
23	(1)(d) amended [2001/21, s. 5(4)]	May 11, 2000
24	(1)(b) amended [2001/21, s. 5(3)] replaced [2004/06, s. 3]	May 11, 2000 June 30, 2004

**Amending Acts:**

NLGSR 2001/21      *Nisga'a Statute Amendment Act #5*  
 NLGSR 2004/06      *Nisga'a Administrative Decisions Review Amendment Act, 2004*

**Regulations:**

NLGSR 2005/13      *Nisga'a Administrative Decisions Review Board Fee Regulation, 2005*