

# TOQUAHT NATION GOVERNMENT


Enacted under the Enforcement Act section 7.1 and  
Administrative Decisions Review Act section 5.6

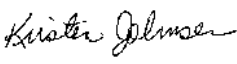
## ENFORCEMENT STANDARDS REGULATION

TNR 4/2014



This regulation enacted on May 7th, 2014

Signed   
Anne Mack, a wife of the  
Toquaht Nation

DEPOSITED IN THE  
REGISTRY OF LAWS  
ON May 12, 2014  
  
Signature of Law Clerk



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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

1.1 This regulation may be cited as the Enforcement Standards Regulation.

### Purposes

1.2 The purposes of this regulation are to

- (a) describe the jurisdiction and authority of enforcement officers, in addition to their jurisdiction and authority under other applicable law,
- (b) establish standards of conduct for enforcement officers in the performance of their duties and the exercise of their powers to enforce Toquaht enactments and preserve and maintain public peace,
- (c) assist enforcement officers to deliver fair, impartial and effective law enforcement services to the Toquaht Nation, and
- (d) maintain public confidence in enforcement officers by ensuring that they are accountable to Toquaht citizens and the general public in a way that is fair to the enforcement officers, Toquaht citizens and other members of the public and does not unduly interfere with the ability of enforcement officers to perform their duties and exercise their powers.

### Application

1.3 This regulation applies to enforcement officers.

### Definitions

1.4 In this regulation,

“Act” means the Administrative Decisions Review Act;

“applicable Toquaht institution” means, in relation to an internal enforcement officer, the Toquaht institution that the enforcement officer represents in his or her enforcement of Toquaht law under an agreement with that Toquaht institution;

“director” means the director of operations;

“internal enforcement officer” means an enforcement officer who is a Toquaht public employee or an independent contractor of a Toquaht institution;

“investigation” means an investigation into an internal enforcement officer’s conduct by the director under section 3.1;

“Review Board” means the Administrative Decisions Review Board;

“supervisor” means, in relation to an enforcement officer, the director or any other person with authority to supervise the enforcement officer in the performance of his or her duties and the exercise of his or her powers under Toquaht law, federal law or provincial law.

### **Statement of core values**

- 1.5 This regulation is to be interpreted as affirming the following core values:
- (a) every enforcement officer must at all times fulfill the duty imposed upon him or her by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by his or her profession;
  - (b) every enforcement officer agrees to uphold the rights and freedoms guaranteed or protected by law, including the human rights of all persons;
  - (c) every enforcement officer must respect and protect human dignity and must be committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity, age or economic and social status;
  - (d) every enforcement officer accepts the duty to act without favour or personal advantage;
  - (e) every enforcement officer may use force only when strictly necessary and only to the extent required for the performance of his or her duty;
  - (f) matters of a confidential nature in the possession of an enforcement officer must be kept confidential in accordance with applicable law;
  - (g) no enforcement officer may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may an enforcement officer invoke superior or exceptional circumstances, such as a state of war or a threat of war, terrorism or a threat to national security, internal political instability or any other public emergency, as a justification for torture or other cruel, inhuman or degrading treatment or punishment;
  - (h) every enforcement officer must ensure the full protection of the health of persons in his or her custody and, in particular, must take immediate action to acquire medical attention whenever required;

- (i) enforcement officers must not commit any act of corruption and must rigorously oppose and combat all such acts;
- (j) every enforcement officer must respect this regulation and other applicable law and must, to the best of his or her capability, prevent and rigorously oppose any contravention of this regulation and other applicable law; and
- (k) every enforcement officer who has reason to believe that misconduct or the contravention of other applicable law has occurred or is about to occur must report the matter to his or her supervisor and, where necessary, to other appropriate authorities or organizations vested with reviewing or remedial power.





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## PART 2 - MISCONDUCT

### Misconduct

- 2.1 In this regulation, “misconduct” means
- (a) discreditable conduct,
  - (b) neglect of duty,
  - (c) deceit,
  - (d) improper disclosure of information,
  - (e) corrupt practice,
  - (f) abuse of authority,
  - (g) improper use and care of a firearm,
  - (h) damage to Toquaht Nation property,
  - (i) misuse of intoxicating liquor or drugs in a manner prejudicial to duty,
  - (j) conduct constituting an offence,
  - (k) improper off-duty conduct,
  - (l) being a party to misconduct, or
  - (m) attempting misconduct.

### Discreditable conduct

- 2.2 For the purposes of section 2.1(a), an enforcement officer commits the misconduct of discreditable conduct if
- (a) the enforcement officer, while on duty, acts in a disorderly manner or in a manner that is
    - (i) prejudicial to the maintenance of the standard of conduct of enforcement officers set out in this regulation, or
    - (ii) likely to discredit the reputation of the Toquaht Nation,
  - (b) the enforcement officer’s conduct, while on duty, is oppressive or abusive to any person,

- (c) the enforcement officer contravenes Toquaht law,
- (d) the enforcement officer withholds or suppresses a complaint or report against an enforcement officer,
- (e) the enforcement officer fails to report to the director, the Toquaht prosecutor appointed under section 2.4 of the Enforcement Act, a special Toquaht prosecutor appointed under section 2.5 of the Enforcement Act or any other officer whose duty it is to receive the report, any information or evidence, either for or against any defendant, that is material to an alleged offence under a Toquaht enactment or a law of British Columbia or Canada, or
- (f) the enforcement officer suppresses, tampers with or, subject to any applicable law, fails to disclose to the director, a Toquaht institution or the Review Board, information that is material to a proceeding or potential proceeding under this regulation, the Act or the Enforcement Act.

### **Neglect of duty**

- 2.3 For the purposes of section 2.1(b), an enforcement officer commits the misconduct of neglect of duty if
- (a) the enforcement officer, without lawful excuse, fails to promptly and diligently
    - (i) perform his or her duties as an enforcement officer, or
    - (ii) obey a lawful direction from the enforcement officer's supervisor,
  - (b) the enforcement officer fails to work in accordance with lawfully given directions or leaves an area or place of duty without due permission or sufficient cause or, having left a place of duty with due permission or sufficient cause, fails to return promptly, or
  - (c) the enforcement officer is absent from or late for duty without reasonable excuse.

### **Deceit**

- 2.4 For the purposes of section 2.1(c), an enforcement officer commits the misconduct of deceit if
- (a) the enforcement officer makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record, or
  - (b) the enforcement officer, with intent to deceive, falsify or mislead,
    - (i) destroys, mutilates or conceals all or any part of an official document or record, or

- (ii) alters, erases or adds to any entry in an official document or record.

**Improper disclosure or dissemination of information**

- 2.5 For the purposes of section 2.1(d), an enforcement officer commits the misconduct of improper disclosure of information if the enforcement officer
- (a) except as required in the performance of his or her duties as authorized by his or her supervisor or as required by due process of law,
    - (i) discloses information that is acquired by the enforcement officer in the course of being an enforcement officer, or
    - (ii) removes or copies a record of the Toquaht Nation, or
  - (b) makes, signs or circulates a petition or statement in respect of a matter concerning the Toquaht Nation,
    - (i) knowing that all or any part of the petition or statement is false, or
    - (ii) having reckless disregard as to the truth of the petition or statement.

**Corrupt practice**

- 2.6 For the purposes of section 2.1(e), an enforcement officer commits the misconduct of corrupt practice if
- (a) the enforcement officer fails to properly account for, or to make a prompt and true return of, any money or property received by the enforcement officer in the course of duty,
  - (b) the enforcement officer agrees to be under a pecuniary or other obligation to any person in a manner that might affect the proper performance of the duties of the enforcement officer, or
  - (c) for personal gain or for purposes unrelated to the performance of his or her duties as an enforcement officer, the enforcement officer
    - (i) uses authority or position as an enforcement officer, or
    - (ii) uses any equipment or facilities of the Toquaht Nation.

**Abuse of authority**

- 2.7 For the purposes of section 2.1(f), an enforcement officer commits the misconduct of abuse of authority if the enforcement officer
- (a) without good and sufficient cause, arrests, detains or searches a person,

- (b) uses unnecessary force on a person,
- (c) while on duty, is discourteous or uncivil or uses profane, abusive or insulting language to a person, including language that tends to demean or show disrespect to a person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity, age or economic and social status, or
- (d) harasses, intimidates or retaliates against a person who makes a report about the conduct of an officer or submits a complaint under any applicable law, including a review request in accordance with the Act.

### **Improper use and care of firearm**

- 2.8 For the purposes of section 2.1(g), an enforcement officer commits the misconduct of improper use and care of a firearm if the enforcement officer uses or cares for a firearm in a manner that is contrary to any applicable law.

### **Damage to Toquaht Nation property**

- 2.9 For the purposes of section 2.1(h), an enforcement officer commits the misconduct of damage to Toquaht Nation property if the enforcement officer
- (a) loses, destroys or causes any damage to
    - (i) any Toquaht Nation property, or
    - (ii) any property, the care of which has been entrusted to the enforcement officer, in the course of the enforcement officer's duties, or
  - (b) fails to report any loss or destruction of, or any damage to, any property referred to in subsection (a)(i), however caused.

### **Misuse of intoxicating liquor or drugs**

- 2.10 For the purposes of section 2.1(i), an enforcement officer commits the misconduct of misuse of intoxicating liquor or drugs in a manner prejudicial to duty if
- (a) the enforcement officer, on reporting for or while on duty, is unfit for duty as a result of drinking intoxicating liquor, using a drug for non-medical purposes or intentionally misusing a prescription drug, or
  - (b) the enforcement officer, without proper authority, makes any use of, or receives from any other person, an intoxicating liquor or a non-medical drug while on duty.

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### **Conduct constituting an offence**

- 2.11 For the purposes of section 2.1(j), an enforcement officer commits the misconduct of conduct constituting an offence if the enforcement officer is found guilty of an offence under an enactment of the Toquaht Nation, Canada or any province or territory in Canada that renders the enforcement officer unfit to perform his or her duties as an enforcement officer or that is likely to discredit the reputation of the Toquaht Nation.

### **Improper off-duty conduct**

- 2.12 For the purposes of section 2.1(k), an enforcement officer commits the misconduct of improper off-duty conduct if
- (a) the enforcement officer, while off duty, asserts or purports to assert authority as an enforcement officer and does an act that would constitute misconduct if done while the enforcement officer is on duty, or
  - (b) the enforcement officer, while off duty, acts in a manner that is likely to discredit the reputation of the Toquaht Nation.

### **Party to misconduct**

- 2.13 For the purposes of section 2.1(l), an enforcement officer commits the misconduct of being a party to misconduct if the enforcement officer aids, abets, counsels or is an accessory after the fact to misconduct.

### **Mental element of misconduct**

- 2.14 Unless otherwise specified in this regulation, an enforcement officer commits misconduct if the enforcement officer intentionally or recklessly commits the act or omission constituting the misconduct.



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## PART 3 - CONDUCT REVIEW AND DISCIPLINE

### Investigation by director

- 3.1 If the director has reasonable grounds to believe that an internal enforcement officer has committed misconduct, he or she must conduct an expeditious investigation into the matter.

### Notice of investigation

- 3.2 (a) At the commencement of an investigation, the director must, by written notice, inform the internal enforcement officer, the applicable Toquaht institution and any person who appears to have been aggrieved by the apparent or alleged misconduct of
- (i) the details of the apparent or alleged misconduct which is the subject of the investigation, and
  - (ii) the right of the internal enforcement officer, the applicable Toquaht institution and an apparently aggrieved person to submit to the director, within 14 days of the date of the notice, a written response in relation to the subject of the investigation.
- (b) The director may, at his or her discretion, extend the deadline under subsection (a)(ii) and may do so before or after the deadline.

### Information gathering

- 3.3 The director may gather the information he or she reasonably requires for the investigation of the apparent or alleged misconduct, including information from the internal enforcement officer, his or her supervisor, the applicable Toquaht institution or any apparently aggrieved person.

### Decision to take no further action

- 3.4 (a) At any time during the investigation of any alleged or apparent misconduct, the director may decide to take no further action on the matter.
- (b) If the director decides to take no further action on a matter under subsection (a) after he or she has given notice of an investigation to persons under section 3.2(a), the director must give those persons prompt written notice of his or her decision to take no further action on the matter.

### Decision of no misconduct

- 3.5 If, after completing an investigation, the director finds that an internal enforcement officer did not commit misconduct, the director must give the persons provided with

notice under section 3.2(a) for that alleged or apparent misconduct a written notice setting out the decision that there has been no misconduct.

### **Decision of misconduct**

- 3.6 If, after completing an investigation, the director finds that an internal enforcement officer has committed misconduct, the director may take any of the following disciplinary or corrective measures:
- (a) recommend to the Executive that it revoke the enforcement officer's appointment;
  - (b) dismiss the enforcement officer;
  - (c) demote the enforcement officer;
  - (d) transfer or reassign the enforcement officer;
  - (e) suspend the enforcement officer without pay for not more than five scheduled working days;
  - (f) direct the enforcement officer to work under close supervision;
  - (g) direct the enforcement officer to undertake special training or retraining;
  - (h) direct the enforcement officer to undertake professional counseling; or
  - (i) reprimand the enforcement officer.

### **Notice of decision**

- 3.7 As soon as practicable after completing an investigation, the director must deliver to the persons who were provided notice of the investigation under section 3.2(a) for the alleged or apparent misconduct a written notice of
- (a) the decision of the director under section 3.5 or 3.6, and
  - (b) the right to request a review of that decision in accordance with section 3.8.

### **Review by Review Board**

- 3.8 No later than 10 days after a person receives a written notice under section 3.7, he or she may request a review of the director's decision under section 3.5 or 3.6 by the Review Board in accordance with the Act.



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### **Right to request a review**

- 3.9 For certainty, this regulation does not limit a person's right, in accordance with the Act, to request a review by the Review Board of an act or omission of an enforcement officer to which section 1.3(b) of the Act applies.

### **Review Board's consideration**

- 3.10 (a) In reviewing a decision of the director made under section 3.5 or 3.6 or a review request to which section 1.3(b) of the Act applies, the Review Board must consider whether the enforcement officer committed any misconduct.
- (b) In considering whether an enforcement officer's determination resulted from him or her acting without jurisdiction or beyond the enforcement officer's jurisdiction or authority under section 4.7(a)(i)(A) of the Act or refusing to exercise the enforcement officer's jurisdiction or authority under section 4.7(a)(i)(B) of the Act, the Review Board must consider whether he or she committed any misconduct.
- (c) For certainty, the circumstances identified in sections 4.7(a)(i)(A) and 4.7(a)(i)(B) of the Act include all forms of misconduct described in section 2.1.

### **Review Board recommendation**

- 3.11 If, in reviewing a decision of the director under section 3.5 or 3.6 or a review request to which section 1.3(b) of the Act applies, the Review Board finds that an internal enforcement officer has committed misconduct, the Review Board may recommend that the director take any action under section 3.6.

### **Corrective and educational approach**

- 3.12 If the director or the Review Board considers that a disciplinary or corrective measure is necessary, an approach that seeks to correct and educate the enforcement officer takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the Toquaht Nation into disrepute.

### **Least onerous measure**

- 3.13 If the director or the Review Board considers that a disciplinary or corrective measure is necessary, the director or Review Board must, within their respective powers under the Act and this regulation, direct, take or recommend the least onerous disciplinary or corrective measure in relation to the enforcement officer concerned unless the following would be undermined:
- (a) the organizational effectiveness of the Toquaht administration, or
- (b) public confidence in the integrity of the enforcement of Toquaht law.

**Aggravating and mitigating circumstances**

- 3.14 The director and the Review Board must consider aggravating and mitigating circumstances in determining which just and appropriate disciplinary or corrective measure to direct, take or recommend within their respective powers under the Act and this regulation, including
- (a) the seriousness of the misconduct,
  - (b) the impact of the misconduct on any apparently aggrieved person,
  - (c) the extent to which the misconduct
    - (i) has brought, or is likely to bring, the Toquaht Nation into disrepute, and
    - (ii) has diminished, or is likely to diminish, public confidence in the integrity of the enforcement of Toquaht laws,
  - (d) the enforcement officer's record as an enforcement officer enforcing Toquaht law, including any other record concerning past misconduct,
  - (e) the impact of proposed disciplinary and corrective measures on the enforcement officer and on the enforcement officer's family,
  - (f) the likelihood of future misconduct by the enforcement officer,
  - (g) whether the enforcement officer accepts responsibility for the misconduct and is willing to take steps to prevent a recurrence of the misconduct,
  - (h) the degree to which the Toquaht Nation or the applicable enforcement agency's policies, standing orders or internal procedures or the actions of the enforcement officer's supervisor contributed to the misconduct,
  - (i) the range of disciplinary or corrective measures imposed in similar circumstances, if known, and
  - (j) other aggravating or mitigating factors.

**Enforcement officer apology**

- 3.15 Nothing in this regulation prevents an enforcement officer from providing an apology to the Toquaht Nation or to any person.

**External enforcement agency response**

- 3.16 Nothing in this regulation or the Act prevents an external enforcement agency from

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- (a) making its own determination concerning alleged or apparent misconduct of an external enforcement officer and any disciplinary or corrective measures required as a result of that misconduct under the applicable external enforcement agency's policies and procedures or under federal or provincial law,
  - (b) issuing an apology on its own behalf or, with the consent of the external enforcement officer concerned, on behalf of both the external enforcement agency and the external enforcement officer, or
  - (c) considering, proposing or implementing policy changes designed to prevent recurrence of misconduct.

**External complaints processes**

- 3.17 For certainty, nothing in the Act or this regulation prevents the director from engaging on behalf of the Toquaht Nation in any other complaint resolution process relating to an external enforcement officer conducted by or in relation to an external enforcement agency in accordance with applicable law.



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## PART 4 - GENERAL PROVISIONS

### Offences

- 4.1 (a) A person commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 if he or she,
- (i) without reasonable excuse, obstructs, hinders or resists the director, the Review Board or any other person in the performance of their duties or the exercise of their powers under this regulation or the Act,
  - (ii) without reasonable excuse, refuses or fails to comply with any lawful requirement of the director, the Review Board or any other person under this regulation or the Act, or
  - (iii) makes any statement or gives any information to the director, the Review Board or any other person exercising powers under this regulation or the Act, knowing that the statement or information is false or misleading.
- (b) An internal enforcement officer who fails to comply with a disciplinary or corrective measure taken by the director under section 3.6 commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000.