


TOQUAHT NATION GOVERNMENT

**TRESPASS AND
COMMUNITY SAFETY ACT**

TNS 4/2019



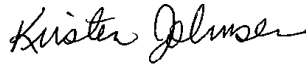
This law enacted on May 14, 2019

Signed 

Anne Mack, ḥaʔwíl of the
Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON May 28, 2019



Signature of Law Clerk

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PREAMBLE

The Toquaht government assumes the responsibility of providing measures to ensure the safety of the community, children and the vulnerable on Toquaht lands. Under 13.25.1 of Chapter 13 Governance of the Maa-nulth Treaty, the Toquaht government is recognized with the authority to enact laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Toquaht lands that constitute, or may constitute, a threat to public order, peace or safety. Section 1.3(g) of the Constitution affirms each Toquaht citizen's right to a healthy life, which includes a life free from the fear of violence and threats of violence, both to his or her person or their property, whether it is from violent crime, exposure to illegal substances or sexual exploitation or abuse.

The Toquaht government recognizes its obligations under 5.4.1 of Chapter 5 Access of the Maa-nulth Treaty to provide reasonable public access to Toquaht public lands for temporary recreational uses and temporary noncommercial purposes. The Toquaht government also recognizes the right of Toquaht citizens under section 1.3(j) of the Toquaht Constitution to access Toquaht lands in accordance with Toquaht laws.

These rights of access must be balanced with the rights of personal and public safety, as well as other rights and obligations, including preventing public nuisance, damage to property and protecting the environment. This balancing must be made in accordance with the Canadian Charter of Rights and Freedoms as recognized in 1.3.2 of Chapter 1 General Provisions of the Maa-nulth Treaty and the principles of fundamental justice, including due process.

The Toquaht government adopts this Act based on these values and objectives.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Trespass and Community Safety Act.

Executive oversight

1.2 The chairperson is responsible for the executive oversight of this Act.

Authority and application

- 1.3 (a) This Act is enacted under
- (i) 5.3.1 and 5.3.3 of Chapter 5 Access and 13.25.1 of Chapter 13 Governance of the Maa-nulth Treaty, and
 - (ii) sections 3.2(aa) and (gg) of the Constitution.
- (b) This Act applies to Toquaht lands.

Definitions

1.4 In this Act,

“authorized person” means a person authorized by an occupier of land to exercise a power or perform a duty of the occupier under this Act;

“director” means the director of lands;

“excluded individual” means the individual who is the subject of an exclusion order;

“exclusion application” means an application made under section 3.1;

“exclusion order” means an order made under section 3.7;

“exclusion hearing” means a hearing held in accordance with section 3.6;

“interest” has the meaning given to that term in the Land Act;

“licence” has the meaning given to that term in the Land Act;

“limited access land” means

- (a) in relation to Toquaht private lands, land that is
 - (i) surrounded by a fence,

- (ii) surrounded by a fence and a natural boundary, or
 - (iii) posted with one or more signs prohibiting trespass in accordance with section 2.3, or
- (b) in relation to Toquaht private lands or Toquaht public lands, land that is designated as limited access land by the Executive, by regulation;

“Toquaht private lands” means “Maa-nulth First Nation Private Lands” of the Toquaht Nation under the Maa-nulth Treaty;

“Toquaht public lands” means “Maa-nulth First Nation Public Lands” of the Toquaht Nation under the Maa-nulth Treaty;

“occupier” means a person who, if a trespass has occurred, is entitled to maintain an action for trespass;

“rescission application” means an application made under section 4.6;

“rescission order” means an order made under section 4.8;

“rescission hearing” means a hearing held in accordance with section 4.7;

“respondent” means the individual who is the subject of an exclusion application;

“significant threat” means a substantial threat to public order, peace or safety on Toquaht lands or the health, safety or wellbeing of any individual on Toquaht lands;

“suspension application” means an application made under section 4.1;

“suspension order” means an order made under section 4.2.

Interpretation

- 1.5**
- (a) For certainty, “land” includes any building or other structure on the land.
 - (b) The phrase “on land” or “on the land” is deemed to include the phrase “in land” or “in the land”, as applicable.

PART 2 - TRESPASS

Unauthorized entry

- 2.1** (a) Subject to subsection (c), a person must not do any of the following:
- (i) enter land that is limited access land;
 - (ii) enter land after the person has had notice from an occupier of the land or an authorized person that the entry is prohibited; or
 - (iii) engage in activity on land after the person has had notice from an occupier of the land or an authorized person that the activity is prohibited.
- (b) Subject to subsection (c), a person who has been directed, either verbally or in writing, by an occupier of land or an authorized person to leave the land or stop engaging in an activity on the land,
- (i) must leave the land or stop engaging in the activity on the land, as applicable, as soon as practicable after receiving the direction, and
 - (ii) must not re-enter the land or resume the activity on the land, as applicable.
- (c) A person does not contravene subsection (a) or (b) in relation to land if the person's action or inaction, as applicable, was with
- (i) the consent of an occupier of the land or an authorized person,
 - (ii) other lawful authority, or
 - (iii) an honest belief in a state of facts which if they actually existed would at law justify or excuse the action or inaction.
- (d) A person found on land that is limited access land is presumed not to have the consent of an occupier of the land or an authorized person to be there.

Unauthorized possession, occupation and uses

- 2.2** A person must not
- (a) without lawful authority
 - (i) occupy or possess Toquaht lands,
 - (ii) damage Toquaht lands or improvements on Toquaht lands,
 - (iii) harvest, extract or damage forest resources, mineral resources, fish or wildlife on Toquaht lands,

- (iv) interfere with the lawfully authorized use, occupation or possession of Toquaht lands,
 - (v) construct a building, structure, enclosure or other works on Toquaht lands,
 - (vi) excavate Toquaht lands,
 - (vii) throw, deposit, dump or in any way cause to be placed on Toquaht lands any glass, metal, garbage, soil or other material,
 - (viii) abandon on Toquaht lands any vehicle or vessel, or
 - (ix) interfere with or remove a sign erected by, on behalf of or with the authority of the Executive on Toquaht lands, or
- (b) use a designated area of Toquaht lands contrary to a Toquaht enactment.

Methods of giving notice

- 2.3** (a) For the purposes of subsection (a)(iii) of the definition of “limited access land”, signs must be posted so that, in daylight and under normal weather conditions, from the approach to each ordinary point of access to the enclosed land,
- (i) a sign is clearly visible,
 - (ii) if a sign contains writing, the writing is clearly legible, and
 - (iii) if a sign uses graphic representation, the graphic representation is clearly visible.
- (b) For the purposes of section 2.1(a)(ii) or 2.1(a)(iii), notice may be given
- (i) verbally or in writing, or
 - (ii) by means of a sign posted at or near an ordinary point of access to the land so that, in daylight and under normal weather conditions from the approach to the ordinary point of access, the sign satisfies the requirements of subsections (a)(i), (a)(ii) and (a)(iii).
- (c) A sign posted in accordance with subsection (b)(ii) that
- (i) names an activity and has an oblique line drawn through the name, or
 - (ii) shows a graphic representation of an activity and has an oblique line drawn through the representation
- is sufficient for the purpose of giving notice that the activity is prohibited.

- (d) A notice under this section may relate to all or a part of land and different notices may be given or posted in relation to different parts of land.
- (e) A person, other than an occupier of the land or an authorized person, must not remove, alter or deface a sign posted for the purpose of subsection (a) or (b)(ii).

PART 3 - EXCLUSION ORDERS

Exclusion application

- 3.1** The director may, on reasonable and probable grounds, make an application to the Executive alleging that an individual named in that application poses a significant threat and should be removed from and be prohibited from entering or remaining on the Toquaht lands proposed in the application.

Form of exclusion application

- 3.2** (a) An exclusion application must be in the prescribed form and contain the following information:
- (i) the name and address of the respondent;
 - (ii) a written statement, not exceeding 500 words, setting out the facts which, in the opinion of the director, make the respondent a significant threat;
 - (iii) the proposed duration of the exclusion order;
 - (iv) the Toquaht lands the director proposes prohibiting the respondent from entering or remaining on; and
 - (v) any other prescribed information.
- (b) An exclusion application must include any documentary evidence the director intends to rely on.
- (c) The director's statement under subsection (a)(ii) must not contain any words or statements that are
- (i) profane,
 - (ii) solely an opinion not based on any fact,
 - (iii) irrelevant to the question of whether or not the individual is a significant threat, or
 - (iv) facts only an unreasonable individual could believe to be true.

Service on respondent

- 3.3** The director must, as soon as is reasonably practicable, deliver in accordance with Toquaht law a copy of an exclusion application to the respondent and provide proof of that delivery to the Executive.

Respondent's reply

- 3.4** (a) Within 14 days after receipt of the exclusion application under section 3.3, the respondent may submit the following to the Executive:
- (i) a written statement, not exceeding 500 words, setting out the respondent's reply to the application;
 - (ii) any record of oral evidence the respondent intends to rely upon; and
 - (iii) copies of any other documentary evidence the respondent intends to rely upon.
- (b) The respondent may apply to the director to extend the time for submitting a document or record under subsection (a), whether or not the time allowed under that subsection has expired, and the director may order an extension of the time.
- (c) A statement under subsection (a)(i) must not contain any words or statements that the director decides are
- (i) profane,
 - (ii) solely an opinion not based on any fact,
 - (iii) irrelevant to the question of whether or not the respondent is a significant threat, or
 - (iv) facts only an unreasonable individual could believe to be true.
- (d) The Chairperson must review any statement under subsection (a)(i) within seven days of its receipt and, if that statement is not acceptable because it contains words or statements referred to in subsection (c), must inform the respondent of the deficiencies and give the respondent seven days to correct the deficiencies and resubmit the statement to the Executive.

Document disclosure

- 3.5** The Chairperson must ensure that a copy of any document or record received by the Executive under section 3.4(a) is provided to the director as soon as is reasonably practicable.

Exclusion hearing

- 3.6** (a) Subject to section 3.4(b) and subsection (c)(i), the Executive must hold a hearing to consider an exclusion application no sooner than 15 days and no more than 30 days after the respondent received the application under section 3.3.

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- (b) Notice of the date, time and location of the exclusion hearing must be delivered in accordance with Toquaht law to the respondent at least 14 days before the date of the exclusion hearing.
 - (c) If the respondent does not attend the exclusion hearing, the Executive may
 - (i) reschedule the hearing, in which case
 - (A) the time limit in subsection (a) does not apply to the rescheduled hearing, and
 - (B) the rescheduled hearing must be held no more than 30 days after the date of the original hearing, or
 - (ii) hold the hearing in the absence of the respondent.
 - (d) The respondent may be represented by an agent or counsel at the exclusion hearing.
 - (e) The respondent may present evidence and call witnesses at the exclusion hearing and all evidence must be given under oath.
 - (f) Subject to this Act and any other Toquaht law, the Executive has the power to establish rules of order and procedure to be followed at exclusion hearings.

Exclusion order

- 3.7**
- (a) After holding an exclusion hearing, the Executive may, by resolution, either
 - (i) issue an exclusion order against the respondent, or
 - (ii) reject the exclusion application.
 - (b) The Executive must not issue an exclusion order unless it is reasonably satisfied that
 - (i) the respondent poses a significant threat,
 - (ii) issuing an exclusion order will materially reduce that threat, and
 - (iii) there is no less intrusive way available to the Toquaht government to materially reduce that threat.

Written reasons

- 3.8**
- Within 14 days of an exclusion hearing, the Executive must
 - (a) prepare written reasons for its decision under section 3.7, and

- (b) deliver in accordance with Toquaht law a copy of those reasons to the director and the respondent.

Content of exclusion order

3.9 An exclusion order must be in the prescribed form and

- (a) must contain
 - (i) the name of the excluded individual,
 - (ii) the date the exclusion order was issued,
 - (iii) the date the exclusion order is effective, which must not be less than seven days from the date of the exclusion hearing,
 - (iv) the date the exclusion order expires, which must not be more than five years from the date the exclusion order becomes effective, and
 - (v) the Toquaht lands the excluded individual is prohibited from entering or remaining on,
- (b) may contain any other terms and conditions the Executive decides are just and appropriate in the circumstances, and
- (c) must be signed by the Chairperson.

Delivery and posting of exclusion order

- 3.10** (a) The director must, within seven days after an exclusion order is issued, deliver in accordance with Toquaht law a copy of the exclusion order to
- (i) the excluded individual,
 - (ii) each employer of the excluded individual if
 - (A) the director has knowledge of that employment, and
 - (B) in the opinion of the director, the excluded individual's employment with that employer could require the excluded individual to enter onto the Toquaht lands specified in the exclusion order, and
 - (iii) each enforcement officer designated under a Toquaht enactment to enforce this Act.
- (b) The director must, within 14 days from the date an exclusion order was issued, post in accordance with Toquaht law a summary of the exclusion order.

Access for elections and referendums

3.11 If

- (a) an exclusion order prohibits an excluded individual from entering or remaining on Toquaht lands designated as a voting place under the Elections Act, and
- (b) that excluded individual is also an eligible voter, as defined in the Elections Act,

despite the terms and conditions of that exclusion order, the excluded individual may attend the voting place to vote in an election or referendum, as defined in the Elections Act, if the excluded individual notifies the director not less than seven days before the date on which the excluded individual proposes to attend the voting place, and then only in accordance with any terms and conditions imposed by the director.

Access for interest or licence in Toquaht lands

3.12 (a) If an excluded individual has an interest in, or licence in relation to, Toquaht lands, the exclusion order must

- (i) provide for the excluded individual to have access to those lands, and
- (ii) include a map clearly showing the means by which the excluded individual is permitted to access those lands,

and the excluded individual may access those lands in accordance with the exclusion order.

- (b) For certainty, nothing in this Act limits the power of the Executive to
 - (i) revoke and discharge an interest in, or licence in relation to, Toquaht land under section 4.3(b) of the Public Order, Peace and Safety Act, or
 - (ii) prohibit an interest holder or occupant from entering onto or occupying Toquaht land under section 4.5(c) of the Public Order, Peace and Safety Act.

Prohibition on acquiring interest or licence in Toquaht lands

3.13 (a) Subject to subsection (b), an excluded individual may not acquire an interest in, or licence in relation to, Toquaht lands while his or her exclusion order is in effect.

- (b) An excluded individual who is also a Toquaht citizen may acquire an interest in, or licence in relation to, Toquaht lands while his or her exclusion order is in effect, but only by testamentary disposition.

- (c) If an excluded individual acquires an interest or licence under subsection (b), the excluded individual must notify the director of the existence of that interest or licence within 30 days from the date it is registered in the lands registry office or the land title office, as applicable.
- (d) Upon receipt of a notification in subsection (c), the director must
 - (i) modify the exclusion order to provide for access to the lands that are the subject of the interest or licence in accordance with section 3.12,
 - (ii) deliver in accordance with Toquaht law a copy of the modified exclusion order to each person referred to in section 3.10(a), and
 - (iii) post in accordance with Toquaht law a summary of the modifications to the exclusion order.

PART 4 - SUSPENSION ORDERS AND RESCISSION ORDERS

Suspension application

- 4.1 (a) An excluded individual may apply to the Executive to have one or more terms and conditions of his or her exclusion order suspended.
- (b) A suspension application
- (i) must be in the form established by the director, and
 - (ii) must not be filed within six months of
 - (A) the date the exclusion order was issued, or
 - (B) the date upon which any previous application was made under subsection (a),whichever is later.

Suspension order

- 4.2 (a) Within 14 days of receiving a suspension application, the Executive must consider the application and, by resolution, either
- (i) approve the application, or
 - (ii) reject the application.
- (b) The Executive must not issue a suspension order unless, in the opinion of the Executive,
- (i) there are compelling compassionate or humanitarian grounds to do so, and
 - (ii) the terms and conditions of the suspension order or the remaining terms and conditions of the exclusion order, as applicable, will materially reduce any significant threat posed by the excluded individual.
- (c) The portion of the Executive meeting during which a suspension application is considered and voted on must be held in camera.

Written reasons

- 4.3 Within seven days of a decision under section 4.2, the Executive must
- (a) prepare written reasons for that decision, and

- (b) deliver in accordance with Toquaht law a copy of those reasons to the director and the excluded individual.

Content of suspension order

4.4 A suspension order

- (a) must contain
 - (i) the name of the excluded individual,
 - (ii) a copy of the applicable exclusion order,
 - (iii) the terms and conditions of the exclusion order that are suspended,
 - (iv) the date the suspension order was issued,
 - (v) the date the suspension order is effective,
 - (vi) the date the suspension order expires, which must not be more than 30 days from the date the suspension order becomes effective,
- (b) may contain any other terms and conditions the Executive decides are just and appropriate in the circumstances, and
- (c) must be signed by the Chairperson.

Delivery and posting of suspension order

4.5 The director must, within seven days after a suspension order is issued,

- (a) deliver in accordance with Toquaht law a copy of the suspension order to each person referred to in section 3.10(a), and
- (b) post in accordance with Toquaht law a summary of the suspension order.

Rescission application

- 4.6** (a) An excluded individual may apply to the Executive to have his or her exclusion order rescinded.
- (b) A rescission application
 - (i) must be in the form established by the director, and
 - (ii) must not be filed within 12 months of
 - (A) the date the exclusion order was issued, or

- (B) the date upon which any previous application was made under subsection (a),

whichever is later.

Rescission hearing

- 4.7** (a) The Executive must hold a hearing to consider a rescission application within 60 days of receiving the application.
- (b) Sections 3.6(b) to 3.6(f) apply to a rescission hearing, with necessary changes in the details.

Rescission order

- 4.8** (a) After holding a rescission hearing, the Executive may, by resolution, either
- (i) issue a rescission order, or
- (ii) reject the rescission application.
- (b) The Executive must not issue a rescission order unless it is reasonably satisfied that some material change has occurred and the excluded individual no longer poses a significant threat.

Written reasons

- 4.9** Within seven days of a decision under section 4.8, the Executive must
- (a) prepare written reasons for that decision, and
- (b) deliver in accordance with Toquaht law a copy of those reasons to the director and the excluded individual.

Content of rescission order

- 4.10** A rescission order must contain
- (a) the name of the excluded individual,
- (b) a copy of the applicable exclusion order,
- (c) the date the rescission order was issued, and
- (d) the date the rescission order is effective.

Delivery and posting of rescission order

- 4.11** The director must, within seven days after a rescission order is issued,
- (a) deliver in accordance with Toquaht law a copy of the rescission order to each person referred to in section 3.10(a), and
 - (b) post in accordance with Toquaht law a summary of the rescission order.

PART 5 - REVIEWS

Review of exclusion decisions

5.1 No later than seven days after receipt of written reasons under

- (a) section 3.8, for the Executive's decision on an exclusion application,
- (b) section 4.3, for the Executive's decision on a suspension application, or
- (c) section 4.9, for the Executive's decision on a rescission application,

the excluded individual may request a review of that decision under the Administrative Decisions Review Act.

PART 6 - ENFORCEMENT

Trespass offences

6.1 Every person who

- (a) enters, re-enters or stays on land contrary to section 2.1,
- (b) engages or continues engaging in an activity contrary to section 2.1,
- (c) occupies, possesses or uses Toquaht lands contrary to section 2.2, or
- (d) removes, alters or defaces a sign contrary to section 2.3(e),

commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months.

Exclusion offences

6.2 Every person who

- (a) fails to comply with any term or condition of
 - (i) an exclusion order, or
 - (ii) a suspension order, or
- (b) knowingly and willingly allows an excluded individual to remain on their property in contravention of an exclusion order,

commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months.

Separate offence

6.3 Each day that a contravention of this Act continues is a separate offence.

Powers of removal and arrest

- 6.4 (a) An enforcement officer may remove or arrest without warrant any person found on land if the enforcement officer believes on reasonable and probable grounds that the person is contravening section 2.1 in relation to the land.
- (b) If an enforcement officer believes on reasonable and probable grounds that a person has contravened section 2.1 in relation to a land and has recently departed from the land, the peace officer may arrest the person without warrant if

- (i) the person refuses to give his or her name and address to the enforcement officer on demand, or
 - (ii) the enforcement officer believes, on reasonable and probable grounds, that the name or address given by the person to the enforcement officer is false.
- (c) An enforcement officer may remove or arrest without warrant any person found on Toquaht lands specified in an exclusion order if the enforcement officer believes on reasonable and probable grounds that the person is in breach of any term or condition of that exclusion order.

Proof of trespass prohibition

6.5 In a prosecution for an offence under section 6.1(a) or 6.1(b), proof that a sign that complies with section 2.3(a) or 2.3(b)(ii), as applicable, was posted at the ordinary point of access used by the defendant to enter the land is sufficient for the purpose of establishing, as applicable, that

- (a) the land are enclosed land, or
- (b) notice was given for the purpose of section 2.1(a)(ii) or 2.1(a)(iii).

Trespass prosecution not defeated by variation in fence

6.6 The prosecution of a person for an offence under section 6.1(a) or 6.1(b) is not defeated only because a fence is not of a uniform height, or that the spaces between the bars, boards or rails of the fence, or any of them, are large enough to crawl through.

Court may order compensation

- 6.7**
- (a) The Provincial Court, on application of an occupier of land or another person injured, may order a person convicted of an offence under section 6.1(a), 6.1(b) or section 6.1(d) in relation to those land to pay restitution for the damage or loss that was sustained by the occupier or other person as a result of the commission of the offence.
 - (b) If an order is made against a defendant under subsection (a), no action for damage for trespass lies against the defendant for the loss or damage of the occupier or other person sustained as a result of the commission of the offence.

Enforcement of exclusion orders in Court

- 6.8**
- (a) The Toquaht Nation may file a certified copy of an exclusion order with the Provincial Court of British Columbia.

- (b) An order filed under subsection (a) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court.

PART 7 - GENERAL PROVISIONS

Regulations

- 7.1 The Executive may make regulations which it considers necessary or advisable for the purposes of this Act, including regulations
- (a) designating Toquaht lands as limited access land,
 - (b) defining a fence for the purposes of this Act, or
 - (c) establishing procedures to be followed at exclusion hearings and rescission hearings.

Access to Toquaht public lands

- 7.2 For certainty,
- (a) in accordance with 5.3.0 and 5.4.0 of Chapter 5 Access of the Maa-nulth Treaty, the Executive may enact a regulation
 - (i) placing reasonable limits on public access to Toquaht public lands for temporary recreational uses and temporary non-commercial purposes, or
 - (ii) limiting or prohibiting public access to Toquaht public lands for any other purpose,
 - (b) in accordance with 5.3.5 of Chapter 5 Access of the Maa-nulth Treaty, the Executive must consult with British Columbia and Canada prior to enacting a regulation that would significantly affect public access on Toquaht public lands, and
 - (c) if Toquaht lands are designated as Toquaht private lands in accordance with 5.2.0 of Chapter 5 Access of the Maa-nulth Treaty, the Executive may enact a regulation limiting or prohibiting public access on those lands for any purpose, including temporary recreational uses or temporary non-commercial purposes.

Repeal

- 7.3 Part 10 of the Land Act is repealed.

Commencement

- 7.4 This Act comes into force on the date it is enacted.