

TOQUAHT NATION GOVERNMENT

**ENFORCEMENT FRAMEWORK
AMENDMENT ACT NO. 5**

TNS 4/2020



This law enacted on February 18, 2020

Signed *Anne Mack*
Anne Mack, ḥaʔwił of the Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 2020/02/21
Kristen Johnson

Signature of Law Clerk

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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Enforcement Framework Amendment Act No. 5.

Executive oversight

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

Application

1.3 (a) This Act is enacted under

- (i) 13.32.1 of Chapter 13 of the Maa-nulth Treaty, and
- (ii) section 3.2(ff) of the Constitution.

(b) This Act amends the Enforcement Act regarding

- (i) director and officer liability for offences committed by a corporation, and
- (ii) the seizure of things related to the commission of an offence.

Definitions

1.4 In this Act, the “Enforcement Act” means the Enforcement Act TNS 16/2011.

PART 2 - ENFORCEMENT ACT AMENDMENTS

Enforcement Act amendments

2.1 The Enforcement Act is amended as follows:

- (a) section 1.4 is amended by
 - (i) striking out the definition of “application” and substituting the following:
“‘application’ means an application made under section 6.1 for a review of a compliance notice, ticket or seizure record;”;
 - (ii) in the definition of “named person”, by striking out the words “compliance notice or ticket” and replacing them with the words “compliance notice, ticket or seizure record”; and
 - (iii) adding the following definition:
“‘seizure record’ means the document prepared by an enforcement officer under section 5.1.1 to record a seizure;”;

- (b) by adding the following between sections 2.1 and 2.2:

“Offences by a corporation

2.1.1 Where a corporation commits an offence against a Toquaht enactment, a director or officer of the corporation who authorized, permitted or acquiesced in the offence also commits the offence.”;

- (c) section 2.8 is amended by
 - (i) striking out the word “vitiate” in subsection (a)(vii) and replacing it with the word “invalidate”, and
 - (ii) striking out the word “averments” in subsection (b)(i) and replacing it with the word “assertions”;
- (d) section 3.2(b) is amended by
 - (i) striking out subsections (iii) to (vi) and replacing them with the following:
 - “(iii) make any reasonable inspection of any person, place or thing for the purpose of ensuring compliance with a Toquaht enactment
 - (A) if that person, place or thing is involved in an activity that is regulated by a Toquaht enactment, and

- (B) the enforcement officer does not have reasonable grounds to believe that a contravention of a Toquaht enactment has occurred;
- (iv) enter any place or thing during an inspection under paragraph (iii)
 - (A) at any reasonable time, if it is not a dwelling-house, or
 - (B) with the consent of the owner or occupant, if it is a dwelling-house;
- (v) during an inspection under paragraph (iii)
 - (A) require to be produced any licences, books, bills, records or other documents, and
 - (B) take a sample of any substance
related to an activity that is regulated by a Toquaht enactment;
- (vi) seize anything found during an inspection conducted under paragraph (iii) that the enforcement officer believes on reasonable grounds
 - (A) was obtained in the commission of an offence,
 - (B) was or is being used in the commission of an offence, or
 - (C) may provide evidence of the commission of an offence;”;
and
- (ii) striking out subsection (ix) and replacing it with the following:
 - “(ix) if the enforcement officer finds a person committing an offence on or in relation to Toquaht lands,
 - (A) arrest that person without a warrant,
 - (B) search that person and his or her belongings if there is a reasonable prospect of securing evidence of that offence,
and
 - (C) seize anything from that person that the enforcement officer believes on reasonable grounds was obtained in, was or is being used in, or may provide evidence of, the commission of an offence; and”;

- (e) by adding the following between Part 5 and Part 6:

“PART 5.1 - SEIZURE

Seizure record

- 5.1.1** The enforcement officer that conducts a seizure under section 3.2(vi) or (ix) must prepare a seizure record in the prescribed form as soon as possible after the seizure has been conducted, which specifies
- (a) the thing seized,
 - (b) the grounds for the seizure,
 - (c) the time and place that the seizure occurred,
 - (d) the name of the person from whom the thing was seized,
 - (e) the name and signature of the enforcement officer who conducted the seizure,
 - (f) how to apply for a review of the seizure, and
 - (g) any other prescribed information.

Seizure record form

- 5.1.2** A seizure record may be completed, recorded, issued and stored
- (a) in electronic format by electronic means, or
 - (b) by another means that allows the seizure record to be reproduced in an understandable form.

Serving seizure record

- 5.1.3** (a) The enforcement officer that conducts a seizure under section 3.2(vi) or (ix) must deliver, in accordance with Toquaht law, a copy of the seizure record to
- (i) the person from who the thing was seized, and
 - (ii) any other person whom the enforcement officer has reason to believe may have an interest in the seized thing,
- all of whom are “named persons” in relation to that seizure record.

- (b) If the enforcement officer becomes aware of a person who was not provided with a copy of the seizure record but should have been, the enforcement officer must deliver, in accordance with Toquaht law, a copy of the seizure record to that person.

Failure to serve a seizure record

5.1.4 If a seizure record is not served in accordance with section 5.1.3, a proceeding or action in relation to the seizure is not invalidated if

- (a) the content of the seizure record was known by the named person within the time allowed for service,
- (b) the named person consents, or
- (c) the failure to serve in accordance with section 5.1.3 does not result in any substantial injustice.

Review by director of operations

5.1.5 (a) A named person may, within 30 days of receiving a seizure record, apply for a review of that seizure in accordance with section 6.1.

- (b) The director may extend the time limit established under subsection (a), upon request by the named person or his or her authorized representative, for

- (i) a period of up to 30 days, or
- (ii) upon the approval of the Executive, a period of longer than 30 days,

if the named person, acting in good faith and through absence, accident, illness or other cause beyond the person's reasonable control, is or was unable to respond to the seizure record in accordance with subsection (a).

Custody

5.1.6 (a) The enforcement officer that conducts a seizure under section 3.2 (vi) or (ix) must deliver the seized thing to the director of operations.

- (b) The director of operations must retain custody and ensure the safekeeping of the seized thing.

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- (c) The director of operations may deliver the seized thing into the custody of any person he or she considers appropriate, prior to the conclusion of the proceedings for the offence related to the seizure, subject to an undertaking by that person to ensure the safekeeping of that thing.
 - (d) The director of operations may require the person who is given custody under subsection (c) to do one or both of the following:
 - (i) provide the director of operations with security for the seized thing in a manner and form that is satisfactory to the director of operations; or
 - (ii) make the seized thing available for inspection by or deliver it into the custody of the director of operations at any reasonable time.

Special items

- 5.1.7** (a) The enforcement officer or director of operations may make copies of any documents or records seized under section 3.2(vi) or (ix).
- (b) The enforcement officer or director of operations may release any wild animal or aquatic species seized under section 3.2(vi) or (ix).
- (c) The director of operations who has custody of any perishable thing seized under section 3.2(vi) or (ix) may dispose of it in any manner he or she considers appropriate and any proceeds realized from its disposition will be held in place of that thing.

Return of seized property

- 5.1.8** (a) The director of operations must deliver a seized thing to the person lawfully entitled to be in possession of that thing if
 - (i) an information is not laid for the offence related to the seizure of that thing within the limitation period specified in section 2.7, or
 - (ii) that person is not named in the information that is laid for the offence related to the seizure of that thing and the proceedings for that offence are concluded.

- (b) The director of operations must deliver a seized thing to the person lawfully entitled to be in possession of the thing, if that person is named in the information laid for the offence related to the seizure and is found not guilty of that offence.

Forfeiture

- 5.1.9** (a) If the person lawfully entitled to be in possession of a seized thing is convicted of the offence related to the seizure, the court may order that person to forfeit that thing to the Toquaht Nation Government.
- (b) If the person lawfully entitled to be in possession of the seized thing is convicted of the offence related to the seizure, and the court imposes a fine to be paid to the Toquaht Nation Government but does not order forfeiture, the director of operations may detain the thing until the fine is paid.
 - (c) If the person lawfully entitled to be in possession of the seized thing is convicted of the offence related to the seizure, and the court does not order forfeiture or a fine to be paid to the Toquaht Nation Government, the director of operations must return the thing to that person.

Recovery of costs

- 5.1.10** If a person is convicted of an offence related to a seizure, the court may order that person to compensate the Toquaht Nation Government for any costs incurred by the Toquaht Nation Government for the seizure, storage, maintenance or disposition of that thing.

Application for possession

- 5.1.11** Any person at any time may apply to court to have a seized thing delivered into their possession, notwithstanding the right to have a seizure reviewed under Part 6.

If owner of thing unknown

- 5.1.12** (a) If the director of operations cannot identify any person who is lawfully entitled to possession of a seized thing by the date on which he or she is required to deliver that thing to a person under this Part, he or she may dispose of that thing and provide the Toquaht Nation Government with the proceeds.

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- (b) If a seized thing is disposed under subsection (a) and a person subsequently proves that he or she is lawfully entitled to possession of that thing, the Toquaht Nation Government will pay that person the proceeds of sale of the thing.”;
- (f) the title of Part 6 is amended by striking out the words “compliance notices and tickets” and replacing them with the words “compliance notices, tickets and seizure records”; and
- (g) sections 6.1 and 6.2 are amended by striking out every occurrence of the words “compliance notice or ticket” and replacing them with the words “compliance notice, ticket or seizure record”.

PART 3 - GENERAL PROVISIONS

Commencement

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