

**TOQUAHT NATION GOVERNMENT**

**ADMINISTRATION OF JUSTICE ACT**

**TNS 6/2024**



This law enacted on December 18<sup>th</sup>, 2024

Signed *Anne Mack*  
Anne Mack, taayii ḥawil of the Toquaht Nation

DEPOSITED IN THE  
REGISTRY OF LAWS  
ON 2024/12/20  
*Kristen Johnson*  
Signature of Law Clerk

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## PREAMBLE

The Toquaht Nation asserts that we have, since time immemorial, governed ourselves according to our traditions and protocols. With our inherent right to self-government recognized in the Maa-nulth Treaty and our Constitution, we have blended our traditional ways with modern-day governing systems which recognize the rule of law. In doing so, we honour our past and embrace the future, ensuring the continued existence of the Toquaht Nation as a strong political, social and cultural community.

Governing effectively requires not only enacting necessary Toquaht law, but properly enforcing Toquaht law. An effective administration of our justice framework honours our traditions while securing our future. The Toquaht Nation desires a just, fair and robust administration of justice framework for the common good of all Toquaht citizens that embraces our traditions and protocols and adheres to the rule of law.

The Toquaht Nation 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 Administration of Justice Act.

### Executive oversight

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

### Application

1.3 This Act applies to the enforcement of all Toquaht enactments, except to the extent that a Toquaht enactment specifically provides otherwise.

### Definitions

1.4 In this Act,

“applicable government” means the government of Canada, the government of British Columbia, another provincial government or an extraterritorial government;

“application” means an application made under section 12.1 for a review of a compliance notice;

“certificate of service” means a certificate under section 10.7;

“compliance notice” means a notice issued in accordance with Part 9;

“designated person” means an individual designated by the Executive by regulation for the purpose of this Act;

“discounted penalty” means the prescribed amount set out in a violation ticket payable in relation to an offence if payment is received on or before the 14th day after the date a violation ticket was served in accordance with section 10.6;

“justice” has the meaning given to that term in the Offence Act (British Columbia);

“named person” means a person to whom a compliance notice or violation ticket is issued;

“notice of dispute” means a notice referred to in section 10.14(a);

“penalty” means the prescribed amount set out in a violation ticket payable in relation to an offence if payment is received after the 14th day after a violation ticket is served in accordance with section 10.6;

“regulated activity” means an activity regulated by a Toquaht enactment;

“statement and written reasons” means the statement and written reasons referred to in section 10.15(a);

“ticketed amount” means the penalty payable at the time of payment;

“Toquaht prosecutor” means an individual appointed as a prosecutor of the Toquaht Nation under section 11.3(a);

“vehicle” includes a vessel; and

“violation ticket” means a violation ticket issued under section 10.2(a) and, for certainty, is a “violation ticket” within the meaning of the Offence Act (British Columbia).



## PART 2 - OFFENCES

### Offences generally

- 2.1 A person commits an offence against a Toquaht enactment by
- (a) doing an act forbidden under that Toquaht enactment, or
  - (b) omitting to do any thing required under that Toquaht enactment.

### Offences by a corporation

- 2.2 (a) 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.
- (b) An officer, director or agent of a corporation is liable to conviction under a Toquaht enactment whether or not the corporation has been prosecuted for, or convicted of, the offence.
- 2.3 In a prosecution for an offence against a Toquaht enactment, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified, or has been prosecuted, for the offence.

### Penalties generally

- 2.4 An offence is punishable by
- (a) compliance notice issued in accordance with Part 9,
  - (b) violation ticket issued in accordance with Part 10, or
  - (c) prosecution conducted in accordance with Part 11.

### Continuing offences

- 2.5 If an offence continues for more than one day, a separate penalty may be imposed for each day the offence continues.

### Prevention or restraint

- 2.6 Toquaht Nation Government may prevent or restrain the commission of an offence by a proceeding brought in the Supreme Court of British Columbia.

### **Non-compliance**

- 2.7** Every person who fails to comply with a compliance notice, violation ticket or directive under this Act 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.

## PART 3 - ENFORCEMENT OFFICERS

### Appointment of enforcement officers

- 3.1** The Executive may, by Order, appoint enforcement officers to enforce Toquaht enactments or preserve and maintain public peace.

### Peace officer status

- 3.2** (a) Unless otherwise specified in the terms of an appointment under section 3.1, an enforcement officer is a peace officer for the purposes of performing the duties or exercising the powers of that officer under Toquaht law.
- (b) Without limiting subsection (a),
- (i) an enforcement officer is a peace officer within the meaning of section 2 of the Criminal Code (Canada) for the purposes of performing the duties or exercising the powers of that officer under Toquaht law and, for certainty, the protections and immunities that apply to peace officers under that Act apply to an enforcement officer in the enforcement of Toquaht law, and
- (ii) the powers and protections that an external enforcement officer would have if acting under a Federal Law or Provincial Law in the enforcement of that law apply to that external enforcement officer in the enforcement of Toquaht law.

### Powers of enforcement officers

- 3.3** Subject to the terms of an appointment under section 3.1 and except to the extent a Toquaht enactment provides otherwise, an enforcement officer has the power to do the following for the purpose of performing their duties:
- (a) conduct investigations where there is suspected non-compliance with Toquaht law;
- (b) carry out inspections in accordance with Part 4;
- (c) carry out searches in accordance with Part 5;
- (d) carry out seizures in accordance with Part 6;
- (e) arrest individuals in accordance with Part 7;
- (f) exercise other powers in accordance with Part 8;
- (g) issue compliance notices in accordance with Part 9;
- (h) issue violation tickets in accordance with Part 10;

- (i) refer matters to the Toquaht prosecutor for prosecution in accordance with Part 11; and
- (j) any other thing necessary for, or incidental to, the exercise of powers listed in subsections (a) to (i).

### **Protections**

- 3.4** Enforcement officers are justified in doing what they are required or authorized to do under Toquaht law and in using as much force as is necessary for that purpose, subject to the limitations set out in section 25 of the Criminal Code (Canada).

### **Immunities**

- 3.5** Enforcement officers are not personally liable and Toquaht Nation Government is not vicariously liable for anything enforcement officers do or omit to do in good faith under Toquaht law.

### **Charter**

- 3.6** For certainty, and in accordance with 1.3.2 of the Maa-nulth Treaty, the exercise of enforcement powers under Toquaht law must at all times be consistent with the Charter of Rights and Freedoms (Canada).

### **Enforcement officer must show identification**

- 3.7** An enforcement officer must, upon request, show appropriate identification confirming the credentials of that officer.

### **Complaints against enforcement officers**

- 3.8**
- (a) Subject to subsection (b), complaints against enforcement officers will be addressed in the manner set out in the Administrative Decisions Review Act.
  - (b) Complaints against external enforcement officers will be addressed in the manner that complaints may be made against those officers under federal or provincial law, as applicable.

### **Prohibitions**

- 3.9** A person must not
- (a) wilfully destroy or alter with intent to mislead a document, a record or data that is required to be kept under Toquaht law,
  - (b) knowingly make any false or misleading statement either orally or in writing to an enforcement officer,

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- (c) refuse to admit an enforcement officer into a premises or place, if that enforcement officer states they are acting under Toquaht law, or
- (d) otherwise wilfully obstruct or hinder an enforcement officer in the performance of that officer's duties and exercise of their powers under Toquaht law.

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## PART 4 - REGULATORY INSPECTIONS

### Inspections

**4.1** Subject to the provisions of this Part, where a person is engaged in an activity that is regulated by Toquaht law, an enforcement officer may conduct an inspection of any place or thing relating to that activity, for the purpose of ensuring that the activity complies with Toquaht law.

### Predominant purpose

- 4.2**
- (a) An enforcement officer may not conduct an inspection under section 4.1 where that enforcement officer has reasonable grounds to believe an offence has been committed.
  - (b) If during an inspection the enforcement officer develops reasonable grounds to believe an offence has been committed, that enforcement officer
    - (i) must immediately cease the inspection, and
    - (ii) may only proceed in accordance with Part 5.

### Inspection powers

- 4.3** Subject to section 4.4, during an inspection under section 4.1, an enforcement officer may
- (a) enter onto private property,
  - (b) enter a building or structure,
  - (c) require the production of licences, records, data or other information,
  - (d) record or make copies of licences, records, data or other information,
  - (e) open and examine the contents of receptacles, containers or packages,
  - (f) take a sample of a substance,
  - (g) conduct tests or take measurements, or
  - (h) take other actions that are reasonable in the circumstances and are necessary for ensuring that the applicable activity complies with Toquaht law.

### Reasonableness

- 4.4**
- (a) An inspection conducted by an enforcement officer under this Part must be reasonable in the circumstances.

- (b) In determining whether an inspection is reasonable in the circumstances, factors to consider include, the following:
  - (i) the nature of the regulated activity, including the risk that the activity may pose to the public or environment;
  - (ii) the purpose of the Toquaht law that regulates the activity;
  - (iii) the manner in which the search is conducted; and
  - (iv) the degree of privacy that the person engaged in the regulated activity may reasonably expect in the circumstances.

### **Assistance**

**4.5** An individual in charge or control of a place entered by an enforcement officer in accordance with this Part, and every individual found in that place, must

- (a) give that officer all reasonable assistance to enable that officer to perform their duties and exercise their powers; and
- (b) provide that officer with any information relating to the administration of the applicable Toquaht law that the officer may reasonably require.



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## PART 5 - SEARCHES

### Searches

- 5.1** Subject to section 5.2, where an enforcement officer has reasonable grounds to believe that an offence has been committed, that enforcement officer may only search an individual that enforcement officer believes may have committed the offence, or any place or thing that officer believes is relevant to the offence,
- (a) with the consent of that individual,
  - (b) in accordance with a search warrant issued by a justice in accordance with the process set out in the Offence Act (British Columbia), or
  - (c) without a search warrant if
    - (i) the delay necessary to obtain a search warrant under subsection (b) would likely result in danger to the environment or human life or in the loss or destruction of evidence, or
    - (ii) the conditions for obtaining a warrant exist but because of exigent circumstances it would not be feasible to obtain the warrant.

### Searches during arrest

- 5.2** An enforcement officer may search an individual, or a place or thing that officer believes is relevant to the offence, upon arrest of that individual in accordance with Part 7 if the search is incidental to the arrest and the purpose of the search is to ensure
- (a) the safety of the enforcement officer or the public,
  - (b) the protection of evidence from destruction at the hands of the arrestee or others, or
  - (c) the discovery of evidence which may be used at the arrestee's trial.

### Warrantless search powers

- 5.3** During a warrantless search conducted in accordance with this Part, an enforcement officer may
- (a) enter onto private property,
  - (b) enter a building or structure,
  - (c) require the production of licences, records, data or other information,
  - (d) record or make copies of licences, records, data or other information,

- (e) open and examine the contents of receptacles, containers or packages,
- (f) take a sample of a substance,
- (g) conduct tests or take measurements, or
- (h) take other actions that are reasonable in the circumstances.

## **PART 6 - SEIZURES**

### **Seizure**

- 6.1** An enforcement officer may seize any thing
- (a) in accordance with a warrant issued by a justice, or
  - (b) obtained during an inspection in accordance with Part 4 or a search in accordance with Part 5 which the enforcement officer believes on reasonable grounds has been obtained by, has been used in or will provide evidence of the commission of an offence.

### **Return of thing**

- 6.2** If an enforcement officer seizes a thing under section 6.1, the enforcement officer must, as soon as practicable,
- (a) return the thing seized to the person lawfully entitled to its possession, if the enforcement officer is satisfied that
    - (i) there is no dispute as to who is lawfully entitled to the possession of the thing seized, and
    - (ii) the continued detention of the thing seized is not required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding; or
  - (b) if the enforcement officer is not satisfied that the conditions set out in subsection (a) apply, bring the thing before a justice, or report to a justice that the thing has been seized and is being detained, to be dealt with in accordance with sections 24 to 24.2 of the Offence Act (British Columbia), with the necessary changes in the details and insofar as applicable.

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## PART 7 - ARREST

### Arrest without warrant

- 7.1** An enforcement officer may arrest an individual without a warrant
- (a) if the officer finds the individual committing an offence under a Toquaht enactment and the officer
    - (i) believes the individual will fail to attend court when required, or
    - (ii) the public interest, including the need to establish the identity of the individual, secure or preserve evidence of the offence, or prevent the continuation or repetition of the offence or the commission of another offence, may only be satisfied by arresting the individual, or
  - (b) in order to prevent an apprehended breach of the peace.

### Arrest with warrant

- 7.2** An enforcement officer may arrest an individual in accordance with a warrant issued by a justice under the applicable provisions of the Offence Act (British Columbia).

### Right of entry

- 7.3** Despite any other provision in this Act, an enforcement officer who has grounds under section 7.1 to arrest an individual without a warrant may enter a dwelling place, or a place that is locked or otherwise inaccessible without use of force, where the officer is in hot pursuit of the individual.

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## **PART 8 - OTHER ENFORCEMENT POWERS**

### **Identification**

**8.1** An enforcement officer may require an individual to produce identification.

### **Right of passage**

**8.2** Subject to the limitations set out in this Act respecting dwelling places and places that are locked or otherwise inaccessible without use of force, an enforcement officer may, for the purposes of performing that officer's duties and exercising their powers, enter on and pass through or over Toquaht lands without being liable for doing so and without any individual having the right to object to that use of the land.

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## PART 9 - COMPLIANCE NOTICES

### Issuing compliance notice

- 9.1**
- (a) If an enforcement officer has reasonable grounds to believe that a person is committing an offence or has committed an offence, the enforcement officer may issue a compliance notice in the prescribed form to that person.
  - (b) A compliance notice must be issued to a named person unless it is issued for an offence involving a vehicle, in which case it must also be issued to
    - (i) the vehicle's licence plate,
    - (ii) the vehicle's identification number, temporary operation permit or interim permit under the Motor Vehicle Act (British Columbia) or other applicable law, or
    - (iii) the vehicle's licence number or official number under the Canada Shipping Act, 2001 (Canada) or other applicable law.
  - (c) If a compliance notice is issued under subsection (b), the compliance notice is deemed to have been issued to each registered owner of the vehicle as contained in the records of the applicable government.
  - (d) Each registered owner of a vehicle referred to in subsection (c) is deemed to be a named person.

### Content of compliance notice

- 9.2**
- (a) A compliance notice must require the named person to do whatever is necessary to stop, rectify or prevent the re-occurrence of the offence.
  - (b) A compliance notice must contain the following information:
    - (i) the particulars of the offence in sufficient detail to permit the named person to identify it;
    - (ii) the date or time period within which the named person must comply with the requirements set out in the compliance notice under subsection (a);
    - (iii) the date and time the compliance notice is issued;
    - (iv) the name and signature of the enforcement officer who issued the compliance notice;
    - (v) how to apply for a review of the compliance notice; and

- (vi) any other prescribed information.
- (c) A compliance notice may state that if the named person does not comply with the requirements set out in the compliance notice and rectify the offence, another individual authorized by the Executive may take action to rectify the offence at the expense of the named person.

### **Serving compliance notice**

- 9.3**
- (a) Subject to subsection (b), a compliance notice must be delivered in accordance with Toquaht law to each named person.
  - (b) If a compliance notice is issued in respect of a parking-related offence, the compliance notice may be served on each registered owner of the vehicle by affixing the compliance notice to the vehicle in a conspicuous place or serving a physical copy of the compliance notice to the individual having care and control of the vehicle.

### **Compliance notice form**

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

### **Complying with or disputing compliance notice**

- 9.5**
- (a) Subject to subsection (b) and the period of time specified in the compliance notice under section 9.2(b)(ii), a named person must, within 14 days after the compliance notice was served on that named person in accordance with section 9.3,
    - (i) comply with the requirements in the compliance notice, or
    - (ii) apply for a review of the compliance notice in accordance with section 12.1.
  - (b) The director of operations 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 up to 30 days, or
    - (ii) upon the approval of the Executive, a period 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 compliance notice in accordance with subsection (a).

### **When failure to serve compliance notice does not invalidate proceeding**

- 9.6** If a compliance notice is not served in accordance with section 9.3, a proceeding or an action in relation to the compliance notice is not invalidated if
- (a) the content of the compliance notice 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 9.3 does not result in any substantial injustice.

### **Variation or cancellation of compliance notice**

- 9.7**
- (a) At any time before a named person takes the actions required by section 9.5, the enforcement officer issuing the compliance notice may make changes to the terms of or cancel the compliance notice.
  - (b) Notice of any changes or cancellation under subsection (a) must be delivered to the named person in accordance with Toquaht law.

### **Executive may authorize measures**

- 9.8**
- (a) Subject to Part 12, the Executive may direct or authorize whatever action or measures are necessary to stop or rectify an offence or to prevent a re-occurrence of that offence if
    - (i) the named person has been served with the compliance notice in accordance with section 9.3,
    - (ii) the compliance notice included a description of the action or measures an individual authorized by the Executive would take if the compliance notice was not followed,
    - (iii) the named person has not complied with the requirements of the compliance notice, and
    - (iv) the named person has not applied for a review of the compliance notice in accordance with section 12.1 within the time period under section 9.5, or
    - (v) the compliance notice has been reviewed under section 12.1 or 12.2 and after completing the review, the director of operations or the

Administrative Decisions Review Board has not reversed the compliance notice.

- (b) If a named person has not put or maintained premises in a clean or safe condition as required in a compliance notice, the Executive may, by Order, require the closure of the premises.
- (c) The expenses of an action or the measures authorized by the Executive under this section are a debt owing by the named person to the Toquaht Nation payable on demand within 14 days, if that demand is delivered in accordance with Toquaht law, and may be collected by the Toquaht Nation in accordance with sections 5.6 to 5.11 of the Financial Administration Act.
- (d) If the Executive is authorized by a Toquaht enactment to sell all or a part of any property that has been removed to stop or rectify an offence, the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the person entitled to them.

#### **Joint and several liability**

- 9.9** The obligations arising from a compliance notice are joint and several as between the named persons.

#### **Limitation period for compliance notices**

- 9.10** A compliance notice for an offence must not be issued more than six months after the offence in relation to which the compliance notice is issued is alleged to have been committed.

## PART 10 - VIOLATION TICKETS

### Violation ticket

**10.1** Unless otherwise specified in a Toquaht enactment, an offence may be enforced by violation ticket issued in accordance with this Part.

### Issuing violation ticket

- 10.2** (a) Subject to section 10.3, if an enforcement officer has reasonable grounds to believe that a person is committing an offence or has committed an offence, the enforcement officer may issue a violation ticket in accordance with this Part.
- (b) A violation ticket must be issued to a named person unless it is issued for an offence involving a vehicle, in which case it may be issued to
- (i) the vehicle's licence plate, or
  - (ii) the vehicle's identification number, temporary operation permit or interim permit under the Motor Vehicle Act (British Columbia) or other applicable law.
- (c) If a violation ticket is issued under subsection (b), the violation ticket is deemed to have been issued to each registered owner of the vehicle as contained in the records of the applicable government.
- (d) Each registered owner of a vehicle referred to in subsection (c) is deemed to be a named person.

### Issuing violation ticket to young person

- 10.3** (a) A violation ticket cannot be issued to an individual alleged to have committed an offence when the individual was less than 12 years of age.
- (b) If a violation ticket is issued to an individual alleged to have committed an offence when the individual was 12 to 17 years of age, the Youth Justice Act (British Columbia) applies to any dispute of that violation ticket, with the necessary changes in the details and insofar as applicable.
- (c) For purposes of interpreting the application of the Youth Justice Act (British Columbia) under section 10.3(b), the term "enactment" in the Youth Justice Act (British Columbia) is deemed to include a Toquaht Nation enactment.
- (d) Information recorded anywhere on a violation ticket respecting the age of the person alleged to have committed an offence is proof of the age of the person.

**Penalty and discounted penalty**

- 10.4** (a) The Executive may, by regulation, establish a penalty and discounted penalty in respect of an offence.
- (b) If a penalty and discounted penalty has not been established under subsection (a) in respect of an offence, an enforcement officer may issue a violation ticket in respect of that offence with a penalty and discounted penalty that is comparable to the penalty and discounted penalty for a similar offence, provided that the penalty does not exceed \$1,000 and the discounted penalty is in any amount less than the penalty.
- (c) Despite subsections (a) and (b), a violation ticket issued to an individual when the individual was 12 to 17 years of age must impose a penalty of not more than \$1,000.

**Content of violation ticket**

- 10.5** (a) A violation ticket must be in writing in the prescribed form and contain the following information:
- (i) the alleged offence or a general description of the alleged offence;
  - (ii) the penalty and discounted penalty;
  - (iii) the methods of paying the ticketed amount;
  - (iv) instructions for disputing the ticket;
  - (v) a statement that if the violation ticket is not disputed within the time provided for in this Act,
    - (A) the violation ticket will be treated as not disputed,
    - (B) the individual on whom the violation ticket is served will be deemed to have pleaded guilty to the alleged offence, and
    - (C) the penalty indicated on the violation ticket will be immediately due and payable to Toquaht Nation Government;
  - (vi) a statement that all matters contained in the information are true to the enforcement officer's knowledge and belief;
  - (vii) the name and signature of the enforcement officer who issued the violation ticket; and
  - (viii) any other prescribed information.

- (b) A violation ticket may charge more than one offence, but each offence must be set out in a separate count.

### **Serving violation ticket**

- 10.6** (a) Subject to subsection (b), a violation ticket must be served to each named person by delivering the violation ticket in accordance with Toquaht law to that named person.
- (b) If a violation ticket is issued in respect of a parking-related offence, the violation ticket may be served on each registered owner of the vehicle by affixing the violation ticket to the vehicle in a conspicuous place or serving a physical copy of the violation ticket to the individual having care and control of the vehicle.

### **Proof of service**

- 10.7** (a) Service of the violation ticket may be proved by a certificate of service, in the prescribed form, signed by the individual who served the violation ticket with a copy of that violation ticket attached to the certificate of service.
- (b) The certificate of service referred to in subsection (a) is proof of the authority of the individual who signed it.

### **Limitation period**

- 10.8** A violation ticket must not be served more than six months after the offence to which the violation ticket relates is alleged to have been committed.

### **Violation ticket record**

- 10.9** (a) A copy of each violation ticket issued in accordance with this Part must be immediately delivered to the director of operations.
- (b) The director of operations must retain a copy of each violation ticket received under subsection (a).

### **Paying or disputing a violation ticket**

- 10.10** (a) A named person who is served with a violation ticket in accordance with section 10.6 must do one of the following:
  - (i) pay the entire discounted penalty amount within 14 days in accordance with the instructions set out in the violation ticket;
  - (ii) pay the entire penalty amount within 30 days in accordance with the instructions set out in the violation ticket; or

- (iii) dispute the violation ticket within 30 days in accordance with section 10.14.
- (b) The court may, on an application made without notice to anyone, extend the time for payment of a fine for a violation ticket issued to an individual when the individual was 12 to 17 years of age.

### **Varying or cancelling violation ticket**

- 10.11** (a) At any time before a named person takes an action under section 10.10, the issuing enforcement officer may make changes to the terms of or cancel the violation ticket.
- (b) Notice of any change or cancellation under subsection (a) must be provided to each named person in accordance with section 10.6.

### **Paying violation ticket**

- 10.12** A named person who pays the entire discounted penalty amount or penalty amount in accordance with section 10.10 pleads guilty to the alleged offence.

### **Failing to pay or dispute violation ticket**

- 10.13** (a) If an individual fails to take one of the steps required under section 10.10,
- (i) the named person is deemed to have pleaded guilty to the alleged offence, and
  - (ii) the unpaid portion of the ticketed amount becomes due and is immediately payable to Toquaht Nation Government in accordance with the instructions set out in the violation ticket.
- (b) Any portion of a penalty due and payable under paragraph (a)(ii) may be enforced by a designated person filing with the Supreme Court or Provincial Court a debt certificate in accordance with section 82(6) of the Offence Act (British Columbia).
- (c) A debt certificate filed under subsection (b) has the same effect, and proceedings may be taken by a designated person, as if it were a judgment of the Supreme Court for the recovery of a debt in the amounts referred to and against the individual named in the debt certificate.

### **Disputing allegation**

- 10.14** (a) A person who has been served a violation ticket in accordance with section 10.6 may dispute the violation ticket by delivering a notice of dispute in the prescribed form to the director of operations in accordance with subsection (b).



- (b) A notice of dispute must be delivered by hand or mail to the Toquaht administrative office or by e-mail to the address set out in the form prescribed under subsection (a) within 30 days of being served the violation ticket under section 10.6.
- (c) A notice of dispute
  - (i) delivered by hand to the Toquaht administrative office is deemed to have been received by the director of operations on the date it was delivered,
  - (ii) mailed to the Toquaht administrative office is deemed to have been received by the director of operations seven days after the date it was mailed, and
  - (iii) e-mailed to the address set out on the form prescribed under subsection (a) is deemed to have been received by the director of operations on the date it was sent.

### **Disputing fine portion only**

- 10.15** (a) A named person may dispute only the fine portion of the ticketed amount by including with the notice of dispute delivered, mailed or e-mailed under section 10.14(c) a statement and written reasons in the prescribed form that includes
- (i) confirmation that the individual does not want to appear for a hearing of the dispute, and
  - (ii) reasons for requesting a reduction in the fine amount or increase in the required time to pay.
- (b) For certainty, a dispute under subsection (a) will be determined in accordance with section 10.16.
- (c) A copy of an order of a justice made under section 15.4(4)(c) of the Offence Act (British Columbia) in respect of a dispute made under this section must be sent by mail or e-mail to the disputant and Toquaht Nation Government at the applicable addresses set out in the notice of dispute.

### **Referral to Provincial Court**

- 10.16** The director of operations must ensure that a copy of each notice of dispute, and statement and written reasons if applicable, received by the director of operations is
- (a) delivered in accordance with Toquaht law to every other named person, and
  - (b) referred to the Provincial Court for a hearing, along with

- (i) a copy of the applicable violation ticket, and
  - (ii) a statement, in the prescribed form and signed by a Toquaht public employee certifying the copy of the violation ticket as being a true reproduction of all the information on the violation ticket.
- (c) The Provincial Court will hear violation ticket disputes in accordance with the applicable procedures set out in the Offence Act (British Columbia).

**Joint and several liability**

**10.17** The obligations arising from a violation ticket are joint and several as between the named persons.

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## PART 11 - PROSECUTION

### Prosecution

**11.1** Unless otherwise specified in a Toquaht enactment, an offence may be enforced by prosecution in accordance with this Part.

### Penalty

**11.2** If a Toquaht enactment does not specify a penalty for an offence, an individual who pleads or is found guilty of an offence enforced by prosecution is liable to a fine not exceeding \$10,000 or a term of imprisonment not exceeding two years less a day.

### Toquaht prosecutor

- 11.3**
- (a) The Executive must appoint a Toquaht prosecutor to conduct, on behalf of Toquaht Nation, a prosecution of an offence and any appeals arising from that prosecution.
  - (b) In order to be qualified to be appointed as a Toquaht prosecutor in respect of a prosecution, an individual must
    - (i) be a member in good standing with the Law Society of British Columbia,
    - (ii) not be a Toquaht government representative or Toquaht public employee,
    - (iii) not have a criminal record,
    - (iv) not have a private interest in the outcome of the prosecution, and
    - (v) have a demonstrable understanding of Toquaht laws, culture and values.
  - (c) The Toquaht prosecutor must perform the duties and exercise the powers of a prosecutor in a manner consistent with the principle of prosecutorial independence.
  - (d) For certainty, the Integrity Act does not apply in respect of a Toquaht prosecutor.

### Referral to Toquaht prosecutor

- 11.4** If an enforcement officer has reasonable grounds to believe that a person is committing an offence or has committed an offence against a Toquaht enactment, the enforcement officer may
- (a) refer the matter to the Toquaht prosecutor, and
  - (b) provide the Toquaht prosecutor with any evidence, records or information relevant to the offence.

**Prosecution of offences**

- 11.5** (a) Prosecutions of offences shall be heard in the Provincial Court in accordance with the Offence Act (British Columbia).
- (b) For greater certainty, the Toquaht prosecutor may commence a prosecution of an offence by laying an information before a justice of the Provincial Court in the manner and form set out in the Offence Act (British Columbia).
- (c) In determining whether to lay an information, the Toquaht prosecutor must consider
- (i) all relevant information and documents relating to the prosecution,
  - (ii) whether there is a substantial likelihood of conviction of the offence,
  - (iii) the number of offences and seriousness of each offence,
  - (iv) the values of the Toquaht Nation,
  - (v) the integrity and independence of the Toquaht Nation administration of justice system,
  - (vi) any recommendation of the director of operations relating to the prosecution, and
  - (vii) the public interest.

**Young persons**

- 11.6** (a) An information may not be laid in respect of an individual alleged to have committed an offence when the individual was less than 12 years of age.
- (b) If an information is laid in respect of an individual alleged to have committed an offence when the individual was 12 to 17 years of age, the Youth Justice Act (British Columbia) applies to that prosecution, with the necessary changes in the details and insofar as applicable.

**Pre-charge alternative measures**

- 11.7** (a) The Toquaht prosecutor may use pre-charge alternative measures, instead of judicial proceedings in accordance with this Part, to deal with an individual suspected to have committed an offence if
- (i) an information has not yet been laid in respect of the offence,

- (ii) the Toquaht prosecutor considers there would be a substantial likelihood of conviction of the offence, if prosecuted,
  - (iii) the Toquaht prosecutor is satisfied that the measures would be adequate to hold the suspected offender accountable for the individual's offending behaviour,
  - (iv) the suspected offender consents to the alternative measures, and
  - (v) the Toquaht prosecutor and the alleged offender have entered into a pre-charge alternative measures agreement identifying the alternative measures and any other conditions that must be met in order for the Toquaht prosecutor to agree to not lay an information in respect of the offence.
- (b) If pre-charge alternative measures have been used, the Toquaht prosecutor must not lay an information in respect of the offence if the Toquaht prosecutor is satisfied on a balance of probabilities that the suspected offender has met the conditions of the pre-charge alternative measures agreement.

#### **Post-charge alternative measures**

- 11.8** (a) The Toquaht prosecutor may use post-charge alternative measures, instead of judicial proceedings under this Part, to deal with an individual alleged to have committed an offence if
- (i) an information has been laid in respect of the offence,
  - (ii) the Toquaht prosecutor is satisfied that the measures would be adequate to hold the individual accountable for the individual's offending behaviour,
  - (iii) the alleged offender accepts responsibility for the commission of the offence,
  - (iv) the alleged offender consents to the alternative measures, and
  - (v) the Toquaht prosecutor and the alleged offender have entered into a post-charge alternative measures agreement identifying the alternative measures and any other conditions that must be met in order for the charge laid against the alleged offender to be dismissed.
- (b) If post-charge alternative measures have been used, the court must dismiss the charge laid against the alleged offender in respect of that offence if the court is satisfied on a balance of probabilities that the alleged offender has met the conditions of the post-charge alternative measures agreement.

**Limitation period for prosecutions**

- 11.9** An information must not be laid under section 11.5 more than three years after the day on which the alleged offence in relation to which the information is laid has been discovered by the Toquaht Nation Government.

**Penalties**

- 11.10** Where an individual pleads guilty or is found guilty of an offence, the justice may impose any of the following on the individual:
- (a) all or part of the penalties applicable to the offence,
  - (b) restorative justice measures, community service or restitution, or
  - (c) the costs of the prosecution.

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## PART 12 - REVIEW OF COMPLIANCE NOTICES

### Review by director of operations

- 12.1**
- (a) A named person may apply to the director of operations for a review of a compliance notice by delivering an application in the prescribed form and with the prescribed fee to the director of operations.
  - (b) An application must
    - (i) identify the compliance notice that is the subject of the application, and
    - (ii) give the full legal name of the applicant, an address or email address to which documents may be delivered to the applicant and a telephone number or email address where the applicant may be contacted.
  - (c) The director of operations must, within seven days after receiving an application, deliver a copy of the application to any other named person.
  - (d) The director of operations may gather the information that they reasonably require for the review of the compliance notice.
  - (e) After delivering a copy of the application to any other named person under subsection (c), the director of operations must expeditiously review the compliance notice and must, by directive,
    - (i) reverse or modify the compliance notice with or without conditions, or
    - (ii) confirm the compliance notice.
  - (f) As soon as practicable after completing the review, the director of operations must deliver in accordance with Toquaht law to the applicant and any other named person written notice of
    - (i) the directive that the director of operations made under subsection (e), and
    - (ii) the right to request a review of that directive in accordance with section 12.2.

**Review by Administrative Decisions Review Board**

- 12.2** (a) No later than 10 days after receipt of the written notice under section 12.1(f), the applicant or any other named person may request a review of the directive made under section 12.1(e) in accordance with the Administrative Decisions Review Act.
- (b) The grounds for review under this section are that the directive is inconsistent with this Act or the Toquaht enactment to which the compliance notice relates.
- (c) The director of operations, the applicant and any other named person are deemed to be parties to the review under the Administrative Decisions Review Act.
- (d) After conducting a review, the Administrative Decisions Review Board may
- (i) dismiss the review request, or
  - (ii) if it determines that the directive is inconsistent with this Act or the Toquaht enactment to which the compliance notice relates, cancel the compliance notice.



## PART 13 - GENERAL PROVISIONS

### Regulations

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

### Application of Offence Act (British Columbia)

**13.2** If, in any proceeding, matter or thing to which this Act applies, partial provision or no express provision has been made in this Act, the provisions of the Offence Act (British Columbia) relating to offences punishable on summary conviction, including the applicable provisions of the Criminal Code (Canada) incorporated through section 133 of the Offence Act (British Columbia), apply to matters under this Act, with the necessary changes in the details and insofar as applicable.

### Toquaht representatives

- 13.3**
- (a) Subject to subsection (b), if the Toquaht Nation enter into an agreement with an external enforcement agency for the enforcement of Toquaht law, the Executive must appoint at least one but not more than three individuals to represent the Toquaht Nation under that agreement.
  - (b) If the Toquaht Nation and one or more other Maa-nulth First Nations enter into an agreement with an external enforcement agency for the enforcement of Maa-nulth First Nation laws, and those Maa-nulth First Nations establish a joint enforcement advisory committee to represent them under that agreement, the Executive must appoint at least one but not more than two individuals to represent the Toquaht Nation on that committee.
  - (c) An individual appointed under subsection (a) or (b)
    - (i) has the power to make any decision on behalf of the Toquaht Nation in relation to the agreement with the applicable external enforcement agency, except a decision to amend or terminate that agreement, and
    - (ii) must report to the Executive at least quarterly, and at any time upon request of the Executive, regarding any compliance activities of the applicable external enforcement agency within Toquaht lands and any concerns regarding the applicable external enforcement agency's enforcement of Toquaht law.

### Repeal

**13.4** The Enforcement Act, TNS 16/2011 is repealed.

**Consequential amendments**

- 13.5** (a) The Interpretation Act is amended as follows:
- (i) section 3.3 is amended by:
    - (A) inserting the following definition in alphabetical order:

““debt certificate” means a certificate filed under section 10.13(b) of the Administration of Justice Act or section 5.9(a) of the Financial Administration Act;”;
    - (B) striking out the definition of “enforcement officer” and substituting the following:

““enforcement officer” means an individual designated under a Toquaht enactment, or appointed by Executive Order, to enforce Toquaht law and, for certainty, includes an external enforcement officer;”;
    - (C) inserting the following definition:

““external enforcement officer” means an enforcement officer who is also appointed or employed by Canada, British Columbia or a local government to enforce federal or provincial laws or local government by-laws or to preserve and maintain public peace;”;
  - (ii) by striking out every occurrence of the words “Her Majesty the Queen” and substituting the words “His Majesty the King”;
- (b) The Administrative Decisions Review Act is amended as follows:
- (i) by striking out section 1.3(b) and substituting the following:

“a complaint against an enforcement officer, other than an external enforcement officer, performing their duties or exercising their powers as an enforcement officer in the enforcement of Toquaht law, and”;
  - (ii) section 1.4 is amended by striking out the definition of “parties to review” and substituting the following:

““parties to review” means

    - (a) the applicant, and
    - (b) the Toquaht institution responsible for the determination that is the subject of a review under this Act;”;

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- (iii) section 2.1(c)(iii) is amended by striking out the words “whose duties include the enforcement of Toquaht laws”;
- (iv) by repealing section 3.1(b.1);
- (v) section 3.1(g)(ii) is amended by striking out the words “or external enforcement agency responsible for the determination”;
- (vi) section 4.5(a) is amended by striking out the words “applicant, a Toquaht public employee or a representative of an external enforcement agency” and substituting the words “applicant or a Toquaht public employee”;
- (vii) by repealing section 4.5(f);
- (viii) by repealing section 4.7(e.1);
- (c) The Application of Laws to Foreshore Act is amended by striking out “Enforcement Act” and substituting the words “Administration of Justice Act” in section 2.1(a)(iv).
- (d) The Financial Administration Act is amended as follows:
  - (i) section 5.9 is amended by adding the word “debt” before every occurrence of the word “certificate”;
  - (ii) section 5.10 is amended by adding the word “debt” before every occurrence of the word “certificate”;
  - (iii) section 5.11 is amended by adding the word “debt” before every occurrence of the word “certificate”; and
- (e) The Macoah Zoning and Structures Act is amended as follows:
  - (i) section 13.1(b) is amended by:
    - (A) striking out the words “Enforcement Act” and substituting the words “Administration of Justice Act”;
    - (B) striking out the words “section 3.2(b)” and substituting the words “section 3.3”;
- (f) The Public Order, Peace and Safety Act is amended by striking out the words “Enforcement Act” and substituting the words “Administration of Justice Act” in section 6.17(a).

## **Commencement**

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