

TOQUAHT NATION GOVERNMENT

**ENFORCEMENT FRAMEWORK
AMENDMENT ACT NO. 3**

TNS 3/2017



This law enacted on August 8, 2017

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

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 2017/08/14

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. 3.

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) 13.3.1(j), 13.3.1(o), 13.11.1(d), 13.31.1 and 13.32.1 of Chapter 13 of the Maa-nulth Treaty,
- (ii) sections 3.2(ff), 3.3(d) and 3.3(g) of the Constitution, and
- (iii) section 3.11 of the Foreshore Agreement.

(b) This Act amends

- (i) the Administrative Decisions Review Act to establish a right to make submissions on costs,
- (ii) the Enforcement Act regarding
 - (A) the laying of an information,
 - (B) the limitation period for a prosecution or compliance notice, and
 - (C) Toquaht Nation representation under an agreement with an external enforcement agency, and
- (iii) the Financial Administration Act to establish an adjudicative process for debts that have not yet been the subject of a review.

PART 2 - ADMINISTRATIVE DECISIONS REVIEW ACT AMENDMENTS

Administrative Decisions Review Act amendments

2.1 Section 4.8 of the Administrative Decisions Review Act is amended by adding the following after subsection (c):

- “(d) The Review Board must not make an order under this section without first giving each party to the review a reasonable opportunity to make submissions on whether or not an order should be made and, if an order is made, the amount of costs or the manner in which they should be determined.”.

PART 3 - ENFORCEMENT ACT AMENDMENTS

Enforcement Act amendments

3.1 The Enforcement Act is amended as follows:

- (a) by striking out section 2.3 and substituting the following:
 - “2.3 The Toquaht prosecutor may, after consulting with the director of operations and on reasonable and probable grounds, lay an information on behalf of the Toquaht Nation that a person has committed or is suspected of having committed an offence.”;
- (b) section 2.4 is amended by
 - (i) striking out subsections (b) and (c) and substituting the following:
 - “(b) In determining
 - (i) whether or not to lay an information, and
 - (ii) if the Toquaht prosecutor intends to lay an information, the content of that information,

the Toquaht prosecutor must consider

 - (iii) all relevant information and documents relating to the prosecution,
 - (iv) whether there is a substantial likelihood of conviction of the offence,
 - (v) the seriousness of the offence,
 - (vi) the values of the Toquaht Nation,
 - (vii) the integrity and independence of the Toquaht Nation enforcement system,
 - (viii) any recommendation of the director of operations relating to the prosecution, and
 - (ix) the public interest.”, and
 - (ii) renumbering the subsequent subsection and references to that subsection accordingly;
- (c) by adding the following after section 2.6:

“Limitation period for prosecutions

- 2.7 An information must not be laid under section 2.3 more than two years after the offence in relation to which the information is laid is alleged to have been committed.

Content of information

- 2.8 (a) An information laid under section 2.3
- (i) must be in writing,
 - (ii) must be in the prescribed form,
 - (iii) must be under oath,
 - (iv) may charge more than one offence or relate to more than one matter of complaint, but if more than one offence is charged or the information relates to more than one matter of complaint, each offence or matter of complaint must be set out in a separate count,
 - (v) must not contain any reference to previous convictions if the information is in respect of an offence for which, because of previous convictions, a greater punishment may be imposed,
 - (vi) must contain, and is sufficient if it contains in substance, a statement that the defendant committed an offence or act specified in the information and punishable on summary conviction,
 - (vii) must contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against the defendant and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the information,
 - (viii) may refer to any section, subsection, paragraph, subparagraph or clause of the enactment that creates the offence charged, and for determining whether an information is sufficient, consideration must be given to any such reference, and
 - (ix) need not set out or negate any exception, exemption, proviso, excuse or qualification prescribed by law.
- (b) The statement referred to in subsection (a)(vi) may be
- (i) in popular language without technical averments or allegations of matters that are not essential to be proved,
 - (ii) in the words of the enactment that describes the offence or declares the matters charged to be an offence or act punishable on summary conviction, or
 - (iii) in words that are sufficient to give to the defendant notice of the offence with which the defendant is charged.

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- (c) Without limiting subsection (a)(vii), no information is insufficient merely because it fails to
- (i) name the person injured or intended or attempted to be injured,
 - (ii) name the person who owns or has a special property or interest in property mentioned in the information,
 - (iii) specify the means by which the alleged offence was committed,
 - (iv) name or describe with precision any person, place or thing, or
 - (v) if the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.”;
- (d) section 3.2(b)(vii) is amended by striking out each instance of “director of operations” and substituting “Toquaht prosecutor”;
- (e) section 4.9 is amended by striking out “12” and substituting “six”;
- (f) section 7.1 is amended by striking out subsection (b) and substituting the following:
- “(b) Without limiting subsection (a), the Executive may make regulations
- (i) in relation to the duties and powers of enforcement officers,
 - (ii) designating offences for which a ticket may be issued, and
 - (ii) prescribing the form for an information laid under section 2.3, a ticket or a compliance notice.”; and
- (g) by adding the following after section 7.1:

“Toquaht representatives

- 7.1.1 (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 law, 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 on 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.”.

PART 4 - FINANCIAL ADMINISTRATION ACT AMENDMENTS

Financial Administration Act amendments

4.1 The Financial Administration Act is amended as follows:

- (a) section 5.6 is amended by
 - (i) striking out the period at the end of the definition of “debtor” and substituting a semi-colon, and
 - (ii) adding the following after the definition of “debtor”:

““review” means a review by the Administrative Decisions Review Board or a review by another person with the authority to review the applicable debt under a Toquaht enactment.”;
- (b) by striking out section 5.8 and substituting the following:

“Notice required prior to enforcing in court

5.8 Following the period established by or in accordance with a Toquaht enactment for the purposes of payment of a debt, if

 - (a) the debtor has not paid the debt, and
 - (b) the debt is not the subject of a review, or
 - (c) the debt has been the subject of a review and all or a portion of that debt is upheld on review,

the director or his or her designate may deliver in accordance with Toquaht law a notice to the debtor indicating

 - (d) the debt owing,
 - (e) how and where payment may be made,
 - (f) that if the debt has not yet been the subject of a review, the debtor may request a review of the debt under the Administrative Decisions Review Act within 30 days after the date the notice is delivered, and
 - (g) that if
 - (i) the debtor fails to pay the debt within the 30 day period referred to in subsection (f), or
 - (ii) the debtor seeks a review of the debt in accordance with subsection (f) and all or a portion of that debt is upheld on review,

the Toquaht Nation may pursue enforcement of any outstanding portion of the debt in the Supreme Court or Provincial Court in accordance with this Act.”;

- (c) by striking out section 5.9 and substituting the following:

Amounts owing enforced in court

- 5.9 (a) Subject to subsections (b) to (e), a debt may be recovered by the director of operations, or his or her delegate, by filing a certificate in the prescribed form in the Supreme Court or Provincial Court.
- (b) Subject to subsection (e), a certificate may not be filed under this section until 30 days after the date a notice is delivered to the debtor in accordance with section 5.8.
- (c) A certificate may not be filed under this section for a debt that has been owed to the Toquaht Nation for more than two years.
- (d) If a debt has not yet been the subject of a review, a debtor may during the 30 day period referred to in subsection (b) request a review of that debt under the Administrative Decisions Review Act.
- (e) If a debtor seeks a review of a debt in accordance with subsection (d), a certificate may not be filed under this section unless, upon completion of that review, all or a portion of that debt is upheld.”; and
- (d) section 5.10 is amended by
- (i) striking out “and” at the end of subsection (c);
- (ii) striking out the period at the end of subsection (d) and substituting “; and”;
and
- (iii) adding the following after subsection (d):
- “(e) if the debt has been the subject of a review, a description of the review process and the outcome of the review.”.

PART 5 - GENERAL PROVISIONS

Commencement

- 5.1** (a) Subject to subsection (b), this Act comes into force on the date it is enacted.
- (b) Section 3.1(f) is deemed to have come into force on April 1, 2011 and is retroactive to the extent necessary to give it effect on and after that date.