


YUULU?IL?ATH GOVERNMENT

ENFORCEMENT FRAMEWORK
AMENDMENT ACT NO. 3

YFNS 73/2021



This law enacted on December 6, 2021

Signed 
Charles McCarthy, President of the Yuulu?il?ath First Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 08 / DEC / 21


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 President 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,
- (ii) the limitation period for prosecutions,
- (iii) the content of an information,
- (iv) the seizure of things related to the commission of an offence,
- (v) the payment of tickets, and
- (vi) the authority of a Yuulu?il?ath First Nation representative to enter into an agreement with an external enforcement agency.

Definitions

1.4 In this Act, the “Enforcement Act” means the Enforcement Act YFNS 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 replacing it with 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”;
 - (iii) adding the following definition:

“‘seizure record’ means the document prepared by an enforcement officer under section 5.1.1 to record a seizure;”; and
 - (iv) in the definition of “surcharge penalty”, by striking out the word “29th” and replacing it with the word “31st”;
- (b) by adding the following between section 2.1 and 2.2:

“Offences by a corporation

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

- (c) by striking out section 2.3 and replacing it with the following:

“Prosecution of offences

2.3 The Yuulu?il?ath prosecutor may, after consulting with the director of operations and on reasonable and probable grounds, lay an information on behalf of the Yuulu?il?ath First Nation that a person has committed or is suspected of having committed an offence.”;

- (d) section 2.4 is amended by
 - (i) striking out subsection (b) and replacing it with the following:

- “(b) In determining
- (i) whether or not to lay an information, and
 - (ii) if the Yuulu?il?ath prosecutor intends to lay an information, the content of that information,
- the Yuulu?il?ath 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 Yuulu?il?ath First Nation,
 - (vii) the integrity and independence of the Yuulu?il?ath First Nation enforcement system,
 - (viii) any recommendation of the director of operations relating to the prosecution, and
 - (ix) the public interest.”,

- (ii) by striking out subsection (c), and
- (iii) by renaming subsection (d) as subsection (c);

- (e) 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 three years after the day on which the alleged offence in relation to which the information is laid has been discovered by the Yuulu?il?ath Government.

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,

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- (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 invalidate 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 assertions 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.
- (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.”;
- (f) subsection 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 Yuulu?il?ath enactment
 - (A) if that person, place or thing is involved in an activity that is regulated by a Yuulu?il?ath enactment, and
 - (B) the enforcement officer does not have reasonable grounds to believe that a contravention of a Yuulu?il?ath 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 Yuulu?il?ath enactment;

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- (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 Yuulu?il?ath 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”;
 - (g) section 4.9 is amended by striking out the number “12” and replacing it with the word “six”;
 - (h) 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 Yuulu?il?ath 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 Yuulu?il?ath 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 persons 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.
- (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 Yuulu?il?ath 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 Yuulu?il?ath 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 Yuulu?il?ath? 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 Yuulu?il?ath? Government for any costs incurred by the Yuulu?il?ath? 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 Yuulu?il?ath? Government with the proceeds.

- (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 Yuulu?il?ath? Government will pay that person the proceeds of sale of the thing.”;

(i) by striking out section 5.5 and replacing it with the following:

“(a) A named person who is served with a ticket in accordance with section 5.3 must do one of the following:

- (i) pay the discounted penalty amount, as set out in the ticket, within 14 days;
- (ii) pay the penalty amount, as set out in the ticket, within 30 days; or
- (iii) apply for a review of the ticket within 14 days in accordance with section 6.1.

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- (b) The senior officer may extend a time limit established under subsection (a), upon request by the named person or an authorized representative of the named person, by
- (A) a period of up to 15 days, or
 - (B) upon the approval of the Executive, a period longer than 15 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 ticket in accordance with subsection (a).";
- (j) section 5.6 is amended by adding the word "surcharge" between the words "the" and "penalty";
- (k) 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";
- (l) 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"; and
- (m) by adding the following between section 7.1 and 7.2:

"Yuulu?il?ath representatives

- 7.1.1** (a) Subject to subsection (b), if the Yuulu?il?ath First Nation enters into an agreement with an external enforcement agency for the enforcement of Yuulu?il?ath law, the Executive must appoint at least one but not more than three individuals to represent the Yuulu?il?ath First Nation under that agreement.
- (b) If the Yuulu?il?ath First 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 Yuulu?il?ath First 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 Yuulu?il?ath First 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 Yuulu?il?ath lands and any concerns regarding the applicable external enforcement agency's enforcement of Yuulu?il?ath law.”

PART 3 - GENERAL PROVISIONS

Commencement

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