

**KA:'YU:'K'T'H'/CHE:K'TLES7ET'H'  
FIRST NATIONS GOVERNMENT**

**COMMUNITY SAFETY AND TRESPASS  
ACT**

**KCFNS 53/2019**



This law enacted on June 27, 2019

Signed Christina Cox  
Christina Cox, Tyee Ha'wilt, Ka:'yu:'k't'h' First Nation

Signed Francis Gillette  
Francis Gillette, Tyee Ha'wilt, Che:k'tles7et'h' First Nation

Signed Richard Leo  
Richard Leo, Legislative Chief, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations

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REGISTRY OF LAWS AND  
OFFICIAL RECORDS

ON 10 16 2019

[Signature]  
Signature of Clerk



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## PREAMBLE

The Ka:'yu:'k't'h'/Che:k'tles7et'h' government assumes the responsibility of providing measures to protect our lands and to protect our citizens, particularly our children and the vulnerable.

Under 13.25.1 of Chapter 13 Governance of the Maa-nulth Treaty, the Ka:'yu:'k't'h'/Che:k'tles7et'h' government is recognized with the authority to enact laws in respect of the regulation, control or prohibition of any actions, activities or undertakings on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands that constitute, or may constitute, a threat to public order, peace or safety. Section 1.4(g) of the Constitution affirms each Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' government recognizes its obligations under 5.4.1 of Chapter 5 Access of the Maa-nulth Treaty to provide reasonable public access to Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for temporary recreational uses and temporary noncommercial purposes. The Ka:'yu:'k't'h'/Che:k'tles7et'h' government also recognizes the right of Ka:'yu:'k't'h'/Che:k'tles7et'h' citizens under section 1.4(j) of the Ka:'yu:'k't'h'/Che:k'tles7et'h' Constitution to access Ka:'yu:'k't'h'/Che:k'tles7et'h' lands in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' government adopts this Act based on these values and objectives.



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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

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

### Executive oversight

1.2 The Legislative Chief 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' 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;

“excluded individual” means an 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 3.8;

“exclusion hearing” means a hearing held in accordance with section 3.7;

“healing circle” means the individuals appointed in accordance with section 2.2;

“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 Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 6.3, or
- (b) in relation to Ka:'yu:'k't'h'/Che:k'tles7et'h' private lands or Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands, land that is designated as limited access land by the Executive, by regulation, and posted with one or more signs prohibiting trespass in accordance with section 6.3;

“Ka:'yu:'k't'h'/Che:k'tles7et'h' elder” means a Ka:'yu:'k't'h'/Che:k'tles7et'h' citizen that is at least 65 years old;

“Ka:'yu:'k't'h'/Che:k'tles7et'h' private lands” means “Maa-nulth First Nation Private Lands” of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations under the Maa-nulth Treaty;

“Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands” means “Maa-nulth First Nation Public Lands” of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations under the Maa-nulth Treaty;

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

“q<sup>w</sup>ayac'iik” (“wolf” in the Nuu-chah-nulth language) means an individual designated, in accordance with Ka:'yu:'k't'h' or Che:k'tles7et'h' custom, as applicable, to investigate a matter or maintain public order, peace and safety during a gathering held in accordance with that custom;

“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 application under section 2.1 or an exclusion application, as applicable;

“significant threat” means a substantial threat to public order, peace or safety on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands or the health, safety or wellbeing of any individual on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands;

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

“suspension order” means an order made under section 4.2

“whit wock” means the spokesperson of a Tyee Ha'wilth, appointed in accordance with Ka:'yu:'k't'h' or Che:k'tles7et'h' custom, as applicable.



## 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 following phrases, as applicable:
- (i) “in land” or “in the land”;
  - (ii) “on a building or other structure” or “on the building or other structure”;  
and
  - (iii) “in a building or other structure” or “in the building or other structure”.



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## PART 2 - ISAAK-STA-ALTH

### Application for a healing circle

- 2.1 (a) The director of community services may, on reasonable and probable grounds, make an application to the applicable Tye Ha'wilt in accordance with subsection (c) alleging that an individual named in that application
- (i) poses a significant threat, or
  - (ii) has committed an offence under a Ka:'yu:'k't'h'/Che:k'tles7et'h' enactment or under the traditional laws of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, and
- that threat or offence should be dealt with in accordance with this Part.
- (b) A respondent who is the subject of an exclusion application under Part 3 may make an application to the applicable Tye Ha'wilt in accordance with subsection (c) to have the matter dealt with under this Part.
- (c) An application under subsection (a) or (b) must be in the prescribed form and must be made to the
- (i) Ka:'yu:'k't'h' Tye Ha'wilt, if that individual is a Ka:'yu:'k't'h'/Che:k'tles7et'h' citizen, or the significant threat or offence is related to the Ka:'yu:'k't'h'/Che:k'tles7et'h' lands or Hahoulthe, affiliated with the Ka:'yu:'k't'h' First Nation, or
  - (ii) Che:k'tles7et'h' Tye Ha'wilt, if that individual is a Ka:'yu:'k't'h'/Che:k'tles7et'h' citizen, or the significant threat or offence is related to the Ka:'yu:'k't'h'/Che:k'tles7et'h' lands or Hahoulthe, affiliated with the Che:k'tles7et'h' First Nation.

### Healing circle

- 2.2 (a) If an application is made in accordance with subsection 2.1, the applicable Tye Ha'wilt must consider the application and, if the applicable Tye Ha'wilt decides it is appropriate in the circumstances to do so but subject to subsection (b) and section 2.3, convene within 14 days a healing circle of at least three but no more than seven individuals consisting of
- (i) the applicable Tye Ha'wilt,
  - (ii) at least one other Ka:'yu:'k't'h' Ha'wilt or Che:k'tles7et'h' Ha'wilt, as applicable, and

- (iii) at least one Ka:'yu:'k't'h'/Che:k'tles7et'h' elder affiliated with the Ka:'yu:'k't'h' First Nation or Che:k'tles7et'h' First Nation, as applicable.
- (b) An individual appointed to a healing circle under subsection (a) must not be in a conflict of interest as defined in section 2.2 of the Integrity Act.
- (c) If the applicable Tyee Ha'wilt'h decides it is not appropriate in the circumstances to convene a healing circle, he or she must deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law to the respondent and the director of community services written reasons for that decision within fourteen days.

### Notice of healing circle

- 2.3** The director of community services must deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law notice of the time, date and location of a meeting of a healing circle to the respondent at least seven days before that meeting.

### Interim measures

- 2.4** (a) On direction from the applicable Tyee Ha'wilt'h, the q<sup>w</sup>ayac'iik may investigate and report to the Tyee Ha'wilt'h on the facts alleged under section 2.1 to form the basis of the significant threat or the offence that will be considered at the healing circle.
- (b) On direction from the applicable Tyee Ha'wilt'h, the whit wock may, by order in the prescribed form delivered in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law, restrain an individual from entering a place, entering or being present on a parcel of Ka:'yu:'k't'h'/Che:k'tles7et'h' lands or having contact or communicating with an individual as specified in the order prior to a healing circle.

### Meeting of a healing circle

- 2.5** (a) Subject to section 2.3, a meeting of a healing circle must be held at Houpsitas, British Columbia, at the time, date and location designated by the applicable Tyee Ha'wilt'h.
- (b) Only the following individuals may be present at a healing circle:
- (i) the respondent and up to two other individuals designated by the respondent;
  - (ii) the director of community services;
  - (iii) the applicable Tyee Ha'wilt'h and the individuals appointed by him or her in accordance with section 2.2;

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- (iv) the applicable whit wock and q<sup>w</sup>ayac'iik;
  - (v) the Ka:'yu:'k't'h'/Che:k'tles7et'h' government's family support worker;  
and
  - (vi) up to two other individuals with the consent of the Tyee Ha'wilth.
- (c) A meeting of a healing circle must be conducted in accordance with the traditional laws of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations.
  - (d) The deliberations of a healing circle, any corrective or restorative measures imposed under section 2.6 and any report delivered under this Part are confidential and not subject to disclosure under the Access to Information Act.

### **Corrective and restorative measures**

**2.6** A healing circle may impose in accordance with the traditional laws of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations whatever corrective or restorative measures it decides by consensus are appropriate in the circumstances to substantially eliminate the significant threat posed by the respondent or provide restitution for the respondent's offence.

### **Voluntary participation of respondent**

- 2.7**
- (a) A respondent's participation in a healing circle under section 2.5 and the corrective or restorative measures imposed under section 2.6 is voluntary and the respondent may, by either written or verbal notice given to the applicable Tyee Ha'wilth at any time, withdraw from a healing circle process under this Part.
  - (b) If a respondent fails to attend a healing circle, fails to meaningfully cooperate with a healing circle or fails to satisfactorily complete the corrective or restorative measures imposed by the healing circle under section 2.6, the applicable Tyee Ha'wilth must, within seven days, provide a report in the prescribed form to the director of community services summarizing that failure.
  - (c) The director of community services must deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a report provided under subsection (b) to the respondent.
  - (d) For certainty, if a report is provided to the director of community services under subsection (b), the chief administrative officer may proceed with an exclusion application under Part 3.

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### Conclusion of a healing circle process

- 2.8** (a) If a respondent participates in a healing circle under section 2.5 and satisfactorily completes the corrective or restorative measures imposed under section 2.6, the applicable Tyee Ha'wilth must,
- (i) within seven days, provide a report in the prescribed form to the director of community services officer summarizing that completion, and
  - (ii) as soon as is reasonably practicable and subject to section 2.5(d), conduct a ceremony in accordance with the traditional laws of the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations acknowledging the respondent's satisfactory completion of a process under this Part.
- (b) The director of community services must deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a report provided under subsection (a)(i) to the respondent.
- (c) For certainty, despite an individual having participated in a healing circle under section 2.5 and satisfactorily completing corrective or restorative measures imposed under section 2.6, if that individual continues to pose, or subsequently poses, a significant threat, the chief administrative officer may proceed with an exclusion application under Part 3.

### Delegation authority

- 2.9** (a) A Tyee Ha'wilth may, in accordance with Ka:'yu:'k't'h' or Che:k'tles7et'h' custom, as applicable, delegate the performance of any of the Tyee Ha'wilth's duties or the exercise of any of the Tyee Ha'wilth's powers under this Part to his or her whit wock.
- (b) Despite the delegation of any duties or powers under subsection (a), the Tyee Ha'wilth remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

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## PART 3 - EXCLUSION ORDERS

### Exclusion application

**3.1** The chief administrative officer 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 chief administrative officer, make the respondent a significant threat;
  - (iii) the proposed duration of the exclusion order;
  - (iv) the Ka:'yu:'k't'h'/Che:k'tles7et'h' lands the chief administrative officer 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 chief administrative officer intends to rely on.
- (c) The chief administrative officer'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 chief administrative officer must, as soon as is reasonably practicable, deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of an exclusion application to the respondent and provide proof of that delivery to the Executive.

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### Healing circle referral

- 3.4** If a respondent makes an application in accordance with section 2.1 to have the matter referred to a healing circle under Part 2 and the applicable Tyee Ha'wilt convenes a healing circle for that matter, the exclusion application under this Part is either
- (a) suspended until a report is delivered in accordance with section 2.7, or
  - (b) deemed to be terminated when a report is delivered in accordance with section 2.8.

### Respondent's reply

- 3.5** (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 Legislative Chief 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 Legislative Chief may order an extension of the time.
- (c) A statement under subsection (a)(i) must not contain any words or statements that the Legislative Chief 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 Legislative Chief 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.



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### Document disclosure

- 3.6** The Legislative Chief must ensure that a copy of any document or record received by the Executive under section 3.5(a) is provided to the chief administrative officer as soon as is reasonably practicable.

### Exclusion hearing

- 3.7** (a) Subject to section 3.5(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.
- (b) Notice of the date, time and location of the exclusion hearing must be delivered in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 chief administrative officer must first present to the Executive the grounds upon which the exclusion application is made after which the respondent must be provided an opportunity to respond to the exclusion application, if the respondent or his or her agent or counsel is present.
- (e) The respondent may be represented by an agent or counsel at the exclusion hearing.
- (f) The chief administrative officer or respondent may present evidence and call witnesses at the exclusion hearing and all evidence must be given under oath.
- (g) Subject to this Act and any other Ka:'yu:'k't'h'/Che:k'tles7et'h' law, the Executive has the power to establish rules of order and procedure to be followed at exclusion hearings.

### Exclusion order

- 3.8** (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 Ka:'yu:'k't'h'/Che:k'tles7et'h' government to materially reduce that threat.

### Written reasons

**3.9** Within 14 days of an exclusion hearing, the Executive must

- (a) prepare written reasons for its decision under section 3.8, and
- (b) deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of those reasons to the chief administrative officer and the respondent.

### Content of exclusion order

**3.10** 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 Legislative Chief.

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### **Delivery and posting of exclusion order**

- 3.11** (a) The chief administrative officer must, within seven days after an exclusion order is issued, deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of the exclusion order to
- (i) the excluded individual,
  - (ii) each employer of the excluded individual if
    - (A) the chief administrative officer has knowledge of that employment, and
    - (B) in the opinion of the chief administrative officer, the excluded individual's employment with that employer could require the excluded individual to enter onto the Ka:'yu:'k't'h'/Che:k'tles7et'h' lands specified in the exclusion order, and
  - (iii) each enforcement officer designated under a Ka:'yu:'k't'h'/Che:k'tles7et'h' enactment to enforce this Act.
- (b) The chief administrative officer must, within 14 days from the date an exclusion order was issued, post in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a summary of the exclusion order for at least 60 days.

### **Access for elections and referendums**

- 3.12** If
- (a) an exclusion order prohibits an excluded individual from entering or remaining on Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 chief administrative officer 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 chief administrative officer.

### **Access for interest or licence in Ka:'yu:'k't'h'/Che:k'tles7et'h' lands**

- 3.13** (a) If an excluded individual has an interest in, or licence in relation to, Ka:'yu:'k't'h'/Che:k'tles7et'h' 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, Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' land under section [4.5(c)] of the Public Order, Peace and Safety Act.

### **Prohibition on acquiring interest or licence in Ka:'yu:'k't'h'/Che:k'tles7et'h' lands**

- 3.14** (a) Subject to subsection (b), an excluded individual may not acquire an interest in, or licence in relation to, Ka:'yu:'k't'h'/Che:k'tles7et'h' lands while his or her exclusion order is in effect.
- (b) An excluded individual who is also a Ka:'yu:'k't'h'/Che:k'tles7et'h' citizen may acquire an interest in, or licence in relation to, Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 chief administrative officer 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 chief administrative officer 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 3.13,
  - (ii) deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of the modified exclusion order to each person referred to in section 3.11(a), and
  - (iii) post in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a summary of the modifications to the exclusion order.

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## 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 prescribed form, 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of those reasons to the chief administrative officer 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 Legislative Chief.

### **Delivery and posting of suspension order**

#### **4.5 The chief administrative officer must, within seven days after a suspension order is issued,**

- (a) deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of the suspension order to each person referred to in section 3.11(a), and
- (b) post in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 prescribed form, 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 30 days of receiving the application.
- (b) Sections 3.7(b) to 3.7(g) 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of those reasons to the chief administrative officer 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 chief administrative officer must, within seven days after a rescission order is issued,
- (a) deliver in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a copy of the rescission order to each person referred to in section 3.11(a), and
  - (b) post in accordance with Ka:'yu:'k't'h'/Che:k'tles7et'h' law a summary of the rescission order.



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## PART 5 - REVIEW OF DECISIONS

### Review of exclusion decisions

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

- (a) section 3.9, 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.



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## PART 6 - TRESPASS

### Unauthorized entry

- 6.1 (a) Subject to subsection (c), a person must not do any of the following:
- (i) enter limited access land where entry is prohibited;
  - (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 limited access 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 limited access land or stop engaging in an activity on the limited access land,
- (i) must leave the limited access land or stop engaging in the activity on the limited access land, as applicable, as soon as practicable after receiving the direction, and
  - (ii) must not re-enter the limited access land or resume the activity on the limited access land, as applicable.
- (c) A person does not contravene subsection (a) or (b) if the person's action or inaction, as applicable, was with
- (i) the consent of an occupier of the limited access 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) For the purposes of subsection (a)(i), entry is deemed to be prohibited on all Ka:'yu:'k't'h'/Che:k'tles7et'h' private lands that are limited access lands.
- (e) A person found on limited access land is presumed not to have the consent of an occupier of that land or an authorized person to be there.

### Unauthorized possession, occupation and uses

- 6.2 A person must not

- 
- (a) without lawful authority
- (i) occupy or possess Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (ii) damage Ka:'yu:'k't'h'/Che:k'tles7et'h' lands or improvements on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (iii) harvest, extract or damage forest resources, mineral resources, fish or wildlife on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (iv) interfere with the lawfully authorized use, occupation or possession of Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (v) construct a building, structure, enclosure or other works on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (vi) excavate Ka:'yu:'k't'h'/Che:k'tles7et'h' lands,
  - (vii) throw, deposit, dump or in any way cause to be placed on Ka:'yu:'k't'h'/Che:k'tles7et'h' lands any glass, metal, garbage, soil or other material,
  - (viii) abandon on Ka:'yu:'k't'h'/Che:k'tles7et'h' 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' lands, or
- (b) use a designated area of Ka:'yu:'k't'h'/Che:k'tles7et'h' lands contrary to a Ka:'yu:'k't'h'/Che:k'tles7et'h' enactment.

### Methods of giving notice

- 6.3** (a) For the purposes of sections 1.4(a)(iii) and 1.4(b) 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 limited access 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 6.1(a)(ii) or 6.1(a)(iii), notice may be given
- (i) verbally or in writing, or

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(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).



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## PART 8 - ENFORCEMENT

### Trespass offences

#### 8.1 Every person who

- (a) enters, re-enters or stays on land contrary to section 6.1,
- (b) engages in, resumes or continues engaging in an activity contrary to section 6.1,
- (c) occupies, possesses or uses Ka:'yu:'k't'h'/Che:k'tles7et'h' lands contrary to section 6.2, or
- (d) removes, alters or defaces a sign contrary to section 6.3(e),

commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or imprisonment for a term not exceeding three months.

### Exclusion offences

#### 8.2 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

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

### Powers of removal and arrest

- 8.4 (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 6.1 in relation to the land.
- (b) If an enforcement officer believes on reasonable and probable grounds that a person has contravened section 6.1 in relation to land and has recently departed from that 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 Ka:'yu:'k't'h'/Che:k'tles7et'h' 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**

- 8.5** In a prosecution for an offence under section 8.1(a) or 8.1(b), proof that a sign that complies with section 6.3(a) or 6.3(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 is limited access land, or
  - (b) notice was given for the purpose of section 6.1(a)(ii) or 6.1(a)(iii).

### **Trespass prosecution not defeated by variation in fence**

- 8.6** The prosecution of a person for an offence under section 8.1(a) or 8.1(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**

- 8.7** (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 8.1(a), 8.1(b) or section 8.1(d) in relation to that 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 damages 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**

- 8.8** (a) The Ka:'yu:'k't'h'/Che:k'tles7et'h' 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.



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## PART 9 - GENERAL PROVISIONS

### Regulations

- 9.1** The Executive may make regulations which it considers necessary or advisable for the purposes of this Act, including regulations
- (a) designating Ka:'yu:'k't'h'/Che:k'tles7et'h' 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.

### Restrictions on access

- 9.2** (a) Subject to 5.2.0, 5.3.5 and 5.4.0 of Chapter 5 Access of the Maa-nulth Treaty, the Executive may enact a regulation
- (i) placing reasonable limits on the public's right to access Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for temporary recreational uses and temporary non-commercial purposes,
  - (ii) limiting or prohibiting public access to Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for any other purpose, or
  - (iii) designating Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands as Ka:'yu:'k't'h'/Che:k'tles7et'h' private lands or designating Ka:'yu:'k't'h'/Che:k'tles7et'h' private lands as Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands.
- (b) For certainty and 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 the public's right to access Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for temporary recreational uses and temporary non-commercial purposes.
- (c) If Ka:'yu:'k't'h'/Che:k'tles7et'h' lands are designated as Ka:'yu:'k't'h'/Che:k'tles7et'h' 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.

### Temporary restrictions on access

- 9.3** The director of lands and resources may, by order, for a period up to 60 days,

- (a) place reasonable limits on the public's right to access Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for temporary recreational uses and temporary non-commercial purposes, or
- (b) limit or prohibit public access to Ka:'yu:'k't'h'/Che:k'tles7et'h' public lands for any other purpose.

**Repeal**

9.4 Part 10 of the Land Act is repealed.

**Commencement**

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