



huu ay aht

ANCIENT SPIRIT, MODERN MIND

**ENFORCEMENT FRAMEWORK
AMENDMENT ACT, 2021**

*The Huu-ay-aht Legislature enacts this law to amend various enactments
relating to the enforcement of Huu-ay-aht laws*

REGISTRY OF LAWS CERTIFICATION

I certify that the *Enforcement Framework Amendment Act, 2021* passed Third Reading in the Legislature on:

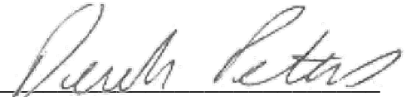
March 30, 2021



Chief Councillor, Robert Dennis

I certify that the *Enforcement Framework Amendment Act, 2021* is enacted as law on:

March 30, 2021



Ta'yii Hawilth, Derek Peters

I certify that the *Enforcement Framework Amendment Act, 2021* came into force on:

April 14, 2021



Law Clerk, Coraleah Bauer

Enforcement Framework Amendment Act, 2021

Contents

Section

- 1 Offence and Law Enforcement Act amendments
- 2 Tribunal Act amendments
- 3 Commencement
- 4 Consolidation

The Legislature enacts as follows:

Offence and Law Enforcement Act amendments

- 1** The *Offence and Law Enforcement Act*, HFN 12/2011 is amended as follows:

- (a) *in the preamble, by adding the following as the 4th paragraph:*

Peace officers may seize anything they reasonably believe was obtained through, used in or provides evidence of the commission of an offence. Seized items will be held until the matter is resolved by a court, at which point they may be ordered to be forfeited to the HUU-ay-aht or they may be returned. If the person lawfully entitled to the seized item is not brought to court in respect of the related offence within the required time frame, the seized item will be returned to that person;

- (b) *in section 2, by inserting a definition for “Maa-nulth First Nation” as the following:*

“**Maa-nulth First Nation**” has the same meaning as under the Treaty;

- (c) *in section 2, by substituting the definition for “named person” with the following:*

“**named person**” means a person or entity to whom a compliance notice, ticket or seizure record is issued;

- (d) *in section 2, by inserting a definition for “seizure record” as the following:*

“**seizure record**” means the document prepared by a peace officer under section 32.2 to record a seizure;

- (e) *in section 4(1), by adding the following after paragraph (g):*

(g.1) upon an arrest authorized by this subsection, search that person and his or her belongings if there is a reasonable prospect of securing evidence of that offence, and seize anything found during that search that the peace officer believes on reasonable grounds

- (i) was obtained in the commission of an offence,
- (ii) was or is being used in the commission of an offence, or

(iii) may provide evidence of the commission of an offence;

(f) *by striking out section 5 and substituting it with the following:*

Regulatory inspection by peace officers

- 5** (1) A peace officer who does not have reasonable grounds to believe that a contravention of HUU-AY-AHT legislation has occurred may, for the purpose of ensuring compliance with HUU-AY-AHT legislation, make any reasonable inspection of any person, place or thing involved in an activity that is regulated by HUU-AY-AHT legislation.
- (2) In exercising the powers under subsection (1), a peace officer may enter any place or thing
- (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.
- (3) In addition to exercising powers under subsection (1), a peace officer may at any time during an inquiry or inspection
- (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 HUU-AY-AHT legislation.

(g) *by striking out section 6 and substituting it with the following:*

Seizure of evidence by peace officers

- 6** During an inspection under section 5, a peace officer may seize anything that he or she 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.

(h) *by striking out section 7(1) and substituting it with the following:*

- 7** (1) Subject to subsection (2), all provisions of the Offence Act (British Columbia) relating to offences punishable on summary conviction apply in respect of offences under HUU-AY-AHT law, including, for greater certainty, section 133 of that Act [Application of Criminal Code (Canada)].

(i) *in section 7(2), by striking out the word “specified” and substituting it with the words “referred to”;*

-
- (j) **in section 16(1)(c), by striking out the words “regulation, control or prohibition of the actions or activities” and substituting them with the words “applicable section of the Huu-ay-aht legislation that regulates, controls or prohibits the action or activity”;**
- (k) **in section 16(1), by adding the following after paragraph (c):**
- (c.1) by delivering a copy of the compliance notice
 - (i) to the last known residential or business address of the named person, or
 - (ii) if the named person is a corporation, to the registered office shown in the records of the applicable government;
- (l) **in section 16, by striking subsection (2) and substituting it with the following:**
- (2) A compliance notice served under subsection (1) (d.1) is deemed to have been received by the named person on the day following the day on which it is delivered to the address.
- (m) **in section 17(3), by adding the following after paragraph (b):**
- (b.1) by delivering a copy of the compliance notice
 - (i) to the last known residential or business address of the named person, or
 - (ii) if the named person is a corporation, to the registered office shown in the records of the applicable government;
- (n) **in section 17, by striking out subsection (4) and substituting it with the following:**
- (4) A compliance notice served under subsection (3) (b.1) is deemed to have been received by each registered owner on the day following the day on which it is delivered to the address.
- (o) **in section 22(4) after the words “person entitled to them”, by inserting the words “payable on demand within 14 days, if that demand is delivered to the Executive Director in accordance with Huu-ay-aht law”;**
- (p) **in section 27(d) after the words “prescribed surcharge”, by adding the word “penalty”;**
- (q) **in section 28(1), by adding the following after paragraph (c):**
- (c.1) by delivering a copy of the ticket
 - (i) to the last known residential or business address of the named person, or
 - (ii) if the named person is a corporation, to the registered office shown in the records of the applicable government;
- (r) **in section 28, by striking out subsection (2) and substituting it with the following:**

- (2) A ticket served under subsection (1) (c.1) is deemed to have been received by the named person on the day following the day on which it is delivered to the address;
- (s) *in section 31(1)(b) after the words “ticket is served”, by adding the words “under section 28”;*
- (t) *between Division 3 and Division 4, by inserting the following:*

Division 3.1 – Seizures

Definition

- 32.1** In this Division, “**responsible authority**” means the person responsible for administering and enforcing the Huu-ay-aht legislation under which the offence related to the seizure occurred.

Seizure record

- 32.2** The peace officer that conducts a seizure under section 4 or 6 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 peace officer who conducted the seizure,
 - (f) how to appeal the seizure, and
 - (g) any other prescribed information.

Serving seizure record

- 32.3** (1) A seizure record prepared under section 32.2 must be served
- (a) on the person from whom the thing was seized, and
 - (b) any other person whom the peace officer has reason to believe may have an interest in the thing seized,
- all of whom are “**named persons**” in relation to that seizure record.
- (2) A seizure record prepared under section 32.2 may be served as follows:
- (a) by a peace officer or another authority on the named person,

- (b) by mailing a copy of the seizure record
 - (i) to the last known residential or business address of the named person, or
 - (ii) if the named person is a corporation, to the registered office shown in the records of the applicable government;
 - (c) by delivering a copy of the seizure record
 - (i) to the last known residential or business address of the named person, or
 - (ii) if the named person is a corporation, to the registered office shown in the records of the applicable government;
 - (d) by another prescribed method.
- (3) A seizure record served under subsection 2(c) is deemed to have been received by the named person on the day following the day on which it is delivered to the address.

If seizure record not served

- 32.4** If a seizure record is not served under section 32.3, 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 under section 32.3 does not result in any substantial injustice.

Appealing a seizure

- 32.5** (1) In this section, “**receiving a seizure record**” in relation to a named person, means
- (a) being served, or being deemed to be served, with a seizure record under section 32.3, or
 - (b) not being served, but the proceeding or action in relation to the seizure record is not invalidated under section 32.4.
- (2) A named person may, within 30 days of receiving a seizure record or becoming aware of the content of the seizure record, appeal the seizure

by filing a notice of appeal with the tribunal in accordance with Part 3 of the *Tribunal Act*.

- (3) If the tribunal varies or sets aside a seizure on an appeal under subsection (2), the tribunal may order a named person to be compensated by the HUU-AY-AHT for any action taken in relation to that seizure.

Custody

- 32.6**
- (1) The peace officer that conducts a seizure under section 4 or 6 must deliver the seized thing to the responsible authority.
 - (2) The responsible authority must retain custody and ensure the safekeeping of anything seized under section 4 or 6.
 - (3) The responsible authority 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 that seizure, subject to an undertaking by that person to ensure the safekeeping of that thing.
 - (4) The responsible authority may require the person given custody under subsection (2) to do one or both of the following:
 - (a) provide the responsible authority with security for the seized thing in a manner and form that is satisfactory to the responsible authority; or
 - (b) make the seized thing available for inspection by or deliver it into the custody of the responsible authority at any reasonable time.

Special items

- 32.7**
- (1) A peace officer or responsible authority may make copies of any documents seized under section 4 or 6.
 - (2) A peace officer or responsible authority may release any wild animal seized under section 4 or 6.
 - (3) The responsible authority who has custody of any perishable thing seized under section 4 or 6 may dispose of it in any manner he or she considers appropriate and any proceeds realized from its disposition shall be held in place of that thing.

Return of seized property

- 32.8**
- (1) The responsible authority must deliver a seized thing to the person lawfully entitled to be in possession of that thing if

- (a) an information is not laid for the offence related to the seizure within the time period specified in section 32.2 of the *Tribunal Act*, or
 - (b) 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.
- (2) The responsible authority 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

- 32.9** (1) 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 Huu-ay-aht.
- (2) 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 Huu-ay-aht but does not order forfeiture, the responsible authority may retain custody of the thing until the fine is paid.
- (3) 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 Huu-ay-aht, the responsible authority must return the thing to that person.

Recovery of costs

- 32.10** If a person is convicted of an offence related to a seizure, the court may order that person to compensate the Huu-ay-aht for any costs incurred by the Huu-ay-aht for the seizure, storage, maintenance or disposition of that thing.

Application for possession

- 32.11** Any person at any time may apply to court to have a seized thing delivered into their possession, notwithstanding the right to appeal a seizure to the tribunal.

If owner of thing unknown

- 32.12** (1) If the responsible authority 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 Division, the responsible authority may dispose of that thing and provide the Huu-ay-aht with the proceeds.

- (2) If a seized thing is disposed under subsection (1) and a person subsequently proves that he or she is lawfully entitled to possession of that thing, the Huu-ay-aht shall pay that person the proceeds of sale of the thing.

(u) *in subsection 43(2), by striking out paragraph (a) and substituting it with the following:*

- (a) prescribing a method of service for compliance notices, tickets and seizure records in addition to the methods described in this Act and prescribing a period within which a person is deemed to have received documents served in that way;

(v) *after section 43, by inserting the following:*

Huu-ay-aht representatives

43.1 (1) Subject to subsection (2), if the Huu-ay-aht enter into an agreement with an external enforcement agency for the enforcement of Huu-ay-aht law, Executive Council must appoint at least one but not more than three individuals to represent the Huu-ay-aht under that agreement.

- (2) If the Huu-ay-aht 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, Executive Council must appoint at least one but not more than two individuals to represent the Huu-ay-aht on that committee.

(3) An individual appointed under subsection (1) or (2)

- (a) has the power to make any decision on behalf of the Huu-ay-aht in relation to the agreement with the applicable external enforcement agency, except a decision to amend or terminate that agreement, and
- (b) must report to Executive Council at least quarterly on any compliance activities of the applicable external enforcement agency within Huu-ay-aht lands and any concerns regarding the applicable external enforcement agency's enforcement of Huu-ay-aht law.

Tribunal Act amendments

2 The *Tribunal Act*, HFNA 13/2011 is amended:

- (a) *in section 20(3)(b), by striking out the words “compliance notice or ticket” and substituting them with the words “compliance notice, ticket or seizure record”;*

(b) *in section 25, by striking out the words “ticket or compliance notice” and substituting them with the words “compliance notice, ticket or seizure record”;*

(c) *by striking out section 32 and substituting it with the following:*

- 32 (1) For the purpose of section 17 (1) (f) the tribunal may, upon receiving the necessary information from Executive Council, a peace officer or another authority of an offence under Huu-ay-aht law, lay an information in the manner and form prescribed under the Offence Act (British Columbia).
- (2) Subject to subsection (3), all provisions of the Offence Act (British Columbia) relating to laying an information apply in respect of the laying of an information by the tribunal under subsection (1).
- (3) The provisions referred to in subsection (2) apply to the extent that they are not inconsistent with this Act and the regulations made under it.

(d) *after section 32, by inserting the following:*

Considerations when laying an information

32.1 In determining whether or not to lay an information, and if the tribunal decides to do so, the content of that information, the tribunal must consider

- (a) all relevant information and documents relating to the offence,
- (b) whether there is a substantial likelihood of conviction of the offence,
- (c) the seriousness of the offence,
- (d) the vision, values and sacred principles of the Huu-ay-aht,
- (e) the integrity and independence of the Huu-ay-aht enforcement system,
- (f) any recommendation of Executive Council relating to the offence,
- (g) the public interest, and
- (h) any other factors the tribunal considers relevant.

Limitation period for prosecutions

32.2 An information must not be laid under section 32 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 Huu-ay-aht government.

Commencement

- 3** (1) Subject to subsection (2), this Act comes into force by resolution of Executive Council.

- (2) Section (1) (v) of this Act is deemed to have come into force on January 1, 2014 and is retroactive to the extent necessary to give it effect on and after that date.

Consolidation

- 4** The Law Clerk is directed to consolidate *the Offence and Law Enforcement Act*, HFNA 12/2011, and the *Tribunal Act*, HFNA 13/2011, to include the amendments contained in this Act.