



K'ómoks First Nation

K'ómoks First Nation Summary Offence Law, 2023

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**K'ÓMOKS FIRST NATION
SUMMARY OFFENCE LAW**

KFN-2023-01

WHEREAS the K'ómoks First Nation has an inherent right to self-government, including the right to establish and enforce laws governing K'ómoks First Nation lands and peoples, as recognized and affirmed by section 35 of the *Constitution Act, 1982* and articles 3, 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples;

WHEREAS Canada and a group of First Nations concluded the *Framework Agreement on First Nation Land Management* on February 12, 1996, and Canada later ratified the agreement via the enactment of the *Framework Agreement on First Nation Land Management*, SC 2022, c 19;

WHEREAS the K'ómoks First Nation became a signatory to the *Framework Agreement on First Nation Land Management* and later brought the *K'ómoks First Nation Land Code* into effect on November 30, 2016;

WHEREAS the K'ómoks First Nation has the authority under paragraph 12.1(a) of the *K'ómoks First Nation Land Code* to make laws concerning the protection, management, use and possession of K'ómoks First Nation land and any matter necessary or ancillary thereto and under subsection 12.3 and 12.4 of the *K'ómoks First Nation Land Code* to establish offences, enforcement procedures and ticketing processes;

WHEREAS the K'ómoks First Nation has the authority under sections 18 and 19 of the *Framework Agreement on First Nation Land Management* to create offences punishable on summary conviction, and to make laws for the prosecution and enforcement of contraventions of K'ómoks First Nation laws;

WHEREAS the K'ómoks First Nation Chief and Council deems it advisable and in the best interests of K'ómoks First Nation to enact a law to provide for the enforcement and prosecution of K'ómoks First Nation laws, in an effort to protect K'ómoks First Nation lands, K'ómoks First Nation modern and traditional values, and the K'ómoks First Nation community, its children and its vulnerable persons from harmful and unlawful activities that may occur on K'ómoks First Nation lands;

WHEREAS the K'ómoks First Nation people have historically used banishment and other punishments to help preserve and promote order, peace and safety in the community;

WHEREAS the K'ómoks First Nation, in accordance with K'ómoks First Nation tradition, has recognized the importance of the collective rights of the community and the need to balance those with the rights of the individual;

AND WHEREAS this law therefore seeks to balance the rights of the individual guaranteed under the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*, RSC 1985, c H-6 with the safety of the K'ómoks First Nation community, its children and its vulnerable persons,

NOW THEREFORE the K'ómoks First Nation Chief and Council enacts the following law.

PART 1 – INTERPRETATION, PURPOSE AND APPLICATION

1. SHORT TITLE

- 1.1 This Law may be cited, for all purposes, as the *Summary Offence Law*.

2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

“Administrator” means a person appointed under subsection 48.1, for the administration of matters set out under this Law, or any delegate acting on behalf of the Administrator;

“Banishment” means a penalty prescribed by a Justice of the Peace under a Sanction Order, which banishes a Defendant from some or all KFN Lands;

“Banishment Rescission Hearing” means a hearing held in accordance with section 30, to determine whether or not to issue a Banishment Rescission Order;

“Banishment Rescission Order” means an order made under section 31, which rescinds the portion of a Sanction Order relating to Banishment;

“Banishment Suspension Order” means an order made under paragraph 28.3(a), which suspends the portion of a Sanction Order relating to Banishment;

“Business Corporations Act” means the *Business Corporations Act*, SBC 2002, c 57, as amended or replaced from time to time;

“Canadian Charter of Rights and Freedoms” means Part I of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, also known as the *Canadian Charter of Rights and Freedoms*, as amended or replaced from time to time;

“Canadian Human Rights Act” means the *Canadian Human Rights Act*, RSC 1985, c H-6, as amended or replaced from time to time;

“Certificate of Service” means a certificate proving Service of an Information, set out in the form established by the Administrator;

“Chief and Council” means the KFN’s “council of the band”, as that term is defined in the *Indian Act*;

“Community Centre” means a public facility operated by KFN for the use of Members and any non-Members who are authorized by Chief and Council, and for greater certainty, includes the KFN big house;

“Community Facility” means a child care facility, school, school bus stop, library, recreational facility, public place of religious worship, or Community Centre on KFN Lands;

“Criminal Code” means the *Criminal Code of Canada*, RSC 1985, c C-46, as amended or replaced from time to time;

“Defendant” means a Person who is alleged to have committed an Offence and is Served an Enforcement Notice under subsection 8.1;

“Enforcement Notice” includes a Notice of Fine, a Notice of Hearing and a Warning Notice, issued under subsection 6.1;

“Fine Recovery Certificate” means a fine recovery certificate in the form established by the Administrator;

“Fine Review” means a review of a Notice of Fine conducted by a Justice of the Peace under section 13;

“Fine Review Application” means an application submitted by a Defendant in accordance with subsection 12.1 to request that a Notice of Fine be amended or withdrawn;

“Fine Review Determination” means a written decision of a Justice of the Peace under subsection 14.1 to maintain, amend or withdraw a Notice of Fine;

“First Nations Land Registry System” means the registry of land records for First Nations who operate under their own land code pursuant to the *Framework Agreement on First Nation Land Management*;

“Framework Agreement on First Nation Land Management” means the *Framework Agreement on First Nation Land Management* concluded between Canada and First Nations on February 12, 1996, as amended or replaced from time to time;

“Immune Person” means any Justice of the Peace, present or past Chief and Council, KFN Law Enforcement Officers, the Administrator, the Prosecutor or employees, servants, contractors, or agents of KFN or Chief and Council;

“Indian Act” means the *Indian Act*, RSC 1985, c I-5, as amended or replaced from time to time;

“Information” means a formal statement of the charges against the Defendant, and includes:

- (a) a Notice of Fine; and
- (b) an information laid under paragraph 18.4(a);

“Intent to Plea Form” means a form established by the Administrator, in which the Defendant may indicate whether they intend to plead guilty, or not guilty, at a Sanction Hearing;

“Interest” means an interest in KFN Land within the meaning of the Land Code and for greater certainty, does not include any claims of interest in Community Lands by a person by virtue of that person being a Member;

“Justice of the Peace” means a person appointed under subsection 45.1, and who is responsible for carrying out the duties set out in section 45 and 46;

“KFN” means the K’ómoks First Nation, recognized as a band under the *Indian Act*, or any successor to the K’ómoks First Nation under a federal statute or otherwise;

“KFN Land” means any portion of a KFN reserve that is subject to the Land Code;

“KFN Law Enforcement Officer” includes:

- (a) the person or persons appointed under subsection 49.1 for the enforcement of KFN laws, including any delegate; and
- (b) a Peace Officer;

“KFN Values” means the modern and traditional community values of the KFN related to the preservation and management of KFN Lands, or the maintenance of order, peace and safety in the community;

“Land Code” means the *K’ómoks First Nation Land Code*, as may be amended or replaced from time to time, and which was adopted by the KFN in accordance with the *Framework Agreement on First Nation Land Management*;

“Law” means this *Summary Offence Law*, as amended or replaced from time to time, and any associated regulations;

“Member” means a person whose name appears on the KFN band membership list;

“Notice of Fine” means a notice that is issued under subsection 6.1, alleging the commission of an Offence by the Defendant and levying a fine in accordance with this Law;

“Notice of Hearing” means a notice that is issued under subsection 6.1 or subsection 17.1, alleging the commission of an Offence by the Defendant and mandating a hearing related to that Offence;

“Offence” means any offences set out in any KFN law;

“Order” means a summons made under paragraph 19.8(b), a Sanction Order, a Banishment Suspension Order, or a Banishment Rescission Order issued by a Justice of the Peace under this Law;

“Order Review Law” means the *K’ómoks First Nation Order Review Law*, KFN-2023-01, as amended or replaced from time to time;

“Peace Officer” means a provincial constable, a member of the RCMP, or other police officer employed for the preservation and maintenance of the public peace or for the service or execution of civil process, who is responsible for providing policing services on KFN Lands;

“Person” means a natural person, Members, non-Members, a corporation of any type, a partnership, a society, or an association whether or not incorporated;

“Prosecutor” means a person appointed under subsection 47.1, and includes any agent or delegate acting on behalf of the Prosecutor;

“Provincial Court” means the Provincial Court of British Columbia or any other court of competent jurisdiction;

“Provincial Court Act” means the *Provincial Court Act*, RSBC 1996, c 379, as amended or replaced from time to time;

“Prohibited Areas” means the portions of KFN lands which a Defendant who, subject to a Sanction Order in which Banishment is proscribed, is prohibited from accessing, including any areas proscribed under subsection 24.1;

“Remove” or “Removal” means to physically remove, relocate or detain;

“Resolution” means a resolution of Chief and Council passed at a duly convened meeting;

“RCMP” means the Royal Canadian Mounted Police;

“Sanction Hearing” means a hearing held by a Justice of the Peace under section 19;

“Sanction Order” means an order issued under section 20 by a Justice of the Peace, prescribing a penalty in respect of a Defendant who is convicted or found guilty of an Offence;

“Serve”, “Served”, or “Service” means the delivery of a document via one or more of the mechanisms contemplated in subsection 8.1, where such delivery is at the time presumed under subsection 8.2;

“Supreme Court” means the Supreme Court of British Columbia or any other court of competent jurisdiction; and

“Warning Notice” means a warning notice that is issued under subsection 6.1, setting out the alleged contravention of a KFN law and issuing only a warning in respect of that contravention.

3. PURPOSE

- 3.1 The purpose of this Law is to provide a mechanism by which to charge, prosecute and enforce Offences under KFN laws.

4. APPLICATION

- 4.1 Unless otherwise indicated in a KFN law, this Law applies to all Offences.
- 4.2 This Law is an enactment of Canada for the purpose of interpreting the *Provincial Court Act*.

- 4.3 In the event of an inconsistency between this Law and the Land Code, the Land Code prevails.
- 4.4 Where a KFN law, or federal or provincial act or regulation, applies to any matter covered by this Law, compliance with this Law will not relieve any Person from also complying with provisions of the applicable law, act or regulation.

5. INTERPRETATION

- 5.1 Unless otherwise provided for under this Law, the words, expressions and rules of construction used in this Law have the same meaning as in the Land Code.
- 5.2 The following rules of interpretation apply in this Law:
 - (a) if this Law prescribes the use of a set form for an application under this Law, deviations from the set form which do not affect the substance, or are not calculated to mislead, do not invalidate the form used;
 - (b) gender specific terms include all genders and include corporations;
 - (c) words in the singular include the plural, and words in the plural include the singular;
 - (d) if a word or expression is defined in this Law, other parts of speech and grammatical forms of the same word or expression have corresponding meanings; and
 - (e) the word 'including' means 'including but not limited to'.
- 5.3 The headings given to the sections, subsections, paragraphs and subparagraphs in this Law are for convenience of reference only, and do not form part of this Law and will not be used in the interpretation of this Law.
- 5.4 If any section, subsection, paragraph or subparagraph of this Law is, for any reason, held invalid by a decision of a court of competent jurisdiction, the invalid section, subsection, paragraph or subparagraph must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.

PART 2 - ENFORCEMENT NOTICES: GENERAL

6. ISSUANCE OF ENFORCEMENT NOTICES

- 6.1 Subject to subsection 6.2, where a KFN Law Enforcement Officer has reasonable and probable grounds to believe that a Person committed an Offence, the KFN Law Enforcement Officer:
 - (a) may issue the Person an Enforcement Notice in respect of that Offence; and
 - (b) if the KFN Law Enforcement Officer issues an Enforcement Notice, must cause the Defendant to be Served, in accordance with subsection 8.1, with a copy of that Enforcement Notice.
- 6.2 A KFN Law Enforcement Officer may issue:
 - (a) a Notice of Hearing, only if the KFN Law Enforcement Officer has reasonable and probable grounds to believe that the presence of the Person in question on KFN Land

could pose a threat to:

- (i) the health, safety, or wellbeing of any Person residing on or accessing KFN Lands;
 - (ii) the protection, conservation and management of KFN Lands; or
 - (iii) KFN Values; or
- (b) a Notice of Fine or a Warning Notice, in all circumstances where a Notice of Hearing is not appropriate or where a requirement in paragraph 6.2(a) is not met.

6.3 A Notice of Hearing must contain the following information:

- (a) sufficient information to identify the Defendant, including the Defendant's name, address and telephone number, as applicable;
- (b) particulars of the alleged commission of the Offence in sufficient detail that a reasonable recipient of the Notice of Hearing would be able to identify the KFN law at issue and the contravention alleged in respect of that law;
- (c) a statement that the alleged Offence is punishable on summary conviction;
- (d) subject to subsection 19.2, the anticipated date, time and place of the Sanction Hearing;
- (e) the name and signature of the KFN Enforcement Officer that issued the Notice of Hearing; and
- (f) any additional conditions that may be imposed by the KFN Law Enforcement Officer, in their reasonable discretion.

6.4 A Warning Notice must contain all of the information set out below at paragraphs 6.4 (a), (b), (c) and (d) and a Notice of Fine must contain all of the information set out below at paragraphs 6.4(a), (b), (c), (d), (e), (f), (g) and (h):

- (a) sufficient information to identify the Defendant, including the Defendant's name, address and telephone number, as applicable;
- (b) particulars of the alleged commission of the Offence by the Defendant in sufficient detail that a reasonable recipient of the Warning Notice or Notice of Fine would be able to identify the KFN law at issue and the contravention alleged in respect of that law;
- (c) a statement that the Offence is punishable on summary conviction;
- (d) the name and signature of the KFN Enforcement Officer that issued the Enforcement Notice;
- (e) the fine that the Defendant is liable to pay in respect of the Offence at issue, the amount of any discount for early payment of the penalty, the amount of any surcharge for late payment of the penalty and any other applicable fees, in accordance with section 9;
- (f) the consequences of failing to respond to the Notice of Fine;
- (g) the methods for paying the fine; and
- (h) how to dispute the alleged commission of the Offence as set out in the Notice of Fine.

6.5 The issuance of a Notice of Fine constitutes the laying of an Information, even if not under oath.

6.6 An Enforcement Notice may be completed, issued and stored by any means that allows the Enforcement Notice to be reproduced in an intelligible form, including by electronic means.

7. COMMENCING PROCEEDINGS AND INFORMATIONS

- 7.1 Proceedings under this Law must be commenced by the laying of an Information under paragraph 18.4(a) or by means of a Notice of Fine.
- 7.2 An Information must be:
 - (a) in writing; and
 - (b) under oath, other than an Information laid by means of a Notice of Fine.
- 7.3 Proceedings under this law may not be instituted more than twelve (12) months after the time when the subject matter of the proceeding arose.

8. MANNERS OF SERVICE OF ENFORCEMENT NOTICE

- 8.1 A Defendant must be Served with a document, including an Enforcement Notice, in the following ways:
 - (a) if the Defendant is an individual, by:
 - (i) leaving a copy of the document with the Defendant; or
 - (ii) leaving a copy of the document addressed to the Defendant at the Defendant's place of residence with an individual who appears to the KFN Law Enforcement Officer to be over sixteen (16) years of age and who resides with the Defendant;
 - (b) if the Defendant is a corporation, business or society, by:
 - (i) leaving a copy of the document with an officer, senior manager, director, or other executive officer of the corporation, business or society; or
 - (ii) registered mail to the address of the office of the corporation, business or society; or
 - (c) if the Defendant is a partnership, by:
 - (i) leaving a copy of the document with a partner or other executive officer of the partnership; or
 - (ii) registered mail to the address of the office of the partnership.
- 8.2 A document Served under subsection 8.1 is presumed to have been Served on a Defendant at the following time:
 - (a) if delivered personally to the Defendant under subparagraphs 8.1(a)(i), (b)(i), or (c)(i), on the date of delivery;
 - (b) if delivered to a household resident under subparagraph 8.1(a)(ii), on the fifth (5th) day after the document was delivered; or
 - (c) if delivered by registered mail under subparagraphs 8.1(b)(ii) and (c)(ii), on the date of delivery.

- 8.3 Service of an Enforcement Notice may be proved by a Certificate of Service.

PART 3 – NOTICE OF FINE & FINES

9. PENALTY FOR NOTICE OF FINE

- 9.1 In a Notice of Fine, a KFN Law Enforcement Officer must, in accordance with section 11 and any regulations established under subsection 9.2, as applicable, set out:

- (a) the fine amount that the Defendant is liable to pay in respect of the Offence;
- (b) the amount of any discount for early payment of the fine;
- (c) the amount of any surcharge for late payment of the fine; and
- (d) any other applicable fees in respect of the Offence, including administrative fees.

- 9.2 Chief and Council must, by Resolution, establish regulations that prescribe:

- (a) the fine amount for each Offence;
- (b) any discount for early payment;
- (c) any surcharge for late payment' and
- (d) other applicable fees, including administrative fees for a Fine Review,

to be imposed in a Notice of Fine.

10. OPTIONS ON RECEIPT OF NOTICE OF FINE

- 10.1 A Defendant who is Served with a Notice of Fine must, within fourteen (14) days of the date of Service, do one of the following:

- (a) plead guilty and pay the fine amount set out in the Notice of Fine, in accordance with the instructions in the Notice of Fine;
- (b) plead guilty and submit a Fine Review Application to the Administrator, in accordance with the instructions in the Notice of Fine, to make submissions about the fine amount, the time period for payment or the method of payment prescribed in the Notice of Fine; or
- (c) plead not guilty and submit a Fine Review Application to the Administrator, in accordance with the instructions in the Notice of Fine, to dispute the alleged Offence(s) set out in the Notice of Fine.

- 10.2 If a Defendant who is Served with a Notice of Fine does not take any action under subsection 10.1 within fourteen (14) days of being Served, the Defendant is presumed to plead guilty to the Offence and the applicable fine amount set out in the Notice of Fine, plus any prescribed late payment surcharge or other applicable fee, is immediately due and payable by the Defendant.

- 10.3 An amount due and payable under subsection 10.2 may be recovered under section 16, but collection procedures may not be started until twenty-eight (28) days after the date the Notice of Fine was Served on the Defendant.

10.4 Payment at any time by a Defendant of the fine amount set out in a Notice of Fine constitutes a guilty plea in respect of the Offence set out in the Notice of Fine.

11. DISCOUNT FOR EARLY PAYMENT AND SURCHARGE FOR LATE PAYMENT

11.1 If a Defendant pleads guilty under paragraph 10.1(a) and pays the fine amount within seven (7) days of the date on which the Defendant is Served with the Notice of Fine, then the Defendant is entitled to pay a discounted amount, as prescribed by regulation.

11.2 If a Defendant pleads guilty under paragraph 10.1(a) and pays the fine amount more than fourteen (14) days after the date on which the Defendant is Served with the Notice of Fine, then the Defendant must pay a late payment surcharge amount prescribed by regulation.

12. FINE REVIEW APPLICATION

12.1 A Fine Review Application filed with the Administrator under paragraphs 10.1(b) or (c) must:

- (a) be in a form established by the Administrator; and
- (b) be filed by the Defendant within fourteen (14) days of the date on which the Defendant was Served with a Notice of Fine, but not thereafter.

12.2 The Administrator must, within fourteen (14) days of receiving the Fine Review Application, call upon a Justice of the Peace to conduct a Fine Review in accordance with section 13.

13. FINE REVIEW

13.1 A Justice of the Peace called upon under subsection 12.2 must conduct a Fine Review in accordance with this section, at which the only order of business is to:

- (a) consider the Fine Review Application; and
- (b) determine whether to:
 - (i) maintain the Notice of Fine;
 - (ii) withdraw the Notice of Fine; or
 - (iii) amend the Notice of Fine in any manner, including an amendment to the fine amount, the time period for payment or the method of payment.

13.2 The Justice of the Peace may conduct a Fine Review in one of the following manners:

- (a) in writing;
- (b) by video conference, audio conference, telephone or other electronic means; or
- (c) in-person, if the Justice of the Peace, in its sole discretion, considers it necessary for the just and timely resolution of the Fine Review.

13.3 A Defendant may be represented by an agent or legal counsel at a Fine Review Hearing.

- 13.4 Subject to subsection 13.2, a Defendant and Prosecutor may each present evidence and call witnesses at a Fine Review Hearing, but all such evidence must be given under oath or affirmation.
- 13.5 In conducting the Fine Review, the Justice of the Peace:
- (a) must do the following:
 - (i) review the Fine Review Application; and
 - (ii) review, and decide whether to accept as evidence, any information or documentation provided by the Defendant which the Justice of the Peace considers relevant, necessary and appropriate; and
 - (b) may, in its sole discretion, do one or more of the following:
 - (i) admit as evidence any information, testimony, record or thing from any Person that it considers relevant, credible and trustworthy, whether or not that evidence would be admissible under the laws of evidence;
 - (ii) ask questions of the Defendant or any other person, where appropriate; and
 - (iii) inform itself in any other way it considers appropriate.
- 13.6 Evidence presented by any person must be given under oath or affirmation.
- 13.7 Notwithstanding subparagraph 13.5(b)(i), the Justice of the Peace may not admit as evidence in a Fine Review anything that is privileged under the laws of evidence.

14. FINE REVIEW DETERMINATION

- 14.1 No later than forty-five (45) days after being called upon to conduct a Fine Review under subsection 12.2, the Justice of the Peace must issue a written Fine Review Determination, in which the Justice of the Peace does one of the following:
- (a) rejects the Fine Review Application, confirms the terms of the Notice of Fine, and require that the Defendant pay:
 - (i) the full fine amount set out in the Notice of Fine; and
 - (ii) an additional administrative fee, as applicable and in accordance with any regulations;
 - (b) accepts the Fine Review Application in whole or in part, amends the terms of the Notice of Fine as appropriate, and requires that the Defendant pay:
 - (i) a fine, the amount of which will be determined at the discretion the Justice of the Peace; and
 - (ii) an administrative fee, as applicable and in accordance with any regulations; or
 - (c) accepts the Fine Review Application in whole or in part, and dismiss the Notice of Fine and the fine set out in the Notice of Fine.
- 14.2 The Justice of the Peace must include the following information in the Fine Review Determination:
- (a) the Defendant's name;

- (b) the Notice of Fine under review;
- (c) the date on which the Fine Review Determination is issued; and
- (d) the reasons for the Fine Review Determination.

14.3 The Administrator must, within fourteen (14) days of the date that the Fine Review Determination was issued, provide a copy of the same to the Defendant.

15. OBLIGATIONS ON RECEIPT OF A FINE REVIEW DETERMINATION

15.1 If, pursuant to paragraphs 14.1(a) or 14.1(b), the Justice of the Peace issues a Fine Review Determination requiring the Defendant to pay a fine amount, an administrative fee, or both, then within fourteen (14) days of the Defendant's receipt of the Fine Review Determination or within any other time period set out in the Fine Review Determination, the Defendant must pay the prescribed amounts.

15.2 If, pursuant to paragraph 14.1(c), the Justice of the Peace issues a Fine Review Determination in which the Notice of Fine or the fine amount set out in the Notice of Fine is dismissed, then the Defendant is not required to take any action.

15.3 An amount due and payable under subsection 15.1 may be recovered under section 16, but collection procedures may not be started until twenty-eight (28) days after the date that the Fine Review Determination is provided to the Defendant.

16. AMOUNTS OWING ENFORCED AS PROVINCIAL COURT JUDGEMENT

16.1 Subject to subsection 10.3 and 15.3, the Administrator may recover a fine that is due and payable to the KFN under a Notice of Fine or a Fine Review Determination by filing a Fine Recovery Certificate in the Provincial Court.

16.2 The Administrator may not file a Fine Recovery Certificate under subsection 16.1 if fine in question has been due and payable to the KFN for more than twenty-four (24) months.

16.3 If the Administrator files a Fine Recovery Certificate in the Provincial Court, the Administrator must sign and include the following information in the Fine Recovery Certificate:

- (a) the details of the Notice of Fine, including the date and place of the commission of the Offence, or the details of the Fine Review Determination, as applicable;
- (b) the details of the amounts owing in respect of the Notice of Fine or the Fine Review Determination, as applicable, including:
 - (i) a summary of the total amount owing; and
 - (ii) a breakdown of the specific amounts owing, including the fine amount, any surcharges for late payment and any other applicable fees;
- (c) the name of the Defendant who is required to pay the fine;
- (d) the date that the fine became due and payable; and
- (e) whether the outstanding fine became due and payable because of a Fine Review Determination under subsection 14.1 or because of the Defendant's failure to take any action under subsection 10.2.

- 16.4 Once filed under subsection 16.1, a Fine Recovery Certificate is of the same effect and proceedings may be taken on it, as if it were a judgment of the Provincial Court for the recovery of a debt in the amount stated against the named Defendant.
- 16.5 A Fine Recovery Certificate that has been filed under subsection 16.1 is:
- (a) admissible in any proceeding to recover the certified debt set out in that Fine Recovery Certificate, without proof of the signature or official position of the person appearing to have signed the Fine Recovery Certificate; and
 - (b) proof of the facts contained therein.
- 16.6 Immediately after filing a Fine Recovery Certificate with the Provincial Court under subsection 16.1, the Administrator must Serve to the Defendant named in the Fine Recovery Certificate notice that the Fine Recovery Certificate has been filed.

PART 4 – NOTICE OF HEARING AND SANCTION HEARINGS

17. SANCTION HEARING BY WAY OF RESOLUTION

- 17.1 Notwithstanding that a Notice of Hearing has not been issued under paragraph 6.1(a), Chief and Council may, by Resolution, cause a Notice of Hearing to be issued to a Person if Chief and Council have reasonable and probable grounds to believe that a Person committed an Offence, thereby making that Person a Defendant under this Law.
- 17.2 If a Resolution is passed under subsection 17.1 requiring the issuance of a Notice of Hearing, then the requirements of subsections 6.3, 7.1, 7.2, 7.3, 8.1,8.2 and 8.3 apply, *mutatis mutandis*, to the Notice of Hearing.
- 17.3 Chief and Council must not cause a Notice of Hearing to be issued a under subsection 17.1 unless it is has reasonable and probable grounds to believe that:
- (a) the Person’s presence on KFN Lands could pose a threat to:
 - (i) the health, safety or wellbeing of any Person residing on KFN Lands;
 - (ii) the protection, conservation and management of KFN Lands s; or
 - (iii) KFN Values; and
 - (b) the issuance of a Sanction Order is likely to reduce the threat posed under paragraph 17.3(a).

18. PROSECUTOR REVIEW AND LAYING OF INFORMATION

- 18.1 Within fourteen (14) days of a Notice of Hearing being issued to a Defendant under paragraph 6.1(a) or subsection 17.1, a Prosecutor must review the Notice of Hearing and, in the Prosecutor’s reasonable discretion, determine whether to:
- (a) approve the Notice of Hearing and proceed to laying an Information under this section; or
 - (b) dismiss the Notice of Hearing.

- 18.2 In making a determination under subsection 18.1, the Prosecutor may consider, without limitation, the following factors:
- (a) whether the commission of the Offence occurred as alleged;
 - (b) whether the Notice of Hearing complies with subsection 6.3;
 - (c) whether the Notice of Hearing was Served in accordance with section 8;
 - (d) whether any other ground for withdrawing the Notice of Hearing exists under this Law, or under any KFN law, regulation, policy or guideline; and
 - (e) whether it is in the best interest of the KFN to prosecute the Offence.
- 18.3 If the Prosecutor makes a determination, under paragraph 18.1(a), to approve a Notice of Hearing, then:
- (a) if the Notice of Hearing was issued by a KFN Law Enforcement Officer under subsection 6.1, the KFN Law Enforcement Officer must, before the Justice of the Peace, lay an Information under oath, setting out that they have reasonable and probable grounds to believe that the Defendant committed the Offence set out in the Notice of Hearing; and
 - (b) if the Notice of Hearing was issued by Chief and Council under subsection 17.1, an authorized member of Chief and Council must, before the Justice of the Peace, lay an Information under oath, setting out that Chief and Council has reasonable and probable grounds to believe that the Defendant committed the Offence set out in the Notice of Hearing.
- 18.4 On receipt of an Information under subsection 18.3, the Justice of the Peace must:
- (a) if the Justice of the Peace is satisfied that there are sufficient grounds to lay the Information:
 - (i) sign the Information; and
 - (ii) confirm the Notice of Hearing; or
 - (b) if the Justice of the Peace is not satisfied that there are sufficient grounds to lay the Information, dismiss the Notice of Hearing.
- 18.5 In making a determination under subsection 18.4, the Justice of the Peace must hear and consider, without notice to any other person:
- (a) the allegations of the KFN Law Enforcement Officer or the authorized member of Chief and Council, as applicable; and
 - (b) the evidence of witnesses, where the Justice of the Peace considers it desirable or necessary to do so.
- 18.6 If the Prosecutor determines under subsection 18.1, or the Justice of the Peace determines under paragraph 18.4(b), that the Notice of Hearing should be dismissed, the Administrator must immediately provide the Defendant with written notice of the cancellation.
- 18.7 If an Information is laid and the Notice of Hearing is confirmed, under paragraph 18.4(a), the

Administrator must, at least forty (40) days before the Sanction Hearing:

- (a) Serve the Defendant with:
 - (i) notice confirming or varying the date, time and location of the Sanction Hearing, as originally set out under paragraph 6.3(c);
 - (ii) a copy of the Information;
 - (iii) an Intent to Plea Form, in which the Defendant must indicate whether they intend to plead guilty, or not guilty, to the alleged Offence; and
 - (iv) a brief description of the defendant's rights, including the right to counsel; and
- (b) call upon a Justice of the Peace to conduct a Sanction Hearing in accordance with sections 19 to 21.

- 18.8 Service of an Information under subsection 18.7 may be proved by a Certificate of Service.
- 18.9 A Defendant who is served an Intent to Plea Form must complete and return the form to the Administrator, in accordance with the instructions on the form, within seven (7) days of receipt.
- 18.10 A Defendant is not bound by a response set out in an Intent to Plea Form provided to the Administrator under subsection 18.9.
- 18.11 A defect in the form of an Information does not invalidate the Information.
- 18.12 A Justice of the Peace may, in their discretion and at any time, amend an Information if it appears that the form of the Information is defective in any way.

19. SANCTION HEARING

- 19.1 If an Information is laid and proceedings are commenced under paragraph 18.4(a), then a Sanction Hearing will be held at which the Justice of the Peace's only order of business is to:
 - (a) determine whether the Defendant is guilty of an Offence; and
 - (b) if the Defendant is guilty, determine whether to enter a conviction and issue a Sanction Order.
- 19.2 A Sanction Hearing must be set down for a date that is not more than eighteen (18) months after the date the Enforcement Notice was issued under subsections 6.1 or 17.1.
- 19.3 At the commencement of a Sanction Hearing, the Justice of the Peace must:
 - (a) read or summarize the substance of the Information to the Defendant; and
 - (b) ask the Defendant whether the Defendant pleads guilty or not guilty to the Information.
- 19.4 The Defendant must be provided with the opportunity to be heard at the Sanction Hearing, and the Justice of the Peace must take into consideration any submissions of the Defendant when making its determinations.

- 19.5 A Defendant may be represented by an agent or legal counsel at the Sanction Hearing.
- 19.6 A Defendant may present evidence and call witnesses at the Sanction Hearing, but all such evidence must be given under oath or affirmation.
- 19.7 The Prosecutor may present evidence and call witnesses at the Sanction Hearing, but all such evidence must be given under oath or affirmation.
- 19.8 Notwithstanding subsections 19.3 and 19.4, if a Defendant does not attend the Sanction Hearing, the Justice of the Peace may:
- (a) reschedule the hearing and Serve the Defendant with the new date of the hearing;
 - (b) issue a summons for the Defendant's attendance; or
 - (c) hold the hearing in the absence of the Defendant.
- 19.9 If a Defendant does not attend the Sanction Hearing and the Justice of the Peace holds the hearing in the absence of the Defendant under paragraph 19.8(c), the Justice of the Peace must:
- (a) proceed with the Sanction Hearing as if the Defendant entered a plea of not guilty to the Information; and
 - (b) assess the guilt of the Defendant based on the available evidence.
- 19.10 At the conclusion of the Sanction Hearing, the Justice of the Peace must:
- (a) if the Defendant pled guilty or is found guilty of an offence, determine whether to convict the Defendant of the Offence;
 - (b) if the Defendant is convicted under paragraph 19.10(a), issue a Sanction Order in accordance with section 20;
 - (c) if the Defendant is found not guilty, acquit the Defendant and dismiss the Information; and
 - (d) prepare written reasons for its determinations under this section.
- 19.11 The Administrator must provide the Defendant with a copy of the reasons prepared under paragraph 19.10(c).
- 19.12 Subject to this Law and any rules or regulations, a Justice of the Peace has the power to control its processes at Sanction Hearings.

20. SANCTION ORDERS

- 20.1 Unless otherwise specifically provided for in a KFN law, the Justice of the Peace may prescribe the following penalties in a Sanction Order:
- (a) a fine not greater than five thousand dollars (\$5,000), or any other amount prescribed by KFN law for the Offence in question;
 - (b) a term of imprisonment not exceeding six (6) months, or any other term of

- imprisonment prescribed by KFN law for the Offence in question;
- (c) restitution;
- (d) community service;
- (e) Banishment;
- (f) any other means for restoring justice or achieving compliance, as the Justice of the Peace deems fit; or
- (g) any combination of the above.

20.2 The Justice of the Peace must include the following information in a Sanction Order:

- (a) the name of the Defendant;
- (b) the Offence which the Defendant was convicted of;
- (c) the date upon which the Defendant is convicted;
- (d) the date upon which the Sanction Order was issued;
- (e) the penalties set out in subsection 20.1 that apply to the Sanction Order;
- (f) the date upon which the penalties provided for in the Sanction Order becomes effective; and
- (g) the date upon which the penalties provided for in the Sanction Order expire, if applicable.

21. PROVISION OF SANCTION ORDER

21.1 If the Justice of the Peace issues a Sanction Order, the Administrator must, within seven (7) days from the date of the Sanction Order was issued, provide a copy of the Sanction Order, along with notification that such order will be registered in Provincial Court under subsection 40.1, to:

- (a) the Defendant; and
- (b) the local RCMP detachment.

22. RULES OF PRACTICE AND PROCEDURE FOR SANCTION HEARING

22.1 Following the coming into force of this Law, Chief and Council may, by Resolution, make rules or regulations respecting the practice and procedure to be followed at a Sanction Hearing.

22.2 Chief and Council may, at any time, by Resolution, amend any regulations made under subsection 21.1, but such amendments must not:

- (a) apply to any Sanction Hearing which was set down under a Notice of Hearing dated prior to the date on which the Resolution establishing regulations under subsection 21.1 was passed; or
- (b) come into force until sixty (60) days after the date on which the Resolution establishing the regulation amendments is passed.

**PART 5 – BANISHMENT, BANISHMENT SUSPENSION ORDERS
AND BANISHMENT RESCISSION HEARINGS**

23. APPLICABILITY OF PART 5 WHEN BANISHMENT PRESCRIBED AS A PENALTY

- 23.1 If a Justice of the Peace intends to issue a Sanction Order in which Banishment is prescribed, then in addition to the requirements of Part 4, the provisions of this Part 5 apply to the issuance, preparation and provision of the Sanction Order.

24. ISSUANCE OF A SANCTION ORDER WHICH INCLUDES BANISHMENT

- 24.1 In issuing a Sanction Order in which Banishment is prescribed, the Justice of the Peace must consider including in the Sanction Order, where appropriate, the following additional conditions:

- (a) no residing within 500 meters of any Community Facility;
- (b) no coming within 500 meters of any Community Facility; and
- (c) no employment in any capacity, with or without remuneration, by any Community Facility or Person, if that employment requires the Defendant to come within 500 meters of a Community Facility.

- 24.2 In issuing a Sanction Order in which Banishment is prescribed, then in addition to the requirements of subsection 20.2, the Justice of the Peace must ensure the Sanction Order:

- (a) contains a description or photograph of the Defendant, or both;
- (b) contains a map of KFN Lands clearly showing the Prohibited Areas which the Defendant is prohibited from accessing, including any areas proscribed under subsection 24.1;
- (c) contains any terms or conditions imposed under subsection 24.1; and
- (d) in cases where the Defendant has a right or Interest in KFN Lands within the Prohibited Areas:
 - (i) provides the Defendant with access to the lands associated with their right or Interest;
 - (ii) includes a map setting out the means by which the Defendant may access those lands; and
 - (iii) specifies that the Defendant may access those lands only in accordance with subparagraphs 24.2(d)(i) and (ii).

25. PROVISION OF A SANCTION ORDER WHICH INCLUDES BANISHMENT

- 25.1 If the Justice of the Peace issues a Sanction Order in which Banishment is prescribed, then, in addition to the requirements set out at subsection 21.1, the Administrator must, within seven (7) days from the date the Sanction Order was issued, provide a copy of the Sanction Order to:

- (a) each employer of the Defendant that is located on KFN Lands;
- (b) each employer of the Defendant that is not located on KFN Lands if, in the opinion of

- the Administrator, the Defendant's employment with that employer could require the Defendant to enter onto the Prohibited Areas; and
- (c) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility.

26. ADDITIONAL EFFECT OF BANISHMENT

- 26.1 If a Defendant is a Member and is subject to a Sanction Order in which Banishment is prescribed, the Defendant may attend a Community Facility for the purpose of participating in a KFN election or community vote if:
- (a) the Defendant notifies the Administrator not less than seven (7) days before the date on which the Defendant proposes to attend at the Community Facility, and then only in accordance with any terms imposed by the Administrator; or
 - (b) the terms of the Defendant's Sanction Order allow for such attendance, and then only in accordance with those terms.

27. DEFENDANT SUBJECT TO BANISHMENT MAY NOT ACQUIRE AN INTEREST

- 27.1 A Defendant who is subject to a Sanction Order in which Banishment is prescribed and who is not a Member may not acquire a right or Interest in any KFN Lands that are within the Prohibited Areas.
- 27.2 A Defendant who is subject to a Sanction Order in which Banishment is prescribed and who is a Member may acquire a right or Interest in KFN Lands that are within the Prohibited Areas, but only by testamentary disposition.
- 27.3 If a Defendant who is subject to a Sanction Order in which Banishment is prescribed acquires a right or Interest under subsection 27.2, the Defendant must provide the Administrator with written notification of the existence of the right or Interest within thirty (30) days from the date of the registration of the right or Interest in the KFN lands office, the First Nations Land Registry System or similar registry.
- 27.4 A Defendant who is subject to a Sanction Order in which Banishment is prescribed and who does not comply with the requirements in subsection 27.3 is guilty of an Offence and is subject to prosecution, conviction and penalty under this Law.
- 27.5 Upon receipt of notification from the Defendant under subsection 27.3, the Administrator must call upon a Justice of the Peace to:
- (a) modify the Sanction Order to allow the Defendant to access the lands that are the subject of the right or Interest; and
 - (i) provide a copy of the modified Sanction Order, along with notification that such order will be registered in Provincial Court under subsection 40.1, to:
 - (ii) the Defendant;
 - (iii) the local RCMP detachment; and
 - (iv) each Community Facility, with instructions that it be posted in a place visible to all

employees and volunteers of the Community Facility.

28. APPLICATION FOR AND ISSUANCE OF BANISHMENT SUSPENSION ORDER

- 28.1 A Defendant who is subject to a Sanction Order in which Banishment is prescribed may seek to have the Banishment portion of the Sanction Order suspended by submitting an application to the Administrator, in the form established by the Administrator, for a Banishment Suspension Order.
- 28.2 If a Defendant applies for a Banishment Suspension Order under subsection 28.1, the Administrator must call upon a Justice of the Peace to make a determination on the application, in accordance with this section 28.
- 28.3 Within fourteen (14) days of receiving an application made under subsection 28.1, the Justice of the Peace must either:
- (a) approve the application and issue a Banishment Suspension Order; or
 - (b) reject the application.
- 28.4 A determination made under subsection 28.3 will be based on the written application and submissions of the Defendant, including any evidence submitted.
- 28.5 The Prosecutor may provide written submissions and evidence for the consideration of the Justice of the Peace in making its determination under subsection 28.3.
- 28.6 A Banishment Suspension Order issued under paragraph 28.3(a) must:
- (a) not be issued unless there are, in the opinion of the Justice of the Peace, compelling, compassionate or humanitarian grounds to do so;
 - (b) not be issued if, in the opinion of the Justice of the Peace, doing so would pose a significant threat, which cannot be satisfactorily mitigated by the imposition of specific terms or conditions under paragraph 28.7(f), to the following:
 - (i) the health, safety or wellbeing of any Person residing on KFN Lands or using a Community Facility;
 - (ii) the protection, conservation and management of KFN Lands themselves; or
 - (iii) KFN Values; and
 - (c) must not, except in exceptional circumstances as determined by the Justice of the Peace, be effective for more than fourteen (14) days.
- 28.7 The Justice of the Peace must include the following information in a Banishment Suspension Order:
- (a) the name of the Defendant;
 - (b) the date upon which the Banishment Suspension Order is issued; and
 - (c) which provisions of the Sanction Order relating to Banishment are suspended;
 - (d) the date on which the Banishment Suspension Order becomes effective;
 - (e) the date on which the Banishment Suspension Order expires; and

(f) any other terms and conditions as the Justice of the Peace deems just and appropriate.

28.8 In making a determination under subsection 28.3, the Justice of the Peace must:

- (a) prepare written reasons for the determination; and
- (b) provide a copy of these reasons to the Defendant within fourteen (14) days of the determination.

29. PROVISION OF A BANISHMENT SUSPENSION ORDER

29.1 If the Justice of the Peace issues a Banishment Suspension Order under paragraph 28.3(a), the Administrator must, within fourteen (14) days from the date of issuance, provide a copy of the Banishment Suspension Order, along with notification that such order will be registered in Provincial Court under subsection 40.1, to:

- (a) the Defendant;
- (b) the local RCMP detachment; and
- (c) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility.

30. BANISHMENT RESCISSION HEARING

30.1 A Defendant who is subject to a Sanction Order in which Banishment is prescribed may apply, in accordance with subsection 30.2, to have the Banishment portion of that Sanction Order rescinded.

30.2 An application under subsection 30.1 for the rescission of the Banishment portion of a Sanction Order:

- (a) must be submitted to the Administrator, in the form established by the Administrator; and
- (b) must not be filed within twelve (12) months of the later of:
 - (i) the date upon which the Sanction Order prescribing Banishment was issued; or
 - (ii) the date upon which any previous application under subsection 30.1 was made.

30.3 If a Defendant applies for a Banishment Rescission Order under subsection 30.1, the Administrator must:

- (a) at least thirty (30) days before the Banishment Rescission Hearing, provide the Defendant with written notice of the date, time and location of the Banishment Rescission Hearing; and
- (b) call upon a Justice of the Peace to conduct the Banishment Rescission Hearing in accordance with this Law.

30.4 The Justice of the Peace called upon under paragraph 30.3(b) must, within sixty (60) days thereof, hold a Banishment Rescission Hearing at which the only order of business is to consider the application and determine whether a Banishment Rescission Order will be issued.

30.5 At a Banishment Rescission Hearing, subsections 19.3 to 19.12 apply, *mutatis mutandis*.

31. ISSUANCE OF BANISHMENT RESCISSION ORDER

31.1 If, after conducting a Banishment Rescission Hearing, the Justice of the Peace determines that the prescribed penalty of Banishment should be rescinded, the Justice of the Peace may issue a Banishment Rescission Order.

31.2 The Justice of the Peace must include the following information in a Banishment Rescission Order issued under subsection 31.1:

- (a) the reasons for the Justice of the Peace's determination under subsection 31.1;
- (b) the name of the Defendant;
- (c) the date upon which the Sanction Order prescribing Banishment is issued;
- (d) the date upon which the Banishment portion of the Sanction Order was to expire;
- (e) the date upon which the Banishment Rescission Order under subsection 31.1 was issued;
- (f) the date upon which the Banishment Rescission Order becomes effective; and
- (g) any other terms and conditions as the Justice of the Peace deems just and appropriate.

31.3 If, after conducting a Banishment Rescission Hearing, the Justice of the Peace determines that the prescribed penalty of Banishment should be maintained, the Justice of the Peace must confirm the Sanction Order and must provide written reasons for the determination to the Defendant.

32. DEFENDANT MUST NO LONGER REPRESENT THREAT

32.1 The Justice of the Peace must not issue a Banishment Rescission Order under subsection 31.1 unless they are satisfied that some material change has occurred, such that the Defendant no longer poses a significant threat to:

- (a) the health, safety and wellbeing of any person residing on KFN Lands or using a Community Facility;
- (b) the protection, conservation and management of KFN Lands themselves; or
- (c) KFN Values.

33. PREPARATION AND PROVISION OF RESCISSION ORDER

33.1 If the Justice of the Peace issues a Banishment Rescission Order under subsection 31.1, the Administrator must, within fourteen (14) days from the date of issuance, provide a copy of the Banishment Rescission Order, along with notification that such order will be registered

in Provincial Court under subsection 40.1, to:

- (a) the Defendant;
- (b) the local RCMP detachment;
- (c) any employer provided with notice under subsection 25.1; and
- (d) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility.

34. EFFECT OF BANISHMENT RESCISSION ORDER

- 34.1 On the effective date of the Banishment Rescission Order, but subject to the terms specified in the Banishment Rescission Order, the portion of the Sanction Order prescribing Banishment is null and void and may not be revived.

35. RULES OF PRACTICE AND PROCEDURE FOR BANISHMENT RESCISSION HEARINGS

- 35.1 Following the coming into force of this Law, Chief and Council may, by Resolution, make regulations respecting the practice and procedure to be followed at a Banishment Rescission Hearing.
- 35.2 Chief and Council may, at any time, by Resolution, amend any regulations respecting the practice and procedure to be followed at a Banishment Rescission Hearing made under subsection 35.1, but such amendments must not:
- (a) apply to a Banishment Rescission Hearing in which an application under subsection 30.1 was made before the date on which the Resolution establishing regulations under subsection 35.1 is passed; or
 - (b) come into force until sixty (60) days after the date on which the Resolution establishing regulation amendments to practice and procedure, under this subsection 35.2, is passed.

PART 6 – DIVERSION COMPLIANCE, ENFORCEMENT AND REVIEW OF ORDERS

36. DIVERSION PROGRAMS

- 36.1 A KFN Law Enforcement Officer, a Prosecutor, a Justice of the Peace, or Chief and Council may, at any time prior to or following the laying of an Information, divert proceedings under this Law to a restorative justice program approved by Chief and Council, which program may be prescribed by regulation from time to time.

37. CONSEQUENCE OF NON-COMPLIANCE WITH ORDERS

- 37.1 A Defendant who breaches any requirement, term or condition of an Order commits an Offence and is subject to prosecution, conviction and penalty in accordance with this Law.
- 37.2 A Person who employs a Defendant in contravention of an Order commits an Offence and is subject to prosecution, conviction and penalty in accordance with this Law.

37.3 A Person who knowingly allows a Defendant to remain on their property in contravention of an Order commits an Offence is subject to prosecution, conviction, and penalty in accordance with this Law.

38. AIDING AND ABETTING BREACH OF ORDER

38.1 Any Person who does anything, or omits to doing anything, for the purpose of aiding and abetting a Defendant in the breach of a requirement, term or condition of an Order commits an Offence, and is subject to prosecution, conviction and penalty in accordance with this Law.

39. POWERS OF REMOVAL

39.1 If a Defendant is in breach of any requirement, term or condition of a Sanction Order or a Banishment Suspension Order, a KFN Law Enforcement Officer may, in accordance with subsection 39.2, Remove the Defendant from the area proscribed in the said order.

39.2 Notwithstanding subsection 49.3, in carrying out a Removal under subsection 39.1, a KFN Law Enforcement Officer may exercise the powers and privileges that a Peace Officer is entitled to exercise when carrying out their duties under an enactment of Canada or British Columbia.

40. FILING ORDERS

40.1 The Administrator may file a certified copy of any Order made or modified under Part 4 or Part 5 of this Law in the Provincial Court within six (6) months of the Order being issued.

40.2 An Order filed under subsection 40.1 has the same force and effect, and proceedings may be taken on it, as if it were a judgement of the Provincial Court.

41. REVIEWS AND APPEALS

41.1 A Defendant may, in accordance with, the *Order Review Law*, seek a review of an Order, but such a review may only be sought on the following grounds:

- (a) the Defendant was unable to attend a Sanction Hearing or a Banishment Rescission Hearing due to circumstances that could not reasonably be anticipated by the Defendant and that were beyond the Defendant's control; or
- (b) the Defendant has fresh and relevant evidence that was not reasonably available:
 - (i) at the time of the Sanction Hearing or the Banishment Rescission Hearing; or
 - (ii) at the time that a suspension of Banishment was applied for by the Defendant.

41.2 Subject to subsection 41.3, a Defendant may appeal a Fine Review Determination or an Order in the manner in which an appeal lies under Part XXVII of the *Criminal Code*.

41.3 A Defendant may not seek an appeal under subsection 41.2 on the grounds listed in paragraphs 41.1(a) and (b),

PART 7 –OFFENCES, PROSECUTIONS AND COSTS

42. OFFENCES AND PENALTIES

- 42.1 Unless otherwise indicated, all Offences created under a KFN law, including this Law, are strict liability offences.
- 42.2 For greater certainty, all Offences created under a KFN law, including this Law, are punishable on summary conviction.
- 42.3 Each calendar day an Offence continues will be deemed a separate Offence for the purpose of this Law.

43. PROSECUTIONS

- 43.1 For greater certainty, a prosecution conducted under this Law constitutes a summary conviction process, and a conviction issued under this Law constitutes a summary conviction, for the purpose of subsection 19.1 of the *Framework Agreement on First Nation Land Management*.
- 43.2 Nothing in this Law precludes KFN from pursuing any other enforcement action available at law or under any other enactment, including seeking to prosecute Offences under Part XXVII of the *Criminal Code*.

44. COSTS

- 44.1 A Justice of the Peace may, in their discretion, award and order costs that the Justice of the Peace considers reasonable, in relation to the investigation, prosecution and hearing of an Offence, to be paid:
 - (a) to KFN by a Defendant, if the Justice of the Peace convicts the Defendant and issues a Sanction Order; and
 - (b) to a Defendant by KFN, if the Justice of the Peace dismisses an Information.
- 44.2 A Justice of the Peace may, in their discretion, award and order costs that the Justice of the Peace considers reasonable, in relation to an application for a Banishment Suspension Order or a Banishment Rescission Hearing, to be paid by a Defendant to KFN if the Justice of the Peace dismisses an application for a Banishment Suspension Order or a Banishment Rescission Order.
- 44.3 Any costs awarded or ordered by a Justice of the Peace under this section are deemed to be all or part of a fine imposed against the Defendant with respect to the Offence set out in an Information.

PART 8 – APPOINTMENTS

45. APPOINTMENT OF JUSTICES OF THE PEACE

- 45.1 Chief and Council must, by Resolution, appoint one or more persons as Justices of the Peace, each of whom:
- (a) is a justice of the peace appointed in accordance with subsection 19.4 of the *Framework Agreement on First Nation Land Management* for the purpose of ensuring the enforcement of KFN laws, including the adjudication of Offences for contraventions of KFN laws;
 - (b) may be called upon from time to time to exercise the powers, functions and duties of a Justice of the Peace under this Law, including carrying out Fine Reviews, conducting Sanction Hearings, making determinations on applications for Banishment Suspension Orders and conducting Banishment Rescission Hearings; and
 - (c) may be called upon from time to time to exercise the powers, functions and duties of a Justice of the Peace under any other KFN laws, as applicable.
- 45.2 Before undertaking the duties of their office, each person appointed as a Justice of the Peace must swear an oath to faithfully and impartially, according to their skill and knowledge, execute their duties and powers as a Justice of the Peace under this Law and under any other law, as applicable.
- 45.3 Each person appointed as a Justice of the Peace under subsection 45.1 must:
- (a) have a law degree from an accredited institution;
 - (b) not be an employee of KFN, the Chief, or a member of Council; and
 - (c) have any other qualifications required under any regulation made by Chief and Council.
- 45.4 A person appointed as a Justice of the Peace under subsection 45.1 shall hold office for an initial term of five (5) years.
- 45.5 A person appointed as a Justice of the Peace under subsection 45.1 may, on the expiry of their initial term, be reappointed to hold office for subsequent terms of one (1) to five (5) years.
- 45.6 Nothing in this Law precludes the part-time appointment of a Justice of the Peace.
- 45.7 A Justice of the Peace ceases to hold office on the earliest of the following:
- (a) the date they are no longer qualified under subsection 45.3;
 - (b) the date their term of office is expired;
 - (c) the effective date of a resignation submitted by the Justice of the Peace under subsection 45.8; or
 - (d) the date Justice of the Peace's appointment is rescinded, either by Chief and Council or in accordance with any regulation regarding the same, due to misconduct, mental or physical disability, failure in the execution of their office, or conduct incompatible

with the execution of their office.

- 45.8 A Justice of the Peace may resign by submitting a written resignation to the Administrator stating the effective date of the resignation and the resignation becomes effective on that date.
- 45.9 Chief and Council may, by Resolution, establish regulations respecting the appointment, qualifications, tenure, office, and management of Justices of the Peace.

46. POWERS, DUTIES AND FUNCTIONS OF A JUSTICE OF THE PEACE

- 46.1 A Justice of the Peace is administratively independent of KFN, subject only to a contract for remuneration for the fulfillment of their duties and functions under this Law and other KFN laws.
- 46.2 A Justice of the Peace has all the powers necessary to fulfill the duties and functions of a Justice of the Peace, as set out in this Law or any other KFN law.
- 46.3 Subject to subsections 7.3 and 19.2, a Justice of the Peace has the power to amend any timelines associated with proceedings under this Law.
- 46.4 A Justice of the Peace has the power to make an order curing any defect in the form of a Fine Review Determination or an Order.
- 46.5 A Justice of the Peace must not, except in the proper performance of their duties, disclose to any Person any information obtained by them in the course of carrying out their duties as a Justice of the Peace under this Law, or any other law, as applicable.
- 46.6 If a Justice of the Peace has, or is reasonably apprehended to have, any bias or conflict of interest in relation to the outcome of a Fine Review, a Sanction Hearing, an application for Banishment Suspension Order, or Banishment Rescission Hearing, the Justice of the Peace must:
 - (a) inform the Administrator of the potential bias or conflict;
 - (b) recuse themselves from the applicable proceeding; and
 - (c) not make any decision with respect to the proceeding.

47. APPOINTMENT OF PROSECUTOR

- 47.1 Chief and Council must, by Resolution, appoint one or more Prosecutors for the purpose of prosecuting the commission of Offences under any KFN law, including this Law.
- 47.2 The Prosecutor's powers include all things necessary to fulfill the duties and responsibilities set out in this Law.
- 47.3 The Prosecutor must conduct all prosecutions of Offences in a manner that is consistent with the principle of prosecutorial independence.

- 47.4 Chief and Council may, at any time, by Resolution, rescind the appointment of any Prosecutor, and appoint a replacement as needed.

48. APPOINTMENT OF ADMINISTRATOR

- 48.1 Chief and Council must, by Resolution, appoint an Administrator for the purpose of administering matters set out under this Law, including, without limitation, the issuance of notices, the establishment of forms, the filing of certificates and orders, the maintenance of records and regulations and the preparation of orders.
- 48.2 The Administrator's powers include all things necessary to fulfill the duties and responsibilities of the Administrator under this Law.

49. APPOINTMENT OF ENFORCEMENT OFFICERS

- 49.1 Chief and Council must, by Resolution, appoint one or more KFN Law Enforcement Officers for the purpose of enforcing KFN laws, including by way of issuing Enforcement Notices.
- 49.2 A KFN Law Enforcement Officer appointed under subsection 49.1 are, for greater certainty, employed for the preservation and maintenance of the public peace and for the service and execution of civil process under KFN law.
- 49.3 Subject to any other KFN laws or regulations, a KFN Law Enforcement Officer has the power to:
- (a) gather evidence in relation to the commission of an Offence under a KFN law, including by way of conducting interviews, collecting evidence in any form, making recordings in writing, audio recording, video recordings, and examining any documents in any format; and
 - (b) do all other things necessary to fulfill the duties and responsibilities of a KFN Law Enforcement Officer as set out in this Law.
- 49.4 Chief and Council may, by Resolution, develop regulations setting out the scope of enforcement powers of KFN Law Enforcement Officers in carrying out their obligations under this Law, including the powers provided for at paragraph 19.1(c) of the *Framework Agreement on First Nation Land Management*.

PART 9 – ADMINISTRATION

50. PROVISION OF DOCUMENTS – GENERAL

- 50.1 Unless otherwise indicated, any document that is required to be provided to a Person, Chief and Council, an RCMP detachment or a Community Facility under this Law must be provided in any of the following ways:
- (a) if provided to an individual, by:
 - (i) sending a copy of the document by ordinary mail, registered mail, or courier to

- the actual or last known address of the individual;
- (ii) leaving a copy of the document with the individual;
- (iii) leaving a copy of the document addressed to the individual at the individual's place of residence with a person who appears to the KFN Law Enforcement Officer to be over sixteen (16) years of age and who resides with the individual;
- (iv) leaving a copy of the document in a mailbox or mail slot for the address at which the individual resides;
- (v) by attaching a copy of the document to a door or other conspicuous place at the address at which the individual resides; or
- (vi) sending a copy of the document by email to the email address provided by the individual;
- (b) if provided to a corporation, business or society, by:
 - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the registered office of the corporation, business or society;
 - (ii) leaving a copy of the document with an officer, senior manager, director, or other executive officer of the corporation, business or society; or
 - (iii) sending a copy of the document by email to the email address provided by the corporation, business, or society;
- (c) if provided to a partnership, by:
 - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the business office or registered office of the partnership;
 - (ii) leaving a copy of the document with a partner or other executive officer of the partnership; or
 - (iii) sending a copy of the document by email to the email address provided by the partnership;
- (d) if provided to Chief and Council, by:
 - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the mailing address of the KFN or to the administrative office of the KFN;
 - (ii) leaving a copy of the document with an elected official or administrative officer of the KFN; or
 - (iii) sending a copy of the document by email to the email address provided by the KFN; and
- (e) if provided to an RCMP detachment or Community Facility, by:
 - (i) sending a copy of the document by ordinary mail, registered mail or courier to the mailing address of the RCMP detachment or the Community Facility;
 - (ii) leaving a copy of the document with an individual who works at the RCMP detachment or the Community Facility; or
 - (iii) leaving the document in a mailbox or mail slot at a business address for the RCMP detachment or the Community Facility.

51. REGULATIONS AND FORMS

- 51.1 In addition to the regulations specifically authorized under this Law, Chief and Council may, by Resolution, establish any other regulation necessary for the proper functioning of this Law.

- 51.2 For any regulation established under this Law, Chief and Council must:
- (a) post notice of the regulation in a public area of the KFN administration building and on the KFN members website; and
 - (b) make a copy of same available for viewing free of charge at the administrative offices of the KFN and available for distribution at a nominal charge to any Person upon request.
- 51.3 Chief and Council may, by Resolution, establish, correct, revise or update the terms of any applicable fee schedules, notices, forms, protocols or other documentation related to this Law, and must:
- (a) post notice of same in a public area of the KFN administration building; and
 - (b) upon request, make a copy of same available for viewing free of charge at the administrative offices of the KFN.

52. IMMUNITY

- 52.1 No action for damages lies or may be instituted against an Immune Person for:
- (a) anything said or done or omitted to be said or done by that Immune Person in the performance or intended performance of the Immune Person's duty, or in the exercise of the Immune Person's authority under this Law; or
 - (b) any alleged neglect or default in the performance or intended performance of the Immune Person's duty, or in the exercise of the Immune Person's authority under this Law.
- 52.2 An Immune Person is not liable for any damages or other loss, including economic loss, sustained by any Person or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect the commission of any Offence under this Law or any other KFN law, or from the neglect or failure, for any reason or in any manner, to enforce, not enforce, or not have the ability to enforce, this Law or any other KFN law.
- 52.3 Subsections 52.1 and 52.2 do not provide a defence to an Immune Person if:
- (a) the Immune Person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence, or malicious or willful misconduct; or
 - (b) the cause of action is libel or slander.
- 52.4 All actions against an Immune Person for the unlawful doing of anything that:
- (a) is purported to have been done by an Immune Person under the powers conferred by this Law or any KFN law; or
 - (b) might have been lawfully done by an Immune Person if acting in the manner established by law,

must be commenced within two (2) months of the cause of action arising, or within a further period designated by Chief and Council in a particular case, but not afterwards.

- 52.5 A party commencing an action against an Immune Person must provide the KFN and the Immune Person with notice in writing, setting out the time, place and manner in which the damage was sustained within thirty (30) days from the date on which the damage was allegedly sustained.
- 52.6 If the party commencing an action against an Immune Person fails to provide the KFN and the Immune Person with notice as required under subsection 52.5, the action must be struck and the Immune Person is not liable for damages.

53. AMENDMENTS AND ENACTMENT

- 53.1 Chief and Council may, by Resolution, make minor amendments that do not change the substance of this Law, including but not limited to:
- (a) changes necessary to clarify the drafting of provisions;
 - (b) correcting grammatical or typographical errors; and
 - (c) changes required to address inconsistencies with the *Framework Agreement on First Nation Land Management*.
- 53.2 For greater certainty, all other amendments to this Law must be in accordance with the Land Code.
- 53.3 This Law comes into force on the day of its enactment, being October 19, 2023.

BE IT KNOWN that this Law entitled the *Summary Offence Law*, KFN-2023-01 was/is hereby:

Tabled a first time by the Chief and Council of K'ómoks First Nation at a duly convened meeting held on the 3rd day of August, 2023;

Posted at the Band Administration office on the 4th day of August, 2023;

Tabled a second time and enacted by the Chief and Council of K'ómoks First Nation at a duly convened meeting held on the 19th day of October, 2023; and

Signed by the following Members of Chief and Council who were present at the duly convened meeting wherein this *Summary Offence Law*, KFN-2023-01 was enacted:



Chief/Councilor: Ken Price



Councilor: Coral Mackay



Councilor: Candace Newman



Councilor: Susan Savoie