

SHUSWAP INDIAN BAND

NOTICE ENFORCEMENT LAW

WHEREAS Shuswap Indian Band Council deems it advisable and in the best interests of SIB to enact a Law to provide for the enforcement and prosecution of the Laws of the Shuswap Indian Band for the protection of the lands, Traditional Values, community, children and the vulnerable on SIB Land from violence, exposure to illegal drugs, sexual exploitation and abuse and other unlawful activities on SIB lands;

AND WHEREAS Shuswap Indian Band, in accordance with the Secwepemc Nation tradition, has recognized the importance of the collective rights of the community and the priority of those collective rights over the rights of the individual;

AND WHEREAS the Secwepemc Nation people have historically used banishment and other punishments to help preserve and promote order, peace and safety of the community;

AND WHEREAS Shuswap Indian Band has the authority under subsection 6.1 of the Land Code to make laws concerning the protection, management, use and possession of SIB Land and any matter necessary or ancillary to a Law respecting SIB Land;

AND WHEREAS Shuswap Indian Band has the authority under section 22 of the *First Nations Land Management Act* to make laws to prosecute offences of contraventions of SIB laws;

AND WHEREAS the Shuswap Indian Band membership has been consulted and supports a law which would allow Council to banish from entering onto certain areas of SIB Land persons who pose a threat to their community, their children and the vulnerable and otherwise impose punishment for offenders of Shuswap Indian Band Laws;

AND WHEREAS this law balances the rights of the individual guaranteed under the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Code with the safety of the Shuswap Indian Band community, its children and its vulnerable.

NOW THEREFORE Shuswap Indian Band Council enacts the following Law:

PART 1 – INTERPRETATION AND APPLICATION

1. TITLE AND PURPOSE

- 1.1 This Law may be cited for all purposes as "SIB Notice Enforcement Law".
- 1.2 The purpose of this SIB Notice Enforcement Law is to provide for a mechanism to enforce and prosecute SIB laws to which this Law applies.

2. DEFINITIONS

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

“Administrator” means a person appointed under subsection 9.1;

"Adjudicator" means a person appointed as an Adjudicator under the *SIB Dispute Adjudication Law*;

“Banishment Order” means an order made under subsection 17.1;

“Banishment Order Hearing” means a hearing carried out in accordance with subsection 16.3;

“Child Care Facility” means a public or private pre-kindergarten facility, day-care centre, child care learning centre, preschool facility or long-term care facility for children;

“Church” means a place of public religious worship;

“Community Centre” means a public facility operated by SIB for the use of local residents;

“Community Facility” means a Child Care Facility, School, School Bus Stop, Church, Community Centre, Recreational Facility, building owned by SIB, Community Gathering Place or Library;

“Community Gathering Place” means a location designated by Council, by Resolution at a duly convened meeting, as a community gathering place for the purpose of holding a community event;

“Contravenor” is a person against whom a contravention or offence is alleged pursuant to subsection 3.3 or has been convicted of a Drug Offence, Sex Offence or Violent Offence, for which a Pardon has not been granted or has been required to attend a Banishment Order Hearing pursuant to subsection 16.1;

“Controlled Drugs and Substances Act” means the *Controlled Drugs and Substances Act*, Canada (1996 c. 19) as amended or replaced from time to time;

"Council" means SIB’s “council of the band”, as that term is defined in the *Indian Act*, or any successor;

“Criminal Code” means the Criminal Code of Canada (R.S. 1985, c. C-46) as amended and replaced from time to time;

“Designated Contravention” has the meaning assigned in subsection 3.1;

“Drug Offence” means an offence under sections 4 to 7 of the Controlled Drugs and Substances Act;

"Enforcement Notice" includes a Notice of Fine and a Notice of Hearing, the forms of which are adopted by Resolution pursuant to subsection 38.1;

“Interest” means an interest in SIB 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;

“Land Code” means the Shuswap Indian Band Land Code adopted by the SIB in accordance with the *First Nations Land Management Act* (Canada), as may be supplemented or amended from time to time;

“Law” means this *SIB Notice Enforcement Law*, and any associated regulations or alterations or amendments thereto;

“Library” means a library open to the public;

“Notice of Fine” has the meaning assigned in section 3;

“Notice of Hearing” means the notice of hearing that is issued pursuant to subsection 3.4 and may take the form of an appearance notice or a promise to appear notice;

“Pardon” means a pardon granted by the National Parole Board under the *Criminal Records Act* (R.S. 1985, c. C-47);

“Peace Officer” means a member of the Royal Canadian Mounted Police responsible for policing SIB Lands, or any delegate;

“Rescission Order” means an order made under subsection 26.1;

“Rescission Order Hearing” means a hearing carried out in accordance with subsection 25.3;

“Recreational Facility” means a public facility operated by SIB for the use of local residents for sports and recreational activities, including pools, beaches, public parks, skate boarding and bicycle paths;

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

“School” means a public or private kindergarten, elementary or secondary school;

“School Bus Stop” means a school bus stop as designated by a board of education, private school or SIB;

“Sex Offence” means an offence under sections 151 to 173 of the *Criminal Code*;

“SIB” means the Shuswap Indian Band, recognized as a Band under the *Indian Act*, as represented by Council, or any successor to such band pursuant to a federal statute or otherwise;

“SIB Dispute Adjudication Law” means the *SIB Dispute Adjudication Law*, as amended or replaced from time to time;

“SIB Law Enforcement Officer” means the person or persons appointed by Council, from time

to time, to administer and enforce the provisions of SIB laws enacted by Council, and includes any delegate or any Peace Officer;

“Suspension Order” means an order made under subsection 23.1;

“Traditional Values” means the traditional community values of the Secwepemc Nation and Shuswap Indian Band in relation to the preservation and management of their lands and the promotion of order, peace and safety of the community;

“Tribunal” means the person or persons appointed to the Tribunal pursuant to subsection 15.1; and

“Violent Offence” means an offence under sections 229 to 240, 244 to 248, 264 to 273 and 279 to 286 of the Criminal Code.

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the Land Code.

PART 2 - ISSUANCE OF ENFORCEMENT NOTICES

3. ENFORCEMENT NOTICE

- 3.1 Council may, by Resolution and in accordance with this Law, or in other SIB laws, designate contraventions or offences of SIB laws to which this Law applies, and this Law applies to each designated contravention or offence.
- 3.2 Nothing in this Law precludes SIB from pursuing any other enforcement action or remedy provided for in any other SIB law.
- 3.3 For each Designated Contravention, a SIB Law Enforcement Officer shall complete and issue an Enforcement Notice to a Contravenor.
- 3.4 A Notice of Hearing may be issued pursuant to subsection 3.3 where the presence of the Contravenor could pose a significant threat to:
- (a) the health, safety or wellbeing of any person residing on SIB Lands or using a Community Facility;
 - (b) the protection, conservation and management of SIB Lands themselves; or
 - (c) Traditional Values.

In all other circumstances, a Notice of Fine may be issued.

- 3.5 A Notice of Fine must contain all of the following information:
- (a) the name of the person to whom the Notice of Fine is issued along with the address of the person and other particulars to identify the person, if available;
 - (b) particulars of the alleged contravention of the SIB law in sufficient detail that a reasonable recipient of the Notice of Fine would be able to identify the SIB law and the

contravention alleged;

- (c) the amount of the penalty that the recipient is liable for in respect of the contravention, the amount of a discount for early payment of the penalty, the amount of a surcharge for late payment of the penalty, and the consequences of failing to respond to the Notice of Fine;
- (d) the methods of paying the penalty; and
- (e) how to dispute the allegation contained in the Notice of Fine.

3.6 A Notice of Hearing must contain all of the following information:

- (a) particulars of the alleged contravention of the SIB law in sufficient detail that a reasonable recipient of the Notice of Hearing would be able to identify the SIB law and the contravention alleged;
- (b) set out the date, time and place of the hearing before Council in accordance with subsection 16.3; and
- (c) additional conditions imposed by the SIB Law Enforcement Officer, if any.

3.7 An Enforcement Notice may be completed, issued and stored in electronic format by electronic means, or by another means that allows the Enforcement Notice to be reproduced in intelligible form.

3.8 An Enforcement Notice is valid even though it is not taken under oath.

4. LIMITATION PERIOD FOR ENFORCEMENT NOTICE

4.1 An Enforcement Notice shall not be issued more than 6 months after the contravention in respect of which the Enforcement Notice is issued is alleged to have occurred.

5. DELIVERY OF ENFORCEMENT NOTICE

5.1 An Enforcement Notice may be delivered in any of the following ways:

- (a) in person to the named person;
- (b) by leaving a copy addressed to the named person at the place of residence with anyone who appears to be over 19 years of age and an occupier of the same household;
- (c) by mailing a copy of the Enforcement Notice to the actual or last known address of the named person;
- (d) if the named person is a corporation or a business, by mailing a copy of the Enforcement Notice to the registered office or head office as contained in the records of the Registrar of Companies, or by delivering the Enforcement Notice to a director, manager or other executive officer of the corporation or business, or of a branch of it; or
- (e) if the named person is an extraprovincial company as defined in the *British Columbia Business Corporations Act*, by delivering the Enforcement Notice to the attorney for the extraprovincial company.

- 5.2 An Enforcement Notice delivered under paragraph 5.1 (b) is presumed to have been received by the person to whom it is addressed on the 5th day after mailing.
- 5.3 An Enforcement Notice delivered under paragraph 5.1 (c) or (d) is presumed to have been received by the named person,
 - (a) if delivered personally, on the date of delivery; and
 - (b) otherwise, on the 5th day after mailing.

PART 3 - ENFORCEMENT ORDERS – FINES

6. PENALTY FOR NOTICE OF FINE

- 6.1 Council may, by Resolution, and in accordance with this Law, establish regulations associated with this Law, or any other Law enacted pursuant to the SIB Land Code, which provides for penalties for Designated Contraventions under subsection 3.1 and for which a Notice of Fine is issued.
- 6.2 Subject to subsections 6.3 and 6.4, the penalty for a Designated Contravention referred to in subsection 3.1 is the penalty established by Resolution of Council.
- 6.3 If the penalty is a fine and payment of the penalty is received by SIB within 14 days of the person receiving or being presumed to have received the Notice of Fine, the penalty amount is the Early Payment Penalty established by Resolution of Council.
- 6.4 If the penalty is a fine and payment of the penalty is received by SIB more than 28 days after the person received or is presumed to have received the Enforcement Notice, the penalty amount is the Late Payment Penalty established by Resolution of Council.
- 6.5 Payment of a fine constitutes a guilty plea to the alleged contravention.

7. OPTIONS ON RECEIPT OF NOTICE OF FINE

- 7.1 A person who receives the Notice of Fine must, within 14 days of the date on which the person received or is presumed to have received the Notice of Fine:
 - (a) pay the penalty in accordance with the Notice of Fine; or
 - (b) request dispute adjudication in respect of the allegation made in the Notice of Fine in accordance with the instructions on the notice and the *SIB Dispute Adjudication Law*.
- 7.2 A person may pay the indicated penalty after 14 days of receiving the Notice of Fine, subject to the applicable surcharge for late payment in accordance with subsection 6.4 of this Law, but no person may dispute the Notice of Fine after 14 days of receiving the Notice of Fine.

8. IF A PERSON DOES NOT TAKE AN ACTION UNDER SECTION 7

- 8.1 If a person who receives or is presumed to have received a Notice of Fine does not comply with section 7, the person is deemed to have pleaded guilty to the alleged contravention and the penalty set out in the Notice of Fine is immediately due and payable by the person.
- 8.2 An amount due and payable under subsections 8.1 may be recovered in accordance with sections 12, 13 and 14, but collection procedures may not be started until 35 days after the date the Notice of Fine was received or presumed to have been received.
- 8.3 If a person to whom a Notice of Fine was delivered in any other manner than in person under paragraph 5.1 (a) has not responded to the Notice of Fine within 28 days after the date the Notice of Fine was received or presumed to have been received, the Administrator must deliver a notice to that person indicating the amount owing under the Notice of Fine and how and where payment may be made.
- 8.4 A notice under subsection 8.3 must be delivered in a manner authorized under subsection 5.1.
- 8.5 If, before a certificate is filed under subsection 12.1, a person to whom a notice has been delivered under subsection 8.3 advises SIB that they did not receive a copy of the original Notice of Fine,
- (a) the debt that arose under subsection 8.1 is cancelled, and
 - (b) an Administrator must reissue and deliver the Notice of Fine to the person in a manner authorized under subsection 5.1, and the payment timelines provided for in this Part 3 commence *de novo*.

9. ADMINISTRATOR

- 9.1 Council must, by Resolution, appoint at least one Administrator.
- 9.2 An Administrator must review a request for dispute adjudication under paragraph 7.1 (b) and, after reviewing the Notice of Fine, may either:
- (a) cancel the Notice of Fine if, in the Administrator's opinion, the contravention did not occur as alleged, the Notice of Fine does not comply with subsection 3.5, or any other ground for cancellation authorized by the this Law or SIB Policy is satisfied; or
 - (b) confirm the Notice of Fine and refer it to an Adjudicator unless the request for dispute adjudication is withdrawn.
- 9.3 For greater certainty, the powers, duties and functions of the Administrator set out in subsection 9.2 include the following:
- (a) prosecution of the Designated Contravention in accordance with this Law;
 - (b) the authority to communicate with any or all of the following for the purposes of performing their functions under this Law:

- (i) the Contravenor or their representative;
 - (ii) the SIB Law Enforcement Officer issuing the notice;
 - (iii) the complainant or their representative;
 - (iv) SIB Council or staff; and
- (c) the authority to cancel Notice of Fines in accordance with this Law or SIB policies and guidelines.
- 9.4 Council may, at any time, by Resolution, rescind the appointment of the Administrator and appoint a replacement.

10. DISPUTE ADJUDICATION

- 10.1 If an Enforcement Notice is referred to an Adjudicator by an Administrator under paragraph 9.2 (b), the matter must be heard and determined in accordance with the *SIB Dispute Adjudication Law*.

11. COST OF DISPUTE ADJUDICATION

- 11.1 Every person who is unsuccessful in a dispute adjudication in relation to a notice must pay SIB an administration fee of an amount set by Resolution of Council in addition to any amount payable pursuant to a Notice of Fine.

12. AMOUNTS OWING ENFORCED AS PROVINCIAL COURT JUDGMENT

- 12.1 An amount due and payable to SIB under this Law may be recovered by filing a certificate in the form set out in Schedule "A" in the Provincial Court.
- 12.2 A certificate under subsection 12.1 that is in respect of an amount that has been owed to SIB for more than 2 years before the date of the certificate may not be filed under this section.
- 12.3 A certificate under this section must be signed by the Administrator or a delegate, and must include all the following information:
- (a) the details of the notice, including the date and place of the contravention;
 - (b) the total amount owing in respect of the Notice of Fine and, separately, the amount of the penalty, any surcharges that apply and any adjudication fees payable;
 - (c) the name of the person who is required to pay the penalty;
 - (d) the date that the penalty became due and payable; and
 - (e) whether the amount outstanding is payable because of a determination by an Adjudicator or because of a default referred to in subsection 8.1.
- 12.4 A certificate filed under subsection 12.1 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 person named.
- 12.5 A certificate under subsection 12.1 is admissible in any proceedings to recover the certified

debt without proof of the signature or official position of the person appearing to have signed the certificate, and is proof of the certified facts.

13. SUSPENDING A CERTIFICATE FILED WITH THE COURT

- 13.1 On the application of a person named in a certificate within 30 days after the date the certificate is filed, a justice may order that the certificate is suspended if the justice is satisfied that:
- (a) the notice described in the certificate was not delivered in accordance with paragraph 5.1 (a);
 - (b) notice was not delivered in accordance with subsection 8.3; and
 - (c) through no fault of the person, the person did not receive the notice, and did not know of the notice or the outstanding penalty at any time before a certificate was filed under subsection 12.1.
- 13.2 Proceedings described in subsection 12.4 may not be taken on a certificate while it is suspended.
- 13.3 If a justice suspends a certificate under subsection 13.1, an Administrator must deliver a copy of the Enforcement Notice to the person in a manner authorized under subsection 5.1.
- 13.4 Section 7 of this Law applies *de novo* to a person in respect of whom a certificate is suspended by order under subsection 13.1.
- 13.5 If, within 14 days from the date the certificate is suspended, the person:
- (a) has complied with section 7, then the certificate is deemed to have been withdrawn and the debt that arose under subsection 8.1 in relation to the person is cancelled, or
 - (b) has not complied with section 7, then the suspension under subsection 13.1 ends.

14. CANCELLING A CERTIFICATE FILED WITH THE COURT

- 14.1 On the application of a person named in a certificate, within 30 days after the date the certificate is filed, a justice may order that the certificate is cancelled and a new adjudication be scheduled if the justice is satisfied that:
- (a) the person requested dispute adjudication under paragraph 7.1(b),
 - (b) through no fault of the person, the person was not heard in the adjudication process and the Adjudicator made an order in relation to the person, and
 - (c) the certificate was filed by SIB to recover the amount the Adjudicator ordered due and payable by the person.
- 14.2 If a justice makes an order described in subsection 14.1, the debt ordered by the Adjudicator in relation to the person is cancelled and the Administrator must refer for adjudication the dispute in relation to which the person requested or required dispute adjudication.

PART 4 - ENFORCEMENT ORDERS - BANISHMENT

15. APPOINTMENT OF TRIBUNAL MEMBERS AND RULES OF PRACTICE AND PROCEDURE

- 15.1 Council must, by Resolution, appoint at least one person to the Tribunal who must:
- (a) have the qualifications established by Council from time to time; and
 - (b) swear or affirm the oath set out in Schedule “C” to this Law.
- 15.2 Council may, at any time, by Resolution, remove any appointee to the Tribunal.
- 15.3 One member of the Tribunal constitutes a quorum and is sufficient for the exercise of all of the jurisdiction and powers of the Tribunal.
- 15.4 Within 30 days of the coming into force of this Law, Council must, by Resolution at a duly convened meeting, make regulations respecting the practice and procedure to be followed at Banishment Order Hearings and Rescission Order Hearings.
- 15.5 Council may, at any time, by Resolution at a duly convened meeting, amend the regulations respecting the practice and procedure to be followed at Banishment Order Hearings and Rescission Order Hearings, but such amendments must not:
- (a) apply to any:
 - (i) Banishment Order Hearing which was set down pursuant to a Notice of Hearing dated prior to the date on which the Resolution establishing regulations under subsection 15.4 is passed; or
 - (ii) Rescission Order Hearing in which an application under subsection 25.1 has been made before the date on which the Resolution establishing regulations under subsection 15.4 is passed; or
 - (b) come into force until sixty (60) days after the date on which the Resolution establishing regulations amending the rules is passed.
- 15.6 A copy of all regulations established under subsection 15.4, and any amendments made to those regulations under subsection 15.5, must be retained by the Administrator and made available for viewing to any person upon request.

16. BANISHMENT ORDER HEARING

- 16.1 Notwithstanding that a Notice of Hearing has not been issued, Council may, by Resolution at a duly convened meeting, order that a Banishment Order Hearing be held in order to determine whether a Banishment Order should be issued against a Contravenor, in which case the information requirements in subsection 3.6 apply to the Resolution.
- 16.2 Council must not pass a Resolution under subsection 16.1 unless it is reasonably satisfied that the presence of the Contravenor on SIB Lands could pose a significant threat to:
- (a) the health, safety or wellbeing of any person residing on SIB Lands or using a Community Facility;
 - (b) the protection, conservation and management of SIB Lands themselves; or

(c) Traditional Values.

- 16.3 A Tribunal hearing shall be convened within sixty (60) days of the date of the Notice of Hearing or a Resolution passed pursuant to subsection 16.1, as the case may be, at which the only order of business is to determine whether a Banishment Order along with any other penalty it deems appropriate should be issued against the Contravenor.
- 16.4 The Contravenor must be provided with the opportunity to be heard at the Banishment Order Hearing and the Tribunal must take into consideration any submissions of the Contravenor when deciding whether or not to issue a Banishment Order.
- 16.5 Despite subsection 16.4, if the Contravenor does not attend the Banishment Order Hearing, the Tribunal may by resolution:
- (a) reschedule the hearing, in which case subsection 3.6 applies to the resolution made under this section; or
 - (b) hold the hearing in the absence of the Contravenor.
- 16.6 The Contravenor may be represented by an agent or counsel at the Banishment Order Hearing.
- 16.7 The Contravenor may present evidence and call witnesses at the Banishment Order Hearing and all evidence must be given under oath.
- 16.8 The Administrator may present evidence and call witnesses at the Banishment Order Hearing and all evidence must be given under oath.
- 16.9 The Tribunal must:
- (a) prepare written reasons for its decision; and
 - (b) deliver a copy of those reasons to the Contravenor within thirty (30) days of the date of the Banishment Order Hearing.
- 16.10 Subject to this Law and the regulations established under subsections 15.4 and 15.5, the Tribunal has the power to control the processes of Banishment Order Hearings.

17. AUTHORIZATION OF BANISHMENT ORDER

- 17.1 If, after conducting a Banishment Order Hearing, the Tribunal determines that a Banishment Order should be issued against a Contravenor, the Tribunal may, by resolution at a duly convened meeting, authorize that a Banishment Order be issued against the Contravenor along with any other penalty it deems appropriate.
- 17.2 A resolution passed under subsection 17.1 may require the Banishment Order to include such other terms and conditions as the Tribunal deems just and appropriate.
- 17.3 A resolution passed under subsection 17.1 must specify the date upon which the Banishment Order:
- (a) becomes effective, which date must not be less than one (1) day from the date of the Resolution; and
 - (b) expires, which date must not be more than seventy-five (75) years from the date the Banishment Order becomes effective.

18. CONTRAVENOR MUST REPRESENT SIGNIFICANT THREAT

- 18.1 The Tribunal must not pass a resolution under subsection 17.1 unless it is reasonably satisfied that:
- (a) the presence of the Contravenors in the areas identified in the Banishment Order could pose a significant threat to:
 - (i) the health, safety or wellbeing of any person residing on SIB Lands or using a Community Facility;
 - (ii) the protection, conservation and management of SIB Lands themselves; or
 - (iii) Traditional Values;
- and
- (b) authorizing a Banishment Order will significantly reduce the threat identified under paragraph 18.1(a).

19. PREPARATION AND DELIVERY OF BANISHMENT ORDER

- 19.1 If the Tribunal issues a Banishment Order under subsection 17.1, the Administrator must, within fourteen (14) days from the date of the resolution:
- (a) prepare the Banishment Order in a form approved by the Tribunal and in accordance with the resolution;
 - (b) deliver a copy of the Banishment Order to:
 - (i) the Contravenor;
 - (ii) each employer of the Contravenor that is located on SIB Lands;
 - (iii) each employer of the Contravenor that is not located on SIB Lands if, in the opinion of the Administrator, the Contravenor's employment with that employer could require the Contravenor to enter onto the areas described in the Banishment Order;
 - (iv) the local RCMP detachment;
 - (v) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility; and
 - (c) post a summary of the Banishment Order in at least one newspaper of general local circulation.
- 19.2 A Banishment Order made under subsection 19.1 must contain:
- (a) the name of the Contravenor;
 - (b) a description or photograph of the Contravenor, or both;
 - (c) the offence for which the Contravenor was convicted;
 - (d) the date upon which the Contravenor was convicted;
 - (e) the date upon which the Banishment Order was issued;
 - (f) the date upon which the Banishment Order becomes effective;
 - (g) the date upon which the Banishment Order expires;
 - (h) any terms or conditions imposed or required to be included in accordance with subsections 17.2 and 21.1, and paragraph 20.1(d); and
 - (i) a map of SIB Lands clearly showing the areas proscribed in accordance with subsection 20.1.

20. ADDITIONAL EFFECT OF BANISHMENT ORDER

- 20.1 When issuing a Banishment Order in accordance with this Law and delivered in accordance with paragraph 19.1(b), the Tribunal must consider imposing the following conditions:
- (a) not reside within 500 metres of any Community Facility;
 - (b) not come within 500 metres of any Community Facility;
 - (c) not be employed in any capacity, with or without remuneration, by any
 - (i) Community Facility; or
 - (ii) Person, if that employment requires the Contravenor to come within 500 metres of a Community Facility; and
 - (d) comply with all additional terms and conditions included in the Banishment Order.
- 20.2 Despite any conditions imposed by the Tribunal in accordance with subsection 20.1, a Contravenor who is the subject of a Banishment Order and who is also a Member may attend a Community Facility for the purpose of participating in an Election or Referendum, but only if:
- (a) the Contravenor notifies the Administrator not less than seven (7) days before the date on which the Contravenor 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 Contravenor's Banishment Order allow, and then only in accordance with those terms.

21. IF CONTRAVENOR HAS AN INTEREST IN SIB LANDS

- 21.1 If a Contravenor who is the subject of a Banishment Order made under subsection 19.1 has a right or Interest in SIB Lands within an area proscribed under subsection 20.1, the Banishment Order must:
- (a) provide for the Contravenor to have access to those lands associated with the right or Interest; and
 - (b) include a map of SIB Lands clearly showing the means by which the Contravenor is permitted to access those lands;
- and the Contravenor may access those lands only in accordance with the Banishment Order.

22. CONTRAVENOR MAY NOT ACQUIRE AN INTEREST IN SIB LANDS

- 22.1 A Contravenor who is subject to a Banishment Order and is not a Member may not acquire a right or Interest in SIB Lands that is within an area proscribed under subsection 20.1.
- 22.2 A Contravenor who is subject to a Banishment Order and is also a Member may acquire a right or Interest in SIB Lands that is within an area proscribed under subsection 20.1, but only by testamentary disposition.
- 22.3 If a Contravenor who is subject to a Banishment Order acquires a right or Interest under subsection 22.2, the Contravenor must notify the Administrator of the existence of the right or Interest within 30 days from the date of the registration of the interest in the SIB Lands Office, First Nation Land Registry, or similar registry of that right or Interest.
- 22.4 A Contravenor who is subject to a Banishment Order who does not comply with the requirement in subsection 22.3 is guilty of an offence and is subject to the penalties established by this Law.

- 22.5 Upon receipt of the notification in subsection 22.3, the Administrator must:
- (a) modify the Banishment Order to provide for access to the lands that are the subject of the right or Interest in accordance with subsection 21.1;
 - (b) deliver a copy of the Banishment Order to:
 - (i) the Contravenor;
 - (ii) the local RCMP detachment;
 - (iii) the Administrator;
 - (iv) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility; and
 - (v) post a summary of the changes to the Banishment Order in at least one newspaper of general local circulation.

23. SUSPENSION OF BANISHMENT ORDER

- 23.1 A Contravenor who is subject to a Banishment Order may apply to the Tribunal to have a provision or provisions of that Banishment Order suspended.
- 23.2 Only those provisions of the Banishment Order made under paragraphs 20.1(b) and 20.1(d) may be suspended.
- 23.3 An application under subsection 23.1:
- (a) must be in the form established by the Administrator; and
 - (b) must not be filed within six (6) months of the later of:
 - (i) the date upon which the Banishment Order was issued; or
 - (ii) the date upon which any previous application was made under subsection 23.1.
- 23.4 Within fourteen (14) days of receiving an application under subsection 23.1, the Tribunal must:
- (a) consider the application at a duly convened meeting; and
 - (b) by resolution either:
 - (i) approve the application; or
 - (ii) reject the application.
- 23.5 The Tribunal meeting held under paragraph 23.4(a) must be held *in camera*.
- 23.6 A decision made under paragraph 23.4(a) must be based on the written application of the Contravenor.
- 23.7 A resolution under subparagraph 23.4(b)(i):
- (a) must not be passed unless there are, in the opinion of the Tribunal, compelling compassionate or humanitarian grounds to do so;
 - (b) must not be passed if, in the opinion of the Tribunal, doing so would pose a significant threat to:
 - (i) the health, safety or wellbeing of any person residing on SIB Lands or using a Community Facility;
 - (ii) the protection, conservation and management of SIB Lands themselves; or
 - (iii) Traditional Values;

which cannot be satisfactorily mitigated by the imposition of specific terms or conditions under paragraph 23.7(f);

- (c) must specify which provisions of the Banishment Order are suspended;
- (d) must specify the dates upon which the Suspension Order:
 - (i) becomes effective; and
 - (ii) expires;
- (e) must not be effective for more than fourteen (14) days; and
- (f) may impose such other terms and conditions as the Tribunal deems just and appropriate.

23.8 The Tribunal must:

- (a) prepare written reasons for its decision; and
- (b) deliver a copy of those reasons to the Contravenor within seven (7) days of the date of the meeting at which the Tribunal considered the application.

24. PREPARATION AND DELIVERY OF A SUSPENSION ORDER

24.1 If the Tribunal passes a resolution under subparagraph 23.4(b)(i), the Administrator must within seven (7) days from the date of the resolution:

- (a) prepare the Suspension Order in a form approved by the Tribunal and in accordance with the resolution;
- (b) deliver a copy of the Suspension Order to:
 - (i) the Contravenor;
 - (ii) the local RCMP detachment; and
 - (iii) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility; and
- (c) post a summary of the Suspension Order in at least one newspaper of general local circulation.

24.2 A Suspension Order made under subsection 24.1 must contain the following information:

- (a) the name of the Contravenor;
- (b) the date upon which the Resolution under subparagraph 23.4(b)(i) was passed;
- (c) the date upon which the Suspension Order becomes effective;
- (d) the date upon which the Suspension Order expires; and
- (e) any terms or conditions imposed in accordance with paragraph 23.7(f).

25. RESCISSION ORDER HEARING

25.1 A Contravenor who is subject to a Banishment Order may apply to have the Banishment Order rescinded.

25.2 An application for rescission of a Banishment Order under subsection 25.1:

- (a) must be in the form established by the Administrator; and
- (b) must not be filed within 12 months of the later of:
 - (i) the date upon which the Banishment Order was issued; or
 - (ii) the date upon which any previous application was made under subsection 25.1.

- 25.3 The Tribunal must, within sixty (60) days of receiving an application under subsection 25.1, consider the application at a duly convened meeting at which the only order of business is to determine whether a Rescission Order should be issued.
- 25.4 At a meeting convened under subsection 25.3, subsections 3.6 and 16.4 to 16.10 apply, *mutatis mutandis*.

26. AUTHORIZATION OF RESCISSION ORDER

- 26.1 If, after conducting the Rescission Order Hearing, the Tribunal determines that the Banishment Order issued against a Contravenor should be rescinded, the Tribunal may, by resolution at a duly convened meeting, authorize that a Rescission Order be issued.
- 26.2 A resolution passed under subsection 26.1 must specify the date upon which the Rescission Order becomes effective.

27. CONTRAVENOR MUST NO LONGER REPRESENT THREAT

- 27.1 The Tribunal must not pass a resolution under subsection 26.1 unless it is reasonably satisfied that some material change has occurred such that the Contravenor no longer poses a significant threat to:
- (a) the health, safety and wellbeing of any person residing on SIB Lands or using a Community Facility;
 - (b) the protection, conservation and management of SIB Lands themselves; or
 - (c) Traditional Values.

28. PREPARATION AND DELIVERY OF RESCISSION ORDER

- 28.1 If the Tribunal passes a resolution under subsection 26.1, the Administrator must, within fourteen (14) days from the date of the resolution:
- (a) prepare the Rescission Order in a form approved by the Tribunal and in accordance with the resolution;
 - (b) deliver a copy of the Rescission Order to:
 - (i) the Contravenor;
 - (ii) the local RCMP detachment;
 - (iii) the Administrator; and
 - (iv) each Community Facility, with instructions that it be posted in a place visible to all employees and volunteers of the Community Facility; and
 - (c) post a summary of the Rescission Order in at least one newspaper of general local circulation.
- 28.2 A Rescission Order made under subsection 28.1 must contain the following information:
- (a) the name of the Contravenor;
 - (b) the date upon which the Banishment Order was issued;
 - (c) the date upon which the Banishment Order was to expire;
 - (d) the date upon which the Resolution under subsection 20.1 was passed; and
 - (e) the date upon which the Rescission Order becomes effective.

29. EFFECT OF RESCISSION ORDER

29.1 As of the effective date of the Rescission Order, the Banishment Order specified in the Rescission Order is null and void and may not be revived.

30. CONSEQUENCES OF NON-COMPLIANCE WITH ORDERS

30.1 A Contravenor who breaches any requirement, term or condition of a Banishment Order made in accordance with this Law and delivered in accordance with subparagraph 19.1(b)(i) commits an offence and is subject to the penalties established by this Law.

30.2 A person who knowingly and willingly employs a Contravenor in contravention of a Banishment Order made in accordance with this Law and delivered in accordance with subparagraph 19.1(b)(ii) commits an offence and is subject to the penalties established by this Law.

30.3 A person who knowingly and willingly allows a Contravenor to remain on their property in contravention of a Banishment Order made in accordance with this Law and published in accordance with paragraph 19.1(c) commits an offence and is subject to the penalties established by this Law.

31. DUTY TO REPORT

31.1 A person who has reasonable grounds to believe that a Contravenor has breached any requirement, term or condition of a Banishment Order or Suspension Order, must immediately report these grounds to a SIB Law Enforcement Officer.

31.2 A person who does not comply with subsection 31.1 commits an offence and is subject to the penalties set out in this Law.

32. POWERS OF REMOVAL AND ARREST

32.1 If a Contravenor is in breach of any requirement, term or condition of a Banishment Order made in accordance with this Law and delivered in accordance with subparagraph 19.1(b)(i), a SIB Law Enforcement Officer may remove the Contravenor from the area proscribed in the Banishment Order, or may arrest the Contravenor.

32.2 In order to carry out his or her duties under subsection 32.1, a SIB Law Enforcement Officer has jurisdiction throughout SIB Lands to exercise and carry out the powers, duties, privileges and responsibilities that a Peace Officer is entitled or required to carry out at law in Canada or under an enactment of Canada or British Columbia.

33. ENFORCEMENT OF ORDERS

33.1 The Administrator may file a certified copy of an order made under Part 4 of this Law with the Provincial Court of British Columbia.

33.2 An order filed under subsection 33.1 has the same force and effect, and all proceedings may be taken on it, as if it were a judgement of the Court.

34. APPEALS

- 34.1 An order made by the Tribunal in accordance with this Law may be disputed in accordance with the *SIB Dispute Adjudication Law*, but only on the following grounds:
- (a) the Contravenor was unable to attend the Banishment Order Hearing or a Rescission Order Hearing due to circumstances that could not reasonably be anticipated by the Contravenor and that were beyond his or her control;
 - (b) the Contravenor has new and relevant evidence that was not available at the time of the Banishment Order Hearing or Rescission Order Hearing;
 - (c) the Contravenor has evidence that a Banishment Order was authorized as a result of fraud; or
 - (d) the Contravenor has evidence that Council refused to authorize a Suspension Order or a Rescission Order as a result of fraud.

35. RESOLUTION OF TRIBUNAL NOT REVIEWABLE

- 35.1 An Order made by the Tribunal in accordance with this Law is final and binding, and, except in accordance with subsection 34.1, is not open to review.

PART 5 - GENERAL

36. PROSECUTION

- 36.1 Proceedings under this Law shall be commenced by the issuance of an Enforcement Notice pursuant to Part 2 or by Resolution in accordance with subsection 16.1.
- 36.2 Any proceedings initiated by the issuance of a Notice of Fine may be prosecuted in accordance with Part 3.
- 36.3 Any proceedings initiated by the issuance of a Notice of Hearing or by Resolution in accordance with subsection 16.1 may be prosecuted in accordance with Part 4.
- 36.4 Any prosecution carried out under this Law constitutes a summary conviction process for the purposes of section 22(1) of the *First Nation Land Management Act* (S.C. 1999, c. 24) as amended or replaced. Further, any offence resulting from such summary conviction process will constitute a summary conviction for the purposes of section 22(1) of the *First Nation Land Management Act*.

37. PENALTIES

- 37.1 Any person who contravenes this Law is liable, on summary conviction pursuant to section 36, above, to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not exceeding six (6) months, restitution, community service and any other means or combination thereof for achieving compliance.

- 37.2 For any contravention or offence of a SIB law to which this Law applies, a SIB Law Enforcement Officer may complete and issue an Enforcement Notice to the person against whom an offence is alleged.
- 37.3 The Administrator may, in accordance with this Law, prosecute any person who commits an offence of a SIB law to which this Law applies. If the Administrator decides not to prosecute the offence, the Administrator may provide a report to the British Columbia prosecution service requesting that Crown Counsel prosecute the offence.
- 37.4 In addition to any other penalty or liability imposed pursuant to a prosecution of any SIB law to which this Law applies, any person who violates any provision of any SIB law or any requirement, term or condition of an order made and delivered in accordance with this Law, is guilty of an offence and liable upon conviction to a fine of up to five thousand dollars (\$5,000) or a term of imprisonment not exceeding six (6) months, or both.
- 37.5 Each day that a Contravenor is in breach of a requirement, term or condition of a Banishment Order or Suspension Order will be deemed a separate offence for which the penalties authorized in subsection 27.1 may be imposed.

38. FEES AND FORMS

- 38.1 Council may, by Resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable regulations, fee schedules, notices, forms, protocols or other related documentation which are contemplated in or complement and support this Law, and must post notice of same in a public area of the SIB administration building and make a copy of same available for viewing free of charge at the administrative offices of SIB and available for distribution at a nominal charge.

39. APPLICATION OF LAW

- 39.1 A penalty imposed under this law is a penalty imposed for a summary conviction for the purposes of section 22(1) of the *First Nation Land Management Act* (S.C. 1999, c. 24) as amended or replaced.
- 39.2 Where any federal Act or regulation or provincial Act or regulation or any other SIB law may apply to any matter covered by this Law, compliance with this Law must not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 39.3 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.
- 39.4 The headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law and must not be used in the interpretation of this Law.

40. IMMUNITY

- 40.1 No action for damages lies or may be instituted against present or past Council, SIB Law Enforcement Officers, or employees, servants or agents of either SIB or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 40.2 Subsections 40.1 and 40.3 do not provide a defence if:
- (a) Council, SIB Law Enforcement Officers, employees, servants or agents of either SIB or Council have, 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.
- 40.3 Council, SIB Law Enforcement Officers, employees, servants or agents of SIB or Council are 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 any contravention of this Law or any other SIB law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other SIB law.
- 40.4 All actions against SIB for the unlawful doing of anything that:
- (a) is purported to have been done by SIB under the powers conferred by this law or any SIB law; and
 - (b) might have been lawfully done by SIB if acting in the manner established by law, must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.
- 40.5 SIB is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to SIB, within two (2) months from the date on which the damage was sustained.

BE IT KNOWN that this Law entitled, "SIB Notice Enforcement Law " is hereby:

Read a first time by Council of Shuswap Indian Band at a duly convened meeting held on the ____ day of _____, 2019;

Posted in public places on SIB Lands including _____ on the ____ day of _____, 2019;

Presented to the Membership at a Meeting of Members held on the ____ day of _____, 2019;

Read a second time by Council of Shuswap Indian Band at a duly convened meeting held on the ____ day of _____, 20__ ;

Signed by the following Members of Council:

SCHEDULE "A" - FORM OF CERTIFICATE

Registry File Number
Registry Location

CERTIFICATE OF AMOUNTS OWING

BETWEEN: SHUSWAP INDIAN BAND Enforcement Notice
Creditor

AND: Enforcement Notice
Debtor

CERTIFICATE
(Subsection 12.1 of the *SIB Notice Enforcement Law*)

I, _____, having been designated to file certificates
under subsection 12.1 of the *SIB Notice Enforcement Law*, hereby certify that:

1. (the "Debtor"), having an address at
_____ ' city, town, municipality
_____, Province of _____, Postal Code
_____ ' Phone #

has incurred a debt arising from an Adjudicator's determination or default that is due and payable in accordance with the *SIB Notice Enforcement Law*. As a result of the determination or default, the Debtor is required to pay the amounts listed below.

2. The Debtor has failed to pay all or part of the penalty so that, as of the date of this Certificate, the amounts contained within column 3 became due and payable on the dates indicated in column 2, for the reasons provided in the Enforcement Notice, Adjudicator's Determination, or default referred to in column 1.

CERTIFICATE (continued)
 (Subsection 12.1 of the *SIB Notice Enforcement Law*)

	1 Authority for Enforcement Notice, Adjudicator's Determination or Default (SIB Law and section)	2 Date of Adjudicator's Determination or Default (dd/mm/yyyy)	3 Amount (\$)
Penalty			\$
Late Payment Penalty			\$
Dispute Adjudication admin fee			\$
			\$

SCHEDULE “B” – OATH OF TRIBUNAL MEMBER

(subsection 15. 1)

I,*[name of tribunal member]*. do swear/affirm that I will faithfully, honestly and impartially fulfill the duties and exercise the powers entrusted to me as a tribunal member under the *SIB Notice Enforcement Law* and that I have not received and will not receive any payment or reward, or any promise of payment or reward, for the exercise of any partiality or other improper execution of my office.

Sworn/Affirmed by me, at *[place]* , on*[date]*.

[Signature of person swearing or affirming oath]

[A commissioner for taking affidavits for British Columbia]