

MCLEOD LAKE INDIAN BAND
ENFORCEMENT AND PROSECUTION LAW

MLIB-2020-2

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 *First Nations Land Management Act*, SC 1999, c 24;

WHEREAS the McLeod Lake Indian Band became a signatory to the *Framework Agreement on First Nation Land Management* and later brought the *McLeod Lake Indian Band Land Code* into effect on May 20, 2003;

WHEREAS the McLeod Lake Indian Band has the authority under subsection 6.1 of the *McLeod Lake Indian Band Land Code* to make laws concerning the protection, management, use and possession of McLeod Lake Indian Band land and any matter necessary or ancillary thereto;

WHEREAS the McLeod Lake Indian Band has the authority under section 19 of the *Framework Agreement on First Nation Land Management* and under section 22 of the *First Nations Land Management Act*, SC 1999, c 24, to make laws for the prosecution of contraventions of McLeod Lake Indian Band laws;

WHEREAS the McLeod Lake Indian Band chief and council deems it advisable and in the best interests of the McLeod Lake Indian Band to enact a law to provide for the enforcement and prosecution of McLeod Lake Indian Band laws, in an effort to protect McLeod Lake Indian Band lands, McLeod Lake Indian Band cultural and traditional values, as well as the McLeod Lake Indian Band community, its children and its vulnerable persons from harmful and unlawful activities that may occur on McLeod Lake Indian Band lands;

WHEREAS the McLeod Lake Indian Band, as informed by Tse'Khene Nation traditions, has recognized the importance of the collective rights of the community and, where necessary, the priority of these collective rights over the rights of the individual;

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

WHEREAS the McLeod Lake Indian Band membership supports a law which would allow the McLeod Lake Indian Band chief and council to impose penalties and punishments on persons who violate McLeod Lake Indian Band laws, including, where necessary, punishment by way of banishing offending persons from entering onto certain areas of McLeod Lake Indian Band land where such persons pose a threat to the McLeod Lake Indian Band community, its children and its vulnerable persons;

AND WHEREAS this law balances the rights of the individual guaranteed under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11 and the *Canadian Human Rights Act*, RSC 1985, c H-6, with the safety of the McLeod Lake Indian Band community, its children and its vulnerable persons.

NOW THEREFORE the McLeod Lake Indian Band 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 *McLeod Lake Indian Band Enforcement and Prosecution Law*.

2. DEFINITIONS

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

“Administrator” means a person appointed by Council for the administration of matters set out under this Law, including, without limitation, the issuance of notices, the filing of certificates and orders, the maintenance of records and regulations and the preparation of orders;

“Banishment” means a penalty prescribed by Council under a Sanction Order, which banishes a Defendant from some or all MLIB Land;

“Banishment Rescission Hearing” has the meaning set out at subsection 27.3;

“Banishment Rescission Order” has the meaning set out at subsection 27.3;

“Banishment Suspension Order” means an order made under subsection 25.1;

“Business Corporations Act” means the *British Columbia 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 *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;

“Community Centre” means a public facility operated by the MLIB for the use of Members and those non-Members who are authorized by Council;

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

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

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

“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 4.1;

“Enforcement Notice” includes a Notice of Fine, a Notice of Hearing and a Warning Notice, as set out at subsection 4.1;

“Fine Recovery Certificate” has the meaning set out at subsection 11.1;

“First Nations Land Management Act” means the *First Nations Land Management Act*, SC 1999, c 24, as amended or replaced from time to time;

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

“Immune Person” has the meaning set out at subsection 47.1;

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

“Interest” means an interest in MLIB 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 *McLeod Lake Indian Band Land Code*, as may be amended or replaced from time to time, and which was adopted by the MLIB in accordance with the *First Nations Land Management Act*;

“Law” means this *McLeod Lake Indian Band Enforcement and Prosecution Law*, as amended or replaced from time to time, and any associated regulations;

“McLeod Lake Indian Band Dispute Adjudication Law” means the *McLeod Lake Indian Band Dispute Adjudication Law*, as amended or replaced from time to time;

"Member" means a person who is a member of the MLIB or who is eligible to be on the MLIB membership list;

"MLIB" means the McLeod Lake Indian Band, recognized as a band under the *Indian Act*, or any successor to the McLeod Lake Indian Band under a federal statute or otherwise;

"MLIB Land" means any portion of a MLIB reserve that is subject to the Land Code;

"MLIB Law Enforcement Officer" means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of MLIB laws, and includes any delegate or Peace Officer;

"MLIB Values" means the cultural or traditional community values of the Tse'Khene Nation or the MLIB in relation to the preservation and management of MLIB Land, or the promotion of the MLIB's desire to maintain order, peace and safety in the community;

"Notice of Fine" means a notice of fine that is Served on a Defendant under subsection 4.1, alleging the commission of an Offence by the Defendant and levying a fine in accordance with this Law;

"Notice of Hearing" means a notice of hearing that is Served on a Defendant under subsection 4.1 or subsection 15.1, alleging the commission of an Offence by the Defendant and mandating a hearing related to this Offence;

"Offence" has the meaning set out at subsection 3.2;

"Peace Officer" means a member of the Royal Canadian Mounted Police responsible for policing MLIB Land, or any delegate;

"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 39.1, 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" has the meaning set out at paragraph 21.2(b);

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

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

“Sanction Hearing” has the meaning set out at subsection 17.1;

“Sanction Order” means an order issued by Council under section 18 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 an Enforcement Notice via one or more of the mechanisms contemplated in subsection 6.1, where such delivery is at the time presumed under subsection 6.2; and

“Warning Notice” means a warning notice that is Served on a Defendant under subsection 4.1, setting out the alleged contravention of a MLIB law and issuing a warning, but no fine, related thereto.

3. PURPOSE, APPLICATION AND INTERPRETATION

- 3.1 The purpose of this Law is to provide a mechanism by which to charge, prosecute and enforce Offences under MLIB laws.
- 3.2 Unless otherwise indicated, this Law applies to all offences set out in any MLIB law (each an **“Offence”**).
- 3.3 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.
- 3.4 This Law is an enactment of Canada for all purposes, including for the purpose of interpreting the *Provincial Court Act*.

PART 2 - ENFORCEMENT NOTICES: GENERAL

4. SERVICE OF ENFORCEMENT NOTICES

- 4.1 Subject to subsection 4.2, where a MLIB Law Enforcement Officer has reasonable grounds to suspect that a Person committed an Offence, the MLIB Law Enforcement Officer may Serve, or direct an agent of the MLIB to Serve, the Person with a Notice of Hearing, a Notice of Fine or a Warning Notice (each an **“Enforcement Notice”**) in respect of that Offence.

4.2 A MLIB Law Enforcement Officer may Serve, or direct an agent of the MLIB to Serve, a Person under subsection 4.1 with:

- (a) a Notice of Hearing only if the MLIB Law Enforcement Officer has reasonable grounds to suspect that the presence of the Person on MLIB Land could pose a threat to:
 - (i) the health, safety or wellbeing of any Person residing on MLIB Land or using a Community Facility;
 - (ii) the protection, conservation and management of MLIB Land; or
 - (iii) MLIB 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 under paragraph 4.2(a) is not met.

4.3 A Notice of Hearing that is Served on a Defendant must contain the following information:

- (a) sufficient information to identify the Defendant, including the Defendant's name, address and telephone number;
- (b) particulars of the alleged commission of the Offence by the Defendant in sufficient detail that a reasonable recipient of the Notice of Hearing would be able to identify the MLIB law at issue and the contravention alleged in respect of that law;
- (c) the anticipated date, time and place of the Sanction Hearing in accordance with subsection 17.2; and
- (d) any additional conditions that may be imposed by the MLIB Law Enforcement Officer, as determined at their reasonable discretion.

4.4 A Warning Notice Served on a Defendant under subsection 4.1 must contain all of the information set out below at paragraphs 4.4(a) and (b), and a Notice of Fine Served on a Defendant under subsection 4.1 must contain all of the information set out below at paragraphs 4.4(a) (b), (c), (d) and (e):

- (a) sufficient information to identify the Defendant, including the Defendant's name, address and telephone number;
- (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 MLIB law at issue and the contravention alleged in respect of that law;
- (c) the monetary penalty that the Defendant is liable to pay in respect of the Offence at issue, the amount of any surcharge for late payment of the penalty and any other applicable fees, in accordance with subsection 7.1;
- (d) the consequences of failing to respond to the Notice of Fine;
- (e) the methods for paying the monetary penalty; and
- (f) how to dispute the alleged commission of the Offence as set out in the Notice of Fine.

4.5 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.

5. ENFORCEMENT NOTICE SERVICE REQUIREMENT AND LIMITATION PERIOD

- 5.1 An Offence must not be prosecuted under this Law unless it has been Served on a Defendant.
- 5.2 A MLIB Law Enforcement Officer must Serve, or direct an agent of the MLIB to Serve, an Enforcement Notice on a Defendant within six (6) months of the date on which the alleged commission of the Offence occurred, and not thereafter.

6. MANNERS OF SERVICE OF ENFORCEMENT NOTICE

- 6.1 A MLIB Law Enforcement Officer may Serve, or direct an agent of the MLIB to Serve, the Defendant with a copy of an Enforcement Notice in the following ways:
 - (a) if the Defendant is an individual, by:
 - (i) sending a copy of the Enforcement Notice by ordinary mail, registered mail or courier to the actual or last known address of the Defendant;
 - (ii) leaving a copy of the Enforcement Notice with the Defendant; or
 - (iii) leaving a copy of the Enforcement Notice addressed to the Defendant at the Defendant's place of residence with an individual who resides with the Defendant and who appears to the MLIB Law Enforcement Officer to be over sixteen (16) years of age;
 - (b) if the Defendant is a corporation, business or society, by:
 - (i) sending a copy of the Enforcement Notice by ordinary mail, registered mail or courier to the registered office or head office of the corporation, business or society; or
 - (ii) leaving a copy of the Enforcement Notice with an officer, senior manager, director or other executive officer of the corporation, business or society;
 - (c) if the Defendant is an extraprovincial company as defined in the *Business Corporations Act*, by:
 - (i) sending a copy of the Enforcement Notice by ordinary mail, registered mail or courier to the address for any attorney shown in the records of the registrar of companies; or
 - (ii) leaving a copy of the Enforcement Notice with the attorney for the extraprovincial company; or
 - (d) if the Defendant is a partnership, by:
 - (i) sending a copy of the Enforcement Notice by ordinary mail, registered mail or courier to the business office of the partnership; or
 - (ii) leaving a copy of the Enforcement Notice with a partner or other executive officer of the partnership.

- 6.2 An Enforcement Notice Served under subsection 6.1 is presumed to have been Served on a Defendant at the following time:
- (a) if delivered by mail under subparagraphs 6.1(a)(i), (b)(i), (c)(i) or (d)(i), on the fifth (5th) day after the date the Enforcement Notice was mailed or sent by courier;
 - (b) if delivered personally to the Defendant under subparagraphs 6.1(a)(ii), (b)(ii), (c)(ii) or (d)(ii), on the date of delivery; and
 - (c) if delivered to a household resident under subparagraph 6.1(a)(iii), on the fifth (5th) day after the Enforcement Notice was delivered.

PART 3 – ENFORCEMENT NOTICES: FINES

7. PENALTY FOR NOTICE OF FINE

- 7.1 In a Notice of Fine, and subject to any regulations established under subsection 7.2, a MLIB Law Enforcement Officer may, in their sole discretion, determine the monetary penalty that the Defendant is liable to pay in respect of the Offence at issue, the amount of any surcharge for late payment of the penalty, and any other applicable fees in respect of the Offence.
- 7.2 Council may, by Resolution, establish regulations that prescribe the monetary penalties that a MLIB Law Enforcement Officer must impose on the Defendant in a Notice of Fine.

8. OPTIONS ON RECEIPT OF NOTICE OF FINE

- 8.1 A Defendant who is Served with a Notice of Fine must, within fourteen (14) days of the date on which the Defendant is Served with the Notice of Fine, do one of the following:
- (a) plead guilty and pay the monetary penalty set out in the Notice of Fine, in accordance with the instructions in the Notice of Fine;
 - (b) plead guilty and request a hearing, in accordance with the instructions in the Notice of Fine, to make submissions about the monetary penalty prescribed in the Notice of Fine; or
 - (c) plead not guilty and request a hearing, in accordance with the instructions in the Notice of Fine, to dispute the allegations made in the Notice of Fine.
- 8.2 If a Defendant requests a hearing under paragraphs 8.1(b) or (c), the hearing must be a Sanction Hearing in accordance with Part 4 of this Law.
- 8.3 If a Notice of Fine requires that a Defendant pay a surcharge for the late payment of a monetary penalty, and the Defendant paid the monetary penalty owed in a Notice of Fine more than fourteen (14) days after the Defendant was Served with the Notice of Fine, then the Defendant must also pay that surcharge for late payment, in addition to the monetary penalty prescribed in the Notice of Fine.

- 8.4 A Defendant may not request a hearing in respect of a Notice of Fine under paragraphs 8.1(b) or (c) more than fourteen (14) days after being Served with the Notice of Fine.
- 8.5 Payment at any time by a Defendant of the monetary penalty set out in a Notice of Fine constitutes a guilty plea to the Offence in question.

9. IF A DEFENDANT DOES NOT TAKE ACTION UNDER SECTION 8

- 9.1 If a Defendant who is Served with a Notice of Fine does not, within fourteen (14) days of being Served, take any action under subsection 8.1, the Defendant is presumed to plead guilty to the Offence in question and the applicable monetary penalty set out in the Notice of Fine, plus any prescribed late payment surcharge or any other applicable fee, is immediately due and payable by the Defendant.
- 9.2 An amount due and payable under subsection 9.1 may be recovered under sections 11, 12 and 13, 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. REVIEW AND PROSECUTION OF NOTICE OF FINE

- 10.1 A Prosecutor must consider each request for a hearing under paragraph 8.1(b) or (c) and, after reviewing the related Notice of Fine, may:
- (a) cancel the Notice of Fine if in the Prosecutor's reasonable discretion:
 - (i) the commission of the Offence did not occur as alleged, the Notice of Fine does not comply with subsection 4.4 or if any other ground for cancellation authorized by this Law or any MLIB regulation, policy or guideline is satisfied; or
 - (ii) it is not in the best interest of the MLIB to prosecute the Offence;
 - (b) vary the Notice of Fine, including by reducing the monetary penalty or extending the time for payment, if in the Prosecutor's reasonable discretion, the circumstances surrounding the alleged commission of the Offence warrant the variance and the Defendant pleads guilty to the varied Notice of Fine; or
 - (c) maintain the Notice of Fine and proceed to prosecute the commission of the Offence under Part 4 of this Law.
- 10.2 If the Prosecutor determines, under subsection 10.1, that the Notice of Fine should be cancelled or varied, the Prosecutor must immediately provide the Defendant with written notice that the Notice of Fine has been cancelled or varied.
- 10.3 If the Prosecutor determines, under subsection 10.1, that the Notice of Fine should be maintained, the Prosecutor is not required to provide written notice of the same to the Defendant, and the prosecution of the alleged commission of the Offence must continue uninterrupted, in accordance with Part 4 of this Law.

10.4 If a Notice of Fine is to be maintained and a Sanction Hearing is to be held under subsection 10.3, the Administrator must, at least fourteen (14) days before the Sanction Hearing, provide the Defendant with notice confirming or varying the date, time and location of the Sanction Hearing.

11. AMOUNTS OWING ENFORCED AS PROVINCIAL COURT JUDGMENT

11.1 Subject to subsection 9.2, the Administrator may recover a monetary penalty that is due and payable to the MLIB under a Notice of Fine by completing a certificate in the form set out in Schedule "A" to this Law (a "**Fine Recovery Certificate**"), and filing that Fine Recovery Certificate in the Provincial Court.

11.2 The Administrator may not file in the Provincial Court a Fine Recovery Certificate in respect of a monetary penalty that has been due and payable to the MLIB for more than twenty-four (24) months.

11.3 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;
- (b) the total amount owing in respect of the Notice of Fine and, separately, the amount of the monetary penalty, any surcharge for late payment and any other applicable fees;
- (c) the name of the Defendant who is required to pay the monetary penalty;
- (d) the date that the monetary penalty became due and payable; and
- (e) whether the outstanding monetary penalty is payable because of a Sanction Order issued under a Sanction Hearing in accordance with Part 4 or because the monetary penalty became due and payable under subsection 9.1.

11.4 Once filed under subsection 11.1, 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.

11.5 A Fine Recovery Certificate that has been filed under subsection 11.1 is admissible in any proceeding to recover the 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 is proof of the information contained therein.

11.6 Immediately after filing a Fine Recovery Certificate with the Provincial Court under subsection 11.1, the Administrator must deliver to the Defendant named in the Fine Recovery Certificate notice that the Fine Recovery Certificate has been filed.

11.7 Subsections 6.1 and 6.2 apply, *mutatis mutandis*, to the delivery of notice of the filed Fine Recovery Certificate under subsection 11.6.

12. SUSPENDING A FINE RECOVERY CERTIFICATE FILED WITH THE PROVINCIAL COURT

- 12.1 A Defendant named in a filed Fine Recovery Certificate may submit to the Provincial Court an application for an order suspending the filed Fine Recovery Certificate within thirty (30) days of the filed certificate being delivered to the Defendant in accordance with subsection 11.6 and 11.7.
- 12.2 On an application under subsection 12.1, a justice of the Provincial Court may issue an order suspending the filed Fine Recovery Certificate if the justice is satisfied that:
- (a) the Notice of Fine described in the certificate was not Served in accordance with subsection 6.1 and 6.2; and
 - (b) through no fault of the Defendant, the Defendant did not receive the Notice of Fine, and therefore did not know of the Notice of Fine or the outstanding monetary penalty at any time before the Fine Recovery Certificate was filed.
- 12.3 Proceedings described in subsection 11.4 may not be taken on a filed Fine Recovery Certificate while that certificate is suspended under subsection 12.2.
- 12.4 If under subsection 12.2, a justice of the Provincial Court suspends a filed Fine Recovery Certificate, the Administrator must Serve, or direct an agent of the MLIB to Serve, a new copy of the Notice of Fine to the named Defendant, in accordance with subsection 6.1.
- 12.5 If a new copy of the Notice of Fine is Served under subsection 12.4, then section 8 of this Law applies *de novo* to the Defendant.
- 12.6 If a Defendant named in the suspended Fine Recovery Certificate complies with section 8 within fourteen (14) days of being Served with the new copy of the Notice of Fine under subsection 12.4, then the Fine Recovery Certificate must be withdrawn and any surcharge for late payment that arose under subsection 9.1 is cancelled.
- 12.7 If a Defendant named in the suspended Fine Recovery Certificate has not complied with section 8 within fourteen (14) days of being Served with the new copy of the Notice of Fine under subsection 12.4, then the suspension under subsection 12.2 ends and the Fine Recovery Certificate will be enforceable and admissible under subsections 11.4 and 11.5 respectively.

13. CANCELLING A FINE RECOVERY CERTIFICATE FILED WITH THE PROVINCIAL COURT

- 13.1 A Defendant named in a filed Fine Recovery Certificate may submit to the Provincial Court an application for an order cancelling the Fine Recovery Certificate and requiring a new Sanction Hearing in respect of the Notice of Fine within thirty (30) days of the notice of the filed Fine Recovery Certificate being delivered, in accordance with subsections 11.6 and 11.7, to the Defendant.
- 13.2 On an application under subsection 13.1, a justice of the Provincial Court may issue an order cancelling the Fine Recovery Certificate and requiring that a new Sanction Hearing in respect of the Notice of Fine be scheduled if the justice is satisfied that:
- (a) the Defendant requested a hearing under paragraph 8.1(b) or (c);
 - (b) a Sanction Hearing was thereafter held but through no fault of the Defendant, the Defendant was not heard at the Sanction Hearing and Council nevertheless issued a Sanction Order in relation to the Defendant; and
 - (c) the Administrator filed the Fine Recovery Certificate in the Provincial Court to recover the amount that Council ordered due and payable by the Defendant pursuant to a Sanction Order.
- 13.3 If a justice of the Provincial Court makes an order to cancel a Fine Recovery Certificate under subsection 13.2, then:
- (a) the monetary penalty ordered by Council at the Sanction Hearing wherein the Defendant was not heard is cancelled; and
 - (b) a *de novo* Sanction Hearing aimed at resolving the dispute in relation to the Notice of Fine, as originally requested by the Defendant under paragraph 8.1(b) or (c), must be scheduled by the Administrator.

PART 4 - ENFORCEMENT NOTICES: SANCTION HEARINGS

14. RULES OF PRACTICE AND PROCEDURE

- 14.1 Following the coming into force of this Law, Council may, by Resolution, make regulations respecting the practice and procedure to be followed at a Sanction Hearing.
- 14.2 Council may, at any time, by Resolution, amend any regulations respecting the practice and procedure to be followed at a Sanction Hearing made under subsection 14.1, but such amendments must not:
- (a) apply to any Sanction Hearing which was set down under a Notice of Hearing that is dated prior to the date on which the Resolution establishing regulations under subsection 14.1 was 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 14.2, is passed.

15. SANCTION HEARING BY WAY OF RESOLUTION

15.1 Notwithstanding that a Notice of Hearing has not been Served under subsection 4.1, Council may, by Resolution, order that a Notice of Hearing be Served on a Person, thereby making that Person a Defendant under this Law, in order to determine whether:

- (a) the Defendant is guilty of an Offence; and
- (b) whether a Sanction Order should be issued in respect of the Defendant.

15.2 If a Resolution is passed requiring the Service of a Notice of Hearing under subsection 15.1, then the requirements of subsections 4.3, 5.1, 5.2, 6.1 and 6.2 apply to the Notice of Hearing.

15.3 Council must not pass a Resolution under subsection 15.1 requiring the Service of a Notice of Hearing unless it is reasonably satisfied that:

- (a) the Person's presence on MLIB Land could pose a threat to:
 - (i) the health, safety or wellbeing of any Person residing on MLIB Land or using a Community Facility;
 - (ii) the protection, conservation and management of MLIB Land; or
 - (iii) MLIB Values; and
- (b) the issuance of a Sanction Order is likely to reduce the threat posed under paragraph 15.3(a).

16. REVIEW OF NOTICE OF HEARING BY PROSECUTOR

16.1 Within fourteen (14) days of a Notice of Hearing being Served on a Defendant under subsection 4.1 or 15.1, a Prosecutor must review the Notice of Hearing for the purpose of determining whether, in the Prosecutor's reasonable discretion, the Notice of Hearing should be:

- (a) cancelled; or
- (b) maintained, such that the prosecution of the Offence at issue proceeds under Part 4 of this Law.

16.2 In making a determination under subsection 16.1, 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 4.3;
- (c) whether any other ground for withdrawing the Notice of Hearing exists under this Law, or under any MLIB regulation, policy or guideline; or
- (d) whether it is in the best interest of the MLIB to prosecute the Offence.

- 16.3 If the Prosecutor determines, under subsection 16.1, that the Notice of Hearing should be cancelled, the Prosecutor must immediately provide the Defendant with written notice that the Notice of Hearing has been cancelled.
- 16.4 If the Prosecutor determines, under subsection 16.1, that the Notice of Hearing should be maintained, the Prosecutor is not required to provide written notice of the confirmation to the Defendant, and the prosecution of the alleged commission of the Offence must continue uninterrupted, in accordance with this Part 4.
- 16.5 If a Notice of Hearing is to be maintained under subsection 16.4, the Administrator must, at least fourteen (14) days before the Sanction Hearing, provide the Defendant with notice confirming or varying the date, time and location of the Sanction Hearing originally set out under paragraph 4.3(c).

17. SANCTION HEARING

- 17.1 If a Notice of Hearing is Served under subsection 4.1 or 15.1 and the Prosecutor determines the Notice of Hearing will be maintained under subsection 16.1, or if a Defendant requests a hearing under paragraph 8.1(b) or (c) and the Prosecutor determines that the Notice of Fine will be maintained under paragraph 10.1(c) a hearing must be held at a duly convened meeting of Council (a **“Sanction Hearing”**) at which the only order of business must be to determine:
 - (a) whether the Defendant is guilty of an Offence; and
 - (b) if the Defendant is found guilty, whether a Sanction Order will be issued and the nature of the penalties associated with that Sanction Order.
- 17.2 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 Served under subsection 4.1 or 15.1.
- 17.3 The Defendant must be provided with the opportunity to be heard at the Sanction Hearing, and Council must take into consideration any submissions of the Defendant when making its determination under paragraphs 17.8(a) and (b).
- 17.4 Despite subsection 17.3, if a Defendant does not attend the Sanction Hearing, Council may by Resolution:
 - (a) reschedule the hearing, in which case subsection 4.3 applies to the Resolution made under this subsection; or
 - (b) hold the hearing in the absence of the Defendant.
- 17.5 A Defendant may be represented by an agent or legal counsel at the Sanction Hearing.

- 17.6 A Defendant may present evidence and call witnesses at the Sanction Hearing, and all such evidence must be given under oath or affirmation.
- 17.7 The Prosecutor may present evidence and call witnesses at the Sanction Hearing and all evidence must be given under oath or affirmation.
- 17.8 At the conclusion of the Sanction Hearing, Council must:
- (a) except where the Defendant pled guilty, determine whether or not the Defendant is guilty of committing the Offence in question and may therefore be convicted of said offence;
 - (b) if the Defendant is convicted under paragraph 17.8(a) or if the Defendant pled guilty, determine whether a Sanction Order will be issued and, if so, which penalties as set out in subsection 18.2, if any, will attach to the Sanction Order;
 - (c) prepare written reasons for its decision, which must include:
 - (i) the determination of Council under paragraph 17.8(b); and
 - (ii) the penalties or sentence prescribed by Council, if any, under paragraph 17.8(b); and
 - (d) provide a copy of the reasons prepared under paragraph 17.8(b) to the Defendant within ninety (90) days of the date of the Sanction Hearing.
- 17.9 If, under paragraph 17.8(b), Council determines that a Sanction Order will be issued in respect of a Defendant, Council must issue of the Sanction Order under section 18.
- 17.10 Subject to this Law and any regulations established under subsection 14.1, Council has the power to control its processes at Sanction Hearings.

18. ISSUANCE OF SANCTION ORDER

- 18.1 If Council has, under paragraph 17.8(b), determined that a Sanction Order will be issued against a Defendant it must issue the Sanction Order by way of Resolution.
- 18.2 In issuing a Sanction Order under subsection 18.1, Council may prescribe one or more of the following penalties:
- (a) a fine of up to five thousand dollars (\$5,000);
 - (b) a term of imprisonment not exceeding six (6) months;
 - (c) restitution;
 - (d) community service;
 - (e) Banishment; and
 - (f) any other means or combination thereof for restoring justice or achieving compliance, and any terms and conditions related thereto, as Council deems fit.

18.3 Notwithstanding subsection 18.2, in instances where the Sanction Order issued under subsection 18.1 is the result of a Sanction Hearing that was held at the request of a Defendant under paragraphs 8.1(b) or (c), then:

- (a) the penalty prescribed by Council is limited to a fine under paragraph 18.2(a); and
- (b) the amount of the fine cannot exceed the monetary penalty set out in the Notice of Fine, plus any surcharges for late payment or any other applicable fees.

18.4 Council must include the following information in a Sanction Order issued under subsection 18.1:

- (a) the Defendant's name;
- (b) the Offence the Defendant is convicted of;
- (c) the date upon which the Defendant is convicted;
- (d) the date upon which the Sanction Order is issued;
- (e) the penalties set out in subsection 18.2 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.

19. PROVISION OF SANCTION ORDER

19.1 If Council issues a Sanction Order under subsection 18.1, the Administrator must, within fourteen (14) days from the date the Sanction Order was issued:

- (a) provide a copy of the Sanction Order, along with notification that such order will be registered in Provincial Court under subsection 36.1, to:
 - (i) the Defendant; and
 - (ii) the local RCMP detachment; and
- (b) file a copy of the Sanction Order in the Provincial Court.

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

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

20.1 If Council has issued a Sanction Order under subsection 18.1 in which one of the prescribed penalties is Banishment, then in addition to the requirements of Part 4, the provisions of this Part 5 apply to the issuance and provision of the Sanction Order.

21. ISSUANCE OF A SANCTION ORDER WHICH INCLUDES BANISHMENT

- 21.1 If Council issues a Sanction Order under subsection 18.1 in which Banishment is prescribed, Council 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.
- 21.2 If Council issues a Sanction Order under subsection 18.1 in which Banishment is prescribed, then in addition to the requirements of subsection 18.4, the Sanction Order issued by Council must:
- (a) contain a description or photograph of the Defendant, or both;
 - (b) contain a map of MLIB Land clearly showing the areas which the Defendant is prohibited from accessing, including any areas proscribed under subsection 21.1 (collectively the “**Prohibited Areas**”);
 - (c) contain any terms or conditions imposed under subsection 21.1; and
 - (d) in cases where the Defendant has a right or Interest in MLIB Land within the Prohibited Areas:
 - (i) provide for the Defendant to have access to the land associated with their right or Interest;
 - (ii) include a map that clearly shows the means by which the Defendant is permitted to access that land; and
 - (iii) specify that the Defendant may access that land only in accordance with subparagraphs 21.2(d)(i) and (ii).

22. PROVISION OF A SANCTION ORDER WHICH INCLUDES BANISHMENT

- 22.1 If Council issues a Sanction Order under subsection 18.1 in which Banishment is prescribed, then in addition to the requirements set out at section 19.1, the Administrator must, within fourteen (14) 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 MLIB Land;
 - (b) each employer of the Defendant that is not located on MLIB Land 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.

23. ADDITIONAL EFFECT OF BANISHMENT

- 23.1 Despite any conditions imposed by Council in accordance with this Law, if a Defendant is a Member and is subject to a Sanction Order in which Banishment is prescribed, then that Defendant may attend a Community Facility for the purpose of participating in a MLIB 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, and then only in accordance with those terms.

24. DEFENDANT SUBJECT TO BANISHMENT MAY NOT ACQUIRE AN INTEREST IN MLIB LAND

- 24.1 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 MLIB Land that are within the Prohibited Areas.
- 24.2 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 MLIB Land that are within the Prohibited Areas, but only by testamentary disposition.
- 24.3 If a Defendant who is subject to a Sanction Order in which Banishment is prescribed acquires a right or Interest under subsection 24.2, 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 MLIB land office, the First Nations Land Registry System, or similar registry.
- 24.4 A Defendant who is subject to a Sanction Order in which Banishment is prescribed and who does not comply with the requirements in subsection 25.3 is guilty of an Offence and is subject to the penalties established by this Law.
- 24.5 Upon receipt of notification from the Defendant under subsection 24.3, the Administrator must:
- (a) modify the Sanction Order to allow the Defendant to access to the lands that are the subject of the right or Interest;
 - (b) provide a copy of the modified Sanction Order to:
 - (i) the Defendant;
 - (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) file a copy of the modified Sanction Order with the Provincial Court.

25. APPLICATION FOR AND ISSUANCE OF BANISHMENT SUSPENSION ORDER

- 25.1 A Defendant who is subject to a Sanction Order in which Banishment is prescribed may apply to Council to have the portion of that Sanction Order as it relates to Banishment suspended (a “**Banishment Suspension Order**”).
- 25.2 An application made by the Defendant under subsection 25.1 must be in the form established by the Administrator.
- 25.3 Within fourteen (14) days of receiving an application made under subsection 25.1, Council must:
- (a) consider the application at a duly convened meeting of Council; and
 - (b) either:
 - (i) approve the application and issue a Banishment Suspension Order; or
 - (ii) reject the application.
- 25.4 A Council meeting held under paragraph 25.3(a) must be held *in camera*.
- 25.5 A decision made under paragraph 25.3(b) must be based on the written application and submissions of the Defendant, including any evidence submitted.
- 25.6 The Prosecutor may provide written submissions and evidence for the consideration of Council in making its decision under subsection 25.3(b).
- 25.7 A Banishment Suspension Order issued under subparagraph 25.3(b)(i) must:
- (a) not be issued unless there are, in the opinion of Council, compelling, compassionate or humanitarian grounds to do so;
 - (b) not be issued if, in the opinion of Council, doing so would pose a significant threat, which cannot be satisfactorily mitigated by the imposition of specific terms or conditions under paragraph 25.7(f), to the following:
 - (i) the health, safety or wellbeing of any Person residing on MLIB Land or using a Community Facility;
 - (ii) the protection, conservation and management of MLIB Land; or
 - (iii) MLIB Values; and
 - (c) not, except in exceptional circumstances as determined by Council, be effective for more than fourteen (14) days.
- 25.8 Council must include the following information in a Banishment Suspension Order issued under subparagraph 25.3(b)(i):
- (a) the Defendant’s name;

- (b) the date upon which the Sanction Order prescribing Banishment was issued;
- (c) the date upon which the Banishment Suspension Order is issued;
- (d) which provisions of the Sanction Order relating to Banishment are suspended;
- (e) the date on which the Banishment Suspension Order becomes effective;
- (f) the date on which the Banishment Suspension Order expires; and
- (g) any other terms and conditions as Council deems just and appropriate.

25.9 In making its decision under paragraph 25.3(b), Council must:

- (a) prepare written reasons for its decision; and
- (b) provide a copy of these reasons to the Defendant within fourteen (14) days of Council's decision under paragraph 25.3(b).

26. PROVISION OF A BANISHMENT SUSPENSION ORDER

26.1 If Council issues a Banishment Suspension Order under subparagraph 25.3(b)(i), the Administrator must, within seven (7) days of the date the Banishment Suspension Order was issued:

- (a) provide a copy of the Banishment Suspension Order to:
 - (i) the Defendant;
 - (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
- (b) file a copy of the Banishment Suspension Order with the Provincial Court.

27. BANISHMENT RESCISSION HEARING

27.1 A Defendant who is subject to a Sanction Order in which Banishment is prescribed may apply to have the Banishment portion of that Sanction Order rescinded.

27.2 An application under subsection 27.1 for the rescission of the Banishment portion of a Sanction Order:

- (a) must be 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 27.1 was made by the Defendant.

27.3 Council must, within sixty (60) days of receiving an application under subsection 27.1, hold a hearing (a "**Banishment Rescission Hearing**") at a duly convened meeting of Council at which the only order of business is to consider the said application and determine whether a banishment rescission order (a "**Banishment Rescission Order**") will be issued.

- 27.4 The Administrator must, at least thirty (30) days before the Banishment Rescission Hearing, provide the Defendant with written notice of the Banishment Rescission Hearing, which notice must include the date, time and location of the Banishment Rescission Hearing.
- 27.5 At a Banishment Rescission Hearing held under subsection 27.3, subsections 17.2 to 17.10 apply, *mutatis mutandis*.

28. ISSUANCE OF BANISHMENT RESCISSION ORDER

- 28.1 If, after conducting a Banishment Rescission Hearing, Council determines that the prescribed penalty of Banishment should be rescinded, Council may, issue a Banishment Rescission Order.
- 28.2 Council must include the following information in a Banishment Rescission Order issued under subsection 28.1:
- (a) the Defendant's name;
 - (b) the date upon which the Banishment Rescission Order is issued;
 - (c) the date upon which the Sanction Order prescribing Banishment was issued;
 - (d) which provisions of the Sanction Order relating to Banishment are rescinded;
 - (e) the date upon which the Banishment Rescission Order becomes effective; and
 - (f) any other terms and conditions as Council deems just and appropriate.

29. DEFENDANT MUST NO LONGER REPRESENT THREAT

- 29.1 Council must not issue a Banishment Rescission Order under subsection 28.1 unless it is reasonably 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 MLIB Land or using a Community Facility;
 - (b) the protection, conservation and management of MLIB Land; or
 - (c) MLIB Values.

30. PREPARATION AND PROVISION OF RESCISSION ORDER

- 30.1 If Council issues a Banishment Rescission Order under subsection 28.1, the Administrator must, within fourteen (14) days from the date the Banishment Rescission Order was issued:
- (a) provide a copy of the Banishment Rescission Order to:
 - (i) the Defendant;
 - (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

- (b) file a copy of the Banishment Rescission Order with the Provincial Court.

31. EFFECT OF BANISHMENT RESCISSION ORDER

- 31.1 As of the effective date of the Banishment Rescission Order, and in accordance with 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.

32. RULES OF PRACTICE AND PROCEDURE FOR BANISHMENT RESCISSION HEARINGS

- 32.1 Following the coming into force of this Law, Council may, by Resolution, make regulations respecting the practice and procedure to be followed at a Banishment Rescission Hearing.
- 32.2 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 32.1, but such amendments must not:
 - (a) apply to a Banishment Rescission Hearing in which an application under subsection 27.1 was made before the date on which the Resolution establishing regulations under subsection 32.1 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 32.2, is passed.

PART 6 – COMPLIANCE, ENFORCEMENT AND APPEAL OF ORDERS

33. CONSEQUENCE OF NON-COMPLIANCE WITH ORDERS

- 33.1 A Defendant who breaches any requirement, term or condition of a Sanction Order made under this Law and provided under subparagraph 19.1(a)(i) commits an Offence and may be subject to prosecution, conviction and penalization in accordance with this Law.
- 33.2 A Person who employs a Defendant in contravention of a Sanction Order made under this Law and provided under subparagraph 22.1(a) commits an Offence and may be subject to prosecution, conviction and penalization in accordance with this Law.
- 33.3 A Person who knowingly allows a Defendant to remain on their property, in contravention of a Sanction Order made under this Law, commits an Offence and may be subject to prosecution, conviction and penalization in accordance with this Law.

34. DUTY TO REPORT

- 34.1 A Person who has reasonable grounds to believe that a Defendant has breached any requirement, term or condition of a Sanction Order or a Banishment Suspension Order must immediately report these grounds to a MLIB Law Enforcement Officer.

34.2 A Person who knowingly avoids compliance with subsection 34.1 commits an Offence and is subject to prosecution, conviction and penalization in accordance with this Law.

35. POWERS OF REMOVAL AND ARREST

35.1 If a Defendant is in breach of any requirement, term or condition of a Sanction Order or a Banishment Suspension Order made under this Law and provided to the Defendant under subparagraph 19.1(a)(i) or subparagraph 26.1(a)(i), a MLIB Law Enforcement Officer may Remove the Defendant from the area proscribed in the said order.

35.2 In order to carry out their duties under subsection 35.1, a MLIB Law Enforcement Officer has jurisdiction throughout MLIB Land 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 any enactment of Canada or British Columbia.

36. ENFORCEMENT OF ORDERS

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

36.2 An order filed under subsection 36.1 has the same force and effect, and proceedings may be taken on it, as if it were a judgement of the Provincial Court.

37. APPEALS

37.1 A Defendant may appeal an order made by Council under this Law by way of, and in accordance with, the *McLeod Lake Indian Band Dispute Adjudication Law*, but such an appeal 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 new and relevant evidence that was not 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.

38. ORDER OF COUNCIL NOT REVIEWABLE

38.1 Except under subsection 37.1, an order made by Council in accordance with this Law is final and binding, and is not open to review by any court.

PART 7 – PROSECUTION

39. APPOINTMENT OF PROSECUTOR, POWERS AND DUTIES

- 39.1 Council must, by Resolution, appoint one or more Prosecutors for the purpose of prosecuting, as applicable, the commission of Offences under any MLIB law, including this Law.
- 39.2 The Prosecutor's powers include all things necessary to fulfill the duties and responsibilities set out in this Law, including for greater certainty, discretion to determine whether the alleged commission of an Offence will be prosecuted in accordance with this Law or under Part XXVII of the *Criminal Code*.
- 39.3 Council may, at any time, by Resolution, rescind the appointment of any Prosecutor, and appoint a replacement as needed.

40. PROSECUTION AND CONVICTION

- 40.1 Proceedings under this Law must be commenced by Service of an Enforcement Notice under subsection 4.1 or by Resolution under subsection 15.1.
- 40.2 Any proceedings initiated by Service of a Notice of Fine may be prosecuted in accordance with Part 3 of this Law, and where such Notice of Fine is disputed or challenged by a Defendant, in accordance with Part 4 of this Law.
- 40.3 Any proceedings initiated by the Service of a Notice of Hearing under subsection 4.1 or by Resolution under subsection 15.1 may be prosecuted in accordance with Part 4 and Part 5 of this Law, as applicable.
- 40.4 Any prosecution carried out under this Law constitutes a prosecution carried out under a summary conviction process for the purposes of section 22(1) of the *First Nations Land Management Act*, and any conviction resulting from such a summary conviction process constitutes a summary conviction for the purposes of section 22(1) of the *First Nations Land Management Act*.
- 40.5 Where an Enforcement Notice has been Served on a Defendant under subsection 4.1 with respect to an alleged commission of an Offence, or where a proceeding in respect of an alleged commission of an Offence is initiated by Resolution under subsection 15.1, in the alternative to prosecuting the Offence under this Law, the Prosecutor may elect to have the Offence prosecuted under the summary conviction process set out at Part XXVII of the *Criminal Code*, as authorized by section 22(2) of the *First Nations Land Management Act*.

- 40.6 If the Prosecutor elects, under subsection 40.5, to have the alleged commission of the Offence prosecuted under Part XXVII of the *Criminal Code*, the Prosecutor may:
- (a) continue to act as the Prosecutor for the purpose of the Part XXVII *Criminal Code* proceedings, subject to the requirements of the *Criminal Code*; or
 - (b) provide a report to the federal or provincial crown prosecution services and request that the prosecution under Part XXVII of the *Criminal Code* be taken over by such crown prosecution services.
- 40.7 If a Prosecutor makes a request under paragraph 40.6(b), the applicable crown prosecution services must, within fifteen (15) days of the Prosecutor's request:
- (a) make a determination regarding whether or not it will take over the prosecution; and
 - (b) provide the Prosecutor with written notice, including reasons, of such determination.
- 40.8 Nothing under this Law precludes the MLIB from pursuing any other enforcement action available to the MLIB at law or under any other enactment.

PART 8 – GENERAL

41. COUNCIL'S DUTY TO MAKE APPOINTMENTS

- 41.1 Council must, by Resolution, appoint one or more Administrators for the purpose of administering matters set out under this Law, including, without limitation, the issuance of notices, the filing of certificates and orders, the maintenance of records and regulations and the preparation of orders.
- 41.2 Council must, by Resolution, appoint one or more MLIB Law Enforcement Officers for the purpose of administering and enforcing the provisions of MLIB laws.

42. STRICT LIABILITY OFFENCES

- 42.1 Unless otherwise expressly indicated, the Offences under this Law are strict liability offences.

43. PROVISION OF DOCUMENTS – GENERAL

- 43.1 Unless otherwise indicated, any document that is required or allowed to be provided or delivered to a Person, the MLIB, an RCMP detachment or a Community Facility under this Law must be provided in any of the following ways:
- (a) a document to an individual may be provided 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 MLIB 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) a document to a corporation, business, or society may be provided 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 or business; or
 - (iii) sending a copy of the document by email to the email address provided by the corporation, business or society;
- (c) a document to a partnership may be provided 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) A document to the MLIB may be provided by:
- (i) sending a copy of the document by ordinary mail, registered mail, or courier to the mailing address of the MLIB or to the administrative office of the MLIB;
 - (ii) leaving a copy of the document with an elected official or administrative officer of the MLIB; or
 - (iii) sending a copy of the document by email to the email address provided by the MLIB; and
- (e) a document to a RCMP detachment, Community Facility or an association may be provided by:
- (i) sending a copy of the document by ordinary mail, registered mail or courier to the mailing address of the RCMP detachment, Community Facility, or association;
 - (ii) leaving a copy of the document with an individual who works in the RCMP detachment, Community Facility, or association; or
 - (iii) leaving the document in a mailbox or mail slot at a business address provided by the RCMP detachment, Community Facility or association.

44. PENALTIES AND SENTENCES

- 44.1 For the purposes of section 22(1) of the *First Nations Land Management Act*, a penalty imposed under this Law is a penalty imposed for a summary conviction.

- 44.2 Each day that a Defendant is in breach of a requirement, term or condition of a Sanction Order will be presumed a separate Offence for which the penalties and sentences authorized in subsection 18.2 may be imposed.
- 44.3 Each calendar day an Offence continues will be deemed a separate Offence for the purpose of this Law.

45. REGULATIONS, FEES AND FORMS

- 45.1 Council may, by Resolution, and in accordance with this Law, establish regulations associated with this Law, and must thereafter:
- (a) post notice of same in a public area of the MLIB administration building; and
 - (b) make a copy of same available for viewing free of charge at the administrative offices of the MLIB, and available for distribution at a nominal charge to any Person upon request.
- 45.2 Council may, by Resolution, establish, correct, revise or update the terms of any applicable fee schedules, notices, forms, protocols or other related documentation which is contemplated in or which compliments and supports this Law and must:
- (a) post notice of same in a public area of the MLIB administration building; and
 - (b) make a copy of same available for viewing free of charge at the administrative offices of the MLIB, and available for distribution at a nominal charge to any Person upon request.
- 45.3 A copy of all regulations established under this Law, and any amendments made to those regulations, must be maintained by the Administrator and made available for viewing free of charge, or for distribution at a nominal charge, to any Person upon request.

46. COMPLIANCE WITH LAWS

- 46.1 Where any federal act or regulation, provincial act or regulation or any other MLIB law or regulation applies to any matter covered by this Law, compliance with this Law must not relieve a Person from also complying with the provisions of the other applicable act, regulation or law.

47. IMMUNITY

- 47.1 No action for damages lies or may be instituted against present or past Council, MLIB Law Enforcement Officers, Administrator, Prosecutor, or employees, servants, contractors or agents of either the MLIB or Council (each 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.

47.2 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 MLIB 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 MLIB law.

47.3 Subsections 47.1 and 47.2 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.

47.4 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 MLIB 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 Council in a particular case, but not afterwards.

47.5 A party commencing an action against an Immune Person must provide the MLIB 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.

47.6 If the party commencing an action against an Immune Person fails to provide the MLIB and the Immune Person with notice as required under subsection 47.5, the action must be struck and the Immune Person is not liable for any damages whatsoever.

SCHEDULE "A" - FORM OF FINE RECOVERY CERTIFICATE

Registry File Number:
Registry Location:

BETWEEN:

McLeod Lake Indian Band

Creditor

AND

[Name of Debtor]

Debtor

FINE RECOVERY CERTIFICATE

(Subsection 11.1 of the *McLeod Lake Indian Band Enforcement and Prosecution Law*)

I, _____ [name of Administrator or delegate], having been designated to file certificates under subsection 11.1 of the *McLeod Lake Indian Band Enforcement and Prosecution Law*, hereby certify that:

1. _____ [Name of debtor] (the "**Debtor**"), having an address at _____ [City, Town, Municipality], [Province], [postal code] and with a phone number of _____ [debtor's phone number] has incurred a debt arising from [select one] an order of Council [or] a default to the McLeod Lake Indian Band, which is due and payable to the McLeod Lake Indian Band in accordance with the *McLeod Lake Indian Band Enforcement and Prosecution Law*. As a result of the debt, the Debtor is required to pay the amounts listed below.
2. The Debtor has failed to pay all or part of a monetary penalty owing to the McLeod Lake Indian Band, as of the date of this certificate. The amount in row 9 was due and payable on the date indicated in row 4 or 5, as applicable, for the reasons provided in the Enforcement Notice (as defined in the *McLeod Lake Indian Band Enforcement and Prosecution Law*), as set out in rows 1, 2 and 3.

FINE RECOVERY CERTIFICATE (continued)
 (Subsection 11.1 of the *McLeod Lake Indian Band Enforcement and Prosecution Law*)

Details of Enforcement Notice	1.	MLIB law contravention (and section)	
	2.	Date of Offence	
	3.	Location of Offence	
Date the debt was due and payable (dd/mm/yyyy)	4.	Date the penalty in the Sanction Order was payable under ss. 18.4(a) (if applicable)	
	5.	Date of default under subsection 9.1 (if applicable)	
Amount of debt owing (\$)	6.	Monetary penalty due	
	7.	Late surcharges	
	8.	Administrative or Other Fees	
	9.	Total amount due	

The attached copy of Enforcement Notice # _____ [insert number] forms part of this Certificate; the Certificate is not complete unless a copy of the Enforcement Notice is attached.

Signed at _____, British Columbia, on _____ (dd/mm/yyyy).

Signature

Title

Address

BE IT KNOWN that this Law, entitled the *McLeod Lake Indian Band Enforcement and Prosecution Law*, MLIB-2020-2, was/is hereby:

Read a first time by the Council of McLeod Lake Indian Band at a duly convened meeting held on the 25th day of September, 2020;

Mailed to all Members aged 18 years and older on September 14, 2020;

Posted in Band administration offices and other public places on Band land on or before October 2, 2020;

Deposited with the Chair of the Land Management Committee on October 2, 2020;

Read a second time by the Council of McLeod Lake Indian Band at a duly convened meeting open to all Members held on the 23rd day of October 2020; and

Signed by the following Members of Council who were present at the duly convened meeting, wherein this *McLeod Lake Indian Band Enforcement and Prosecution Law*, MLIB-2020-2, was enacted in accordance with subsection 7.5 of the Land Code:

(Chief)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

(Councillor)