

Land Code Enforcement

Model Ticketing and Enforcement Law

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INTRODUCTION AND PRESENTATION OVERVIEW

- Overview of Substantive Content of Model Ticketing & Enforcement Law
- Visual Overview of Model Law
- Questions and Comments





Model Ticketing and Enforcement Law

OVERVIEW OF DRAFT MODEL LAW

MODEL LAW IS PROCEDURAL

Offence will be set out in substantive Nation law (ex: trespass law, nuisance law, environmental management law)



Every offence under a Nation law plugs into (and is enforced under) the Model Ticketing & Enforcement Law



TWO STREAMS UNDER MODEL LAW



Provincial court system stream,
if available tie-in



Internal stream, if no
court tie-in



MODEL LAW APPROACH SIMILAR TO APPROACH ALREADY AVAILABLE TO OTHER GOVERNMENTS

In Provinces	In Model Law
Deals with summary offences	Deals with summary offences
Expedited ticketing scheme	Expedited ticketing scheme that can tie-in with provincial scheme (already happening in some cases), or can happen internally through JP
Procedure available for long form prosecution in provincial court	Tie-in to long form prosecutions in provincial court (already happening)
Possible appeal to superior courts	If First Nation appointed a JP, appeal to provincial courts If no JP, start at provincial courts, possible appeal to superior courts
	

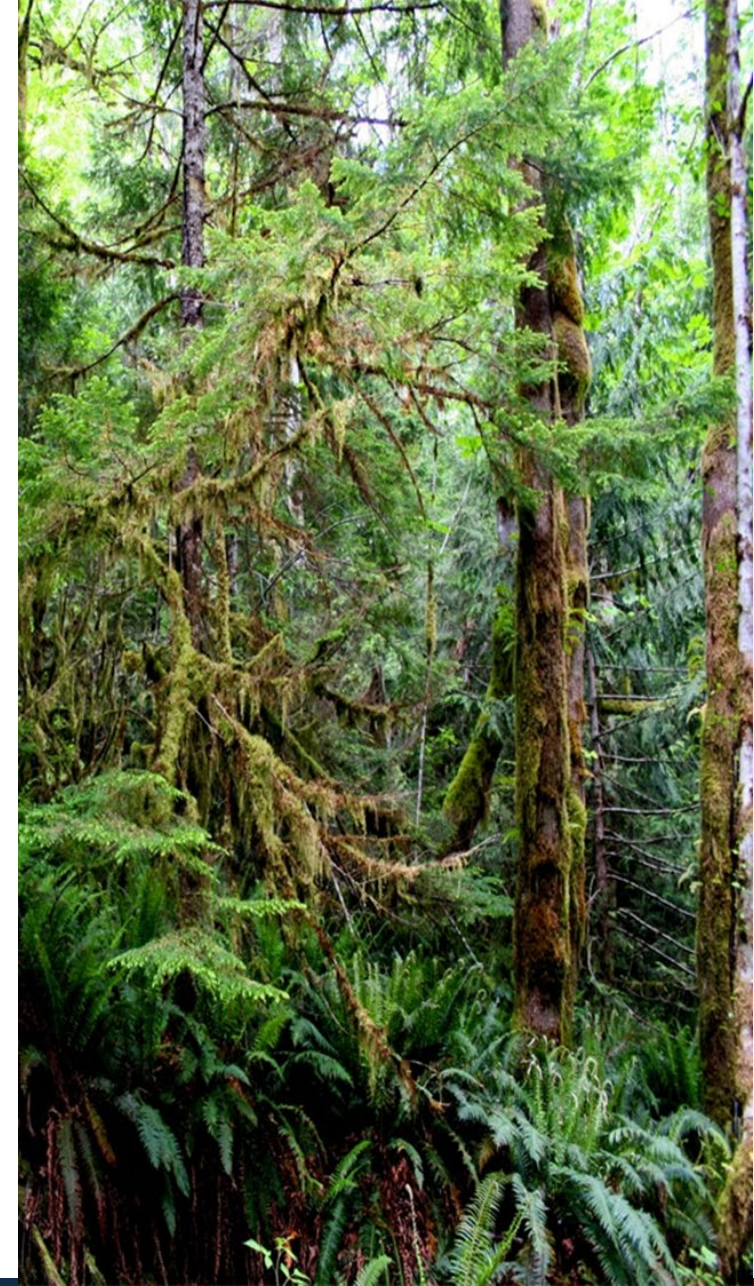


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METHODS OF ENFORCEMENT

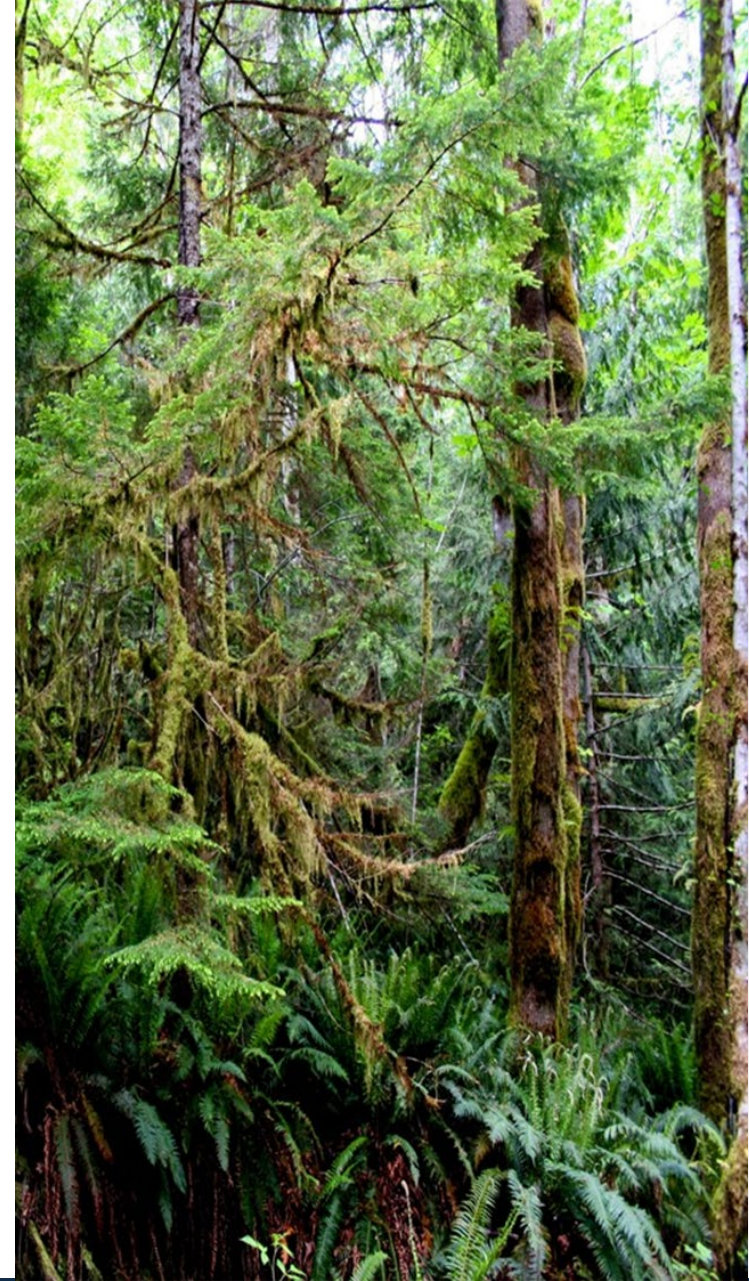
SUMMARY CONVICTION OFFENCES

- Offence is set out in substantive Nation law
 - E.g.: trespass offence in a Nation Trespass Law
- Model Law creates default of strict liability offence
- Time limitation on enforcing offence under Model Law:
 - Within 12 months of subject matter related to offence proceedings arising



FOUR WAYS TO ENFORCE

- Model Law provides 4 ways to achieve compliance with a Nation law
- Where reasonable and probable grounds that offence under a Nation law was committed, one of 4 things can happen:
 1. Warning
 2. Compliance Notice
 3. Tickets
 4. Seek to commence long form prosecution (trial)





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APPOINTMENTS

JUSTICE OF THE PEACE APPOINTMENT

Appointment by Council Resolution



Qualifications & Independence

- Should have some experience relevant to role of JP
- Must be independent (likely not a member of Council or First Nation employee)
- Appointed for initial 3-year term and can be re-appointed

JUSTICE OF THE PEACE



Duties include:

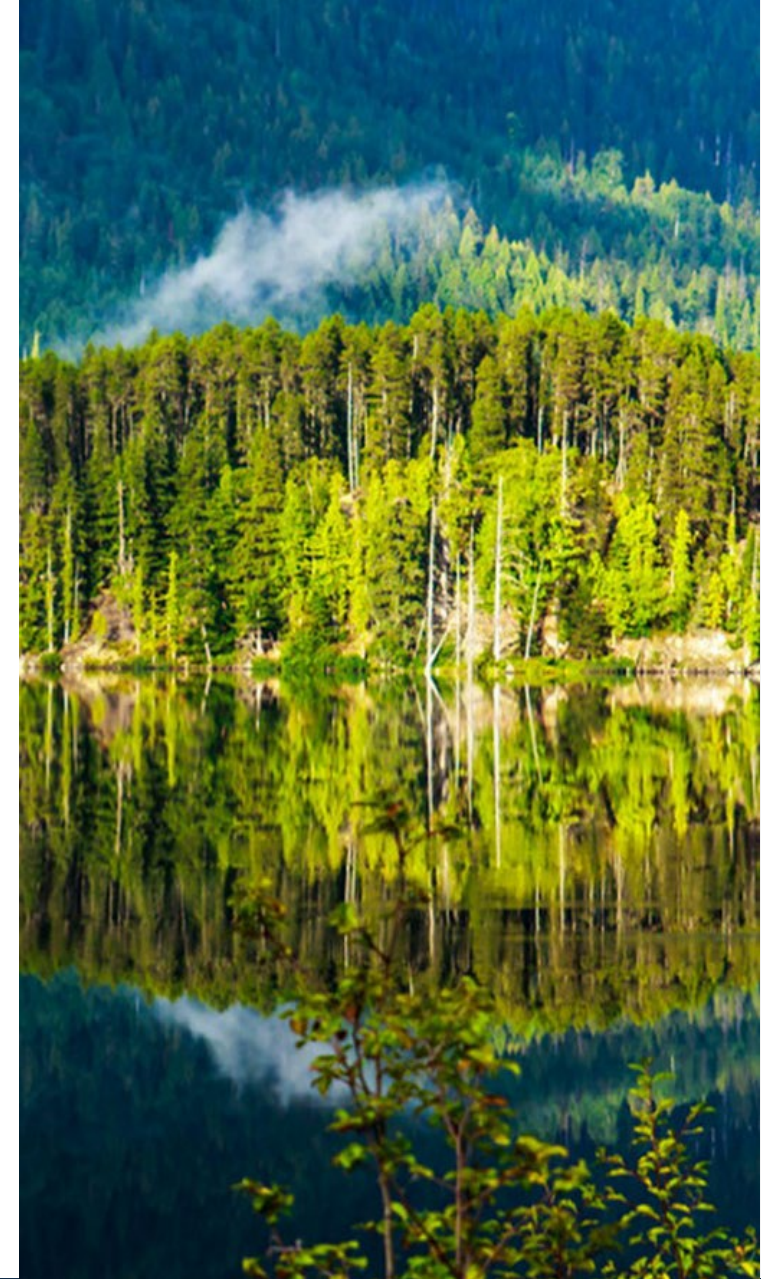
- Holding hearings to review Tickets that are disputed
- Confirming conviction where person has ignored Ticket
- Reviewing requests for time extensions related to Tickets



Must maintain judicial independence



Can only be removed by Council if misconduct or gross negligence



ENFORCEMENT OFFICERS

Can be police or other peace officer

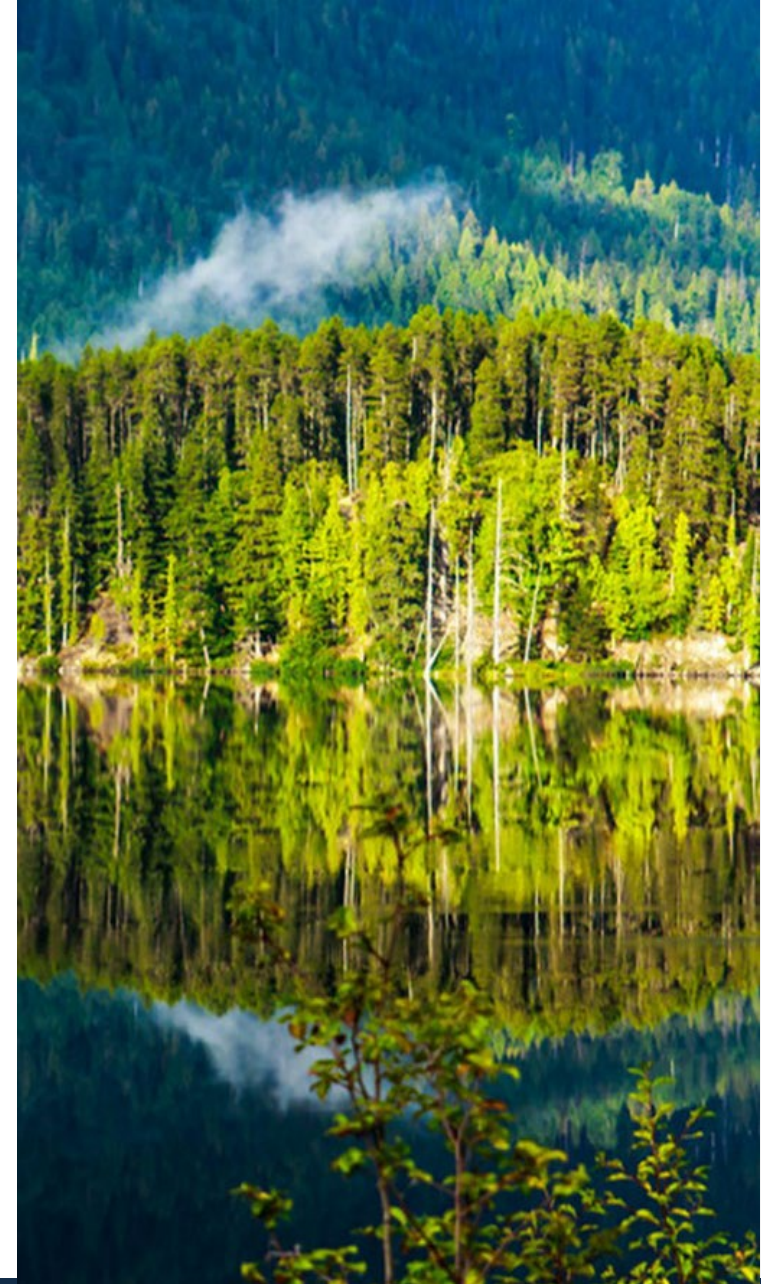


Can be Nation Enforcement Officers



ENFORCEMENT OFFICERS

- Should have some experience relevant to role
- Council can limit the scope of their authority
- Officers will issue Tickets, Warnings, Compliance Notices
- Have power to do other things, but subject to other legal requirements
 - Investigate and gather evidence
 - Inspect property and lands
 - Other powers under FA



PROSECUTOR APPOINTMENT

Can be any qualified person

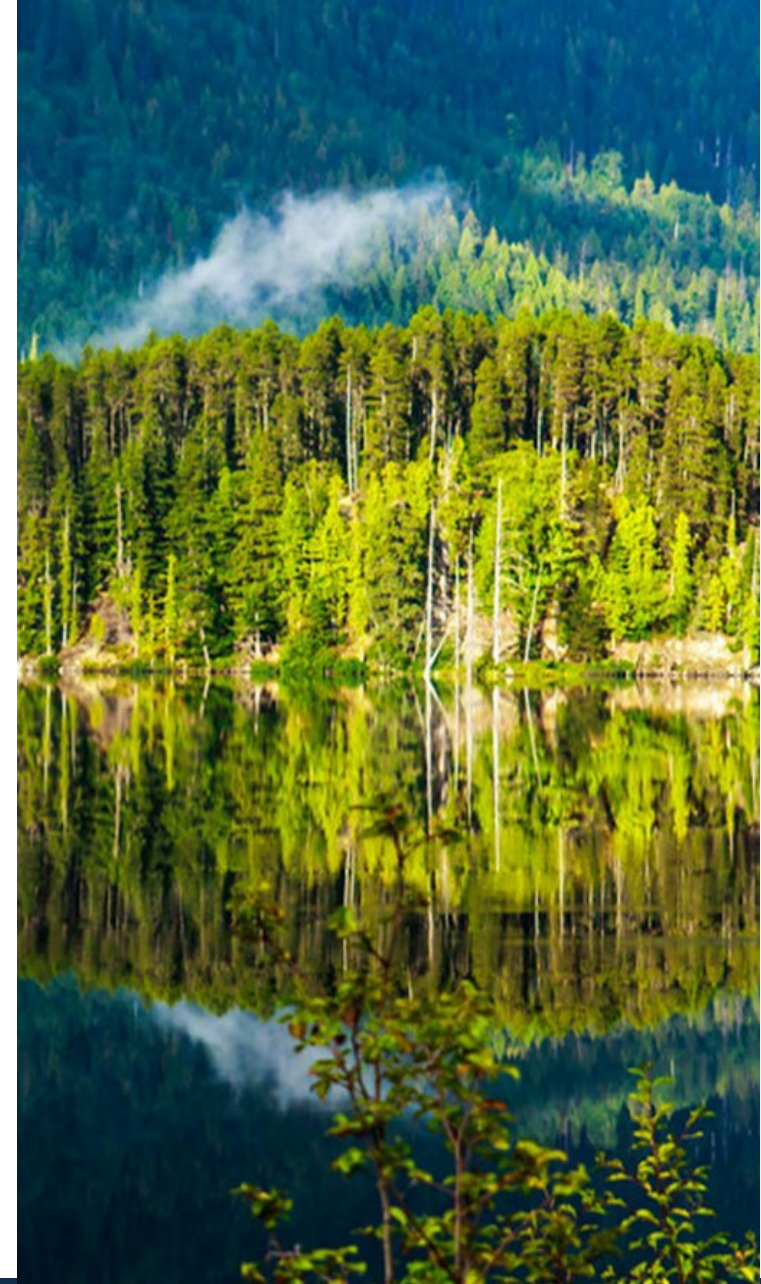


Can be Nation Enforcement Officer
in some cases



PROSECUTOR

- Appointed by Council Resolution
- Must have training or experience relative to the role
- Must maintain prosecutorial independence
- Where a person disputes a Ticket, the Enforcement Officer who issued the Ticket can act as the prosecutor in the hearing, without being appointed by Council Resolution





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WARNINGS AND COMPLIANCE NOTICES

WARNING

- Issued by Enforcement Officer
- Must be reasonable and probable grounds to believe an offence under Nation law was committed to issue a Warning
- No penal consequence attached, but can result in escalated compliance methods for future offences
- Standard form is required for Warnings



COMPLIANCE NOTICES

- Issued by Enforcement Officer
- Must be reasonable and probable grounds to believe an offence under Nation law was committed to issue a Compliance Notice
- Includes conditions that must be followed, to bring the person into compliance with Nation law
- No penal consequence attach, but can result in escalated compliance methods for future offences
- Standard form is required for Compliance Notices





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TICKETS

TICKET

- Issued by Enforcement Officer
- Must be reasonable and probable grounds to believe an offence under Nation law was committed to issue a Ticket
- Issuing a Ticket constitutes the laying of an Information
- Standard form is required for Ticket
- If using provincial summary conviction legislation, recommend revising Model Law to ensure it reflects requirements of the applicable legislation

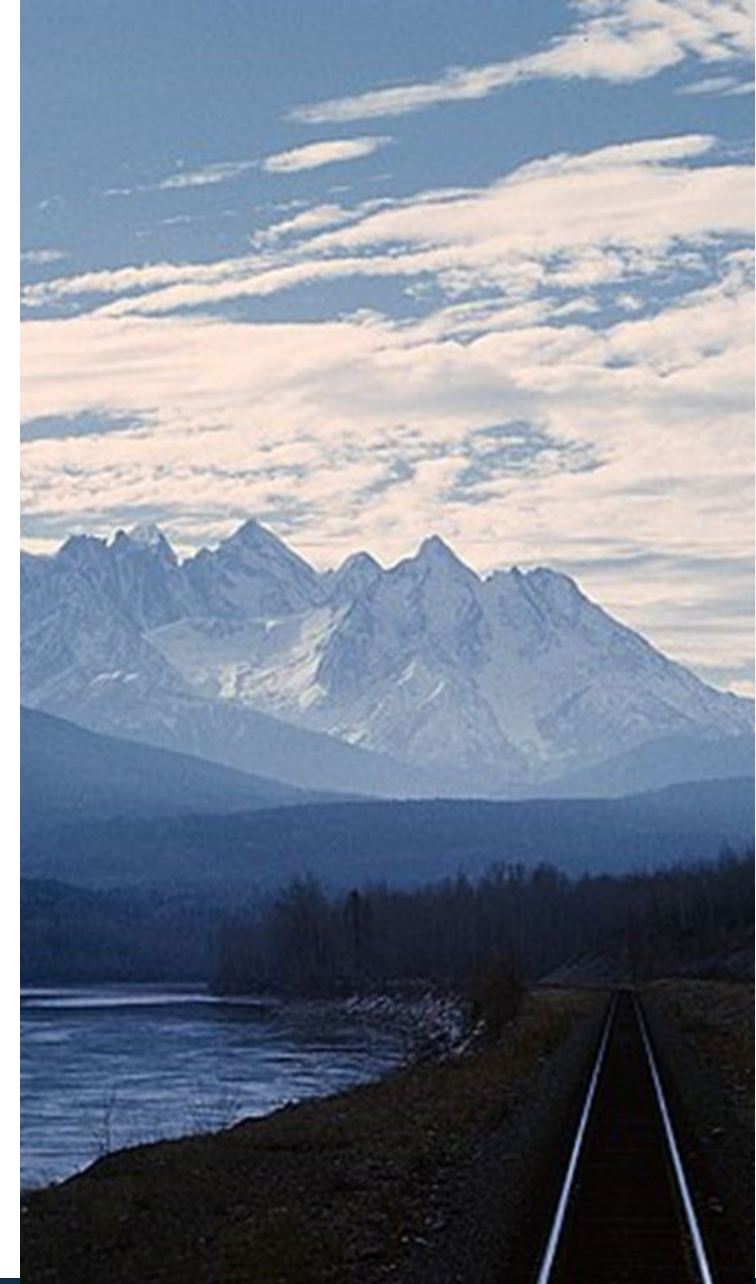


CONTENTS OF TICKET & SERVICE

➤ There are specific content requirements for Tickets:

- Set out particulars of offence in some detail
- Fine amount
- Options on receipt of Ticket (pay or dispute)
- Identify person who committed offence
- Date of issuance

➤ Service is required for Ticket



FINES FOR TICKETS

- Fine amount for Ticket will be set out in either:
 - The Nation law creating the offence
 - A regulation established under the Model Law, setting out fines for various offences under various Nation laws

- Can have surcharges for late payment, or lesser amount for early payment



OPTIONS ON RECEIPT OF TICKET

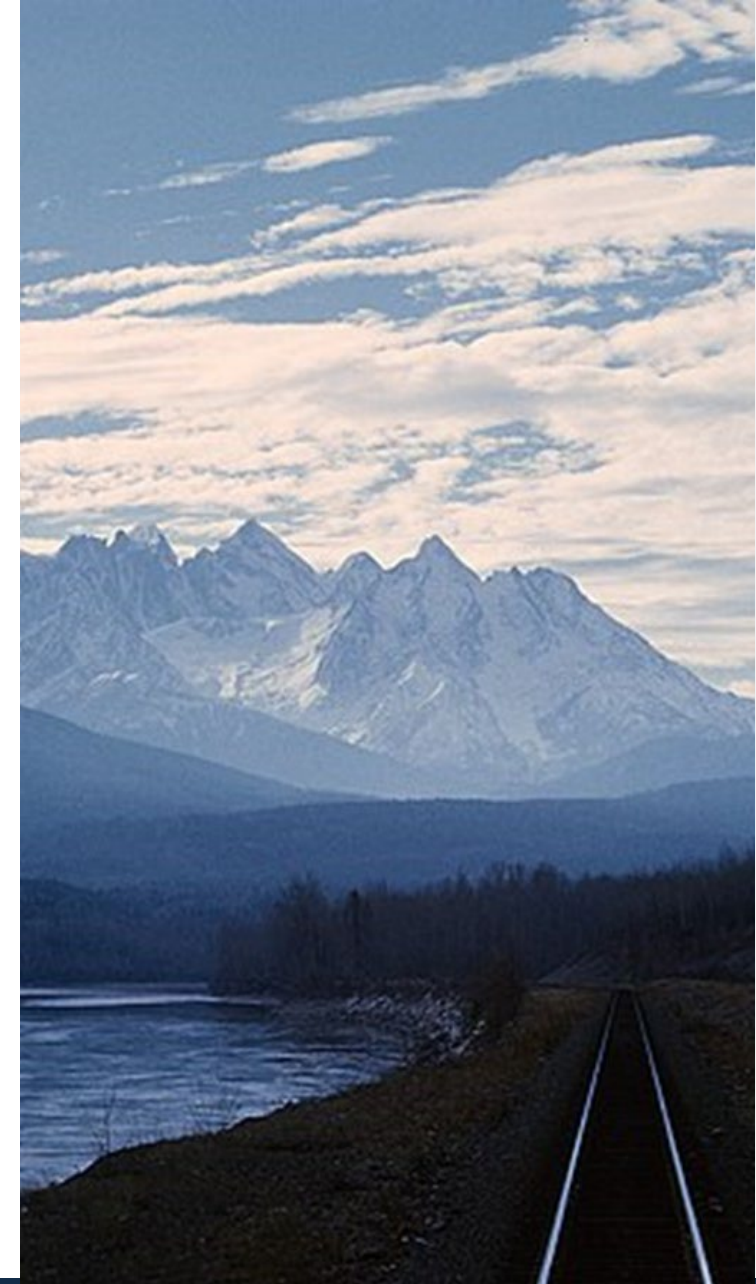
- 2 options when a person receives a Ticket:
 - Pay
 - Dispute

- If dispute, the venue for the dispute hearing will depend on whether the provincial legislation is available
 - **If yes**, dispute in provincial court system
 - Procedure related to this dispute, and all subsequent appeals, will follow provincial legislation
 - **If no**, dispute at hearing before Justice of the Peace



PAY OR FAIL TO RESPOND

- If pay within timeline, deemed guilty, and no further steps
- If do not pay within timeline, Ticket referred to Justice of the Peace who will review, and if no obvious defects, confirm guilt and convict
 - Fine becomes due and payable to Nation
 - Can still appeal in accordance with Framework Agreement



DISPUTE TICKET

- Depending on forum available, dispute will either happen in court or before the Justice of the Peace
- If before Justice of the Peace, a hearing will follow
 - May be in person, video, or phone
 - May have legal counsel and a prosecutor may be involved
 - May present evidence
 - Decision will be made at end, in which finding of guilty or acquittal
 - If guilty, fine is due and payable to Nation
 - Can appeal in accordance with Framework Agreement



TIME EXTENSIONS

- If, through no fault of person charged, they did not get chance to dispute the Ticket OR they were unable to show up at Ticket hearing, they can apply to Justice of the Peace for time extension
- If time extension granted, a person may get:
 - Additional time to pay
 - A new Ticket dispute hearing set





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RECOVERY OF DEBTS

MULTIPLE WAYS TO RECOVER FINE

- Various ways to collect an outstanding fine due to the Nation
 - File debt certificate in court
 - Collections agency
 - Withholding member distributions
 - Withholding member services
- If filing debt certificate in court, it becomes an order of the provincial court
 - May be challenging in some jurisdictions and availability may depend on the language of provincial court legislation
 - If successfully filed in court, this may provide additional avenues for debt recovery (ex: seizure, garnishment of wages)



DEBT RECOVERY HURDLES

- Debt recovery can be challenging for all governments
- Costs of recovery may significantly outweigh outstanding fine amount in some cases
- Where possible, consider starting with the recovery methods that are easier from an administrative perspective (ex: member holdbacks)
- Provincial and federal governments typically have additional recovery tools not available to Nations
 - If provincial legislation becomes available to enforce Tickets in court, additional mechanisms for recovery may become available



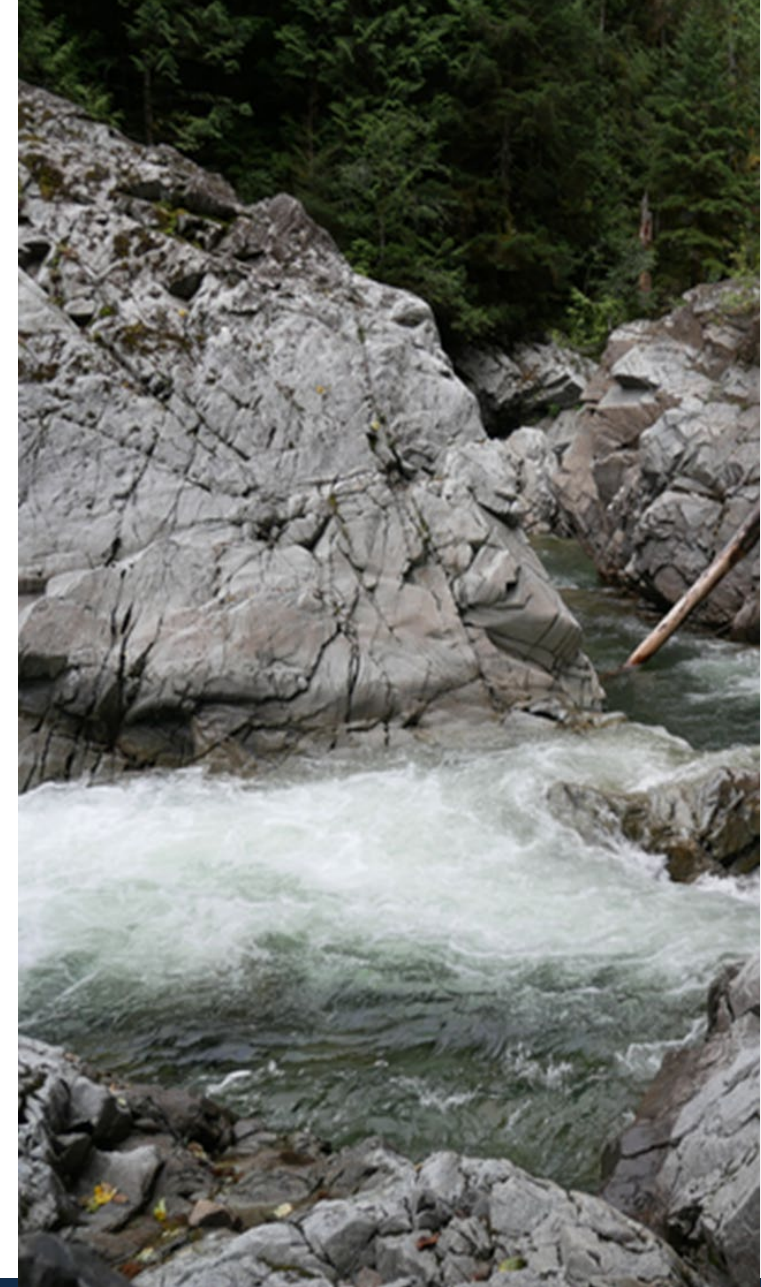


**Model Ticketing and
Enforcement Law**

**LONG FORM
SUMMARY CONVICTION
PROCEEDINGS**

PROCEEDINGS OCCUR IN COURT

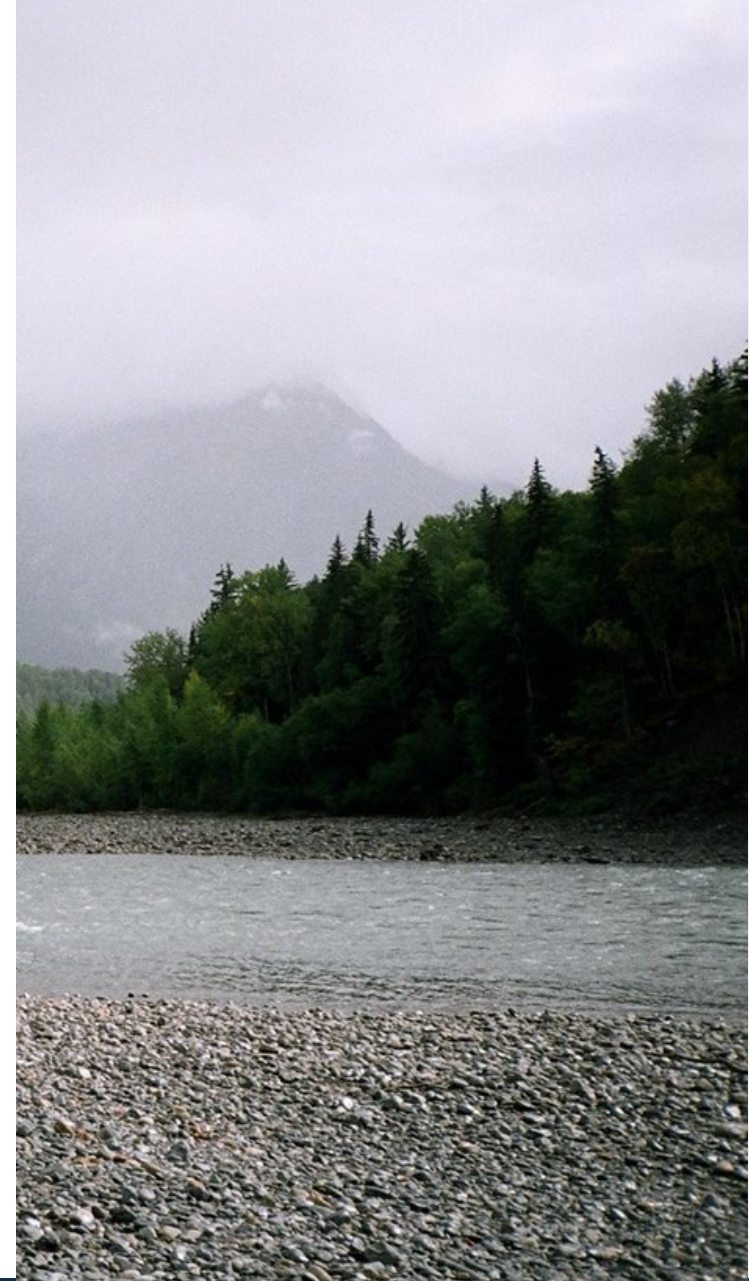
- Where someone has reasonable and probable grounds to believe that an offence under a Nation law was committed, Council may seek to commence long form prosecution proceedings
- Proceedings may be taken either under:
 - Section 507.1 and Part 27 of Criminal Code (i.e. private prosecution)
 - Any other available long form prosecution legislation (i.e. BC Summary Offence Act)
- Threshold to commence long form prosecution:
 - Multiple non-compliance incidents
 - Need for non-monetary order with conditions
 - Threat to community safety





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VISUAL SUMMARY OF MODEL LAW





Thank You

QUESTIONS & COMMENTS?

For more information, please visit:

www.labrc.com