

## NISGA'A LISIMS GOVERNMENT

## WILP SI'AYUUKHL NISGA'A

## NISGA'A OFFENCE ACT

## REGISTRY OF NISGA'A LAWS

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Nisga'a Offence Act

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Date Mar. 19/07 Signed [Signature]

Wilp Si'ayuukhl Nisga'a enacted this legislation on February 2, 2007.

Signed [Signature]  
Nelson Leeson, President of the Nisga'a Nation

## NISGA'A OFFENCE ACT

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**Part I - General****Definitions**

**1** In this Act,

"clerk of the peace" includes the proper officer of the court that has jurisdiction in an appeal under this Act;

"common jail" or "prison" means any place, other than a penitentiary, in which persons charged with offences are usually kept and detained in custody;

"defendant" means a person against whom proceedings have been brought;

"district" or "county" includes any territorial or judicial division or place in and for which there is a judge, justice, justice's court, officer or prison as is mentioned in the context;

"enforcement officer" means any person designated as an enforcement officer under section 136;

"fine" includes any supplemental fine amount, or other additional monetary penalty, established under a Nisga'a enactment;

"informant" means a person who lays an information or an enforcement officer who signs a violation ticket;

"information" includes

- (a) a violation ticket,
- (b) a count in an information or in a violation ticket, and



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(c) a complaint in respect of which a justice is authorized to make an order;

"justice" means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and a judge of the Provincial Court or any person who has the power or authority of two or more justices of the peace;

"order" includes an order for the payment of money;

"proceedings" means

- (a) proceedings in respect of offences, and
- (b) proceedings in which a justice is authorized by a Nisga'a enactment to make an order;

"prosecutor" means

- (a) an informant, or
  - (b) a person designated as a prosecutor under section 136,
- and includes their counsel or agents;

"territorial division" means a district, county, township, city, town or other judicial division or place;

"ticketed amount" means, in relation to an alleged contravention of a Nisga'a enactment for which a violation ticket is issued under section 18, the fine prescribed for the contravention of the enactment alleged by the ticket;

"trial" includes the hearing of a complaint made under 29;

"violation ticket" means a violation ticket referred to in section 18.

**Application**

- 2 This Act applies to an offence that is specified in a Nisga'a enactment to be an offence punishable under this Act.

**Summary conviction**

- 3 An offence is punishable on summary conviction.

**Time limits**

- 4 (1) If no time is specially limited for making a complaint or laying an information in the Nisga'a enactment relating to the particular case, proceedings must not be instituted more than six months after the time when the subject matter of the proceedings arose.
- (2) An action or suit must not be brought for a penalty or forfeiture under a Nisga'a enactment except within six months after the cause of action arises, unless the time is otherwise limited by that enactment.

**Parties to an offence**

- 5 (1) Everyone is a party to an offence who
- (a) actually commits the offence,
  - (b) does or omits to do anything for the purpose of aiding a person to commit the offence, or
  - (c) abets a person in committing the offence.

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- (2) If a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled or procured is a party to that offence, even if the offence was committed in a way different from that which was counselled or procured.
- (3) Everyone who counsels or procures another person to be a party to an offence is a party to every offence that the other person commits in consequence of the counselling or procuring if the person who counselled or procured knew or ought to have known that the offence was likely to be committed in consequence of the counselling or procuring.

**Judicial notice**

- 6 (1) Without limiting the application of section 11 of the *Nisga'a Final Agreement Act* of Canada, but for greater certainty, judicial notice must be taken of an order of the executive that has been deposited in the registry of Nisga'a laws.
- (2) An order or conviction must not be quashed or set aside, and a defendant must not be discharged, merely because evidence has not been given of any matters in respect of which judicial notice must be taken under this Act or a law of Canada or British Columbia.

**Where offence committed**

- 7 (1) If an offence is committed in or on any water or on a bridge between two or more territorial divisions, the offence is deemed to be committed in any of the territorial divisions.
- (2) If an offence is committed on the boundary of two or more territorial divisions or within 450 meters of a boundary, or an offence was commenced in one territorial division and completed in another, the offence is deemed to be committed in any of the territorial divisions.
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**Use of data records**

- 8 (1) In this section, “data record” means a record in an electronic or other format, other than a paper format.
- (2) If a rule of law, custom or practice requires information to be recorded or presented in writing, the requirement is deemed to be satisfied if the information is recorded or presented in a format that enables the information to be subsequently displayed or immediately accessible in visible form.
- (3) If a rule of law, custom or practice requires information to be signed or endorsed, the requirement is deemed to be satisfied in the case of a data record if
- (a) a method of authentication is used to indicate
    - (i) by whom the data record was created or communicated, and
    - (ii) that the person who is required to sign or endorse the record approved of the information in the record, and
  - (b) the method of authentication is reliable and appropriate for that data record.
- (4) If a rule of law, custom or practice requires information to be presented in its original form, the requirement is deemed to be satisfied in the case of a data record by the presentation of the data record or a paper copy of the data record if there is a reasonable assurance as to the integrity of the information being presented.
- (5) Where information in a data record is modified, the data record is deemed to maintain the integrity of the information being presented if the following circumstances apply:
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- (a) any modifications to the information in the data record are documented in a manner that records the name of the person authorizing the modification, the name of the person making the modification, the date and time when the modification was made and the content of the modification; and
  - (b) the information referred to in paragraph (a) is available for presentation.
- (6) A person who uses a data record for the purpose of making a statement under oath must, instead of swearing or affirming an oath, sign a statement in accordance with subsection (3) that all matters contained in the data record are true to the person's knowledge and belief.
  - (7) A data record containing a statement referred to in subsection (6) is deemed to be made under oath.
  - (8) This section must not be construed to limit the use of a data record or to prevent the signing, endorsement or presentation of a data record in any other manner authorized under an enactment or allowed by a court.

**Originating document**

- 9 (1) An information, complaint, warrant, conviction or other process under this Act must, in general, apply to a single transaction.
- (2) An information, complaint, warrant, conviction or other process under this Act must contain, and is sufficient if it contains in substance, a statement that the defendant committed an offence or act specified in the proceedings and punishable on summary conviction.
- (3) The statement referred to in subsection (2) may be
  - (a) in plain language without technical averments or allegations of matters that are not essential to be proved,

- (b) in the words of the Nisga'a enactment that describes the offence or declares the matters charged to be an offence or act punishable on summary conviction, or
  - (c) in words that are sufficient to give to the defendant notice of the offence with which the defendant is charged.
- (4) An information must contain sufficient detail of the circumstances of the alleged offence
- (a) to give to the defendant reasonable information with respect to the act or omission to be proved against the defendant, and
  - (b) to identify the transaction referred to,
- but otherwise the absence or insufficiency of details does not vitiate the information.
- (5) An information may refer to any section, subsection, paragraph, subparagraph or clause of the Nisga'a enactment that creates the offence charged, and consideration must be given to any such reference when determining whether an information is sufficient.
- (6) Nothing in this Act relating to matters that do not render an information insufficient is deemed to restrict or limit the application of this section.

**Certain omissions**

- 10** (1) No information, complaint, warrant, conviction or other process under this Act is insufficient because of the absence of details if, in the opinion of the justice, the information otherwise fulfils the requirements of section 9.
- (2) Without restricting subsection (1), no information is insufficient merely because it fails to
- (a) name the person injured or intended or attempted to be injured,

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- (b) name the person who owns or has a special property or interest in property mentioned in the information,
  - (c) specify the means by which the alleged offence was committed,
  - (d) name or describe with precision any person, place or thing, or
  - (e) if the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.
- (3) If satisfied that it is necessary for a fair trial, the justice may order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant.

**Burden on defendant**

- 11**
- (1) No exception, exemption, proviso, excuse or qualification set out in this Act or another Nisga'a enactment or otherwise prescribed by law is required to be set out or negated in an information.
  - (2) The burden of proving that an exception, exemption, proviso, excuse or qualification referred to in subsection (1) operates in favour of the defendant is on the defendant.
  - (3) The prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification referred to in subsection (1) does not operate in favour of the defendant, whether or not it is set out in the information.
  - (4) If the defendant
    - (a) must be licensed or registered or authorized by a consent, permit, certificate or otherwise in order to do any act or to omit to do any act, and

- (b) is alleged to have done an act or omitted to do any act without the required license, registration or authority,

the defendant must prove that he or she has the required license, registration or authority.

### **Process not objectionable**

- 12** No information, summons, conviction, order or other process under this Act is deemed to charge two offences or to be uncertain merely because it states that the alleged offence was committed

- (a) in different modes, or
- (b) in respect of one or other of several articles, either conjunctively or disjunctively.

### **Amending defective information**

- 13** (1) An objection to an information for a defect apparent on its face must be made by motion to quash the information before the defendant has pleaded, and after that only by leave of the justice before whom the trial takes place.
- (2) On the trial of an information, a justice may amend the information or a particular furnished under section 10(3) in order to make the information or particular conform to the evidence if there appears to be a variance between
- (a) the evidence and the charge in the information, or
- (b) the evidence and the charge in the information
- (i) as amended, or



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- (ii) as it would have been if amended in conformity with any particular furnished under section 10(3).
- (3) At any stage of the trial, a justice may amend the information as necessary if
  - (a) the information is in any way defective in form, or
  - (b) the information
    - (i) fails to state or states defectively anything that is required to constitute the offence,
    - (ii) does not negative an exception that should be negated, or
    - (iii) is in any way defective in substance,and the matters to be alleged in the proposed amendment are disclosed by the evidence taken on the trial.
- (4) A variation between the information and the evidence taken on the trial is not material if
  - (a) it relates to the time when the offence is alleged to have been committed, and
  - (b) it is proved that the information was laid within the limitation period set in this Act.
- (5) A variation between the information and the evidence taken on the trial is not material if
  - (a) it relates to the place where the subject matter of the proceedings is alleged to have arisen, and

- 
- (b) it is proved that the subject matter arose in the territorial jurisdiction of the justice who holds the trial.
- (6) In considering whether an amendment should be made to an information, the justice must consider
- (a) the evidence taken on the trial, if any,
  - (b) the circumstances of the case,
  - (c) whether the defendant has been misled or prejudiced in his or her defence by a variance, error or omission mentioned in subsection (2) or (3), and
  - (d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.
- (7) If, in the opinion of the justice, the defendant has been misled or prejudiced in his or her defence by an error or omission in the information, the justice may
- (a) adjourn the trial, and
  - (b) make an order for the payment of costs resulting from the necessity of amendment as the justice considers desirable.

### **Jurisdiction**

- 14** Every justice has jurisdiction to try, determine and adjudge proceedings to which this Act applies in the territorial division over which the justice has jurisdiction.
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**Jurisdiction of justices**

- 15** (1) Nothing in this Act or any other law requires a justice before whom proceedings are commenced, or who issues process before or after the trial, to be the justice or one of the justices before whom the trial is held.
- (2) If two or more justices have jurisdiction with respect to proceedings, they must be present and act together at the trial, but after the trial one justice may do anything that is required or authorized to be done in connection with the proceedings.
- (3) Subject to section 16, only the justice before whom the trial is commenced has jurisdiction for the trial and adjudication, but any justice may adjourn the proceedings at any time
- (a) before the plea of the defendant is taken, or
- (b) after the plea of the defendant is taken but before the trial is commenced.
- (4) A justice who adjourns the proceedings under subsection (3)(a) or (b) is not seized of the matter.

**Inability of justice to continue**

- 16** (1) If a trial is commenced before a justice and that justice dies or is for any reason unable to continue the trial, another justice for the same territorial division may act in the place of the justice before whom the trial was commenced.
- (2) A justice acting in the place of a justice
- (a) before whom a trial was commenced, and
- (b) who has made an adjudication,
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must impose the punishment or make the order that is authorized by law in the circumstances.

(3) A justice acting in the place of a justice

(a) before whom a trial was commenced, but

(b) who has not made an adjudication,

must commence the trial again as a new trial.

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## **Part II - Initiating Proceedings**

### **Commencing proceedings**

- 17** Proceedings must be commenced by the laying of an information or making a complaint under section 29 or by means of a violation ticket under section 18.

### **Division 1 - Violation ticket**

#### **Violation ticket**

- 18** (1) Sections 18 to 26 only apply to a Nisga'a enactment prescribed under section 137(1)(b).
- (2) An enforcement officer may complete and sign a violation ticket for contravention of a Nisga'a enactment.
- (3) A violation ticket is valid even though it is not taken under oath.
- (4) A violation ticket must be in Form A and contain the following information:
- (a) a statement of the alleged contravention;
  - (b) a statement of the ticketed amount applicable to the alleged contravention;
  - (c) an address to which a notice disputing the allegation or the fine portion of the ticketed amount may be delivered;
  - (d) a statement that if the allegation or fine is not disputed in the manner and within the time provided in this Act
    - (i) the violation ticket will be treated as not disputed,

(ii) the defendant will be deemed to have pleaded guilty to the alleged contravention, and

(iii) the ticketed amount indicated on the violation ticket will be payable to the Nisga'a Nation.

(5) If a violation ticket uses

(a) any word or expression prescribed under this Act to designate an offence, or

(b) a general description of an offence,

that use is deemed sufficient for all purposes to describe the offence designated by that word or expression.

### **Service of ticket**

**19** An enforcement officer must serve a copy of the violation ticket on the defendant in one of the following manners:

(a) by personal service immediately after the alleged contravention, or

(b) by service in the same manner as a summons is required to be served under section 32.

### **Ticketed person's options**

**20** (1) A defendant who is served with a violation ticket may

(a) dispute an allegation or the amount of the fine portion of the ticketed amount indicated on the violation ticket in accordance with section 21, or

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- (b) pay the ticketed amount indicated on the violation ticket in accordance with the instructions set out on the violation ticket.
- (2) If a defendant pays all or a portion of the ticketed amount indicated on a violation ticket in accordance with subsection (1),
- (a) the defendant is deemed to have pleaded guilty to the alleged contravention, and
  - (b) the unpaid portion of that ticketed amount is immediately payable to the Nisga'a Nation.

**Disputing a violation ticket**

- 21** (1) Within 30 days of being served a violation ticket, a defendant may dispute the allegation or the fine portion of the ticketed amount indicated on the violation ticket by
- (a) delivering a written notice of dispute to the address set out in the violation ticket, or
  - (b) appearing in person at the location set out in the violation ticket, if any, to give notice of dispute.
- (2) A notice of dispute under subsection (1) must contain
- (a) an address for the defendant, and
  - (b) sufficient information to identify the violation ticket and the alleged contravention or the fine being disputed.
- (3) For the purpose of this section, a notice of dispute that is delivered by mail is deemed to have been delivered on the date on which it was mailed.
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**Hearing for disputed ticket**

- 22** (1) When the notice of dispute containing the information referred to in section 21(2) is
- (a) delivered to the address set out in the violation ticket, or
  - (b) given at the location, if any, set out in the violation ticket,
- a copy of the violation ticket must be referred by the chief executive officer to the Provincial Court for a hearing of the dispute.
- (2) A notice of hearing must be sent to the defendant
- (a) at the address set out in the notice of dispute, or
  - (b) if the defendant has given another address to the Provincial Court, at that other address.
- (3) A reproduction of a violation ticket referred to the Provincial Court under subsection (1) is deemed to be a copy of the violation ticket if it is
- (a) a microfilm or other photographic reproduction of the violation ticket that is certified in writing by an officer of the Nisga'a Lisims Government or the Nisga'a Village Government as being a true reproduction of the ticket, or
  - (b) a reproduction of electronically stored information, whether in electronic or paper format or on any other record that enables the information to be subsequently displayed or immediately accessible in visible form, that



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- (i) is certified in writing by an officer of the Nisga'a Lisims Government or the Nisga'a Village Government as being a true reproduction of all the information on the violation ticket, or
  - (ii) contains a statement that it is an authentic reproduction of all the information on a violation ticket stored in a database in electronic format by the Nisga'a Lisims Government or the Nisga'a Village Government.
- (4) When the Provincial Court receives a copy of a violation ticket, the court has jurisdiction to try, determine and adjudge proceedings relating to the violation ticket in accordance with section 14.
- (5) If a person appears at a hearing before the Provincial Court to dispute an allegation or fine in a violation ticket, section 74 does not apply with respect to the person and the court has jurisdiction to hear the dispute without
  - (a) examining the notice of dispute or the notice of the hearing, or
  - (b) inquiring into the service of the violation ticket on the person.

**Failure to appear at hearing**

- 23**
- (1) If a person fails to appear at a hearing of the matter before the Provincial Court to dispute the allegation or fine, the person may, within 30 days after the date set for the hearing, appear before a justice for a determination of whether or not the failure to appear at the hearing was the person's fault.
  - (2) If, in an appearance under subsection (1), the justice is satisfied by an affidavit in Form F that the failure to appear at the hearing was not the person's fault, the justice must cause a new date to be set for the hearing.

- (3) If a person fails to appear before the Provincial Court to dispute the allegation or fine on the date of the hearing referred to in section 22(5) or on a new date set under subsection (2), as the case may be, the allegation or fine is deemed not to be disputed and section 24(1) applies.

**Failure to respond to ticket**

- 24** (1) If, within 30 days after a violation ticket was served on a defendant under section 19, the defendant has not either paid all or a portion of the ticketed amount or disputed the allegation or the fine portion of the ticketed amount in accordance with section 20,
- (a) the defendant is deemed to have pleaded guilty to the alleged contravention, and
  - (b) the ticketed amount indicated on the violation ticket is immediately payable to the Nisga'a Nation.
- (2) A defendant who
- (a) is served with a violation ticket, and
  - (b) has not had an opportunity, through no fault of that person, to dispute the allegation or the amount of the fine,
- may appear before a justice within 14 days after the dispute period referred to in section 21.
- (3) On an appearance of a person under subsection (2) and on being satisfied of the facts proven by affidavit in Form G, the justice must
- (a) strike out the conviction, if any, and
  - (b) allow the person to dispute the allegation or the amount of the fine portion of the ticketed amount in accordance with section 20.

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- (4) If a conviction is struck out under subsection (3), the justice must, on request, give the person a certificate of the fact on Form G.
  - (5) Nothing in subsection (1) is to be construed as abrogating the right of a defendant to appeal the conviction under section 114.

**Conviction need not be entered**

- 25 If a defendant is deemed to have pleaded guilty to an alleged offence under section 20(2) or 24(1), or is found guilty of an alleged offence by the Provincial Court, no minute or memorandum of the conviction need be drawn up or entered unless it is required by the person or a prosecutor or under the Nisga'a enactment contravened.

**Cancellation of violation ticket**

- 26
- (1) The designated member of the executive must cancel a violation ticket that does not disclose an offence on its face.
  - (2) A person designated under subsection (5) may cancel a violation ticket
    - (a) that, through no fault of the defendant, was served on a person other than the defendant, and
    - (b) in respect of which the defendant was deemed to have pleaded guilty under section 20(2) or 24(1).
  - (3) A person designated under subsection (5) may cancel a violation ticket that was mailed to a defendant as permitted under section 19 if the defendant was deemed to have pleaded guilty under section 20(2) but, through no fault of the defendant, all or a portion of the ticketed amount indicated on the ticket was paid by a person other than the defendant.

- (4) A violation ticket that has been canceled under this section is void and any conviction with respect to the ticket is deemed never to have occurred.
- (5) For the purposes of subsections (2) and (3), the designated member of the executive or the chief executive officer may designate in writing one or more persons.

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## **Division 2 - Information and complaint**

### **One justice**

- 27 Despite any other law that requires an information to be laid before, or to be tried by, two or more justices, one justice may
- (a) receive the information,
  - (b) issue a summons or warrant with respect to the information, and
  - (c) do all other things preliminary to the trial.

### **Formalities of an information**

- 28 (1) An information
- (a) must be in writing, and
  - (b) except for an information laid by means of a violation ticket under section 18, must be under oath.
- (2) Subject to subsection (3), an information may charge more than one offence or relate to more than one matter of complaint.
- (3) If more than one offence is charged or the information relates to more than one matter of complaint, each offence or matter of complaint must be set out in a separate count.
- (4) An information must not contain any reference to previous convictions if it is in respect of an offence for which a greater punishment may be imposed because of previous convictions.
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**Power to lay information or complaint**

- 29** (1) A person may, on reasonable and probable grounds, lay an information before a justice
- (a) that any person, being within the jurisdiction of that justice, has committed or is suspected of having committed an offence which the person is liable, on conviction, to be imprisoned, fined or otherwise punished, or
  - (b) that any person has committed or is suspected of having committed within British Columbia an offence for which the person is liable, on conviction, to be imprisoned, fined or otherwise punished.
- (2) A person may, on reasonable and probable grounds make a complaint to a justice in relation to any matter on which the justice has authority by law to make an order for the payment of money or otherwise.
- (3) The information or complaint under subsection (1) or (2) must be in Form 2.

**Justice to hear informant or witnesses**

- 30** (1) A justice who receives an information must hear and consider
- (a) the allegations of the informant, and
  - (b) the evidence of witnesses if the justice considers it desirable or necessary.
- (2) If, after a hearing under subsection (1), the justice considers that a case for doing so is made out, the justice must issue a summons or warrant to compel the defendant to attend before the justice.
- (3) A justice who hears the evidence of a witness under subsection (1) must
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- (a) take the evidence on oath, and
  - (b) have the evidence taken in accordance with section 540 of the Criminal Code, in so far as that section is capable of being applied.
  - (4) A justice must not sign a summons or warrant in blank.
  - (5) A justice acting under subsection (1) is not required to give any notice to any other person.

**Summons**

**31** A summons must be in Form B and must

- (a) be directed to the defendant,
- (b) set out briefly the offence in respect of which the defendant is charged, and
- (c) require the defendant to appear at a time and place stated in the summons.

**Division 3 - Service****Service**

- 32** (1) A summons must be served on a defendant by a peace officer or enforcement officer, who
- (a) must deliver it personally to the defendant, or
  - (b) if the defendant cannot conveniently be found, must leave it for the defendant at the defendant's last or usual residence with an occupant of the residence who appears to be at least 16 years of age.
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- (2) If the defendant is a corporation, the summons must be served by delivering it to a director, or to a manager, secretary or other executive officer of the corporation or of a branch of it, or on the attorney of an extra-provincial company.
- (3) If a person referred to in subsection (2) cannot be conveniently found, a justice may order that service be effected on a corporation by leaving the summons at, or mailing it by registered post addressed to, the registered or principal office of the corporation.
- (4) If the defendant is a Nisga'a Village, the summons must be served by delivering it to the Chief Councillor of the Nisga'a Village.

#### **Service of a copy**

- 33 (1) A reference in this Act to service of a summons, appearance notice or promise to appear includes service of a copy of the summons, appearance notice or promise to appear or a copy of it, and a summons, appearance notice or promise to appear is sufficiently served if a copy of it is served.
- (2) If a copy of a summons, appearance notice or promise to appear is served, the certificate referred to in section 34(1)(b) may be endorsed on the summons or on another copy of the summons, appearance notice or promise to appear.

#### **Proof of service**

- 34 (1) Service of a summons, violation ticket, appearance notice and promise to appear may be proved by
    - (a) the oral evidence given under oath of the person who served it, or
    - (b) the certificate of the person who served it, if the certificate is endorsed on a copy of the summons, violation ticket, appearance notice or promise to appear.
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- (2) The certificate referred to in subsection (1)(b) is proof of the authority of the person who signed it.

**Validation of service**

- 35 The court may make an order validating service made in any manner if the court is satisfied that
- (a) the document served came to the notice of the person to be served, or
  - (b) the document served would have come to the notice of the person to be served except for the person's own attempts to evade service.

**Service on holiday**

- 36 A warrant or summons authorized by this Act may be issued or executed on a holiday.

**Division 4 - Compelling appearance****Promise to appear**

- 37 (1) In this section, "officer in charge" means
- (a) the officer in command of the police force or police department, or of the designated policing unit or designated law enforcement unit as those terms are defined in section 1 of the *British Columbia Police Act*, who is responsible for the lockup or other place to which a defendant is taken after arrest, or
  - (b) a peace officer designated for purposes of this section by the officer referred to in paragraph (a) who is in charge of the lockup or other place at the time the defendant is taken to that place to be detained in custody.
-

- (2) If a justice issues a warrant under this Act for the arrest of a defendant, the justice may authorize the release of the defendant under subsection (3) by making an endorsement on the warrant in Form 17.
- (3) If a warrant has been endorsed by a justice under subsection (2), the officer in charge may release the defendant on the defendant giving his or her promise to appear.
- (4) If a person is arrested without a warrant having been issued for that person's arrest, the officer in charge may release the person on the person giving his or her promise to appear.
- (5) A promise to appear must be in Form D.
- (6) A person who gives a promise to appear and fails to comply with the conditions set out in that promise to appear commits an offence punishable under this Act.

### **Appearance notice**

- 38 (1) An appearance notice may be issued by
- (a) a person who has a power to arrest without warrant under a Nisga'a enactment, and
  - (b) an enforcement officer who is authorized to issue an appearance notice for contravention of a Nisga'a enactment prescribed under section 137(1)(b).
- (2) An appearance notice must be in Form E.
- (3) An appearance notice must be served personally on a defendant by a peace officer or enforcement officer.
- (4) A person to whom an appearance notice is delivered and who fails to comply with the conditions set out in an appearance notice commits an offence punishable under this Act.
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**Attendance of prisoner**

- 39 (1) Subject to subsection (2), if a person who is confined in a prison in British Columbia is required
- (a) to stand trial for an offence, or
  - (b) to attend to give evidence in proceedings,
- the Supreme Court or a justice may order in writing that the prisoner be brought before the justice before whom the prisoner's attendance is required, as necessary.
- (2) An order may be made under subsection (1) if
- (a) the applicant for the order sets out the facts of the case in an affidavit and produces the warrant, if any, and
  - (b) the court or justice is satisfied that the ends of justice require that an order be made.
- (3) An order made under subsection (1) must be addressed to the person who has custody of the prisoner.
- (4) On receipt of an order under subsection (1), the person having custody of the prisoner must
- (a) deliver the prisoner to a person named in the order to receive the prisoner, or
  - (b) bring the prisoner before the justice on payment of the actual and necessary costs of doing so.

- (5) If a prisoner is required as a witness, the court or justice must direct in the order the manner in which the prisoner is to be kept in custody and returned to the prison from which the prisoner is brought.
- (6) If a prisoner is required to appear for the purposes of subsection (1)(a), the court or justice must give appropriate directions in the order for return of the prisoner if acquitted of the charge.

**Part III - Powers of Arrest, Search and Seizure****Division 1 - Arrest****Powers of arrest**

- 40** (1) Any individual may arrest without warrant a person who, on reasonable grounds, the individual believes
- (a) has committed an offence, and
  - (b) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.
- (2) Any individual who is
- (a) the owner of property or a person in lawful possession of property, or
  - (b) a person authorized by the owner of property or by a person in lawful possession of property,
- may arrest without warrant a person whom that individual finds committing an offence on or in relation to that property.
- (3) Any individual, other than a peace officer, who arrests a person without warrant must deliver the person to a peace officer as soon as practicable.
- (4) A peace officer may arrest without warrant any person whom the officer believes, on reasonable and probable grounds, is committing an offence unless the following circumstances apply:

- (a) the officer believes on reasonable grounds that the public interest may be satisfied without arresting the person after the officer has taken into account all the circumstances, including the need to
    - (i) establish the identity of the person,
    - (ii) secure or preserve evidence of or relating to the offence, or
    - (iii) prevent the continuation or repetition of the offence or the commission of another offence, and
  - (b) the officer has no reasonable grounds to believe that the person will fail to attend court in order to be dealt with according to law if the officer does not arrest the person.
- (5) A peace officer who arrests without a warrant a person whom the officer believes on reasonable and probable grounds is committing an offence is deemed to be acting lawfully and in the execution of the officer's duty unless it is alleged and established by the person making the allegation that the officer did not comply with subsection (4).

### **Right to telephone**

- 41** (1) Every individual who is taken into custody by a peace officer under this Act or any other Nisga'a enactment is entitled, on request to the person responsible for the individual's custody, to have access to, and the private use of, a telephone as soon as possible and at least once during the first 12 hours of the individual's custody.
- (2) A person who, without reasonable excuse, hinders or prevents an individual in custody from exercising the right granted by subsection (1), commits an offence punishable under this Act.
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**Division 2 - Search warrants****Search warrants**

- 42 (1) A justice may issue and sign a search warrant under subsection (2) if satisfied by information on oath in Form 1 that there are reasonable grounds to believe that
- (a) in a building, receptacle or place there is anything on, or in respect of, which an offence has been committed, or
  - (b) in a building, receptacle or place there is anything that will afford evidence as to the commission of an offence referred to in paragraph (a).
- (2) A search warrant issued under subsection (1) may authorize a person named in it, a peace officer or an enforcement officer
- (a) to search the building, receptacle or place for the thing referred to in subsection (1),
  - (b) to seize the thing, and
  - (c) to bring the thing or a report of it before the justice who issued the warrant, or another justice for the same territorial division, to be dealt with under section 49.
- (3) If the building, receptacle or place in which anything mentioned in subsection (1) is believed to be or is in another territorial division, the justice may issue a search warrant in a similar form, modified according to the circumstances.
- (4) A search warrant issued under subsection (3) may be executed in the territorial division referred to in subsection (3) after it has been endorsed in Form 16 by a justice who has jurisdiction in that territorial division.
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- (5) An endorsement made on a search warrant under subsection (4) is sufficient authority
- (a) to the peace officers or enforcement officers to whom it was originally directed, and
  - (b) to all peace officers or enforcement officers within the jurisdiction of the justice by whom it is endorsed,
- to execute the warrant and to take the things to which it relates before the justice who issued the warrant or some other justice for the same territorial division.
- (6) A search warrant issued under this section
- (a) must be in Form 3, and
  - (b) must be executed in daylight hours unless the justice, by the warrant, authorizes execution of it in night hours.
- (7) As soon as reasonably possible after seizure of anything under this section, the person who executed the search warrant must bring the thing, or a report of the thing, before a justice to be dealt with under section 49.

### **Request for telewarrant**

- 43** (1) If a peace officer or an enforcement officer believes that
- (a) an offence has been committed, and
  - (b) it would be impracticable to appear personally before a justice to apply for a search warrant under section 42,



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the officer may submit an information by telephone or other means of telecommunication to a justice designated for that purpose by the Chief Judge of the Provincial Court.

- (2) An information under subsection (1) must be on oath which may be administered by telephone or other means of telecommunication.
- (3) The justice must record an information under subsection (1) word for word and, as soon as practicable, must
  - (a) cause a record or a transcription of the information to be prepared,
  - (b) certify the record or transcription as to time, date and contents, and
  - (c) cause the certified record or transcription to be filed with the clerk of the court for the territorial division in which the warrant is intended for execution.
- (4) An information under subsection (1) must include all of the following:
  - (a) a statement of the circumstances that make it impracticable for the officer to appear personally before a justice;
  - (b) a statement of the offence alleged, the place or premises to be searched and the items alleged to be liable to seizure;
  - (c) a statement of the officer's grounds for believing that the items liable to seizure in respect of the offence alleged will be found in the place or premises to be searched;
  - (d) a statement as to any prior application for a warrant under this section or any other search warrant, in respect of the same matter, of which the officer has knowledge.

**Issue of telewarrant**

- 44 (1) A justice may issue a search warrant by telephone or other means of telecommunication to a peace officer or enforcement officer under this section if satisfied that information on oath under section 43
- (a) concerns an offence,
  - (b) complies with section 43(4),
  - (c) discloses reasonable grounds for dispensing with an information presented personally and in writing, and
  - (d) discloses reasonable grounds described in section 42(1) for the issuance of a search warrant in respect of an offence.
- (2) A search warrant issued by a justice under this section may
- (a) confer the same authority respecting search and seizure as may be conferred by a search warrant issued under section 42, and
  - (b) require the warrant to be executed within a period of time that the justice may order.
- (3) A search warrant issued under this section must be in Form 4 and must note on its face the time and date when and place where it is issued.
- (4) If a justice issues a search warrant under this section, the peace officer or enforcement officer, on the direction of the justice, must complete, in duplicate, a copy of the search warrant in Form 4, noting on its face the name of the justice who issued it and the time and date when and place where it was issued.

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- (5) As soon as practicable after a search warrant has been issued under this section, the justice must cause the warrant to be filed with the clerk of the court for the territorial division in which the warrant is intended for execution.

**Executing a telewarrant**

- 45 (1) Before entering a place or premises to be searched or as soon as practicable after entering, the peace officer or enforcement officer executing a search warrant issued under section 44 must give a copy of the warrant to any person present who appears to be in control of the place or premises.
- (2) On entering any unoccupied place or premises to be searched or as soon as practicable after entering, the peace officer or enforcement officer executing a search warrant issued under section 44 must cause a copy of the warrant to be suitably affixed in a prominent place within the place or premises.

**Report of telewarrant**

- 46 (1) A peace officer or enforcement officer to whom a search warrant is issued under section 44 must file a written report with the clerk of the court for the territorial division in which the warrant was intended for execution.
- (2) A report under subsection (1) must be filed as soon as practicable but, in any event, not longer than seven days after the warrant was executed.
- (3) A report under subsection (1) must include the following:
- (a) a statement of the time and date the search warrant was executed or, if the warrant was not executed, a statement of the reasons why it was not executed;

- (b) a statement of the things, if any, that were seized under the search warrant and the location where they are being held;
  - (c) a statement of the things, if any, that were seized in addition to the things mentioned in the search warrant and the location where they are being held, together with a statement of the officer's grounds for believing that those additional things had been obtained by, or used in, the commission of an offence.
- (4) As soon as reasonably possible, the clerk of the court with whom a written report is filed under subsection (1) must cause the report, together with the information on oath and the warrant to which it pertains, to be brought before a justice to be dealt with under section 49.

**Proof of authorized execution**

47 In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a search warrant issued under section 44, the absence of

- (a) the information on oath, transcribed and certified by the justice as to time, date and contents, or
- (b) the original warrant, signed by the justice and carrying on its face a notation of the time, date and place of issuance,

is proof that the search or seizure was not authorized by a search warrant issued under section 44, unless evidence to the contrary is presented.

**Division 3 - Seizure****Seizure of things not specified**

- 48 (1) In addition to the specific things mentioned in a search warrant issued under section 42 or 44, the person executing the warrant may seize anything that on reasonable grounds the person believes has been obtained by, or has been used in, the commission of an offence.
- (2) As soon as reasonably possible after seizing under subsection (1) something that was not specified in a search warrant, the person who executed the warrant must bring the thing, or a report of the thing, before a justice to be dealt with under section 49.
- (3) For the purposes of subsection (2), the thing or report must be brought,
- (a) in the case of a search warrant under section 42, before the justice who issued the warrant or another justice for the same territorial division, and

- (b) in the case of a search warrant under section 44, before the justice before whom the report is brought under section 46.
- (4) If a thing is seized from a person by a peace officer or an enforcement officer in the execution of the officer's duties, but not as authorized under section 42 or 44 or under subsection (1) of this section, the officer must, as soon as practicable after the seizure, do one of the following:
  - (a) return the thing to the person from whom it was seized, if the officer is satisfied that
    - (i) continued detention of the thing is no longer required, and
    - (ii) there is no dispute that the person from whom it was seized is lawfully entitled to possession; or
  - (b) bring the thing, or a report of the thing, before a justice to be dealt with under section 49.

### **Detention of things seized**

- 49** (1) In this section and sections 50 and 51,

"relevant proceedings" means a trial, inquiry or other proceeding in which the thing seized may be required;

"responsible official" means the prosecutor, peace officer, enforcement officer or other person having custody of the thing seized;

"thing" means anything that has been seized and is brought before a justice as referred to in subsection (2).

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- (2) If a thing or report is brought before a justice under sections 42 to 48, the justice must proceed as follows:
- (a) unless the prosecutor otherwise agrees, the justice must order the thing's detention;
  - (b) if paragraph (a) does not apply and the person lawfully entitled to possession is known, the justice must order the thing's return to that person;
  - (c) if neither paragraph (a) nor (b) applies, the justice must order that the thing be held until dealt with under section 51.
- (3) A thing may not be detained under subsection (2)(a) for longer than three months from the day of seizure unless
- (a) relevant proceedings are instituted before the end of that period, or
  - (b) an order authorizing the continued detention is made on an application under subsection (5).
- (4) More than one application under subsection (5) may be made in relation to a thing, but the application must be made
- (a) to a Provincial Court judge if, when the requested order is made, the total period of detention is to be longer than one year from the day of seizure, and
  - (b) to a justice in any other case.
- (5) On application by the responsible official made on at least three days' notice to the person from whom the thing was seized, the judge or justice may make an order authorizing continued detention as follows:

- (a) in the case of an application to a justice made before the period for detention has expired, the justice may order the continued detention for a specified period if satisfied that continued detention is warranted having regard to the nature of the investigation;
- (b) in the case of an application to a judge made before the period for detention has expired, the judge may order the continued detention for a specified period, subject to any conditions the judge considers just, if satisfied that continued detention is warranted having regard to the nature of the investigation;
- (c) in the case of an application made after the period for detention has expired, the judge or justice may order the continued detention for a specified period, subject to any conditions the judge or justice considers just, if satisfied that
  - (i) continued detention might reasonably be required for the purpose of an investigation or relevant proceedings, and
  - (ii) it is in the interests of justice to make the order.
- (6) Despite any other provision in this section, if an application under subsection (5) has been made but not yet decided, the period authorized for detention of the thing is extended until the application is decided.

#### **Access to thing seized**

- 50
- (1) On at least seven days' notice to the designated member of the executive, a person who has an interest in a thing detained under section 49 may apply to a Provincial Court judge for an order under subsection (2) that the person be permitted to examine the thing.
  - (2) In an application under subsection (1), the judge may make an order that the applicant or a representative of the applicant be permitted to examine the thing, but must make the order



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on terms that the judge considers necessary or desirable to ensure that the thing to be examined is safeguarded and preserved for any purpose for which it may subsequently be required.

(3) At any time while a seized record is being detained, the designated member of the executive or responsible official may

(a) make a copy of the record, and

(b) retain that copy after the original is no longer detained.

(4) A copy under subsection (3) that is certified to be a true copy by

(i) the designated member of the executive,

(ii) the person who made the copy, or

(iii) the person in whose presence the copy was made,

is admissible in evidence and, in the absence of evidence to the contrary, has the same probative force as the original document would have had if it had been proved in the ordinary way.

**Order for disposition of thing seized**

**51** (1) Unless otherwise provided by another Nisga'a enactment, an application for an order for the disposition of a thing seized may be made to

(a) a Provincial Court judge, in the case of a thing ordered detained by a judge of that court, or

- (b) a justice in any other case.
- (2) On at least seven days' notice to the designated member of the executive, an application under subsection (1) may be made by the person from whom the thing was seized
  - (a) after the total period for detention under section 49 has expired, or
  - (b) after an earlier period of time if the judge or justice to whom the application is made is satisfied that hardship will result from delaying such application.
- (3) An application under subsection (1) may be made by a person, other than a person referred to in subsection (2), who is claiming to be lawfully entitled to possession of the thing, at any time on at least seven days' notice to
  - (a) the designated member of the executive, and
  - (b) the person from whom the thing was seized.
- (4) Unless an application is made under section 49(5)(c), the responsible official must make an application under subsection (1) if
  - (a) the responsible official determines that the continued detention of a thing seized is no longer required, or
  - (b) the period for detention has expired and no proceedings have been instituted in which the thing seized may be required.
- (5) At least seven days' notice of an application under subsection (4) must be given to the person from whom the thing was seized.

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- (6) Subject to subsection (7), on an application under subsection (1), the judge or justice may make one of the following orders:
  - (a) an order that the thing be returned to the person from whom it was seized, if that person is lawfully entitled to its possession;
  - (b) an order that the thing be returned to another person lawfully entitled to it, if this person is known and the person from whom the thing was seized is not lawfully entitled to its possession;
  - (c) if an order is not made under paragraph (a) or (b), an order that the thing is forfeited to the Nisga'a Nation, to be disposed of as the executive directs;
  - (d) if an order cannot be made under paragraph (a) or (b) because the thing has already been forfeited and sold or otherwise dealt with under paragraph (c) such that it cannot be returned to the applicant, an order that, unless otherwise provided by law, the applicant be paid the proceeds of sale or the value of the thing seized.
- (7) An order may be made under subsection (6) only if the judge or justice is satisfied that
  - (a) the total period for detention under section 49 has expired and relevant proceedings have not been instituted, or
  - (b) the total period for detention has not expired but the continued detention of the thing seized will not be required for the purpose of an investigation or relevant proceedings.
- (8) A person aggrieved by an order under this section may appeal the order to the Supreme Court and, for the purposes of the appeal, Part VII applies.

- (9) Despite anything in this section, a thing must not be returned, forfeited or disposed of under this section
- (a) pending any application or appeal taken in respect of the thing or any proceedings in which the right of seizure of the thing is questioned, or
  - (b) within 30 days after an order is made under this section.

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## **Division 4 - Arrest warrants**

### **Service of arrest warrant**

**52** A copy of a warrant issued in the first instance for the arrest of a defendant must be served on the person who is arrested under it.

### **Contents of a arrest warrant**

**53** (1) An arrest warrant must be in Form 5 and must

- (a) name or describe the defendant,
- (b) set out briefly the offence in respect of which the defendant is charged, and
- (c) order that the defendant be arrested and brought before
  - (i) the justice who issued the warrant, or
  - (ii) another justice who has jurisdiction in the same territorial division,

to answer to the charge and be further dealt with according to law.

(2) An arrest warrant remains in force until it is executed and need not be made returnable at any particular time.

### **Formalities on an arrest warrant**

**54** An arrest warrant must be signed by a justice and may be directed

- (a) to a peace officer by name,

- (b) to a peace officer by name and to all other peace officers in the territorial jurisdiction of the justice, or
- (c) generally to all peace officers within the territorial jurisdiction of the justice.

**Summons not to prevent a warrant**

**55** A justice may issue an arrest warrant

- (a) in Form 5 for the arrest of a defendant even if a summons has already been issued to require the appearance of the defendant, or
- (b) in Form C if
  - (i) service of a summons is proved and the defendant does not appear,
  - (ii) it appears that a summons cannot be served because the defendant is evading service, or
  - (iii) service of an appearance notice or promise to appear is proved and the defendant does not attend court in accordance with the appearance notice or promise to appear.

**Execution of an arrest warrant**

- 56** (1) An arrest warrant may be executed by arresting the defendant in the territorial jurisdiction of the justice who issued the warrant.
- (2) A peace officer named in an arrest warrant or to whom an arrest warrant is directed may execute the warrant in any place, whether or not the place is in the territory for which the person is a peace officer.
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**Endorsement on arrest warrant**

- 57** (1) If a warrant for the arrest of a defendant cannot be executed under section 56, on application and on proof on oath or by affidavit of the signature of the justice who issued the warrant, a justice in whose jurisdiction the defendant is, or is believed to be, must authorize the execution of the warrant in the justice's jurisdiction.
- (2) Execution of an arrest warrant is authorized under subsection (1) when the justice endorses the warrant in Form 16.
- (3) An endorsement of an arrest warrant under subsection (2) is sufficient authority to
- (a) the peace officers to whom the warrant was originally directed, and
  - (b) all peace officers in the territorial jurisdiction of the justice by whom the warrant is endorsed,
- to execute the warrant and to take the defendant before the justice who issued the warrant or before another justice for the same territorial division.

**Part IV - Attendance of Witnesses****Application of sections 59 to 68**

- 58** Subject to section 39, sections 59 to 68 apply if a person is required to attend to give evidence in proceedings.

**Subpoena or warrant may be issued**

- 59 (1) If a person is likely to give material evidence in proceedings, a subpoena may be issued under section 60 requiring that person to attend to give evidence.
- (2) If it appears that a person who is likely to give material evidence
- (a) will not attend in response to a subpoena, if a subpoena is issued, or
  - (b) is evading service of a subpoena,
- a court or justice having power to issue a subpoena to require the attendance of that person to give evidence may issue an arrest warrant in Form 8 for the arrest of that person to be brought to give evidence.
- (3) An arrest warrant in Form 8 must not be issued under subsection (2)(b) unless a subpoena has first been issued.

**Issuing subpoena**

- 60 (1) If a person is required to attend to give evidence in proceedings over which a justice has jurisdiction, a subpoena directed to that person must be issued under this Part
- (a) by a justice, if the person whose attendance is required is in British Columbia, or
  - (b) by the Supreme Court, if the person whose attendance is required is not in British Columbia.
- (2) A subpoena may not be issued under subsection (1)(b) unless a party to the proceedings has applied for it.
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- (3) A subpoena issued under this Part must be in Form 7.

### **Formalities**

- 61** (1) A subpoena or arrest warrant that is issued under this Part by a court must be under the seal of the court and be signed by the court or the clerk of the court.
- (2) A subpoena or arrest warrant this is issued under this Part by a justice must be signed by the justice.

### **Contents of a subpoena**

- 62** (1) A subpoena issued under this Part must require the person to whom it is directed
- (a) to attend to give evidence at a time and place to be stated in the subpoena, and
- (b) if necessary, to bring any records that the person has in that person's possession or under that person's control relating to the subject matter of the proceedings.
- (2) A person who is served with a subpoena must attend and remain in attendance throughout the proceedings, unless excused by the justice.

### **Service**

- 63** (1) Subject to subsection (2), a subpoena issued under this Part must be served in accordance with section 32(1).
- (2) A subpoena issued under section 60(1)(b) must be served personally on the person to whom it is directed.
- (3) Service of a subpoena may be proved by the affidavit of the person who effected service.

**Effective throughout British Columbia**

- 64** (1) A subpoena issued by a justice under this Part has effect anywhere in British Columbia.
- (2) A search or arrest warrant issued by a justice under this Act may be executed anywhere in British Columbia.

**Warrant for absconding witness**

- 65** (1) A justice may issue an arrest warrant in Form 9 directing a peace officer to arrest a person and to bring that person before the justice before whom that person is bound to appear if
- (a) that person is bound by a recognizance to give evidence in any proceedings, and
- (b) the justice is satisfied, on written information under oath, that the person is about to abscond or has absconded.
- (2) Section 57 applies to an arrest warrant issued under this section.
- (3) A person who is arrested under an arrest warrant issued under this section is entitled, on request, to receive a copy of the information on which the warrant was issued.

**Warrant when witness does not attend**

- 66** (1) If a person who has been served with a subpoena to give evidence in proceedings does not attend or remain in attendance, the justice before whom that person was required to attend may issue a warrant in Form 8 for the arrest of that person, if
- (a) the subpoena has been served in accordance with this Act, and

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(b) the person is likely to give material evidence.

- (2) If a person who has been bound by a recognizance to attend to give evidence in proceedings does not attend or does not remain in attendance, the court or justice before whom that person was bound to attend may issue a warrant in Form 8 for the arrest of that person.

**Order when witness arrested under warrant**

67 If a person is brought before a justice under an arrest warrant issued under section 59(2), 65 or 66, the justice may order that the person be

- (a) detained in custody, or
- (b) released on recognizance in Form 18, with or without sureties, to appear and give evidence when required.

**Contempt**

68 (1) A person who

- (a) is required by law to attend or remain in attendance at proceedings to give evidence, and
- (b) fails, without lawful excuse, to attend or remain in attendance at proceedings to give evidence,

is guilty of contempt of court.

- (2) A justice may deal summarily with a person who is guilty of contempt of court under this section.

- (3) A person who is guilty of contempt of court under this section
- (a) is liable to either or both of the following:
- (i) a fine of \$100, or
- (ii) to imprisonment for 90 days, and
- (b) may be ordered to pay any costs incidental to the service and execution of the subpoena and search warrant and to the person's detention.
- (4) A conviction under this section must be in Form 21, and a warrant of committal in respect of a conviction under this section must be in Form 14.

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**Part V - Court Proceedings**

**Order in court**

- 69 Every justice has the same power and authority to preserve order in a court over which the justice presides as may be exercised by the Supreme Court.

**Open court**

- 70 The room or place in which the justice sits to hear and try a complaint or information is deemed to be an open and public court to which the public generally may have access so far as it can conveniently contain them.

**Resistance to execution of process**

- 71 When resistance is offered to the execution of a summons, warrant of execution or other process issued by a justice, the justice may enforce the execution of it by the means provided by the law for enforcing the execution of the process of other courts in similar cases.

**Absence of prosecutor**

- 72 If the defendant appears for the trial and the prosecutor, having had notice, does not appear, the justice may dismiss the information or may adjourn the trial to another time on terms the justice considers proper.

**Appearance of prosecutor and defendant or counsel**

- 73 (1) Subject to section 84, if the prosecutor and defendant appear for the trial, the justice must proceed to hold the trial.
- (2) The defendant may appear personally or by counsel or agent.
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- (3) Despite subsection (2), the justice may require the defendant to appear personally and, if the justice imposes this requirement, the justice may
- (b) issue a warrant in Form 5 for the arrest of the defendant, and
  - (c) adjourn the trial to await the defendant's appearance under the warrant.
- (4) If the defendant is a corporation or a Nisga'a Village, it must appear by counsel or agent, and if it does not appear, the justice may, on proof of service of the summons, proceed without further notice to hold the trial.

### **Arraignment**

- 74 When the defendant appears to respond to an information, the substance of the information must be stated to the defendant, and the defendant must be asked
- (a) whether the defendant pleads guilty or not guilty to the information, if the proceedings are in respect of an offence that is punishable on conviction, or
  - (b) whether the defendant has cause to show why an order should not be made against the defendant, in proceedings where a justice is authorized by law to make an order.

### **Where charge admitted**

- 75 (1) If the defendant pleads guilty to the information, the justice must convict the defendant.
- (2) In proceedings where an order is sought against the defendant, the justice may make an order against the defendant if the defendant does not show sufficient cause why an order should not be made.

**Where charge not admitted**

- 76 If the defendant pleads not guilty or states that the defendant has cause to show why an order should not be made against the defendant, the justice must
- (a) proceed with the trial, and
  - (b) take the evidence of witnesses for the prosecutor and the defendant in the same manner, as nearly as may be, as evidence is taken on a preliminary inquiry under Part XVIII of the Criminal Code.

**Separating trial of counts**

- 77 Before or during trial, a justice may direct that the defendant be tried separately on one or more of the counts in the information if the justice is satisfied that the interests of justice require separate trials.

**Joining informations for trial**

- 78 Before or during trial, a justice may direct that the defendant be tried on one or more of the informations or violation tickets, or a combination of them, at the same time, if the justice is satisfied that
- (a) one or more informations or violation tickets, or a combination of them, relate to the same incident, and
  - (b) the interests of justice requires the trial of the informations or tickets at the same time.

**Admission by the defendant**

- 79 A defendant may admit any fact alleged against the defendant for the purpose of dispensing with the proof of it.

**Right of prosecutor and defendant**

- 80 (1) The prosecutor is entitled personally to conduct the prosecutor's case against the defendant.
- (2) The defendant is entitled to make a full answer and defence to the prosecutor's case.

**Remote Appearance**

- 81 (1) The defendant, prosecutor or applicant or a counsel may appear by telephone or other means of communication approved by the court for any part of the trial other than a part in which the oral evidence of a witness is taken.
- (2) A defendant is entitled to have counsel present at the time of an appearance referred to in subsection (1).
- (3) A plea of guilty may not be taken nor may a sentence be pronounced at an appearance referred to in subsection (1) without the consent of the prosecutor and the defendant.

**Examination of witnesses**

- 82 (1) The prosecutor or defendant may examine and cross examine witnesses personally or by counsel or agent.
- (2) A witness must be examined on oath or affirmation.
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- (3) The justice has full power and authority to administer to a witness the usual oath or affirmation.

**Proceedings before a justice**

- 83 (1) A justice who is exercising jurisdiction under an authorization made under section 31 (1) of the *Provincial Court Act of British Columbia* may exercise that jurisdiction at any stage of the proceedings in the absence of a prosecutor.
- (2) If a justice is exercising the jurisdiction referred to in subsection (1) in the absence of a prosecutor,
- (a) section 72 does not apply,
  - (b) the justice may adjourn the trial under section 84(1) for more than eight days with the consent of the defendant only, and
  - (c) section 86 applies only if the adjournment was made during a trial where a prosecutor had appeared.

**Adjournment**

- 84 (1) Before or during trial, the justice may adjourn the trial to a time and place to be appointed and stated in the presence of the parties or their respective counsel or agents.
- (2) If the justice adjourns a trial, the justice may, on condition that the defendant appear at the time and place set for resumption of the trial,
- (a) permit the defendant to be at large,

- (b) commit the defendant by warrant in Form 10 to a prison in the territorial division for which the justice has jurisdiction, or to any other safe custody the justice thinks fit, or
- (c) discharge the defendant on the defendant's recognizance in Form 18,
  - (i) with or without sureties, or
  - (ii) on depositing a sum of money the justice directs.

**Absence of defendant**

- 85** (1) The justice may make an order under subsection (2) in the following circumstances:
- (a) if the defendant does not appear at the time and place appointed for the trial and proof of service of the summons within a reasonable period before the appearance was required is established, or
  - (b) if the defendant does not appear for the resumption of a trial that has been adjourned in accordance with section 84.
- (2) The justice may
- (a) hear and determine the proceedings in the absence of the defendant as fully and effectually as if the defendant had appeared, or
  - (b) issue a warrant in Form 6 for the arrest of the defendant, and adjourn the trial to await the defendant's appearance to it.

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**Absence of prosecutor**

- 86 If the prosecutor does not appear at the time and place appointed for the resumption of an adjourned trial, the justice may dismiss the information, with or without costs.

**Remand for observation**

- 87 (1) Despite section 84(1), if the justice is of the opinion, supported by the evidence of at least one medical practitioner, that there is reason to believe that the defendant is mentally ill, the justice may, by written order, remand the defendant to the custody that the justice directs for observation for a period of not longer than 30 days.
- (2) An order under subsection (1) may be made at any time before
- (a) convicting the defendant,
  - (b) making an order against the defendant, or
  - (c) dismissing the information.

**Effect and enforcement of recognizances**

- 88 If a person gives security by a recognizance or is bound by a recognizance to appear before a justice for any purpose, sections 762 to 773 of the Criminal Code apply to the recognizance, with the necessary changes and so far as applicable.

**Supreme Court may grant or vary bail**

- 89 On application, the Supreme Court may
- (a) grant the defendant bail if bail has been refused by a justice, or

- (b) vary the amount of bail set by a justice.

### **Conviction order or dismissal**

**90** After the justice has heard the prosecutor, defendant and witnesses in the trial and has considered the matter, the justice must

- (a) convict the defendant,
- (b) make an order against the defendant, or
- (c) dismiss the information.

### **Recognizance for defendant convicted**

**91** (1) In this section,

"court" means the Supreme Court; and

"default" means failure to enter into the recognizance or provide the security ordered by the justice under subsection (2).

- (2) In addition to or instead of sentence, the justice may order that a defendant convicted of an offence must, at a time set by the justice, enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a term not longer than two years.
  - (3) If a defendant is in default, the justice may, by warrant in Form 13, commit the defendant to prison until the defendant complies with the order under subsection (2).
  - (4) The recognizance under this section must be in Form 18, and section 110(2),(3) and (4) applies to the recognizance.
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- (5) If a defendant who has been ordered to enter into a recognizance under subsection (2) has remained in prison for two weeks because of the defendant's default, the defendant may apply to a court for a review of the order of committal.
- (6) A court that receives an application under subsection (5) may
  - (a) order the discharge of the defendant at once, or at a subsequent time, on notice to persons the court considers proper, or
  - (b) make any other order that it considers proper in the circumstances with respect to the number of sureties to be required, the amounts in which they are to be bound and the period during which the defendant and the sureties are to be bound.

**Previous conviction**

- 92 (1) If a defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, the justice must not impose a greater punishment on the defendant for that reason, unless the prosecutor satisfies the justice that the defendant, before making his or her plea, was notified that a greater punishment would be sought for that reason.
- (2) On application by the prosecutor and on being satisfied that the defendant was notified in accordance with subsection (1), the justice must ask the defendant whether the defendant was previously convicted if the defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions.
- (3) If, on questioning by the justice under subsection (2), the defendant does not admit that the defendant was previously convicted, the prosecutor may present evidence of previous convictions.

- (4) If a justice holds a trial under section 85(2)(a) and convicts the defendant, the justice may make inquiries with respect to previous convictions, whether or not the defendant was notified that a greater punishment would be sought because of them.
- (5) Under this section, a previous conviction may be proved in the manner prescribed by section 667 of the Criminal Code.

### **Memorandum of conviction or order**

- 93 If a defendant is convicted or if an order is made against a defendant,
- (a) a minute or memorandum of the conviction or order may be made, without fee,
  - (b) the justice must draw up a conviction or order in Form 19 or 20 whether or not a minute or memorandum is made, and
  - (c) the justice must issue a warrant of committal in Form 11 or 12, and section 57 applies to the warrant of committal.

### **Disposal of penalties when joint offenders**

- 94 If several persons commit the same offence and on conviction each person is ordered to pay an amount to an aggrieved person,
- (a) the aggrieved person is not entitled to receive more than a total amount equal to
    - (i) the value of the property destroyed or injured, or
    - (ii) the amount of the injury done,
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together with costs, if any, and

- (b) the residue of the amount ordered to be paid must be paid to the Nisga'a Nation.

**Order of dismissal**

- 95 (1) If the justice dismisses an information and the defendant requests a copy of the order, the justice may draw up an order of dismissal, and, in that event, must give to the defendant a certified copy of the order.
- (2) A copy of an order of dismissal certified by the justice dismissing the information is, without further proof, a bar to any subsequent proceedings against the defendant in respect of the same cause.

## **Part VI - Costs**

### **Costs**

- 96** (1) The justice may award and order costs to be paid
- (a) to the informant by the defendant, if the justice convicts or makes an order against the defendant, or
  - (b) to the defendant by the informant, if the justice dismisses an information.
- (2) An order under subsection (1) must be set out in the conviction, order, or order of dismissal.
- (3) Costs awarded and ordered under subsection (1) must be costs that the justice considers reasonable and that are not inconsistent with the fees established by section 97.
- (4) Costs awarded and ordered to be paid by a person under this section are deemed to be all or part, as the case may be, of a fine imposed against the person.

### **Fees and allowances**

- 97** Only the fees and allowances set out in the tariff to the *Offence Act of British Columbia* may be taken or allowed in proceedings before justices under this Act.

### **Investigation and prosecution costs**

- 98** (1) In this section, "court" means the Provincial Court.
- (2) If a defendant is convicted of an offence, the court may order that the defendant is liable for the costs of the investigation into the offence upon the filing of a certificate as required in this section.
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- (3) The prosecutor may
- (a) prepare a certificate setting out the costs of the investigation, including the cost to the Nisga'a Nation of any fees paid to experts, investigators and witnesses, and
  - (b) apply to a registrar of the Supreme Court to review the certificate.
- (4) On the review under subsection (3)(b), the registrar
- (a) must assess the costs that are payable under subsection (2), and
  - (b) may vary the costs if they are unreasonable or not related to the investigation.
- (5) The BC Rules of Court apply to the review of a certificate under this section as though it were a review of disbursements under those Rules.
- (6) After the review under subsection (3)(b), the certificate of the registrar may be filed in the court and may be enforced as if it were an order of the court requiring the convicted defendant to pay the amount of costs in the certificate to the Nisga'a Nation.
- (7) The executive may make regulations for the purpose of this section including regulations that specify a Nisga'a enactment for which a convicted defendant may be ordered to pay the costs of an investigation under subsection (2).

## **Part VII - Punishment**

### **Punishment only after conviction and only authorized**

**99** If a Nisga'a enactment creates an offence and authorizes a punishment to be imposed in respect of it,

- (a) a defendant is deemed to be not guilty of that offence until convicted of it, and
- (b) a defendant who is convicted of that offence is not liable to punishment in respect of it other than the punishment required by this Act or by the Nisga'a enactment that creates the offence.

### **Penalty**

**100** Unless otherwise specifically provided in a Nisga'a enactment, a defendant who is convicted of an offence is liable to either or both of the following:

- (a) a fine of not more than \$2,000;
- (b) imprisonment for not more than six months.

### **Sentencing principles**

**101** (1) Without limiting the application of any other provision of this Act or any provisions of another Nisga'a enactment, a court must take into account the sentencing objectives and principles in this section when imposing a sentence for an offence.

- (2) The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community;
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

(3) The following sentencing principles must be taken into account:

- (a) a sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender;
- (b) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting these circumstances, the following circumstances are deemed to be aggravating circumstances:
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor;
  - (ii) evidence that the offender, in committing the offence, abused a position of trust or authority; or

- (iii) evidence that the offence was committed for the benefit of, at the direction of, or in association with a criminal organization;
- (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) if consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (e) an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances;
- (f) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

### **Absolute liability offences**

- 102** Despite section 100 or the provisions of any other Nisga'a enactment, no person is liable to imprisonment with respect to an absolute liability offence.

### **Failure to pay fine**

- 103** (1) Despite any other provision of this Act, or any other Nisga'a enactment or an order made by a justice, a justice must not order that a defendant be imprisoned merely because the defendant defaults in paying a fine.
- (2) Despite any provision in any Nisga'a enactment to the contrary, if a justice imposes a fine authorized by this Act or any other Nisga'a enactment, the justice may order that the fine be paid by the defendant

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- (a) at once, or
  - (b) at a time, in instalments and subject to terms and conditions the justice considers appropriate.
- (3) A justice must not make an order under subsection (2)(a) unless one of the following circumstances apply:
- (a) the justice is satisfied that the person against whom the fine is imposed has sufficient means and ability to enable the person to pay the fine at once;
  - (b) the person against whom the fine is imposed does not request time for payment after being asked by the justice whether the person desires such time; or
  - (c) the justice has a special reason, which the justice must give orally or in writing, for requiring that the fine be paid at once.
- (4) In making an order under subsection (2)(b), the justice
- (a) must consider any representations made by the defendant, and
  - (b) must not make the first instalment payable within 14 days after the date of the order.
- (5) On application made at any time by the defendant, a justice may amend or vary an order made under subsection (2)(b).

**Certificate for judgment**

**104** (1) If a defendant fails to pay

- (a) a fine in accordance with an order made under section 103(2), or
- (b) a ticketed amount payable as a result of the defendant being found guilty of, or being deemed to have pleaded guilty to the contravention of, a Nisga'a enactment alleged in a violation ticket,

a person designated by regulation may prepare a certificate in Form H containing the information set out in subsection (2) and may file the certificate in the Supreme Court or Provincial Court.

(2) A certificate under subsection (1) must state the following:

- (a) the date of the conviction or the deemed guilty plea, as the case may be;
- (b) the amount of the fine or of the ticketed amount, as the case may be;
- (c) the name of the person required to pay the fine or the ticketed amount, as the case may be;
- (d) the date on which the fine or the ticketed amount, as the case may be, was payable; and
- (e) the amount of the fine or of the ticketed amount, as the case may be, remaining unpaid.

(3) A certificate filed with the Supreme Court or Provincial Court under subsection (1) has the same effect as if it were a judgment of the Supreme Court for the recovery of a debt in the

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amount referred to in subsection (2)(e) against the person named in the certificate and proceedings may be taken by the Nisga'a Nation to recover that debt.

- (4) A certificate may not be filed under subsection (1)
  - (a) with respect to a fine payable in accordance with an order made under section 103(2), more than ten years after the day on which the order is made, or
  - (b) with respect to a ticketed amount referred to in subsection (2)(b), more than ten years after the day on which the person is found guilty of, or is deemed to have pleaded guilty to the contravention of, a Nisga'a enactment alleged in the violation ticket.

**Degrees of punishment**

- 105 (1) Subject to the limitations of this Act, if a Nisga'a enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is in the discretion of the justice who convicts the person who commits the offence.
- (2) Subject to the limitations of this Act, if a Nisga'a enactment prescribes punishment in respect of an offence, the punishment to be imposed is in the discretion of the justice who convicts the person who commits the offence.
- (3) No punishment in a Nisga'a enactment is a minimum punishment unless it is declared to be a minimum punishment.
- (4) If a defendant is convicted while under sentence for another offence and the justice who convicts the defendant imposes a term of imprisonment, the justice may direct that the terms of imprisonment are to be served one after another.

- (5) If a defendant is convicted of more than one offence before the same justice at the same sitting and the justice imposes terms of imprisonment for the respective offences, the justice may direct that the terms of imprisonment are to be served one after another.

### **Sentence and imprisonment**

- 106 (1) A sentence commences when it is imposed, unless a relevant Nisga'a enactment provides otherwise or the justice or the court appealed to orders otherwise.
- (2) The time during which a convicted defendant is at large on bail does not count as part of any term of imprisonment imposed as a result of the defendant's conviction.
- (3) Despite subsection (1), a term of imprisonment imposed by either the justice or the court appealed to commences or is deemed to be resumed, as the case requires, on the day on which the convicted defendant is arrested and taken into custody under the sentence.

### **Intermittent imprisonment**

- 107 If a defendant is convicted of an offence, and it is just and reasonable to do so, the justice may
- (a) sentence the defendant to a term of imprisonment, and
- (b) direct that the defendant serve the term of imprisonment, within a period of one year, on such days as, in the aggregate, equal the number of days to which the defendant was sentenced.

### **Court may impose a lesser fine**

- 108 Despite any other section of this Act or any other Nisga'a enactment, in determining the fine to be imposed on conviction, the justice
- (a) must consider the means and ability of the defendant to pay the fine, and
-



- (b) may impose a fine in a lesser amount that the justice considers appropriate if the justice is of the opinion that the defendant is unable to pay the amount of the fine that the justice would otherwise impose.

### **Suspended sentence**

**109** (1) In this section, "justice" includes the court before which an appeal is heard in respect of a conviction or order made under this Act.

- (2) The justice may suspend sentence under subsection (3) if it appears to the justice that, having regard to

(a) the defendant's age, character and personal history,

(b) the nature of the offence, and

(c) any extenuating circumstances surrounding the commission of the offence,

it is expedient that the defendant be released on probation.

- (3) Subject to subsection (2), the justice may

(a) suspend the passing of sentence on a convicted defendant, and

(b) direct that the defendant be released on entering into a recognizance in Form 18, with or without sureties,

(i) to keep the peace and be of good behaviour during a period set by the justice, and

- (ii) on breach of the recognizance during the period set under subparagraph (i), to appear and to receive sentence when called on to do so.
- (4) A justice who suspends the passing of sentence may require, as conditions of the recognizance, that the defendant must
  - (a) make restitution and reparation to any person aggrieved or injured for the actual loss or damage caused by the commission of the offence, and
  - (b) provide for the support of a spouse and any other dependants whom the defendant is liable to support.
- (5) A justice who suspends the passing of sentence may require as conditions of the recognizance that the defendant
  - (a) report as the justice specifies, to a person designated by the justice, and
  - (b) be under the supervision of that person during the specified period.
- (6) The person designated by the justice under subsection (5) must report to the justice if the defendant does not carry out the terms on which the passing of sentence was suspended, and, in that event, the justice may order that the defendant be brought before the justice to be sentenced.
- (7) A justice who suspends the passing of a sentence may
  - (a) impose further conditions that the justice considers desirable in the circumstances, and
  - (b) change the conditions and increase or decrease the period of the recognizance.

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- (8) Despite any other provision in this section, no recognizance is to be kept in force for more than six months.

**Recognizance not observed**

- 110** (1) If a justice is satisfied by information on oath that a defendant has failed to observe a condition of a recognizance, the justice may issue a summons to compel the defendant's appearance or issue a warrant for the defendant's arrest.
- (2) Subsection (1) applies to the justice who has suspended the passing of sentence or who has jurisdiction in the territorial division in which a recognizance was taken under section 109.
- (3) A summons under subsection (1) is returnable before the justice, and a defendant who is arrested under a warrant issued under subsection (1) must be brought before that justice.
- (4) A justice before whom a warrant under subsection (1) is returned may
- (a) remand the defendant to appear before the justice, or
  - (b) admit the defendant to bail on recognizance, with or without sureties, on the condition that the defendant appear before the justice.
- (5) On the appearance of the defendant under this section or section 109(6), and if the justice is satisfied that the defendant has failed to observe a condition of the recognizance, the justice may, sentence the defendant for the offence of which the defendant was convicted.
- (6) If the passing of sentence is suspended by a justice and subsequently the justice dies or is, for any reason, unable to act, the justice's powers under this section may be exercised by any other justice who has equivalent jurisdiction in the same territorial division.

**Parole**

- 111** (1) The National Parole Board holding office under the *Corrections and Conditional Release Act* (Canada) may exercise its powers and duties with respect to any person who
- (a) is imprisoned as the result of a conviction under this Act or another Nisga'a enactment, and
  - (b) is an "inmate" within the meaning of the *Corrections and Conditional Release Act* (Canada).
- (2) All rights, privileges, powers, duties and responsibilities consequent under the *Corrections and Conditional Release Act* (Canada) on that exercise are applicable and authorized by this Act.

**Warrant of committal**

- 112** (1) A peace officer or other person to whom a warrant of committal authorized by this Act or any other Nisga'a enactment is directed must
- (a) convey the person named or described in the warrant to the jail or other prison mentioned in the warrant, and
  - (b) deliver the person, together with the warrant, to the keeper of the jail or prison.
- (2) Subject to subsection (4), the keeper of the jail or prison to whom a prisoner is delivered in subsection (1) must give a receipt to the peace officer or other person who delivers the prisoner.
- (3) A receipt under subsection (2) must

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- (a) be in Form 24, and
  - (b) set out the state and condition of the prisoner when delivered into the keeper's custody.
- (4) Subsection (2) does not apply if a prisoner is delivered to the custody of the keeper or other person in charge of a lockup or of a prison that is not a common jail of a county, the Nisga'a Nation or a Nisga'a Village.

## **Part VIII - Appeals**

### **Appeal court defined**

**113** In sections 114 to 126, "appeal court" means the Supreme Court.

### **Right of appeal**

**114** (1) Unless otherwise provided by law, the defendant may appeal to the appeal court

(a) from a conviction or order made against the defendant, or

(b) against a sentence passed on the defendant.

(2) Unless otherwise provided by law, the informant, the designated member of the executive or the agent of the designated member of the executive in proceedings under this Act may appeal to the appeal court

(a) from an order dismissing an information, or

(b) against a sentence passed on a defendant.

### **Place of hearing**

**115** (1) Subject to subsection (2), an appeal under section 114 must be heard at the sittings of the appeal court that is held nearest to the place where the conviction or order was made or sentence passed.

(2) On application of a party to the appeal, the appeal court may appoint a place for the hearing of the appeal.

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### **Notice of appeal**

- 116** (1) A person who proposes to appeal to the appeal court must give notice of appeal in a manner and within a period directed by the British Columbia Supreme Court Rules of Court.
- (2) The appeal court may at any time extend the time within which a notice of appeal may be given.

### **Appeal from conviction**

- 117** (1) This section applies if the appellant is the convicted defendant.
- (2) If an appeal to the appeal court is from a conviction imposing imprisonment without alternative punishment, the appellant must
- (a) remain in custody until the appeal is heard, or
  - (b) enter into a recognizance as described in section 118.
- (3) If an appeal to the appeal court is from a conviction or order adjudging that a fine or sum of money be paid and imposing a term of imprisonment in default of payment, the appellant must
- (a) remain in custody until the appeal is heard,
  - (b) enter into a recognizance as described in section 118, or
  - (c) deposit with the justice the amount of the fine or the sum of money to be paid.

- (4) If an appeal to the appeal court is from a conviction or order adjudging that a fine or sum of money be paid but not imposing a term of imprisonment in default of payment, the appellant must comply with subsection (3)(b) or (c).

### **Formalities of recognizance**

**118** (1) A recognizance entered into under section 117

- (a) must be in Form 18,
  - (b) must be entered into before a judge of the Supreme Court or a justice who has jurisdiction in the territorial division in which the conviction or order was made,
  - (c) must be in an amount the court or justice directs,
  - (d) may be required to be entered into with one or more sureties, and
  - (e) may, if it is not entered into by one or more sureties, be required to be accompanied by a deposit of a sum of money the court or justice directs.
- (2) It is a condition of a recognizance under section 117 that the appellant will
- (a) appear personally at the sittings of the appeal court at which the appeal is to be heard, and
  - (b) comply with the judgment of the appeal court on the appeal.
- (3) If the recognizance is insufficient, defective or invalid, the appeal court may permit the substitution of a new and sufficient recognizance to be entered into before it.



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- (4) If an appellant is in custody and a recognizance is entered into under section 117, an order for discharge in Form 22 must be issued by the person who takes the recognizance.

**Payment not waiver of appeal**

- 119** (1) A defendant does not waive the defendant's right of appeal under section 114 merely because the defendant pays the fine imposed on conviction without in any way indicating an intention to appeal or reserving the right to appeal.
- (2) A conviction, order or sentence is deemed not to have been appealed against until the contrary is shown.

**Transmission of conviction**

- 120** (1) Before the time when an appeal is to be heard, or within a further time the appeal court directs, the clerk of the appeal court must
- (a) obtain the conviction, order or order of dismissal from the court from which the appeal is brought and all other material in connection with those proceedings that are in the possession of that court, and
  - (b) keep the records and materials referred to in paragraph (a) with the records of the appeal court.
- (2) The appeal court must not dismiss an appeal merely because a person, other than the appellant, failed to comply with the provisions of this Act relating to appeals.

**Appeal**

- 121** (1) If an appeal is taken under section 114 in respect of a conviction, acquittal, sentence or order, sections 683 to 689, except section 686 (5), of the Criminal Code apply.
- (2) If an appeal court orders a new trial, the trial must be held before a judge or justice other than the judge or justice that tried the defendant in the first instance, unless the appeal court directs otherwise.
- (3) Despite subsection (1), on application of the defendant, the informant, the designated member of the executive or an agent of the designated member of the executive, the appeal court may order that an appeal under section 114 be heard by way of a new trial if, because of the condition of the trial record in the court appealed from or for any other reason, the interests of justice would be better served by hearing and determining the appeal by holding a new trial.
- (4) The provisions of this Act relating to the conduct of trials apply to a new trial ordered under subsection (3) except to the extent that they may be inconsistent with sections 114 to 126.
- (5) In the hearing and determination of an appeal under subsection (3) the appeal court may permit the evidence of any witness taken before the justice to be read if that evidence has been authenticated in accordance with section 540 of the Criminal Code.
- (6) The appeal court may only give permission under subsection (5) if
- (a) the appellant and respondent consent,
  - (b) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or

## NISGA'A OFFENCE ACT

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- (c) because of the formal nature of the evidence or otherwise, the court is satisfied that the opposite party will not be prejudiced.
- (7) Any evidence read under the authority of subsection (5) has the same effect as if the witness had given the evidence before the appeal court.
- (8) If an appeal is taken under subsection (3) against sentence, the appeal court must consider the fitness of the sentence appealed against, unless the sentence is specified under this Act or another Nisga'a enactment under which the defendant was convicted.
- (9) If an appeal is taken under subsection (3) against sentence, the appeal court may, on any evidence it requires or receives, make an order
- (a) dismissing the appeal, or
- (b) varying the sentence within any limits specified under this Act or another Nisga'a enactment under which the defendant was convicted.
- (10) In making an order under subsection (9)(b), the appeal court may take into account any time spent in custody by the defendant as a result of the offence.
- (11) If an appeal under subsection (3) is based on an objection to an information or any process, judgment must not be given in favour of the appellant for an alleged defect of substance or form in the information or process unless it is shown that the objection was made at the trial.
- (12) If an appeal under subsection (3) is based on an objection to an information or any process, judgment must not be given in favour of the appellant for any variance between the information or process and the evidence adduced at the trial unless it is shown that
- (a) the objection was made at the trial, and

(b) an adjournment of the trial was refused, even though the variance had deceived or misled the appellant.

(13) If an appeal under subsection (3) was based upon a defect in a conviction or order, the appeal court must not give judgment in favour of the appellant, but must make an order curing the defect.

### **Adjournment**

**122** The appeal court may adjourn the hearing of an appeal.

### **Dismissal for want of prosecution**

**123** The appeal court may order that an appeal be dismissed, on receipt of proof that

(a) notice of the appeal has been given, and

(b) the appeal has not been proceeded with or has been abandoned.

**Costs**

- 124 (1) If an appeal is heard and determined, is abandoned or is dismissed for want of prosecution, the appeal court may make any order with respect to costs that it considers just and reasonable.
- (2) Section 96(3) applies to an order under subsection (1).

**Default of payment**

- 125 Sections 103 and 104 apply to an appeal to an appeal court.

**Enforcement of conviction or order by appeal court**

- 126 (1) A conviction or order made by the appeal court may be enforced
- (a) in the same manner as if it had been made by a justice, or
  - (b) by process of the appeal court.
- (2) If an appeal taken against a conviction or order adjudging payment of a sum of money is dismissed, the justice who made the conviction or order or a justice for the same territorial division may issue a warrant of committal as if no appeal had been taken.
- (3) If a conviction or order made by an appeal court is to be enforced by a justice, the clerk of the appeal court must send to the justice the conviction or order and all related records, except the notice of intention to appeal and any recognizance.

**Appeal to BC Court of Appeal**

- 127** (1) In this section, "Court of Appeal" means the British Columbia Court of Appeal.
- (2) With leave of a justice of the Court of Appeal, an appeal may be taken to that court on any ground that involves a question of law alone from a decision of the appeal court in an appeal under section 121.
- (3) Sections 673 to 689 of the Criminal Code apply, with the necessary changes and so far as applicable, to an appeal under this section, and the Court of Appeal may grant a new trial.
- (4) Despite subsection (3), the Court of Appeal may make any order with respect to costs that it considers proper in an appeal under this section.
- (5) The decision of the Court of Appeal may be enforced in the same manner as if it had been made by the justice before whom the proceedings were originally heard and determined.
- (6) The British Columbia Court of Appeal Rules apply, with the necessary changes and so far as applicable, to an appeal to the Court of Appeal under this Act.
-

## **Part IX - Extraordinary Remedies**

### **No certiorari**

- 128 (1) A conviction or order must not be removed by certiorari if an appeal was taken, whether or not the appeal has been carried to a conclusion.
- (2) A conviction or order must not be removed by certiorari if
- (a) the defendant appeared and pleaded,
  - (b) the merits were tried, and
  - (c) an appeal might have been taken but the defendant did not appeal.

### **Removal by certiorari**

- 129 (1) On an application for removal by certiorari, a conviction or an order or a warrant for enforcing a conviction or an order must not be held to be invalid for an irregularity, informality or insufficiency in it if the court is satisfied that
- (a) an offence of the nature described in the conviction, order or warrant was committed,
  - (b) there was jurisdiction to make the conviction or order or to issue the warrant, and
  - (c) the punishment imposed, if any, was not in excess of the punishment that might lawfully have been imposed.
- (2) The court in subsection (1) has the same powers to deal with the proceedings as are conferred on a court to which an appeal might have been taken.

**Correcting punishment**

- 130** (1) In proceedings to which section 129 applies, the court must make an order under subsection (2) if it is satisfied that
- (a) a person was properly convicted of an offence, and
  - (b) the imposed punishment is greater than the punishment that may be lawfully imposed.
- (2) For purposes of subsection (1), one of the following orders may be made:
- (a) an order to correct the sentence by imposing a fine that does not exceed the maximum fine that might lawfully have been imposed;
  - (b) an order to correct the sentence by imposing a term of imprisonment that does not exceed the maximum term of imprisonment that might lawfully have been imposed, if the person has not served a term of imprisonment under the sentence that is equal to or greater than the term of imprisonment that might lawfully have been imposed;
  - (c) an order to correct the sentence by imposing a punishment in accordance with paragraph (a) or (b), as the case requires, if the punishment is a fine and imprisonment;
  - (d) an order to remit the matter to the justice and direct the justice to impose a punishment that is not greater than the punishment that may be lawfully imposed.
- (3) If an adjudication is varied under section 129, or under subsection (1) of this section, the conviction and warrant of committal, if any, must be amended to conform with the adjudication as varied.
-



- (4) Any statement that appears in a conviction and is sufficient for the conviction is sufficient for the information, summons, order or warrant in which it appears in the proceedings.

**Application of sections 129 and 130**

**131** Without limiting sections 129 and 130, those sections are deemed to apply if

- (a) the statement of the adjudication, or of any other matter or thing, is in the past tense instead of in the present tense,
- (b) the punishment imposed is less than the punishment that might by law have been imposed for the offence that appears by the evidence to have been committed, or
- (c) there has been an omission to negative circumstances, the existence of which would make the act complained of lawful, whether those circumstances are
  - (i) stated by way of exception or otherwise in the provision under which the offence is charged, or
  - (ii) stated in another provision.

**Not void for defect in form**

**132** On an application for certiorari or habeas corpus, a warrant of committal must not be held to be void merely because of a defect in it if

- (a) it is alleged in the warrant that the defendant was convicted, and
  - (b) there is a valid conviction to sustain the warrant.
-

**Order prohibiting action**

- 133 If, on application, a court quashes a conviction, order or other proceeding made or held by a justice on the ground that the justice exceeded his or her jurisdiction, the court may order that civil proceedings must not be taken against the justice or against any officer who acted under the conviction, order or other proceeding, or under any warrant issued to enforce it.

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**Part X - Miscellaneous**

**Forms**

- 134** (1) The forms set out in the Schedule or forms of similar effect, varied to suit the case, are deemed to be good, valid and sufficient in the circumstances for which they are provided.
- (2) No order is required to attach or affix a seal to any writing or process that the justice is authorized to issue and in respect of which a form is set out in the Schedule.

**Application of Criminal Code**

- 135** If, in any proceeding, matter or thing to which this Act applies, express provision has not been made in this Act or only partial provision has been made, the provisions of the Criminal Code relating to offences punishable on summary conviction apply, with the necessary changes and so far as applicable, as if its provisions were enacted in and formed part of this Act.

**Designations by executive**

- 136** (1) The executive may, by regulation or by written order, designate a person as an enforcement officer, or a class of persons as enforcement officers, for purposes of
- (a) this Act and for enforcement of all or any specified Nisga'a enactments, or
- (b) carrying out the intent of any protocol agreement respecting enforcement of Nisga'a laws that have been entered into by the Nisga'a Nation.
- (2) The executive may, by regulation or written order, designate a person as a prosecutor, or a class of persons as prosecutors, for purposes of this Act.

**Regulations**

- 137 (1) The executive may make regulations considered necessary and advisable for purposes of this Act including, without limitation, the following regulations:
- (a) subject to subsection (2) of this section, prescribing a fine for the contravention of a Nisga'a enactment;
  - (b) prescribing the Nisga'a enactments in respect of which an enforcement officer may issue a violation ticket, issue an appearance notice or issue both a violation ticket and an appearance notice;
  - (c) authorizing any word or expression on a violation ticket to designate an offence under a Nisga'a enactment;
  - (d) designating any person or class of persons for the purposes of section 104(1);
  - (e) prescribing diversion programs or alternative forms of community sanction;
  - (f) prescribing a tariff of fees.
- (2) If a minimum or maximum fine is established by a Nisga'a enactment, the fine prescribed under subsection (1)(a) must not be less than the minimum or more than the maximum fine established by that enactment.

**Repeal and replacement**

- 138 (1) The *Nisga'a Offence Act, 2001*, NLGSR 2001/20, is repealed and replaced by this Act.
- (2) The *Nisga'a Offence Act*, NLGSR 2000/05, to any extent it remains unrepealed, is repealed and replaced by this Act.
-

NISGA'A OFFENCE ACT

**Schedule**

**Form 1**

**(Nisga'a Offence Act)**

**Information To Obtain A Search Warrant**

Canada:

Province of British Columbia:

County of

This is the information of *A.B.*, .....*[occupation]*....., of .....*[address]*.....in  
.....*[territorial division]*, called the "informant", taken before me.

The informant says that *[describe things to be searched for and offence in respect of which search is to be made]*, and that he or she has reasonable grounds for believing that the things or some part of them are in the *[dwelling house, etc.]* of *C.D.*, of ..... in  
*[territorial division]* *[here add the grounds of belief, whatever they may be]*.

The informant requests a search warrant be granted to search the *[dwelling house, etc]* for the things.

Sworn before me . .....

..... *[month, day, year]*, at .....

.....

..... *(Signature of Informant)*

A ..... in and for the Province of British Columbia.

## NISGA'A OFFENCE ACT

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**Form 2**  
**(Nisga'a Offence Act)**  
**Information**

Canada:

Province of British Columbia:

County of

This is the information of C.D., .....[occupation]....., of .....[address].....in  
.....[territorial division], called the "informant", taken before me:

The informant says that *[if the informant has not personal knowledge, state that he or she has reasonable and probable grounds to believe and does believe and state the offence]*.

Sworn before me . . . . .

..... [month, day, year], at .....

.....

..... (Signature of Informant)

A ..... in and for the Province of British Columbia.

NISGA'A OFFENCE ACT.

**Form 3**

*(Nisga'a Offence Act)*

**Warrant to Search**

Canada:

Province of British Columbia:

County of

To the peace officers/enforcement officers in *[territorial division]*:

It appears on the oath of *A.B.*, of ..... that there are reasonable grounds for believing that *[describe things to be searched for and offence in respect of which search is to be made]* are in ..... at ..... called the "premises":

This is to authorize and require you between the hours of *[as the justice may direct]* to enter the premises and to search for the things and to bring them or a report of them before me or another justice.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

**Form 4***(Nisga'a Offence Act)***Search Warrant (Telewarrant)**

Canada:

Province of British Columbia:

County of

To A.B., and other peace officers/enforcement officers in *[territorial division in which the warrant is intended for execution]*:

It appears on the oath of A.B., a *[peace officer/enforcement officer]* in *[territorial division]*, that there are reasonable grounds for dispensing with an information presented personally and in writing, and that there are reasonable grounds for believing that *[describe things to be searched for and offence in respect of which search is to be made]* are in ..... at ..... called "the premises":

This is to authorize and require you within \_\_\_\_ days of this warrant's issuance between the hours of *[as the justice may direct]* to enter the premises and to search for and seize the things and to report on the execution of the warrant as soon as practicable but within a period not more than seven days after the execution of the warrant to the clerk of the court for the *[territorial division in which the warrant is intended for execution]*.

Issued at ..... *[time]* on ..... *[month, day, year]*, at ..... *[place]*.

.....  
A ..... in and for the Province of British Columbia

To the Occupant: This search warrant was issued by telephone or other means of telecommunication. If you wish to know the basis on which this warrant was issued, you may apply to the clerk of the court for the territorial division in which the warrant was executed, at *[address]*, to obtain a copy of the information on oath.



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You may obtain from the clerk of the court a copy of the report filed by the peace officer or enforcement officer who executed this warrant. That report will indicate the things, if any, that were seized and the location where they are being held.

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**Form 5****(Nisga'a Offence Act)****Arrest Warrant for Defendant Charged with an Offence**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]*:

A.B., of ..... *[occupation]*, called the "defendant", has been charged that *[state the offence as in the information]*:

This is to command you at once to arrest the defendant and to bring the defendant before ..... or any justice in and for *[territorial division]*, to answer to the charge and to be dealt with according to law.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT

**Form 6**

***(Nisga'a Offence Act)***

**Arrest Warrant if Defendant Fails to Appear**

Canada:

Province of British Columbia:

County of

To the peace officers in the *[territorial division]*:

*A.B.*, of ..... called the "defendant", appeared before me on ..... *[month, day, year]*, on a charge that *[state the offence as in the information]*:

And the trial *[or inquiry, etc]* was adjourned to ..... *[month, day, year]*:

And the defendant failed to appear at the time and place to which the trial *[or inquiry, etc.]* was adjourned:

This is to command you at once to arrest the defendant and to bring the defendant before me or any justice in and for *[territorial division]*, to answer to the charge and to be dealt with according to law.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

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**Form 7****(Nisga'a Offence Act)****Subpoena to a Witness**

Canada:

Province of British Columbia:

County of

To *E.F.*, of ..... [*occupation*]:

*A.B.* has been charged that [*state offence as in the information*], and it has been made to appear that you are likely to give material evidence for the prosecution [*or the defence*]:

This is to command you to attend before [*name of justice*], on ..... [*month, day, year*], at ..... [*time (AM or PM)*], at ..... to give evidence concerning the charge.\*

Dated ..... [*month, day, year*], at .....

A ..... in and for the Province of British Columbia

\* *If a witness is required to produce records add the following.* - and to bring with you any records in your possession or under your control that relate to the charge, and more particularly the following [*specify any records required*].

## NISGA'A OFFENCE ACT

**Form 8***(Nisga'a Offence Act)***Arrest Warrant for Witness**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]*:*A.B.*, of ..... has been charged that *[state offence as in the information]*:And it has been made to appear that *E.F.* ..... called the "witness", is likely to give material evidence for the prosecution *[or the defence]*, and that\* .....This is to command you to bring the witness before *[name of justice]* on ..... *[month, day, year]*, at ..... *[time (AM or PM)]*, at ..... to give evidence concerning the charge.Dated ..... *[month, day, year]*, at .....  
.....

A ..... in and for the Province of British Columbia

\*Insert whichever of the following is appropriate:

- (a) *E.F.* will not attend unless compelled to do so.
- (b) *E.F.* is evading service of a subpoena.
- (c) *E.F.* was served with a subpoena and has neglected to attend at the time and place appointed in it *[or to remain in attendance]*.
- (d) *E.F.* was bound by a recognizance to attend and give evidence and has neglected to attend *[or to remain in attendance]*.

**Form 9****(Nisga'a Offence Act)****Warrant to Arrest an Absconding Witness**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]*:

A.B., of ..... has been charged that *[state offence as in the information]*:

And I am satisfied by information in writing and under oath that C.D., of ....., called the "witness", is bound by recognizance to give evidence on the trial of the defendant on the charge, and that the witness has absconded *[or is about to abscond]*.

This is to command you to arrest the witness and bring the witness before *[the justice before whom the witness is bound to appear]*, to be dealt with according to law.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT

**Form 10**

*(Nisga'a Offence Act)*

**Warrant Remanding a Prisoner**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]*:

You are commanded at once to convey to the *[prison]* at ..... the persons named in the following schedule, each of whom has been remanded to the time mentioned in the schedule:

Person Charged

Offence

.....

.....

And I command you, the keeper of the prison, to receive each of the persons into your custody in the prison and keep each person safely until the day when his or her remand expires and then to have each person before me or any other justice at ..... at ..... *[time (AM or PM)]* to answer the charge and to be dealt with according to law, unless you are otherwise ordered before that time.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

**Form 11****(Nisga'a Offence Act)****Warrant of Committal on Conviction**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]* and to the keeper of the *[prison]* at .....

A.B., called the "defendant", was convicted today on a charge that *[state offence as in the information]*, and it was adjudged that the defendant for his or her offence\* .....

You are commanded to take the defendant and convey the defendant safely to the *[prison]* at ..... and deliver the defendant to the keeper, together with the following:

You, the keeper, are commanded to receive the defendant into custody in the prison and imprison the defendant there.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

\* Use whichever of the following forms of sentence is applicable:

- (a) be imprisoned in the *[prison]* at ..... for the term of .....
- (b) forfeit and pay the sum of \$ ....., to be applied according to law, and also pay to ..... the sum of \$..... in respect of costs, and in default of payment of the sums at once *[or within a time set, if any]* be imprisoned in the *[prison]* at ..... for the term of ..... unless the sums and costs and charges of the committal and of conveying the defendant to the prison are paid:



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- (c) be imprisoned in *[prison]* at ..... for the term of ..... and in addition *[as in (b) above]*.

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**Form 12****(Nisga'a Offence Act)****Warrant of Committal on an Order for the Payment of Money**

Canada:

Province of British Columbia:

County of

To the peace officers *[territorial division]* and to the keeper of the *[prison]* at .....

*A.B.*, called the "defendant", was tried on an information alleging that *[set out matter of complaint]*, and it was ordered that *[set out the order made]*, and in default that the defendant be imprisoned in the *[prison]* at ..... for a term of .....

I command you to take the defendant and convey the defendant safely to the *[prison]* at ..... and deliver the defendant to the keeper together with the following:

I command you, the keeper of the prison, to receive the defendant into your custody in the prison and imprison the defendant there for the term of ..... unless the amounts and the costs and charges of the committal and of conveying the defendant to the prison are paid.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT

**Form 13**

**(Nisga'a Offence Act)**

**Warrant of Committal for Default on Recognizance**

Canada:

Province of British Columbia:

County of

To the peace officers *[territorial division]* and to the keeper of the *[prison]* at .....

*A.B.*, called the "defendant", has been ordered to enter into a recognizance to keep the peace and be of good behaviour, and has refused *[or failed]* to enter into a recognizance accordingly:

You are commanded to take the defendant and convey the defendant safely to the *[prison]* at ..... and deliver the defendant to the keeper, together with the following:

You, the keeper, are commanded to receive the defendant into your custody in the prison and imprison the defendant there until he or she enters into a recognizance or until he or she is discharged in due course of law.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

**Form 14****(Offence Act)****Warrant of Committal for Contempt**

Canada:

Province of British Columbia:

County of

To the peace officers in *[territorial division]* and to the keeper of the *[prison]* at .....

*E.F.*, of ....., called the "defaulter", was on .....*[month, day, year]*, at .....  
convicted before .....for contempt in that he or she did not attend before .....  
to give evidence on the trial of a charge that *[state offence as in the information]* against *A.B.*, of  
..... although subpoenaed *[or bound by recognizance to appear and give evidence in  
that behalf]* and did not show sufficient excuse for his or her default:

On conviction it was adjudged that the defaulter *[set out punishment adjudged]*:The defaulter has not paid the amounts adjudged to be paid *[delete if not applicable]*.

This is to command you to take the defaulter and convey the defaulter safely to the prison at  
..... and to deliver the defaulter to the keeper, together with the following:

I command you, the keeper, to receive the defaulter into your custody in the prison and imprison the  
defaulter there.\*

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

\* Insert whichever of the following is applicable:

(a) for the term of .....

NISGA'A OFFENCE ACT

- 
- (b) for the term of ..... unless the sums and the costs and charges of the committal and of conveying the defaulter to the prison are paid; or
  - (c) for the term of ..... and for the term of [*if consecutive so state*], unless the sums and costs and charges of the committal and of conveying the defaulter to the prison are paid.

---

**Form 15****(Nisga'a Offence Act)****Warrant of Committal in Default of Payment of Costs of an Appeal**

Canada:

Province of British Columbia:

County of

To the peace officers of *[territorial division]* and to the keeper of the *[prison]* at .....

It appears that on the hearing of an appeal before the *[set out justice]*, it was adjudged that *A.B.*, of  
....., called the "defaulter", should pay to the clerk of the court the sum of \$.....  
in respect of costs:

And the clerk of the court has certified that the defaulter has not paid the sum within the time limited:

I command you to take the defaulter and safely convey the defaulter to the *[prison]* at  
..... and deliver the defaulter to the keeper, together with the following:

I command you, the keeper, to receive the defaulter into your custody in the prison and imprison the  
defaulter for the term of ..... unless the sum and the costs of the committal and of conveying the  
defaulter to prison are paid.

Dated ..... *[month, day, year]*, at .....

.....

A..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT,

**Form 16**

*(Nisga'a Offence Act)*

**Endorsement of Warrant**

Canada:

Province of British Columbia:

County of

I authorize the execution of this warrant in *[territorial division]*.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

**Form 17**

*(Nisga'a Offence Act)*

**Endorsement of Warrant**

Canada:

Province of British Columbia:

County of

To the peace officers in the *[territorial division]*:

I authorize the release of the defendant under section 37 of the *Nisga'a Offence Act*.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia



NISGA'A OFFENCE ACT

**Form 18**  
**(Nisga'a Offence Act)**  
**Recognizance**

Canada:

Province of British Columbia:

County of

Today the persons named in the following schedule personally came before me and separately acknowledged themselves to owe to the Nisga'a Nation the several amounts set opposite their respective names, namely:

Name	Address	Occupation	Amount
A.B.			
CD.			
E.F.			

to be made and levied of their individual property, respectively, to the use of the Nisga'a Nation, if *A.B.* fails in the following condition:\*

Taken and acknowledged before me on ..... [month, day, year], at .....  
.....

A ..... in and for the Province of British Columbia

\* Use whichever of the following conditions is appropriate:

- (a) *A.B.* has been charged [state offence as in the information]: The condition of the above written recognizance is that if *A.B.* appears before the [state justice] on..... [month, day, year], at ..... [(AM or PM)], at [place], to answer to the charge and to be dealt with according to law, the recognizance is void, otherwise it stands in full force.

NISGA'A OFFENCE ACT

---

- (b) The condition of the above written recognizance is that if *AB* keeps the peace and is of good behaviour for the term of ..... beginning on ..... the recognizance is void, otherwise it stands in full force.
- (c) The condition of the above written recognizance is that if *A.B.* appears and receives judgment when called on during the term of ..... beginning on ..... and during that term keeps the peace and is of good behaviour [*add special conditions as authorized and applicable*], the recognizance is void, otherwise it stands in full force.
- (d) *A.B.*, called the "appellant", has appealed against his or her conviction [*or against all order or by way of stated case*] in respect of the following matter [*set out offence, subject matter, of order or question of law*]:

The condition of the above written recognizance is that if the appellant personally appears at the sittings of the court at which the appeal [*or stated case*] is to be heard and abides the judgment of the court, the recognizance is void, otherwise it stands in full force.

NISGA'A OFFENCE ACT

**Form 19**  
**(Nisga'a Offence Act)**  
**Conviction**

Canada:

Province of British Columbia:

County of

On ..... [month, day, year], A.B. called the "defendant", was tried under the *Nisga'a Offence Act* on the charge that [state fully the offence of which defendant was convicted] and was convicted of the offence, and the following punishment was imposed on the defendant, namely:\*

Dated ..... [month, day, year], at .....

A ..... in and for the Province of British Columbia

\* Use whichever of the following forms of sentence is applicable:

- (a) That the defendant be imprisoned in the [prison] at ..... for the term of .....
- (b) That the defendant forfeit and pay the sum of \$ ..... to be applied according to law, and also pay to..... the sum of \$..... in respect of costs, and in default of payment of the sums at once [or within a time set, if any] to be imprisoned in the [prison] at ..... for the term of ..... unless the sums and costs and charges of the committal and of conveying the defendant to the prison are paid.
- (c) That the defendant be imprisoned in the [prison] at ..... for the term of ..... and in addition forfeit and pay the sum of \$..... to be applied according to law, and also pay to the sum of \$ ..... in respect of costs, and in default of payment of the sums at once [or within a time set, if any] to be imprisoned in the [prison] at ..... for the term of ..... unless the sums and costs and charges of the committal and of conveying the defendant to the prison are paid.

**Form 20**

*(Nisga'a Offence Act)*

**Order Against a Defendant**

Canada:

Province of British Columbia:

County of

On ..... *[month, day, year]*, A.B., of ..... was tried on an information alleging that *[set out matter of complaint]*, and it was ordered and adjudged that *[set out the order made]*.

Dated ..... *[month, day, year]*, at.....

.....

A ..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT

**Form 21**

*(Nisga'a Offence Act)*

**Conviction for Contempt**

Canada:

Province of British Columbia:

County of

On ..... *[month, day, year]*, at ..... in *[territorial division]* E.F.,  
of ..... called the "defaulter", is convicted by me for contempt in that he or she did  
not attend before *[name of justice]* to give evidence on the trial of a charge that *[state fully offence with  
which defendant was charged]*, although subpoenaed *[or bound by recognizance to attend to give evidence,]*  
and has not shown before me sufficient excuse for his or her default:

I adjudge the defaulter for his or her default *[set out punishment as authorized and determined in  
accordance with section 68 of the Nisga'a Offence Act]*.

Dated ..... *[month, day, year]*, at .....

.....

A ..... in and for the Province of British Columbia

**Form 22*****(Nisga'a Offence Act)*****Order for Discharge of a Person in Custody**

Canada:

Province of British Columbia:

County of

To the keeper of the *[prison]* at .....

I direct you to release *E.F.*, detained by you under a warrant of committal *[or order]* dated .....  
*[month, day, year]*, if *E.F.* is detained by you for no other cause. ....

Dated.....*[month, date, year]*, at .....

.....

A ..... in and for the Province of British Columbia

NISGA'A OFFENCE ACT

**Form 23**

*(Nisga'a Offence Act)*

**Certificate of Nonpayment of Costs of Appeal**

In the court of .....

*[Style of cause]*

I certify that *A.B.*, the appellant *[or respondent]*, in this appeal, having been ordered to pay costs in the sum of \$ ..... has failed to pay the costs within the time limited for payment.

Dated ..... *[month, day, year]*, at .....

*Clerk of the* ..... *Court of* .....

[Seal.]

**Form 24*****(Nisga'a Offence Act)*****Jailer's Receipt to Peace Officer for Prisoner**

I certify that I have received from *X. Y.*, a peace officer for *[territorial division]*, one *A.B.*, together with a warrant *[or order]* issued by *[set out court or justice]*.\*

Dated ..... *[month, day, year]*, at .....

.....

Keeper of *[prison]*.

\*Add a statement of the condition of the prisoner.



NISGA'A OFFENCE ACT

**Form A**  
**(Nisga'a Offence Act)**  
**Violation Ticket**

ISSUED TO:

SURNAME OR CORPORATE NAME									
GIVEN NAMES (OR CORPORATE NAME CONTINUED)									<input type="checkbox"/> YOUNG PERSON
PROV/S/STATE	DRIVERS LICENCE NUMBER and NISGA'A LICENSE NUMBER		PRODUCED	EXPIRY	GENDER	YY	MM	DD	
ADDRESS						BIRTHDATE			
CITY/TOWN/PLACE						PROV/S/STATE			

THE ENFORCEMENT OFFICER SAYS THAT HE OR SHE HAS REASONABLE AND PROBABLE GROUNDS TO BELIEVE AND DOES BELIEVE THAT

ON OR ABOUT

Violation date	MM	DD
20		

AT THE TIME OF

(24hr Clock)

AT OR NEAR

PLACE/ CITY/ TOWN

IN THE PROVINCE OF BRITISH COLUMBIA

DID COMMIT THE OFFENCES INDICATED UNDER THE FOLLOWING ACT OR ITS REGULATIONS

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> NISGA'A ELECTIONS ACT | <input type="checkbox"/> NISGA'A CITIZENSHIP ACT | <input type="checkbox"/> NISGA'A FISHERIES AND WILDLIFE ACT |
| <input type="checkbox"/> NISGA'A FOREST ACT    | <input type="checkbox"/> NISGA'A LAND TITLE ACT  | <input type="checkbox"/> NISGA'A LAND ACT                   |
| <input type="checkbox"/> OTHER (SPECIFY) _____ |  |   |

DESCRIPTION OF OFFENCE	ACT/ REGS	SECTION	TICKETED AMOUNT
C O U N T (1)	<input type="checkbox"/> ACT		\$
	<input type="checkbox"/> REGS		
C O U N T (2)	<input type="checkbox"/> ACT		\$
	<input type="checkbox"/> REGS		
C O U N T (3)	<input type="checkbox"/> ACT		\$
	<input type="checkbox"/> REGS		

PROVINCIAL COURT HEARING LOCATION		DATE OF SERVICE		20	MM	DD
ENF. OFFICERS#		ORGANIZATION (DETACHMENT/LOCATION)				

SHADED AREAS OF THIS TICKET ARE NOT PART OF THE OFFENCE CHARGED

ENFORCEMENT OFFICER'S SIGNATURE

IF THE ALLEGATIONS OR FINES ARE NOT DISPUTED (SEE REVERSE) WITHIN 30 DAYS, THIS TICKET WILL BE TREATED AS NOT DISPUTED. YOU WILL BE DEEMED TO HAVE PLEADED GUILTY TO THE ALLEGED OFFENCE(S) AND TO OWE THE NISGA'A NATION THE TICKETED AMOUNT(S). YOUR SIGNATURE INDICATES YOU HAVE RECEIVED THIS TICKET AND IS NOT AN ADMISSION OF GUILT.

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS VIOLATION TICKET

ALLEGED OFFENDER'S SIGNATURE \_\_\_\_\_

## NISGA'A OFFENCE ACT

NISGA'A OFFENCE ACT

## Violation Ticket

### PAYMENT AND DISPUTE INSTRUCTIONS

#### HOW TO PAY THIS TICKET

##### HOW DO I MAKE A PAYMENT?

You may pay by mail, by sending your cheque or money order (payable to the Nisga'a Nation in Canadian funds) to the TICKET PAYMENT PROCESSING OFFICE, P.O. BOX 231, NEW AIYANSH, BRITISH COLUMBIA, V0J 1A0. Do not send cash in the mail. A receipt will NOT be sent back to you.

OR

You may pay by delivering your payment in person to the TICKET PAYMENT PROCESSING OFFICE at 2000 LISIMS DRIVE, NEW AIYANSH, BRITISH COLUMBIA.

**NOTE:** Your payment must be accompanied by a copy of the other side of this ticket, or a note including:

- the Ticket Number (from the top right corner on the face of the ticket);
- your full name, address, driver's licence number and date of birth;
- the violation date, and Nisga'a law and section number of the offence(s).

If you do not provide these details, your payment might not be credited to you, and the ticketed amount(s) may remain outstanding. Dishonoured cheques will be subject to additional administrative charges. By paying any portion of the ticketed amount, you will be deemed to have pleaded guilty to the described offence(s) and they will be added to your record as conviction(s).

##### WHAT HAPPENS IF I DO NOT PAY?

If you do not pay or dispute this ticket within thirty days of the date you were served with the ticket, you will be deemed to have pleaded guilty to the offence(s) and they will be added to your record as conviction(s). The ticketed amount shown on the front becomes a debt due to the Nisga'a Nation and you may be subject to collection activity. Nonpayment may also affect your ability to obtain or renew licences and permits issued under the Nisga'a law under which you have been deemed to have pleaded guilty.

---

#### HOW TO DISPUTE THIS TICKET

##### CAN I DISPUTE THIS TICKET?

Yes. If you dispute the allegations or the fine portion of the ticketed amount you or your agent will have to go to the Provincial Court for a hearing at the location indicated on the face of this ticket. After you dispute the ticket you will be sent a notice of the time and date of the hearing of the dispute.

##### HOW MUCH TIME DO I HAVE TO DISPUTE?

You have thirty days from the date you were served with the ticket to give your dispute notice. The date of service is shown on the front of the ticket.

##### HOW CAN A DISPUTE NOTICE BE GIVEN?

You may give your dispute notice by mailing it to the TICKET DISPUTE PROCESSING OFFICE, P.O. 231, NEW AIYANSH, BRITISH COLUMBIA, V0J 1A0.

OR

You may give your dispute notice personally by delivering it to the TICKET DISPUTE PROCESS OFFICE at 2000 LISIMS DRIVE, NEW AIYANSH, BRITISH COLUMBIA.

**NOTE:** Your notice of dispute must be accompanied by a copy of the other side of this ticket, or a note including:

- the Ticket Number (from the top right corner on the face of the ticket);
- your full name, address, driver's licence number and date of birth;
- the violation date, and Nisga'a law and section number of the offence(s).

If you do not provide these details, the dispute might not be recorded and you may be deemed to have pleaded guilty to the described offences. If your address changes before you have been notified of a hearing date, you should give your new address to the Provincial Court at the address shown on the front of the ticket to help ensure proper notice to you of the hearing of the dispute.

##### WHAT HAPPENS AFTER MY DISPUTE HAS BEEN RECEIVED?

NISGA'A OFFENCE ACT

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You will receive notice in the mail from the Provincial Court Registry telling you the time and location for your hearing. If you do not attend the Court on the indicated date, the ticket will be treated as undisputed, the ticketed amount will be immediately payable to the Nisga'a Nation, and conviction(s) of the described offence(s) will be added to your record. See above regarding NON-PAYMENT.

## NISGA'A OFFENCE ACT

## Form B

*(Nisga'a Offence Act)*

## Summons and certificate of service

COURT FILE NUMBER
----------------------

Canada:

Province of British Columbia:

To: ..... of .....

Whereas you have this day been charged before me that .....

You are commanded to appear before the Presiding Provincial Court Judge on the .....  
day of ..... 19...., at ..... o'clock in the ..... noon, at .....  
on or before any Justice in and for the said Province who is there, to answer to the said charge  
and to be dealt with according to law.

Dated this ..... day of ..... 20...., at ..... British  
Columbia.

.....  
A Provincial Judge (Justice of the Peace)  
in and for the Province of British Columbia

## CERTIFICATE OF SERVICE

I, ..... [Name]..... [Occupation] ....., certify that on the  
..... day of ..... 20 .... I served ..... [Name of Defendant]  
..... with a copy of this summons in the manner indicated below:  
(Place mark in appropriate box)

- ☐ by delivering it to him/her personally.
- ☐ because the defendant named above could not conveniently be found, by leaving it for  
him/her at his/her last or most usual place of abode with an occupant of that place who  
appeared to be at least 16 years of age.
- ☐ the defendant being a municipal corporation, by delivering it to the mayor/secretary-  
treasurer/or clerk of the corporation, namely: .....

NISGA'A OFFENCE ACT

- 
- ☐ the defendant being an extra-provincial company, by serving the copy on that extra-provincial company's attorney, namely: .....
  - ☐ the defendant being a corporation that is neither a municipal corporation nor an extra-provincial company, by delivering a copy to a director/ or to a manager/secretary/ or other executive officer, of the corporation/ or of a branch of the corporation, namely: .....
  - ☐ pursuant to the order of ..... *[name of justice who made the order]* ..... by leaving the copy at/or sending the copy by registered post addressed to the registered or principal office of the defendant corporation at the following address, namely: .....
  - ☐ the defendant being a Nisga'a Village, by delivering a copy to the Chief Councillor of the Nisga'a Village, namely: .....

Dated this ..... day of ..... 20 .....

.....  
Peace Officer

## NISGA'A OFFENCE ACT

**Form C**  
**(Nisga'a Offence Act)**  
**Warrant**

COURT FILE NUMBER
----------------------

Canada:

Province of British Columbia:

To the Peace Officers of the Province of British Columbia:

Whereas ..... of ..... (*the "defendant"*)has been charged that (*state the substance of that offence*)

And whereas:

- ☐ 1. the defendant failed to attend court in accordance with the summons served upon him/her.
- ☐ 2. it appears that a summons cannot be served because the defendant is evading service.
- ☐ 3. the defendant failed to attend court in accordance with the appearance notice issued to or the promise to appear given by the defendant and it has been proved that the appearance notice or the promise to appear was served on the defendant.

You are commanded as soon as practicable to arrest the defendant and to bring him/her before any Justice/Judge in and for the Province of British Columbia to be dealt with according to law.

Dated this ..... day of ..... 20 .... at ..... British Columbia.

.....  
A Justice of the Peace in and for the Province of  
British Columbia or Clerk of the Court on behalf of .....

---

## NISGA'A OFFENCE ACT

**Endorsement of Warrant**

Canada:

Province of British Columbia:

To the Peace Officers in the Province of British Columbia:

I authorize the release of the defendant under section 37 of the *Nisga'a Offence Act*.

Dated this ..... day of ..... 20 .... at ..... British  
Columbia.

.....  
A Judge or Justice of the Peace in and for the  
Province of British Columbia

DESCRIPTION OF DEFENDANT	REPORT OF OFFICER INVESTIGATING
Name	
Alias	
Nationality	
Residence	
Occupation	
Birthplace	
Age	
Height	
Weight	
Build	
Complexion	
Colour of hair	
Eyes	
Clean shaven or otherwise	
Description of clothing	
Other particulars	
Informant's address	
Informant's phone no.	
	Executed by
	Date

**Form D****(Nisga'a Offence Act)****Promise to appear and certificate of service**

COURT FILE NUMBER
----------------------

Canada:

Province of British Columbia:

I ..... of ..... understand that it is alleged that

I have committed [*set out substance of offence*]

In order that I may be released from custody, I promise to attend court on the  
 ..... day of ..... 20...., at ..... o'clock in the ..... noon in Provincial  
 Courtroom number ..... located at ..... British Columbia and to attend  
 thereafter as required by the court, in order to be dealt with according to law.

Dated this ..... day of ..... 20...., at ..... British Columbia.

.....  
Signature of Defendant.....  
Signature of Officer in Charge**CERTIFICATE OF SERVICE**. .... [*Name*] ..... [*Occupation*] ..... certify that on the  
.....

day of ..... 20...., I served ..... [*Name of Defendant*] ..... with  
 a copy of the Promise to Appear on the reverse side by delivering it to him/her personally.

Dated this ..... day of ..... 20 ....

.....  
Signature



NISGA'A OFFENCE ACT,

**Form E**

**(Nisga'a Offence Act)**

**Appearance notice and certificate of service**

Canada:

Province of British Columbia:

To.....(*name of Defendant*).....  
of .....(*address*).....

You are alleged to have committed (*set out substance of offence*).....

You are required to attend court on the ..... day of ..... 20..., at ..... o'clock  
in  
the ..... noon in the Provincial Courtroom number ..... located at ..... and  
to attend thereafter as required by the court in order to be dealt with according to law..

Issued at ..... this ..... day of ..... 20... at  
..... in the Province of British Columbia.

.....  
Signature of Issuer

.....  
Agency

.....  
Signature of Defendant

**CERTIFICATE OF SERVICE**

I, ..... [*Name*] ..... [*Occupation*] ..... certify that on the.....  
day of ..... 20..., I served ..... [*Name of Defendant*] ..... with  
a copy of the appearance notice on the reverse side by delivering it to him/her personally.

Dated this ..... day of ..... 20 .....  
Signature

## NISGA'A OFFENCE

**Form F**

*(Nisga'a Offence Act)*

# Affidavit

TIC#..... DOB ..... DL#.....  
 day month year NL#.....

I, .....  
(Last name)

.....  
(First name)

of .....  
(Address)

.....

(City) (Prov.) (Postal code)

swear that:

1. On the ..... day of ..... , 20....., I was to appear at a hearing to dispute the following contravention(s)

- ☐ Nisga'a Elections Act
- ☐ Nisga'a Citizenship Act
- ☐ Nisga'a Fisheries and Wildlife Act
- ☐ Nisga'a Forest Act
- ☐ Nisga'a Land Title Act
- ☐ Nisga'a Land Act
- ☐ Other(*specify*)

.....

.....

### Description of Offence

Section

Act/Reg

NISGA'A OFFENCE ACT

- (1) ☐ Act ☐ Reg
- (2) ☐ Act ☐ Reg.
- (3) ☐ Act ☐ Reg.

2. Not more than 30 days have elapsed since the date the hearing was scheduled.
3. Through no fault of my own, I failed to appear before the Provincial Court for the following reasons:

.....

.....

.....

Signature

Sworn before me at .....,

In the Province of British Columbia

this ..... day of ....., 20.....

.....

A Commissioner for taking affidavits

**ORDER**

I hereby order that a new date be set for the hearing of this matter, and that the Nisga'a Nation cancel or cease any administrative actions that have been taken or commenced as a consequence of this person's failure to appear at the hearing.

.....

day month year

Provincial Judge (Justice of the Peace)

**Form G**

## *Nisga'a Offence Act*

## Affidavit

VT# ..... DOB ..... DL#.....  
 day month year NL#.....

I, .....  
(Last name)

.....  
(First name)

of .....  
(Address)

.....

swear that:

1. On the ..... day of ....., ....., I was deemed to have pleaded guilty to the following contravention(s)

- ☐ Nisga'a Elections Act
- ☐ Nisga'a Citizenship Act
- ☐ Nisga'a Fisheries and Wildlife Act
- ☐ Nisga'a Forest Act
- ☐ Nisga'a Land Title Act
- ☐ Nisga'a Land Act
- ☐ Other (*specify*)

.....

.....

NISGA'A OFFENCE ACT

Description of Offence	Section	Act/Reg
(1)		<input type="checkbox"/> Act <input type="checkbox"/> Reg.
(2)		<input type="checkbox"/> Act <input type="checkbox"/> Reg.
(3)		<input type="checkbox"/> Act <input type="checkbox"/> Reg.

2. Not more than 14 days have elapsed since the expiry of my dispute period.

3. Through no fault of my own, I did not have an opportunity to dispute the allegation of fine for the following reasons:

.....  
 .....

.....  
 Signature

Sworn before me at .....,

in the Province of British Columbia

this ..... day of ....., 20.....

.....

A Commissioner for taking affidavits

**CERTIFICATE OF STRIKING OUT OF CONVICTION**

The conviction(s) described above are:

Struck out ☐

Denied ☐

as of the ..... day of ....., 20.....

.....  
 Provincial Judge (Justice of the Peace)

**Form H*****Nisga'a Offence Act*****Certificate**

I, ..... having been designated to file certificates under section 104(1) of the Nisga'a Offence Act, certify that:

1. ....(Name of defendant)..... whose address is ..... was convicted of or deemed to be convicted of an offence(s) under a Nisga'a enactment.
2. As a result of such convictions the defendant is required to pay the following fine(s) or ticketed amount(s):(Specify the Act/Regulation and section number and amount)  
.....  
.....  
.....  
.....
3. The defendant has failed to pay all or part of the fine(s) or ticketed amount(s) and, as of the date of this certificate, the following amount(s) are due and owing:  
.....  
.....  
.....  
.....

Signed at ..... in the Province of British Columbia on the ..... day of  
....., 20.....

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)