

**UCHUCKLESAHT TRIBE GOVERNMENT**

**AMINISTRATIVE DECISIONS  
REVIEW ACT**

**UTS 7/2011**



This law enacted on April 1, 2011

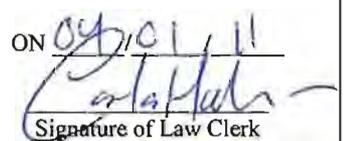
Signed

A handwritten signature in black ink, appearing to read "Charlie Cootes", is written over a horizontal line.

Charlie Cootes, Chief Councillor of the  
Uchucklesaht Tribe

DEPOSITED IN THE  
REGISTRY OF LAWS

ON

The date "04/01/11" is handwritten in black ink above a horizontal line. Below the line is a handwritten signature in black ink.

Signature of Law Clerk



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## PREAMBLE

Through the act of governing, the Uchucklesaht Tribe assumes the responsibility of providing transparent and accountable government. This requires that Uchucklesaht institutions, Uchucklesaht officials and enforcement officers adhere to the Constitution, act within the law and at all times be impartial and free from improper influence and interference. Uchucklesaht citizens and Uchucklesaht enrollees have a right to expect that they will be treated by our government with dignity, respect and courtesy, guided by principles of natural justice and our rights and values set out in our Constitution.

To assist with realizing these goals, the Uchucklesaht Tribe desires a dispute resolution process that is accessible, affordable, understandable and proportionate to the abilities and sensibilities of its users. The resolution of disputes with, and complaints against, the Uchucklesaht government or anyone acting on its behalf or allegations that the law under which government action is taken is invalid should, where possible, be resolved by the parties informally.

Where informal resolution is not possible, the parties to such disputes or complaints, or those who make allegations of a law's invalidity and those acting under that law, are entitled to a resolution of the matter in a way that is expeditious, both in process and in rendering decisions, minimizes any disadvantage unrepresented parties may experience and reaches a final resolution of the matter that is just and fair with reasons given, where appropriate. The resolution process established to resolve such matters must also provide consistency, both in procedure and adjudicative outcomes.

The Uchucklesaht Tribe adopts this Act based on these values.



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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

**1.1** This Act may be cited as the Administrative Decisions Review Act.

### Executive Oversight

**1.2** The chief councillor is responsible for the executive oversight of this Act.

### Application

**1.3** This Act applies to

- (a) a right under a Uchucklesaht enactment to request a review of a decision made under that enactment, except to the extent that the enactment that grants the right specifically provides otherwise,
- (b) a complaint against an enforcement officer carrying out his or her duties in the enforcement of Uchucklesaht law, and
- (c) a challenge to the validity of a Uchucklesaht law.

### Definitions

**1.4** In this Act,

“adjudicator” means an individual appointed to the Review Board under section 2.1;

“applicant” means a person who has filed a review request;

“chairperson” means the adjudicator appointed as the chairperson under section 2.1;

“determination” means

- (a) a decision to which section 1.3(a) applies, or
- (b) an act or omission of an enforcement officer to which section 1.3(b) applies, or
- (c) the assertion by the Uchucklesaht government of the validity of the Uchucklesaht law to which section 1.3(c) applies and, for certainty, unless there is an admission to the contrary, the enactment of a Uchucklesaht law is deemed to be an assertion by the Uchucklesaht government of that law’s validity;

“parties to the review” means

- (a) the applicant, and

- (b) the Uchucklesaht institution responsible for the implementation of the Uchucklesaht law, the enforcement of the Uchucklesaht law or decision, as the case may be, that is the subject of a review under this Act;

“Review Board” means the Administrative Decisions Review Board;

“review request” means the request made under section 3.1 for a review of the determination.

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## PART 2 - REVIEW BOARD AND OFFICER

### Review Board

- 2.1**
- (a) The Review Board is established as a Uchucklesaht public institution under 13.11.1a, and for purposes of 13.3.1j, 13.3.1o, and 13.32.5b of, Chapter 13 Governance of the Maa-nulth Treaty and is an office reporting to the Executive.
  - (b) The Review Board consists of a chairperson and two other adjudicators, each of whom must be appointed by the Executive.
  - (c) The following individuals are ineligible to be adjudicators under this Act:
    - (i) a Uchucklesaht government representative;
    - (ii) a Uchucklesaht public employee;
    - (iii) an enforcement officer whose duties include the enforcement of Uchucklesaht laws; or
    - (iv) an individual with a criminal record.
  - (d) Adjudicators must be appointed for a term of four years.
  - (e) An adjudicator's appointment ends if
    - (i) the adjudicator resigns,
    - (ii) the Executive determines it is in the Uchucklesaht Tribe's best interests that the adjudicator no longer be an adjudicator, or
    - (iii) the Executive determines that the adjudicator, due to mental or physical inability, is not able to perform the duties and exercise the powers of an adjudicator.
  - (f) An adjudicator may not be removed from office merely because of the decisions the adjudicator renders under this Act.
  - (g) An adjudicator must not participate in a review under Part 4 if by doing so that adjudicator is in a conflict of interest as described in section 2.2 of the Integrity Act.
  - (h) If an adjudicator is ineligible to participate in a review under Part 4 because of subsection (g), the Executive must appoint a replacement adjudicator under subsection (b) to participate in that review and that replacement adjudicator is, for all purposes under this Act, an adjudicator until such time as the review is

complete and an order is made under section 4.7 and an order, if any, is made under section 4.8.

- (i) Before an adjudicator may take up the adjudicator's duties, the adjudicator must take the oath of office set out in Schedule 1.

## **Law clerk**

- 2.2** (a) The law clerk is responsible for
- (i) disseminating information respecting a review under this Act,
  - (ii) assisting persons to request a review under this Act,
  - (iii) assisting persons in preparing documents required under this Act in circumstances where, in the opinion of the law clerk, the person has demonstrated an inability to do so on his or her own,
  - (iv) requesting the relevant records of the Uchucklesaht institution responsible for the determination that is being reviewed under this Act,
  - (v) assisting the parties to the review in reaching an agreement on the factual aspects of the review request under section 3.5,
  - (vi) providing a review report to the Review Board as required under section 3.6,
  - (vii) preparing and filing an annual report as required under section 5.5, and
  - (viii) performing any other duties that the Executive specifies and that are not inconsistent with the law clerk's duties under this Act.
- (b) At any time before making a report under section 3.6 in relation to a review request, the law clerk may
- (i) conduct informal inquiries into the review request, and
  - (ii) provide to the parties to the review any assistance the law clerk considers appropriate to help resolve the review request informally.

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## PART 3 - REQUESTING A REVIEW

### Filing of review request

- 3.1**
- (a) A person may request the review of a determination by filing a review request in the prescribed form with the law clerk as required by this Act.
  - (b) A review request to which section 1.3(a) or section 1.3(b) applies must be filed
    - (i) within the time specified for requesting a review in the enactment that grants the right of review, or
    - (ii) within 30 days after the applicant was notified of the determination that is subject of the review request, if no time is specified in that enactment.
  - (c) Subject to subsections (d) and (e), a review request to which section 1.3(c) applies must be filed
    - (i) by a person who has an interest directly affected by the impugned Uchucklesaht law within 90 days of the applicant becoming aware of the effect of the impugned Uchucklesaht law on his or her interest or within 90 days of the date the applicant ought to have become aware of the effect of the impugned Uchucklesaht law on his or her interest, whichever date is sooner, or
    - (ii) by any other person, within 90 days of the impugned Uchucklesaht law coming into force.
  - (d) Despite subsection (c), a review request to which section 1.3(a) or section 1.3(b) applies may include as part of the review request an allegation to which section 1.3(c) applies, however, for certainty, that review request must comply with subsection (b).
  - (e) A review request to which section 1.3(c) applies may not be filed if the validity of the impugned Uchucklesaht law has previously been the subject of review under this Act in substantially the same circumstances and the Review Board has previously ordered that the Uchucklesaht law was valid.
  - (f) A review request must
    - (i) identify the determination, including its subject matter, that is the subject of the review request,
    - (ii) state the date
      - (A) the applicant was notified of the determination, if the review request is one to which section 1.3(a) or section 1.3(b) applies, or

- (B) the applicant became aware of the effect of the impugned Uchucklesaht law on his or her interest, if the review request is one to which section 1.3(c) applies, or
  - (C) on which the impugned Uchucklesaht law came into force, if the review request is one to which section 1.3(c) applies and subsections (c)(i) and (d) of this section do not apply,
  - (iii) state the basis for the review request, and
  - (iv) give the full legal name of the applicant, an address to which documents may be delivered to the applicant and a telephone number where the applicant or his or her representative may be contacted.
- (g) The law clerk
- (i) must, within seven days after receiving a review request, deliver a copy of the review request to the Uchucklesaht institution responsible for the determination that is the subject of the review request, and
  - (ii) may, subject to the Freedom of Information and Protection of Privacy Act, request copies of the Uchucklesaht institution's records respecting that determination.
- (h) Within seven days after receipt of a request under subsection (g)(ii), the Uchucklesaht institution must submit the following records respecting that determination to the law clerk:
- (i) any record of oral evidence received or relied upon;
  - (ii) copies of any documentary evidence received or relied upon;
  - (iii) any other evidence received; and
  - (iv) a copy of the written determination and written reasons, if any.

### **Extension of time limits**

- 3.2**
- (a) A person who has the right to request a review of a determination may apply to the Review Board for an order extending the time for filing a review request in relation to that determination, whether or not the time allowed under sections 3.1(b) or 3.1(c) for filing a review request has expired.
  - (b) Upon receiving an application under subsection (a) and after giving the Uchucklesaht institution responsible for the determination that is the subject of the review a reasonable opportunity to make representations on that application, the Review Board may order an extension of the time for filing a review request.

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- (c) A Uchucklesaht institution may apply to the Review Board to extend the time for submitting records under section 3.1(h), whether or not the time allowed under that section has expired, and the Review Board may, without giving the applicant an opportunity to make representations on the application, order an extension of the time.
  - (d) The law clerk may apply to the Review Board to extend the time for delivering a review report under section 3.6(a), whether or not the time allowed under that section has expired.
  - (e) Upon receiving an application under subsection (d), the Review Board may
    - (i) without giving notice of the application to the applicant, extend the time once only for a period not to exceed 15 days, and
    - (ii) after giving the applicant a reasonable opportunity to make representations on the application, extend the time for a longer time period than permitted in paragraph (i) or for an additional period.
  - (f) The chairperson must give a copy of an order made under this section to every party affected by it.

## Stays

- 3.3**
- (a) The filing of a review request operates as a stay of the determination that is subject of the review request.
  - (b) The chief councillor may apply to the Review Board for an order to not stay the determination that is the subject of the review request.
  - (c) Upon receiving an application under subsection (b) and after giving the Uchucklesaht institution responsible for the determination that is the subject of the review request a reasonable opportunity to make representations on that application, the Review Board may order that the determination not be stayed if the Review Board decides that the applicant
    - (i) does not likely have an arguable case for requesting a review of the determination, and
    - (ii) the Uchucklesaht institution responsible for the determination that is the subject of the review request would suffer irreparable harm if the determination were stayed.
  - (d) In an order under subsection (c), the Review Board may
    - (i) specify the period of time that the determination is not stayed, and

- (ii) impose any conditions that the Review Board considers appropriate in the circumstances.

### **Preliminary assessment**

- 3.4** (a) Within 14 days of the filing of a review request, the Review Board must make an assessment whether the review request is frivolous, without merit or based upon a technical irregularity that has not resulted in an injustice.
- (b) If the Review Board makes a preliminary assessment that the review request is frivolous, without merit or based upon a technical irregularity, the Review Board must
- (i) advise the applicant in writing of this preliminary assessment and the possible assessment of costs under section 4.8 if the applicant continues with the review request, and
  - (ii) give the applicant reasonable opportunity to decide whether to proceed with the review request.

### **Agreement as to facts**

- 3.5** Before submitting a review report under section 3.6, the law clerk must assist the parties to the review to reach an agreement on the factual matters related to the review request filed and identify those factual matters that are in dispute.

### **Review report**

- 3.6** (a) Within 30 days of the filing of a review request, the law clerk must provide a review report respecting the review request to the Review Board unless the review request has been
- (i) withdrawn by the applicant, or
  - (ii) resolved as a result of informal intervention of the law clerk under section 2.2(b).
- (b) A review report under subsection (a) must include
- (i) a copy of the review request,
  - (ii) a copy of the records submitted under section 3.1(h),
  - (iii) the Review Board's preliminary assessment made under section 3.4, and
  - (iv) a statement containing the facts which the parties to the review have agreed upon and those facts that are in dispute.

- (c) The law clerk must provide a copy of the review report under subsection (a) to all the parties to the review.



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## PART 4 - REVIEW BOARD

### General

- 4.1**
- (a) In conducting a review, the Review Board must perform the duties and may exercise the powers given to it under this Act.
  - (b) The Review Board must not conduct an oral hearing or carry out its deliberations without an oral hearing unless
    - (i) in the case of an oral hearing, all the adjudicators are present in person, and
    - (ii) in the case of deliberations without an oral hearing, all the adjudicators are present in person or by means of such telephonic, electronic or other communication facilities as permit all persons participating in the deliberations to communicate adequately with each other.
  - (c) If all the adjudicators are not present as required under subsection (b), the chairperson must
    - (i) adjourn the oral hearing to another date and give notice of the adjournment under section 4.2(b) to the parties to the review, or
    - (ii) suspend or adjourn the Review Board's deliberations until all the adjudicators are present.
  - (d) If an adjudicator has participated in the review of a determination and the adjudicator's appointment ends before the review has been completed with an order made under section 4.7, the adjudicator's term of appointment continues for the purpose only of completing that review and participating in the making of the order under section 4.7 and an order, if any, under section 4.8.
  - (e) If an adjudicator that has participated in the review of a determination becomes unable, for any reason, including the discovery of a conflict of interest as described in section 2.2 of the Integrity Act, to complete the review or to participate in the making of an order under section 4.7, the remaining adjudicators may
    - (i) complete the review and make the order under section 4.7 and an order, if any, under section 4.8, or
    - (ii) adjourn the proceedings until such time as a replacement adjudicator is appointed under sections 2.1(b) or 2.1(h) and that replacement adjudicator has had a reasonable opportunity to become familiar with the proceedings.

## Hearings

- 4.2** (a) Within 15 days after receiving a review report from the law clerk under section 3.6, the chairperson must determine
- (i) whether the review will be conducted on the basis of an oral hearing or written submissions, and
  - (ii) the time, date and location of an oral hearing, if applicable.
- (b) The chairperson must give the parties to the review written notice, of not less than 15 days, of the date of any oral hearing or when written submissions must be received by the Review Board and such date must be no later than 30 days after the date the chairperson received the review report from the law clerk under section 3.6.
- (c) An oral hearing is open to the public unless, on application by any one of the parties to the review, the chairperson orders the public to be excluded.

## Representation

- 4.3** Parties to the review may, at their own expense, be represented by legal counsel or an agent.

## Language

- 4.4** (a) Subject to subsection (b), a review must be conducted in English.
- (b) If the chairperson is satisfied that one of the parties to the review or a witness is unable to understand evidence or submissions presented in English at an oral hearing, the chairperson may order that simultaneous translation into and from the Nuu-chah-nulth language be provided at the hearing.

## Power to require attendance

- 4.5** (a) On a review, the chairperson may, by reasonable written notice, require the applicant or a Uchucklesaht public employee.
- (i) to attend as a witness before the Review Board, at a place and time specified in the notice, and
  - (ii) to bring and produce before the Review Board, subject to subsection (b), all records in the person's possession, custody or power relevant to the subject matter of the review.

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- (b) A Uchucklesaht public employee's obligation to bring and produce records under subsection (a)(ii) is subject to the Freedom of Information and Protection of Privacy Act.
  - (c) A person named in and served with a written notice under subsection (a) must
    - (i) attend before the Review Board,
    - (ii) unless the chairperson directs otherwise, answer on oath or affirmation all questions relevant to the subject matter of the review, and
    - (iii) produce all records in accordance with the notice.
  - (d) If an applicant fails or refuses to attend, take an oath or affirmation, answer questions or produce the records required in the notice under subsection (a), the Review Board may make
    - (i) an order dismissing the applicant's request for review and include in such order an order under section 4.8 requiring the applicant to pay the costs of the Uchucklesaht institution responsible for the determination that is subject of the review, or
    - (ii) an order based upon the information before it.
  - (e) If a Uchucklesaht public employee fails or refuses to attend, take an oath or affirmation, answer questions or produce the records required in the notice under subsection (a), the Review Board may make
    - (i) an order setting aside the determination or declaring invalid the Uchucklesaht law that is subject of the review, and
    - (ii) an order under section 4.8 requiring the Uchucklesaht institution responsible for the determination that is subject of the review to pay the costs of the applicant.

### **Conduct of reviews**

- 4.6**
- (a) Subject to this Act, the Review Board may determine the practice and procedure for the conduct of a review before the Review Board.
  - (b) The Review Board must conduct each review as expeditiously and informally as possible but must give each of the parties to the review a reasonable opportunity
    - (i) to hear the evidence and submissions of the other party to the review,
    - (ii) to present relevant evidence,

- (iii) to question witnesses, and
  - (iv) to make submissions.
- (c) Subject to subsection (d), the Review Board may receive and accept on oath or by affirmation, by affidavit or otherwise, evidence that the Review Board considers relevant and credible, whether or not the evidence would be admissible in a court of law.
- (d) Despite any other provision of this Act, the Review Board may only receive relevant evidence respecting any of the grounds for a review request set out in section 4.7(a) that the applicant is alleging and must not conduct a new hearing into the matter that was subject of the determination under review.
- (e) The Review Board may retain, call or hear a technical expert or advisor when it is in the public interest to do so.
- (f) The Review Board must arrange for the recording of an oral hearing and, on request of any one of the parties to the review and after payment of any prescribed fees by the party making the request, must provide a transcript of that recording.

## Order

- 4.7** (a) The Review Board must decide
- (i) if the review request is one to which section 1.3(a) or section 1.3(b) applies, whether, beyond a reasonable doubt, the determination under review resulted from the Uchucklesaht institution or enforcement officer responsible for the determination
    - (A) acting without jurisdiction or beyond its jurisdiction or authority,
    - (B) refusing to exercise its jurisdiction or authority,
    - (C) failing to observe procedural fairness,
    - (D) failing to interpret the law correctly, or
    - (E) basing its decision, action or omission on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the information before it, or
  - (ii) if the review request is one to which section 1.3(c) applies, whether the impugned Uchucklesaht law is invalid.
- (b) Subject to subsections (c), (d) and (e), if the Review Board determines that

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- (i) the determination did not result from circumstances identified in subsection (a), it must make an order dismissing the review request, or
  - (ii) the determination did result from circumstances identified in subsection (a), it must make an order setting aside the determination or declaring the impugned Uchucklesaht law invalid.
- (c) If the review request is one to which section 1.3(a) or section 1.3(b) applies, on the request of the applicant and the Uchucklesaht institution responsible for the determination that is subject of the review, the Review Board may substitute its own decision for the determination under review if the Review Board has made an order under subsection (b)(ii) setting aside the determination.
- (d) If the review request is one to which section 1.3(c) applies and if the Review Board has made an order under subsection (b)(ii) declaring the impugned Uchucklesaht law invalid, that declaration of invalidity is held in abeyance for 90 days within which time the impugned Uchucklesaht law may be amended to make it valid or repealed, however, for certainty, an order
- (i) setting aside any determination included in the review request to which section 1.3(a) or section 1.3(b) applies, or
  - (ii) substituting the Review Board's own decision in accordance with subsection (c) in place of the determination which is set aside
- is not held in abeyance and has immediate effect, unless otherwise specified in the order.
- (e) The Review Board may make an order dismissing the review request if it determines that the request is based on a technical irregularity and that has not resulted in an injustice.
- (f) The Review Board must make its final order as soon as practicable, but in any event, no later than 30 days
- (i) after the close of any oral hearing held, or
  - (ii) if no oral hearing is held, after receipt of the last written submission by the parties to the review.
- (g) The Review Board must attempt to reach its order by consensus but if consensus is not possible, an order must be made by a majority of the adjudicators.
- (h) The Review Board's order must be in writing and signed by the chairperson.

- (i) Copies of all orders made and reasons given by the Review Board must be delivered in accordance with Uchucklesaht law by the law clerk to the parties to the review as soon as practicable.
- (j) Subject to subsection (k), the Review Board is not required to give written reasons for an order made under this Act.
- (k) If the decision of the Review Board is not unanimous, or if any of the parties to the review have, by written notice, requested the Review Board to do so, the Review Board must give written reasons for the order made.
- (l) Subject to subsection (m), an order of the Review Board is final and binding on the parties to the review and is not subject to appeal.
- (m) An appeal from a decision of the Review Board under this section lies to the Supreme Court only on a question of law or jurisdiction.
- (n) An appeal under subsection (m) must be made within 15 days of the delivery under subsection (i).

### **Costs**

- 4.8**
- (a) After conducting a review, the Review Board may make an order requiring a party to the review to pay all or part of the costs of another one or more of the parties to the review.
  - (b) Without limiting subsection (a), the Review Board may consider an order requiring the applicant to pay all or part of the costs of the Review Board if
    - (i) the Review Board made a preliminary assessment under section 3.4 that the request for a review was frivolous, without merit or based on a technical irregularity that has not resulted in an injustice,
    - (ii) despite the Review Board's preliminary assessment, the applicant wished to proceed with the request for a review of the determination, and
    - (iii) after conducting the review, the Review Board determined the preliminary assessment was correct.
  - (c) For purposes of this section, the Review Board may specify the amount of costs or the manner in which they are to be determined and is not limited to costs that a court may award a party in a civil action before the courts of British Columbia.

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## PART 5 - GENERAL PROVISIONS

### Technical irregularity

- 5.1 A proceeding under this Act is not invalid because of any defect in form or any technical irregularity.

### Limitation on actions

- 5.2 (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Uchucklesaht official or former Uchucklesaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Uchucklesaht institution, Uchucklesaht official or former Uchucklesaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

### Not compellable

- 5.3 Except in a judicial review of an order made under this Act, neither the Review Board, an adjudicator nor the law clerk may be compelled in a civil proceeding to give evidence or to produce a record respecting information obtained in proceedings conducted under this Act.

### Offices of the Review Board

- 5.4 The offices of the law clerk and the Review Board must be within Uchucklesaht lands but the Review Board may sit at any place the chairperson determines, taking into account the convenience to the parties to the review and cost of the proceedings.

### Report by the law clerk

- 5.5 (a) Annually, the law clerk must make a written report to the Executive advising it generally
- (i) on the nature and incidence of review requests,
  - (ii) how the review requests were resolved,
  - (iii) the results of reviews conducted by the Review Board, and

- (iv) any recommendations the law clerk may have for improving the administration of Uchucklesaht institutions to minimize the occurrence of review requests.
- (b) The Executive must present the annual report of the law clerk required under subsection (a) to Council
  - (i) within 30 days after the date the report was received, or
  - (ii) at the next sitting of Council,whichever is later.

### **Regulations**

- 5.6** The Executive may make regulations which it considers necessary or advisable for the purposes of this Act
- (a) respecting fees for the conduct of proceedings and for production of a transcript of an oral hearing under this Act,
  - (b) setting the remuneration of adjudicators,
  - (c) prescribing forms for review requests, and
  - (d) establishing rules of procedure for the Review Board.

### **Commencement**

- 5.7** This Act comes into force on the Maa-nulth Treaty effective date.

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## SCHEDULE 1 – OATH OF OFFICE

Each person who is appointed to serve the Uchucklesaht Tribe as an adjudicator of the Review Board must swear or affirm to perform his or her responsibilities appropriately by answering the following questions, which will be asked by the chief councillor:

“Do you solemnly swear or affirm that you will faithfully, truly and impartially, without fear or favour and to the best of your judgment, skill and ability, perform the office of adjudicator of the Review Board and that you will not, except in the discharge of your duties, disclose to any person any of the evidence or other matter brought before the Review Board.”

“I will.”