

UCHUCKLESAHT TRIBE GOVERNMENT

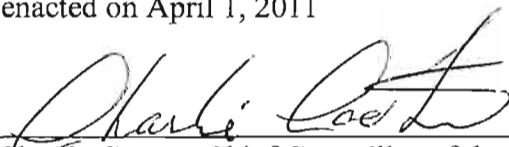
GOVERNMENT PERSONNEL ACT

UTS 5/2011



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

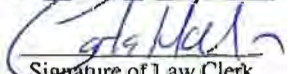
ON 04/01/11

Signature of Law Clerk

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PREAMBLE

Through the act of governing and as a treaty first nation, the Uchucklesaht Tribe assumes the responsibility of providing responsible, efficient and effective government, blending hereditary and modern-day governing institutions. In doing so, our governing structures honour our past and embrace the future ensuring the continued existence of the Uchucklesaht Tribe as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant peoples.

As such, the Uchucklesaht Tribe requires an administration that is responsive to the changing requirements of our nation. It is important that we recruit and develop well qualified, efficient and effective personnel to be part of an administration that encourages creativity and initiative. In doing so, the Uchucklesaht Tribe needs to facilitate the long term employment of our citizens, foster long-term career development and promote harmonious relations between the Uchucklesaht government and its personnel. The public must have trust and confidence in the integrity of the Uchucklesaht administration and the Uchucklesaht government.

To assist with realizing these goals, the Uchucklesaht Tribe desires to establish rules and procedures concerning the recruitment, selection, management, discipline, suspension and dismissal of Uchucklesaht government employees. The values of the Uchucklesaht Tribe require a hiring process that is consistent, fair and based on merit, but which allows priority to be given to Uchucklesaht citizens. These values also require rules and procedures that promote the fair and consistent handling of all employment matters and provide for the review of employment decisions.

The Uchucklesaht Tribe adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Government Personnel Act.

Executive oversight

1.2 The member of the Executive holding the human services portfolio is responsible for the executive oversight of this Act.

Application

- 1.3 This Act governs
- (a) the employment of personnel, and
 - (b) the Department of Human Services.

Definitions

1.4 In this Act,

“just cause” means just cause under federal law or provincial law;

“nepotism” means, for certainty, showing preference or favour to family members or friends because of the relationship with the family member or friend, without regard to merit.

“personnel” means a person employed by a Uchucklesaht institution, regardless of the method of employment, but does not include

- (a) the chief administrative officer, or
- (b) an employee of a for-profit Uchucklesaht corporation unless designated by the Executive by regulation as personnel for the purpose of this definition;

“Review Board” means the Administrative Decisions Review Board.

Executive as employer

- 1.5
- (a) The Executive, on behalf of the Uchucklesaht government, is the employer for the purposes of this Act.
 - (b) For purposes of this Act, the term “Uchucklesaht government” is deemed to include Uchucklesaht public institutions and Uchucklesaht public corporations.

PART 2 - EMPLOYMENT PRINCIPLES

Purposes of Act

2.1 The purposes of this Act are to

- (a) facilitate the provision of service to Uchucklesaht citizens and persons ordinarily resident on Uchucklesaht lands in a manner that is responsive to the changing requirements of the Uchucklesaht Tribe,
- (b) by means of internal advancement and external recruitment of personnel, recruit and develop well qualified, efficient and effective personnel that are representative of the Uchucklesaht citizens,
- (c) facilitate the long term employment of Uchucklesaht citizens,
- (d) encourage the training and development of personnel to foster long term career development and advancement of personnel,
- (e) encourage creativity and initiative among personnel, and
- (f) promote harmonious relations between the Uchucklesaht government and its personnel.

Hiring of personnel

2.2 (a) Subject to section 2.3, hiring personnel under this Act must

- (i) be based on the principle of merit, and
 - (ii) be the result of a process designed to assess the knowledge, skills and abilities of eligible applicants.
- (b) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed and the powers to be exercised, include the applicant's education, skills, knowledge, experience, past work performance and personal suitability.
- (c) Subject to section 2.3, all regulations, standards, policies and procedures respecting recruitment, appointment, transfer and promotion of personnel must be consistent with the principle of merit set out in subsection (a) and must facilitate the purposes of this Act set out in section 2.1.
- (d) Hiring personnel under this Act must not be based on
- (i) personal favouritism,

- (ii) political considerations,
- (iii) nepotism, or
- (iv) any other consideration that is made in bad faith.

Priorities and limitations in relation to hiring

- 2.3** (a) For a vacancy or class of vacancies, applicants for a vacant position are to be given priority or limited, as the case may be, in a manner described in paragraphs (i), (ii) or (iii) or in any combination of any of those paragraphs as follows:
- (i) giving
 - (A) first priority to Uchucklesaht citizens, and
 - (B) second priority to members of other first nations;
 - (ii) encouraging the career development and advancement of personnel; or
 - (iii) limiting the appointment to personnel of a stated occupational group, position level or organizational unit.
- (b) A vacancy may be filled by means of
- (i) a lateral transfer, or
 - (ii) a promotion of current personnel.
- (c) In determining merit under section 2.2(b), consideration of a Uchucklesaht citizen's skills as required by that section may include consideration of that Uchucklesaht citizen's ability to develop the skills necessary for the position in circumstances where that Uchucklesaht citizen does not at that time possess the requisite skills but education and training are readily available for that Uchucklesaht citizen to develop the requisite skills for the position.

Exceptions to section 2.2

2.4 Subject to any regulations

- (a) section 2.2(a) does not apply to an appointment that is a lateral transfer or a demotion, and
- (b) section 2.2(a)(ii) does not apply to the following:
 - (i) a temporary appointment of not more than six months in duration;

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- (ii) a direct appointment by the chief administrative officer in
 - (A) the unusual or exceptional circumstances contemplated in section 4.1(c), or
 - (B) in the circumstances contemplated in section 4.1(d).

Probation

- 2.5**
- (a) If an individual who is not a member of the Uchucklesaht administration is appointed to a position and becomes personnel, the individual is on probation until he or she has worked the equivalent of three months' full time employment.
 - (b) If the appointment is made from within the Uchucklesaht administration, a probation period in the new position not exceeding the equivalent of three months' full time employment may be imposed by the chief administrative officer.
 - (c) The chief administrative officer may reject personnel on probation during the probation period if the chief administrative officer considers that the personnel on probation is unsuitable for employment in the position to which he or she was appointed.

PART 3 - CHIEF ADMINISTRATIVE OFFICER

Office of the chief administrative officer established

- 3.1**
- (a) The office of chief administrative officer is established.
 - (b) The chief councillor must appoint an individual to hold the office of the chief administrative officer after considering the recommendation of the Executive and any human resources committee established under a Uchucklesaht enactment on the appointment.
 - (c) The chief administrative officer reports to the Executive.

Administrative responsibilities

- 3.2**
- (a) The chief administrative officer is responsible for the general management and administration of the Uchucklesaht government.
 - (b) The general authority in subsection (a) includes
 - (i) exercising control and management of the administrative business and affairs of Uchucklesaht government in accordance with Uchucklesaht law,
 - (ii) ensuring the efficient and effective operation of the Uchucklesaht government,
 - (iii) establishing and overseeing administrative policies, practices and procedures necessary to effectively implement Uchucklesaht laws and the policies and programs of the Uchucklesaht government, including preparing and maintaining a current organizational chart and making it available to the public,
 - (iv) advising the chief councillor and the Executive,
 - (v) ensuring that decisions of the Executive are implemented,
 - (vi) ensuring that the annual budget is prepared and implemented,
 - (vii) safeguarding the financial integrity of the Uchucklesaht government by identifying, assessing, monitoring and reporting on financial risks, fraud risks and mitigating measures,
 - (viii) ensuring the accountability of the operations of the Uchucklesaht government, including the activities of management,

- (ix) directing persons who are retained to provide services for the Uchucklesaht government,
- (x) developing, overseeing and administering contracts and agreements entered into on behalf of the Uchucklesaht Tribe,
- (xi) performing any other duties and exercising any other powers given, delegated or assigned under Uchucklesaht law or by the Executive.

Personnel responsibilities

- 3.3**
- (a) The chief administrative officer is responsible for providing policy leadership and overall policy direction to personnel.
 - (b) The chief administrative officer is responsible for all matters relating to personnel recruitment, hiring, promotion, training, discipline, suspension, termination and overall personnel management matters.
 - (c) The general authority in subsection (b) includes
 - (i) advising the Uchucklesaht government respecting regulations, standards, policies and procedures relating to personnel,
 - (ii) developing and implementing personnel standards, policies and procedures,
 - (iii) providing direction, advice or assistance to Uchucklesaht directors in the carrying out of regulations, standards, policies and procedures relating to personnel,
 - (iv) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of personnel to or within the Uchucklesaht government subject to the annual budget,
 - (v) developing, providing, assisting in or coordinating staff training, educational and career development programs,
 - (vi) developing, establishing and maintaining job evaluation and classification plans,
 - (vii) developing, establishing and maintaining occupational health and safety programs,
 - (viii) developing and implementing employment equity policies and programs,
 - (ix) conducting studies and investigations respecting staff utilization,

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- (x) carrying out research on compensation and working conditions,
 - (xi) developing and implementing mechanisms to ensure effective human resource planning and organizational structures,
 - (xii) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 3.4 to ensure compliance with this Act,
 - (xiii) establishing and maintaining a personnel management information system, and
 - (xiv) performing any other duties and exercising any other powers assigned by the Executive respecting personnel consistent with this Act.

Delegation authority

- 3.4** (a) Upon the approval of the Executive, the chief administrative officer may delegate, in writing, the performance of any of the chief administrative officer's duties or the exercise of any of the chief administrative officer's powers to
- (i) another Uchucklesaht director,
 - (ii) a Uchucklesaht government employee, or
 - (iii) an independent contractor of the Uchucklesaht Nation.
- (b) Despite the delegation of any duties or powers under subsection (a), the chief administrative officer remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

Operations manual

- 3.5** (a) The chief administrative officer must prepare and maintain a current operations manual respecting every element of the Uchucklesaht Tribe's administrative system, including any financial administration systems.
- (b) The operations manual must be made available to Uchucklesaht government representatives, committees of Council and all personnel.
- (c) If any part of the operations manual is relevant to the services being provided by a contractor or agent of the Uchucklesaht Tribe, that part of the operations manual must be made available to that contractor or agent.

PART 4 - PERSONNEL

Hiring of personnel

- 4.1** (a) Subject to subsection (b) and sections 2.2, 2.3 and 2.4, the chief administrative officer is responsible for the recruitment, hiring, promotion, transfer and training of all personnel.
- (b) Subject to Uchucklesaht legislation providing otherwise, the Executive must appoint an individual to hold the office of a Uchucklesaht director after considering the recommendation of the chief administrative officer on the appointment.
- (c) In unusual or exceptional circumstances, the chief administrative officer may limit to one the number of applicants for a vacant position in the Uchucklesaht administration.
- (d) The chief administrative officer may transfer or promote personnel by way of direct appointment if the appointment is otherwise consistent with section 2.2.

Affirmation ceremony

- 4.2** All new personnel must participate in a personnel affirmation ceremony, which must include
- (a) a pledge of honour, respect and confidentiality, and
- (b) other matters the Executive may prescribe.

Personnel integrity

- 4.3** For certainty, all personnel are subject to the provisions of the Integrity Act applicable to personnel.

Discipline, suspension and dismissal of personnel

- 4.4** (a) The chief administrative officer may discipline personnel for just cause or suspend personnel from the performance of his or her duties and the exercise of his or her powers for just cause.
- (b) The chief administrative officer may dismiss personnel for just cause.
- (c) For certainty, the chief councillor and any other Uchucklesaht government representative must not discipline, suspend or dismiss any personnel.

Political activity of personnel

- 4.5** (a) Personnel must not be required to participate in partisan political activity, including actively supporting a candidate for elected office.
- (b) Personnel must not be prohibited from participating in partisan political activity.

PART 5 - REVIEW OF EMPLOYMENT DECISIONS

General

5.1 For certainty, no

- (a) civil remedy, or
- (b) remedy under federal law or provincial law

is available to an individual against the Uchucklesaht government as employer if suspended or affected by this Part.

Review by chief administrative officer

5.2 (a) An individual who is

- (i) a Uchucklesaht citizen whose application for an advertised position in the Uchucklesaht administration is not accepted, or
- (ii) dismissed from a position in Uchucklesaht administration

may apply to the chief administrative officer for a review of the decision of non-acceptance or dismissal, as the case may be.

- (b) The chief administrative officer must expeditiously review the decision with the applicant and by order may
 - (i) reverse or modify the decision with or without conditions, or
 - (ii) confirm the decision.
- (c) As soon as practicable after completion of the review, the chief administrative officer must deliver to the applicant written notice
 - (i) stating the outcome of the review, and
 - (ii) advising the applicant of the right to request a review of the order, as described in section 5.3.

Review by Review Board

5.3 (a) No later than 10 days after receipt of the written notice under section 5.2(c), the applicant may request a review of the order made under section 5.2(b) by the Review Board.

- (b) The grounds for a review under this section are that the order is inconsistent with this Act or the standards, policies and procedures referred to in section 3.3(c)(ii).
- (c) After conducting a review, the Review Board may
 - (i) dismiss the review request, or
 - (ii) if it determines that the order is inconsistent with this Act or the standards, policies and procedures referred to in section 3.3(c)(ii), either
 - (A) reverse the decision, or
 - (B) alter the decision to include a remedy.

PART 6 - DEPARTMENT OF HUMAN SERVICES

Department of Human Services established

6.1 The Department of Human Services is established as a division of the Uchucklesaht administration.

Mandate

- 6.2** (a) The mandate of the Department of Human Services is to provide the services set out in subsection (b) to
- (i) Uchucklesaht citizens, and
 - (ii) those persons ordinarily resident on Uchucklesaht lands who are not Uchucklesaht citizens and entitled to receive those services in accordance with a Uchucklesaht enactment.
- (b) The following services will be provided by the Department of Human Services in accordance with subsection (a):
- (i) the citizenship and enrolment services contemplated in the Citizenship Act;
 - (ii) any services necessary or desirable in accordance with Chapter 13 Governance of the Maa-nulth Treaty or any other Uchucklesaht enactment relative to
 - (A) adoption,
 - (B) child protection, custody or care,
 - (C) health services,
 - (D) social development,
 - (E) solemnization of marriages,
 - (F) language and culture education,
 - (G) kindergarten to grade 12 education,
 - (H) post secondary education,
 - (I) public order, peace and safety,
 - (J) emergency preparedness, and

- (K) community correctional services;
- (iii) public works development and maintenance;
- (iv) waste management and recycling of waste material;
- (v) development and maintenance of public utility works where Uchucklesaht Tribe is obligated to do so by an agreement or a Uchucklesaht enactment;
- (vi) any other services as required by the Executive by regulation; and
- (vii) any other services as required by the chief administrative officer by order.

Office of the director of human services established

- 6.3**
- (a) The office of the director of human services is established as an office within the Department of Human Services.
 - (b) The Executive must appoint an individual to hold the office of the director of human services after considering the recommendation of the chief administrative officer on the appointment.
 - (c) The director of human services reports to the chief administrative officer.

Duties of the director of human services

- 6.4**
- (a) The director of human services is responsible for the general management and administration of the Department of Human Services.
 - (b) The general authority in subsection (a) includes the following duties and powers:
 - (i) to ensure that Uchucklesaht government employees within the Department of Human Services carry out the duties assigned to them
 - (A) under this or any other Uchucklesaht enactment,
 - (B) by the chief administrative officer,
 - (C) by the chief administrative officer, or
 - (D) by the director of human services;
 - (ii) to report, as required by the chief administrative officer, to the chief administrative officer or the Executive on the Department of Human services and its activities;

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- (iii) to perform any other duties or exercise any other powers assigned to the director of human services
 - (A) under this or any other Uchucklesaht enactment, or
 - (B) by the chief administrative officer by order.

Delegation authority

- 6.5** (a) Upon the approval of the chief administrative officer, the director of human services may delegate, in writing, the performance of any of the director of human services' duties or the exercise of any of the director of human services' powers to
- (i) another Uchucklesaht director,
 - (ii) a Uchucklesaht government employee, or
 - (iii) an independent contractor of the Uchucklesaht Tribe.
- (b) Despite the delegation of any duties or powers under subsection (a), the director of human services remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

PART 7 - GENERAL PROVISIONS

Annual report

- 7.1** The chief administrative officer must
- (a) prepare a report annually on matters related to this Act, and
 - (b) present the report to the Executive no later than two months after the end of each fiscal year.

Regulations

- 7.2**
- (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
 - (b) Without limiting subsection (a), the Executive may make regulations
 - (i) respecting all or any of the following:
 - (A) classifications of positions;
 - (B) remuneration of personnel;
 - (C) applications and selection of personnel;
 - (D) appointment of personnel;
 - (E) internal advancement of personnel;
 - (F) the giving of first priority to Uchucklesaht citizens and second priority to members of other first nations;
 - (G) lateral transfers of personnel;
 - (H) short term or casual appointments;
 - (I) benefits;
 - (J) terms of employment;
 - (K) review and evaluation of performance;
 - (L) leaves of absence;
 - (M) competitions and exclusions from competitions;
 - (N) position titles and job descriptions;

- (O) promotions;
- (P) disciplinary action;
- (Q) training and human resource development;
- (ii) defining words and expressions that are used but not defined in this Act;
and
- (iii) generally for the purpose of giving effect to this Act.

Commencement

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