

A F F I D A V I T

CANADA

PROVINCE OF BRITISH COLUMBIA

TO WIT: BY-LAW PURSUANT TO SECTION 81(1) INDIAN ACT RSC 1985  
C.I.5 AND AMENDMENTS THERETO

I, BARBARA SMITH of VANCOUVER  
make oath and say:

- (1) That I have personal knowledge of the facts hereinafter deposed to, save and except where stated to be based upon information and belief and whereso stated I verily believe the same to be true.
- (2) That attached to this my Affidavit and marked as Exhibit "A" is a true copy of a document which has been produced and shown to me purporting to be the original by-law made pursuant to the Indian Act having compared the said copy with the original by-law.

SWORN BEFORE ME AT the City of )  
 Vancouver, in the Province of )  
 British Columbia, this 4TH )  
 day of OCTOBER, 1991. )  
 )  
 )

Barbara Smith

Patricia Jankner  
 Commissioner for taking Affidavit for B.C.

**CERTIFIED TRUE COPY**

Exhibit "A"

By-Law No.     #5    

of the Lower Kootenay Band

**A BY-LAW FOR THE PREVENTION OF  
DISORDERLY CONDUCT AND NUISANCES**

ENACTED ON THE 19th DAY OF SEPTEMBER, 1991

WHEREAS the Council of the Lower Kootenay Band desires to make a by-law governing the prevention of disorderly conduct and nuisances, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of the Lower Kootenay Band is empowered to make such by-law pursuant to paragraphs 81(1)(d), (q) and (r) of the Indian Act;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Lower Kootenay Band to provide for the prevention of disorderly conduct and nuisances on the reserve;

NOW THEREFORE the Council of the Lower Kootenay Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Lower Kootenay Reserve Disorderly Conduct and Nuisances By-law".

Interpretation

2. In this by-law,

"Band" means the Lower Kootenay Band;

"Council" means the Council of the Lower Kootenay Band;

"Disorderly conduct" means any act or behaviour, including

- (a) fighting;
- (b) making or causing unreasonable noise;
- (c) using abusive language;
- (d) using offensive or indecent gestures or displays;
- (e) being drunk;
- (f) loitering;
- (g) exposing, firing or discharging any gun, pistol or other firearm, or suing or threatening to use any other article as a weapon, except in defence of life or property,

that disrupts public order on the reserve, scandalizes the community, or causes public inconvenience, annoyance or alarm;

"Nuisance" means any act, activity or condition, including

- (a) the abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (b) the storage of abandoned cars, household appliances or furniture, or parts of cars, household appliances or furniture;

- (c) the dumping or storage of tires, garbage or other refuse;
- (d) the burning of tires, grass, garbage, leaves or other refuse;
- (e) the discharge of any substance into the air or water;
- (f) noise;

that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health safety or welfare of the reserve community, but does not include any act, activity or condition to the extent it is unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

"Officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the reserve.

"Person" includes a corporation;

"Reserve" means the reserve of the Lower Kootenay Band and includes the Band's Reserve No.   #1  .

### Disorderly Conduct

3. An officer may offer any person who is engaging in any disorderly conduct to stop such conduct immediately.

Nuisance

4.(1) An officer may order any person who is causing or who threatens to cause a nuisance on the reserve to refrain from causing the nuisance or to abate the nuisance within such period as is reasonable in the circumstances.

(2) In determining whether a period fixed by an officer under subsection (1) was reasonable in the circumstances, a court shall take into account

- (a) the nature and extent of the nuisance;
- (b) the methods available to abate the nuisance;
- (c) the approximate time required to abate the nuisance; and
- (d) the effect of the order on any business or means of livelihood of the person who is the subject of an order.

5. Everyone who, while intoxicated, and not being in a dwelling house, creates a nuisance by disturbing the peace and quiet of an occupant of a dwelling house by fighting, screaming, shouting, swearing, singing, using insulting or obscene language, attempting to gain entry to said dwelling house or other disorderly conduct is guilty of an offence.

6. Everyone who, while intoxicated and not being in a dwelling house, causes a nuisance to another person by impeding, insulting, molesting, harassing, threatening, begging from, shouting at, swearing at or displaying other disorderly conduct towards that other person is guilty of an offence.

7. Everyone who, while intoxicated, interferes with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Reserve is guilty of an offence.

8. Everyone who, while intoxicated, puts at risk the health of any child under the age of 12 years to whom that person stands in loco parentis by leaving said child without making reasonable arrangements for his or her shelter, feeding, clothing, supervision or protection during that person's absence is guilty of an offence.

9. Everyone who interferes with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Reserve or who removes, copies, destroys or alters any documents in the possession of the Band Council without the prior approval of at least one council member is guilty of an offence.

10. Everyone not being in a dwelling house who causes a nuisance to another person by impeding, insulting, molesting, harassing, threatening, begging from, shouting at, swearing at or displaying other disorderly conduct towards that other person is guilty of an offence.

11. Everyone not being in a dwelling house who creates a nuisance by disturbing the peace and quiet of an occupant of a dwelling house by fighting, screaming, shouting, swearing, singing, using insulting or obscene language, attempting to gain entry to said dwelling house or other disorderly conduct is guilty of an offence.

Enforcement

12.(1) Where a person who has been ordered to stop engaging in disorderly conduct, or to refrain from causing a nuisance or to abate a nuisance within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to stop the disorderly conduct, or to prevent or to abate the nuisance.

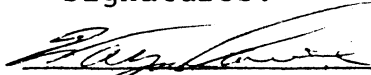
(2) A person who fails or refuses to comply with an order made under section 3 or subsection 4.(1), or who resists or interferes with an officer acting under subsection 4.(1) or subsection 12.(1), commits an offence.

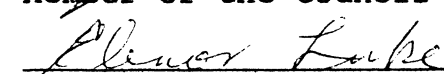
Penalty

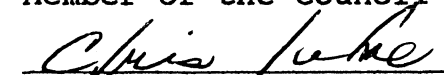
13. A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days, or to both.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Lower Kootenay Band this 19th day of September, 1991.

Voting in favour of the by-law are the following members of the Council:           Signatures:

  
 \_\_\_\_\_  
 Member of the Council

  
 \_\_\_\_\_  
 Member of the Council

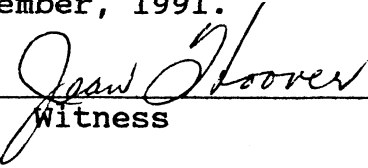
  
 \_\_\_\_\_  
 Member of the Council

being the majority of those members of the Council of the Lower Kootenay Band present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 3

I, Wayne Louie, Chief/Councillor of the Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the BAND office pursuant to subsection 82(1) of the Indian Act, this 20th day of September, 1991.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Chief/Councillor