

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

On behalf of the Minister of Indian Affairs and Northern Development,
I HEREBY APPROVE, pursuant to section 83 of the *Indian Act*, the
following by-law made by the Kwaw Kwaw Apilt Indian Band, in the
Province of British Columbia, at a meeting held on the 31st day of
December, 1993.

**KWAW KWAW APILT INDIAN BAND PROPERTY TAXATION BY-
LAW AMENDMENT 1 - 1993**

Dated at Hull, Quebec

this 30th day of June 1994.


Dan E. Goodleaf
Deputy Minister

KWAW KWAW APILT INDIAN BAND

- TAB A Property Taxation By-law
 Amendment 1 - 1993
- TAB B Property Assessment By-law^H
 Amendment 1 - 1994
- TAB C Band Council Resolution to Property Assessment
 By-Law, sections 9 and 10

KWAW KWAW APILT INDIAN BAND

PROPERTY TAXATION BY-LAW

AMENDMENT 1 - 1993

WHEREAS the Kwaw Kwaw Apilt Indian Band passed the Kwaw Kwaw Apilt Indian Band Property Taxation By-law Amendment 1-1992 on the 11th day of February, 1992 (hereinafter referred to as the "By-law"), which By-law was approved by the Deputy Minister of Indian Affairs and Northern Development on the 14th day of February, 1992;

BE IT HEREBY RESOLVED THAT the Chief and Council of the Kwaw Kwaw Apilt Indian Band enacts the following by-law pursuant to section 83(1) of the Indian Act for the purpose of amending the By-law:

1. Section 2 of the By-law is amended by adding the following definitions thereto:

- "interest in land"** means an estate or interest in land;
- "landlord"** includes a lessee or sublessee of land, an interest in land or an improvement where that person leases the whole or part of his leasehold;
- "prime rate"** means the variable interest rate per year declared by the Bank of Montreal from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada;
- "Reserve General Register"** means the land register maintained by the Department of Indian Affairs and Northern Development pursuant to section 55 of the Indian Act;
- "Reserve Land Register"** means the land register maintained by the Department of Indian Affairs and Northern Development pursuant to section 21 of the Indian Act;
- "tax debtor"** means any person with outstanding obligations to pay arrears in taxes;
- "taxation year"** means the period commencing on January 1 of any year and ending on December 31 of the same year;
- "tenant"** includes a sublessee of land, an interest in land or an improvement;

2. Section 19 of the By-law is amended by deleting subsections 19(A) and 19(B) in their entirety and substituting therefor the following:

19. RECOVERY OF TAXES BY ACTION IN COURT

- (A) All taxes due and payable under this by-law are debts due to the Band are recoverable as such by action in a court of competent jurisdiction or in any other manner provided in this by-law.
- (B) Each year, on or before January 31, the collector shall prepare and submit to the taxation authority a list containing the names of all persons who were tax debtors as of December 31 of the previous year.
- (C) A copy of the part of the taxation roll which relates to the arrears in taxes which is certified by the collector as a true copy shall be prima facie proof of the debt.
- (D) The collector shall take necessary and appropriate enforcement proceedings under this by-law.

19.1 NOTICE BEFORE TAKING PROCEEDINGS

- (A) Before taking proceedings for the recovery of taxes under this by-law, the collector shall give notice to the tax debtor of the intention of the taxation authority to enforce payment.
- (B) For the purposes of subsection 19.1(A), the notice may be given by letter mailed to the tax debtor's address as last known to the collector, or by a general or special advertisement in a newspaper in general circulation in the Province of British Columbia.
- (C) Failure to give the notice required by this section does not affect the validity of the proceedings taken for the recovery of the taxes under this by-law.

19.2 LIEN FOR TAXES

- (A) Taxes due and payable under this by-law form a lien and charge in favour of the Band on all parcels of land, interests in land and improvements subject to taxation under this by-law

held, occupied or otherwise in the possession of the tax debtor.

- (B) The collector may register a lien and charge in the appropriate Reserve Land Register or Reserve General Register, as the case may be.
- (C) When registered pursuant to subsection 19.2(B), every lien or charge created by subsection 19.2(A) has priority over every other lien, charge, encumbrance, security interest, claim, privilege of every person in respect of the parcel of land, interest in land or improvement.
- (D) Notwithstanding subsections 19.2(B) and 19.2(C) the lien or charge created by subsection 19.2(A) and its priority is not lost or impaired by any neglect, omission or error of the taxation authority, the collector or any other agent or officer, or by taking or failing to take proceedings to recover the taxes due, or by tender or acceptance of partial payment of the taxes or by want of registration.
- (E) When all taxes levied against the tax debtor have been paid the collector shall certify that the liens and charge against the parcels of land, interests in land and improvements held, occupied or otherwise in the possession of the tax debtor has been discharged and shall register such certification in the appropriate Reserve General Register or Reserve Lands Register, as the case may be. Such certification shall be sufficient proof of the payment of the taxes and the discharge of the lien and charge.

19.3 EFFECT OF SALE OF PROPERTY SUBJECT TO LIEN

- (A) No sale, assignment or transfer of possession in respect of any parcel of land, interest in land or improvement subject to a lien and charge created under subsection 19.2(A) shall affect the right to take enforcement actions under this Part.

19.4 ARREARS IN TAXES CONSTITUTE FIRST CHARGE

- (A) Where there is sale, assignment or transfer of possession in respect of any parcel of land, interest in land or improvement subject to a lien and charge created under subsection 19.2(A) the

amount of that lien and charge constitutes a first lien and charge on the proceeds of the sale, assignment or transfer of possession.

19.5 RECOVERY OF TAXES BY DISTRESS

- (A) Where a tax debtor owes arrears in taxes, the collector may effect a seizure by way of distress of:
 - (1) any personal property owned by or in the possession of the tax debtor, wherever it is found within the assessment area; and
 - (2) any personal property situate on land, an interest in land or improvement held, occupied or in the lawful possession of the tax debtor if that personal property would be subject to distress for arrears of rent due to a landlord at common law.
- (B) If any personal property is distrained under subsection 19.5(A) the collector shall post a notice thereof in a conspicuous place on the land or improvement on which the personal property is situate at the time of distress.
- (C) So long as a person remains a tax debtor, no personal property distrained under subsection 19.5(A) may be removed from the assessment area without the written approval of the collector or taxation authority.
- (D) Any removal of the personal property contrary to subsection 19.5(C) shall be considered a trespass. Without restricting the generality of the foregoing, no such property shall be seized by a bailiff, sheriff, assignee or liquidator or trustee, or authorized trustee in bankruptcy, except by approval of the collector or taxation authority under subsection 19.5(C).
- (E) No earlier than 30 days after the distress, the collector may offer the distrained property for sale.
- (F) Where the collector chooses to offer the distrained property for sale, the collector shall, by advertisement posted in at least 3 conspicuous public places within the assessment area, and in

the locality where the sale of the personal property distrained is to be made, give at least 10 days' public notice of the time and place of the sale and the name of the tax debtor whose personal property is to be sold.

- (G) At the time and location named in the notice the collector shall offer for sale at public auction the personal property distrained, or so much as is necessary.
- (H) The collector may adjourn the sale to another time or location, but if he does he shall give an additional notice in the manner provided by subsection 19.5(F).
- (I) If the tax debtor pays all arrears in taxes prior to a sale, the collector shall not conduct the sale and shall return the distrained property to the tax debtor at the tax debtor's expense.
- (J) If the personal property distrained is sold for more than the arrears in taxes, inclusive of any interest and penalties added thereto, together with costs of the sale and no claim to the surplus is made by another person, on the ground that the personal property sold belonged to him or that he was entitled by lien or other right to the surplus, the surplus shall be paid to the person in whose possession the personal property was when the distress was made and his receipt taken.
- (K) If a claim for the surplus is made by the tax debtor and the claim is admitted, the surplus shall be paid to the tax debtor and his receipt taken.
- (L) If a claim for the surplus is contested, or the collector is uncertain as to the person entitled to the surplus, the collector shall pay such surplus into court by way of interpleader action.
- (M) Where personal property liable to distress under subsection 19.5(A) is under seizure or attachment or has been seized by a sheriff or bailiff or any court or is claimed by or is in the possession of any assignee for the benefit of creditors or any liquidators or any trustee or authorized trustee in bankruptcy, or when that personal property has been converted into cash and is undistributed, it

is sufficient for the collector to give the sheriff, bailiff, assignee or liquidator or trustee or authorized trustee in bankruptcy, notice of the amount due for taxes and the person so notified shall pay the amount of taxes, after deducting any costs properly incurred, to the collector in preference and prior to any other all fees, charges, liens or claims whatsoever.

19.6 RIGHT OF TENANT TO DEDUCT TAXES FROM RENT

- (A) Where there are arrears in taxes in respect of a parcel of land, interest in land or improvement occupied by a tenant whose landlord is a tax debtor, the collector shall give 30 days notice to the landlord that, the collector may proceed with collection of rent under subsections 19.6(B) and 19.6(C).
- (B) Where a landlord remains a tax debtor 30 days after the collector gives notice pursuant to subsection 19.6(A), the collector may proceed by giving the tenant notice to pay to the Band the rent otherwise due and owing as it becomes due, and from time to time, until there are no arrears in taxes.
- (C) A tenant shall pay to the Band rent demanded under subsection 19.6(b).
- (D) A tenant may deduct from rent payable to the landlord, any amounts paid by the tenant to the Band for the landlord's arrears in taxes.

19.7 GARNISHMENT OF OTHER MONIES

- (A) When the collector has reasonable knowledge that a person is, or will be, within 90 days, liable to make a payment on the assessment area to a tax debtor, then the collector may require that those monies, in whole or in part, be paid to the Band on account of arrears in taxes.
- (B) If there are arrears in taxes, a person given a garnishment notice pursuant to subsection 19.7(A), shall pay the amount immediately, or, if the amount is not yet payable to the tax debtor, when the amount becomes payable, to the Band.

- (C) A person may deduct from his or her liabilities to a tax debt any amounts paid by the person to the Band pursuant to subsection 19.7(B).

19.8 FORFEITURE OF PROPERTY

- (A) Where a tax debtor owes arrears in taxes on December 31 of the year in which the taxes were first levied, the collector may give the tax debtor notice that the tax debtor has six (6) months from the date of mailing of the notice to pay the arrears in taxes, and that on default of payment, the taxed parcel of land, interest in land or improvement shall be absolutely forfeited to and vested in the Band clear of all liens and charges, encumbrances, security interests, claims, and privileges of every person, or cancelled pursuant to subsection 19.8(D), subject to subsection 19.8(O).
- (B) Where there is a forfeiture to the Band, the collector shall register the forfeiture in the appropriate Reserve Land Register or Reserve General Register, as the case may be.
- (C) The notice referred to in subsection 19.8(A) shall state
 - (1) that the parcel of land, interest in land or improvement is subject to forfeiture under subsections 19.8(A) and 19.8(D), or cancellation under subsection 19.8(O),
 - (2) the amount of the arrears in taxes to the date of the notice,
 - (3) the date on which the parcel of land, interest in land or improvement forfeits,
 - (4) the right to prevent forfeiture by payment of the arrears in taxes,
 - (5) subject to subsection 19.8(O), that on forfeiture the parcel of land, interest in land or improvement will vest in the Band clear of all liens and charges except those rights of way, easements or other such third party interests registered in the appropriate Reserve General Register or Reserve Lands Register, as the case may be, and

- (6) that if, for any reason, forfeiture does not occur, that interests of the tax debtor in the land, interest in land or improvement will be cancelled, subject to subsection 19.8(O).
- (D) Where the forfeiture of a parcel of land, an interest in land or an improvement of a tax debtor may not or does not occur by reason of the restrictions described in subsection 19.8(O) or other operation of law, the interests of the tax debtor in the same parcel of land, interest in land or improvement shall be cancelled and the collector shall register the cancellation in the appropriate Reserve General Register or Reserve Lands Register, as the case may be.
- (E) The collector shall offer for sale parcels of land, interests in land and improvements forfeited to the Band subject to subsection 19.8(O).
- (F) The sale of a parcel of land, interest in land or improvement forfeited to the taxation authority may be conducted
- (1) by public auction, or
 - (2) where the taxation authority deems it appropriate, by public tender.
- (G) Where a sale is to be conducted by public auction, the collector shall post a notice of the sale on the land, interest in land or improvement to which the sale relates and publish a notice of sale in at least one newspaper of general circulation in British Columbia for 7 days prior to the sale.
- (H) Where a sale is to be conducted by public tender, the conditions of sale, method of publication or circulation, and acceptance of any offer shall be in the discretion of the taxation authority.
- (I) The taxation authority may, in any sale, set an upset price equal to the arrears in taxes, costs of the sale and a reasonable estimate of the accrued taxes for the current taxation year that are not yet due and payable but would be levied and due and payable for that taxation year, and

the upset price shall be the lowest amount for which the land, interest in land or improvement may be sold.

- (J) Where there is no bid equal to or above the upset price, the Band may, at the discretion of the taxation authority, and subject to subsection 19.8(O), be deemed to be the purchaser.
- (K) Upon a sale, moneys received by the collector in excess of the arrears in taxes and taxes, costs of the sale, a reasonable estimate of the accrued taxes for the current taxation year that are not yet due and payable but would be levied due and payable for that taxation year shall be paid without interest to the tax debtor.
 - (1) Where the collector is uncertain of the person entitled to the surplus, the collector shall pay the surplus into court by way of interpleader action.
- (L) If no upset price is set and the parcel of land, interest in land or improvement is sold for less than the amount of arrears in taxes, inclusive of costs, the debt for any deficiency is extinguished.
- (M) Where the band is deemed to be the purchaser of the parcel of land, interest in land or improvement the taxation authority may sell the parcel of land, interest in land or improvement to any person for not less than the upset price within ninety (90) days of the date of the deemed purchase. Thereafter the taxation authority may deal with the parcel of land, interest in land or improvement as it sees fit in the name of the Band.
- (N) The taxation authority is entitled to the quiet and peaceable possession of the parcel of land, interest in land or improvement forfeited, and for the purposes of obtaining such possession the collector and any persons authorized by the collector for the purpose are entitled to enter on the parcel of land, interest in land or improvement and take possession thereof for and in the name of the Band, and if in doing so resistance is encountered, an application may be

made to a court of competent jurisdiction for an order for possession of the parcel of land, interest in land or improvement.

- (O) The collector or the taxation authority shall obtain all required consents of the Minister or such other party as may be lawfully required under the Act or otherwise for a forfeiture, cancellation, sale or other disposition under this section prior to the forfeiture, cancellation, sale or disposition.

19.9 REMOVAL OF STRUCTURES AND IMPROVEMENTS AND ABSCONDING TAX DEBTORS

- (A) As long as there are arrears in taxes, no person may remove any improvements over, on or in the taxed parcel of land or interest in land without the consent of the taxation authority.
- (B) No person shall acquire any proprietary interest or right in an improvement removed in contravention of subsection 19.9(A).
- (C) Notwithstanding section 19.1 where the taxation authority considers it appropriate, it may authorize the collector to commence enforcement proceedings set out in sections 19.5, 19.6, 19.7 and 19.8 or abridge or dispense with the time periods required therein, at any time when the taxation authority believes, on reasonable grounds, that the arrears in taxes will be uncollectible because of the actions or proposed actions of the tax debtor.
- (D) Without restricting subsection 19.9(C), where the collector has reasonable grounds for believing that the tax debtor is planning to remove any or all of his or her personal property from the assessment area, dismantle or remove his or her improvements located within the assessment area, or take any other actions which will either preclude or substantially impair the collection of any arrears in taxes, the collector shall apply to the taxation authority for authorization to commence immediately any of the collection proceedings set out in sections 19.5, 19.6, 19.7 and 19.8 and abridge or dispense with the time periods required within.

19.10 DISCONTINUANCE OF SERVICES

- (A) With the approval of the taxation authority, any utility services to any holder, occupant or any other person who fails to comply with any provision of this by-law may be discontinued.
- (B) The collector shall give notice to a person 30 days prior to discontinuing the services of that person pursuant to 19.10(A).
- (C) The notice referred to in subsection 19.10(B) shall include the date, time and place where the person so notified can appear before the taxation authority to show cause as to why the services should not be discontinued.
- (D) Following the appearance under 19.10(C) of a person before the taxation authority, the taxation authority shall, in its absolute discretion, determine whether or not to discontinue the provision of any utility services.

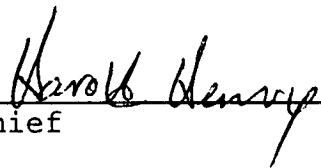
19.11 POWER TO PROHIBIT TIMBER CUTTING

- (A) Where there are arrears in taxes in respect of forest land with timber on it, from which the timber is being cut or removed, the collector may prohibit the cutting or removal of timber from that forest land until the arrears in taxes have been paid in full or otherwise recovered.
- (B) Before prohibiting the cutting or removal of timber from forest land within the assessment area under subsection 19.11(A), the collector shall serve notice on the holder or occupant of such forest land and a copy of such notice shall also be posted in a conspicuous position on the forest land.
- (C) Where notice has been served on a holder or occupant under subsection 19.11(B), any person who, while the arrears in taxes remain unpaid, cuts or removes timber from the forest land for which the notice has been served commits an offence.

19.12 EXERCISE OF POWERS FOR RECOVERY OF TAXES

- (A) Except as otherwise provided in this by-law, the powers conferred by this Part for recovery of taxes may be exercised separately, concurrently or cumulatively.
- (B) The taxation authority may charge the person named in a taxation roll or an occupant of a parcel of land, interest in land or improvement with all reasonable costs which are incurred in the collection of all taxes, inclusive of interest, penalties or other costs payable under this by-law.
- (C) Neither the Band, the taxation authority, the collector, nor any employee or agent of the Band, collector or taxation authority shall be liable for any claims, losses, damages or expenses of any kind or nature whatsoever, of or to any holder, occupant or any other person, or property whether real, personal or otherwise, arising directly or indirectly from any step or act taken pursuant to this Part.

This by-law is hereby made and approved at a duly convened meeting of the Chief and Council of the Kwaw Kwaw Apilt First st Nation, also known as the Kwaw Kwaw Apilt Indian Band this 31 day of December, 1993.



Chief

Councillors

