

Recent Private Prosecutions

Case Summaries

Presented by:

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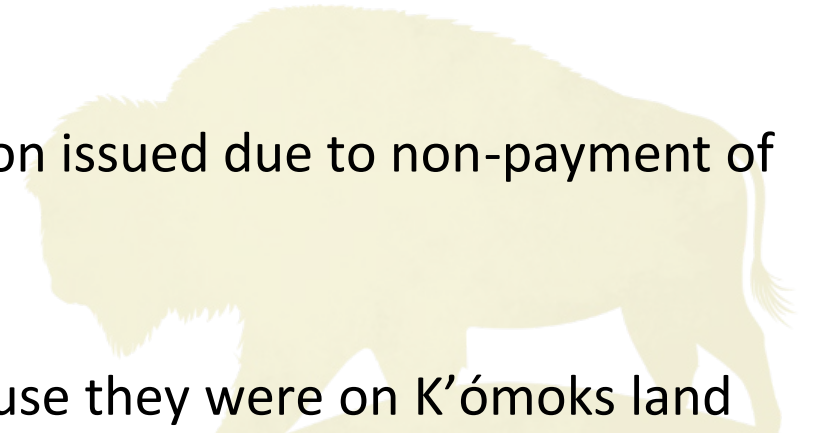


***K'ómoks First Nation v.
Thordarson and Sorbie
(BC provincial court 2018)***

K'ómoks First Nation v. Thordarson and Sorbie **(BC provincial court 2018)**

Background

- K'ómoks First Nation is a land code Nation situated on Vancouver Island, BC
- A CP holding member was renting their property to 2 non-members
- The renters stopped paying rent
- The rental agreement was terminated and a notice of eviction issued due to non-payment of rent
- The renters refused to leave
- As a result, they were committing a land code offence because they were on K'ómoks land without a residence right (i.e. a valid lease)



K'ómoks First Nation v. Thordarson and Sorbie **(BC provincial court 2018)**

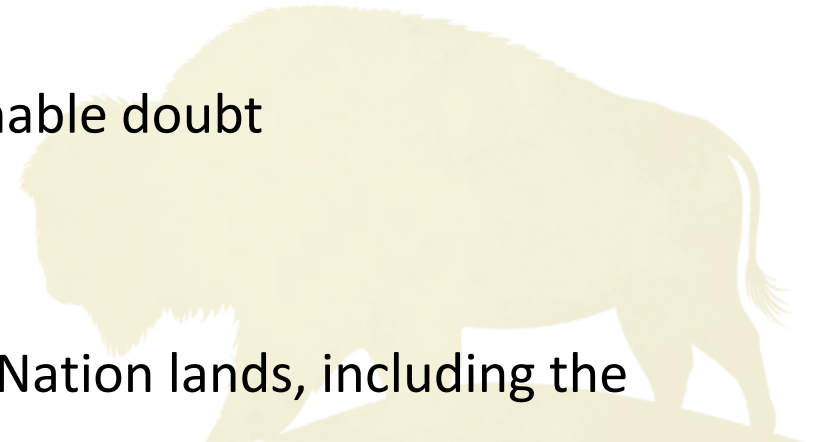
Process

- RCMP were not willing to charge with the land code offence and prosecutors refused to prosecute
- K'ómoks hired a private prosecutor to bring the matter to provincial court
- This was the first private prosecution of a First Nation offence in Canada
- Time consuming prosecution, as had to establish many foundational principles, accused persons were self represented and were not cooperative
- See reported decision for preliminary hearing: K'ómoks First Nation v. Thordarson and Sorbie 2018 BCPC 114

K'ómoks First Nation v. Thordarson and Sorbie **(BC provincial court 2018)**

Outcome

- K'ómoks First Nation was successful at both stages of the private prosecution:
 1. The preliminary hearing, where the judge considered whether there was sufficient evidence of the offence to proceed to trial
 2. Trial, where offence had to be proven beyond a reasonable doubt
- Trespassers were found guilty of the offence at trial
- Each received a \$1000 fine and 6 months of probation
- Probation order banned them from accessing K'ómoks First Nation lands, including the provincial highway that crosses the reserve lands
- RCMP ensured they left and followed the terms of the probation order





***Lower Nicola Indian Band v
Caldwell and Pockrant
(BC provincial court 2025)***

Lower Nicola Indian Band v Caldwell and Pockrant **(BC provincial court 2025)**

Background

- Lower Nicola Indian Band is a land code Nation situated in the southern interior of BC
- Two non-members were living in an RV on LNIB community lands without a valid residence or access right under land code (trespass offence under land code)
- They were invited to live on the lands by a member who asserted a family claim/customary holding in respect of the lands
 - But the member did not have a recognized and registered member interest in the land
- To be safe, LNIB nevertheless issued a BCR removing any residence or access right the non-members might have as invitees of member interest holder
 - BCR removing such rights was authorized by land code
- Non-members still refused to leave, and continued to reside in trespass

Lower Nicola Indian Band v Caldwell and Pockrant **(BC provincial court 2025)**

Process

- RCMP refused to charge and prosecutors refused to prosecute
- LNIB initiated a private prosecution
- Private prosecution was lengthy and time consuming for many reasons, including:
 - Preliminary hearing
 - Trespassers failed to attend court for initial appearances, which resulted in additional proceedings and warrants being issued for their arrest
 - Trespassers applied for legal aid, so several month delay
 - One trespassers did not attend the pre-trial conference
 - Resulted in court issued summons, but the sheriffs failed to execute at first and the accused was also evading service

Lower Nicola Indian Band v Caldwell and Pockrant **(BC provincial court 2025)**

Outcome

- LNIB was successful at both stages of the private prosecution
 1. Preliminary hearing: reported decision (File No. 114041-1 Merritt)
 2. Successful conviction, as trespassers pled guilty and agreed to a sentencing submission on the morning of trial
- The Judge accepted sentencing submission
 - \$10 fine – nominal because the trespassers did not have means to pay
 - 3 year probation order banning them Nation lands and requiring them to be gone from lands within one month of sentence
- Trespassers did not leave by required date, so RCMP worked with LNIB to enforce the probation order



Lower Nicola Indian Band v Purd
(BC provincial court 2025)

Lower Nicola Indian Band v Purdie **(BC provincial court 2025)**

Background

- Very similar facts to Caldwell and Pockrant LNIB case
- Non-member lived in RV on LNIB lands on and off over 3 years, without a valid residence or access right under land code (trespass offence and trespass law)
- They were invited to live on the lands by a member who asserted a family claim/custom holding in respect of the lands
 - But the member did not have a recognized registered interest in the land
- To be safe, LNIB nevertheless issued a BCR removing any residence or access right the non-members might have as invitees of member interest holder
 - BCR removing such rights was authorized by land code
- Non-member still refused to leave, and continued to reside in trespass



Lower Nicola Indian Band v Purdie **(BC provincial court 2025)**

Process

- RCMP initially attended the lands with LNIB to keep the peace while a tow company hired by LNIB attempted to remove the RV
- RCMP stopped the towing process when it became violent
- RCMP not willing to charge and prosecutors refused to prosecute
- LNIB initiated a private prosecution for land code and trespass law offences in spring of 2024
- Time consuming court proceedings:
 - Accused failed to attend court on several occasions, so had proceedings for judge to issue endorsed warrants compelling him to attend court
 - Preliminary hearing required two separate court dates

Lower Nicola Indian Band v Purdie **(BC provincial court 2025)**

Outcome

- LNIB was successful at the preliminary hearing
- LNIB was also successful at the trial:
 - Trespasser was found guilty of an offence under LNIB's Trespass Law, and an offence under Land Code
 - Sentencing is scheduled for Fall 2025





FIRST NATION ENFORCEMENT & TICKETING LAW DEVELOPMENT

Rama First

Nation



MISSISSAUGA FIRST NATION (MFN) v. WITTY

Justice of the Peace J. E. Morris on April 22, 2024

Reasons for Judgment on Pre-enquête

[6] The legal authority as set out in the affidavit, is as follows:

[7] On June 2, 2009, MFN ratified the Mississauga First Nation Land Code

[8] On March 15, 2025, MFN ratified the Misswezahging Constitution - A MFN constitution wherein it states at paragraph 11 The Misswezahging (MFN) **have the inherent right given by the Creator to enact laws necessary in order to protect and preserve Anishinaabe culture, to protect our lands, our language, customs, tradition and practices.** On July 19, 2019, by eh Misswezahging Constitution, MFN ratified the Mississauga First Nation Community Protection Law

[10] The MFN Community Protection Law (CPL) was created to protect MFN, its land and its members. The CPL sets out perimeters for residency and public access within MFN territory. **Part of the law is designed for the exclusions and removal of people who are not permitted within the MFN territory.**

[11] The defendant is not a member of the MFN and is not status Indian under the Indian Act.

[14] Having read the affidavits the court is satisfied that information has been received on each of the essential elements and that the defendant, Roberta Witty, **should be summonsed to the court to face the 8 aforementioned charges.**

MISSISSAUGA FIRST NATION (MFN) v. PILON

JP S KEESMAAT on December 19, 2024

Bail Hearing for Failure to Attend Court on MFN charges

“The Court can take judicial notice on certain things, like I know that I can take judicial notice that people cannot go through stop signs without stopping, right? That is a law. So, I will never issue a condition on a release order saying, and you must never stop at a stop sign, right?”

“If I can take judicial notice knowing that First Nations are in their territorial right to say who and who does not reside on their territory. I am not going to impose a condition saying, reside at an address that is on their territory if you are not a member of that Nation, right?”

“So, I am not going to impose a condition where it says, if you were to tell me today that your address is on the Mississauga First Nation, and you are not a member of the Mississauga First Nation, I am not going to impose condition that you have to reside at that address, because then that contradicts law that I know is in place”

MISSISSAUGA FIRST NATION (MFN) v. WITTY

BEFORE THE HONOURABLE
JUSTICE D. PETERSON
on October 30, 2024, at ELLIOTT LAKE, Ontario

Guilty – Did reside on, enter or remain on MFN land contrary to s.37.5 of the MFN Land Code;

Guilty – Did reside on, enter or remain on MFN land contrary to s.37.5 of the MFN Land Code;

Guilty – Did Fail to Comply with a Resolution of Council by failing to vacate MFN contrary to MFN Community Protection Law;

MISSISSAUGA FIRST NATION (MFN) v. TOULOUSE

First MFN charge laid by Blind River OPP



Danith Toulouse plead guilty and was found guilty by Justice Peterson of Trespassing contrary to s.3.1.1 of the Community Protection Law (CPL)



This was the first charge laid by the OPP



Toulouse was charged with a domestic assault on his partner, who was a band member. MFN used the charges to issue a BCR. Toulouse was given the opportunity to appeal to Chief and Council and did not do so.



The OPP were called to MFN when Mr. Toulouse was found on the Territory. The OPP used the MFN authority to attend the residence, laid the charges for the first time, and ultimately, Mr. Toulouse was convicted.



The underlying goal of helping the community member was achieved.
This is the goal of the CPL, and we saw it play out from beginning to end with this case.

Enforcement by OPP of First Nation Laws

- Service of Summons on Accused
- Feeney Warrant on Fail to Appear(s)
- Bench Warrants - Served and new FTA charges laid
- Policy on inputting evidence into NICHE
- Laying new Charges

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Thank You

Questions?

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