

**Presented by: Amy Jo Scherman** 



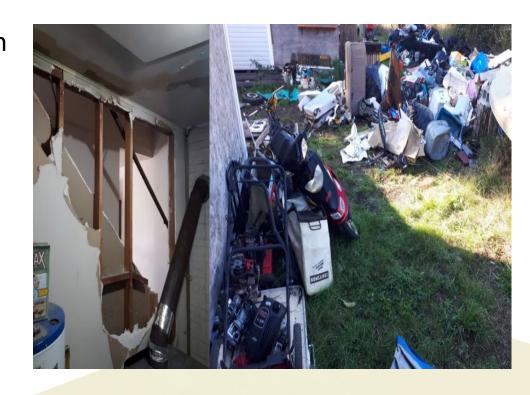


K'ómoks First Nation v. Thordarson and Sorbie (BC provincial court 2018)

# 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, so rental agreement terminated
- The renters refused to leave, so were committing a trespass offence under land code



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

#### **Process**

- >>> RCMP would not charge with the land code offence and prosecutors would not 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: \$1000 fine and 6month probation order banning them from accessing Nation 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)

- >>> 2 non-members were living in an RV on community lands without a right to be there
  - >>> They were renting land from a member who asserted a family claim to the lands, but the member had no recognized right to the land
- >>> Nation initiated a private prosecution for trespass offence, after giving the non-members an opportunity to dispute their status as trespassers
- Private prosecution was lengthy and time consuming (summons, warrants for failure to attend court)
- >>> Ultimately successful: trespassers pled guilty morning of trial
  - >>> \$10 fine nominal because the trespassers did not have means to pay
  - 3 year probation order banning them from Nation lands





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

- >>> Non-member lived in RV on Nation lands on and off over 3 years, without a right to be there
  - Trespass offence under land code
  - Breach of prohibition order under Nation's Trespass Law
- >>> Tow company hired by Nation attempted to remove the RV, but process became violent so ended
- >>> Nation initiated a private prosecution in spring of 2024: 2 charges
- Time consuming court proceedings (warrants required compelling him to attend court, etc.)
- Ultimately accused found guilty at trial and sentenced:
  - >>> \$1500 for land code offence
  - >>> \$2000 for breach of prohibition order under trespass law
  - 3 year probation order prohibiting entrance onto Nation lands





#### Mississauga First Nation v Witty and Pilon (ON provincial court 2024)

# Mississauga First Nation v Pilon and Witty (ON provincial court 2025)

- Two non-members were issued orders under the Mississauga First Nation Community Protection Law to vacate a home on Nation lands due to alleged involvement in criminal activities
- >>> The non-members did not comply and were charged with trespass-related offences under the Nation's Community Protection Law and the Land Code.
- >>> The Nation initiated a private prosecution in respect of both offences
- **Result:** 
  - >>> One accused (Witty) pled guilty and was issued a \$1000 fine
  - >>> Trial for other accused (Pilon) not yet scheduled
- >>> Ontario Provincial Court recognized the enforceability of a Land Code and First Nation Law
- First successful private prosecution in an Ontario Provincial Court of a First Nation's Land Code





#### Mississauga First Nation v Witty and Pilon (ON provincial court 2024)

## Mississauga First Nation v Tolouse (ON provincial court 2025)

#### **Facts and Outcome**

- >>> Tolouse had been charged with domestic assault on his member spouse while on Nation land, so Nation relied on its own Community Protection Law to deem him a trespasser and seek to have him removed
- Ontario Police laid trespassing charges under the Community Protection Law, while also laying other Criminal Code charges (big win and first time that this has happened)
- Private prosecution commenced
- >>> Toulon ultimately pled guilty to/was convicted of the trespass offence under the Nation law
- >>> Toulon was issued a reduced fine, as he was also required to serve jail time for related criminal activities on the Nation's land





Questions?

