



Lheidli T'enneh

Matrimonial Real Property Law

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LHEIDLI T'ENNEH FIRST NATION MATRIMONIAL REAL PROPERTY LAW

PREAMBLE

WHEREAS the Lheidli T'enneh First Nation has taken control of its reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Lheidli T'enneh First Nation Land Code* effective the 1st day of December 2000.

AND WHEREAS pursuant to the *Framework Agreement on First Nation Land Management* and the *Lheidli T'enneh First Nation Land Code*, the Lheidli T'enneh First Nation agreed to enact rules and procedures applicable on the breakdown of a marriage to the use, occupancy and possession of Lheidli T'enneh First Nation Land, and the division of interests in that land;

AND WHEREAS the Lheidli T'enneh First Nation intends to provide rights and remedies, without discrimination on the basis of sex, to Spouses who have or claim interests in Lheidli T'enneh First Nation Land upon the breakdown of their marriage;

AND WHEREAS the Lheidli T'enneh First Nation intends to respect the following general principles with respect to the use, occupancy and possession of matrimonial real property on Lheidli T'enneh First Nation Land, and the division of interests in that land on the breakdown of a marriage:

- (a) the children of the Spouses, if any, should have a right to remain undisturbed in the matrimonial home;
- (b) each Spouse should have an equal right to possession of the matrimonial home;
- (c) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
- (d) the rules and procedures shall not discriminate on the basis of sex; and



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- (e) only Members of the Lheidli T'enneh First Nation are entitled to hold a permanent interest in Lheidli T'enneh First Nation Land or a charge against a permanent interest in Lheidli T'enneh First Nation Land.

AND WHEREAS the Lheidli T'enneh First Nation further intends to respect the following procedural principles with respect to the use, occupancy and possession of matrimonial real property on Lheidli T'enneh First Nation Land, and the division of interests in that land on the breakdown of a marriage:

- (a) the right of the parties to a marriage to make their own agreement as to the disposition of interests in Lheidli T'enneh First Nation Land in the event that their marriage does, or has, broken down;
- (b) the value of mediation where the parties have not or are unable to reach their own agreement as described above; and
- (c) the right of the parties to have access to a court of competent jurisdiction to deal with all of their property rights, entitlements and obligations on the breakdown of their marriage, subject to Lheidli T'enneh law where their property includes an interest in Lheidli T'enneh First Nation Land.

NOW THEREFORE this Lheidli T'enneh First Nation Matrimonial Real Property Law is hereby enacted as a Law of the Lheidli T'enneh First Nation.

PART 1 APPLICATION

1. This Law may be cited as the *Lheidli T'enneh First Nation Matrimonial Real Property Law*.
2. This Law applies only to interests in, or claimed pursuant to this Law in, Lheidli T'enneh First Nation Land as defined in the *Lheidli T'enneh First Nation Land Code*.
3. Subject to its terms, this Law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it



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pursuant to any other law applicable on the breakdown of a marriage with respect to any property other than interests in Lheidli T'enneh First Nation Land, or other entitlements or obligations of Spouses.

4. For the purposes of this Law, the following definitions shall apply:

(a) *"Child" means a child born in or out of wedlock, a legally adopted child or a child adopted in accordance with Lheidli T'enneh custom;*

(b) *"Common-law Marriage" means a man and woman not married to each other, who have lived together as husband and wife for a period of not less than one year; (Amended March 7, 2009)*

(c) *"Council" means the Chief and Councillors of the Lheidli T'enneh First Nation or any successor elected government of the Lheidli T'enneh First Nation;*

(d) *"Dispute Resolution Panel" means the Dispute Resolution Panel established under Part 8 of the Lheidli T'enneh First Nation Land Code;*

(e) *"Interspousal Contract" means:*

(i) a Marriage Contract entered into between Spouses who are married to each other, or intend to marry, made in writing, signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of an Interest in Lheidli T'enneh First Nation Land; or

(ii) a Separation Agreement entered into between Spouses who are married to each other and are living separate and apart, made in writing, signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of an Interest in Lheidli T'enneh First Nation Land;

(f) *"Interest in Lheidli T'enneh First Nation Land" includes any legal or equitable interest held in possession by either Spouse, or both Spouses, in Lheidli T'enneh First Nation Land;*



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- (g) "Lands Authority" means the Lands Authority established under Part 6 of the *Lheidli T'enneh First Nation Land Code*;
 - (h) "Lands Manager" means the Lands Manager of the Lheidli T'enneh First Nation;
 - (i) "Matrimonial Home" means an Interest in Lheidli T'enneh First Nation Land that is, or if the Spouses have separated, was at the time of separation, occupied by one or both Spouses as the family home or that is mutually intended by the Spouses to be occupied by one or both of them as the family home;
 - (j) "Member" means a person whose name appears on the Lheidli T'enneh First Nation Band Membership List;
 - (k) "Spouse" means a person who:
 - (i) is married to another person, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common-law Marriage; or
 - (ii) has entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right under this Law;
5. This Law does not apply to an interest in Lheidli T'enneh First Nation Land held by either Spouse, or both Spouses, where neither Spouse is a Member.
6. For greater certainty, a Spouse does not have an election, on the death of the other Spouse, to claim, take or pursue an interest in Lheidli T'enneh First Nation Land held by the other Spouse under this Law, and his or her interest will be determined by the will or administration of the estate of the other Spouse.

PART 2 INTERSPOUSAL CONTRACTS

7. It is the purpose and intention of this Law to respect the agreement of the
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- parties to a marriage as to the use, possession, occupancy, disposition or partition of an Interest in Lheidli T'enneh First Nation Land, including an interest that is a Matrimonial Home.
8. Subject to this Part, a provision in an Interspousal Contract that reflects the agreement of the parties with respect to an Interest in Lheidli T'enneh First Nation Land, including an Interest that is a Matrimonial Home, is valid, binding and enforceable.
 9. Notwithstanding section 8, a provision in an Interspousal Contract that would give, award, acknowledge or create an interest in Lheidli T'enneh First Nation Land greater than a life estate to occupy or possess an interest in Lheidli T'enneh First Nation Land, in favour of a Spouse who is not a Member, is void.
 10. In applying section 9, a valid life estate to possess or occupy an Interest in Lheidli T'enneh First Nation Land will be measured by the life of the person intended to enjoy it.
 11. Subject to this Law, a court of competent jurisdiction may, on application under Part Four, set aside a provision of an Interspousal Contract with respect to an Interest in Lheidli T'enneh First Nation Land:
 - (a) if a party failed to disclose to the other all of that party's Interests in Lheidli T'enneh First Nation Land, or any material information in respect of those interests;
 - (b) if a party did not understand the nature or consequences of the provision;
or
 - (c) otherwise in accordance with the law of contract.
 12. This Part applies whether the parties entered into the Interspousal Contract on, before or after the date that this Law comes into force and effect.

PART 3 MEDIATION



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13. It is the intention of this Part that Spouses who, on the breakdown of their marriage, do not have and are unable to conclude an Interspousal Contract with respect to Interests in Lheidli T'enneh First Nation Land, submit to mediation in respect of Interests in Lheidli T'enneh First Nation Land.
14. A member of the Dispute Resolution Panel will meet with the Spouses to explain the mediation process and will include a recommendation that the Spouses obtain independent legal advice.
15. For the purposes of this Part, Council in consultation with the Lands Authority is authorized to:
 - (a) prescribe rules and procedures applicable to the conduct of mediation;
 - (b) develop any forms, certificates, and other documents or instruments deemed necessary or advisable;
 - (c) determine fees, costs and consequential relief in respect of the provision of mediation services; and
 - (d) create and maintain a roster of qualified mediators available to assist Spouses in resolving disputes about Interests in Lheidli T'enneh First Nation Land, and a current copy of that roster shall be maintained in the office of the Lands Manager.
16. Spouses who do not have or are unable to conclude an Interspousal Contract may jointly initiate their own mediation with respect to interests in Lheidli T'enneh First Nation Land and it is recommended that they use the services of a mediator whose name appears on the roster of qualified mediators.
17. A Spouse who does not have and is unable to conclude an Interspousal Contract with the other Spouse may request mediation by filing a Notice of Request for Mediation, in the designated form and with proof of service on the other Spouse, with the Lands Manager.
18. The Lands Manager may assist the Spouse in completing a Notice of Request for Mediation.



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19. It is the responsibility of the Spouse requesting mediation to ensure that the Notice of Request for Mediation is served on the other Spouse before it is delivered to the Lands Manager.
20. Service under section 19 may be effected by:
 - (a) personal service;
 - (b) delivery to a solicitor representing the other Spouse in the matter of the breakdown of the marriage;
 - (c) as provided in an interspousal contract; or
 - (d) registered mail to the address where the other Spouse is known or believed to be residing, in which case service shall be deemed to be effected four days after the day the notice is mailed.
21. Upon receipt of a Notice of Request for Mediation, the Lands Manager shall forthwith deliver the Notice to the Lands Authority.
22. Upon receipt of a Notice of Request for Mediation under section 21 the Lands Authority will, within thirty days of the filing of the Notice under section 17:
 - (a) arrange for a qualified mediator prescribed in section 15(d) to be available to the Spouses ; and
 - (b) set a date for the Appointment for Mediation.
23. The Lands Authority may extend the period prescribed in section 22:
 - (a) at the joint request of the Spouses: or
 - (b) where the Lands Authority is unable to secure the services of a qualified mediator to be available to the Spouses within the 30 day period.



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24. Notice of an Appointment for Mediation shall be served upon both Spouses and the Lands Manager by the Lands Authority no less than 10 days before the date of the Appointment for Mediation set in section 22(b).
25. A Spouse who receives a Notice of Appointment for Mediation has a duty to attend the Appointment for Mediation.
26. Unless otherwise agreed, each Spouse shall be responsible for an equal share of the costs of mediation.
27. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the Spouses in resolving any issues with respect to Interests in Lheidli T'enneh First Nation Land.
28. Where the mediation is successful, the agreement of the Spouses with respect to Interests in Lheidli T'enneh First Nation Land shall be reduced to writing in a Separation Agreement, and that Agreement shall expressly provide that each Spouse waives all rights to challenge its provisions under section 11.
29. A Separation Agreement concluded under section 28 shall include provision for all Interests in Lheidli T'enneh First Nation Land held by either Spouse, or both Spouses, and shall be a sufficient Interspousal Contract for purposes of this Law if it deals only with those Interests.
30. Where mediation is successful, the mediator shall report this fact to the Lands Authority and the Lands Authority shall notify the Lands Manager.
31. Where the mediation is unsuccessful, the mediator shall deliver to each of the Spouses and to the Lands Authority a confidential report upon the mediation and the points remaining in dispute between the Spouses with respect to Interests in Lheidli T'enneh First Nation Land.
32. Upon the conclusion of an unsuccessful mediation, the Lands Authority shall provide a certificate to the Spouses and to the Lands Manager, which may be:
 - (a) a certificate of compliance with this Part; or



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- (b) a certificate of waiver in favour of the Spouse requesting the mediation in circumstances where the Lands Authority reasonably concludes that the other Spouse cannot be located, is avoiding or ignoring service of documents or has otherwise refused to participate in the mediation.
- 33. For greater certainty, nothing in this Part is intended to deprive or limit the right of a Spouse to seek any or further alternate dispute resolution on the breakdown of a marriage in relation to any matter other than an Interest in Lheidli T'enneh First Nation Land, or to restrict the Spouses from otherwise reaching agreement with respect to an Interest in Lheidli T'enneh First Nation Land, provided that such agreement results in a Separation Agreement that meets the requirements set out in this Law.



**PART 4
ACCESS TO A COURT OF COMPETENT JURISDICTION**

GENERAL

34. For the purposes of this Part, “court of competent jurisdiction” and “court” mean the Family Law Division of the British Columbia Court of Queen’s Bench.
35. For greater certainty, no court other than a court of competent jurisdiction shall exercise jurisdiction under this Law in respect of an Interest in Lheidli T’enneh First Nation Land.
36. In the event of the breakdown of a marriage, a Spouse may apply to a court to determine a dispute in relation to an Interest in Lheidli T’enneh First Nation Land provided that the Spouse has first complied with Part Three or has been specifically relieved of such compliance by a provision of this Part.
37. No court shall take or exercise jurisdiction under this Part without first enquiring whether or not the Spouses have pursued and participated in mediation pursuant to Part Three and, if there has been no mediation, the court may:
- (a) direct that there be mediation pursuant to the rules of the court or under Part Three; or
 - (b) where a requirement for mediation may result in an injustice, proceed to deal with an application under this Part.
38. Subject to this Law, a court may deal with Interests in Lheidli T’enneh First Nation Land held by either Spouse, or both Spouses, in a manner consistent with the provisions of the British Columbia *Family Relations Act* relevant to the ownership, possession or occupancy of real property, the division of interests in real property, and net family property representing the value of interests in real property.
39. Notwithstanding section 38, the fact that an Interest in Lheidli T’enneh First Nation Land does not include future or contingent Interests in Lheidli T’enneh



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First Nation Land shall not be taken to confer jurisdiction upon a court over those Interests under this Law.

40. Notwithstanding section 66, the court may make any appropriate and equitable order on the ground of unconscionability where a Spouse has intentionally, recklessly or fraudulently depleted net family property that is an Interest in Lheidli T'enneh First Nation Land and that would otherwise be subject to the presumption set out in that section.
41. Subject to this Law, a court may make any order in relation to an Interest in Lheidli T'enneh First Nation Land held by a Spouse, or by both Spouses, that the court could make in respect of real property situated in the province of British Columbia, but not on Lheidli T'enneh First Nation Land, including:
 - (a) an order that an interest in Lheidli T'enneh First Nation Land be transferred to a Spouse absolutely, where permitted under this Law;
 - (b) an order that an interest in Lheidli T'enneh First Nation Land be subject to a lease by one Spouse to the other Spouse for a term of years, subject to such terms and conditions as the court deems just in all the circumstances; or
 - (c) an order that an Interest in Lheidli T'enneh First Nation Land held by both Spouses be partitioned or partitioned and sold.
42. No order shall be made under paragraph 41(a) in favour of a Spouse who is not a Member.
43. Where an order is made under section 41(c) for partition of an Interest in Lheidli T'enneh First Nation Land, Council shall direct the transaction and the Lands Manager may, unless a court has made an order with respect to costs, make provision for a survey and for the allocation of the costs of the transaction.
44. Where an order is made under section 41(c) for the partition and sale of an Interest in Lheidli T'enneh First Nation Land, that sale shall be by auction directed by the Council, and Council shall by resolution make provision for a reserve bid representing a fair sale price for the Interest, and unless a court has



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already made an order with respect to costs, for the allocation of the costs of the transaction.

45. Subject to this Law, a Spouse may apply to a court for determination of a question in relation to the right to possession of an Interest in Lheidli T'enneh First Nation Land, and the court may:
 - (a) make an order declaring the right of possession to the Interest in Lheidli T'enneh First Nation Land; or
 - (b) make any order that could be made under section 41 in respect of that Interest in Lheidli T'enneh First Nation Land.
46. Where the Interest of a Spouse in Lheidli T'enneh First Nation Land is held through a corporation, the court may order:
 - (a) that Spouse to transfer shares in the corporation to the other Spouse; or
 - (b) the corporation to issue shares in the corporation to the other Spouse.
47. An order shall not be made under this Part:
 - (a) which requires the sale of an operating business or farm on Lheidli T'enneh First Nation Land; or
 - (b) which significantly impairs the operation of such business or farm,

unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
48. Where a proceeding has been commenced under this Part, and either Spouse dies before all issues relating Interests in Lheidli T'enneh First Nation Land have been disposed of by a court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
49. For greater certainty, a "Spouse" for the purposes of applying for relief from a court includes a former Spouse after the marriage has been dissolved by decree absolute of divorce or by judgment of nullity.



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50. Nothing in this Law relieves a party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.
51. Nothing in this Law limits the application of valid laws of British Columbia and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with Interests in Lheidli T'enneh First Nation Land, and to that extent this Law shall apply.
52. It is the intention of this Law that, subject to this Law, all rights, entitlements and obligations of Spouses are dealt with equitably on the basis of all their respective circumstances, including rights, entitlements and obligations in respect of Interests in Lheidli T'enneh First Nation Land.

MATRIMONIAL HOME

53. Whether or not an interest in Lheidli T'enneh First Nation Land is a Matrimonial Home is a question of fact.
54. Where an Interest in Lheidli T'enneh First Nation Land for purposes of this Law includes a Matrimonial Home that is normally used for a purpose other than residential purposes, the Matrimonial Home includes only that part of the Interest In Lheidli T'enneh First Nation Land that may reasonably be regarded as necessary for use and enjoyment as the family residence.
55. Subject to the limitations inherent in the nature of Lheidli T'enneh First Nation Land, both Spouses have an equal right to possession of a Matrimonial Home.
56. When only one Spouse holds an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, the other Spouse's right of possession is:
 - (a) personal against the Spouse who holds the Interest; and
 - (b) unless an Interspousal Contract or court order provides otherwise, ends when the Parties cease to be Spouses.



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57. No Spouse shall dispose of or encumber an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home unless:
- (a) the other Spouse consents;
 - (b) the other Spouse joins in the instrument of disposal or encumbrance;
 - (c) the other Spouse has released all rights in respect of that Interest by Interspousal Contract;
 - (d) a court order has authorized the transaction; or
 - (e) a court has released the Interest in Lheidli T'enneh First Nation Land from the application of this section.
58. If a Spouse disposes of or encumbers an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home in contravention of section 57, the disposal or encumbrance may, on application to a court, be set aside.
59. Section 58 does not apply where the person holding the disposition or encumbrance at the time of the application to the court acquired the disposition or encumbrance for value, in good faith and without notice at the time of acquiring, or making an agreement to acquire the disposition or encumbrance, that the property was a Matrimonial Home.
60. Where a person proceeds to realize upon an encumbrance or execution against an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, the Spouse who has a right of possession under section 55 has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
61. A court may, on the application of a Spouse or a person claiming an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home:
- (a) make a declaration whether or not the Interest in Lheidli T'enneh First Nation Land is a Matrimonial Home;



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- (b) where a court finds that the Spouse whose consent is required under section 57 cannot be found, is not available, is declared incompetent due to mental incapacity, is otherwise incapable of giving or withholding consent, or is unreasonably withholding consent, authorize a disposition or encumbrance of the Interest in Lheidli T'enneh First Nation Land, provided that such disposition or encumbrance is otherwise authorized under Lheidli T'enneh law, and the court may prescribe such conditions including the provision of or payment for other comparable accommodation, that the court considers appropriate; or
 - (c) make an order under section 57(d) or (e), subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.
62. Regardless of which Spouse holds an interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, a court may on application:
- (a) order the delivering up, safekeeping and preservation of the Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home;
 - (b) direct that one Spouse be given exclusive possession, consistent with this Law, of the Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, or part of that Interest, for such period as the court may direct, and release any other Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home from the application of this Part;
 - (c) authorize a disposition or encumbrance consistent with Lheidli T'enneh law of a Spouse's Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, subject to the other Spouse's right of exclusive possession as ordered;
 - (d) where it is shown that a Spouse has disposed of or encumbered an interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this Law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest in Lheidli T'enneh First Nation Land is not a Matrimonial Home, direct the other Spouse to



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substitute any other Interest the other Spouse may hold in Lheidli T'enneh First Nation Land for the Matrimonial Home subject to such conditions as the court considers appropriate;

- (e) make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a Spouse; and
 - (f) make any ancillary order, including and order as to costs, that the court deems necessary to give effect to this Law.
63. A court, in considering whether to direct that one Spouse have exclusive possession of an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home, shall be guided by the principle that the custodial parent of a child should have exclusive possession of the family residence for a period sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority and has the opportunity to complete their education, provided that observance of this principle is consistent with the best interests of the child.
64. Where both Spouses share joint custody of a child or children, the principle set out in section 63 shall be adapted to favour the Spouse with whom the child or children principally reside, but if the child or children reside substantially equal periods of time with both Spouses, then the principle shall be neutral as between the Spouses.
65. In applying the principle set out in sections 63, a court may have regard to the fact that one or more of the children are not Members.

PART 5 GENERAL PROVISIONS

66. An Interest in Lheidli T'enneh First Nation Land received by way of gift or inheritance by one Spouse only from a third person who is a family member, or by one Spouse only together with one or more members of that family, shall be deemed, subject to proof to the contrary, to have been transferred with the intention that the Interest should continue to be held within that family exempt



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from any claim of the other Spouse, but the Interest, the income from the Interest and the value of the Interest are to be excluded from the transferee Spouse's net family property.

67. Section 66 does not apply with respect to an Interest in Lheidli T'enneh First Nation Land that is a Matrimonial Home.
68. The possession of an Interest in Lheidli T'enneh First Nation Land under this Law by a person who is not a Member is not assignable and shall be deemed to terminate when that person ceases to use or occupy that interest personally.
69. A person who contravenes an order made by a court of competent jurisdiction pursuant to this Law in relation to an Interest in Lheidli T'enneh First Nation Land is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.
70. A fine payable under section 69 shall be remitted to the Lheidli T'enneh First Nation by the court, after reasonable court costs have been deducted.
71. This Law shall come into force and effect on the 1st day of December 2001.

