

**SHUSWAP INDIAN BAND  
TRESPASS LAW**

**WHEREAS** Shuswap Indian Band has a profound relationship with their land;

**AND WHEREAS** Shuswap Indian Band deems it advisable and in the best interests of the Shuswap Indian Band to enact a Law to provide for protection of the community and remove trespassers from SIB Land;

**AND WHEREAS** the Shuswap Indian Band entered into the *Framework Agreement on First Nations Land Management* with Canada, which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act (1999)*;

**AND WHEREAS** the Shuswap Indian Band has ratified the Framework Agreement and brought its Land Code into effect on February 1, 2015;

**AND WHEREAS** Shuswap Indian Band has the authority under section 6.1 of the Land Code to make laws concerning the protection, management, use and possession of SIB Land and any matter necessary or ancillary to a Law respecting SIB Land; and

**AND WHEREAS** Shuswap Indian Band has the authority under section 81(1)(p) to make laws concerning the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes.

**NOW THEREFORE**, Shuswap Indian Band Council enacts the following law:

**1. TITLE AND PURPOSE**

1.1 The title of this law is the "SIB Trespass Law".

1.2 The purpose of this law is to provide for the protection, management, use and possession of SIB Land by removing trespassers from SIB Land.

1.3 The *SIB Notice Enforcement Law* applies to all offences or contraventions under this Law.

**2. DEFINITIONS AND INTERPRETATION**

2.1 The following definitions apply in this Law:

**"Authorized Person"** means a person authorized by an Occupier of Premises to exercise a power or perform a duty of the Occupier under this Law and includes an SIB Enforcement Officer;

**"Community Facilities"** means any building owned by SIB;

**"Community Land"** has the meaning assigned in the Land Code.

**"Council"** means SIB's "council of the band", as that term is defined in the *Indian Act*, or any successor.

**“Enforcement Notice”** means an enforcement notice issued in accordance with the *SIB Notice Enforcement Law* which may be amended or replaced from time to time.

**“Land Code”** means the Shuswap Indian Band Land Code adopted by SIB in accordance with the *First Nations Land Management Act* (Canada), as may be supplemented or amended from time to time.

**“SIB”** means the Shuswap Indian Band, recognized as a Band under the *Indian Act*, as represented by Council, or any successor to such band pursuant to a federal statute or otherwise.

**“SIB Law Enforcement Officer”** means the person or persons appointed by Council, from time to time, pursuant to the *SIB Notice Enforcement Law*, to administer and enforce the provisions of SIB laws enacted by Council and includes any delegate and any assisting personnel as required and requested by an SIB Law Enforcement Officer, or any Peace Officer as defined, or any other person appointed by the Council for the purpose of maintaining law and order on SIB Land.

**“SIB Land”** means any portion of a Shuswap Indian Band reserve;

**“Member”** means a person whose name appears or is entitled to appear on the SIB Membership List.

**“Occupier”** in relation to Premises, means the following:

- (a) a Person entitled to maintain an action for trespass in respect of those Premises; or
- (b) a Person lawfully entitled to possession of those Premises; or
- (c) Council in relation to any Community Land or Premises on Community Land; or
- (d) in any case, a Person who has
  - (i) responsibility for and control over the conditions of the Premises or the activities carried out or in the Premises; or
  - (ii) control over persons allowed to enter the premises.

**“Peace Officer”** means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing SIB Land, or any delegate.

**“Person”** includes a natural person, SIB, Members, and non-members, a corporation of any type, partnership, society or association whether or not incorporated.

**“Posted Land”** includes land that is:

- (a) surrounded by a lawful fence;
- (b) surrounded by a natural boundary;
- (c) surrounded by a lawful fence and a natural boundary; or
- (d) a garden, field or other SIB Land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and woodlots on SIB Land that are used primarily for agricultural purposes; or
- (e) posted, in accordance with section 5.1, with signs prohibiting trespass.

**"Premises"** means

- (a) SIB Land; and
- (b) any thing on SIB Land including:
  - i. buildings and other permanent structures;
  - ii. a vehicle, except while in operation;
  - iii. a trailer or a portable structure designed or used as a residence, for shelter or to house a business, and
  - iv. water;

**"Private Land"** means SIB Land that is not Community Land and land in which a Member or Members or any non-member has an interest pursuant to or recognized by the Land Code (and any subsequent amendments) and includes business premises.

**"Resolution"** means a resolution of Council enacted under the Land Code or the *Indian Act* or other law.

### **3. TRESPASS PROHIBITED**

3.1 Subject to section 4, a Person who does any of the following commits an offence:

- (a) enters Premises that are Posted Land;
- (b) enters Premises after the Person has had notice from an Occupier of the Premises or an Authorized Person that the entry is prohibited;
- (c) engages in activity on or in Premises after the Person has had notice from an Occupier of the Premises or an Authorized Person that the activity is prohibited.

3.2 A Person, other than an Occupier the onus of proof of which rests on the Occupier, found on or in Premises that are Posted Land is presumed to be on or in the Premises without the consent of an Occupier of the Premises or an Authorized Person.

3.3 Subject to section 4, a Person who has been directed, either orally or in writing, by an Occupier of Premises or an Authorized Person or an SIB Law Enforcement Officer to:

- (a) leave the Premises, or
- (b) stop engaging in an activity on or in the Premises,

commits an offence if the Person

- (c) does not leave the Premises or stop the activity, as applicable, as soon as practicable after receiving the direction, or
- (d) re-enters the Premises or resumes the activity on or in the Premises, as applicable.

### **4. DEFENSES TO TRESPASS CHARGE**

4.1 A Person may not be convicted of an offence under section 3 if the Person's action or inaction, as applicable to the offence was with

- (a) the consent of an Occupier of the Premises or an Authorized Person, or
- (b) other lawful authority pursuant to the Land Code or otherwise.

## **5. METHOD OF GIVING NOTICE**

- 5.1 For the purposes of paragraph (e) of the definition of Posted Land in section 2.1, signs must be posted so that, in daylight and under normal weather conditions, from the approach to each ordinary point of access to the Posted Land,
- (a) a sign is clearly visible;
  - (b) if the sign contains writing, the writing is clearly legible; and
  - (c) if the sign uses graphic representation, the graphic representation is clearly visible.
- 5.2 For the purposes of section 3.1 (b) or (c), notice may be given,
- (a) orally or in writing;
  - (b) by means of signs posted at or near an ordinary point of access to the Premises so that in daylight under normal weather conditions, from the approach to the ordinary point of access, the sign satisfies the requirements of subsection 5.1; and
  - (c) by Resolution duly posted in a public area of the SIB administration building and made available free of charge at the administrative offices of SIB.
- 5.3 A sign, posted in accordance with subsection 5.2(b) and naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.
- 5.4 A sign, posted in accordance with subsection 5.2(b) naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.
- 5.5 In a prosecution for an offence under section 3.1, proof that a sign that complies with subsection 5.1 or 5.2(b), as applicable, was posted at the ordinary point of access used by the defendant to enter the Premises is sufficient for the purpose of establishing, as applicable, that
- (a) the Premises are Posted Land; or
  - (b) notice was given for the purpose of 3.1(b) or (c).
- 5.6 Notice given under this section may relate to all or a part of the Premises and different notices may be given or posted in relation to different parts of the Premises.

## **6. OFFENCE TO REMOVE, ALTER OR DEFACE POSTED SIGNS**

- 6.1 A person, other than an Occupier or Authorized Person, must not remove, alter or deface signs posted for the purpose of section 5.1 or 5.2(b).
- 6.2 A person who contravenes subsection 6.1 commits an offence.

## **7. TRESPASSER MUST GIVE NAME AND ADDRESS**

- 7.1 On the demand of an Occupier of Premises, or of an Authorized Person, who has reasonable grounds to believe that a person is on or in the Premises, or was on or in the Premises, in contravention of section 3.1 or 3.3, the Person must provide the Person's correct name and address to the Occupier or Authorized Person.
- 7.2 A Person who contravenes subsection 7.1 commits an offence.
- 7.3 A Person who contravenes subsection 7.1 and remains on or in the Premises commits an offence.

## **8. ENTRY ONTO PREMISES AND ARREST WITHOUT WARRANT**

- 8.1 A SIB Law Enforcement Officer may enter any Premises at any time to administer and enforce the provisions of this law.
- 8.2 A SIB Law Enforcement Officer may remove or arrest without warrant any Person found on or in the Premises if the SIB Law Enforcement Officer believes on reasonable and probable grounds that the person is committing an offence under section 3 in relation to the Premises and the action is necessary to facilitate the removal of the person refusing to leave the Premises. The offender shall be released as soon as practicable after the arrest taking into consideration the safety of the SIB Law Enforcement Officer and public at large as well as the likelihood of the offender's immediate discontinuance of the offence.
- 8.3 If a SIB Law Enforcement Officer believes on reasonable and probable grounds that a Person has committed an offence under section 3 and has recently departed from the Premises, the SIB Law Enforcement Officer may arrest the Person without warrant if,
  - (a) the Person refuses to give his or her name and address to the SIB Law Enforcement Officer on demand, or
  - (b) the SIB Law Enforcement Officer believes, on reasonable and probable grounds, that the name or address given by the person to the SIB Law Enforcement Officer is false.

## **9. PARTIES TO THE OFFENCE OF TRESPASS**

- 9.1 A Person other than a Person who commits trespass under this law, is also guilty of an offence under that section if that Person is shown to be complicit in the commission of the offence by:
  - (a) purporting to give permission for entry to the Premises where that Person is not, or was not at the relevant time, an Occupier or otherwise authorized to give such permission under this law;
  - (b) being the employer of the Person who committed acts of trespass, directed or counseled him or her to do so as part of their employment;
  - (c) being the principal of the Person who committed acts of trespass, directed or counseled him or her to do so as an agent;
  - (d) being a Person in authority over a Person, counsels or directs that Person to commit an act of trespass; or
  - (e) knowing that conduct would be a trespass, assists a Person by providing him or her with the means, tools or equipment to commit the trespass.

- 9.2 A Person may be a party to the offence of trespass whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any other person was convicted under this law in respect of the same trespass.

## **10. OFFENCES**

- 10.1 For each offence designated under this Law, a SIB Law Enforcement Officer shall complete and issue an Enforcement Notice to the person against whom an offence is alleged.
- 10.2 No person shall obstruct, interfere with or hinder Council, the SIB Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this law, or any other SIB Law.
- 10.3 Each day a violation of this law continues will be deemed to be a separate offence for which a separate fine, imprisonment, banishment or other remedy may be imposed.
- 10.4 Any person who commits an offence under this Law is liable on summary conviction to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not exceeding six (6) months, restitution, community service and any other means or combination thereof for achieving compliance.
- 10.5 Nothing in this Law precludes SIB from pursuing any other enforcement action or remedy provided for in any other SIB Law.

## **11. FEES AND FORMS**

- 11.1 Council may, by Resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and must post notice of same in a public area of the SIB administration building and make a copy of same available for viewing free of charge at the administrative offices of SIB and available for distribution at a nominal charge.

## **12. APPLICATION OF LAW**

- 12.1 Offences created under this law constitute offences punishable on summary conviction for the purposes of section 22(1) of the *First Nation Land Management Act* (S.C. 1999, c. 24) as amended or replaced, the enforcement of which may be prosecuted pursuant to the *SIB Notice Enforcement Law*.
- 12.2 Where any federal Act or regulation or provincial Act or regulation or any other SIB Law may apply to any matter covered by this Law, compliance with this Law must not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 12.3 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.

- 12.4 The headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law and must not be used in the interpretation of this Law.

### **13. IMMUNITY**

- 13.1 No action for damages lies or may be instituted against present or past Council, SIB Law Enforcement Officers, or employees, servants or agents of either SIB or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
  - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 13.2 Section 13.1 does not provide a defense if:
- (a) Council, SIB Law Enforcement Officers, employees, servants or agents of either SIB or Council have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
  - (b) the cause of action is libel or slander.
- 13.3 Council, SIB Law Enforcement Officers, employees, servants or agents of SIB or Council are not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other SIB Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other SIB Law.
- 13.4 All actions against SIB for the unlawful doing of anything that:
- (a) is purported to have been done by SIB under the powers conferred by this law or any SIB law; and
  - (b) might have been lawfully done by SIB if acting in the manner established by law, must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.
- 13.5 SIB is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to SIB, within two (2) months from the date on which the damage was sustained.

### **14. POWER TO MAKE REGULATIONS CONCERNING COMMUNITY LANDS**

- 14.1 Council may, by Resolution and posted in accordance with subsection 5.2(c),
- (a) set out the rules and regulations for the use of Community Land and Community Facilities, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar premises,
  - (b) regulate the hours or seasons in which Premises located on Community Land may be used for specific purposes,
  - (c) impose limits on the activities to be engaged in on Community Lands,
  - (d) impose a requirement for a permit to engage in such activities or purposes, and

- (e) prohibit entry or activity on Community Land or Community Facilities as it deems appropriate.

**15. CIVIL ACTION FOR TRESPASS PRESERVED**

- 15.1 Subject to section 13, nothing in this Law extinguishes the right of a person, including SIB, to bring a civil action for damages arising out of a trespass on any premises on SIB Land, and all civil remedies for trespass are preserved.