

KTUNAXA NATION TOOL KIT



KTUNAXA
NATION

INTRODUCTION

The Ktunaxa Nation Council (KNC) recognizes the growing need to provide tools to Citizens to support their effective participation in the Nation. It is with this understanding that we now offer a Tool Kit. This Tool Kit is intended to empower Ktunaxa Citizens. The topics included in this Tool Kit will help Ktunaxa Citizens understand their governance, roles, rights and responsibilities. While this Tool Kit addresses legal matters, it is not intended to be relied on as legal advice.

ACKNOWLEDGEMENT

Assistance and guidance provided by Rob Louie, Dipl.P.S.M., B.A., LL.B. was greatly appreciated. Rob saw a need for a Tool Kit for Ktunaxa Citizens. Rob hopes that the topics included in this Tool Kit will help answer some of the diverse questions that Citizens have been asking privately and publicly. He also hopes that this Tool Kit will be educational for the youth, students, elders, leaders, and the Nation generally.



TABLE OF CONTENTS

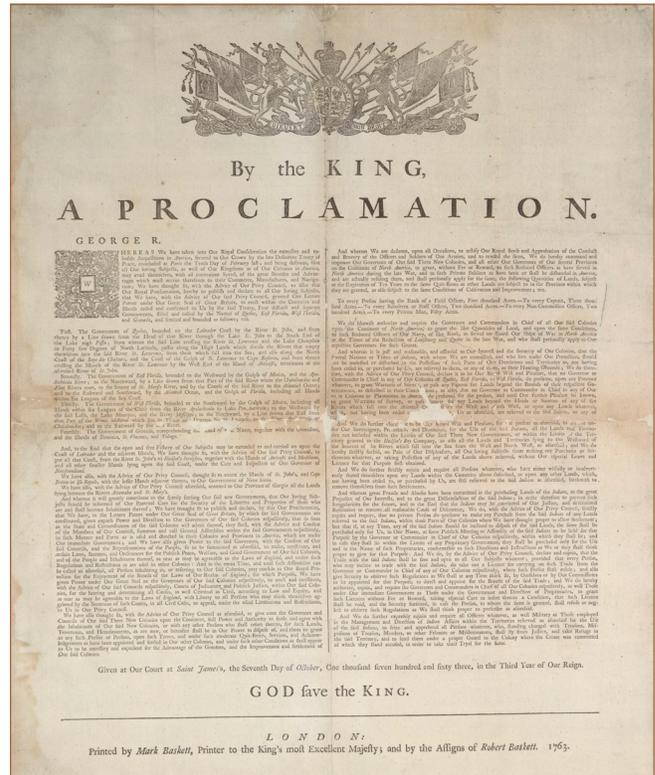
1. HISTORIC & CONTEMPORARY LAWS	4
2. COLLISION OF CANADIAN LAW WITH KTUNAXA CULTURE	7
3. KEY INDUSTRIES IN KTUNAXA TERRITORY	9
Teck	
BC Hydro	
Columbia Power Corporation	
FortisBC	
Forestry	
Tourism	
4. KTUNAXA NATION COUNCIL AND COMMUNITIES	11
KNC	
Ktunaxa Communities (Bands)	
5. OTHER GOVERNMENTS IN KTUNAXA TERRITORY	12
Federal Government	
Member of Parliament	
Provincial Government	
Member of the Legislative Assembly	
Municipal Government	
Regional Districts	
6. KEY GOVERNMENT AGENCIES IN KTUNAXA TERRITORY	14
Crown Counsel Office	
BC Conservation Office	
Land Title and Survey Authority of British Columbia	
Indian Land Registry (AANDC)	
First Nation Land Registry	
Royal Canadian Mounted Police	
Canada Border Service Agency (CBSA)	
US Department of Homeland Security (DHS), & Customs and Border Protection (CBP)	
7. WHAT IF I WANT TO RUN FOR BAND COUNCIL?	17
8. LEGAL PRINCIPLES THAT APPLY TO BAND COUNCILS & BAND MEMBERS	18
9. WHERE DO I GO IF I HAVE A PROBLEM WITH MY BAND COUNCIL?	20
10. TERMINOLOGY	21
11. FREQUENTLY ASKED QUESTIONS	22
12. RESOURCES	24

I. HISTORIC & CONTEMPORARY LAWS

The following legal documents are of particular relevance to Ktunaxa Citizens.

(A) ROYAL PROCLAMATION OF 1763

The *Royal Proclamation of 1763* clarified the British Crown’s policy regarding First Nations’ lands. The Royal Proclamation made it clear that First Nations’ lands may only be acquired by non-Aboriginal people through the formal process of surrender to the Crown – this provided the foundation for treaty-making. This was designed to protect First Nations’ lands by preventing their direct sale to the early traders and settlers. Recent attempts to use the *Royal Proclamation* to secure rights to land or as a basis for claiming Aboriginal title or other Aboriginal rights have not succeeded in court. According to the Supreme Court of Canada, the *Royal Proclamation* is a historic expression of the common law, rather than an independent source of legal rights.



(B) INDIAN ACT

The *Indian Act* is the main federal statute dealing with Indian membership (status), Band (Community) government, the management of reserve land and Band monies. Early legislation was primarily directed at regulating trade between First Nations and non-Aboriginal settlers in their traditional territories. Prior to Canada becoming a sovereign country in 1867, laws to regulate and protect First Nations’ lands were enacted in Upper and Lower Canada and in Nova Scotia, New Brunswick, Prince Edward Island and British Columbia.

The *Indian Act* is a part of a long history of assimilation policies that were intended to suppress the cultural, social, economic, and political distinctiveness of the Ktunaxa and other First Nations. In 2008 the federal government finally offered an official apology for the Residential Schools system. The two primary objectives of this policy were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption that Aboriginal cultures and spiritual beliefs were inferior and unequal. The purpose, as it was infamously said, was, “to kill the Indian in the child”.

The *Indian Act* has gone through various amendments over the years to address changes in

federal government policy and to respond to court decisions (e.g. regarding women who lost their Indian status through marriage). Today, the *Indian Act* is administered by Aboriginal Affairs and Northern Development Canada (AANDC), formerly called the Department of Indian and Northern Affairs.

(C) UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The *United Nations Declaration on the Rights of Indigenous Peoples* was adopted by the UN General Assembly in 2007, by a majority of 144 states in favour, with four votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions.

The *UN Declaration* sets out minimum standards for the “survival, dignity and well-being” of Indigenous peoples around the world. The *UN Declaration* builds on existing human rights standards, and applies these standards to the specific needs and circumstances of Indigenous peoples, including the Ktunaxa. The *UN Declaration* provides guidance to state governments, a road map for non-Indigenous peoples to better understand the rights of Indigenous peoples, and a tool to advocate for the rights of Indigenous peoples before courts and tribunals.

Today, all four of the states that originally opposed the Declaration have reversed their positions and officially endorsed it. Canada endorsed the *UN Declaration*, with specific limitations, in 2010.

(D) CONSTITUTION ACT, 1982

(I) SECTION 35

Section 35 of The *Constitution Act, 1982* recognizes and affirms existing Aboriginal and treaty rights, but does not define them. What “Aboriginal rights” and “treaty rights” include has been the topic of much debate and discussion. Aboriginal rights have been interpreted to include a range of cultural, social, political, and economic rights including the right to land (i.e. Aboriginal title), as well as to fish, hunt and practice one’s own culture. Section 35 also confirms that rights set out in modern treaties are “treaty rights” and protected by section 35 and that “Aboriginal peoples” include Indian, Inuit and Métis.

Section 35 protects “existing” Aboriginal rights. The Supreme Court of Canada has stated that this means that any Aboriginal rights that were extinguished by treaty or other legal processes prior to 1982 are not “existing” and, therefore, not protected under the Canadian Constitution.

Since the enactment of section 35, there have been many cases before the courts focused on the nature and scope of Aboriginal rights. Court decisions have also addressed federal and provincial government obligations and the purpose of achieving reconciliation of pre-existing Aboriginal sovereignty with the assertion of Crown sovereignty. Many of the milestone cases arose in BC.

In June 2014, the Supreme Court of Canada released its decision in the *Tsilhqot’in* case (sometimes referred to as the *William* case). The ruling represents the first time in Canadian

history a declaration of Aboriginal title has been granted. And unlike previous court judgments, the *Tsilhqot'in* ruling states that Aboriginal title is not limited to specific sites that have been intensively used and can extend to wider areas within First Nations' traditional territories. Even more important, once Aboriginal title has been recognized, project development requires the consent of the First Nation that holds title, except where: (a) the government can show it has consulted and accommodated the First Nation; and (b) it can justify the infringement by, among other things, demonstrating a compelling and substantial public purpose for the project. In this sense, the federal and provincial governments still can override Aboriginal title, but only if they can meet specific requirements.

To read the entire *Tsilhqot'in* case, you may find it at:

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/14246/1/document.doc>

(II) CHARTER

The *Canadian Charter of Rights and Freedoms* is part of the *Constitution Act, 1982*. The *Charter* is designed to provide Canadians with protection of their fundamental freedoms. This includes freedom of religion, freedom of thought (including freedom of the press), freedom of peaceful assembly and freedom of association. The *Charter* also includes protection for equality rights provisions that are designed to protect people from discrimination on the basis of race, ethnic origin, religion, gender, age or disability and other rights, such as democratic political rights and legal rights that apply in the context of criminal law. In the *Qat'muk* case, the Ktunaxa Nation Council has argued that the Jumbo Glacier Resort violates both their freedom of religion protected under section 2 of the *Charter* and their Aboriginal rights protected under section 35.

Guarantee of Rights and Freedoms

Fundamental Freedoms

Democratic Rights

Mobility Rights

Equality Rights

Official Languages of Canada

Minority Language Educational Rights

Legal Rights

Enforcement

General

Application of Charter

Citation

2. COLLISION OF CANADIAN LAW WITH KTUNAXA CULTURE

When Canada became a sovereign country in 1867, and BC joined Canada in 1871, they initially ignored and tried to suppress Ktunaxa rights and cultural practices. It was said by a Ktunaxa elder, “We had to go underground to practise our rituals like the Sundance and blanket dance.”

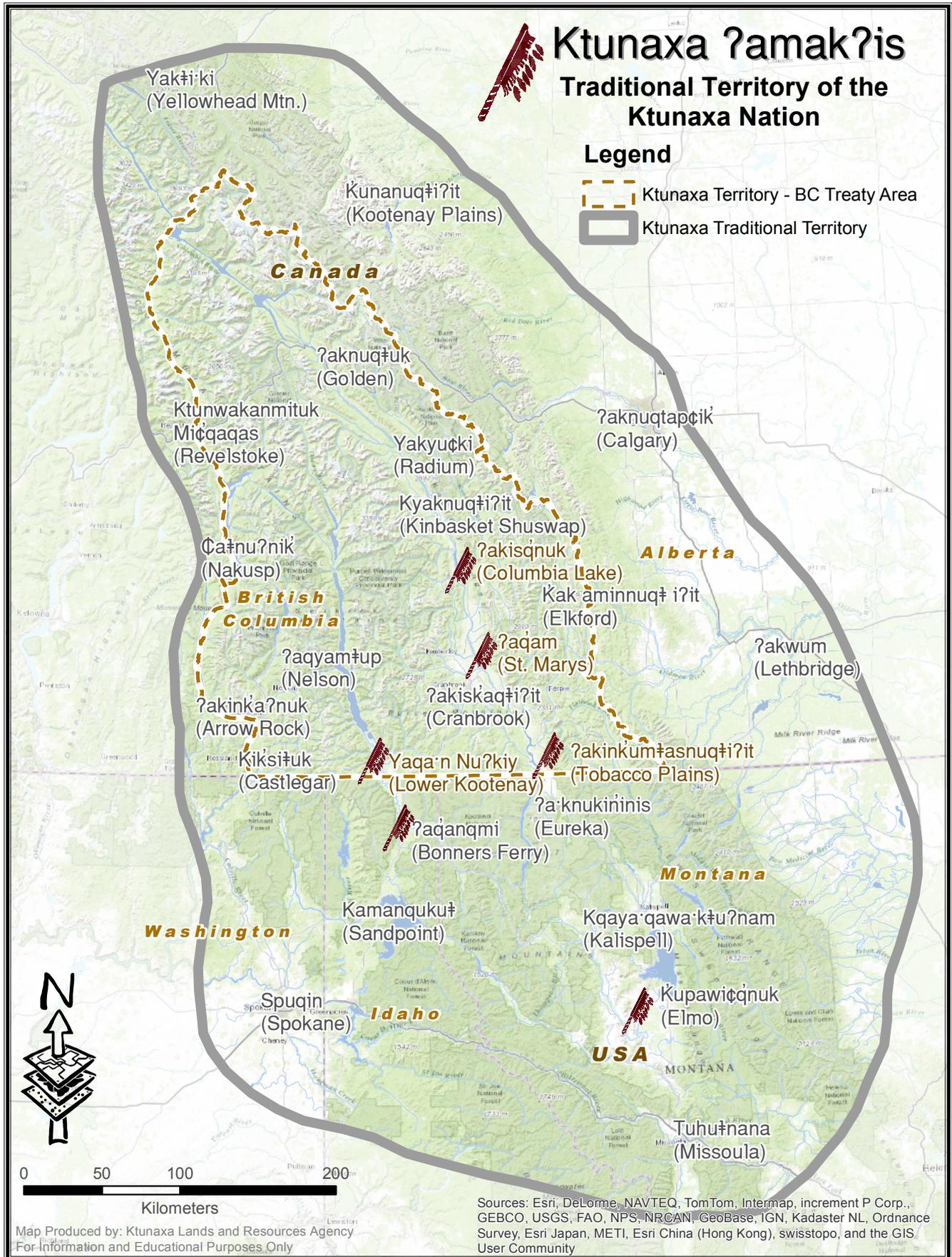
Over time, the federal government added specific discriminatory provisions to the *Indian Act* that made it illegal for the Ktunaxa to organize politically or to hire legal counsel to further their land claims. The government did not remove these discriminatory sections from the *Indian Act* until 1951. Other major events, such as the Supreme Court of Canada ruling in the Calder case (which recognized for the first time the existence of Aboriginal title to land), gave a boost to Ktunaxa legal and political interests. This in turn led to the political re-empowerment of First Nations and, in Ktunaxa territory, to the establishment of the Kootenay Indian Area Council – now the Ktunaxa Nation Council.

Many Aboriginal leaders in Canada, including some Ktunaxa leaders, brought their concerns to the government and helped push to have Aboriginal Rights included and protected in the Canadian Constitution in 1982.

Some First Nations in BC have opted to enter the BC treaty negotiations process as a means to have their Aboriginal rights and title recognized in a modern treaty, while others have chosen not to. Many First Nations have used the court process as a means of protecting and advancing their rights. The Ktunaxa Nation has chosen to pursue treaty negotiations and occasionally litigation, as well as to engage in consultation and accommodation processes with the provincial and federal governments.



WHO'S WHO IN KTUNAXA TERRITORY



3. KEY INDUSTRIES IN KTUNAXA TERRITORY

There are a number of companies, agencies and non-profit corporations doing business within Ktunaxa Territory. The following is a list of some of the key industries that have a particularly big role and impact on the Ktunaxa:

TECK

Teck Resources Limited is a Canadian metals and mining company. This company was formed from the amalgamation of Teck (which was founded 100 years ago) and Cominco in 2001 and is Canada’s largest diversified resources company. The Ktunaxa Nation has entered into a number of agreements with Teck and is in the process of negotiating others, including an impact management and benefits agreement (aka IMBA or IBA). The BC Government and the Ktunaxa Nation Council signed a “revenue-sharing” agreement with the BC government in January 2013 that includes the sharing of mineral tax revenues BC receives from Teck’s coal mining operations in the Elk Valley. The agreement will apply to revenues from new coal mining projects and expansions of existing ones.

Teck’s Trail operation, located in Trail, BC, is one of the world’s largest integrated zinc and lead smelting and refining complexes. Teck is also the majority owner of the Waneta hydroelectric dam (1/3 owned by BC Hydro) and related transmission system. The Trail operations produce refined zinc and lead, a variety of precious and specialty metals, chemicals and fertilizer products.



BC HYDRO

BC Hydro, a provincial Crown corporation, has several dams located throughout Ktunaxa Territory. The dam facilities in the Territory include: Aberfeldie; Duncan; Elko; Keenleyside; Kootenay Canal; Mica; Revelstoke; Seven Mile; Spillimacheen; Walter Hardman; and Whatshan. In addition, BC Hydro owns a large array of transmission lines throughout the territory. The Columbia River Treaty signed by Canada and the United States in 1964 directly affects power developments on the Columbia River and its tributaries. The treaty was signed to prevent periodic and sometimes devastating floods, and to meet the need for additional power. In return for building the Mica, Keenleyside and Duncan dams, BC is entitled to half the additional power generated in the U.S. that resulted from storage operations in Canada.

COLUMBIA POWER CORPORATION

The Columbia Power Corporation, another provincial Crown Corporation, also co-owns, with the Columbia Basin Trust, several generating stations and one dam (Brilliant) in Ktunaxa Territory. The generating stations are at Brilliant, Waneta and Keenleyside (Arrow Lakes).

FORTISBC

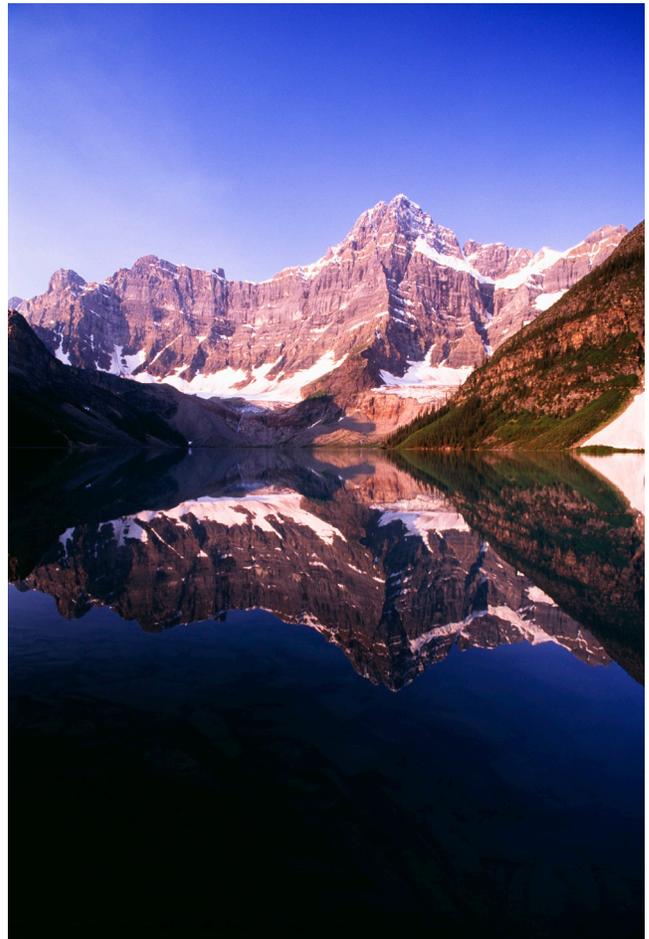
FortisBC also operates and maintains hydroelectric power facilities and natural gas transmission and distribution facilities in British Columbia. These facilities are either owned by FortisBC or, if owned by others, are operated and maintained under management agreements. FortisBC owns four hydro-electric generating plants on the Kootenay River: the Corra Linn, Upper Bonnington, Lower Bonnington, and South Slovan Plants.

FORESTRY

Forestry is also a very important industry in Ktunaxa Territory. Some of the key forestry companies operating in the Territory include: Canfor, Zelstoff Celgar and Interfor. There are also many smaller logging and lumber operations throughout the Territory.

TOURISM

Tourism is an important and growing industry in Ktunaxa Territory. Key tourism operations include ski hills, golf courses and resorts. One of the largest resorts is the St Eugene Golf Resort Casino, which is partly owned by Ktunaxa Nation communities.



4. KTUNAXA NATION COUNCIL AND COMMUNITIES

KNC

The Ktunaxa Nation Council was originally established in 1970 as the Kootenay Indian District Council to promote the political and social development of the Nation. In 1991 the Council's name was changed to Ktunaxa/Kinbasket Tribal Council (K/KTC) to reflect the origins of the two language groups (Ktunaxa and Secwepemc) of the Communities that were represented by the Council. In 2005, following the departure of the Shuswap Indian Band (Kinbasket), the Council's name was changed to Ktunaxa Nation Council (KNC). The KNC is made up of the Chiefs and Council of the Ktunaxa Nation.

The KNC is organized into five sector councils: lands and resources; traditional knowledge and language; social; economic investment; and corporate.

The programs and services offered by the KNC and its affiliates are generally available to Ktunaxa Citizens, which include members of Ktunaxa Communities living on and off reserve, and to other status and non-status Aboriginal people living within Ktunaxa Territory.

The KNC also serves as an umbrella organization for several societies, committees and corporations that are engaged in the provision of programs and services to Ktunaxa citizens.

One of the goals of the KNC and its member Communities is to work with our neighbours and build strong relationships to strengthen the regional economy within the Kootenays.

For more information on the KNC, visit: www.ktunaxa.org

KTUNAXA COMMUNITIES (BANDS)

There are four Ktunaxa Communities (or Bands) that belong to the Ktunaxa Nation Council. They are:

1. Akisqnuk
2. Aqam
3. Lower Kootenay
4. Tobacco Plains

Each of these Communities has its own Chief and Council who are elected to represent the members of the Community.



5. OTHER GOVERNMENTS IN KTUNAXA TERRITORY

FEDERAL GOVERNMENT

The Executive branch of the federal government consists of the Prime Minister and his Cabinet Ministers, while the Legislative branch consists of the 305 Members of Parliament (MPs) who are elected by the people of Canada. The federal government has a number of departments (including Aboriginal Affairs and Northern Development Canada), organizations and agencies. The Cabinet, led by the Prime Minister, directs the federal government by determining priorities and policies, and ensuring their implementation across Canada. Parliament, which consists of the House of Commons and Senate, passes federal laws, many of which apply in Ktunaxa Territory, including on reserve lands.



MEMBER OF PARLIAMENT

A Member of Parliament (MP) is a person who is elected to represent the Ktunaxa and other people in their “riding” in Parliament. A riding is a geographic area that is represented by an MP. An MP may also be appointed as a Minister of a department, such as Aboriginal Affairs and Northern Development Canada.

PROVINCIAL GOVERNMENT

Just like the Federal Government, the BC Government has an Executive and Legislative branch. However, as federal and provincial responsibilities are different, there are different portfolios or tasks for each level of government. The BC Government was the first province in Canada to institute fixed election dates, and it is the only province in Canada with a recall power that allows voters in BC to unseat an elected Member of the Legislative Assembly (MLA).

MEMBER OF THE LEGISLATIVE ASSEMBLY

A Member of the Legislative Assembly (MLA) is a person that is elected to represent the Ktunaxa and other people in their “riding” as part of the provincial Legislature in Victoria, BC. MLAs are focused on provincial issues. Aqam and Tobacco Plains are in the Kootenay-East riding, Akisqnuq is in the Columbia River-Revelstoke riding, and Lower Kootenay is in the Nelson-Creston riding. This means that there are three MLAs that represent Ktunaxa Citizens living in the Communities.

MUNICIPAL GOVERNMENT

The powers of municipal governments, such as Creston, Nelson, Cranbrook, Invermere and Fernie, are delegated by provincial government statute. In British Columbia, the Local Government Act sets out the role and function of municipalities.

Municipal governments in BC consist of an elected mayor and council who, starting in 2014, will serve four year terms (this has just been increased from three years). The Mayor and Council are responsible for establishing policies for the community and adopting bylaws based on these policies. While Mayor and Council are responsible for policy making, municipal staff is responsible for putting policy into action, and delivering various municipal services such as: water, sewage, waste collection, public transit, land use planning, libraries, emergency services, animal control, and economic development.

REGIONAL DISTRICTS

There are four Regional Districts within Ktunaxa Territory: the Regional District of the Central Kootenay (RDCK), the Regional District of the East Kootenay (RDEK), the Kootenay Boundary Regional District (KBRD) and the Columbia-Shuswap Regional District (CSRD). These Regional Districts provide a broad range of services, with the exception of roads and policing. The choice of services is determined by the regional board, but only with the approval of the regional voters. The scope of services, therefore, varies with each Regional District.

Regional Districts are granted their powers by the provincial government and are governed by the Local Government Act and other supporting legislation.

6. KEY GOVERNMENT AGENCIES IN KTUNAXA TERRITORY

CROWN COUNSEL OFFICE

Crown Counsel lay charges in British Columbia, not the police. Decisions to lay charges are made in accordance with charge assessment guidelines policy, which requires that two criteria be met before approving a charge: (1) there must be a substantial likelihood of conviction; and (2) a prosecution must be in the public interest. Crown Counsel is entrusted with the prosecution of all offences and appeals in British Columbia related to the *Criminal Code of Canada* and provincial regulatory offences.

Although the Crown is legally-speaking a single entity, Federal Crown Counsel operate separately from the Provincial Crown Counsel (BC). The Federal Crown Counsel office is responsible for federal matters and the Provincial Crown Counsel office is responsible for provincial matters. With respect to *Indian Act* violations, the Provincial Crown Counsel could enforce the *Indian Act* since the Provincial Crown is responsible for prosecuting criminal and quasi-criminal matters; however, since “Indians and Lands Reserved for Indians” is a federal matter, the Federal Crown could also enforce the *Indian Act*. Bands, such as the four Ktunaxa Communities, can also hire a lawyer to prosecute *Indian Act* violations.

BC CONSERVATION OFFICE

The Conservation Officer Service is a public safety provider focussed on natural resource law enforcement and human-wildlife conflicts prevention and response. The BC Conservation Office enforces six federal statutes and 25 provincial statutes, including the *Species at Risk Act*, *Liquor Control and Licensing Act*, *Wildlife Act* and *Environmental Management Act*. If a Ktunaxa Citizen requires an eagle or other wildlife for cultural purposes, he or she could make a request to the BC Conservation Office or the Ktunaxa Nation Council (Lands & Resources Department) and ask to be notified if they become aware of a deceased eagle or other wildlife.

LAND TITLE AND SURVEY AUTHORITY OF BRITISH COLUMBIA

The Land Title and Survey Authority of British Columbia (LTSA) or sometimes called the “LTO” (Land Title Office) is a publicly accountable agency responsible for operating BC’s land title and survey systems on behalf of the Province. The LTSA is comprised of two separate divisions: the Land Title Division and the Surveyor General Division. The LTSA maintains the Land Title Register. This is BC’s official legal record of private property ownership. Their mandate is to ensure all British Columbians have confidence that the register is a reliable record of land title ownership and registered charges. The LTSA does not, however, register or protect Ktunaxa Nation Aboriginal title in Ktunaxa Territory or any interests on reserve lands.

INDIAN LAND REGISTRY (AANDC)

The Indian Lands Registry System records information regarding the rights to a parcel or parcels of Reserve land. The Indian Lands Registry Upgrade Project (ILRUP) is re-developing the existing Indian Lands Registry system to make the system more usable.

FIRST NATION LAND REGISTRY

The registry used by First Nations that have opted into the First Nations Land Management initiative. It is managed in the same general manner as the Indian Land Registry. First Nations, like the Ktunaxa Communities, wishing to exercise greater control and decision-making over their reserve lands and resources have the option of signing the “Framework Agreement” under the *First Nation Land Management Act*. Through the development of their own Land Codes, First Nations may assume jurisdiction to make, administer, and enforce their land laws. Title to the First Nation’s land does not change and the lands continue to be “lands reserved for Indians” under s. 91(24) of the *Constitution Act*, 1867. Once a community ratifies a Land Code, the restrictive land administration provisions of the *Indian Act* no longer apply to the First Nation. It should be noted that members of Aqam (St. Mary’s Indian Band) recently voted in favour of establishing a Land Code for their community.

ROYAL CANADIAN MOUNTED POLICE

The Royal Canadian Mounted Police (RCMP) is the Canadian national police service and an agency of the Ministry of Public Safety Canada. The RCMP is unique in the world since it is a national, federal, provincial and municipal policing body. They provide a total federal policing service to all Canadians and policing services under contract to more than 600 Aboriginal communities. The RCMP have the right to enter reserves in the course of their duty. If, however, a Ktunaxa Citizen feels that the RCMP have abused their position, that Ktunaxa Citizen may lodge a formal complaint. See RCMP On-Line Complaint Form: <https://www.cpc-cpp.gc.ca/cnt/srv/mac/forms/ocf-fpe-eng.aspx>. The RCMP enforces the law, but is not above the law. There are Ktunaxa Citizens who have been and are currently members of the RCMP.

CANADA BORDER SERVICE AGENCY (CBSA)

The Canada/US border cut right through Ktunaxa Territory. This division has caused legal, cultural and social difficulties for the Ktunaxa, and has been an on-going problem. Today, the Ktunaxa Nation and Canada Border Service Agency are working on the problems through a Memorandum of Understanding.

When you enter or re-enter Canada, a Canadian border services officer will ask you where are you from and to see your passport. You do not need a passport to enter or re-enter Canada; however, you need proof of your citizenship such as a certificate of Indian Status.

After 9/11, Border officers have become extra-observant regarding items crossing the border. One of the more sensitive issues that you may face at the border is if you have a cultural item like a medicine bundle or eagle feathers. It is mandatory that you tell a Border officer that you have a Ktunaxa medicine bundle or eagle feather. Individuals crossing the border into Canada

with eagle items will be asked:

- to declare that they are transporting eagle items for cultural or ceremonial purposes;
- to present their Certificate of Indian Status (status card); and
- to complete a US Fish and Wildlife Service Import/Export Form.

US DEPARTMENT OF HOMELAND SECURITY (DHS), & CUSTOMS AND BORDER PROTECTION (CBP)

If you have any criminal record, no matter how minor or how long ago the offense, you may not be allowed

entry to the US. Not all criminal convictions create an ineligibility to enter the U.S., but any past criminal record must be declared. Attempting to gain entry without declaring that you have been arrested could result in a permanent ineligibility and/or detention at a U.S. Department of Homeland Security (DHS) enforcement facility while a Customs and Border Protection (CBP) officer determines your admissibility. If you are ineligible to enter the United States, you may apply for a waiver of ineligibility.

Here are the required steps for a waiver:

- You have to complete a signed form I-192 and G-325A; and
- U.S. Fingerprint chart FD-258 must be completed by a U.S. CBP Officer at a designated location when you come in person to submit the application, or - if you have mailed the application, instructions for obtaining it will be given to you after the rest of the application has been received.

Each application, regardless of the ground of inadmissibility, must be accompanied by a copy of an official police record or evidence that no record exists, from your country of residence or nationality. Canadians can obtain verification of your criminal record or evidence of that you have no record from the Royal Canadian Mounted Police (RCMP) by submitting your fingerprints on Form C216C. Please contact your local RCMP office or police agency for fingerprint locations. There is a \$25.00 fee.

Here are the websites for downloading the forms mentioned above:

<http://www.uscis.gov/sites/default/files/files/form/i-192.pdf>

<http://www.uscis.gov/sites/default/files/files/form/g-325.pdf>



7. WHAT IF I WANT TO RUN FOR BAND COUNCIL?

It is a huge responsibility to lead a Ktunaxa Community. As an elected Band Councillor there are social, legal and cultural obligations.

A Band Councillor has a social responsibility which means that they have to be aware of their actions and words, not only during the workday, but also during the evening and weekend. The general public and Band membership may lose confidence in and respect for a Band Councillor who acts inappropriately in a private setting. Prior to running for Band Council, you may want to inform yourself about:

- Governance (at the community and nation levels)
- Community membership and Ktunaxa citizenship
- Ktunaxa language, translation and songs
- Land and resource issues
- Traditional-use and cultural studies
- Elders Committee
- Key community issues
- Archives and repatriation

One thing to keep in mind is that Band Councils can be sued by members of the community, as well as others who have dealings with them, such as contractors or other governments.

8. LEGAL PRINCIPLES THAT APPLY TO BAND COUNCILS & BAND MEMBERS

Here are some common legal principles that apply to Band Councils:

(A) PROCEDURAL FAIRNESS

This means that before a Band Council makes a decision about someone (e.g., Band staff or Band member), the Band Council must:

- tell the person that they are going to make a decision about them and why they are going to do that;
- give that person an opportunity be heard before a decision is made; and
- be free and clear of any outside factors (e.g. not be influenced by community gossip) to arrive at a fair decision to that person.

If any one of these components is missing, this could affect how a court deals with a Band Council's decision.



(B) CONFLICT OF INTEREST

This means that a Band Councillor who has a financial interest or may receive a financial benefit in a transaction must remove themselves from any discussion or decision.

(C) FIDUCIARY DUTY

Band Councillors have a “fiduciary duty” to their elected membership. This means that a Band Councillor has to act in the best interests of their membership and not advance their own personal interest. A Band Councillor must take care not to abuse or misuse their position of power in relation to their membership. A failure to be accountable, fair and transparent may result in a breach of fiduciary duty. A Band Councillor found guilty of breach of fiduciary duty related to a financial matter may be required to reimburse the Band.

Here are some common legal safeguards for Ktunaxa Citizens:

1. The federal Human Rights Act ensures that all Ktunaxa are protected from harassment and discrimination based on their sex/gender, religion, age, marital status, disability and criminal conviction for which a pardon has been granted.
2. The vast majority of employment relationships on reserve fall under provincial jurisdiction and are governed by British Columbia laws, including the *BC Employment Standards Act*, *Workers Compensation Act* and *BC Human Rights Code*. For the minority of positions that may fall under federal jurisdiction, the employment relationships are governed under the *Canada Labour Code* and the *Canadian Human Rights Act*.
3. The *Canadian Charter of Rights and Freedoms (Charter)* is part of the Canadian Constitution. Some of the rights and freedoms contained in the Charter are:
 - freedom of expression
 - the right to a democratic government
 - the right to live and to seek employment anywhere in Canada
 - legal rights of persons accused of crimes
 - the right to equality, including the equality of men and women.

9. HELP! WHERE DO I GO IF I HAVE A PROBLEM WITH MY BAND COUNCIL?

At times, a Ktunaxa Citizen may find themselves at odds with their Band Council. Most Ktunaxa Band Councils will try to resolve the problem in a professional and respectful manner. Band Councils may also establish their own dispute resolution process to address disputes that arise between the Band Council or administration and its members. However, if there is no dispute resolution process or if either party is not satisfied with the outcome of the process, then either side may apply to the courts.

A Ktunaxa Citizen may recover up to \$25,000 from another party in Small Claims Court. To start a Small Claims action there is a \$100 filing fee for claims up to and including \$3,000, and there is \$156 filing fee for claims over \$3,000.

The Federal Court has jurisdiction over Band Councils acting under the authority of the *Indian Act*, so most legal actions against Band Councils will need to be filed in the Federal Court registry in Vancouver. A Ktunaxa Citizen who wants to have a Band Council's decision reviewed must pay a \$50 filing fee. There are a lot of court forms that have to be filled out, additional filing fees, affidavit fees and service fees. If Ktunaxa Citizens decide to represent themselves in a Federal Court, they can expect to pay upwards of \$1,000 out of their own pocket to launch a judicial review. If a Ktunaxa Citizen hires a lawyer to help, the cost will go up dramatically. A lot of time, energy and money will go into a court case – even a straightforward one.

The BC Supreme Court can deal with matters that are not exclusive to the Small Claims Court or Federal Court. Filing a Notice of Claim in BC Supreme Court will cost you \$200 plus fees to serve the other side/party. However, if you are on income assistance, or on a very limited income, you may be eligible for "indigent status" which means that you don't have to pay any court fees. You would have to talk to the BC Supreme Court Registry about eligibility for "indigent status".

Finally, you should be aware that there are "limitation periods" for certain legal actions. After a limitation period has expired, you cannot generally file a claim in court. There are specific limitation periods for different types of legal actions.

10. TERMINOLOGY

“**AANDC**” means Aboriginal Affairs and Northern Development Canada (formerly INAC, DIAND or DIA).

“**BCR**” means Band Council Resolution. It is a legal document that records a decision made by a Band Council. A BCR must be signed by a majority of the Band Council to be binding.

“**Buckshee Lease**” means an informal and unregistered contract on reserve lands between a Band member (or the Band) and a non-Band member.

“**Crown**” means the federal or provincial government or a representative of the government.

“**DIA**” or “**DIAND**” means the “Department of Indian Affairs” or the “Department of Indian Affairs and Northern Development”. DIAND is now called Aboriginal Affairs and Northern Development (AANDC).

“**Due Process**” means a fair, formal and legal way to address a matter.

“**GL**” means the “General Ledger” of the Band. A general ledger is a complete record of financial transactions of the Band. The ledger holds account information that is needed to prepare financial statements, and includes accounts for honoraria, assets, liabilities, equity, revenues and expenses.

“**KNC**” means “Ktunaxa Nation Council” and replaces what used to be called “Tribal Council”.

“**Nasukin**” means “Chief”.

“**Own Source Revenue**” refers to revenue that a First Nation’s government raises by levying taxes, collecting resource revenues or generating business and other income.

II. FREQUENTLY ASKED QUESTIONS

CAN I GET FUNDING FROM MY BAND TO ATTEND POST-SECONDARY SCHOOL?

Yes. But, each Ktunaxa Community has authority over its own post-secondary program. That means they will have a process and eligibility requirements that must be met before they may sponsor a student to attend college or university. The amount of money in a Band's post-secondary funding budget will be a factor in determining the number of people to be sponsored in an academic year. Most Ktunaxa Communities have a post-secondary waitlist. If you are interested in attending college or university, you should consult your Community's Education support worker as soon as possible.

I'M A BAND MEMBER, CAN I RUN FOR BAND COUNCIL?

Yes. But, each Ktunaxa Community has its own set of rules for running for Band Council, such as when you can run, age limit and method of voting. You should note that if you are elected as a Band Councillor you may be called on to perform cultural functions like opening a meeting in the Ktunaxa language, attend Ktunaxa cultural dances, or greet visiting dignitaries. So, you may want to develop a working knowledge of Ktunaxa customs, such as learning the Ktunaxa language and songs, or understanding the importance of the Black Tail Deer dance (Jump Dance) and Ktunaxa sweat lodge ceremony.

SHOULD I GET A WILL IF I LIVE ON THE RESERVE?

Yes. Dying without a will complicates matters for your family members, and will result in greater involvement by AANDC (for Ktunaxa Citizens living on reserve) or the provincial government (for Citizens living off reserve). So, every adult should have a will. In the case of Ktunaxa Citizens who live on reserve, the *Indian Act* allows AANDC to accept a document that is in writing, expresses the intention to dispose of property upon death, and is signed by the will-maker, as a valid will, even if there are no witnesses and it does not otherwise meet the formal requirements of the provincial *Wills, Estates and Succession Act*.

CAN MY BAND WITHHOLD MY INCOME ASSISTANCE CHEQUE?

No, except where you are not entitled to receive income assistance. You have the right to ask for an administrative review of your social development worker's decision if he or she refuses your application, or reduces, suspends or cancels an allowance or service. You must tell your worker that you want to ask for an appeal of his or her decision. Ask for a "Request for Administrative Review" form. Next, complete the "Request for Administrative Review" form and mail or give it to your worker within 20 business days of being notified of the decision you're appealing. Include any relevant documents and evidence you have to support your case.

If you are asking for a review of a decision that reduces or cancels a social assistance benefit you are already getting, your worker **must** pay you the full benefit until the review is completed. If

you lose the review, you will have to pay this money back. You can also file a complaint if you don't like the way your social assistance application or claim is being handled. You may want to call AANDC toll free at 1-800-665-9320 and ask to speak to the social development specialist for your area.

You should note, however, that if you are, for example, earning more money than you are entitled to, and/or have failed to disclose extra income on your income assistance stub, you cannot make a complaint against your worker, and you are not eligible for an income assistance cheque.

DO I CONTACT THE KNC ABOUT GETTING A KTUNAXA NAME FOR MY BABY?

No. You should contact your Community cultural resource person or a Ktunaxa elder.



12. RESOURCES

ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

E-mail: Infopubs@aandc-aadnc.gc.ca

Phone: (toll-free) 1-800-567-9604 | Fax: 1-866-817-3977

BC SMALL CLAIMS COURT FORMS

http://www.ag.gov.bc.ca/courts/small_claims/info/forms.htm

CRANBROOK CROWN COUNSEL

201-100 Cranbrook Street North

Cranbrook, BC V1C 3P9

Phone: 1-250-426-1525

CANADIAN HUMAN RIGHTS COMMISSION

344 Slater Street, 8th Floor

Ottawa, Ontario K1A 1E1

Phone: (toll-free) 1-888-214-1090

FEDERAL COURT FORMS

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Forms

KTUNAXA NATION COUNCIL

7468 Mission Road

Cranbrook, BC V1C 7E5

Phone: 1-250-489-2464

MEMBER OF PARLIAMENT (CONSTITUENCY OFFICE)

100 – B Cranbrook Street North

Cranbrook, British Columbia V1C 3P9

Phone: 1-250-417-2250

MEMBER OF THE LEGISLATIVE ASSEMBLY (FOR KOOTENAY-EAST)

100 - C Cranbrook Street North

Cranbrook, BC V1C 3P9

Phone: (toll-free) 1-866-417-6022

MEMBER OF THE LEGISLATIVE ASSEMBLY (FOR NELSON-CRESTON)

#204 - 402 Baker Street

Nelson, BC V1L 4H8

Phone: (toll-free) 1-877-388-4498

MEMBER OF THE LEGISLATIVE ASSEMBLY (FOR COLUMBIA RIVER-REVELSTOKE)

#104, 806 9th St N (Box 2052)

Golden, BC V0A 1H0

Phone: (toll-free) 1-866-870-4188

