

CHAPTER 38
PROTECTION OF KOOTENAI TRADITIONAL KNOWLEDGE ACT

38-1 TITLE AND PURPOSE

This Chapter shall be known as the Protection of Kootenai Traditional Knowledge Act. The purpose of the Act is to prevent the exploitation of Kootenai Traditional Knowledge by non-Ktunaxa people, governments or entities.

38-2 APPLICATION

Kootenai Traditional Knowledge is owned in perpetuity by the Kootenai Tribe, Ktunaxa Nation, and/or individual Ktunaxa families.

Kootenai Traditional Knowledge includes, but is not limited to:

- (1) Traditional ecological knowledge, innovations and practices existing before or after the commencement of this Act, including traditional medicines,
- (2) Cultural property,
- (3) Cultural traditions, customs and expressions, including past, present and future manifestations, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts, and literature,
- (4) Spiritual and religious traditions, customs and ceremonies,
- (5) Intellectual property,
- (6) Histories, languages, oral traditions, philosophies, writing systems and literatures, and
- (7) Human and genetic resources,

whether in the public domain or not.

Nothing in this Act shall allow for, or advocate, the copyrighting of certain specific symbols or designs. The Kootenai Tribe holds these designs sacred as gifts from the Creator to the Ktunaxa people. However, such designs may appear as part of a larger work of copyrightable

material. The Kootenai Tribal Council further reserves the right to copyright such designs in the name of the Kootenai Tribe.

The Kootenai Tribal Council declares that archival records, including field notes, audio tapes, video tapes, photographs, which describe and depict esoteric ritual, ceremonial and religious knowledge are the cultural property of the Kootenai Tribe and Ktunaxa Nation.

38-3 COMMERCIAL USE

Any non-Ktunaxa government, entity or person using or proposing to use Kootenai Traditional Knowledge must:

- (1) Seek the free, prior and informed consent of the Tribe or other co-owners; and
- (2) Enter into an access and benefit sharing agreement with the Tribe or other co-owners.

38-4 NON-COMMERCIAL USES

The Tribe or another co-owner may, in accordance with their customs and practices and such other conditions as they consider appropriate, allow use of Kootenai Traditional Knowledge, so long as such Knowledge is not acquired for or does not subsequently become the subject of commercial use.

38-5 REMEDIES

- (1) This Act does not affect any rights of action or other remedies, civil or criminal, whether brought under this Act or any other enactment or any rule of law.
- (2) The Kootenai Tribal Court shall have subject matter jurisdiction over any matter brought by the Tribe or other co-owner of Kootenai Traditional Knowledge under this Act.

(3) To the extent the Kootenai Tribal Court has personal jurisdiction over a defendant, it may grant in addition to any other relief any one or more of the following:

- a. An account of profits,
- b. An order for a public apology,
- c. Forfeiture of any tangible items of Kootenai Traditional Knowledge or, alternatively,

compensation for loss of any tangible items of Kootenai Traditional Knowledge.

38-6 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing herein shall be construed to waive the Tribe's sovereign immunity from suit.