

SAMPLE BY-LAW FOR THE REMOVAL OF TRESPASSERS

Please note that this sample removal of trespassers by-law is only to be used as a guide. First Nations will want to consider local factors and concerns. It is recommended that drafts of by-laws be submitted to a Departmental By-law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the present and future validity or enforceability of a by-law that is based on this sample or suggested enactment procedure.

By-law Number _____
By-law for the Removal of Trespassers

NOTE: *If repealing an existing removal of trespassers by-law, use the title below instead:*

By-law Number _____
By-law for the Removal of Trespassers
(Repealing and Replacing By-law Number _____)

Enacted on the [day] of [month] in [year]

THE COUNCIL of the _____ First Nation ("the Council") desires to make a by-law to facilitate the removal of trespassers from the reserve;

NOTE: *The preamble should outline the specific concerns and motivations that led to the adoption of the by-law.*

PARAGRAPHS 81(1)(p), (q) and (r) of the *Indian Act*, R.S.C. 1985, c. I-5 (hereinafter "the Act"), provide that a council of a band may make by-laws for the purpose of removing and punishing trespassers or persons who frequent the reserve for prohibited purposes, for any ancillary matters and for imposing a penalty for violating any such by-law;

THE COUNCIL hereby makes the following by-law:

Short Title

1. This by-law may be cited as the _____ First Nation Removal of Trespassers By-law.

Interpretation

2. In this by-law:

“**on the reserve**” means physically located within the area defined as a “reserve” in the Act, and set apart for the use and benefit of the _____ First Nation and known as Indian Reserve number(s) _____ (and) _____;

“**prohibited purpose**” means any activity that constitutes an offence under any applicable by-law, provincial law or federal law;

“**resident of the reserve**” means a person authorized to reside on the reserve pursuant to the Act or by permission of the band council.

Trespassing

3. Any person who trespasses on the reserve is guilty of an offence and is liable on summary conviction to **[insert penalty]**.

NOTE: *The penalties permitted under the Act are a maximum fine of one thousand dollars (\$1000) or imprisonment for a term not exceeding thirty (30) days or some combination of both. These penalties cannot be exceeded.*

4. Any person caught trespassing on the reserve may be asked to leave by a resident of the reserve or a law enforcement officer.

Should the person refuse, he/she shall be escorted off the reserve by a law enforcement officer.

Frequenting the Reserve for Prohibited Purposes

5. Any person who frequents the reserve for prohibited purposes is guilty of an offence and is liable on summary conviction to **[insert penalty]**.

NOTE: *The penalties permitted under the Act are a maximum fine of one thousand dollars (\$1000) or imprisonment for a term not exceeding thirty (30) days or some combination of both. These penalties cannot be exceeded.*

6. Any person caught frequenting the reserve for prohibited purposes may be asked to leave by a resident of the reserve or a law enforcement officer.

Should the person refuse, he/she shall be escorted off the reserve by a law enforcement officer.

enforcement officer.

Severance

7. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

Effective Date

8. This by-law comes into force forty (40) days after a copy is mailed to the Minister of Indian Affairs and Northern Development (“the Minister”), being the [day] of [month] in [year], unless the Minister declares it to be in force before that date.

NOTE: Section 82(1) of the Act provides that a copy of the by-law must be forwarded to the Minister within four days after it is made. Section 82(2) states that the by-law will come into force forty (40) days after it is mailed, unless the by-law is disallowed or the Minister declares it to be in force before that date.

NOTE: if repealing an existing removal of trespassers by-law, include this paragraph:

Repeal

8. By-law Number _____ enacted on the [day] of [month] in [year], and being a By-law to _____, is now repealed.