

CERTIFIED TRUE COPY
S. Tomatuk
Sandra Marie Tomatuk
Commissioner for the Taking of Oaths
pursuant to paragraph 108(a) of the
Indian Act.

BY-LAW NO. 3
OF THE CHAPLEAU CREE FIRST NATION

A BY-LAW FOR THE PREVENTION OF
DISORDERLY CONDUCT AND NUISANCES

WHEREAS the Council of the Chapleau Cree First Nation desires to establish a by-law governing the prevention of disorderly conduct and nuisances, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

AND WHEREAS, the Council of the Chapleau Cree First Nation is empowered to make such by-law pursuant to paragraphs 81 (1) (d), (q) and (r) of the Indian Act;

AND WHEREAS, it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Chapleau Cree Indian Reserve to provide for the prevention of disorderly conduct and nuisances on the reserve;

NOW THEREFORE, the Council of the Chapleau Cree First Nation hereby makes the following by-law:

Short Title

1. This by-law may be cited as by-law No. 3 Disorderly Conduct and Nuisances By-Law.

Interpretation

2. In this by-law:

"Band" means the Chapleau Cree First Nation;

"Council" means the Council of the Chapleau Cree First Nation;

"Disorderly conduct" means any act or behaviour, including:

- (a) fighting;
- (b) making or causing unreasonable noise;
- (c) using abusive language;
- (d) using offensive or indecent gestures or displays;
- (e) being drunk;
- (f) loitering;
- (g) exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon, except in defence of life or property, that disrupts public order on the reserve, scandalizes the community, or causes public inconvenience, annoyance or

alarm;

"Nuisance" means any act, activity or condition, including:

- (a) the abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (b) the storage of abandoned cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (c) the dumping or storage of tires, garbage or other refuse;
- (d) the burning of tires, grass, garbage or other refuse;
- (e) the discharge of any substance into the air or water;
- (f) noise;
- (g) driving or parking heavy trucks in residential areas, except for short periods of time for purposes of delivering goods and materials to a residence;
- (h) driving motor boats or other motorized vehicles on Fox Lake, except for snow machines like skidoos during the winter months;

that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the reserve community, but does not include any act, activity or condition to the extent it is avoidably necessary for carrying on any business or other means of livelihood authorized by the Council;

"Officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the reserve pursuant to By-Law No. 3 relating to Law and Order;

"Person" includes a corporation;

"Reserve" means the reserve of the Chapleau Cree First Nation and includes the Indian Chapleau Cree Indian Reserve No.75 and Fox Lake;

Disorderly Conduct

3. An officer may order any person who is engaging in any disorderly conduct to stop such conduct immediately.

Nuisance

- 4.1) An Officer may order any person who is causing or who threatens to cause a nuisance to refrain from causing the nuisance or to abate the nuisance within such period as is reasonable in the circumstances.

- 2) In determining whether a period fixed by an officer under subsection (1) was reasonable in the circumstances, a court shall take into account:
 - (a) the nature and extent of the nuisance;
 - (b) the methods available to abate the nuisance;
 - (c) the approximate time required to abate the nuisance; and
 - (d) the effect of the order on any business or means of livelihood of the person who is the subject of an order.
5. Everyone who, while intoxicated, and not being in a dwelling house, creates a nuisance by disturbing the peace and quiet of an occupant of a dwelling house by fighting, screaming, shouting, swearing, singing, using insulting or obscene language, attempting to gain entry to said dwelling house or other disorderly conduct is guilty of an offence.
6. Everyone who, while intoxicated and not being in a dwelling house, causes a nuisance to another person by impeding, insulting, molesting, harassing, threatening, begging from, shouting at, swearing at or displaying other disorderly conduct towards that other person is guilty of an offence.
7. Everyone who, while intoxicated, interferes with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Reserve is guilty of an offence.
8. Everyone who, while intoxicated, puts at risk the health of any child under the age of 12 years to whom that person stands in loco parentis by leaving said child without making reasonable arrangements for his or her shelter, feeding, clothing, supervision or protection during that person's absence is guilty of an offence.
9. Everyone who interferes with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Reserve is guilty of an offence.
10. Everyone not being in a dwelling house who causes a nuisance to another person by impeding, insulting, molesting, harassing, threatening, begging from, shouting at, swearing at or displaying other disorderly conduct towards that other person is guilty of an offence.
11. Everyone not being in a dwelling house who creates a nuisance by disturbing the peace and quiet of an occupant of a dwelling house by fighting, screaming, shouting, swearing, singing, using insulting or obscene language, attempting to gain entry to said dwelling house or other disorderly conduct is guilty of an offence.

Enforcement

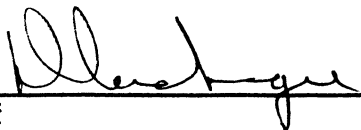
12. 1) Where a person who has been ordered to stop engaging in disorderly conduct, or to refrain from causing a nuisance or to abate a nuisance within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to stop the disorderly conduct, or to prevent or to abate the nuisance.
- 2) A person who fails or refuses to comply with an order made under section 2 or subsection 3(1), or who resists or interferes with an officer acting under subsection 4(1) or subsection 12(1), commits an offence.

Penalty

13. A Person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.


This by-law is hereby made at a duly convened meeting of the Band Council of the Chapleau Cree First Nation this 19 day of NOVEMBER, 1991.

Voting in favour of the by-law are the following members of the Council:


Chief


Councillor

Councillor


Councillor

Councillor

being the majority of those members of the Band Council of the Chapleau Cree First Nation present at the aforesaid meeting of the council.

The quorum of the Band Council is 2 members.

Number of members of the Band Council present at the meeting: 2

I, _____ Chief/Councillor of the Chapleau Cree First Nation, do hereby certify that a true copy of the foregoing trespass by-law was mailed to the Minister of Indian Affairs and Northern Development at the District office pursuant to subsection 82 (1) of the Indian Act, this 19 day of NOVEMBER, 1991.

Chief/Councillor

Witness

NOTES

GENERAL

In General, a nuisance is an unreasonable interference with the use and enjoyment of land by its occupier (private nuisance) or with the use and enjoyment of a public right to use and enjoy public rights of way (public nuisance).

This by-law is a general one. An alternative approach would be to make separate by-laws dealing with specific nuisances, for example, noise, noxious odours, air and water pollution.

Reference should be made to the federal Indian Reserve Waste Disposal Regulations, C.R.C. 1978, C. 960, enacted under the Indian Act, which provide that no person shall:

- (a) operate a garage dump in a reserve;
- (b) use any land in a reserve for the disposal or storage of waste; or
- (c) burn waste on any land in a reserve.

except under the authority of a permit issued pursuant to the Regulation.

It is therefore conceivable that a person could be convicted under both:

- (1) The Indian Reserve Waste Disposal Regulations, for failure to obtain a permit; and
- (2) a Nuisance By-Law, for not obeying an order of an officer to abate a nuisance.

If a conflict were to arise between the Nuisance By-law and The Indian Reserve Waste Disposal Regulations (e.g. a conflict between an order issued by an officer under the Nuisance By-law and an order issued by the Minister under the federal Regulation), the latter would prevail.

Section 2

It should be noted that there are provisions in the Criminal Code dealing with disorderly conduct (sections 173 - 179) and nuisances (sections 180 - 182.) Therefore, an act which is considered to be a nuisance or which constitutes disorderly conduct could fall within either the sample by-law or the Criminal Code or both, depending on the circumstances of the act. In the latter case, it will be left to the discretion of the enforcement officer to lay a charge under either the Criminal Code or the by-law.

The definition of "nuisance" in the sample by-law codifies the common law meaning of the term. As well, the definition refers to several activities which could be considered to be nuisances on a reserve. A Band Council may wish to add to the list of activities.

The courts have held that the power to "prevent, abate and prohibit" nuisances does not enable a municipal council to define what constitutes a nuisance. In other words, a municipal council cannot set out specific activities and declare them to be at law, and therefore it is up to a court to determine whether particular activities are nuisances. In our by-law, the definition of "nuisance" does not restrict the term to certain enumerated activities; rather the enumerated activities must also fulfil the latter part of the definition of "nuisance" before it can be said that a nuisance exists in law.

Finally, the definition of "nuisance" excludes any activity that is "unavoidably necessary" for carrying on any business or livelihood authorized by the Council. This is analogous to the common law defence that exists where an alleged nuisance is a necessary part of an activity authorized by a legislature.

Sections 12 and 13

Subsection 12(2) makes it an offence to fail or refuse to comply with an officer's order, or to interfere with an officer's attempt to stop the disorderly conduct or to stop or abate the nuisance. Additional measures that may be taken with respect to the prevention of disorderly conduct and nuisances are set out in sections 81(2) and (3) of the Indian Act. Under section 81(2), where any by-law of a band is contravened and a conviction entered, a court may make an order prohibiting the continuation or repetition of the offence by the person convicted. Under section 81(3), where any by-law of a Band is contravened (but no conviction entered), such contravention may be restrained by court action at the instance of the Band council. Sections 81(2) and (3) may be helpful to a Council that wishes to restrain or prevent the continuation of any disorderly conduct or nuisance of the reserve.