



Roseau River Anishinabe First Nation Government
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BY-LAW NO. RRAFN 001
of the Roseau River Anishinabe First Nation

Being a By-Law for the Removal and Punishment
of Person(s) Trespassing or Frequenting
the Reserve for Prohibited Purposes

WHEREAS the Council of the Roseau River Anishinabe First Nation desires to establish a By-Law to provide for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;

WHEREAS the Council of the Roseau River Anishinabe First Nation is empowered to make such By-Law, and any matter ancillary thereto pursuant to paragraphs 81(1)(p), (q) and (r) of the Indian Act, R.S.C. 1985, c. I-5;

WHEREAS it is deemed to be expedient and necessary, for the benefit, comfort and safety of the inhabitants of the Roseau River Anishinabe First Nation reserve, to provide for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;

NOW THEREFORE

the Council of the Roseau River Anishinabe First Nation hereby makes the following By-Law:

1. Short title

1.1. This By-Law may be cited as "Roseau River Anishinabe First Nation Removal of Trespassers By-Law"

2. Repeal of Previous By-Laws

2.1 Any Previous By-Law for the Removal and Punishment of person(s) Trespassing or Frequenting the Reserve for Prohibiting Purposes enacted by the Roseau River Anishinabe First Nation is hereby repealed and replaced by this By-Law

3. Interpretation

3.1. In this By-Law,

"Council" means the Chief and Council of the Roseau River Anishinabe First Nation;

"officer" means any police officer, Community Safety Officer, police constable, special constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed or contracted by the Council for the purpose of maintaining law and order on the reserve;

"reserve" or "lands" means the reserves of the Roseau River Anishinabe First Nation and includes any reserve lands under the authority of Council;

"trespass" means the entry onto, or the presence on, the reserve by a person without lawful justification.

4. Prohibited Purposes

4.1. Any person, other than a person referred to in section who without authorization from the Council, conducts on the reserve any of the following activities:

- a) hunting, fishing or trapping;
- b) hawking or peddling of wares or merchandise;
- c) loitering;
- d) soliciting financial assistance;
- e) disorderly conduct;
- f) Illegal or unauthorized activity

shall be deemed to be frequenting the reserve for a prohibited purpose.

4.2. Section 4.1 does not apply to:

- a) a person who is a lawful resident of the RRAFN reserve; or
- b) a person who, pursuant to any duly enacted By-Law of the Roseau River Anishinabe First Nation, holds a valid licence to conduct any activity referred to therein or is otherwise permitted by Chief and Council to conduct that activity.

5. Prohibitions

5.1. No person shall trespass on the reserve;

5.2. No person shall attend the reserve for a Prohibited Purpose.

6. Powers of Officer

6.1. An officer may order any person who trespasses on the reserve or who frequents the reserve for a prohibited purpose to leave the reserve immediately.

6.2. Where a person who has been ordered to leave the reserve fails or refuses to do so, an officer may take such reasonable measures as may be necessary to remove the person from the reserve.

6.3. A person who fails or refuses to comply with an order made under section 6.1 to leave the reserve or shall resist or interfere with an officer acting under section 6.2 commits an offence.

7. Penalty

7.1. A person who violates any provision of this By-Law commits an offence and 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

8. Banishment

8.1. In addition to the penalties set out in section 7 herein, Council may, by way of Band Council Resolution, banish from the reserve any individual who violates any provision of this By-Law or has no lawful right to enter the reserve for a period of time as Council determines just and appropriate in the circumstances. Any person who has been removed or banished from the reserve pursuant to this section may not enter the reserve, and any person who enters the reserve after having been removed or banished from the lands pursuant to section commits an offence.

8.2. Any person who has been removed or banished from the lands pursuant to section 8.1 has an automatic right to appeal that decision.

That person must notify the Appeal Committee of their intention to appeal the banishment decision within twenty (20) days of the decision having been communicated to the banished individual.

Within fifteen (15) days of notice of the appeal being provided to Appeal Committee, a hearing must be held at which the banished individual shall have the opportunity to plead their case. In doing so, the banished individual shall have the opportunity to present evidence relevant to the decision that is being appealed.

In making their decision on appeal, the Appeal Committee shall take into account the following factors:

- a) The nature and severity of the offence;
- b) Any attempts made by the individual at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm;
- c) The connection of the individual to the community and its members, including whether the individual has any dependents for whom their removal from the community could be detrimental;
- d) The extent to which banishment in the specific case contributes to the objective of this type of sanction, specifically whether banishment of the individual would be in the best interests of the safety and protection of the community; and
- e) Any other consideration that the Appeal Committee deems relevant.

The Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.

Decisions made by the Appeal Committee are final and are not subject to appeal by any court or tribunal.

All hearings conducted by the Appeal Committee shall be open to the public.

8.3. The Appeal Committee shall be made up of five (5) members as follows:

The Chief and Council shall appoint one (1) member to the Appeal Committee from each of the following groups:

- a) One elder;
- b) One youth;
- c) One community member;
- d) One member of council;
- e) One lawyer or individual with an education in law.

Whenever an Appeal Committee member has a conflict of interest in a matter coming before the Appeal Committee, the affected person shall fully disclose the nature of the interest and withdraw from adjudicating on the matter.

8.4. Banishment pursuant to section 8.1 shall take effect upon the expiry of thirty (30) days after notice of the decision has been communicated to the affected individual. However, if the individual has appealed the decision, banishment shall take effect upon the expiry of ten (10) days after notice of the decision on appeal has been communicated to the individual.

8.5. Individuals who have been banished pursuant to section 8.1 may apply to the Appeal Committee to have the banishment lifted after five (5) years. Applications shall outline the reasons why the Appeal Committee ought to overturn this decision, including why the individual is no longer a threat to re-offend and further jeopardize the safety and security of the community.

8.6. The Appeal Committee may use their discretion in providing conditions on individuals who have been banished pursuant to section 8.1 including allowing the banished individual to temporarily re-enter the lands in specified circumstances such as a funeral, or any other circumstance they see fit.

9. MISCELLANEOUS

9.1. 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 this By-Law shall not be affected.

9.2. The provisions of this By-Law apply to all Lands of the Roseau River Anishinabe First Nation.

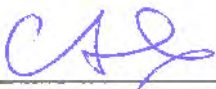
9.3. Nothing in this By-Law shall derogate or abrogate from existing Indigenous Aboriginal or inherent Treaty Rights.

10. Coming into Force

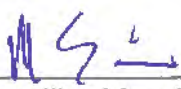
10.1. This By-Law shall come into force upon being signed by Chief and Council below.

This By-Law is hereby made at a Duly Convened Meeting of the Council of the Roseau River Anishinabe First Nation this 14th day of December 2020.

Voting in favour of the By-Law are the following members of the Council:



Chief Craig Alexander



Councillor Max Seenie



Councillor June Thomas



Councillor Alfred Hayden

Councillor Terrance Nelson

Being the majority of those members of the Council of the Roseau River Anishinabe First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is three members. Number of members of the Council present at the meeting: 5