



Madawaska Maliseet First Nation

BY-LAW NO. 2020-001

– a by-law respecting the –

Construction and Maintenance of Fences

November 2, 2020





**Madawaska Maliseet First Nation
BY-LAW NO. 2020-001
A By-law Respecting
The Construction and Maintenance of Fences**

WHEREAS the Council of Madawaska Maliseet First Nation desires a new by-law governing the construction and maintenance of Fences on St. Basile I.R. No. 10;

AND WHEREAS the Council of Madawaska Maliseet First Nation is empowered to make such a by-law pursuant to paragraph 81 (1) (c), (d), (f), (q) and (r) of the *Indian Act*, RSC 1985, c I-5;

AND WHEREAS it is expedient and necessary for the benefit, comfort and well-being of the inhabitants of Madawaska Maliseet First Nation and each individual interest holder's right to the use and peaceful enjoyment of their land on Reserve;

NOW THEREFORE the Council of Madawaska Maliseet First Nation hereby repeals By-law No. 1991-02 and all amendments and enacts the following By-law No. 2020-001.

PART I: TITLE & INTERPRETATION

1. Title

- 1.1 The title of this by-law is "Madawaska Maliseet First Nation By-law No. 2020-001 a By-law Respecting the Construction and Maintenance of Fences".
- 1.2 This by-law may be cited as the "Madawaska Maliseet First Nation Fence By-law."

2. Definitions

- 2.1 The following definitions apply in this by-law:
 - (a) "By-law Enforcement Officer" means the person or persons appointed by Council by a Band Council Resolution to administer and enforce the provisions of this by-law;
 - (b) "Council" means the Chief and Council of Madawaska Maliseet First Nation;
 - (c) "Fence" means a barrier including any mobile components such as gates, except a structural part of a building, that wholly or partially screens from view, encloses, or divides land, or marks or substantially marks the boundary between adjoining land, and includes any hedge, shrub, or retaining wall that has the same effect, whether installed for decorative purposes, privacy, security, separation, or noise attenuation;



- (d) “Hazard” means a potential source of risk to persons or property, deemed so by a By-law Enforcement Officer, and includes:
- (i) water with a depth of at least 60 cm, except for Swimming Pools;
 - (ii) livestock;
 - (iii) dangerous animals;
 - (iv) construction sites;
 - (v) commercial garbage storage areas; and
 - (vi) hazardous material storage areas.
- (e) “Height” means the vertical distance from ground level at the average grade within one (1) metre of both sides of a Fence and includes any retaining wall;
- (f) “Occupant” means a person in actual or perceived possession of a premises;
- (g) “Registered Holder” means the person who is registered by Madawaska Maliseet First Nation as the holder of an interest in a parcel of land which includes:
- (i) a member of Madawaska Maliseet First Nation who holds an interest in Reserve Land under a Certificate of Possession or other instrument;
 - (ii) a tenant with a leasehold interest in Reserve Land designated for commercial leasing;
 - (iii) Council, as representatives of the Madawaska Maliseet First Nation membership, in reference to community (common-band) land;
- (h) “Reserve” or “Reserve Land” means all of St. Basile I. R. No. 10; and
- (i) “Swimming Pool” means a pool of water capable of being used for swimming, wading, or bathing which exceeds a depth of 60 cm at any point.

3. Interpretation

- 3.1 Unless it is otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular.
- 3.2 Unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to,” and the use of the word “includes” means “includes, but is not limited to.”



PART II: AGREEMENTS AND APPROVALS

4. Plan Approval

- 4.1 All Fences on Reserve require the written approval of the By-law Enforcement Officer prior to being erected, constructed, or substantially altered. The By-law Enforcement Officer may request from the applicant any information they deem necessary including a site plan.
- 4.2 All fences on Reserve erected or constructed for the purposes of obstructing a Hazard or enclosing a Swimming Pool require a site plan be submitted to the By-law Enforcement Officer detailing:
- (a) the nature of the location and Hazard or Swimming Pool;
 - (b) the dimensions of the property and Hazard or Swimming Pool including distances to structures and lot lines;
 - (c) the location, height, style, and material of the proposed Fence;
 - (d) the percentage of hard versus soft landscaping; and
 - (e) any requested variance.

5. Approval of Neighbours

- 5.1 No person shall erect, construct, remove, cut, or damage the whole or any part of a Fence without first obtaining the written approval of the Registered Holders of the lands enclosed by or abutting such Fence.

6. Agreements Between Neighbours

- 6.1 Notwithstanding subsections 9.1, 10.1(e), and 10.1(f) of this by-law, Registered Holders of adjoining lands may enter into a written agreement with respect to the dimensions and location of a Fence, as well as the responsibilities of each party in its erection and maintenance.
- 6.2 Agreements made pursuant to subsection 6.1 of this by-law shall be filed with the office of the By-law Enforcement Officer and enforced as if it is a decision made by the By-law Enforcement Officer pursuant to subsection 13.1 of this by-law.

7. Council's Approval Prior to Land Transactions

- 7.1 Prior to the granting or approval of any lease, allotment, transfer, or other such transaction of Reserve Land, Council may require the construction, reconstruction, alteration, removal, or repair of any Fence related to the lands to be so leased, allotted, or transferred including the division of any costs or responsibilities.



PART III: OBLIGATIONS AND REQUIREMENTS

8. General Obligation

- 8.1 Every person must take care when undertaking activities near a Fence to not cause damage to the Fence (i.e. by ensuring snow piles, landscaping debris, and other materials and activities do not damage, undermine, or obstruct a fence.)

9. Obligations of Registered Holders

- 9.1 Every Registered Holder shall make, keep up, and repair a just proportion of every Fence marking the limits of lands they control, or if there is no Fence, shall make, keep up and repair a just proportion of any Fence which may be subsequently constructed.
- 9.2 For greater certainty, in respect to subsection 9.1 of this by-law, a Registered Holder must keep up and repair their just portion of a Fence regardless of the cause of any damage or disrepair; however, the party responsible for the damage remains liable.
- 9.3 For the purpose of subsection 9.1 of this by-law, the just proportion of any Fence for which a Registered Holder is responsible may be determined as follows:
- (a) all Fences or parts thereof separating a public road or road allowance and the lands of the Registered Holder; and
 - (b) when standing on the Registered Holder's land and facing the lot line in question, that half of any such Fence lying to the right.
- 9.4 All Registered Holders shall keep in good repair every fence and just proportion of every fence for which they are responsible for by:
- (a) maintaining the structural integrity of the fence at all times;
 - (b) promptly replacing any missing or damaged planks, panels, posts or other components;
 - (c) treating metallic or wooden components with an appropriate protective exterior-grade surface treatment;
 - (d) keeping fences free of posters, advertisements, political statements, and other types of messaging; and
 - (e) promptly removing or covering graffiti or vandalism.
- 9.5 Every Registered Holder must adequately Fence all Hazards located wholly or partially on the lands they control in accordance with subsection 10.3 of this by-



law within two (2) years of this by-law coming into force, unless ordered by Council to do so before that date.

- 9.6 Every Registered Holder must adequately Fence or otherwise enclose all Swimming Pools located wholly or partially on the lands they control in accordance with subsection 10.4 of this by-law within two (2) years of this by-law coming into force, unless ordered by Council to do so before that date.

10. Fence Specifications

- 10.1 All Fences erected or constructed on Reserve, except those obstructing a Hazard, shall:
- (a) be made of materials designed or manufactured for non-temporary fencing, including timber;
 - (b) not be made of mesh, barbed wire, or be electrified, except for mesh for containing poultry and electrified for containing livestock but only where deemed appropriate to the circumstances by the By-law Enforcement Officer;
 - (c) have posts not more than five (5) metres apart, except for hedges;
 - (d) have a solid inground footing such as cement or rigid fence post foam;
 - (e) have a Height not more than two (2) metres, including ornamentation except for fences within four (4) metres of property lines abutting roads which shall have a Height of not more than 1.2 metres;
 - (f) be located at least one (1) metre from any lot line; and
 - (g) not impair the lawful use and enjoyment by any Registered Holder or Occupant of adjoining or abutting lands or premises.
- 10.2 Notwithstanding subsections 10.1(e), and 10.1(f) of this by-law, a Fence not obstructing a Hazard or enclosing a Swimming Pool may of any dimensions and located less than one (1) metre from a lot line where the Registered Holders of the adjoining or abutting properties agree to in writing pursuant to section 6 of this by-law.
- 10.3 All Fences erected or constructed on Reserve for the purposes of obstructing a Hazard shall:
- (a) be constructed of any material, design, and style deemed appropriate to the circumstances by the By-law Enforcement Officer;



- (b) have a Height deemed by the By-law Enforcement Officer to be appropriate in the circumstances, generally of not less than 1.8 metres and not more than 2.4 metres.
- 10.4 All Fences erected or constructed on Reserve for the purposes of enclosing a Swimming Pool must:
- (a) in the case of in-ground Swimming Pools:
 - (i) wholly and adequately contain the Swimming Pool with either a fence, wall, structure, or a combination thereof but not a hedge or other permeable fence, wall, or structure;
 - (ii) have a minimum Height of one and a half (1.5) metres;
 - (iii) have a lower edge not more than ten (10) cm from ground level;
 - (b) in the case of above-ground Swimming Pools:
 - (i) wholly and adequately enclose the Swimming Pool with either the portion of the pool wall above ground level, a fence, wall, structure, or a combination thereof but not a hedge or other permeable fence, wall, or structure;
 - (ii) have a minimum Height of one and a half (1.5) metres except for where the pool wall forms a part of the enclosure where a minimum Height of one (1) metre is permissible;
 - (c) enclose ladders and other access points to the pool;
 - (d) be setback at least seven and a half (7.5) metres from a driveway sight triangle or corner lot sight triangle; and
 - (e) be constructed of materials, design, and style deemed appropriate to the circumstances by the By-law Enforcement Officer.
- 10.5 Notwithstanding section 6 or subsections 10.1, 10.2, 10.3, and 10.4 of this by-law, a Fence shall be constructed of such material, dimensions, or style as ordered by Council.
- 10.6 Notwithstanding section 6 or subsections 10.1, 10.2, 10.3, and 10.4 of this by-law, no Fence shall be constructed of such material, design, or Height so as to obstruct or interfere with:
- (a) the safe passage of vehicles on any road;
 - (b) visibility to drivers or pedestrians entering, exiting, crossing, or approaching a driveway, roadway, laneway, or walkway;



- (c) fire hydrants, electrical boxes, or other community infrastructure.
- 10.7 For greater certainty, in respect to subsection 10.6 of this by-law, no Fence on Reserve shall:
- (a) be of a Height exceeding one (1) metre within seven and a half (7.5) metres of a driveway sight triangle or corner lot sight triangle; or
 - (b) be located less than one and a half (1.5) metres from a fire hydrant.

PART IV: DISPUTES AND APPEALS

11. Notice of Dispute

- 11.1 If a Registered Holder refuses or neglects to build or maintain their portion of a Fence, or erects or constructs a Fence contrary to sections 5, 6, 7, 8, 9, or 10 of this by-law, the Registered Holder of the adjoining land or Council may, by written notice in accordance with section 12 of this by-law, require them to do so.
- 11.2 If a Fence is not erected, constructed, altered, removed, repaired, or maintained, as the case may be, in accordance with the requirements set forth in the notice given pursuant to subsection 11.1 of this by-law, within fourteen (14) days from the date that the notice is issued, the Registered Holder may request the By-law Enforcement Officer, in writing, to direct and determine the matter in dispute.
- 11.3 Upon receipt of a request pursuant to subsection 11.2 of this by-law, the By-law Enforcement Officer shall make all necessary arrangements to arbitrate the dispute and shall notify, in writing, each Registered Holder in the dispute, of the date, time and place of the meeting for arbitration which shall be not less than seven (7) days nor more than fourteen (14) days from the date of the notification.
- 11.4 A notice given pursuant to subsection 11.3 of this by-law may be written in Form "A," attached hereto and forming part of this by-law.

12. Method of Giving Notice

- 12.1 Any notice required by this by-law shall be made in writing and served in person or by registered mail on the Registered Holder or Occupant of the land in question as the case may be, or with an adult person apparently residing at the residence of the Registered Holder or Occupant.
- 12.2 An Occupant or household member who has received notice pursuant to subsection 12.1 of this by-law shall immediately forward such notice to the Registered Holder.



13. Determination of Dispute

- 13.1 The By-law Enforcement Officer shall, at the time appointed in section 11 of this by-law, examine the lands and Fence and make a decision respecting the matters in dispute.
- 13.2 Any decision made pursuant to subsection 13.1 of this by-law shall be in writing and shall specify the locality, quantity, description, and the minimum cost of the Fence ordered to be made, or whether the Fence shall be removed or altered, as the case may be, and the time in which the work shall be done, and shall state by which of the said parties the costs of work and materials shall be paid, or whether either party shall pay a certain or specified portion of such costs.
- 13.3 A decision made pursuant to subsection 13.1 of this by-law may be written in Form “B,” attached hereto and forming part of this by-law.
- 13.4 In making a decision pursuant to subsection 13.1 of this by-law, the By-law Enforcement Officer shall take into consideration:
- (a) the nature of the Fences in use in the locality;
 - (b) the pecuniary circumstances of the parties to the arbitration;
 - (c) the requirements set forth in this by-law for Fences; and
 - (d) generally, the suitability of the Fence to the needs of each party.
- 13.5 The By-law Enforcement Officer shall deposit any decision with Council within 48 hours of the determination of the matters in dispute and shall, within the same time period, deposit a copy of the decision with all parties to the dispute.

14. Appeals

- 14.1 Within seven (7) days of the date that the By-law Enforcement Officer’s decision is deposited with Council, any party dissatisfied with the decision may appeal to Council, delivering a written notice to Council and with all parties to the dispute.
- 14.2 Council shall hear and determine the appeal within one (1) month of receiving the appeal and may set aside, alter, or confirm the decision and may examine the parties and witnesses, including the By-law Enforcement Officer.
- 14.3 Any decision of the By-law Enforcement Officer, which has been so altered, confirmed, or set aside by Council is final, subject to the *Madawaska Maliseet First Nation Administrative Appeals Policy*.
- 14.4 All parties to a dispute shall comply with any decision made by Council pursuant to this section (Appeals), or, where a decision of a By-law Enforcement Officer is not appealed to Council, of the By-law Enforcement Officer’s decision, as the case may be, within the time stated for such compliance.

**PART V: VIOLATIONS****15. Compliance**

15.1 Where a person has, without lawful excuse, refused or neglected to comply with a decision made by Council pursuant to section 14 of this by-law, or to a decision made by a By-law Enforcement Officer pursuant to section 13 of this by-law where no appeal has been filed, the By-law Enforcement Officer may effect all and any work necessary for such compliance and may recover the value and the costs of such work and materials, if any, from the person who has so refused or neglected to comply.

16. Penalty

16.1 Any person who violates any of the provisions of this by-law commits an offence and is liable upon summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty (30) days, or to both.

16.2 An outstanding fine owed by Madawaska Maliseet First Nation member pursuant to subsection 16.1 of this by-law may be deducted from their Treaty Credits or other benefits.

This by-law is hereby made at a duly convened meeting of the Council of Madawaska Maliseet First Nation this 2nd day of November, 2020.

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

Chief Patricia Bernard

Councillor Donna Wallace-Bourgeault

Councillor Diane Pelletier

Being the majority of those members of the Council of Madawaska Maliseet First Nation present at the aforesaid meeting of Council.

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 3



FORM "A"
NOTICE TO THE PARTIES
TO THE DISPUTE

TO _____

AND TO _____

PURSUANT to Section(s) _____ of By-Law Number 2020-001 of Madawaska Maliseet First Nation TAKE NOTICE THAT a By-law Enforcement Officer, as requested by _____ will attend on the ____ day of _____, 20 ____, at the hour of _____ (local time), to view and arbitrate upon the line Fence in dispute between lands controlled by _____ and _____ being Lot ____ and Lot ____.

DATED at _____, this ____ day of _____, 20 ____.

By-law Enforcement Officer



FORM "B"

BY-LAW ENFORCEMENT DECISION

I, _____, a duly appointed By-law Enforcement Officer of Madawaska Maliseet First Nation, having been appointed to view and arbitrate upon the line Fence between _____ and _____ which Fence is to be made and maintained /altered/removed (as the case may be) between Lot _____ and Lot _____, and having examined the premises and duly acted according to By-law number 2020-001 do decide as follows:

DATED at _____, this _____ day of _____, 20____.

By-law Enforcement Officer