

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

BY LAW NO. 1
OF THE CHAPLEAU CREE FIRST NATION

A BY LAW FOR THE REMOVAL AND
PUNISHMENT OF PERSON TRESPASSING OR
FREQUENTING THE RESERVE FOR
PROHIBITED PURPOSES

WHEREAS the Council of the Chapleau Cree 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;

AND WHEREAS, the Council of the Chapleau Cree 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;

AND WHEREAS, it is deemed to be expedient and necessary, for the benefit, comfort and safety of the inhabitants of the Chapleau Cree Indian 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 Chapleau Cree First Nation hereby makes the following by-law:

Short title

1. This by-law may be cited as By-law No.1 Respecting Trespass in the Chapleau Cree Indian Reserve.

Interpretation

2. In this by-law:

"Band" means the Chapleau Cree First Nation;

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

"Minister" means the Minister of Indian Affairs and Northern Development;

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

by-law enforcement officer pursuant to By-law No. 1 relating to Law and Order;

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

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

Prohibited Purposes

3. 1) A person, other than a person referred to in subsection (2), who conducts on the reserve any of the following activities, namely:

- (a) hunting, fishing or trapping;
- (b) hawking or peddling of wares or merchandise;
- (c) loitering;
- (d) soliciting financial assistance; or
- (e) (other prohibited purposes).

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

2) Subsection (1) does not apply to:

- (a) a person who is a lawful resident of the reserve; or
- (b) a person who, under a by-law of the Council, holds a valid license to conduct any activity referred to therein or is otherwise permitted to conduct that activity.

4. 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.

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.

3) No person shall fail or refuse to comply with an order made under subsection (1) to leave the reserve, or shall resist or interfere with an officer acting under subsection (2.)

Penalty

5. 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.

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:

W. Leebogwe
Chief

Ray F. Fletcher
Councillor

Councillor

Joseph Tuma
Councillor

Councillor

being the majority of those members of the Band Council or 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

Subsection 2

The Indian Act does not define "trespassing". Courts have held that one must look to the commonlaw for a definition of the term, as the powers of a Band Council under the Indian Act do not include the person to decide what constitutes trespassing. They are limited to removing and punishing persons who are found trespassing upon the reserve. At common law, trespass involves the entering upon another's land without lawful justification.

The definition of "trespass" in the sample by-law codifies the common law meaning of the term. The words "without lawful justification" mean that there is in law not just, lawful excuse or reason for entering upon or being on the reserve.

It is a question of law whether a person is or is not a trespasser, and the facts of each situation are important. Generally speaking, visitors on a reserve, who have been invited (whether specifically or under a general invitation to the public) to come onto the reserve by a person who is resident on the or by someone who is conducting business on the reserve, would not be considered to be persons entering the reserve without lawful justification. They would, however, become trespassers if they remained on the reserve after their invitation was revoked.

Essentially, the function of a s. 81(1)(p) by-law is not to determine what constitutes a "trespass"; rather it is to deal with the removal and punishment of trespassers on the reserve.

Section 3

The Band Council must decide what constitutes "prohibited purposes". A few examples are cited above in the sample by-law. In deciding what constitutes "prohibited purposes", the Council must not enact a by-law which unduly restricts who may or may not enter upon the reserve and is, in effect, discriminatory: for example, a by-law which prohibited the distribution on the reserve of material produced by a particular religious group.

Section 4

This is not the only authority under which a trespasser may be removed from a reserve. At least one court has held that a member of an Indian Band has the right, even where there is no trespass by-law, to expel any person trespassing on reserve land, with as much force as is reasonably necessary, by virtue of the fact that he has a real interest in the reserve lands.

Section 5

Section 30 of the Indian Act makes it an offence for a person to trespass on a reserve, and prescribes a penalty that is less severe than the penalty a Band could prescribe for a violation of a by-law under section 81(1) (r). If a Band Council, in a by-law with respect to trespassing, were to make it an offence to trespass on the reserve, it would create a conflict with section 30 of the Indian Act.

Section 5 makes it an offence for someone who trespasses on a reserve or who frequents a reserve for a prohibited purpose to fail or refuse to leave the reserve when ordered to do so, or to resist an officer who is lawfully removing the person from the reserve. These do not duplicate offenses found in the Indian Act, or other Band by-laws that may deal with prohibited activities, and are sufficiently related to the removal and punishment of trespassers and persons who frequent the reserve for a prohibited purpose to justify inclusion in the by-law.