

BY-LAW # 13

KINGSCLEAR INDIAN BAND

Rights of Spouses and Children

WHEREAS the council of the band may make by-laws under **Section 81(1)(p.2)(q)(r), 81(2)(3), 82** providing for the rights of spouses and children;

WHEREAS the family exists as the basic unit of Indian society, and its well-being is inseparable from the common well-being:

WHEREAS Indian culture and tradition is only understood at the Reserve level;

WHEREAS children have basic rights and fundamental freedoms no less than those of adults; a right to special safeguards and assistance in the preservation of those rights and freedoms and in the application of the principles stated in the **Canadian Bill of Rights**; and a right to be heard in the course of, and to participate in, the processes that leads to decisions that affect them and that they are capable of understanding; and

WHEREAS it is recognized that the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interest and those of their families and of society; and

WHEREAS it is accepted that parents have responsibility for the care and supervision of their children and that children should only be removed from parental supervision either partly or entirely when all other measures are inappropriate, and

WHEREAS it is recognized that spouses are entitled to protection and can benefit from social services, and

WHEREAS it is recognized that social services are essential to prevent or alleviate the social and related economic problems of individuals and families,

THEREFORE BE IT RESOLVED that the council of the **Kingsclear Indian Band** enact this **by-law**.

SHORT TITLE

1. This by-law shall be entitled a by-law "**respecting the rights of spouses and children**".

INTERPRETATION

2. In the by-law,

"council" means the **Council of the Kingsclear Indian Band;**

"reserve" means the reserve of the **Kingsclear Band;**

"adult" means a person who has reached the age of majority;

"best interests of the child" means the best interests of the child under the circumstances taking into consideration.

- a) the mental, emotional and physical health of the child and his need for appropriate care or treatment, or both;
- b) the views and preferences of the child, where such views and preferences can be reasonably ascertained;
- c) the effect upon the child of any disruption of the child's sense of continuity;
- d) the need to provide a secure and culturally relevant environment; and
- e) the child's religious heritage;

"child" means a person actually or apparently under the age of majority, unless otherwise specified or prescribed in this by-law;

"child in care" means any child within an age group prescribed by regulations who has been placed under protective care or who is in the care of the **Band Council** under the terms of

- a) a custody agreement;
- b) a guardianship agreement;
- c) a custody order;

- d) a guardianship order;
- e) a supervisory order; or
- f) **Section 20 of the Juvenile Delinquents Act, chapter J-3 of the Revised Statutes of Canada, 1970;**

"community social services" means services provided by the **Kingsclear Indian Band** that are protective, preventive, development or rehabilitative in nature and which

- a) facilitate access to the necessities of life;
- b) assist disabled or disadvantaged persons to live as normally and independently as possible or support them in doing so;
- c) prevent the need for institutional care as well as provide alternatives to it;
- d) support or assist the aged, children, families;
- e) facilitate or support the involvement and participation of people in their communities;
- f) enhance or maintain employment skills and capabilities of persons;
- g) provide protection to children and adults;
- h) provide information and refer people to available services;

and includes

- i) homemaker services;
- j) day care services;
- k) family services;
- l) children's services;
- m) adoption services;

- n) employment - related services;
- o) sheltered workshops;
- p) rehabilitation services;
- q) community services;
- r) headstart services.

"community social services agency" means the Kingsclear social services department and its representatives;

"consent" means a written consent to an arrangement, having been informed of, or having an understanding of, all aspects of the arrangement and its reasonable implications;

"court" means any court of competent jurisdiction;

"custody agreement" custody order **"guardianship agreement"** and **"guardianship order"** means the definition ascribed to it by law;

"immediate family" includes parents, grandparents, brother, sisters, aunts, uncles;

POWERS OF THE BAND COUNCIL

3. **The Band Council**
 - a) is responsible for the administration of this by-law;
 - b) may, in writing, authorize any appropriate Band employee to exercise any authority, power, duty of function conferred upon it by this by-law;
 - c) may enter into contracts with persons, or other governments to carry out responsibilities under this by-law:
4. The **Kingsclear Indian Band Council** shall act as the legal representative of any child of who guardianship is required under this by-law and may act as the legal representative of any other child in care.
5. The **Kingsclear Indian Band Council** shall act as trustee for, and shall manage or control any money or property received on behalf of, a child in care subject to appropriate accountability.
6. In any proceeding conducted by a court of competent jurisdiction, that affects a child, the court may, where it determines that it would be in the best interests of the child to do so, require the child, a parent or any other person living with the child or in such a close relationship with the child as to be in a position to influence the nature of the care and control exercised with respect to the child, undergo a psychiatric, psychological, social, physical or any other examination or evaluation specified by the court, prior to or during the hearing, and in the event of the refusal or failure by any person to participate in an examination or evaluation, or consent to the examination or evaluation of a child under his care, the court may draw such inferences as appear to the court to be warranted under the circumstances.

PROTECTION SERVICES

7. Any person who has information causing him (her) to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually illtreated or otherwise abused shall inform the **Band Council** of the situation without delay.
- 7(1) Any person who violates **Section 7** commits an offence.
- 7(2) The security or development of a child may be in danger when
- a) the child is without adequate care, supervision or control;
 - b) the child is living in unfit or improper circumstances;
 - c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
 - d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;
 - e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
 - f) the child is living in a situation where there is severe domestic violence;
 - g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;
 - h) the child has committed an offence.
- 7(3) Where the **Band Council** receives information about any situation pertaining to 7(2) shall take such steps as necessary to protect the child.
- 7(4) Where the **Band Council** has reason to believe that the security and development of a child may be in danger, may place the child under protective care.

8. Where a spouse is a victim of or is in danger of being a victim of

- a) physical abuse;
- b) sexual abuse;
- c) mental cruelty; or
- d) any combination thereof

that person is an abused spouse and may be investigated.

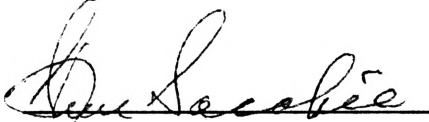
8(1) Any person detained under the authority of a warrant issued as a result of an offence under Section 8 shall be brought forth before a court of a competent jurisdiction.

8(2) Any person who does not comply with an order under 8(1) commits an offence.

PENALTY

9. A person who violates any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine not exceeding one thousand (\$1000.00) or to imprisonment for a term not exceeding 30 days, or both.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Kingsclear Band this 18th day of May, 1993.



 CHIEF



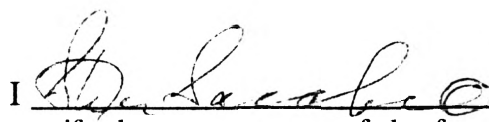
 COUNCILLOR



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I  Chief of the Kingsclear Indian Band, do hereby certify that a true copy of the foregoing By-Law was **mailed** to the Regional Office of the Department of Indian Affairs this 19th day of May, 1993.

