

# DRAFT

\_\_\_\_\_ **FIRST NATION TRESPASS LAW**

**PREAMBLE**

Whereas the *First Nation* has a profound relationship with the land;

Whereas the *First Nation* entered into the *Framework Agreement on Land Management* with Canada ([Insert date], as amended: the "Framework Agreement"), which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act (1999)*.

And Whereas the *First Nation* ratified the Framework Agreement and brought its Land Code into effect on [insert date];

And Whereas, pursuant to the Land Code, land laws may be enacted to protect *First Nation* Land, the use and benefit of *First Nation* Land, the occupation of *First Nation* Land, residence on *First Nation* Land, and the creation of offences, penalties and remedies for violations of *First Nation* and laws;

**NOW THEREFORE, THIS LAW IS HEREBY ENACTED AS A LAND LAW OF THE FIRST NATION.**

**PART 1**

**PRELIMINARY MATTERS**

**1. Title**

Title

1.1 The title of this law is the *First Nation* Trespass Law.

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## 2. Interpretation

### Definitions

2.1 The following definitions apply in this Law:

“community land” means any *First Nation* Land in which all members have a common interest and in respect of which there are no other member interests or third party interests.

“Council” means the Chief and Council of the *First Nation*.

“occupier” includes,

(a) a person who is in physical possession of premises, or

(b) a person who has responsibility for and control over the conditions of premises or the activities carried on there, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises.

“*First Nation* Land” has the same meaning as set out in the *First Nation* Land Code.

“person” includes a natural person, a corporation of any type, partnership, society or association whether or not incorporated, and any other entity having a separate personality, or style recognized in law.

“premises” means lands and structures, or either of them and includes water.

“private land” means *First Nation* Land that is not community land in which a member or members or any third party has an interest pursuant to or recognized by the *First Nation* Land Code, and includes business premises.

“Member” means a person whose name appears or is entitled to appear on the *First Nation* Band Membership List.

“resolution” means a resolution of the Council enacted under the Land Code or a Land Law

### 3. Trespass an Offence

#### Offence

- 3.1 Every person who is not acting under a right or authority conferred by the *First Nation* Land Code, a *First Nation* law or a resolution of Council and who,
- (a) without the express permission of the occupier, the proof of which rests on the defendant,
    - (i) enters on premises when entry is prohibited under this Law, or
    - (ii) engages in an activity on premises when the activity is prohibited under this Law; or
  - (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,
- is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.00.
- 3.2 It is a defence to a charge under subsection 3.1 in respect of premises that is *First Nation* Land that the person charged reasonably believed that he or she had a right or interest in the *First Nation* Land that entitled him or her to do the act complained of, if such belief has an air of reality and the conduct did no damage to premises or to *First Nation* land.
- 3.3 Except as varied by this law, common law defences to trespass are preserved.
- 3.4 Where the premises are or include community land, the *First Nation* is the occupier and the rights and powers of the occupier are exercised by Chief and Council or by a person designated by Chief and Council to exercise some or all of its rights or powers under this land law.
- 3.5 An activity prohibited under this law includes any activity in breach of a land or environmental law of the *First Nation*, its Land Code, the *Criminal Code (Canada)* or any order of a court of competent jurisdiction. Entry into premises that are *First Nation* Land for the purpose of engaging in any such activity is a separate
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offence under this land law punishable by a fine of not more than \$10,000 and subject to any orders or directions Council may make pursuant to this law irrespective of conviction

#### **4. Prohibition of Entry**

4.1 Entry on premises may be prohibited by notice to that effect posted on the premises; and entry is prohibited without any notice on premises,

(a) that is a garden, field or other *First Nation* Land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and woodlots on *First Nation* Land that used primarily for agricultural purposes; or

(b) that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises.

4.2 Subject to sections 5, 7 & 8, there is a presumption that access for lawful purposes to the door of a building on premises by a means provided and used for access purposes is not prohibited.

#### **5. Council Authority**

5.1 Council may make a resolution setting out the rules and regulations for the use of any premises on community land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar premises.

5.2 Council may make a resolution providing that a person who breaches a resolution, rule, regulation or the terms of any permit authorized under this section, or who is charged with a violation of this land law, is banned from entering onto or remaining on any or all *First Nation* Lands for such period of time as set out in the resolution.

5.3 Council may prohibit, by resolution, entry or activity on premises located on community land, provided that notice is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises.

5.4 Council may regulate, by resolution, the hours or seasons in which premises

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located on community land may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for a permit to engage in such activities or purposes.

## **6. Offence - Violation of Council Resolution, Rule or Regulation**

6.1 Every person who fails to comply with a resolution, rule or regulation of Council made under section 5.2 or 5.3, or who fails to comply with the terms of any permit granted under section 5.4, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.00.

## **7. Method of Giving Notice**

7.1 A notice under this Law may be given,

(1) orally or in writing:

(2) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies;

(3) by resolution duly published unless delivery to a member is specifically provided for in this law.

7.2 Substantial compliance with clause 7.1 is sufficient notice.

## **8. Form of Sign**

8.1 A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.

8.2 A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

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## **9.0 Arrest without warrant**

- 9.1 In this section, "**peace officer**" means a peace officer described in the *Criminal Code* (Canada) and includes an officer appointed by the Council to enforce the laws of the *First Nation*.
- 9.2 A peace officer may arrest without warrant any person found on or in premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence under section 3 or section 6.
- 9.3 If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 3 or section 6 and has recently departed from the premises, the peace officer may arrest the person without warrant if
- (a) the person refuses to give his or her name and address to the peace officer on demand, or
  - (b) the peace officer believes, on reasonable and probable grounds, that the name or address given by the person to the peace officer is false.

## **10.0 Parties to the Offence of Trespass**

- 10.1 A person other than an individual who commits trespass under this land law, is also guilty of an offence under section 6 if that person is shown to be complicit in the commission of the offence by:
- (a) purporting to give permission for entry to the premises where that person is not, or was not at the relevant time, an occupier or otherwise authorized to give such permission under this land law;
  - (b) being the employer of the individual who committed acts of trespass, directed or counseled him or her to do so as part of their employment; or
  - (c) being the principal of the individual who committed acts of trespass, directed or counseled him or her to do so as an agent.
  - (d) being a person in authority over an individual, counsels or directs that individual to commit and act of trespass; or
  - (e) knowing that conduct would be a trespass, assists an individual by providing him or her with the means, tools or equipment to commit the trespass.
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10.2 A person may be a party to the offence of trespass whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any other individual was convicted under this land law in respect of the same trespass.

## **11.0 Curfew, Exclusion and Banishment**

11.1 This provision may apply to any person with respect to any *First Nation* Land or premises on *First Nation* Land, whether or not that person is a member.

11.2 Council may by resolution apply a remedy pursuant to this section for any of the reasons or circumstances described in paragraph 3.5 with respect to frequenting *First Nation* Land or any premises on *First Nation* Land, for any reason or circumstance occasioned by violence in or on premises, or for any reason or Council determines to pose a danger to *First Nation* Land, premises on *First Nation* Land or the public and personal safety of individuals entitled to the use and occupation of *First Nation* Land, or for any apprehended public or private mischief.

11.3 Council may impose a curfew on any individual with respect to all or any *First Nation* Land or premises on *First Nation* Land, which may prescribe hours, dates or times when that individual is permitted or prohibited from attending at or on those premises, or restricting that individual to specified premises during specific hours, dates or times, and shall arrange for personal service of a resolution to that effect upon the individual unless service can only be effected by other forms of notice pursuant to this law.

11.4 Council may exclude an individual at all times from all or any *First Nation* Land or premises on *First Nation* Land, and shall arrange for personal service of a resolution to that effect upon the individual unless service can only be effected by other forms of notice pursuant to this law.

11.5 Council may banish an individual permanently or for a specified period of time from all *First Nation* Land.

11.6 Council shall make best efforts to effect service of resolutions made pursuant to this section, shall arrange for all such resolutions to be posted on *First Nation* Land as it sees fit and shall inform law enforcement of such resolutions in a timely manner.

11.7 An individual who is the subject of a resolution under this section and who has received or has notice of the resolution may appeal to Council for it to be altered or

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rescinded. Council will prescribe a form for such an appeal to be commenced and may deal with that appeal on the basis of the representations submitted in writing or direct a personal attendance to give the appellant an opportunity to present his or her case. Council's decision in the matter of an appeal is final and not subject to review.

11.8 Every person who fails to comply with a resolution made pursuant to this section, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.00, to imprisonment for a term not exceeding 90 days and to such other orders as may be conducive to preventing repetition of the offence.

## **12.0 Civil Action for Trespass Preserved**

12.1 Nothing in this Law extinguishes the right of a person, including the *First Nation*, to bring a civil action for damages arising out of a trespass on any premises on *First Nation* Land, and all civil remedies for trespass are preserved.

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