

## **LAW OF THE TOBIQUE FIRST NATION**

### **THE "TRESPASS ACT"**

#### **A LAW FOR THE OBSERVANCE OF LAW AND ORDER AND RESPECTING TRESPASS ON RESERVE**

WHEREAS the Reserve has been set aside for the use and benefit of the Tobique First Nation;

AND WHEREAS the Council of the Tobique First Nation has deemed it expedient and necessary for the peace, safety and good governance of its members to provide for the observance of law and order on Reserve and for the removal and punishment of persons trespassing on the Reserve;

AND WHEREAS the Council of the Tobique First Nation is empowered to make by-laws pursuant to section 81(1)(c), (p), (p.1), (q) and (r) of the *Indian Act*, R.S.C., 1985, c.I-5;

AND WHEREAS pursuant to section 30 of the *Indian Act*, R.S.C., 1985, c.I-5, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

AND WHEREAS section 81 of the *Indian Act*, R.S.C., 1985, c.I-5 makes violation of a by-law punishable by a fine or imprisonment, or both;

AND WHEREAS the Tobique First Nation wishes to respond to its security and public order concerns using the Traditional Knowledge of its people;

NOW THEREFORE, it is hereby enacted pursuant to section 81(1) of the *Indian Act*, R.S.C., 1985, c.I-5:

#### ***Short Title***

This Law may be cited as the "Trespass Act".

#### ***Interpretation***

1. In this Law:

"*Authorized Person*" means a person who is not subject to a Banishment order and who is a member of Tobique First Nation or a person who has received written authorization from the Band to reside on Reserve and such written authorization has not been revoked.

"*Accused Person*" means being a person against whom the Council of Elders has initiated proceedings under Section II of this Law.

"*Band*" means the Tobique First Nation, as represented by its duly elected Chief and Council;

"*Banishment Order*" means an order issued by a committee of the Council of Elders or the full Council of Elders under Part II of this Law.

"*Committee*" means a committee of three members of the Council of Elders convened to hear a petition for banishment under Part II of this Law;

"*Council of Elders*" means a council constituted by the Band from time to time for the purposes of this Law;

"*Indian Act*" means the *Indian Act*, R.S.C., 1985, c. I-5, a statute of the Federal Crown governing registered Indians, Bands, and Reserves;

"*Trespasser*" a person that has committed one or more acts listed as Trespass Conduct under section 3 of this Law.

"*Reserve*" means all those lands defined as a "Reserve" within the meaning of the *Indian Act* and set apart for the use and benefit of the Tobique First Nation;

"*Reside*" means being resident in a dwelling or a structure capable of being a dwelling, all for the purpose of domestic day to day activities;

"*Security Guard*" means the person identified by the Band from time to time to enforce this Law.

2. In this Law, the following rules shall apply to the interpretation thereof:
  - (a) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders or no gender;
  - (b) the words "include", "includes" and "including" and other similar words and expressions shall in all cases be deemed to be followed by the words "without limitation".
  - (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

#### ***Residence on Reserve***

3. The Reserve has been set aside for the use and benefit of the Tobique First Nation, and is intended for residence by Band members of the Tobique First Nation, including any Dependent Family Members, subject to sections 18.1, 20, 24, 28(2), 58(3), and any other applicable provisions, of the *Indian Act*, and this or any other by-law of the Tobique First Nation.

#### ***Rule Against Trespass***

4. No person shall enter upon the Reserve or conduct herself in any manner without an express or implied invitation from an Authorized Person authorizing such conduct.



### ***Trespass Conduct***

5. Any of the following conduct by a person who is not an Authorized Person may constitute Trespass Conduct,
  - (a) conduct on Reserve without an actual or implied invitation from an Authorized Person authorizing such conduct;
  - (b) illegal activity;
  - (c) a history of failure to comply with a previous Trespass Notice even if that notice has expired;
  - (d) activity that is contrary to a Trespass Notice issued to the person;
  - (e) activity that is contrary to a Banishment Order issued to the person;

### ***Duration and Content of Trespass Notices***

6. The Security Guard may use the following guidelines when determining the duration of a Trespass Notice,
  - (a) first to third offence: one month for each offence;
  - (b) fourth and fifth offence: six months for each offence;
  - (c) upon the sixth offence, the security guard may petition the Council of Elders to request that the person be banished from the reserve indefinitely.
7. The content of the Trespass Notice may include restrictions upon the person's movement or activity on Reserve up to and including a temporary ban on entry upon the Reserve.
8. For greater certainty, notwithstanding the guidelines in section 5 or section 6, the Security Guard may determine the duration and content of any Trespass Notice for any reason or for no reason.

### ***Consequence of Failure to Comply With a Trespass Notice***

9. If a person, when presented with a Trespass Notice and requested orally to comply with the notice, fails to do so, the Security Guard may petition the Council of Elders requesting that the person be banished from the Reserve indefinitely.

### ***Enforcement of Trespass Notices***

10. The Security Guard shall have the right, on behalf of the Band, to
  - (a) interview persons in order to identify Trespassers;
  - (b) request identification from a person only upon reasonable suspicion the person is a Trespasser;

- (c) issue Trespass Notices to persons who are not Authorized Persons;
  - (d) orally request that a person comply with a Trespass Notice;
  - (e) notify the RCMP of any person who refuses to comply with a Trespass Notice;
  - (f) use reasonable force to defend himself or another person;
11. The Security Guard shall not have the right to,
- (a) issue a Trespass Notice to an Authorized Person; or
  - (b) use force to coerce a person to comply with a Trespass Notice.

#### ***Appeal of a Trespass Notice***

12. An Authorized Person may appeal to the Council of Elders for the removal or variation of a Trespass Notice.
- (a) The council of elders may consider the request;
  - (b) If the council of elders considers the request, it may use any means to determine whether to grant the removal or variation of a Trespass Notice.

### **Part II: Process for Banishment of a Person**

#### ***Grounds for Banishment***

13. The following are grounds for banishment from the Reserve:
- (a) an authorized person has invited or facilitated the presence on Reserve of a person to whom a trespass notice has been issued and the authorized person knew or ought to have known about the trespass notice and that it was in force;
  - (b) an authorized person has committed a serious offence under the *Criminal Code of Canada*; or
  - (c) another ground provided for in this Law.

#### ***No Banishment of a Holder of a Certificate of Possession***

14. A person who is the holder of a certificate of possession shall not be subjected to proceedings under this Part.

#### ***Initiation of Proceedings***

15. The Council of Elders may initiate proceedings for banishment of a person if it receives one of the following:
- (i) a petition by the Security Guard;

- (ii) a petition by a minimum of 10 members; or
- (iii) a petition by an alleged victim or multiple alleged victims.

***Preliminary Investigation and Review***

- 16. The Council of Elders shall reject any petition for banishment that is merely frivolous or vexatious.
- 17. Upon receipt of a petition, the Council of Elders shall review it and determine whether it is frivolous or vexatious. The council shall seek and review,
  - (a) a statement from the petitioner,
  - (b) a statement from the accused, and
  - (c) other statements if applicable.

***Proceedings***

- 18. The Council of Elders shall notify an Accused Person in writing a minimum of one month in advance prior to a hearing of a petition for banishment.
- 19. The Council of Elders shall convene a Committee of three of its members to hear the petition for banishment.
- 20. At a hearing of a petition for banishment, the Accused Person has the right to be represented or assisted by any person who is not a Trespasser.
- 21. An Accused Person has the right to a hearing in person.
- 22. A hearing under this part is not bound by the rules of a court.
- 23. The Committee shall decide the outcome of the petition based on its assessment of whether, on a balance of probabilities, there are grounds to banish the person from the Reserve.
- 24. The Committee shall determine the rules of evidence and process of the proceedings on a case-by-case basis in accordance with this Law.

***Result Of Petition***

- 25. If the petition is substantiated, the Council of Elders may require the Accused Person to submit to one of the following outcomes indefinitely or for any duration:
  - (i) a restriction or restrictions on the person's movements and/or activities on Reserve up to including banishment; or
  - (ii) a choice between subsection (i) and restorative justice.



26. The Council of Elders shall ensure that the outcome it chooses is proportionate and reasonable in the circumstances.
27. If the petition is not substantiated, the Council of Elders Council may issue an apology if appropriate.
28. An Accused Person is entitled to written reasons at the completion of proceedings.
29. If the Accused Person is regularly resident on Reserve, he may appeal the decision of the Committee to the full Council of Elders which may convene another hearing.

#### ***Petition for Reinstatement***

30. A person who is an Authorized Person, or who, prior to being subject to a Banishment Order, was an Authorized Person, may petition the Council of Elders for removal or variation of a Banishment order in respect of any person, including herself, if all of following are true:
  - (a) the person subject to the Banishment Order has not been issued a Trespass Notice for the one year immediately preceding the petition for reinstatement;
  - (b) any person submits evidence of a change of circumstances that reduces the likelihood of a repeat offence; and
  - (c) the person subject to the Banishment Order agrees to participate in a restorative justice or other rehabilitation program that is acceptable to the Council of Elders.

#### ***Offence***

31. A person who fails to comply with a Trespass Notice or a Banishment Order commits an offence.
32. A person who commits an offence under this Law is liable on summary conviction to a fine not exceeding \$1, 000 or to imprisonment for a term not exceeding thirty (30) days, or to both.

#### ***Severability***

33. Should a court determine that a provision of this Law is invalid for any reason, the provision shall be severed from the Law and the validity of the rest of the Law shall not be affected. The Band shall replace the severed provision with another provision, if necessary, in order to maintain the intent of this Law.

#### ***Coming into Force***

34. This Law comes into force immediately upon publication on the Tobique First Nation's internet site.

**THIS LAW IS HEREBY** made at a duly convened meeting of the Band this \_\_\_\_ day of \_\_\_\_\_, 2017.

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

 Councillor	 Chief	 Councillor
 Councillor		 Councillor
 Councillor		 Councillor
 Councillor		 Councillor

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is 5 members.

Number of members of the Council present at the meeting: \_\_\_\_\_.