

**MCLEOD LAKE INDIAN BAND**  
**TRESPASS LAW**

**MLIB-2020-1**

**WHEREAS** Canada and a group of First Nations concluded the *Framework Agreement on First Nations Land Management* on February 12, 1996, and Canada later ratified the agreement via the enactment of the *First Nations Land Management Act*, SC 1999, c. 24;

**WHEREAS** the McLeod Lake Indian Band became a signatory to the *Framework Agreement on First Nations Land Management* and later brought the *McLeod Lake Indian Band Land Code* into effect on May 27, 2003;

**WHEREAS** the McLeod Lake Indian Band has the authority under subsection 6.1 of the *McLeod Lake Indian Band Land Code* to make laws concerning the protection, management, use and possession of McLeod Lake Indian Band land and any matter necessary or ancillary to a law respecting McLeod Lake Indian Band land;

**WHEREAS** the McLeod Lake Indian Band has a profound relationship with its land;

**AND WHEREAS** the McLeod Lake Indian Band deems it advisable and in the best interests of the McLeod Lake Indian Band to enact a law to provide for protection of the community and remove trespassers from McLeod Lake Indian Band land.

**NOW THEREFORE**, the McLeod Lake Indian Band Council enacts the following law:

**1. SHORT TITLE AND PURPOSE**

- 1.1 This Law may be cited, for all purposes, as the *McLeod Lake Indian Band Trespass Law*.
- 1.2 The purpose of this Law is to provide for the protection, management, use and possession of MLIB Land by removing trespassers from MLIB Land.

**2. DEFINITIONS AND INTERPRETATION**

- 2.1 The following definitions apply to this Law:

**“Authorized Person”** means a MLIB Law Enforcement Officer, an Occupier of a Premises or a person authorized by an Occupier of a Premises to exercise a power or perform a duty of the Occupier of a Premises under this Law;

**“Community Facilities”** means any building owned by the MLIB;

**“Community Land”** has the meaning assigned in the Land Code;

**"Council"** means the MLIB's "council of the band", as that term is defined in the *Indian Act*, RSC 1985, c I-5;

**"Enforcement Notice"** means an enforcement notice served in accordance with the *McLeod Lake Indian Band Enforcement and Prosecution Law*, which may be amended or replaced from time to time;

**"First Nations Land Management Act"** means the *First Nations Land Management Act*, SC 1999, c 24, as amended or replaced from time to time;

**"Immune Person"** means present or past Council, MLIB Law Enforcement Officers or employees, servants or agents of either the MLIB or Council;

**"Indian Act"** means the *Indian Act*, RSC 1985, c I-5, as amended or replaced from time to time;

**"Land Code"** means the *McLeod Lake Indian Band Land Code*, as may be supplemented or amended from time to time, and which was adopted by the MLIB in accordance with the *First Nations Land Management Act*;

**"Law"** means this *McLeod Lake Indian Band Trespass Law*;

**"Member"** means a person whose name appears or is entitled to appear on the MLIB membership list;

**"Notice"** means a notice delivered in one of the manners set out in subsection 5.1;

**"Occupier"** means in relation to a Premises, the following:

- (a) a Person lawfully entitled to possession of the Premises;
- (b) a Person who has:
  - (i) responsibility for and control over the conditions of the Premises or the activities carried out in or on the Premises; or
  - (ii) control over Persons allowed to enter or occupy the Premises; or
- (c) Council in relation to any Community Land or Premises on Community Land;

**"Peace Officer"** means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing MLIB Land, or any delegate;

**"Person"** means a natural person, the MLIB, Members, non-Members, a corporation of any type, partnership, society or association whether or not incorporated;

**"Premises"** means:

- (a) MLIB Land; and
- (b) anything on MLIB Land, including:
  - (i) buildings and other permanent structures;
  - (ii) a vehicle, except while in operation;

- (iii) a trailer or a portable structure designed or used as a residence, for shelter or to house a business; and
- (iv) water;

**“Remove”** means remove, relocate, detain or arrest;

**“Resolution”** means a resolution by a quorum of Council passed at a duly convened Council meeting;

**“MLIB”** means the McLeod Lake Indian Band, recognized as a Band under the *Indian Act*, RSC 1985, c. I-5, as represented by Council, or any successor to the McLeod Lake Indian Band pursuant to a federal statute or otherwise;

**“MLIB Law Enforcement Officer”** means the person or persons appointed by Council, from time to time, pursuant to the *McLeod Lake Indian Band Enforcement and Prosecution Law*, to administer and enforce the provisions of MLIB laws enacted by Council, and includes any delegate or assisting personnel as required and requested by an MLIB Law Enforcement Officer, a Peace Officer or any other person appointed by the Council for the purpose of maintaining law and order on MLIB Land; and

**“MLIB Land”** means any portion of a McLeod Lake Indian Band reserve that is subject to the Land Code.

### **3. TRESPASS AS AN OFFENCE**

3.1 A Person who does any of the following, without lawful authority or the express permission of an Authorized Person in respect of a Premises, is guilty of an offence:

- (a) enters onto or occupies a Premises if entry onto or occupation of the Premises is prohibited under subsection 4;
- (b) enters onto, occupies or does not immediately leave a Premises after an Authorized Person in respect of the Premises gives the Person Notice in accordance with subsection 5.1 that the Person’s entry onto or occupation of the Premises is prohibited; or
- (c) engages in or does not immediately stop an activity on or in a Premises after an Authorized Person in respect of the Premises gives the Person Notice in accordance with subsection 5.1 that the activity they are engaging in or that they previously engaged in is prohibited on the Premises.

### **4. TRESPASS ON PREMISES WHERE NOTICE IS NOT REQUIRED**

4.1 Entry onto or occupation of a Premises is prohibited, and no Notice is required, if the Premises is enclosed in a manner that indicates the Occupier’s intention to keep Persons off the Premises, or to keep animals on the Premises, including by a lawful fence or a natural boundary.

## **5. TRESPASS ON PREMISES WHERE NOTICE IS REQUIRED**

5.1 For the purposes of paragraphs 3.1(b) or (c), an Authorized Person in respect of a Premises may give Notice in one or more of the following ways:

- (a) orally or in writing;
- (b) by means of a sign or signs which are posted so that, in daylight, under normal weather conditions and from each ordinary point of access to the Premises, the signs:
  - (i) are clearly visible;
  - (ii) contain writing that is clearly legible, if any writing is used, to indicate a prohibition; and
  - (iii) contain graphic representations that are clearly visible, if any graphic representation is used, to indicate a prohibition; or
- (c) by Resolution posted in a public area of the MLIB administration building and made available free of charge at the administrative offices of the MLIB

("Notice").

5.2 In the prosecution of an offence under subsection 3.1, proof that a sign compliant with paragraph 5.1(b) was posted at the ordinary point of access used by the Person accused of the said offence to enter the Premises is sufficient for the purpose of establishing that Notice was given for the purpose of paragraphs 3.1(b) or (c).

5.3 Notice given under this section 5 may relate to all or a part of the Premises and different Notices may be given or posted in relation to different parts of the Premises.

## **6. OFFENCE TO REMOVE, ALTER OR DEFACE POSTED SIGNS**

6.1 A Person must not remove, alter or deface signs posted on a Premises for the purpose of subsection 5.1, unless they are an Authorized Person in respect of the Premises.

6.2 A Person who contravenes subsection 6.1 is guilty of an offence.

## **7. TRESPASSER MUST GIVE NAME AND ADDRESS**

7.1 An Authorized Person in respect of a Premises may demand a Person's name and address if they have reasonable grounds to suspect that the Person is on the Premises or was on the Premises in contravention of subsection 3.1.

7.2 If an Authorized Person in respect of a Premises demands a Person's name and address under subsection 7.1, the Person must provide their correct name and address to the Authorized Person in respect of the Premises.

7.3 A Person who contravenes subsection 7.2 is guilty of an offence.

## **8. ENTRY ONTO A PREMISES AND ARREST WITHOUT WARRANT**

- 8.1 Where a MLIB Law Enforcement Officer has reasonable grounds to suspect that a Person is committing an offence under subsection 3.1, the MLIB Law Enforcement Officer may Remove the Person from the Premises without a warrant if the Person refuses to leave the Premises voluntarily.
- 8.2 If a MLIB Law Enforcement Officer has Removed a Person in accordance with subsection 8.1, the Person shall be released as soon as practicable thereafter, taking into consideration the safety of the MLIB Law Enforcement Officer and the public at large, as well as the likelihood of the offending Person's immediate discontinuance of the offence.

## **9. PARTIES TO THE OFFENCE OF TRESPASS**

- 9.1 A Person is guilty of an offence if they:
- (a) purport to give another Person permission to enter onto or into Premises and the other Person proceeds to enter the Premises and commit an offence under subsection 3.1;
  - (b) are the employer of another Person and thereby direct or counsel that other Person to commit an offence under subsection 3.1 as part of their employment, and that other Person proceeds to commit the said offence;
  - (c) are the principal of another Person and thereby direct or counsel that other Person to commit an offence under subsection 3.1 as their agent, and that other Person proceeds to commits the said offence;
  - (d) are a Person in authority over another Person and thereby direct or counsel that other Person to commit an offence under subsection 3.1, and that other Person proceeds to commits the said offence; or
  - (e) knowingly assist another Person in committing an offence under subsection 3.1 by providing that other Person with the means, tools or equipment to do so.
- 9.2 A Person is not guilty of an offence under subsection 9.1 if they are an Authorized Person in respect of the Premises.

## **10. OFFENCES**

- 10.1 Each offence under this Law is a strict liability offence, unless expressly indicated otherwise.
- 10.2 For each offence designated under this Law, a MLIB Law Enforcement Officer may complete and issue an Enforcement Notice to the Person against whom an offence is alleged.

- 10.3 No Person shall obstruct, interfere with or hinder Council, a MLIB Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law, or any other MLIB law.
- 10.4 Each day a violation of this Law continues will be deemed to be a separate offence for which a separate punishment, as provided for in this Law or any other MLIB law, may be imposed.
- 10.5 Any Person who commits an offence under this Law is liable on summary conviction to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not exceeding six (6) months, restitution, community service and any other means or combination thereof for achieving compliance.
- 10.6 Nothing in this Law precludes the MLIB from pursuing any other enforcement action or remedy provided for in any other MLIB law.

## **11. FEES AND FORMS**

- 11.1 Council may, by Resolution, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and must post notice of same in a public area of the MLIB administration building and make a copy of same available for viewing free of charge at the administrative offices of the MLIB and available for distribution at a nominal charge.

## **12. APPLICATION OF LAW**

- 12.1 The *McLeod Lake Indian Band Notice Enforcement Law* applies to all offences or contraventions under this Law.
- 12.2 Offences created under this Law constitute offences punishable on summary conviction for the purposes of subsection 22(1) of the *First Nations Land Management Act*, the enforcement of which may be prosecuted pursuant to the *McLeod Lake Indian Band Notice Enforcement Law*.
- 12.3 Where any federal act or regulation or provincial act or regulation or any other MLIB law may apply to any matter covered by this Law, compliance with this Law must not relieve the Person from also complying with the provisions of the other applicable act, regulation or law.
- 12.4 If any section, subsection, paragraph or subparagraph of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section, subsection, paragraph or subparagraph must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.

12.5 The headings given to the sections in this Law are for convenience of reference only and do not form part of this Law and must not be used in the interpretation of this Law.

### **13. IMMUNITY**

13.1 No action for damages lies or may be instituted against an Immune Person for:

- (a) anything said or done or omitted to be said or done by that Immune Person in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law; or
- (b) any alleged neglect or default in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law.

13.2 Subsection 13.1 does not provide a defense if:

- (a) an Immune Person has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
- (b) the cause of action is libel or slander.

13.3 An Immune Person is not liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other MLIB law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other MLIB law.

13.4 All actions against the MLIB for the unlawful doing of anything that:

- (a) is purported to have been done by an Immune Person under the powers conferred by this Law or any MLIB law; and
- (b) might have been lawfully done by an Immune Person if acting in the manner established by law, must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

13.5 A party commencing an action against an Immune Person must deliver notice in writing, setting out the time, place and manner in which the damage was sustained, to the MLIB and the Immune Person within sixty (60) days from the date on which the damage was sustained.

13.6 If the party commencing an action against an Immune Person fails to deliver notice to the MLIB and the Immune Person as required under subsection 13.5, the action must be struck and the Immune Person will not be liable for damages.

**14. POWER TO MAKE REGULATIONS CONCERNING COMMUNITY LAND**

14.1 Council may, by Resolution and posted in accordance with paragraph 5.1(c):

- (a) set out the rules and regulations for the use of Community Land and Community Facilities, including but not limited to arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar Premises;
- (b) regulate the hours or seasons in which a Premises located on Community Land may be used for specific purposes;
- (c) impose limits on the activities to be engaged in on Community Land;
- (d) impose a requirement for a permit to engage in such activities or purposes; and
- (e) prohibit entry or activity on Community Land or Community Facilities as it deems appropriate, including a prohibition directed at select Persons only.

14.2 If Council establishes regulations under subsection 14.1, Council must thereafter:

- (a) post notice of the regulations in a public area of the MLIB administration building; and
- (b) make a copy of the regulations and any amendments made to those regulations available for any Person to view free of charge at the administrative offices of the MLIB and available for distribution at a nominal charge to any Person upon request.

**15. CIVIL ACTION FOR TRESPASS PRESERVED**

15.1 Subject to section 13, nothing in this Law extinguishes the right of a Person, including the MLIB, to bring a civil action for damages arising out of a trespass on any Premises on MLIB Land, and all civil remedies for trespass are preserved.



**BE IT KNOWN** that this Law entitled the *McLeod Lake Indian Trespass Law*, MLIB-2020-1 was/is hereby:

Read a first time by the Council of McLeod Lake Indian Band at a duly convened meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2020;

Signed by the following Members of Council who were present at the duly convened meeting wherein this *McLeod Lake Indian Band Trespass Law*, MLIB-2020-1, was enacted on a temporary urgent basis:

\_\_\_\_\_  
(Chief)

\_\_\_\_\_  
(Councillor)

\_\_\_\_\_  
(Councillor)