



Madawaska Maliseet First Nation TRESPASSING AND BANISHMENT LAW

– in accordance with –

*Madawaska Maliseet First Nation Land Code and the
Framework Agreement on First Nation Land Management*

May 07, 2020





TABLE OF CONTENTS

| | Page |
|--|------|
| s. 1 TITLE AND PURPOSE | 2 |
| s. 2 DEFINITIONS | 2 |
| s. 3 INTERPRETATION | 3 |
| s. 4 RIGHT OF ENTRY AND ACCESS | 4 |
| s. 5 COUNCIL AUTHORITY | 4 |
| s. 6 DEPOSIT WITH CENTRAL RECORDS | 5 |
| s. 7 TRESPASSING | 5 |
| s. 8 BANISHMENT | 6 |
| s. 9 PARTIES TO THE OFFENCE OF TRESPASS | 7 |
| s. 10 GENERAL PENALTY | 7 |
| s. 11 METHOD OF GIVING NOTICE | 8 |
| s. 12 FORM OF SIGN | 8 |
| s. 13 ENTRY ONTO A PREMISES AND ARREST WITHOUT A WARRANT | 8 |
| s. 14 RELEASE AFTER ARREST | 9 |
| s. 15 USE OF FORCE | 10 |
| s. 16 CIVIL ACTION FOR TRESPASS PRESERVED | 10 |
| s. 17 SEVERABILITY | 10 |
| s. 18 IMMUNITY | 10 |
| APPENDIX "A" | 12 |





**MADAWASKA MALISEET FIRST NATION
TRESPASSING AND BANISHMENT LAW**

PREAMBLE

Whereas the Members of the Madawaska Maliseet First Nation have the inherent right to self-government which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

And Whereas the Madawaska Maliseet First Nation has jurisdiction and authority over its control and management of its lands, resources, and interests for the use and benefit of its Members pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Madawaska Maliseet First Nation Land Code* effective the 22nd day of August 2017;

And Whereas section 7 of the *Madawaska Maliseet First Nation Land Code* provides the Madawaska Maliseet First Nation with authority to enact Land Laws in relation to reserve Land;

And Whereas section 36.2 of the *Madawaska Maliseet First Nation Land Code* provides the Madawaska Maliseet First Nation with authority to enact laws and policies applicable to Trespass on any Land subject to the *Madawaska Maliseet First Nation Land Code*;

And Whereas the Council of Madawaska Maliseet First Nation Council deems it necessary to enact a Land Law to deal with trespassing in order to ensure the comfort, safety, and protection of people, lands, buildings, and resources on Madawaska Maliseet First Nation Land;

NOW THEREFORE, this *Madawaska Maliseet First Nation Trespassing and Banishment Law* is hereby enacted as a Land Law of the Madawaska Maliseet First Nation.



1. TITLE AND PURPOSE

- 1.1 This Land Law may be cited as the *Madawaska Maliseet First Nation Trespassing and Banishment Law*.
- 1.2 The purpose of this Land Law is to protect Madawaska Maliseet First Nation members, residents, lands, buildings, and resources from Persons trespassing on or frequenting Madawaska Maliseet First Nation Land for prohibited purposes.

2. DEFINITIONS

2.1 The following definitions apply in this Law:

- (a) “Band Council Resolution” or “Resolution” means a Band Council Resolution duly passed by the Council of the Madawaska Maliseet First Nation;
- (b) “Banishment” means a definitive exclusion from entering Madawaska Maliseet First Nation Land as determined by Council;
- (c) “Community Land” means any Madawaska Maliseet First Nation Land which all Members have a common interest in and which is not currently allocated (i.e. common-band Land);
- (d) “Council” means the Chief and Council of the Madawaska Maliseet First Nation;
- (e) “Enforcement Officer” means the Person or Persons appointed by Council, from time to time, to administer and enforce the provisions of Madawaska Maliseet First Nation Land Laws enacted by Council and includes a Peace Officer and any delegate and any assisting personnel as required and requested by an Enforcement Officer or a Peace Officer;
- (f) “Land” or “Madawaska Maliseet First Nation Land” or “Reserve Land” has the same meaning as set out in the *Madawaska Maliseet First Nation Land Code* and, for the purposes of this Law, includes:
- (i) Land held by a Member under a Certificate of Possession;
 - (ii) Land designated for commercial development;
 - (iii) Land set aside for a particular purpose;
 - (iv) Community Land including public roads, bridges, and paths; and
 - (v) Land that is otherwise allocated;
- (g) “*Land Code*” means the *Madawaska Maliseet First Nation Land Code*, which sets out the basic provisions regarding the exercise of the Madawaska Maliseet First Nation’s rights and powers over its Land;
- (h) “Land Law” means a law, including, but not limited to, regulations and standards



restricted to Madawaska Maliseet First Nation Land, enacted in accordance with the *Madawaska Maliseet First Nation Land Code*;

- (i) “Member” means a Person whose name appears, or is entitled to appear, on the Madawaska Maliseet First Nation Band Membership List;
- (j) “Natural Resources” means any renewable or non-renewable resources in and of Madawaska Maliseet First Nation Land (e.g. trees, gravel, soil, etc.);
- (k) “Notice” means a communication, issued by Council in accordance with section 11 of this Law;
- (l) “Occupier” means any of the following:
 - (i) a Member who holds an interest in the Premises under a Certificate of Possession;
 - (ii) a tenant with a leasehold interest in the Premises on Land designated for commercial leasing;
 - (iii) Council, as representatives of Madawaska Maliseet First Nation Membership, in reference to Community Land; or
 - (iv) a Person duly authorized to act on behalf of the Occupier;
- (m) “Peace Officer” has the same meaning as defined in the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] and includes an officer appointed by Council to enforce the laws of Madawaska Maliseet First Nation;
- (n) “Person” means a Non-Member or a Member of the Madawaska Maliseet First Nation, including any other entity having a separate personality or style for carrying out business recognized in law such as a corporation of any type, partnership, society, or association whether or not incorporated;
- (o) “Premises” means lands and structures, or either of them, and includes water; and
- (p) “Undesirable Individual” means a Person who is not a Member of the Madawaska Maliseet First Nation and who is declared to be an Undesirable Individual by a Band Council Resolution for the purpose of Banishment from Madawaska Maliseet First Nation Land under this *Trespassing and Banishment Law*.

3. INTERPRETATION

- 3.1 Unless it is otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular.
- 3.2 Unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to,” and the use of the word “includes” means “includes, but is not limited to.”



3.3 For greater certainty, the language of the *Land Code* may be used to clarify the meaning of any provision in this Law, if the meaning of that provision is not otherwise clear in English or French.

3.4 If there is an inconsistency or conflict between this Law and the *Land Code*, the *Land Code* shall prevail to the extent of the inconsistency or conflict.

4. RIGHT OF ENTRY AND ACCESS

4.1 It is a presumption that all Members and the public have access to Madawaska Maliseet First Nation Land in accordance with sections 36.3 through 36.5 of the *Land Code*.

5. COUNCIL AUTHORITY

5.1 The provisions under section 5 of this Law apply to any Person with respect to any Madawaska Maliseet First Nation Land or Premises, whether or not that Person is a Member.

5.2 Council, by Resolution, may appoint Enforcement Officers for the administration and Enforcement of Madawaska Maliseet First Nation Land Laws. Council may, in the appointment, provide authority to Peace Officers to arrest and remove individuals according to this Law.

5.3 Council should make every attempt to resolve the allegation of Trespass through a dispute resolution process in an effort to promote harmony in the community.

5.4 Council may make Resolutions for the use of any Premises on Madawaska Maliseet First Nation Land, in accordance with Section 36 of the *Land Code*, including, but not limited to, arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics, and similar Premises, to set out restrictions, policies, procedures, rules, regulations, or the terms of any permit authorized under this section, including, but not limited to:

- (a) the hours, days, or seasons in which a Premises may or may not be used for specific purposes;
- (b) to impose limits on the activities to be engaged in; and
- (c) requirements for obtaining permits to engage in such activities or purposes.

5.5 Council may, by Resolution, prohibit entry or activity on Madawaska Maliseet First Nation Land, including prohibiting entry to a Premises or prohibiting one or more activities on a Premises, provided that Notice is given in accordance with sections 11 and 12 of this Law.

5.6 Council may, by Resolution, impose a curfew on any Person with respect to all or any Madawaska Maliseet First Nation Land which may:



- (a) prescribe hours, dates or times when that Person is permitted or prohibited from attending at or on those Premises;
- (b) prescribe hours, dates or times when that Person is permitted or prohibited from engaging in one or more activities at a Premises;
- (c) restrict that Person to specified Premises during specific hours, dates or times; and
- (d) shall arrange for personal service of a Resolution to that effect upon the Person unless service can only be effected by other forms of Notice pursuant to section 11 of this Law.

5.7 Council shall arrange for personal service of a Resolution made upon a Person, unless service can only be effected by other forms of Notice pursuant to section 11 of this Law.

5.8 A Person who is the subject of a Resolution under this section and who received or otherwise has Notice of the Resolution may appeal in writing to Council for it to be altered or rescinded.

5.9 An appeal made under section 5.8 of this Law is subject to the *Madawaska Maliseet First Nation Administrative Appeals Policy*.

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

5.11 Council may, by Resolution, restrict from entering onto or remaining on any or all Madawaska Maliseet First Nation Land for such a period of time as set out in this Law as part of the sentence imposed upon a Person convicted of Trespass, or who breaches a Resolution, policy, procedure, rule, regulation, or the terms of any permit authorized under this Law.

6. DEPOSIT WITH CENTRAL RECORDS

6.1 A copy of any Notice or Resolution issued by Council under this Law shall be deposited with Central Records at the Administrative Office of the Madawaska Maliseet First Nation.

7. TRESPASSING

7.1 Every Person commits the offence of Trespass who:

- (a) Except in accordance with section 36 of the *Land Code* "Residency and Access Rights," or an authorization issued by Council, enters onto Madawaska Maliseet First Nation Land;
- (b) Enters or Occupies Madawaska Maliseet First Nation Land or a Premises, when entry is prohibited under a Resolution made under this Law, or any law whereby any permission or authorization has been revoked;



- (c) Enters or Occupies any Madawaska Maliseet First Nation Land or Premises and carries out an illegal activity under Madawaska Maliseet First Nation laws as designated in Appendix “A”;
- (d) Enters or Occupies any Madawaska Maliseet First Nation Land or Premises and carries out activities that pose a threat to the health or safety of Occupiers of Madawaska Maliseet First Nation Land, as determined by Council, acting reasonably, and
 - (i) Council or an Enforcement Officer notifies those Persons; and
 - (ii) those Persons refuse to cease any of those activities;
- (e) Enters onto Madawaska Maliseet First Nation Lands or Premises that are closed, off-limits, or have access restricted by way of Notice issued or signs posted in accordance with this Law including:
 - (i) Madawaska Maliseet First Nation Land designated as closed by a Resolution or the *Madawaska Maliseet First Nation Land Code*; and
 - (ii) Occupied Land;
- (f) Enters onto Occupied Madawaska Maliseet First Nation Land without the express permission of the Occupier, the proof of which rests on the defendant, and does not leave the Premises immediately after being directed to do so by the Occupier of the Premises, a Person authorized by the Occupier, or an Enforcement Officer; or
- (g) Occupies a premise where a rental agreement or lease agreement has been terminated by Council and through due process ordered to vacate;

and upon conviction is liable to a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than six (6) months or both. In addition, the Justice may impose such remedies at their disposal such as education, healing circles, or other remedies that align with Wolastoquey cultural or traditional ways.

- 7.2 It is a defence to a charge under section 7.1, in respect of the Premises, that the Person charged reasonably believed that they had an interest in Madawaska Maliseet First Nation Land, bearing the burden of proof, which entitled them to do the act complained of.
- 7.3 Where the Premises are or include Community Land, the rights and authority of the Occupier are exercised by Council or by a Person designated by Council to exercise some or all of its rights or powers under this Law.

8. BANISHMENT

- 8.1 Council may, by Resolution, Banish a Person declared to be an Undesirable Individual permanently or for a specified period from any or all Madawaska Maliseet First Nation



Land if:

- (a) Council has reasonable grounds to believe that the Person poses a threat to the health and safety of Madawaska Maliseet First Nation Lands and the community; and
- (b) that Person is a Non-Member.

9. PARTIES TO THE OFFENCE OF TRESPASS

9.1 A Person other than a Person who commits Trespass under this Land Law is also guilty of an offence under section 7.1, 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 Law;
- (b) being the employer of the Person who committed acts of Trespass, directed or counselled them to do so as part of their employment;
- (c) being the principal of the Person who committed acts of Trespass, directed or counselled them to do so as an agent;
- (d) being a Person in authority over a Person, counsels or directs them to commit and act of Trespass; or
- (e) knowing that conduct would be a Trespass, assists a Person by providing them with the means, tools, or equipment to commit the Trespass;
- (f) aids or abets a Person in committing acts of Trespass; or
- (g) aids or abets a Person in the obstruction of an Enforcement Officer.

9.2 A Person may be a party to the offence of Trespass:

- (a) whether or not the acts subsequent to entry exceeded the scope of such counselling, authorization, direction, or assistance; and
- (b) whether or not any other Person was convicted under this Land Law in respect of the same Trespass;

and upon conviction is liable to a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than six (6) months or both. In addition, the Justice may impose such remedies at their disposal such as education, healing circles, or other remedies that align with Wolastoqey cultural or traditional ways.

10. GENERAL PENALTY

10.1 Every Person who commits an offence under this Law by failing to comply with the conditions of a Notice, Resolution, rule, or regulation issued by Council, is guilty of an offence and upon conviction is liable to a penalty of not more than \$10,000.00. In addition, the Justice may impose such remedies at their disposal such as education, healing circles, or other remedies that align with Wolastoqey cultural or traditional ways.



- 10.2 Council may develop a penalty schedule based on repeat offences and increase the amount of penalty based on the frequency and repetition of offences.
- 10.3 Notwithstanding section 10.1, Council or an Enforcement Officer may decide to waive a penalty against a Person alleged to have committed the offence of Trespass, provided that said Person removes themselves from the Premises upon Notice.

11. METHOD OF GIVING NOTICE

- 11.1 A Notice under this Trespassing and Banishment Law shall be given by Council or authorized authority official of the Madawaska Maliseet First Nation by:
- (a) orally by an Occupier or Enforcement Officer;
 - (b) a written letter signed by at least two members of Council;
 - (c) 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; or
 - (d) by Resolution duly published unless delivery to a Person is specifically provided for in this Law.
- 11.2 Substantial compliance with section 11.1(c) is sufficient Notice.

12. FORM OF SIGN

- 12.1 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.
- 12.2 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.
- 12.3 A Person, other than an Occupier or a Person authorized by the Occupier, must not remove, alter or deface signs posted for the purpose of section 12.1 or 12.2.
- 12.4 A Person who removes, alter or deface signs posted for the purpose of section 12.1. or 12.2 of this Law commits an offence and upon conviction is liable to a penalty of not more than \$10,000.00. In addition, the Justice may impose such remedies at their disposal such as education, healing circles, or other remedies that align with Wolastoqey cultural or traditional ways.

13. ENTRY ONTO A PREMISES AND ARREST WITHOUT A WARRANT

- 13.1 An Enforcement Officer may enter any Premises at any time to administer and enforce the provisions of this Law.



- 13.2 It is the duty of any one who executes a process or warrant to have a copy of the process or warrant with them, where it is feasible to do so, and to produce it when requested to do so.
- 13.3 An Enforcement Officer shall serve or leave a copy of the process, notification, or warrant at the location or on the Person to whom the document is directed.
- 13.4 The administration of court orders and eviction orders shall be carried out by day as defined by the *Criminal Code* unless otherwise directed by a court order. Service of documents may be effected at any reasonable time.
- 13.5 A Peace Officer may arrest without a warrant any Person found on or in a Premises if the Peace Officer believes on reasonable and probable grounds that the Person is committing an offence under section 7 of this Law to:
- (a) facilitate the removal of the Person refusing to leave a Premise; and
 - (b) the Person shall be released as soon as practicable after the arrest.
- 13.6 If a Peace Officer believes on reasonable and probable grounds that a Person has committed an offence under section 7 of this Law and has recently departed from the Premises, the Peace Officer may arrest the Person without a warrant if:
- (a) the Person refuses to give their 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.
- 13.7 Any Person who does not leave a Premises immediately after being directed to do so by the Occupier, or a Person authorized by the Occupier, may be arrested by a Peace Officer:
- (a) to facilitate the removal of the Person refusing to leave a Premise; and
 - (b) the Person shall be released as soon as practicable after the arrest.

14. RELEASE AFTER ARREST

- 14.1 Where a Peace Officer arrests a Person, the Peace Officer shall, as soon as practicable, release the Person from custody after serving them with a summons or offence notice, unless the Peace Officer has reasonable and probable grounds to believe that it is necessary in the public interest for the Person to be detained, having regard to all the circumstances including the need to:
- (a) establish the identity of the Person;
 - (b) secure or preserve evidence of or relating to the offence; and
 - (c) prevent the continuation or repetition of the offence or the commission of another offence.

**15. USE OF FORCE**

- 15.1 Every Enforcement Officer, while assisting a Peace Officer, is, if acting on reasonable and probable grounds, justified in using as much force as is necessary to do what the Enforcement Officer is required or authorized to do by law.
- 15.2 It is the duty of every one who arrests a Person, whether with or without a warrant, to give Notice to that Person, where it is feasible to do so, of the reason for the arrest.
- 15.3 Where a Person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought against:
- (a) the Peace Officer making the arrest, if they believed in good faith and on reasonable and probable grounds that the Person arrested was the Person named in the warrant or was subject to arrest without a warrant under the authority of this Law;
 - (b) any Person called upon to assist the Peace Officer if such Person believed that the Peace Officer had the right to effect the arrest;
 - (c) any Person required to detain the prisoner in custody if such Person believed the arrest to be lawfully made.

16. CIVIL ACTION FOR TRESPASS PRESERVED

- 16.1 Nothing in this *Madawaska Maliseet First Nation Trespassing and Banishment Law* extinguishes the right of a Person, including the Madawaska Maliseet First Nation, to bring a civil action for damages arising out of a Trespass on any Premises and all civil remedies for Trespass are preserved.

17. SEVERABILITY

- 17.1 Should any section of this Law be declared by a court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding and shall be read as if the offending section or part has been struck.

18. IMMUNITY

- 18.1 No action for damages lies or may be instituted against present or past Council, duly appointed Enforcement Officers, or employees, servants, or agents of either Madawaska Maliseet First Nation or Council:
- (a) for anything said or done or omitted to be said or done by that Person in the performance or intended performance of the Person's duty or the exercise of the Person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the Person's duty or the exercise of the Person's authority.
- 18.2 Section 18.1 does not provide a defence if:



- (a) Council, duly appointed Enforcement Officers, employees, servants or agents of either Madawaska Maliseet First Nation or Council have, 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.
- 18.3 Council, duly appointed Enforcement Officers, and employees, servants, or agents of Madawaska Maliseet First Nation or Council are 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 Madawaska Maliseet First Nation Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Madawaska Maliseet First Nation Law.
- 18.4 All actions against Madawaska Maliseet First Nation for the unlawful doing of anything that is purported to have been done by Madawaska Maliseet First Nation under the powers conferred by this Law, or any Madawaska Maliseet First Nation 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.
- 18.5 Madawaska Maliseet First Nation is in no case liable for damages unless written Notice setting out the time, place, and manner of the sustained damage is delivered to Madawaska Maliseet First Nation, within two (2) months from the date on which the damage occurred.

**APPENDIX "A"**

In accordance with section 7.1(c) of this Law, the following are classified as illegal activities and are prohibited on Madawaska Maliseet First Nation Land unless excepted by Council:

- (a) hunting, fishing, trapping, or gathering;
- (b) camping;
- (c) hawking or peddling wares or merchandise, goods and services;
- (d) loitering or soliciting;
- (e) removing any Natural Resources;
- (f) dumping material of any kind; and
- (g) any activity which is contrary to the *Criminal Code*.



Madawaska Maliseet First Nation

BAND COUNCIL RESOLUTION

Department: Lands

File reference no.:

| | |
|---|-------------------------------|
| | Reserve |
| The Council of the Madawaska Maliseet First Nation New Brunswick | St. Basile Indian Reserve #10 |
| Date of Duly Convened Meeting <u>01/06/20</u> D M Y | Account _____ \$ _____ |

Whereas: The Madawaska Maliseet First Nation enacted the *Madawaska Maliseet First Nation Land Code* on January 1, 2018; and

Whereas: pursuant to section 7 of the Land Code, the Madawaska Maliseet First Nation has the right to enact laws pertaining to trespass on reserve;


Whereas: a law is required to expand on the issue of trespass and to provide provision for its enforcement under section 36.6 of the Land Code;

Whereas: preliminary drafts of the *Madawaska Maliseet First Nation Trespassing and Banishment Law* were made available to Madawaska Maliseet First Nation Members and a community meeting was held on November 26, 2019 in accordance with the *Madawaska Maliseet First Nation Land Law Consultation and Enactment Regulations*, to consult Members on the law;

Therefore Be it Resolved That: upon a motion duly made and passed at a duly convened Band Council meeting, the Council of the Madawaska Maliseet First Nation hereby enacts the *Madawaska Maliseet First Nation Trespassing and Banishment Law* dated May 07, 2020.

Quorum: 3


Chief Patricia Bernard


Councillor Donna Wallace-Bourgeault


Councillor Diane Pelletier

