

Tataskweyak Cree Nation

*Community Protection Bylaw,
2018-01*

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WHEREAS:

- A.** Chief and Council of the Tataskweyak Cree Nation have an obligation to ensure that the remote location of its Reserves are managed in a way that maximizes the protection of its Members and residents, particularly children and other vulnerable community members;
- B.** Chief and Council of the Tataskweyak Cree Nation, in accordance with tradition, recognize the importance of the collective rights of the community and the priority of those collective rights over certain rights of the individual;
- C.** Chief and Council of the Tataskweyak Cree Nation desire to make a Bylaw governing the observance of law and order of Members and other persons on the Reserve, the prevention of disorderly conduct and nuisances, and the residence of Members and other persons on the Reserve and for the imposition of a penalty for a violation thereof;
- D.** Chief and Council of the Tataskweyak Cree Nation wishes to ensure that its Members and other residents can live on Tataskweyak Cree Nation Reserves in relative safety;
- E.** The practice of banishment has been part of Tataskweyak Cree Nation traditional aboriginal customary law as a remedy for dealing with individuals who posed a threat to Members or the community;
- F.** The Members of the Tataskweyak Cree Nation have been consulted and support a bylaw which would allow Council to restrain from residing or entering onto Tataskweyak Cree Nation Reserves persons, including Members, who pose a threat to the community, their children or other vulnerable community members;
- G.** Sections 81(a), (c), (d), (p),(p.1), (q) and (r) of the *Indian Act* empower the Chief and Council to pass bylaws to provide for the health of residents on the reserve, the observance of law and order, the prevention of disorderly conduct and nuisances, the removal and punishment of persons trespassing on reserve or frequenting

the reserve for prohibited purposes, the residence of Members and other persons on the Reserve, in addition to matters arising out of or ancillary to the exercise of powers under this section and the imposition of a penalty for the violation of any such bylaw;

- H. This Bylaw balances the rights of the individual guaranteed under the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Code* with the safety of the Members of the Tataskweyak Cree Nation, the community, its children and the vulnerable;

Now Therefore Chief and Council of the Tataskweyak Cree Nation hereby enact the following Bylaw:

PART 1. NAME

- 1.1 This Bylaw may be cited as the *Community Protection Bylaw, 2018-01*.

PART 2. DEFINITIONS

- 2.1 For the purposes of this Bylaw, the following definitions apply:

"Arbitrator" means an arbitrator appointed pursuant to Part 8 of this bylaw to consider an appeal of a Removal Order.

"Court" means any federal or provincial court of competent jurisdiction;

"Council" means the Chief and Council of the Tataskweyak Cree Nation;

"Criminal Code" means the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, as amended or replaced from time to time;

"Enforcement Officer" means any RCMP, police officer, police constable, peace officer, First Nation Safety Officer, Bylaw enforcement officer or any other person charged with the duty to preserve and maintain the peace and appointed by Chief and Council for the purposes of maintaining law and order;

"First Nation Safety Officer" means a person appointed by Tataskweyak Cree Nation who is authorized to enforce this Bylaw;

"**Indictable Offence**" includes a hybrid offense that proceeded by way of summary conviction;

"**Intoxicant Bylaw**" means the Tataskweyak Cree Nation Intoxicant Bylaw, 2017-01;

"**Justice Committee**" means the Justice Committee appointed by Council;

"**Member**" means a person whose name appears on the TCN membership list;

"**TCN**" means the Tataskweyak Cree Nation;

"**Removal Order**" means a decision made by Council under this Bylaw to prohibit a person from residing or being on Reserve;

"**Reserve**" means lands reserved for Tataskweyak Cree Nation within the meaning of the *Indian Act*, R.S.B.C.1985, c.I-5 (see Schedule #1);

"**Resolution**" means a decision made by a majority of the Council at a duly convened meeting of Council.

2.2 Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

PART 3. PUBLICATION OF BYLAW

3.1 Upon the coming into force or any amendments of this Bylaw, Council shall:

- (a) Cause the Bylaw to be published in the First Nation Gazette;
- (b) Post the Bylaw in a public area in the TCN Administration Building including a notice containing:
 - (i) The date that this Bylaw came into force; and
 - (ii) A summary of this Bylaw.

PART 4. APPLICATION OF BYLAW

Bylaw applicable to TCN Reserves

4.1 This Bylaw applies only to TCN Reserves.

Bylaw applicable to Members and non-Members

4.2 This Bylaw applies to all persons, including Members.

PART 5. STARTING A COMPLAINT

5.1 An inquiry under this Bylaw can be initiated by either,

- (a) A quorum of Council; or
- (b) Ten (10) Members, excluding members of the Council and Justice Committee, who believe TCN Members and residents are being adversely affected by the activities and actions being undertaken by certain people residing or frequenting the TCN Reserve.

5.2 The following activities are grounds for starting a complaint:

- (a) reasonable grounds to believe that the person is a drug trafficker or dealer and lives on or is frequenting the Reserve for prohibited reasons; or
- (b) reasonable grounds to believe the person has violated Section 4.2 the TCN Intoxicant Bylaw, 2017-01; or
- (c) the person has been charged with contravening Section 4.2 of the TCN Intoxicant Bylaw, 2017-01; or
- (d) reasonable grounds to believe that the person has committed an indictable offence contrary to the *Criminal Code* or other federal enactment, which offense has harmed or endangered the life or safety of one or more persons who live on the Reserve; or
- (e) the person has been charged with an indictable offence contrary to the *Criminal Code* or other federal enactment, which offense has endangered the life or safety of one or more persons but the charge(s) have not yet been brought to trial or otherwise resolved; or
- (f) the person has been convicted of an indictable offence under the *Criminal Code* or other federal enactment for which a

pardon or record suspension has not been granted, which offense has endangered the life or safety of one or more persons; or

- (g) any other reasonable grounds to believe that the presence of the person endangers the life or safety of another person on the Reserve.

PART 6. ACTION OF JUSTICE COMMITTEE AFTER RECEIVING A COMPLAINT

6.1 At any time after receiving a complaint pursuant to section 5.1, the Justice Committee may

- (a) Instruct Enforcement Officer(s) to investigate the complaint;
- (b) Ask for more information;
- (c) Send a warning letter to the person who is the subject of the complaint or if the subject is under eighteen (18) years of age, to the subject's parents or guardians and any applicable child welfare agency;
- (d) Attempt to resolve the petition by agreement or informal action;
- (e) Recommend that Council issue a Removal Order under PART 7;
- (f) Decide not to act further on the complaint;
- (g) Take any other action that the Justice Committee considers appropriate.

6.2 The decision to do any of the things referred to in subsection 6.1 or to stop doing any of them at any time is within the discretion of the Justice Committee.

6.3 The Justice Committee shall notify Council or the main signatory of the complaint, and provide reasons, if they decide not to act on the complaint or not continue acting.

PART 7. REMOVAL ORDER

- 7.1 Council must not issue a Removal Order under this Part unless it is reasonably satisfied that the presence of the person poses a real threat to the health, safety or wellbeing of any person residing on TCN Reserves.
- 7.2 A Removal Order under section 6.1(e) shall not be considered under this Bylaw if, at the time of the petition, the person subject to the petition, is under the age of twelve (12) years.
- 7.3 Council may issue a Removal Order if it is satisfied that
- (a) Any of the grounds in section 5.1 are occurring; and
 - (b) Persons on the Reserve are being adversely affected by the activities.
- 7.4 When deciding whether to issue a Removal Order under this Part, Council shall meet in camera to consider the option and shall determine if, in the opinion of the Council, the requirements of PART 5 are present.
- 7.5 All decisions to issue a Removal Order will be made by Council Resolution.

If the person subject to the Removal Order is a Member

- 7.6 If the person subject to the Removal Order is a Member, Council may:
- (a) Issue a Removal Order for a defined period; or
 - (b) Issue a Removal Order pending the final resolution of the charges; or
 - (c) Decide not to issue a Removal Order.

If the person subject to the Removal Order is a Non-Member

- 7.7 If the person subject to the Removal Order is a non-Member, Council may:
- (a) Issue a permanent Removal Order;
 - (b) Issue a Removal Order for a defined period;

- (c) Issue a Removal Order pending the final resolution of the charges; or
- (d) Decide not to issue a Removal Order.

7.8 A Removal Order must contain:

- (a) The name of the person subject to the Removal Order;
- (b) a provision describing the activities in respect of which the order is made;
- (c) The time and date upon which the Removal Order is effective;
- (d) a provision requiring the person to vacate the Reserve on or before a date specified in the Removal Order;
- (e) if a person is party to a tenancy agreement or lease, a provision terminating the tenancy agreement or lease of any tenant of the property on the date specified under subsection (c);
- (f) a provision instructing all persons from causing, contributing to, permitting, or acquiescing in the activities, beginning on the day after the person is served with the order and continuing until the order ceases to be in effect;
- (g) a provision fixing the date on which the order ceases to be in effect, if applicable.

7.9 A decision of Council under this Part shall be sent to the RCMP, the Justice Committee, the main signatory of the complaint, the person subject to the Removal Order, and if the subject is less than eighteen (18) years of age, his or her parents or guardians, and the appropriate child welfare agency, and shall be posted publicly in the TCN Administration Building.

7.10 All decisions made by Council under this Part can be appealed, as set out in this Bylaw.

PART 8. EMERGENCY REMOVAL ORDER

8.1 If Council, acting reasonably and in good faith, believes that a person on TCN Reserve poses an imminent serious physical or

psychological threat to a Member or Non-Member, Council may, notwithstanding PART 5, decide that this serious and imminent threat constitutes grounds for emergency removal under PART 7 of this Bylaw.

- 8.2 A decision of Council under this Part will follow the provisions of PART 7 and shall only be made in the most extreme situations.
- 8.3 A decision of Council under this Part shall be sent to the RCMP, the Justice Committee, the person subject to the Removal Order, and if the person subject to the Removal Order is less than eighteen (18) years of age, his or her parents or guardians, and the appropriate child welfare agency, and shall be posted publicly in the TCN Administration Building.
- 8.4 All decisions to issue a Removal Order under this Part will be made by Council Resolution.
- 8.5 All decisions made by Council under this Part can be appealed, as set out in this Bylaw.

PART 9. APPEALING A REMOVAL ORDER

- 9.1 A person subject to the Removal Order under PART 7 or PART 8 may appeal the decision to issue the Removal Order.

Time for applying

- 9.2 The person subject to the Removal Order must make an application within 30 days after he or she is served with the Removal Order.
- 9.3 Council may extend the time for making the application if it is satisfied that the extension is in the interests of justice.
- 9.4 If a Removal Order appeal is accepted, an Arbitrator will be appointed to hold the hearing as soon as is reasonably practicable.
- 9.5 At least seven (7) days prior to the hearing, the Arbitrator shall:
 - (a) Give written notice by way of personal service to the person subject to the Removal Order informing him or her of the date, time and place of the hearing and that he or she has a right to present submissions to the Arbitrator in writing, by telephone or in person; and

- (b) Give written notice by way of personal service to Council or the main signatory of the original complaint, of the date, time and place of the hearing, informing them that they have a right to appear at to present submissions in writing or in person; and
 - (c) Post a copy of the notice of the hearing in a public area in the TCN Administration Building.
- 9.6 If the person subject to the Removal Order is incarcerated, notice pursuant to section 9.5(a) will be sufficient if it is sent to his or her attention at the correctional facility.
- 9.7 If the person subject to the Removal Order is less than eighteen (18) years of age, notice pursuant to section 9.5(a) shall also be given to his or her parents or guardians and any applicable child welfare agency.
- 9.8 At the hearing, the Arbitrator shall:
 - (a) Provide all party's to the Removal Order an opportunity to present evidence and to make oral and written submissions, or both, on the petition; and
 - (b) Provide any other TCN Member present at the hearing with an opportunity to be heard as far as time and circumstances reasonably permit.
- 9.9 The Arbitrator can cancel the Removal Order if the Arbitrator is satisfied that
 - (a) neither the person subject to the Removal Order nor any member of his or her household caused or contributed to any of the activities in respect of which the Removal Order was made;
 - (b) no person who caused or contributed to any of the activities is still present on Reserve or occupying the property;
 - (c) the circumstances described in sub-section 5.2(a), 5.2(b), 5.2(d), 5.2(g) or 8.1 no longer exist and that the safety of the community or any Member would not be compromised by cancelling the Removal Order.

9.10 A decision of the Arbitrator pursuant to this Part shall be final and not subject to appeal.

PART 10. EFFECTIVE TIME OF REMOVAL ORDER

10.1 Where Council has issued a Removal Order pending the resolution of the charges pursuant to sub-section 7.6(b) or 7.7(c), such Removal Order shall expire where the final resolution of the charges after trial and any resulting appeals is an acquittal or stay of proceedings, on the date the charges are so resolved.

When the Removal Order comes into effect

10.2 Notwithstanding section 22.2, where a Removal Order has been issued under this Bylaw, the person subject to the Removal Order must leave the Reserve by the time and date upon which the Removal Order is effective, pursuant to section 7.8(c), which shall not be less than 24 hours.

Time order in effect

10.3 Once a Removal Order comes into effect, it is in force until it expires according to its terms or is cancelled pursuant to section 9.9 or PART 13.

Personal belongings

10.4 The person subject to the Removal Order must remove their personal belongings from the property by the time and date upon which the Removal Order is effective.

10.5 If an individual believes they have personal belongings that remain on the property where they were residing after the Removal Order takes effect, the individual may contact the TCN Executive Director and:

- (a) provide a detailed list of personal belongings and arrange to have the personal belongings delivered to an agreed-upon location off Reserve; or
- (b) at the sole discretion of the TCN Executive Director, arrange for re-entry onto Reserve in the presence of an Enforcement Officer for a specified period of time to gather and remove the

personal belongings.

PART 11. VISITS

- 11.1 A person subject to the Removal Order may apply to the Justice Committee for permission to visit the Reserve for the purposes of funerals, ceremonies, and other special occasions.
- 11.2 A person making an application under section 11.1 shall include in his or her application the dates upon which the person proposes to visit the Reserve, the purpose of the visit, where on the Reserve the person will be present, and any additional information or submissions the person wishes the Justice Committee to consider.
- 11.3 The Justice Committee shall use its best efforts to consider and determine applications under this Part as soon as possible, and in advance of the proposed visitation dates.
- 11.4 The Justice Committee may consider and determine applications pursuant to sub-section 11.1 on the basis of the written application, and is not required to hold a hearing into the matter.
- 11.5 The Justice Committee will notify Council and main signatory of the original complaint if an application to visit the Reserve has been approved.
- 11.6 A decision by the Justice Committee under this Part is final and not subject to appeal.

PART 12. PERSONS NOT AFFECTED

- 12.1 No Removal Order shall impact upon the ability of the spouse or children of the person subject to the Removal Order to continue to reside on Reserve or visit the Reserve.

PART 13. CANCELLATION OF REMOVAL ORDER

When a Removal Order must be cancelled

- 13.1 After the 30 day appeal period has passed, Council must cancel a Removal Order if it is satisfied that the circumstances described in sub-section 5.2(a), 5.2(b), 5.2(d), or 5.2(g) or 8.1 no longer exist and that the safety of the community or any Member would not be

compromised by cancelling the Removal Order.

Application for cancellation of Removal Order

13.2 A person subject to the Removal Order may apply to Council for cancellation of the Removal Order if they can provide reasonable evidence that the circumstances for which the Removal Order was issued has changed.

Council must consider application within a reasonable time frame

13.3 As soon as reasonably practicable after receiving an application under section 13.2, Council must:

- (a) Consider the application at a duly convened Council meeting; and
- (b) By Resolution, either:
 - (i) approve the application for cancellation; or
 - (ii) reject the application for cancellation, with reasons.

13.4A person subject to the Removal Order whose application for cancellation has been rejected by Council is prohibited from making a further application for cancellation of the Removal Order for six (6) months after the reasons for rejection have been provided.

Meeting must be in camera

13.5 A Council meeting held under section 13.3(a) must be held *in camera*.

Cancellations must be made by Resolution

13.6 A cancellation of a Removal Order under section 13.1 or 13.3 must be made by Resolution.

PART 14. JUSTICE COMMITTEE

Terms of reference

14.1 Council may prepare a written mandate and terms of reference for the Justice Committee that are consistent with this Bylaw.

Rules and procedures

14.2 The Justice Committee may establish rules and procedures under this Bylaw.

14.3 For the purpose of hearing and determining complaints under this Bylaw, a quorum of the Justice Committee is required.

PART 15. NO LIABILITY FOR DECISIONS MADE IN GOOD FAITH

15.1 TCN, including Council, the Justice Committee, and Arbitrator or any person acting on authority of, or under the direction of Council, is not liable for any damages arising from any action taken pursuant to this Bylaw, including issuing a Removal Order, provided that the action or order was made in good faith.

PART 16. ENFORCEMENT

16.1 This Bylaw is enforceable by any Enforcement Officer.

16.2 An Enforcement Officer may order any person who is, or in the absence of evidence to the contrary, appears to be, frequenting or residing on the Reserve contrary to this Bylaw, and who is not entitled to be or reside on the Reserve, to leave the Reserve.

16.3 Any person who fails or refuses to comply with an order under subsection 16.2 commits an offence and is subject to the applicable penalties.

PART 17. JUDICIAL REVIEW

17.1 On any application for judicial review in respect of a Resolution made under this Bylaw, the Court shall take notice of the specialized knowledge and expertise of the members of the Justice Committee and Council with respect to the history, culture and values of the TCN, as well as the best interests of TCN.

PART 18. NOTICE

18.1 Any notice which is required to be provided to TCN under this Bylaw will be in writing and will be considered to have been given if delivered by hand or mailed by prepaid registered post in Canada, to the address or facsimile transmission number set out below:

By mail: Tataskweyak Cree Nation,
PO BOX 250
SPLIT LAKE, MB, R0B 1P0

By facsimile: (204) 342-2270

PART 19. PENALTIES

19.1 Any person who fails or refuses to comply with this Bylaw, or who assists a person who is contravening this Bylaw, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.

PART 20. SEVERALABILITY

20.1 Should a Court determine that a provision of this Bylaw is invalid for any reason, the provision shall be severed from the Bylaw and the validity of the rest of the Bylaw shall not be affected.

PART 21. CONFLICT OF TERMS

21.1 If there is any inconsistency between this Bylaw and any other agreement, law, bylaw or policy, the terms of this Bylaw will prevail.

PART 22. CALCULATION OF TIME

22.1 Where there is a reference to a number of days or a number of days in between two events within this Bylaw, in calculating the number of days, the days on which the events happen are excluded and Saturdays and Sundays are included.

22.2 Where the time limited for the doing of an act under this Bylaw expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.

22.3 If the time for doing an act under this Bylaw is with respect to an act required in a business office, and falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open during regular business hours.

PART 23. AMENDMENTS

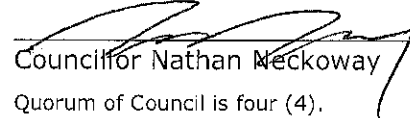
23.1 This Bylaw may only be amended by a quorum of Council at a duly convened Council meeting.


PART 24. DATE BYLAW COMES INTO FORCE

24.1 This Bylaw shall come into force when a copy of it is first published on TCN's Internet site, in the First Nations Gazette or in a newspaper that has general circulation on the Reserve, whichever the Council considers appropriate in the circumstances pursuant to section 86 of the *Indian Act* and the Council hereby confirms that any of these forms of publication are appropriate in the circumstance.

BE IT KNOWN that this Bylaw entitled the *Tataskweyak Cree Nation Community Protection Bylaw, 2018-01* is hereby amended by a quorum of Council at a duly convened Council of the Tataskweyak Cree Nation held on February 15, 2018.


Councillor Sarah Cole


Councillor Nathan Meckoway
Quorum of Council is four (4).


Chief Doreen Spence


Councillor Gary Garson


Councillor Leroy Spence


Councillor Robert Garson


Councillor Robert Spence

Schedule "A"

Reserves/Settlements/Villages

No.	Name	Location	Hectares
06461	<u>SPLIT</u> <u>171</u>	<u>LAKE</u> 104 KN NE/NE OF/DE THOMPSON	15928.40
06462	<u>SPLIT</u> <u>171A</u>	<u>LAKETWP</u> 83, RGES 8,9&10, TWP 84 RGES 8&9, EPM	2990.70
06463	<u>SPLIT</u> <u>171B</u>	<u>LAKE</u> TWP 82, RGE 9, EPM	135.60