

Legal Overview of the Wahta Mohawks Trespass By-Law

NOTICE: Please note that the following is not the Wahta Mohawks Trespass By-Law. The following Q & A below is an explanation of the Wahta Mohawks By-Law to help answer commonly asked questions.

Origins of Trespass on Indian Lands?

The origins of the law of trespass on Indian lands began with the Royal Proclamation in 1763. The Proclamation forbids the taking or occupying of Indian lands without the permission of the Crown. Since the Proclamation, the *Indian Act* confirmed that both criminal and civil remedies are available for trespass on Indian lands.

What is a Trespass By-Law?

The simple definition of trespass is to be on land without permission.

A Trespass By-Law confirms Wahta Mohawks authority over its own lands. Any proposed Trespass By-Law does not alter the state of the law of trespass that has existed on Indian lands but solidifies Wahta Mohawks control of the land and offers possible remedies for improper use or occupation of that land.

Why do we need a Trespass By-Law

Section 81 *Indian Act* allows a Band to make By-Laws to control reserve land in accordance with the *Indian Act*. Section 81 is used to confirm Band Council Resolutions (BCR) into law and enforce that law. Without the *Indian Act*, BCRs do not have binding authority and are not enforceable policy.

Will this effect Matrimonial Real Property Rights on Reserve?

The proposed Trespass By-Law does **not** interfere with spouses' rights under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

What are the possible applications of a Trespass By-Law?

Section 81 of the *Indian Act* allows First Nations to pass By-Laws that assist in the management of lands. Trespass By-Laws are often implemented to control lands and conduct on reserve. A Trespass By-Law can be used for the following purposes:

1. Restricting hunting and fishing of non-members;
2. Restricting solicitation by non-members;
3. Restricting Loitering;
4. Restricts camping by non-members;
5. Restricts all-terrain vehicle use on non-designated roads;
6. Restricts dumping in non-designated locations;

7. Restricts disorderly conduct on reserve;
8. Enforcement of Wahta Mohawk By-Laws.

How does this change my Certificate of Possession?

The Trespass By-Law strengthens the Certificate of Possession for members. A member who has a Certificate of Possession can use the Trespass By-Law to remove persons attending on that land without permission. The member with a Certificate of Possession still has all other available remedies under the law.

Will the Trespass By-Law interfere with the Wahta Mohawks Wildlife By-Laws (1, 2.77 and 3.77)?

The Trespass By-Law strengthens the enforcement provisions of the Wildlife By-Laws but does not interfere with the content of Wildlife By-Laws.

Will the Trespass By-Law interfere with the Wahta Mohawks Citizenship Code?

The Trespass By-Law strengthens the enforcement provisions of the Citizenship Code but does not interfere with the content of the Citizenship Code.

How does this affect the rights of leaseholders?

People who lease property on reserve are protected by their lease. Once the lease has expired, the former leaseholder may be subject to the Trespass By-Law.

How does this affect our right of protest?

The Canadian Charter of Rights and Freedoms protect the right of protest and the Trespass By-Law does not take away that right.

The Trespass By-Law ensures that such rights of protest and assembly will not interfere with the use and enjoyment of reserve land by the entire band.

Occupiers and Council

The terms Occupier and Council are used in the Trespass By-Law. An Occupier is a person or Council (on behalf of the First Nation) when they are lawfully occupying a specific location on Reserve.

The term Reserve is used when describing the Wahta Mohawk Territory.

If I am found to be trespassing am I automatically removed from the Wahta Mohawk Territory?

No. The Trespass By-Law Authorizes two options:

(1) Removal from the premises - If someone is trespassing on a premise then they can be found guilty of the offence of trespassing and removed from the premises

(2) From Wahta Mohawk Territory - If someone (generally a non-member) is carrying out a prohibited purpose, then they can be found guilty of the offence of trespassing and removed from the reserve.

Does the Trespass By-Law affect my other rights to remove a trespasser?

As a member, Certificate of Possession holder, or Occupier you have numerous options in law to enforce your rights. You are not limited by the Trespass By-Law and are not required to use the Trespass By-Law.

For Example, you can still contact the police to have someone removed from your property.

Applications and Appeals

Chief and Council want to ensure fairness under the proposed Trespass By-Law. The Trespass By-Law includes rules that govern due process including an application process and an appeals process. Council must provide decisions regarding any appeal; in writing and anyone alleged to be a trespasser has the right to be represented by legal counsel.

The application process involves two documents. First is the application must be completed that a person would use to initiate the process. Then, by majority vote at a duly convened Council meeting, a notice entitled “Notice of Trespass and Order to Vacate” is issued.

Amendments

Chief and Council want to ensure due process and that community consultation is followed for all amendments. Minor and substantive amendment procedures are in place under Part 5 – General Provisions.