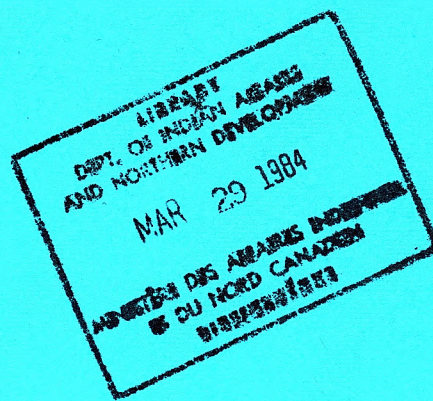


Canada. Dept. of Indian Affairs and
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Requirements Division.

By-laws : their preparation and
processing

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By-laws : their preparation
and processing

DIAND, 1981

BY-LAWS
Their Preparation and Processing

Following a number of requests of Indian Band Councils, Band Staff and Departmental Staff, the Department of Indian Affairs and Northern Development prepared a booklet in 1972 on the drafting and processing of by-laws under the Indian Act. In the ensuing years it was used extensively across the country.

This is a revised version of that booklet. It has been re-written because of an apparent growing interest in the subject by Indian Band Councils, personnel changes in the Band and Departmental administrations, and to update or clarify certain policies or points as a result of experience over the years. It is a guide for your assistance and should be used only in that light and primarily for reference or training purposes.

Statutory Requirements Division,
Reserves and Trusts,
Department of Indian Affairs
and Northern Development,
Ottawa.
March, 1981.

BY LAWS -
Their Preparation and Processing

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BY-LAWS
Their Preparation and Processing

Section 1 - Definitions

- 1.1 "Band Council Resolution" (form) - There is a Departmental form commonly called a BCR (Band Council Resolution) which should not be confused with the actual resolution of a Council as defined under paragraph 1.4. The expression of Council's opinion, as indicated in a resolution and recorded in the minutes of the Council meeting, is in fact the resolution of Council. The form is a means of administration, and perhaps an additional method of recording the Council's decision which is easily filed with the Department or others for any necessary action or information. In itself, it does not make the resolution more binding, more legal, or more effective. Some Band Councils have given up its use except for money matters; others continue to use it for all purposes. A record of Council's decisions as made at a properly held meeting must be maintained.
- 1.2 "By-Law" - A law made by the governing body of an organization for the regulation of its own local or internal affairs or its dealing with others, or for the government of its members. The by-laws of a municipal corporation are true laws; those of a corporation are agreements of the members.
- a law that a Council has the right to enact, under Statutory authority, generally in a certain form or under certain conditions or restrictions for specific local purposes.
- a law of some particular district made by the inhabitants thereof or their authorized representatives... (Wilson on Municipal Corporations).
- 1.3 "Motion" - A formal proposal made in a deliberative assembly looking to or for an action.
- 1.4 "Resolution" - A formal expression of the opinion or will of an assembly adopted by vote.

In effect what is put before the Council for consideration is a motion; when, and if, the Council approves or adopts the motion it becomes a formal expression of their opinion and therefore a

resolution. However, these two terms are often used interchangeably and the difference between them is not as important to recognize as the difference between them and a by-law.

(Note - for a more general discussion on minutes, resolutions, etc. see the paper on "Council Meetings".)

Section II - General

- 2.1 The powers of a Band Council are exercised by resolution or by-law. The Indian Act stipulates where a by-law is required or may be enacted and the subjects on which a by-law may be made. In other instances a resolution would be appropriate. For a short summary of the principal by-law subjects as given in sections 81 and 83 of the Act, see Appendix B.
- 2.2 Generally a resolution is required when the subject is one of administration, particularly internal administration, and is a declaration of a council's opinion or intention.
- 2.3 A by-law is a Law applicable to that Reserve or to members of that Band and generally sets down rules which will continue to apply to various situations as they arise. It is just as much a law as those passed by the Federal or Provincial governments and has the force of an ordinance in the area over which the Council has control (which is normally the reserve or reserves). All persons to whom it applies, whether they are residents or not and whether they approve of it or not, are bound by that law. It is not only binding on the people, it is binding on the Council and each member of the Council individually. The Council cannot ignore the requirements of its own by-law.
- 2.4 A council is ultimately responsible for the drafting of a by-law, its contents, its passing, its amendments (if any), its enforcement, and if necessary its defence before the Courts (including the costs unless other arrangements in respect to the costs have been established prior to initiating the legal action).

Section III - Drafting

- 3.1 A by-law must be based on a statutory authority and must stay within the terms of such authority, either specific or implied. It must be passed in good faith

and cannot be based on the whim of any official who may happen to be in office, whether elected or appointed.

- 3.2 There may be some related reference or connection in other statutes or regulations. Such statutes or regulations, therefore, must also be considered and taken into account when drafting a by-law. For instance - Regulations have been made by the Governor-in-Council under section 73(1) (e) of the Indian Act respecting places of amusement. A council by-law, passed under section 81 (m) cannot be inconsistent with these Regulations. It is also likely that a police force would be reluctant to enforce a by-law passed under section 81 (c) or (d) of the Act to cover situations already provided for in the Criminal Code of Canada. Appropriate provincial laws should also be checked as they may be applicable on the Reserve by section 88 of the Indian Act, making a by-law redundant.
- 3.3 The matter of existing applicable laws is important as the Council by passing a by-law on a particular subject might mislead its band members. For example, an individual may comply with a by-law believing that he is acting within the law while his actions, in fact, may amount to committing a criminal offence under some other law such as the Criminal Code.
- 3.4 Any statutory conditions for passing a by-law must be met. For instance - section 82 (1) of the Indian Act indicates that a copy of a by-law passed under authority of section 81 shall be mailed to the Minister within four days after it is made. It is not necessary to send the copy to the Minister personally. Mailing it to a Departmental agency, district or regional office, or to headquarters, (as applicable in each region), probably would meet this requirement. It is possible that if this condition is not met the by-law could be adjudged in a court as having no force or effect. It is also likely that the 40 days during which the Minister could disallow a by-law (see Section 3.5.1 below) would start on the actual date of mailing, regardless of whether or not the 4 day time limit was met. (See also Section XII - Statutory Instruments Act. The effective dates of all by-laws are affected by this Act.)
- 3.5.1 The Indian Act, (section 82, ss (2)) also indicates that a by-law made under section 81 shall come into force, 40 days after the copy is mailed to the Minister, unless it is disallowed or declared to be in force by the Minister prior to that time. It is essential therefore that the by-law state its date of

passing. In addition a record should be kept of the actual date the by-law was mailed to the Minister (for one example of how this may be done see the notation at the end of Appendix C(1) attached). If an early approval (i.e. prior to the expiration of the 40 days) is obtained, or if the by-law is disallowed, that also should be recorded.

- 3.5.2 By-laws passed under section 83 (which require the approval of the Minister to be effective) should also record the date of that approval, together with some cross-reference to the Ministerial correspondence (for one example of this see the notation on the last page of Appendix C (2)).
- 3.6 It should be emphasized, that section 82 permits the Minister to disallow a by-law in force sooner than 40 days. It does not require the Minister to actually approve all by-laws passed under section 81. This differs from by-laws passed under section 83 of the Act which do require the approval of the Minister before they become effective.
- 3.7 If the by-law is of the type which forbids or controls certain acts, or requires certain things to be done, there must be a penalty for failure to do so. Such a by-law would not be effective without a means of enforcement. Section 81 ss (r) of the Indian Act authorizes the Council to pass a by-law respecting the type of penalty. This may perhaps be done as a separate by-law which would then be effective for all by-laws requiring a penalty; but it is strongly recommended that a "penalty clause" be included in each individual by-law where a penalty is necessary. Subsection 1(e) of section 83 authorizes the permissible penalty for by-laws passed under that section. The penalty imposed by a by-law cannot be greater or of a different nature from that permitted under the Indian Act. For instance a penalty which would permit someone to seize the rifle of a hunter acting contrary to a by-law passed under section 81, would not be effective since this is not one of the permitted penalties indicated in ss(r).
- 3.8 A by-law should contain reference only to those subjects or matters on which the Council believes it is necessary to rule upon or control and is within its powers. It must include all items essential for it's complete operation and be related directly to the needs of the residents of the Reserve.
- 3.9 The Indian Act does not require a by-law to be drafted or prepared by any particular person. This is a matter for the Council to decide. In making

this decision it should be remembered that the Council is ultimately responsible for its drafting. The enactment of a by-law cannot be delegated to another body. If the validity or interpretation of the by-law is questioned, the ultimate test takes place in a court. It is advisable for by-laws of any significance or import to be drawn up by, or on the advice of, the Band solicitor, whose fees are the responsibility of the Council unless other prior arrangements are made. Assistance may also be obtained from samples prepared by the Department or the by-laws of municipalities or other Indian Band Councils. However, such copies should be used only as a guide.

- 3.10 A by-law, insofar as it is a by-law, is valid and binding. However its legal effectiveness cannot be guaranteed regardless of whether it is prepared by the Council, its staff, its solicitor, a municipality, or this Department. Like all laws it is subject to interpretation by a court if challenged. The approval of the Minister, where required by the Indian Act, does not change this situation.
- 3.11 If the by-law is to be enforced by the R.C.M. Police or other enforcement agency, the by-law should be checked with them before enactment by the Council. This will ensure that it meets their requirements and that it is so drafted that they believe they can enforce its provisions. It is also a means of establishing a desirable relationship with the law enforcement body.
- 3.12 In drafting by-laws it is best to be consistent in form and appearance, as this makes its administration and reference from year to year easier. If there is more than one page to the by-law the 2nd, 3rd, 4th, 5th, etc., pages should be related to the original page, and to each other, so there can be no doubt as to which by-law reference is being made in each subsequent page, and also to ensure that no pages are missing. (See the attached examples, Appendix C, and the numbering of this paper).
- 3.13 If the Department, upon receipt of the by-law makes suggestions for its improvement, with which changes the Council agrees, the Council should enact either a new by-law repealing the former, or include the change in an amending by-law. In either case the new or amending by-law would have a new number and date of passing. Unless the Departmental letter contains a specific Ministerial order disallowing the by-law, such a letter should be considered only as

suggestions and the Council is free to adopt them or not as they so desire. In these cases the original by-law, insofar as it is a by-law, would come into force in the normal way as would the new or amending by-law.

- 3.14.1 Band Councils have powers which are similar in many respects to the powers of smaller municipalities. Experience in the municipal by-law field indicates that the courts will invalidate those parts of a by-law of any municipality for which there is not a clear authority in some statute of the province which created the municipality.
- 3.14.2 When the courts find that important parts of a by-law are beyond a municipality's powers, they will not only invalidate those parts found invalid but often will invalidate all of the by-law unless it is satisfied that the municipal council would still have enacted the remainder of the by-law had it known that certain parts were invalid. This is generally referred to as invalidating the entire by-law unless the valid parts can be severed from the invalid parts.
- 3.14.3 Although there are no court decisions in respect to Band Council by-laws on this subject, it is likely that the courts would approach them in the same manner. If this is so, then it is essential that each part of the by-law be clearly authorized by the Indian Act.
- 3.14.4 By-laws may regulate many aspects of the lives of many people, and the people being regulated should not be restricted unless there is a clear legal authority for doing so. This is particularly true when considering fines or imprisonment for the violation of a band council by-law. The courts have always insisted, not only that the evidence put before them clearly proves that an offence has been committed by the accused, but also that the law says clearly that the offence in question really does exist.
- 3.15 At this time let us summarize some of the points which should be remembered in considering or drafting a by-law:
 - (a) A by-law is equally binding on the council and its individual members;
 - (b) A by-law must be passed by a duly convened meeting of the council with the consent of a majority of the Councillors present;

- (c) It must be within the express powers given to the council by the Indian Act;
- (d) It must not be inconsistent with the Indian Act or with any Regulations made under it;
- (e) It must be made in the best interests of the inhabitants and not to serve any particular or private interests;
- (f) It must not discriminate;
- (g) It must not create a monopoly by itself;
- (h) It must be reasonable;
- (i) All conditions necessary to its enactment must be observed;
- (j) A schedule may be attached to a by-law and be made part of it;
- (k) It must have certainty of meaning. The courts generally will refuse to enforce a by-law in which the provisions are not clearly and definitely expressed;
- (l) It is generally a good policy to follow the wording or language of the authorizing statute when possible; not only to ensure certainty of meaning but also to bring the by-law within the powers of council;
- (m) The inclusion of a penalty which is not within the permitted penalty is not acceptable;
- (n) It must indicate its date of passing;
- (o) It should be related to the needs of the community;
- (p) It may be prepared (drafted) by any body or person, but must be passed by the Council;
- (q) The Council is ultimately responsible for all by-laws it enacts;
- (r) Its legal effectiveness cannot be guaranteed. Like all laws it is subject to interpretation by a court if challenged. The approval of the Minister, where required, does not change this situation.

Section IV - Form

- 4.1 In respect to the actual form of a by-law, let us remember, firstly: there is no regulation or law, insofar as the Indian Affairs Program or the Act is concerned, that states that a by-law must be prepared in any particular manner, shape or form or by any particular person; and secondly: that the basic criterion is whether it is a good law or a bad law. Since there are no established rules the following comments are suggestions only. They are based, for the most part, on practices followed in many communities.
- 4.2 In order to help avoid confusion as to whether or not the document is a by-law or a resolution, it is recommended that the by-law itself not be placed on a Band Council Resolution Form. Only the resolution adopting the by-law should be put on such a form where in fact these forms are used.
- 4.3 The usual by-law has three major parts: the title and numbering, the preamble (including the enacting clause), and the enacting sections.
- 4.3.1 The Title and number provides a brief reference by which the by-law is known. It should include a short description of the substance of the by-law so as to identify it. It is not sufficient to refer to "A by-law to amend by law 14-1952". The purpose of giving it a title is defeated in this case because it requires reference to some other by-law in order to know what it is all about. On the other hand it should not be so lengthy and detailed that all of the following enactments are included. It is only necessary to have a title sufficient to identify the purpose of the by-law.
- 4.3.2 The Preamble, sometimes referred to as the Recitals, outlines the basic reasons for enacting the by-law and generally includes the authority on which the by-law is based. For by-laws enacted under section 83, it should also include a reference to the Order in Council naming the Band as an advanced band. It should only be used within limits to explain the substance. Once again it is possible to include too much.
- 4.3.3 The preamble should be followed by an Enacting Clause. The use and wording of this clause varies

considerably between councils but is generally worded somewhat as follows:

"Now therefore the Council of the
.....Band of Indians hereby enacts as follows"

It has been suggested by some solicitors that in order to show clearly that what is following is a by-law, and is in fact a by-law of the council, the enacting clause should read:

"Now therefore the Council of the
.....Band of Indians hereby enacts as a by-law thereof as follows"

The reasoning used is that the Act states "The Council of a band may make by-laws...". This type of wording clearly indicates that (a) the Council of the band is making the by-law; and (b) that which follows is a by-law.

- 4.3.4 It is doubtful that the lack of any of the above, would affect the legality of the by-law. However some courts when considering a by-law will take into account the wording of the preamble in order to find out the intent of the Council, and therefore perhaps, clarify the meaning of the enactment clauses. Such a form also tends to give the by-law a better appearance - in effect it looks more like a law; makes it read more smoothly; and sets it apart from the normal minutes or other records of council.
- 4.3.5 The Enactments or enacting sections are in fact the restrictions which are to be made law. They are the heart of the by-law. They should be written as clearly as possible so that they may not be open to many interpretations. They should be concise and positive in wording. If a certain lengthy combination of words is to be used a number of times throughout the by-law, it is suggested that the combination be indicated and defined in the first enactment. Any word requiring a specific meaning within the by-law should also be defined. For clarity, each section should refer to only one distinct part of the subject and if necessary related parts should be shown as sub-sections. A long rambling section is often difficult to understand.

The by-law is consented to by the following members of the Council:

_____	(Witness)
(Chief)	
_____	(Witness)
(Councillor)	
_____	(Witness)
(Councillor)	
_____	(Witness)
(Councillor)	
_____	(Witness)
(Councillor)	
_____	(Witness)
(Councillor)	

being the majority (or more) of those members of the Council of the _____ (name) band of Indians present at the aforesaid meeting of the Council.

A quorum of the Band Council is _____ members."

Section V - Processing

- 5.1 It is important to take extreme care in bringing a by-law into effect. Nothing will make a mockery of government faster than a series of laws which are not enforced, not founded on sound principles, not in the best interests of the residents of the community, or not having the support of the people.
- 5.2 The processing of by-laws by the Council is governed partly by the Indian Band Council Procedure Regulations for Bands under section 74 of the Act and partly by the procedural by-law of the Council, if it has one, and if it doesn't by the normal custom of the Council. There is no procedure established by

maintained for future reference purposes. Of the more common systems there are the following:

- (i) a straight numerical system commencing at By-Law No. 1. This is the simplest system but gives no rapid indication as to the age, type or other reference to the by-law.
- (ii) another reasonably simple system which relates the by-law to its passing date is a consecutive numerical system in which the year of enactment becomes part of the number (such as 1967.21, 21.1967 or 21.67). Under this system some organizations commence renumbering at 1 at the beginning of each year. It is recommended, however, if this system is adopted, that this not be done and the continuity of the basic numbering be retained.
- (iii) probably the most complex, is a system of codifying. This in itself may be done in a number of ways but generally breaks down into dividing all possible by-laws into a series of categories and giving each category a prefix letter indicating the category, a consecutive number, a method of indicating any amendments, and possibly the year. This system would result in by-law numbers somewhat like C-15 (c)-201.67. It is extremely doubtful that such a system is required for the purposes of the majority of Indian Bands.

- 6.2 The system which is adopted is of course a decision to be made by the Band Council. Whatever it may be it should be designed to be flexible, easy to follow and maintain, easy to index, and such as to indicate continuity in numbering.

Section VII - Indexing and Filing

- 7.1 Section 82 of the Indian Act states in part "...A copy of every by-law... be forwarded by mail...". Note the word "copy". It does not require the original to be forwarded. The signed originals should be retained in the Band Office - properly indexed and safely filed for easy reference. (See also section XII re Statutory Instruments Act).
- 7.2 It is evident of course that the original copy of all by-laws must be filed and maintained in such a way as to prevent loss or destruction. Probably this can be

accomplished best by having at least two signed original duplicates. One set of the originals would be kept in a book, in a safe or other fireproof area, and bound at regular intervals. Where the Band Office is not equipped for this purpose, perhaps one set of the original duplicates could be kept in the District or Agency Office. These would in fact be those retained for safekeeping. The second set of originals could be bound in a loose leaf binder and would be used for day to day reference. This set should also be kept in a reasonably safe place and separate from the first set, as a type of insurance.

- 7.3 Depending upon the general filing system in effect in the office a number of extra copies may be found helpful to the administration and the Council. These copies could be kept in the appropriate file for easy reference; or supplied to members of the staff or Council for their use; or where necessary, with the law enforcement agency.
- 7.4 A matter often overlooked in a smaller office is the need for maintaining an accurate and up-to-date index of all by-laws. At the beginning it is considered to be useless and time consuming for surely a person can remember five or six by-laws. However, as time passes, many by-laws may be enacted and one cannot remember all of them. In addition, the existing Band clerk or administrator is not likely to be there during the entire life of the Band and any new employee may have difficulty. It is, therefore, essential that a complete index be maintained, cross-indexed, as necessary, under several different headings. It should be all inclusive and not just on a year to year basis. The adopted system should be of course, some type of expandable system where additions can be made easily.

Section VIII - Review and Amending

- 8.1 There are some people who consider that having passed a by-law that the matter is dead. This is incorrect. Firstly it must be enforced, but in addition, all by-laws should be reviewed from time to time to make sure they are still doing the job for which they were drafted. Times change, conditions change, attitudes change, and that which doesn't change with them in fact loses ground. There is nothing wrong in amending a by-law - as a matter of fact it may be very right. To amend for the sake of amendment is wrong; but to amend to up-date a by-law, to correct a fault or an omission, and so on is not only right but necessary.

- 8.2 Amending or repealing by-laws are drafted and processed in the same way as the original, but must of course include an enactment to the effect that such or such a section of a preceding by-law is amended or repealed. A by-law can only be amended by a by-law - never by a resolution. All special actions, approvals, or prerequisites necessary for the original by-law are also necessary for any amending by-law. For instance, copies of amending by-laws passed under Section 81 must be mailed to the Minister.
- 8.3 With amending by-laws it is advisable to establish a system of noting on the original by-law that it has been amended or repealed. This can be done in many ways but the easiest is probably by the use of a rubber stamp or inked notation with wording such as "Repealed or Amended see by-law no....".
- 8.4 A note of caution. An amending or repealing by-law cannot destroy vested rights. For example, a by-law amending a zoning by-law could not create a zone to prohibit the continued operation of a trade which was not previously prohibited.

Section IX - Enforcement

- 9.1 To be of value a by-law must be enforced. If it is not going to be enforced there is no sense in passing it. The enforcement arm will depend primarily on local circumstances and the types of by-laws involved.
- 9.2 The R.C.M. Police have indicated that they will automatically enforce all by-laws enacted under section 81(b), (c), (d), (n), and (o). When the Council has engaged its own Band Constable it is suggested that those officers police these and such other by-laws as the Council decides. If a "civil" type of by-law is involved (eg. zoning, housing or plumbing standards, trespass by cattle, etc.), it may be useful to appoint a by-law enforcement officer, as by-laws of this type often require special expertise or knowledge, such as in the construction field.
- 9.3 Regardless of the enforcement arm, an individual is not guilty of contravening a by-law unless and until he has been convicted of the charge before a court. Neither the enforcement body nor the Council has any right to decide that a person is guilty of violating a by-law or to unilaterally impose a fine.

- 9.4 Where a suspected violation of a "civil" type by-law has occurred, it is often reported to the Council by the enforcement officer. The Council then attempts to have the accused correct the situation amicably. It is only when this fails that the Council proceeds to charge the individual before the Courts. Violations of the "criminal" type of by-law (e.g. traffic, law and order, etc.) normally proceed directly with a charge before the court.
- 9.5 Anyone may lay an information before a justice charging someone with violating a by-law. Where an enforcement officer is involved it is suggested that he be requested to do so. Where there is no such officer the Council should direct one of its members to do so. It is not necessary to be a peace officer or a police officer to lay such an information. It should be remembered however, that costs may be involved and the Council should be prepared to assume them.
- 9.6 The method of laying an information is basically the same in all provinces. An information form is available from the local police detachment or court, which must be completed in a specific manner and sworn to before a justice. Assistance in completing such a form would be available at the local police detachment. The justice would then issue a summons to the person charged with the offence to appear before the presiding judge on a specified date and time when the matter will be considered. The summons would normally be served by a police officer. At the specified time the case would be heard by the justice, and a decision made. The person laying the information, together with such witnesses and evidence as is necessary, also must be present. If the accused proposes to fight the charge it would be better if the Council engaged a solicitor to prosecute the case.

Section X - By-Law disallowance

- 10.1 Indian Band Councils have the right to pass by-laws on certain specified subjects as indicated in sections 81 and 83 of the Indian Act, and neither the Minister nor the Department wishes to unduly interfere with the perceived rights or powers of a Council to pass by-laws; or to stifle local initiative.

- 10.2 Notwithstanding the foregoing, section 82 of the Indian Act empowers the Minister to disallow a by-law passed under section 81 within 40 days of its being sent to the Minister.
- 10.3 The 40-day period previously referred to commences from the date the by-law is mailed (given) to any office (officer) of the Department -e.g. the Minister's Office or the Regional, District, or Headquarters Office. It is imperative therefore that upon receipt of the by-law the appropriate certified copy be forwarded immediately to the Statutory Requirements Division, Reserves and Trusts, in Headquarters. Failure to do so may result in the loss of the Minister's right of disallowance.
- 10.4 This power of disallowance may be exercised in respect to any by-law passed under section 81 of the Act, but generally recommendations to exercise this power of disallowance will be made when -
- (a) a by-law or any of its parts is considered to be clearly ultra vires (beyond the powers of the Council);
 - (b) a by-law or any of its parts may be ultra vires, or conflict with other legislation
 - (i) such that a Band member who abides by the by-law may in fact place himself in jeopardy of being charged under the other legislation; or
 - (ii) may lead to some other adverse effect;
 - (c) a by-law or any of its parts is considered to be discriminatory generally, but not necessarily, within the context of the Human Rights Legislation, but bearing in mind that the Indian Act treats many of the aspects of life on Indian Reserves in a way quite different from the law which applies outside the Reserves; or
 - (d) a by-law or any of its parts retains to the Council (or staff) a power(s) to arbitrarily make decisions or rules affecting an individual without that individual having a "right to know" on what grounds, conditions, etc., the decision would be made; or is of such major importance that these powers/rules themselves ought to be in a by-law.

Section XI - Points to Ponder

- 11.1 By-laws may be passed only on the subjects enumerated under sections 81 and 83. Department officials, in advising the Minister, will interpret as widely as is reasonably permissible these powers to make by-laws.
- 11.2 By-laws are effective and may be enforced only within the area of jurisdiction of the Council which generally means within the limits of the Reserve(s) indicated in the by-law set aside for the use and benefit of the Band, the Council of which is passing the by-law.
- 11.3 Before passing a by-law, and certainly before attempting to enforce it, the Council should check these areas of jurisdiction and be guided accordingly, or at least proceed cautiously on the basis of the best opinion available. For example -
 - (a) in the absence of specific evidence to the contrary, it is the better opinion that rivers and the waters therein, or other bodies of waters, which form the boundaries of a Reserve would not form part of the Reserve. The limits of the Reserve would be, generally, the waters edge;
 - (b) some bodies of waters partly or wholly surrounded by Reserve lands may themselves not be part of the Reserve;
 - (c) a road or road allowance running through a Reserve may have been separated from Reserve lands in one way or another;
 - (d) an opinion has been expressed that by-laws do not apply to Reserve lands which have been surrendered. This point, however, is not clear and Councils could, if they wish, proceed to apply by-laws to such lands with the knowledge that the by-law may be lost in subsequent court action.
- 11.4 NEITHER THE MINISTER NOR THE DEPARTMENT CAN CONDONE OR SUPPORT ANY ATTEMPT BY A COUNCIL TO ENFORCE A BY-LAW OR TO EXERCISE AUTHORITY WHICH IS CLEARLY OUTSIDE THE JURISDICTION OF THE COUNCIL.
- 11.5 The recording of a by-law in the Departmental Register, and its subsequent registration by the Privy Council Office pursuant to the Statutory Instruments Act, is considered to be an administrative function only. It is not an

indication, nor does it imply, any type of Ministerial or Departmental approval of the by-law in whole or of any of its various sections; nor does it make a by-law "good law". This can only be determined by a Court if and when the by-law is challenged.

- 11.6 As previously noted on those Reserves where it is the law enforcement agency the R.C.M. Police have agreed for many years to enforce any properly and legally passed by-laws under sections 81(b), (c), (d), (n), and (o) of the Indian Act. However, in these instances, the Council should discuss its needs and intentions with the Local Detachment prior to the passing of such by-laws.
- 11.7 The Department will endeavour to forward any comments of which it is aware and which may be of assistance to the Council in respect to the legal or technical aspects of a by-law put forward for registration or approval. It will remain the Council's responsibility to consider, or not, these points of view as it determines.
- 11.8 The effective date of a by-law is considered to be the LATEST of the following -
- (a) the date on which the 40-day period referred to in section 82 expires; or
 - (b) the date on which the by-law is approved by the Minister when this is necessary; or
 - (c) the date on which the by-law was registered by the Privy Council Office pursuant to the Statutory Instruments Act.
- 11.9 All of the points in this paper of a general nature will apply also to by-laws passed under section 83 of the Indian Act. However, as required by the Act, such by-laws must be approved by the Minister, and may be passed only by a Band having an Order in Council under section 83 of the Indian Act. The 40 day Ministerial disallowance period does not apply.
- 11.10 Probably the most important item to remember is that by-laws are in fact laws and, therefore, should be passed only after careful study. Above all they should mean what they say, and say what they mean.

Section XII - Statutory Instruments Act

- 12.1 For many years certain types of orders and regulations have had to be published in the Canada Gazette. The Statutory Instruments Act, which became effective on January 1, 1972, widened this requirement so that some documents must now be registered with the Privy Council; or reviewed, registered and published in the Canada Gazette. Band Council by-laws under sections 81 and 83 of the Indian Act are included in the first category (i.e. registered with the Privy Council). Time limits are also involved.
- 12.2 Under the terms of the legislation it is the responsibility of the body making the by-law (in these cases the Band Council) to file it with the Privy Council. However, many Indian Bands may not be staffed or equipped for this purpose. As a result the Department is willing to assist by registering the by-laws.
- 12.3 The Clerk of the Privy Council has advised that all copies of by-laws submitted for registration must -
- (a) be clearly typewritten so that additional copies may be made by them if necessary; and
 - (b) be an exact duplicate of the original as enacted by the Council, and certified as being a true copy.
- 12.4 It is suggested therefore that the Band Chief or Councillor mail the original of the by-law to the appropriate Departmental office (this would also serve to meet the requirements of Section 82 of the Indian Act). The Departmental field staff upon receiving the original will immediately have it retyped (word for word, comma for comma, error for error - if in fact there are any) including the typing of the names of the signatories. The field officer who does so will then complete an affidavit stating that this is a true copy of the original by-law; make as many copies of these two documents as may be required for the District or Regional records; and file the original of the retyped duplicate version (ribbon copy) together with the original copy of the affidavit with Headquarters. The original by-law is returned to the Band Council for filing as suggested in Section VII. Headquarters will then process the by-law, including registration with the Privy Council, and make such copies or records as it may require.

- 12.5 The required form of affidavit, which may be on the face of the by-law (if space permits), or attached on a separate piece of paper is given in Appendix "A". The wording of the affidavit should be chosen according to whether it is "attached" or "on". In addition the proper designation for the Commissioner of Oaths should be used (i.e. either by provincial appointment or under the Indian Act).
- 12.6 When the by-law has been registered with the Privy Council, Headquarters will advise the appropriate field office (who should then advise the Band Council) of the date of registration, the registration number, and the calculated date of the expiration of the 40 day period referred to in section 82 of the Indian Act. The calculated effective date of the by-law will also be indicated in the memorandum. A record of the date of registration, and the registration number should be maintained by the Council and the field office. Administratively this is probably easiest to do on the face of the by-law (see example by-laws for one method of doing so).

NOTE - THE PRIVY COUNCIL OFFICE WILL NOT ACCEPT PHOTO COPIES FOR REGISTRATION PURPOSES.

Department of Indian Affairs and Northern Development,
Statutory Requirements Division (Roberts)
January, 1980

APPENDIX A

CANADA

Province of _____

TO WIT

I _____
(name) (capacity)

residing at _____ make oath and
swear that the paper-writing on (to) which this affidavit is
endorsed (attached) is a true copy of a document produced and
shown to me and purporting to be the original by-law made
pursuant to the Indian Act and signed by
_____ and dated _____
the said copy having been compared by me with the said
original document.

(signature)

Sworn to before me at
_____ this
_____ day of _____ 19 .
Commissioner of Oaths in and for
the Province of _____

or

Commissioner for the Taking of Oaths
Authorized under Section 108 of the
Indian Act.

APPENDIX B

The following is a summary of the principal subjects on which by-laws may be enacted as indicated in Section 81 and 83 of the Indian Act.

Section 81 (general)	Section 83 (money)
(1) (a) health;	(1) (a) the raising of money by
(b) traffic;	(i) assessment and taxation;
(c) law and order;	(ii) licensing of businesses calling, trades, and occupations;
(d) disorderly conduct and nuisances;	(b) appropriation and expenditure of band funds;
(e) trespass by domestic animals, pounds and pound keepers;	(c) appointment of officials when remuneration is from money raised in (a);
(f) local works;	(d) payments to chiefs and councillors from money raised in (a);
(g) zoning (town planning);	(e) penalty for non-payment of taxes;
(h) buildings;	(f) raising of money from band members for band projects; and
(i) survey and allotment of reserve lands;	(g) ancillary matters;
(j) noxious weeds;	(2) prerequisite - an Order in Council declaring that the Band has reached an advanced stage of development. (Section 83 (1))
(k) bee-keeping and poultry raising;	(3) Subject to approval of Minister (Section 83 (1))
(l) water supplies;	(4) Expenditures of moneys raised in (a) to be by by-law (Section 83 (2)).
(m) control of amusements;	
(n) hawkers and peddlers;	
(o) game;	
(p) trespassing;	
(q) ancillary matters; and	
(r) penalty.	

Section 81 (general) Continued:

- (2) Copy to be forwarded by mail to the Minister (Departmental Office) within 4 days of enactment (Section 82 (1)).
- (3) Effective 40 days after copy mailed to Minister (Departmental Office) unless:
 - (a) disallowed by Minister within that period; or
 - (b) declared to be in force by the Minister before the end of the 40 - day period.
(Section 82 (2)).

- Note (1) Effective dates of by-laws also subject to terms of the Statutory Instruments Act.
- (2) The foregoing is a summary only. For accurate reference please refer to the Indian Act.

EXAMPLES

APPENDIX C

A number of by-laws prepared primarily to clarify the intent of the foregoing points are attached. Please remember these are examples only. They are not necessarily complete, guaranteed to be flawless (in the long run this can only be established by a court), and may not cover the matters which any specific council may require. However, they may be of some assistance as a guide - and guide only. The notations made in the margin are to identify the various parts of a by-law as discussed under Section IV. They do not form part of the by-law and should not be included when drafting a by-law.

- Amending by-laws - C(4)
 - C(15)
- Curfew - C(13)
- Fences, construction and maintenance of - C(8)
- Hawkers and peddlers, license and regulate - C(2)
- Lands, to prohibit unsightly - C(11)
- Law and Order and preservation of game C(6)
- Law and Order - C(14)
- Repealing by-law - C(5)
- Roads, road maintenance and Traffic signs - C(10)
- Traffic - C(1)
- Traffic - C(9)
- Trespass, domestic animals - C(10)
- Weeds, to control - C(13)
- Wrecking Yards, to control - C(12)

EXAMPLE ONLYAPPENDIX C(1)

SOR/ , (date)

THE (name) BAND OF INDIANS
 By-law 34.72
 Being a by-law to provide for
 the regulation of traffic

Title
 and
 Number

WHEREAS paragraphs (b) and (r) of section 81 of the Indian Act empower the council of a band to make by-laws respecting the regulation of traffic and the imposition of a penalty for the violation thereof;

Recitals
 or
 Preamble

AND WHEREAS it is deemed to be expedient to limit the speed of vehicles on public roads for the safety and welfare of the inhabitants of the Reserve;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof the following:

Enacting
 Clause

1. In this by-law,
 - (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (b) "reserve" means the tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve No. ;
 - (c) "road" includes any road, bridge, driveway, street, lane, square, highway, avenue, parkway, viaduct, trestle, thoroughfare or other place set aside for, used, or open to the public for the passage of vehicles within the reserve; and
 - (d) "sign" or "traffic signs" means a sign, warning, marking or other device for the guidance or direction of persons using the roads.

Enactments
 including
 Definitions

The (name) Band of Indians - By-law 34.72 (continued)

2. The design, dimension and the erection of traffic signs shall meet the requirements indicated in the "Manual of Uniform Traffic Control Devices for Canada", 2nd edition, 1966, as amended, and as prepared by the Council on Uniform Traffic Control Devices for Canada and the Canadian Good Roads Associations.
3. (1) The Council shall, by resolution, authorize the placing of all traffic signs and the resolution shall specify the location of the sign.

(2) The Band Manager shall place and maintain, or cause to be placed and maintained, the signs authorized by the Council and shall remove or cause to be removed, signs which are not authorized by the Council.
4. No person shall interfere with, or attempt to interfere with, the placement or maintenance of any authorized traffic sign.
5. No person shall remove, deface, obliterate, alter or attempt to remove, deface, obliterate, or alter or in any manner interfere with any sign lawfully placed on a road.
6. No person shall operate a vehicle on a road at a rate of speed in excess of twenty-five miles per hour and a sign to this effect shall be posted on all roads entering the reserve.
7. No person shall operate a vehicle on any of the following bridges or portions of bridges at a rate of speed in excess of fifteen miles per hour. (here list by name and location any bridges within the reserve on which, because of defect, width, location or other reason, there should be a reduced speed) after a sign indicating such speed limit has been erected at each end of such bridges.
8. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not

The (name) Band of Indians - By-law 34.72 (continued)

exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both fine and imprisonment.

Penalty
Clause

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this _____ day of _____
19 ____ .

Date of
Passing

(signature)

Chief

(signature)

Councillor

(signature)

Councillor

I, Chief/Councillor (as the case may be) of the (name) Band of Indians, do hereby certify that a true copy of the foregoing by-law was forwarded to the Minister of Indian Affairs and Northern Development pursuant to section 82(1) of the Indian Act this day of _____, 19 ____ .

(signature)

Witness

(signature)

Chief/Councillor

EXAMPLE ONLYAPPENDIX C(2)

SOR/(number), (date)

THE (name) BAND OF INDIANS

By-law 10.72

Being a by-law to license and regulate the
conduct and activities of hawkers and peddlers.

WHEREAS paragraphs (n) and (r) of section 81 and section 83 of the Indian Act empower the council of a band to make by-laws to regulate the conduct and activities of hawkers, peddlers, or others; to license businesses, trades, callings and occupations; and to impose a penalty for the violation thereof;

AND WHEREAS the Governor-in-Council by order dated 19 declared the (name) Band of Indians to have reached an advanced stage of development pursuant to subsection (1) of section 83 of the Indian Act;

AND WHEREAS it is deemed to be expedient for the welfare of the inhabitants of the (name) Reserve to license and regulate hawkers and peddlers;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof the following:

1. In this by-law,
 - (a) "Council" means the Council as defined in the Indian Act of the (name) Band of Indians;
 - (b) "hawker" and "peddler" means and includes hawker, peddler, petty chapman, transient trader or other person who enters the reserve and goes from place to place to buy, sell, or otherwise deal in wares or merchandise or services, or offers or exposes for sale to any person by means of samples, patterns, cuts, blueprints or pictures, merchandise to be afterwards delivered or shipped into the reserve, but does not include a person who -
 - (i) is a wholesaler or retailer in such merchandise with a permanent place of business on the reserve;
 - (ii) is a resident of the reserve; or

The (name) Band of Indians - By-law 10.72 (continued)

- (iii) who sells fruit or other farm or garden produce which he has produced, raised or grown;
 - (c) "Inspector" means the person appointed, from time to time, by the Council pursuant to section 2; and
 - (d) "reserve" means the tract of land the legal title to which is vested in Her Majesty that has been set apart by Her Majesty for the use and benefit of the (name) Band of Indians and known as the (name) Reserve No. .
2. The Council may by resolution appoint an Inspector for the reserve.
3. The Band Manager shall
- (a) until the Council has appointed an Inspector, and
 - (b) during any other period in which the office of Inspector is vacant or the person appointed by the Council is for any reason unable to fulfill his office,
- occupy the position of Inspector.
4. The Inspector shall
- (a) receive and deal with all applications for licenses to be issued under this or other licensing by-laws;
 - (b) maintain a record of all applications for licenses and retain on file a copy of all licenses issued, together with their particulars;
 - (c) ascertain, as far as reasonably practicable, that all information furnished by the applicant in connection with an application for a license is true in substance;
 - (d) as often as may be necessary make enquiries and inspections to determine whether every holder of, and applicant for, a license complies in every respect with the by-laws of the Council;
 - (e) report in writing to the Council bi-monthly, or as otherwise requested by the Council, stating the number of licenses issued and the amount of money received since the previous report, and including the total number of licenses issued and the total amount of monies received to date during the current year, together with a summary of the particulars of the licenses issued since the previous report; and

The (name) Band of Indians - By-law 10.72 (continued)

- (f) perform such other duties as may be assigned by the Council from time to time.
- 5. No person shall, within the limits of the reserve, carry on or be engaged in the business of a hawker or peddler unless he has paid the prescribed fee and holds a valid and subsisting license issued pursuant to this by-law.
- 6. Every applicant for a license shall make application in writing to the Inspector on the form prescribed by the Council, and shall truthfully disclose all information required of him.
- 7. The Inspector shall make out and deliver to the licensee every license issued under this by-law.
- 8. The fee payable for a license issued under this by-law shall be
 - (a) two dollars per day or any part thereof; or
 - (b) five dollars per week; or
 - (c) fifty dollars per year.
- 9. Every license issued under the authority of this by-law shall be for the calendar year, or part thereof, current at the time of issuing thereof and shall expire on the 31st day of December next succeeding the date of the license unless specifically issued to expire at an earlier date.
- 10. Every person to whom a license is issued under this by-law shall have and keep such license on his person during the time that he is conducting business on the reserve.
- 11. Every person to whom a license is issued under this by-law shall produce the same whenever it may be demanded by the Inspector, a police officer or by any other person so authorized by resolution of the Council.
- 12. The Council, for cause, may by resolution at any time revoke or suspend any license issued under this by-law.
- 13. No rebate or refund of any part of a license fee may be made to any licensee by reason of the forfeiture of a license, or on account of the non-usage of the rights and privileges thereby granted, or for any other cause.
- 14. No license issued under authority of this by-law is transferable.

The (name) Band of Indians - By-law 10.72 (continued)

15. No person shall carry on or be engaged in the business of a hawker or peddler within the reserve between the hours of 8:30 o'clock in the afternoon and nine o'clock in the forenoon on any day, or on Sundays or holidays.
16. Any person who violates any of the provisions of this by-law shall be guilty of an offense and shall be liable on summary conviction to a fine not exceeding one-hundred dollars or imprisonment for a term not exceeding thirty days, or both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of , 19 .

(signature)

(Chief)

(signature)

(Councillor)

(signature)

(Councillor)

I, Chief/Councillor (as the case may be) of the (name) Band of Indians do hereby certify that a true copy of the foregoing By-Law ~~#~~ 10.72 was forwarded to the Minister of Indian Affairs and Northern Development pursuant to section 82,(1) of the Indian Act, this day of, 19 .

(signature)

Witness

(signature)

Chief

This by-law was approved by the Minister of Indian Affairs and Northern Development pursuant to section 83(1) of the Indian Act by order dated the day of, 19... (see file ~~#~~).

EXAMPLE ONLY

APPENDIX C(3)

SOR/(number) (date)

Amended see
by-law 12-66
May 22, 1966

for
record
purposes
only

THE (name) BAND OF INDIANS

By-Law 2-65

Being a by-law respecting the destruction
and control of noxious weeds.

WEREAS paragraphs (j) and (r) of section 81 of the Indian Act empower the Council of an Indian Band to make by-laws respecting the destruction and control of noxious weeds and the imposition of a fine for violation of any by-law made under that section;

AND WHEREAS it is deemed to be expedient for the welfare of the inhabitants of the reserve to control noxious weeds so as to reduce their spreading;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof the following:

1. In this by-law:

- (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
- (b) "Inspector" means the person appointed from time to time by the Council pursuant to section 2;
- (c) "Noxious weed" (define as in provincial legislation);
- (d) "Reserve" means the tract of land set apart by Her Majesty within the definition in the Indian Act for the use and benefit of the (name) Band

The (name) Band of Indians - By-Law 2-65 (continued)

of Indians, and known as the (name) Indian Reserve No. .

2. The Council by resolution may appoint a Weed Inspector for the reserve.
3. The Band Manager shall
 - (a) until the Council has appointed an Inspector, and
 - (b) during any other period in which the office of the Inspector is vacant or the person appointed by the Council is unable for any reason to fulfill his dutiesoccupy the position of Inspector.
4. The occupant of any land within the reserve and the holder of a certificate of possession in respect of land within the reserve, even if he does not personally occupy that land, shall cut down or cause to be cut down, or otherwise destroy or cause to be destroyed, all noxious weeds growing thereon as often in each year as may be necessary to prevent them from going to seed.
5. The Inspector shall make periodic inspections of the reserve.
6. The Inspector may give written notice to any occupant of land within the reserve, or to the holder of a certificate of possession in respect of land within the reserve, whether personally occupied by him or not, requiring that person to destroy or have destroyed any noxious weeds on that land within fourteen days of receipt of the notice.
7. An occupant or holder of a certificate of possession, whether in personal occupation of the land or not, who refuses or neglects to cut down or destroy the noxious weeds within the period of fourteen days shall be guilty of a breach of this by-law.
8. Any person who violates any of the provisions of this by-law shall be guilty of an offense and shall be liable on summary conviction to a fine not

Approved and passed at a duly convened meeting of the
Council of the (name) Band of Indians this day of
 , 19 .

Chief

(signature)

Councillor

Councillor

(signature)

(signature)

Witness

Chief/Councillor

EXAMPLE ONLY - AMENDING BY-LAWAPPENDIX C(4)

SOR/(number) (date)

THE (name) BAND OF INDIANS
 By-Law 12-66
 Being a by-law respecting the destruction
 and control of noxious weeds.
 (Amends By-Law 2.65)

Title
 and
 Number

WHEREAS paragraphs (j) and (r) of Section 81 of the Indian Act empower the Council of an Indian Band to make by-laws respecting the destruction and control of noxious weeds and the imposition of a fine for violation of any by-laws made under that section;

AND WHEREAS the Council of the (name) Band of Indians did enact by-law number 2.65 respecting the destruction and control of noxious weeds;

AND WHEREAS the said Council deems it to be expedient and in the best interest of the residents of the (name) Indian Reserve to amend the said by-law;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

Enacting
 Clause

1. Section 6 of by-law 2.65 be and the same is hereby amended by deleting the words "fourteen days" in the fifth line thereof and inserting in lieu thereof the words "ten days", so that the said section shall read

Enactment

"6. The Inspector may give written notice to any occupant of land within the reserve, or to the holder of a certificate of possession in respect of land within the reserve, whether personally occupied by him or not, requiring that person to destroy or have destroyed any noxious weeds on that land within ten days of receipt of the notice".

2. Section 7 of by-law no. 2.65 be and the same is hereby amended by deleting the words "fourteen days"

The (name) Band of Indians - By-Law 12-66 (continued)

in the fourth line thereof and inserting in lieu therefore the words "ten days", so that the said section shall read

- "7. An occupant or holder of a certificate of possession, whether in personal occupation of the land or not, who refuses or neglects to cut down or destroy the noxious weeds within the period of ten days shall be guilty of a breach of this by-law."

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this 22nd day of May, 1966.

(signature)

(signature)

Councillor

(signature)

Councillor

EXAMPLE ONLY

APPENDIX C (5)

SOR/(number), (date)

THE (NAME) BAND OF INDIANS
By-law 17.72
Being a by-law to repeal by-law No. 21.64
regulating bee-keeping and poultry raising.

WHEREAS the Council of the (name) Band of Indians did enact by-law number 21.64 on the 21st day of March, 1964, pursuant to Section 81 (k) of the Indian Act to regulate bee-keeping and poultry raising;

AND WHEREAS the said Council is of the opinion that such a by-law is not required at this time;

NOW THEREOF the Council of the (name) Band of Indians enacts as a by-law thereof the following:

1. By-law number 21.64 enacted on the 21st day of March, 1964, and being a by-law to regulate bee-keeping and poultry raising, be and the same is hereby repealed.

Approved and passed at duly convened meeting of the Council of the (name) Band of Indians this
day of 1972.

(signature)

Chief

(signature)

Councillor

(signature)

Councillor

EXAMPLE ONLYAPPENDIX C(6)

SOR/(number) (date)

THE (name) BAND OF INDIANS
By-law Number 4
Being a by-law respecting law and order,
and the preservation of fur bearing
animals and other game.

WHEREAS sections 81(c), (o) and (r) of the Indian Act empower the Council of an Indian Band to make by-laws respecting the observance of law and order, the preservation, protection, and management of fur-bearing animals, fish and other game on the reserve and to impose a penalty for the violation thereof;

AND *WHEREAS the possession and use of firearms on the Reserve is subject to the requirements of the Criminal Code of Canada and other related federal or provincial laws, but such laws do not, in the opinion of the Council, appropriately reflect certain local concerns;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

1. In this by-law
 - (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (b) "hunt" means and includes to hunt, snare, trap, shoot, take, or otherwise destroy or worry any species of animal or game; and
 - (c) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve number .
2. No boy or girl under the age of fourteen (14) years shall hunt or attempt to hunt within the reserve unless accompanied by his parent, guardian, or a person of or over the age of 18 years appointed by his parent or guardian for that purpose.

The (name) Band of Indians - By-Law No.14 (continued)

3. No person shall hunt or discharge any firearms within the following defined areas of the Reserve:
- (a)
 - (b) (include here the definition of built-up areas, schools, villages, etc.)
 - (c)
 - (d)
 - (e)
4. Any person who violates any of the provisions of this by-law shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of
the Council of the (name) Band of Indians this
day of , 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

EXAMPLE ONLYAPPENDIX C(7)

SOR/(number) Date

THE (name) BAND OF INDIANS
By-law number
Being a by-law respecting the trespass of
domestic animals

WHEREAS paragraphs (e) and (r) of Section 81 of the Indian Act empower the Council of a band to make by-laws respecting the protection against and prevention of trespass by cattle and other domestic animals and the imposition of a penalty for the violation thereof;

AND WHEREAS it is deemed to be expedient to establish a method of impounding and distraining domestic animals running at large on the (name) Indian Reserve No.....;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

1. In this by-law,
 - (a) "by-law enforcement officer" means the person appointed to that position by resolution of the Council;
 - (b) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (c) "domestic animal" and "animals" means and includes horses, goats, cattle, sheep, pigs, or other similar type of domestic animals;
 - (d) "fence-viewers" means a committee consisting of not less than three persons appointed to the position of fence viewer by resolution of the Council;
 - (e) "owner" shall include harbourer and possessor;
 - (f) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve No. ; and

The (name) Band of Indians - By-Law No. (continued)

- (g) "running at large" means domestic animals not under the control of a person or not within the confines of lands occupied or otherwise legally controlled by the owner.
2. No owner of a domestic animal shall allow the same to run at large or trespass upon lands which are not lawfully in the personal possession of the owner of the domestic animal.
 3. The owner of pigs shall have and maintain a pig-proof enclosure on lands occupied or controlled by him.
 4. Any domestic animal found running at large may be distrained by any person and impounded.
 5. The owner of any domestic animal found running at large and impounded shall be liable for all fees, costs, and damages as set forth in this by-law.
 6. In addition to the value of the damages and costs, the person distraining or impounding any domestic animal shall be entitled to remuneration in respect to the maintenance of such animals at the rate of \$2.00 per head per day, or any part thereof, and the daily rate of such fees shall be included in the notices referred to in section 9(a) or 10(a).
 7. Any person distraining or impounding a domestic animal shall:
 - (a) provide any such animal impounded, daily at the proper times, with good and sufficient food, water, and shelter during the period that such animal shall be impounded; and
 - (b) estimate the value of any damages to lands, premises, crops, or personal property owned or controlled by him and caused by such animal running at large and include these estimated costs in the notices referred to in section 9(a) or section 10(a).
 8. A person, other than the one distraining the animal, may also estimate the value of any damages to lands, premises, crops, or personal property owned or controlled by him and caused by such animal running at large and may advise the by-law enforcement officer of these estimated costs so that they may be included in the notices referred to in section 9(a) or section 10(a).

The (name) Band of Indians - By-Law No. (continued)

9. (a) Any person distraining or impounding an animal shall immediately in writing request the By-law enforcement officer to forthwith give written notice to the owner of the distrained animal, where known, advising him of having taken up such animal and setting forth the nature and extent of the demand against the owner including the estimated value of the damages caused and the daily maintenance fee;
- (b) The owner of the animal so impounded may, within 24 hours next after the delivery of the notice required by section 9(a), dispute the amount of damages so claimed by delivering a notice in writing to the By-law enforcement officer.
- (c) Where the owner disputes the claim as referred to in section 9(b), the By-law enforcement officer shall request the fence-viewers to determine the matter in dispute.
- (d) The fence-viewers shall, within 24 hours after being so requested, review the matter under dispute and issue a statement in writing to both parties and the by-law enforcement officer containing the decision, which decision shall be final, including the fees and the liability for such fees and costs.
- (e) The person distraining the animal shall not release the same to the owner until such time as all costs, fees, and charges for which the owner is liable have been paid to the by-law enforcement officer who shall disburse the same accordingly.
- (f) In the event that the owner does not claim the animal or pay all costs, fees, and charges for which he is liable within one week of the giving of the notice required by section 9(a), the animal may be sold by public auction in accordance with the provisions of this by-law.
10. Where the owner of the distrained animal is not known:
- (a) the person distraining the animal shall immediately and in writing advise the by-law enforcement officer who shall within 48 hours from the taking up of the domestic animal, post written notices in at least three public places in the neighbourhood and on the door of the Council House, announcing such taking up and

The (name) Band of Indians - By-Law No. (continued)

retention which notices shall include a full description of the animal, its colour, apparent age, and natural or artificial marks;

- (b) the person distraining such an animal shall cause his estimate of damages and costs to be reviewed by the fence-viewers in the same manner as provided in section 9 and the decision of the fence-viewers shall be final;
- (c) in such instances the owner shall be liable for the fence-viewer's fees; and
- (d) if after the expiration of five days from the date of the notice in section 10(a) the said animal has not been claimed it may be sold at a public auction, in accordance with the provisions of this by-law.

11. (1) In the event of the necessity for a public auction, the by-law enforcement officer shall post a notice of the retention of the animal and of the intent to sell the same by public auction specifying the date, time and place of the auction, in at least three public places in the neighbourhood where the animal was distrained, and one on the door of the Council House at , and shall publish the same for at least three days in a newspaper having general circulation within the Reserve.

(2) Where the owner is known, the By-law enforcement officer shall also deliver a copy of the notice referred to in subsection 11(1) to the owner on the same day that the notices are posted.

12. (1) At the time and place of the sale indicated in the notice a person, appointed by the Council, shall sell such animals by public auction to the highest bidder, and shall pay over the total proceeds of the auction to the By-law enforcement officer.

(2) The By-law enforcement officer shall:

(a) deduct from the total amount realized all damages, fees and charges, including the costs of holding the auction, and shall disburse the same accordingly; and

(b) pay the surplus, if any, to the owner where known.

The (name) Band of Indians - By-Law No. (continued)

- (3) Where the owner of the distrained animal is not known the surplus funds shall be retained for the use and benefit of the (name) Band of Indians unless claimed by the owner of the animal within twelve months of the time of the sale.
 - (4) The owner of the distrained animal shall be liable for any outstanding balance when the sale does not raise sufficient funds to cover the full costs of all fees, damages, and charges, including the costs of holding the auction.
13. (1) Where a domestic animal running at large has caused damage and has been removed by its owner before the owner of the damaged property has discovered the damage, and which damage can be proven as having been done by the said domestic animal, the owner of the damaged property may, if the owner of the domestic animal refuses to acknowledge the damage, call in the fence-viewers to determine the matter in dispute, and they shall, within twenty-four hours after having been called in, deliver a statement in writing to both parties containing their award, including their fees and the liability for such fees.
- (2) If the award of the fence-viewers or any part thereof, remains unpaid for seven days after its issuance the party in whose favour the award has been made may take such civil action as he desires or may apply to the Council to recover the amount.
14. (1) No person shall remove any domestic animal distrained or impounded under this by-law or in any manner interfere or obstruct any person from impounding or distraining an animal running at large.
- (2) Any person who violates section 14(1) of this by-law shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or to both fine and imprisonment.
15. Unless the context of this by-law otherwise requires the powers conferred upon the fence-viewers may be

, 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

EXAMPLE ONLYAPPENDIX C(8)

SOR/(number), (Date)

THE (name) BAND OF INDIANS
By-law Number
Being a by-law respecting the construction
and maintenance of fences

WHEREAS Section 81(f) of the Indian Act empowers the Council of a Band of Indians to make by-laws respecting the construction and maintenance of fences;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

1. In this By-law

- (a) "band administrator" means the person appointed to that position by resolution of the Council;
- (b) "built up area" means and comprises all that part of the Reserve more properly described in Schedule 'A' attached to this by-law, which schedule is deemed to be and form part of this by-law;
- (c) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
- (d) "fence" means a fence marking the boundary between separately owned or controlled parcels of land within the Reserve;
- (e) "fence viewers" means a committee consisting of not less than three persons appointed by resolution of the Council for the purposes of this by-law;
- (f) "owner" means a leesee, the holder of a Certificate of Possession, Occupation, or Location Ticket as referred to in the Indian Act, or any person lawfully in possession of land within the Reserve;
- (g) "Reserve" means that tract of land the legal title to which is vested in Her Majesty that

The (name) Band of Indians By-Law No. (continued)

has been set apart for the use and benefit of (name) Band of Indians, and known as the (name) Indian Reserve number ; and

(h) "rural area" means and comprises all that part of the reserve not included within the areas defined in this by-law as a "built-up area".

2. No person shall remove, cut or damage the whole or any part of a fence without first obtaining the written approval of the owners of the lands enclosed by or abutting such fence.
3. Owners of adjoining lands may enter into any written agreement in respect to the type of fence and the responsibilities of each in respect to its erection and maintenance which agreement shall be filed in the Office of the Band Administrator and enforced as if it were a decision of the fence-viewers.
4. As a prerequisite for the granting or approval of any lease or allotment of land, the Council may require, as it deems necessary, the construction, reconstruction, or repair of any fence related to the lands to be so leased or allotted, including the division of costs and responsibilities.
5. Unless the context of this by-law otherwise requires the powers conferred upon the fence-viewers may be exercised by any two members of the committee, and all decisions of the fence-viewers shall be in writing signed by at least two members of the committee.
6. Any notice required by this by-law shall be in writing and may be served in person or by registered mail on the owner, the occupant of the land in question, or the fence-viewers, as the case may be, or with some adult person residing at the place of abode of the owner, occupant or the fence-viewers.
7. An occupant not being the owner of the land notified in the manner above mentioned shall immediately notify the owner, and if he neglects to do so shall be liable for all damages caused to the owner by such neglect.
- 8.(1) Every owner shall make, keep up, and repair a just proportion of every fence marking the limits of lands controlled by him, or if there is no fence, shall make, keep up and repair a just proportion of such a fence which may be constructed subsequently.

The (name) Band of Indians By-Law No. (continued)

(2) For the purpose of section 8(1), the just proportion of any fence for which an owner is responsible may be determined as follows:

- (a) all fences or parts thereof separating a public road or road allowance and the lands of the owner; and
- (b) when standing on his lands and facing the lot line in question, that half of any such fence lying to his right.

9.(1) Within the rural area of the Reserve a lawful fence shall be not less than 4 feet in height and shall be constructed of:

- (a) a chain link fence mounted on steel posts not more than 20 feet apart with not less than 3 feet of such posts embedded in the ground; or
- (b) woven wire mesh not lighter than 9 3/4 gauge and consisting of at least 8 lateral wires of the type commonly known to the Hardware Trade as "farm fence" with one strand of barbed wire, not more than 4 inches above the top wire of the farm fence, with the whole fence being mounted upon steel or timber posts not more than twenty feet apart having not less than 3 feet thereof embedded in the ground and properly tamped in.

(2) (a) In section 9(1) above, timber posts shall be not less than 8 feet in length and shall be not less than 4 inches in diameter at the small end thereof. Steel posts shall be not less than 7 feet in length.

(b) The bottom wire of the woven portion of the fence shall be not more than 2 inches from the ground.

(c) Anchor posts shall be installed wherever required and shall be not less than 9 feet in length having 4 feet thereof embedded in the ground and properly tamped in. The same shall be properly anchored and suitably braced. If the anchor post is of timber it shall be not less than 7 inches in diameter at the small end.

(d) Brace posts shall be not less than 8 feet in length having a diameter at the small end of not less than 6 inches and the said post shall be embedded at least 3 feet in the ground and

The (name) Band of Indians By-Law No. (continued)

properly tamped in and spaced not less than 8 feet or more than 10 feet from the anchor post.

- (e) Braces between anchor posts and the brace posts shall be timber, not less than 4 inches by 4 inches or the equivalent thereof, properly mortised into the anchor post and brace post.
- (f) Brace wire between the anchor post and the brace post shall be No. 9 gauge soft galvanized wire doubled strand.
- (g) As a minimum requirement anchor posts and brace posts with proper braces and brace wires, above mentioned, shall be installed every 40 rods and at all corners and intersections with connecting fences.
- (h) All woven wire fences shall be stretched tightly to provide a proper farm fence suitable for pasturing live stock.
- (i) The top of all posts used in the fence shall be not more than 2 inches above the barbed wire attached thereto.

10. Within the "built-up area" of the Reserve, a lawful fence shall be constructed of timber, steel, iron or wire of a type other than barbed wire, having a height of not less than 3 feet and not more than 4 feet 6 inches with the posts thereof being not more than twenty feet apart; or may consist of a hedge not less than 3 feet in height or more than 4 feet 6 inches in height with the plants spaced not more than 1 foot 6 inches apart.

11. Notwithstanding sections 9 and 10 a lawful fence may

- (a) be constructed of any material or of any dimensions which the owners of the adjoining properties may agree to in writing pursuant to section 3; or
- (b) be constructed of such material, dimensions, or style as ordered by the fence viewers upon arbitration.

12. Notwithstanding sections 9, 10, and 11 no fence shall be constructed of such material, design, or height so as to obstruct or interfere with the safe passage of vehicles on roads adjoining the lands in question.

The (name) Band of Indians By-Law No. (continued)

13. If an owner refuses or neglects to build or maintain his portion of a fence, the owner of the adjoining land may by notice in writing require him to do so.
14. If the fence is not constructed or repaired, as the case may be, within one week after the notice referred to in section 13 has been issued, the owner may request the Band Administrator in writing to direct the fence viewers to determine the matter in dispute.
15. Upon a request of an owner, pursuant to section 14, the Band Administrator shall make all necessary arrangements with the fence viewers to arbitrate the dispute and shall notify, in writing, each owner in the dispute, and the applicable fence viewers, of the date, time and place of the meeting for arbitration which shall be not less than 7 days nor more than 14 days from the date of the notification (form A).
16. (1) The fence viewers at the time appointed in section 15, shall examine the premises and make a decision respecting the matters in dispute.
(2) The decision shall specify the locality, quantity, description and the minimum cost of the fence ordered to be made, and the time in which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay a certain or specified portion of such costs (form B).
17. In making such a decision, the fence viewers shall take into consideration the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they are arbitrating, and generally the suitability of the fence to the needs of each party.
18. The fence viewers shall deposit their decision with the Band Administrator within 48 hours of their examination and shall within the same time period deposit a copy of the decision with all parties to the dispute.
19. (1) Within 7 days of the date that the fence viewers' decision is registered with the Band Administrator any person dissatisfied with the decision may appeal therefrom to the Council by leaving a notice in writing to this effect with the Band Administrator and with the other party.

The (name) Band of Indians By-Law No. (continued)

- (2) The Council shall hear and determine the appeal within one month of the registering of the appeal and may set aside, alter or confirm the award or correct any error therein, and may examine the parties and witnesses including the fence viewers.
 - (3) The decision, as so altered or confirmed by the Council, shall be final and be dealt with in all respects as if it had been the original decision of the fence viewers.
20. (1) When a decision of the fence viewers is finalized each of the parties to the dispute shall, within the time stated within the decision do such things as the decision may direct.
- (2) If one party fails to comply with the decision, within the stated time, the other party may enforce the decision by serving in person or by registered mail upon the party involved a notice in writing requiring him to obey the decision.
 - (3) If the decision is not obeyed within two weeks after the service of notice referred to in subsection (2), the person so desiring to enforce it may do the work as the decision directs and may recover its value and the cost from the owner by
 - (a) action in any court of competent jurisdiction;
 - (b) by registering the same with the Band Administrator; and
 - (i) conveyance of the said property shall not be approved by the Council until the amount of award is paid in full; or
 - (ii) until such time as the award has been paid by the party in default he shall not be eligible for any grant or loan payable by or through the Council; or
 - (iii) both of the foregoing; or
 - (c) submitting a detailed account of the costs involved for the work done on behalf of the other owner of the Council who may, at its sole discretion, pay to the owner enforcing the decision all, part, or none of such costs, and shall recover any such payments made from the owner on whose behalf the work was done.
21. In the event of a new fence being ordered or being built by the owners of adjoining lands to replace a

The (name) Band of Indians By-Law No. (continued)

fence which was built and maintained by one of them previously, all the materials in the old fence shall be the property of the individual who built and maintained the fence so replaced.

22. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding \$100.00 or imprisonment for a term not exceeding 30 days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of 19.

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

THE (NAME) BAND OF INDIANS By-law No.

FORM "A"

NOTICE TO THE PARTIES
TO THE DISPUTE

TO.....
AND TO.....

Pursuant to Section of by-law number
..... of the Council of the
Band of Indians TAKE NOTICE THAT the Fence Viewers, as
requested by will
attend on the day of 19 , at
the hour of o'clock (local time), to view
and arbitrate upon the line fence in dispute between lands
controlled by and by
..... and being lot
..... and lot, in the
..... Concession, Township of
.....

Dated at (name) this day of
..... 19..

(Signed)

Band Administrator

Copy to	(fence viewer)
Copy to	(fence viewer)
Copy to	(fence viewer)

THE (NAME) BAND OF INDIANS By-law number

FORM "B"

FENCE VIEWERS DECISION

We, the fence viewers of the (name) Band of Indians, having been nominated to view and arbitrate upon the line fence between and which fence is to be made and maintained between (describe properties), and having examined the premises and duly acted according to by-law number do decide as follows: That part of the said line fence which commences at and ends at shall be fenced, and the fence maintained by the said; and that part of the said line fence which commences at and ends at shall be fenced, and the fence maintained by the said The fence shall be of the following description (state kind of fence, height, material, etc.) and shall cost at least per rod. The work shall be commenced within days and completed within days from this date, and the expense thereof shall be paid in the following proportions (state by whom paid and amount) and the costs of the fence viewers amounting to \$..... shall be paid (state by whom paid; if both, in what proportion).

Dated this day of
19...

.....
.....
.....
Signatures of Fence Viewers.

SCHEDULE 'A' to by-law
number of the Council
of the (name) Band
of Indians.

The "built-up areas" of the Reserve, for the purposes of this by-law, comprise all of those lands or parts of the Reserve included within the following limits:

- (a)
- (b)) (here include a legal definition of the
- (c)) lands to be included in the built up area
- (d)) of the Reserve).

EXAMPLE ONLY

APPENDIX C(9)

SOR/(number) (date)

THE (NAME) BAND OF INDIANS
By-Law Number
Being a by-law to provide for the regulation
of traffic

WHEREAS paragraphs (b) and (r) of Section 81 of the Indian Act empower the council of a Band of Indians to make by-laws respecting the regulation of traffic and the imposition of a penalty for the violation thereof;

AND WHEREAS it is deemed to be expedient to control the passage of vehicles on public roads for the safety and welfare of the inhabitants of the (name) Indian Reserve No. ;

NOW THEREFORE the Council of the (name) Band of the Indians makes as a by-law thereof as follows:

1. In this by-law

- (a) "All terrain vehicle" means a motor vehicle designed or used primarily for cross-country travel on land, water, snow, ice, marsh, swamp land, or on other natural terrain and without limiting the generality of the foregoing, includes, when designed for such travel,
- (i) four-wheel drive or low pressure tire vehicles,
 - (ii) motor-cycles and related two wheel vehicles,
 - (iii) amphibious machines,
 - (iv) all terrain vehicles,
 - (v) miniature motor vehicles,
 - (vi) snow vehicles, and
 - (viii) minibikes;

The (name) Band of Indians By-Law No. (continued)

- (b) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (c) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of the (name) Band of Indians, and known as the (name) Indian Reserve number ;
 - (d) "road" means and includes any avenue, bridge, driveway, highway, lane, parkway, place, road, square, street, thoroughfare, trestle, viaduct or other lands under the control of the Council which are designed for, intended for, set aside for, used by, or open for the common use of the members of the (name) Band of Indians, or the general public, for the passage of vehicles within the Reserve, but does not include any lane, road, or right-of-way held or established solely as a means of egress to privately controlled lands;
 - (e) "sign" or "traffic sign" means any mechanical or other device, sign, warning or marking installed for the control or routing of traffic or for the guidance or direction of persons using the roads;
 - (f) "through highway" means any road designated as such in this by-law; and
 - (g) "vehicle" means any wagon, cart, motor car, motor truck, trailer, motorcycle, traction engine, tractor, bicycle, road-making machinery or other conveyance that is driven, propelled or drawn by any kind of power.
- 2.
- (1) The Highway Traffic Act of the Province of (name) RS 19 including the definitions therein and amendments thereto, except as the same may be inconsistent with this by-law including its definitions, shall apply to all roads, vehicles and persons within the Reserve.
 - (2) The Motorized Snow Vehicles Act of the Province of , RS 19 , including the definitions therein and amendments

The (name) Band of Indians By-Law No. (continued)

thereto, except as the same may be inconsistent with this by-law including its definitions, shall apply to all roads, vehicles and persons within the Reserve.

3. No person shall operate a vehicle at a rate of speed in excess of kilometers an hour within the Reserve and signs to this effect shall be erected.
4. Notwithstanding the provisions of Section 3 of this by-law no person shall operate a vehicle at a rate of speed in excess of kilometers per hour within any residential area of the Reserve as defined and designated in Schedule A attached to this by-law, which schedule is deemed to be and form part of this by-law, and signs to this effect shall be erected.
5. Notwithstanding the provisions of Sections 3 and 4 of this by-law no person shall operate a vehicle at a rate of speed in excess of kilometers per hour within that portion of the reserve known as the "(name) Community grounds" and defined as (herein include a legal definition of the lands comprising all of the community grounds) except upon the race track within those grounds during an authorized race or while practicing for such a race, and signs to this effect shall be erected at all entrances to these community grounds.
6. Notwithstanding the provisions of Sections 3 and 4 of this by-law no person shall operate a vehicle at a rate of speed in excess of kilometers per hour within any school zone in the Reserve as defined and designated in Schedule "B" attached to this by-law, which schedule is deemed to be and form part of this by-law, and signs to this effect shall be erected.
7. A person parking a vehicle on a road within the reserve shall park the same parallel to the curb, where there is one, or the roadside ditch where there is no curb, and at a distance not greater than 15" from the curb or the edge of the roadside ditch.
8. (1) No person shall operate an all terrain vehicle on the travelled portion of any road or road allowance within the reserve.

The (name) Band of Indians By-Law No. (continued)

8. (2) The operator of an all terrain vehicle may cross any road or road allowance within the reserve, providing
- (i) the operator stops the all terrain vehicle before entering onto the road or road allowance, or portion thereof to be crossed,
 - (ii) all passengers disembark from the all-terrain vehicle or any vehicle or thing attached thereto before the operator commences to cross,
 - (iii) the operator yields the right of way to all other vehicles and persons on the road or road allowance, and
 - (iv) the operator crosses over the road or road allowance, or portion thereof to be crossed, by the most direct and shortest route of travel available to him.
- (3) the operator of an all terrain vehicle shall at all times yield the right of way to operators of vehicles of other classes and to pedestrians.
- (4) No person shall operate an all terrain vehicle on lands or premises within the reserve allotted to, occupied, used, leased, or otherwise lawfully in the possession or under the control of another person without first having obtained the permission of that person so to do.
- (5) No person shall operate an all terrain vehicle within the limits of the Village of (name), which limits are defined as (herein include a legal definition of the boundaries of the Village) after the hour of 11 o'clock in the evening, local time, or before the hour of 7 o'clock in the morning, local time.
- (6) The Chief, as defined in the Indian Act, of the (name) Band of Indians may suspend, in writing, any or all of the requirements related to all terrain vehicles in a time of emergency.

The (name) Band of Indians By-Law No. (continued)

9. (1) Every person operating a vehicle shall bring the same to a full stop immediately before entering or crossing a through highway.
- (2) Every intersection of a road with a through highway shall be marked by a stop sign.
- (3) The roads or parts of roads designated as through highways are shown on schedule "C" attached to this by-law, which schedule is deemed to be and form part of this by-law.
10. All traffic signs required by this by-law shall be erected in accordance with by-law number governing such signs and passed on the day of 19 .
11. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (Name) Band of Indians this day of 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

SCHEDULE "A" to
by-law No. of
The Council of
the (Name) Band
of Indians.

The following areas are hereby declared to be residential areas for the purposes of by-law No. of the Council of the (name) Band of Indians.

- (a) The Village of (name) being all that certain parcel or tract of land defined as:

SCHEDULE "B" to
by-law No. of
the Council of
the (name) Band
of Indians.

The following areas are hereby declared to be school zones
in the Reserve for the purposes of by-law number of the
Council of the (name) Band of Indians,

- (a) that part of the 8th Concession Road, Township
of lying between the intersection of the
said 8th Concession Road and the (name) sideroad
and a point 2,000 feet easterly of the said
intersection;
- (b) (etc. - define any road or part to be included
herein)
- (c) (etc. - define any road or part to be included
herein)
- (d)

SCHEDULE "C" to
by-law number
of the Council of
the (name) Band
of Indians.

The following roads or parts of roads are designated as
through highways for the purposes of section 9 of by-law
number of the Council of the (name) Band of Indians.

<u>Road</u>	<u>From</u>	<u>To</u>
1. 5th Concession Road Township of (name)	Townline	Easterly limit road allowance for Provincial Highway No. 101
2. Margaret St.	the easterly limit of the Village as defined in Schedule "A" of by-law no.	the westerly limit of the (name) Reserve No.
3.		
4.		
5.		
etc.		

EXAMPLE ONLYAPPENDIX C(10)

SOR/(number), (date)

THE (NAME) BAND OF INDIANS
By-law number
Being a by-law governing roads, road
maintenance, and traffic signs

WHEREAS section 81(b), (f), (g) and (r) of the Indian Act empowers the Council of a Band of Indians to enact by-laws respecting the regulation of traffic, the construction and maintenance of watercourses, roads, and bridges, any matter ancillary thereto and the imposition of a penalty for the violation thereof;

NOW THEREFORE the Council of the (Name) Band of Indians enacts as a by-law thereof as follows:

1. (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
- (b) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart by Her Majesty for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve No.;
- (c) "road" means and includes a road allowance and any avenue, bridge, driveway, highway, lane, parkway, place, road, square, street, thoroughfare, trestle, viaduct or other lands within the Reserve and under the control of the Council which are designed for, intended for, set aside for, used by, or open, for the common use of the members of the (name) Band of Indians, or the general public for the passage of vehicles within the Reserve, but does not include any lane, road, or right-of-way held or established solely as a means of egress to privately controlled lands;
- (d) "road allowance" means any land shown on a plan of survey as a road allowance whether used as a road or not, and any land set aside or used for the purposes of a road lying

The (name) Band of Indians - By-law No. (continued)

between the limits of lands allotted to or otherwise lawfully in the possession of any person;

- (e) "road foreman" means that person appointed by resolution of the Council pursuant to section 4; and
- (f) "traffic sign" means a sign, warning, marking or other device installed for the control or routing of traffic or for the guidance or directions of persons using the roads.

2. The design, dimension, placing, construction and erection of traffic signs shall meet the requirements for such signs indicated in the Regulations passed under the (name) Act of the Province of (name) .
3. The Council shall, by resolution, authorize the placing of all traffic signs and the resolution shall specify the location of the sign in accordance with the Regulations referred to in Section 2 and the requirements of any by-laws respecting the control of traffic.
4. The Council shall by resolution appoint a road foreman who shall place and maintain, or cause to be placed and maintained, the traffic signs in compliance with the Regulations indicated in section 2 and authorized by the Council, and shall remove or cause to be removed traffic signs which are not so authorized.
- 5.(1) No person shall interfere with or attempt to interfere with the placement or maintenance of any authorized traffic sign.
 - (2) No person shall remove, deface, obliterate, alter or in any manner interfere with any traffic sign lawfully placed on a road.
6. No person shall block or obstruct a natural watercourse, drain, or roadside ditch.
7. The road foreman, upon resolution of the Council, shall re-open any roadside ditch willfully or unintentionally blocked or obstructed by a person contrary to Section 6 and shall in writing advise the person so blocking or obstructing the roadside

The (name) Band of Indians - By-law No. (continued)

ditch that such actions are contrary to this by-law and may result in a charge being laid under the by-law for repeated offences.

8. No person shall block or obstruct any road or the passage of vehicles on any road other than with the written authority of the road foreman.
- 9.(1) No person shall use any part of a road for any purpose other than the passage of vehicles without first having obtained the approval of the Council as authorized by a resolution and under the conditions designated in the resolution.
- (2) A person who has obtained the permission of Council to utilize part or all of a road pursuant to section 9(1) shall not be relieved from liability in respect to damages caused to the road by such use and shall forego the use and return the road to its original state at his cost within 30 days of a written notice authorized by a Council resolution.
- (3) Without limiting the generality of the foregoing no person shall erect, or attempt to erect, any advertising sign on a road except with the permission of the Council authorized by a resolution and subject to any conditions designated in the resolution, and such signs shall not be erected or placed in such a way as to obstruct the vision of persons using the road.
10. No person shall operate or draw any vehicle, tractor, farm wagon, or trailer on the hard surfaced portion of any road unless such vehicle is equipped with pneumatic tires, solid rubber tires, or tires of some composition equally resilient.
11. No person shall injure, destroy, cut down or remove any trees growing upon a road without having first obtained written permission to do so from the road foreman.
12. No person shall set, or cause to be set, a fire on a road without first having obtained written permission so to do from the Fire Chief and subject to the conditions set out in that permission.

The (name) Band of Indians - By-law No. (continued)

13. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding \$100.00 or imprisonment for a term not exceeding 30 days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of
19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

EXAMPLE ONLYAPPENDIX C(11)

THE (NAME) BAND OF INDIANS

By-law Number

Being a by-law to prohibit unsightly lands

WHEREAS section 81(a), (d), (q) and (r) of the Indian Act empowers the Council of an Indian Band to enact by-laws to provide for the health of residents on the Reserve, the prevention of nuisances, any matter ancillary thereto and the imposition of a penalty for the violation thereof;

AND WHEREAS the Council of the (name) Band of Indians is of the opinion that unsightly lands and premises is a nuisance and may be a menace to health;

NOW THEREFORE the Council of the (name) Band of Indians makes as a by-law thereof as follows -

1. In this by-law
 - (a) "council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (b) "refuse" means and includes ashes, garbage, junk, paper, rubbish, refuse, trash, bodies or parts of automobiles or other vehicles or machinery, household goods or furnishings or parts thereof, construction material, scrap iron or other metals, or domestic or industrial wastes of any kind whatsoever; and
 - (c) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart by Her Majesty for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve .
2. No person shall permit lands or premises within the reserve occupied, used, leased, allotted to or otherwise in his possession or under his control to be or to become unsightly by permitting refuse to remain or accumulate on any part of such lands or premises.

The (name) Band of Indians - By-law No. (continued)

- 3.(1) Where in the opinion of the Council lands or premises within the reserve are unsightly by virtue of refuse having been permitted to remain or accumulate, the Council shall by resolution direct the (title of staff position) to notify the person in possession of the said lands or premises to have the lands or premises cleaned of all offensive material or refuse within days.
- (2) The notice referred to in section 3(1) shall be in writing and
- (i) may be served by personal service upon the person named therein, or
 - (ii) may be posted in a conspicuous place on the lands or premises involved, or
 - (iii) may be mailed by first class registered mail to the person named therein.
4. Failure of a person to obey the directions given by the Council in the notice referred to in section 3 shall be deemed to be a violation of this by-law.
5. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding \$100.00 or imprisonment for a term not exceeding 30 days, or both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

THE (NAME) BAND OF INDIANS
By-law number
Being a by-law to control wrecking yards

WHEREAS section 81(a), (d), (q) and (r) of the Indian Act empowers the Council of a Band of Indians to make by-laws respecting the health of residents on the reserve, the prevention of nuisances, any matter ancillary thereto and the imposition of a penalty for the violation thereof;

AND WHEREAS the Council of the (name) Band of Indians is of the opinion that the indiscriminate storing of automobiles and other machinery, or parts thereof is a nuisance and may be a menace to health,

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

1. In this by-law

- (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
- (b) "fire Chief" means the person appointed from time to time by resolution of the Council as the Chief of the (name) Band of Indians fire department;
- (c) "reserve" means that tract of land the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve No.
- (d) "wrecking yard" means a tract or parcel of land on which two or more automobiles not capable of normal operation or parts thereof, used farm implements or machinery not capable of normal operation or parts thereof, or other used vehicles or machinery not capable of normal operation or parts thereof are:

- (i) stored, kept, or placed, or

(The (name) Band of Indians - By-law No. (continued)

- (ii) stored, kept or placed for the purpose of wrecking or dismantling or
- (iii) stored, kept or placed for the purpose of salvaging parts thereof, or for any other means of disposal.

2. No land within the reserve shall be used for a wrecking yard and no wrecking yard shall be established or maintained on the reserve, except by resolution of Council upon written application and subject to the following conditions -

- (a) no such yard shall be located within any part of the lands occupied by the applicant closer to the road allowance than the front wall of any dwelling located on the same or adjoining lands, where the dwelling on the adjoining land is within 100 feet of any part of the wrecking yard;
- (b) notwithstanding paragraph (a), no such yard shall be located within feet of any dwelling, or feet from the front lot line and feet from the back and side lot lines of the lands occupied by the applicant;
- (c) all such yards shall be surrounded by a solid, painted fence, of at least 10 feet in height;
- (d) the area between the fence and the lot lines shall be grassed, kept free of all junk, debris, parts of equipment or machinery, and maintained in a neat and tidy manner; and
- (e) any special conditions or requirements of Council as indicated in the resolution granting approval.

3. The burning of junk, debris, automobile or other vehicles or machinery, or parts thereof is prohibited, except with the written permission of, and under the conditions required by, the Fire Chief.

4. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable, on summary conviction to a fine

(The (name) Band of Indians - By-law No. (continued)

not exceeding one hundred dollars (\$100.00), or imprisonment for a term not exceeding thirty (30) days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of , 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

EXAMPLE ONLYAPPENDIX C (13)

SOR/(number), (date)

THE (NAME) BAND OF INDIANS
Being a by-law to regulate the
activities of boys and girls.

WHEREAS it is believed necessary to enact a
by-law to provide for the regulation of the
activities of boys and girls on the (name) Indian
Reserve Number .

NOW THEREFORE the Council of the (name) Band
of Indians makes as a by-law thereof as follows:

1.
 - (a) "child" means any boy or girl under the age
of years;
 - (b) "Council" means the council, as defined in
the Indian Act, of the (name) Band of
Indians;
 - (c) "parent" includes the father, mother or
guardian of a child;
 - (d) "prohibited hours" means and includes that
period of time between the hour of o'clock
in the afternoon of one day and the hour
of o'clock in the morning of the following
day, local time, during the calendar months
of, June, July, August, in each year;

or between the the hour of o'clock in the
afternoon of one day and the hour of
o'clock in the morning of the following day,
local time, for all other calendar months of
each year; and
 - (e) "Reserve" means that tract of land the legal
title to which is vested in Her Majesty that
has been set apart by Her Majesty for the use
and benefit of the (name) Band of Indians and
known as the (name) Reserve No. .
2. No child shall loiter within the Reserve during
the prohibited hours.

The (name) Band Indians - By-law No. (continued)

3. No child shall go to or from, or be in, a place of public entertainment, street, lane, by-way, or common, within the Reserve during the prohibited hours unless accompanied by a parent or an adult appointed by a parent for that purpose.
4.
 - (1) A child found violating the provisions of this by-law may be warned and escorted home by a police officer, a by-law enforcement officer, or such other person appointed by resolution of the Council to enforce this by-law,
 - (2) A police officer, a by-law enforcement officer, or such other person appointed by resolution of the Council to enforce this by-law may apply subsection 4(1) of this by-law in respect to any person whom he has reasonable grounds to believe is under the age of years.
5.
 - (1) If, after the warning referred to in subsection 4(1) of this by-law, the warning is disregarded or the child is found disobeying this by-law again, the parents of such child may be directed, by resolution of the Council, to meet and discuss the situation with the Welfare Committee appointed by the Council for the protection of children.
 - (2) A copy of the resolution of the Council referred to in subsection 5(1) shall be sent by first class mail or delivered by hand to the parent not less than clear days prior to the proposed meeting.
6. A parent who permits a child to violate any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction

The (name) Band Indians - By-law No. (continued)

to a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of 19 .

Chief

Councillor

Councillor

EXAMPLE ONLYAPPENDIX C (14)

THE (NAME) BAND OF INDIANS

By-law Number

Being a by-law respecting law and order

WHEREAS sections 81(c), (g) and (r) of the Indian Act empowers a Council of a Band of Indians to make by-laws for the observance of law and order, any matter ancillary thereto, and the imposition of a penalty for the violation thereof;

NOW THEREFORE the Council of the (name) Band of Indians enacts as a by-law thereof as follows:

1. In this by-law
 - (a) "Council" means the Council, as defined in the Indian Act, of the (name) Band of Indians;
 - (b) "public property" means and includes any building, bridge, park or the facilities and equipment located therein, and any land, structure, premises or equipment of whatsoever nature belonging to the (name) Band of Indians or maintained by the Council or any of its staff or committees on behalf of the members of the said Band of Indians; and
 - (c) "reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of the (name) Band of Indians and known as the (name) Indian Reserve Number .
2. No person shall remove, deface, destroy, damage, mutilate, or in any manner whatsoever vandalise public property on the reserve or attempt to vandalise such property.
3. No person shall wilfully interrupt, or disquiet by profane discourse, by rude or indecent behaviour, by the making of noise or noises, or in any manner whatsoever disturb the order or solemnity of:
 - (i) any meeting of the Council,
 - (ii) any religious festival,

The (name) Band of Indians - By-law No. (continued)

- (iii) any assemblage of Indians met for the consideration and discussion of matters of public interest, or
 - (iv) any assemblage on the Reserve held for any lawful purpose.
4. No person shall expectorate on the floor or on any other part of a public building or property.
5. Any person who violates any of the provisions of this by-law shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred dollars, or imprisonment for a term not exceeding thirty days, or to both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of ,
19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

SOR/(Number), (date)

THE (NAME) BAND OF INDIANS

By-law 22-(14.75(a))-78

Being a by-law to amend by-law ~~14~~ 14-75
regulating the use of public wells

WHEREAS paragraphs (l) and (r) of section 81 of the Indian Act empowers the Council of an Indian Band to make by-laws regulating the use of public wells and the imposition of a fine for the violation of any by-law made under that section;

AND WHEREAS the Council of the (name) Band of Indians did enact its by-law number 14.75 which regulates the use of public wells;

AND WHEREAS it has been shown that section 7 of that by-law is not applicable at this time;

NOW THEREFORE the Council of the (name) Band of Indians makes as a by-law thereof as follows:

1. Section 7 of by-law ~~14~~ 14-75 passed on the day of 1975 is hereby repealed in its entirety.
2. Sections 8, 9, and 10 of the said by-law ~~14~~ 14-75 be and the same are hereby amended by deleting the said section numbers and inserting in lieu thereof section numbers 7, 8, and 9, respectively.

Approved and passed at a duly convened meeting of the Council of the (name) Band of Indians this day of , 19 .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor