


# By-Law Workshop

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SEPTEMBER 2018

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- **Definition:** A FN by-law is a local law that is passed by a FN Council to help control certain activities within the community.
  - **Authorities:** Indian Act sections 81, 83, & 85.1 of the *IA*; a Land Code or self-government agreement.
  - The by-law has absolutely no effect outside reserve boundaries.

## Section 81:

- Traffic control
- Residency
- Health
- Nuisances
- Wildlife conservation
- Zoning

## Section 83:

- property taxation
- the expenditure of band moneys
- business licensing.
- **NOTE:** must be sent to the FNs Tax Commission (FNTC) for review & recommendation to the Minister; must receive ministerial approval

## Section 85.1

- **Prohibits:**
  - the sale, barter, supply or manufacture of intoxicants;
  - being intoxicated on the reserve; &
  - any person from having intoxicants

## Limitations:

- FN by-laws cannot be contrary to:
  - The *IA*, or other federal laws e.g. the *Criminal Code* or *Narcotic Control Act*; or
  - any regulations enacted pursuant to the *IA*

## Guidelines

- **A by-law:**
  - applies to everyone (FN & non-FN) present on the reserve;
  - governs the activity in question on all of the reserve lands of the FN; and
  - must be properly enacted

NOTE: A section 85.1 intoxicant by-law must be voted on at a special meeting called for that purpose.

## BCR & FN Council By-Laws

- A BCR is an administrative declaration of the FN Council with respect to a particular matter of a temporary character; it does not prescribe a permanent rule of local government.
- A by-law is in effect a federal law & enforceable by the by-law enforcement officers.
- A BCR may be a legal document in a sense, but it is not a law therefore there is no obligation for the RCMP to enforce it.



## The General Rule:

A provincial law will apply on reserve if the province had the constitutional authority to pass it & is otherwise valid & applicable throughout the province.

Examples:

- Child Welfare
- Labour Relations
- Insurance
- Contracts
- Corporations
- Regulation of professions & trades

# Drafting Requirements

- be logical & organized; and
- the subject area of the by-law should be divided into major groupings i.e. administrative setup, administrative procedures, offenses & penalties, appeal procedures, etc.

## Enacting Clause

- states that the FN Council has enacted the by-law, & that the by-law is in fact a by-law & not simply a BCR.

## Definition Section

- To ensure a by-law is interpreted in the way it is intended.
- The courts will use the definition section & not some other definition which may or may not reflect the intend of the by-law
- Definition section should be in listed in alphabetical order & may be numbered or lettered

## Main Body

- The main body will include substantive rules of procedure or conduct as well as measures for administering and enforcing the by-law.
- Administrative provisions should precede the operative or substantive rules.
- The offenses & penalties sections come towards the end of the by-law.

## IA By-Law Procedural Requirements

- It is very important to adhere to the procedural requirements of by-law pursuant to sections 81, 83, & 85.1 of the IA because by-laws can be successfully challenged in broad general ways in one, or a combination of the following ways, which could result in the by-law being ruled invalid;
  - **Factually:** i.e. “I was not the person who committed the offence” or “the facts as alleged by the by-law officer are not correct, & the real facts do not disclose an offence”. (losing a case on factual grounds does not mean the by-law is invalid)

- **On substantive or jurisdictional grounds:** i.e. “the subject area in the by-law is beyond the jurisdiction of the FN Council to enact under s. 81 of IA”, or “the by-law infringes on the Charter of Rights & Freedoms”
- **Procedural deficiencies:** i.e. “not holding a special meeting of the FB for purposes of considering the by-law under section 85.1, but enacting the by-law anyway”
- A statement to the effect that a by-law was made by a FN Council at a duly convened meeting on a particular date must be included.
- The signatures of the members of the FN Council who voted in favour of the by-law should appear at the end of the by-law with a statement informing the reader what constitutes a quorum of the band & the number of members of the FN Council present at the meeting

## Schedules & Appendices

- Schedules & appendices referred to in the by-law must be attached to the by-law
- They would be used for required forms necessary for application of the by-law
- Reference to the schedules or appendices must be included within the body of the by-law as being part of the by-law

## By-Law Enactment

- A by-law has no effect unless it is properly enacted.
- A by-law is not a law until ALL procedures for legal enactment are followed.
- Enactment refers to the process of having a by-law legally passed, recorded & registered (if applicable) so that it becomes an official law that can be enforced in the courts.
- Each of the areas in the IA under which by-laws may be enacted have their own separate procedures & requirement.



## Enactment Requirements

- Paragraph 2(3)(b) of the IA make it clear that a by-law, which must be enacted by the FN Council, must be approved by a majority of the councillors present at a duly convened meeting of the Council.

*2(3)(b). “a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.”*

## Proof of Proper Procedures

- FN Councils passing by-laws pursuant to sections 81, 83, & 85.1 of the IA should ensure that they are able to prove that the actions required of them by the IA have been taken properly.
- Such proof may be required in the event the by-law has been challenged & a court must make a ruling on the validity of the by-law.

## Administrative Process

- Once a by-law has been drafted & the FN Council has decided that they are satisfied with what it says, & what it will do for the community, then there is a very formal procedure for enacting it as follows:
  - Convening a FN Council meeting
  - Introducing the by-law by motion
  - “Reading” a by-law
  - “Voting” a by-law

- Recording the result of the vote in the minutes of the meeting
- Signing the by-law
- Reproduction of the by-law (pursuant to section 86)
- Forwarding the by-law to the Minister (section 83)
- Publication of the by-law (pursuant to *the IA Amendment & Replacement Act*)
- Storage & distribution of the by-law

## Requirements of the *Statutory Instrument Act*

- By-laws made by FN Councils pursuant to the provisions of the IA are statutory instruments within the meaning found in the *Statutory Instruments Act*.
- As such, by-laws should meet the drafting requirements set forth in this Act.
- While by-laws are not required to be processed according to the requirements of the *Statutory Instruments Act* the underlying concepts of this Act regarding notification to the persons who may be affected by the by-law, the right of access to the by-law, & the principle of fairness still apply.
- According to this Act, an individual has the right to inspect & obtain copies of by-laws.

# Amend/Repeal a By-Law

- A by-law will have to be change at some point in time i.e. out dated, loophole in the by-law, etc.
- Where a few words have to be changed it is acceptable to strike out the words in the original section & replace them.
- If several changes are required, it is recommended to repeal the entire section & replace it with a new section.
- Depending on the number of amendments it may be recommended to repeal the entire by-law & replace it with a new one.

# By-Law Enforcement

## Main Method of Enforcement

- Verbal & written warnings or discussions are often sufficient to convince people to modify their behaviour to conform to the by-law requirements.
- Formal charges bringing offenders before the provincial courts may be required in other situations.
- Some communities have developed Alternative Justice mechanism.

## Two Types of By-Laws

- **Administrative:** building code, zoning code, etc. generally enforcement by By-law Enforcement Officers
- **Quasi-criminal:** (dealing with law & order) disorderly conduct, traffic, animal control, prohibition of intoxicants enforced by a policing authority.