

SAWRIDGE FIRST NATION

AN ACT RESPECTING TRESPASS ON SAWRIDGE LANDS

Introduced at a General Assembly Held February 25, 2017

First Reading – March 18, 2017

Second Reading – April 22, 2017

Third Reading – May 27, 2017

Came in to Force – May 27, 2017

An Act Respecting Trespass on Sawridge Lands

Short Title

1. This Act may be cited as the “*Sawridge Trespass Act*”.

Purpose

2. The purposes of this Act are
 - (a) the removal and punishment of persons trespassing on Sawridge Lands, and
 - (b) the control of the use of Sawridge Lands

Interpretation

3. In this Act,

- “member” means a natural person whose name is on the Sawridge Membership List;
- “night” means any time between thirty minutes after sunset and thirty minutes before sunrise on the day of the offence;
- “premises” means any building or structure or any part or portion of a building or structure, including any land used in connection with that building or structure for the purposes of providing parking for vehicles, displaying or storing vehicles, equipment or other chattels, enhancing the appearance or use of the building or structure, or carrying out activities that are ancillary to activities carried out in or on that building or structure and in the case of any house includes the land around the house up to fifty feet from the house or halfway to the next house if that house is less than 100 feet away.
- “resident” means a member who has been assigned premises by the First Nation or a member who lives with someone who has been assigned premises by the First Nation, or a person who holds a permit to reside on Sawridge Lands or a person who is temporarily on Sawridge Lands pursuant to an Act of the Sawridge First Nation;
- “Sawridge Lands” are those lands set out as “Sawridge Lands” in the Constitution of the Sawridge First Nation and includes the foreshore adjacent to “Sawridge Lands”.

Scope of the Act

4. In the manner set out in this Act, this Act applies to all Sawridge Lands whether they are occupied or unoccupied and to all persons, whether they are members of the Sawridge First Nation or not and whether they are residents or non-residents.

Part 1: Trespassing at Night

Trespassing at Night

5. Everyone who, without lawful excuse, loiters or prowls at night on premises in which that person is not a resident within 50 feet of a residential premises on Sawridge Lands
 - (a) on a first offence, is guilty of an offence punishable on summary conviction with a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days or to both; and
 - (b) for a second or subsequent offence occurring within one year after conviction of the first offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months, or to both.
6. The onus of proving that a person had a lawful excuse for being at night near a dwelling house situated on Sawridge Lands lies with the person.

Part 2: Trespass on Sawridge Lands

Public Access

7. Any individual may have access to the public areas of business and industrial premises on Sawridge Lands while such areas are open to the public for any lawful and reasonable business or social purpose, and when invited by a resident, to that resident's residential premises for social purposes, and to such roads leading thereto providing that
 - (a) in the case of business and industrial premises, the land, or area of premises, which the individual is accessing has not been posted against trespass or the individual has been invited onto that land or into that area of premises by the lawful occupant of that land or premises;
 - (b) the individual has not been asked by an official of the Sawridge Government, or the lawful occupant of those premises, to leave Sawridge Lands or any portion of Sawridge Lands;
 - (c) the individual does not interfere with any interest in land;
 - (d) the individual complies with all applicable laws; and
 - (e) no resolution has been enacted by the Sawridge Council barring that individual.

Trespass

8. (1) (a) Any person not a member of the Sawridge First Nation, a guest of a Sawridge member, or a legal resident on Sawridge Lands, who enters or

remains on Sawridge Lands other than in accordance with this Act, or the authorization of Council or in contravention of an order of Council; and

- (b) any person who enters onto any premises, otherwise than as permitted by this or any other law of the First Nation, or the authorization of Council, without the lawful occupier's express permission or who occupies Sawridge Lands or premises without lawful permission

is guilty of an offence of trespass and is liable to a fine of not more than \$10,000.

- (2) A peace officer or a person appointed under this Act with authority for its enforcement, may order any person who trespasses on Sawridge Lands or who frequents Sawridge Lands for a prohibited purpose, as set out in subsection 8(5), to leave Sawridge Lands immediately.
- (3) When a person who has been ordered to leave Sawridge Lands forthwith fails or refuses to do so, a peace officer or such appointed officer may take such reasonable measures as may be necessary to remove the person from Sawridge Lands.
- (4) No person shall fail or refuse to follow the order of the officer and any person who resists or interferes with an officer acting pursuant to this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days or both.
- (5) Every person who enters on Sawridge Lands without authorization from Council or otherwise pursuant to this Act for the purposes of
 - a) hunting, fishing, trapping, or gathering;
 - b) removing any natural resources;
 - c) committing a nuisance;
 - d) committing a criminal offence;
 - e) disturbing the peace and tranquility of residents on Sawridge Lands;
 - f) engaging in activities that are prohibited by Sawridge Laws;
 - g) engaging in actions or activities that contravene or are disrespectful to the culture and traditions of the Sawridge First Nation and its members

is guilty of an offence of trespass and is liable to a fine of not more than \$10,000.

- (6) It is a defense to a charge under this Act in respect of premises that are on Sawridge Lands that the person charged reasonably believed that he or she had a legal interest in the Sawridge Lands that entitled him or her to do the act complained of.
- (7) Where the premises are or include community premises, the Sawridge First Nation is the occupier and the rights and powers of the occupier are exercised by Chief and Council or by a person designated by Chief and Council to exercise some or all of its rights or powers under this Act.
- (8) There is a presumption that access for lawful purposes to the door to a building on land by a pathway apparently provided for the purpose of access is not a trespass.
- (9) When a trespass to which this Act applies is committed by means of a motor vehicle, the driver of the vehicle is guilty of the contravention of this Act and liable to the fine.
- (10) There is a presumption that access by public works employees, employees or officers of the Sawridge First Nation to any lands or premises on Sawridge Lands for the purpose of carrying out their duties is not a trespass.

Civil Remedies

9. Nothing in this Act extinguishes the right of a person or the Sawridge First Nation to bring a civil action for damages arising out of a trespass on any premises on Sawridge Lands, and all civil remedies for trespass are preserved.

Prohibition of Entry

10. Entry on premises may be prohibited by notice to that effect posted on the premises; and entry is prohibited without any notice on premises,
 - (a) that is a garden, field or other portion of Sawridge Lands that is under cultivation, including a lawn and premises on which trees or other plantings have been planted and woodlots.
 - (b) that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises.

Authority of Council

11. (1) The Council of the Sawridge First Nation may make a resolution setting out the rules and regulations for the use of any community premises, including arenas, community halls, recreational facilities , pools, sports fields, schools, health clinics and similar premises.
- (2) Council may prohibit by resolution entry or activity on community premises, provided that notice is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises.
- (3) Council may regulate, by resolution, the hours or seasons in which community premises may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for a permit to engage in such activities or purposes

Offence for Violation of Council Resolution, Rule or Regulation

12. Every person who fails to comply with a resolution, rule or regulation of Council made pursuant to this Act or who fails to comply with the terms of any permit granted under this Act, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Method of Giving Notice

13. (1) A notice under this Act may be given
 - (a) orally or in writing;
 - (b) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies;
 - (c) by resolution duly published unless delivery to a member is specifically provided for in this Act.
- (2) No person shall tear down, remove, damage, deface or cover up a sign that prohibits trespass that has been posted on Sawridge Lands by the Sawridge First Nation, an officer or employee of the Sawridge First Nation, or a lawful occupant of premises on Sawridge Lands, without the permission of the Sawridge First Nation or the lawful occupant of the premises involved.
- (3) A person who contravenes subsection 13(2) is guilty of an offence and is liable to a fine not exceeding \$2,000.

Form of Sign

14. (1) A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.
- (2) A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

Arrest without warrant

15. (1) In this section, "peace officer" means a police officer or constable employed by a police service having jurisdiction over Sawridge Lands and any person appointed by the Council to enforce the laws of the Sawridge First Nation.
- (2) A peace officer may arrest without warrant any person found on or in premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence pursuant to this Act.
- (3) If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 3 or section 6 and has recently departed from the premises, the peace officer may arrest the person without warrant if
 - (a) the person refuses to give his or her name and address to the peace officer on demand, or
 - (b) the peace officer believes, on reasonable and probable grounds, that the name or address given by the person to the peace officer is false.

Parties to the Offence of Trespass

16. (1) A person other than an individual who commits trespass under this law, is also guilty of an offence under this Act if that person is shown to be complicit in the commission of the offence by:
 - (a) purporting to give permission for entry to the premises where that person is not, or was not at the relevant time, an occupier or otherwise authorized to give such permission under this Act;
 - (b) being the employer of the individual who committed acts of trespass, directed or counseled him or her to do so as part of their employment; or
 - (c) being the principal of the individual who committed acts of trespass, directed or counseled him or her to do so as an agent.
 - (d) being a person in authority over an individual, counsels or directs that individual to commit and act of trespass; or

- (e) knowing that conduct would be a trespass, assists an individual by providing him or her with the means, tools or equipment to commit the trespass.
- (2) A person may be a party to the offence of trespass whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any other individual was convicted under this Act in respect of the same trespass.

Exclusion and Banishment

- 17 (1) This provision may apply to any person with respect to any Sawridge Land or premises on Sawridge Land whether or not that person is a member.
- (2) Council may by resolution apply a remedy pursuant to this section for any breach of this act, any rule, resolution or regulation made under this act, for any reason or circumstance occasioned by violence in or on premises, or for any reason Council determines to pose a danger to Sawridge Lands, premises on Sawridge Lands, or public and personal safety of individuals entitled to the use and occupation of Sawridge Lands or for any apprehended public or private mischief.
- (3) Council may exclude an individual at all times from all or any Sawridge Lands and or premises on Sawridge Lands and shall arrange for personal service of a resolution to that effect upon the individual unless service can only be effected by other forms of notice pursuant to this law.
- (4) Council may banish an individual other than a member of the Sawridge First Nation permanently or for a specified period of time from all Sawridge Lands.
- (5) Council may banish a member of the Sawridge First Nation or a resident for a period of time not greater than the day of the next meeting of the Sawridge Assembly, at which time the Assembly shall decide whether the banishment shall be extended to a longer period of time not to exceed the day of the first Assembly taking place one year later at which time the Assembly shall consider whether the period of banishment is to be extended.
- (6) An individual who is the subject of a resolution under this section and who received or has notice of the resolution may appeal to Council or to

the Assembly for it to be altered or rescinded.

- (7) Council will prescribe a form for such an appeal to be commenced and may deal with that appeal on the basis of the representations submitted in writing or direct a personal attendance to give the appellant an opportunity to present his or her case.
- (8) Council's decision or the Assembly's decision in the matter, as the case may be, regarding an appeal is final and not subject to review.
- (9) Every person who fails to comply with a resolution made pursuant to this section, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 90 days and to such other orders as may be conducive to preventing repetition of the offence.

Failure to Abandon Possession of Sawridge Lands or Premises on Sawridge Lands

18. (1) Where,

- (a) in the opinion of the Council expressed by resolution, a person is wrongfully or without lawful authority using, possessing or occupying Sawridge Lands and
- (b) who, after having been given notice of the resolution continues to use, possess or occupy or fails to deliver up possession or to vacate Sawridge Lands,

an officer of the Sawridge Government, authorized by the Council for that purpose, may apply to a court of competent jurisdiction for an order directed to that person calling on that person

- (c) to vacate without delay or to abandon and cease using, possessing or occupying Sawridge Lands, or
- (d) to show cause to the officer as to why the order should not be enforced at the time the order is served on the person for a period of time less than 30 days hence,

and if the person does not act as provided for in subsections (c) and (d), the officer may ask the court of competent jurisdiction for a warrant for the person's summary removal from Sawridge Lands.

- (2) (a) If such a warrant for removal is issued, it may also include an order as to

the disposition of any buildings, improvements, vehicles, equipment or other items situated on or near the lands which have been used or occupied by the person .

- (b) the officer mentioned in this section may ask for the assistance of one or more other peace officers of any jurisdiction to assist in these matters and the peace officers have all the powers, rights, immunities and privileges of a peace officer in the execution of his or her duty on Sawridge lands;
- (c) a person to whom an order or warrant is addressed pursuant to this section and all members of that person's family and all employees, tenants or other persons involved with or living with that person shall without delay leave Sawridge Lands;
- (d) service of a summons or warrant under this section may be made
 - (i) by leaving a copy with an adult found on the land or premise mentioned in the summons or warrant and by posting up another copy in a conspicuous place on the land or premises, but
 - (ii) in the event that no adult is found on the land or premises in the summons or warrant, by posting up copies in at least two conspicuous places on that land.

Remaining on or Returning to Sawridge Lands

19. (1) (a) A person who remains on Sawridge Lands, returns to Sawridge lands, or assumes any possession or occupancy of Sawridge Lands after having been ordered to vacate them pursuant to this Act, or after having been removed from Sawridge Lands is guilty of an offence and liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding six months, or to both.

Continuing offences

- (2) An offence under subsection (1) that is committed or continued on more than one day constitutes a separate offence for each day on which it is committed or continued.