

OCT 6 1998

E41216-432

Chief and Council  
Tsuu T'ina Nation  
9911 Chula Blvd.  
SARCEE, ALBERTA T2W 6H6

Dear Chief and Council:

**Tsuu T'ina First Nation Offences Procedure By-law 1998**

This is to confirm that the above-noted by-law will come into force on **October 27, 1998**, pursuant to subsection 82(2) of the *Indian Act*. Although this by-law is coming into force, we do have comments to make. Please note that the remarks are intended as suggestions only and should not be treated as a legal opinion.

Notwithstanding that this by-law will be coming it force, it is our opinion that there is no legislative authority under section 81 of the *Indian Act* to enact such a by-law. Furthermore, the reference to "summary conviction" in section 81(1)(r) of the *Indian Act* entails that penalties are to be imposed and dealt by a court in accordance with Part XXVII of the *Criminal Code*. Therefore, the rules and procedures for summary convictions contained in Part XXVII of the *Criminal Code* prevail over the procedures contained in your by-law.

There are typographical errors in your cross referencing of sections. Please take note of the following:

- On page 13, paragraph 20(3)(a). Section 24(1) should be changed to section 22(1).
- On page 14, subsection 22(1). Section 25 should be changed to section 23.
- On page 18, subsection 27(2). Paragraph 28(1)(b) should be changed to paragraph 26(1)(b).
- On page 18, subsection 28(1). Section 31 should be changed to section 29.
- On page 22, subsection 32(4). Section 31(5)(a) or (b) should be changed to section 29(5)(a) or (b).

- On page 24, subsection 35(3). Section 3(5)(a) or (b) and subsection (2) should be changed to section 29(5)(a) or (b) and subsection (3).
- On page 24, section 36(a) and (b). The reference to section 33 should be changed to section 31.
- On page 26, subsection 40(1). Section 22(3) or 27(3) should be changed to section 20(3) and 25(3) respectively.

We have other comments such as:

- The numbering in the Index is inconsistent with the by-law.
- On page 5, paragraph 6(7)(b), there is a typographical error. The word "an" should be substituted by "and".

The coming into force of this by-law pursuant to section 82 of the *Indian Act* is not an expression of opinion by the Minister that the by-law is valid. The Department of Indian Affairs and Northern Development is not ruling on the validity of your by-law; only a court of law has such power.

We hope that the foregoing comments will be of some assistance to you. If you require any further information, or have any questions about the above-captioned matter, please do not hesitate to contact Wayne Wallace, the by-law advisor responsible for this file, at (819) 997-8237.

Yours sincerely,

ORIGINAL SIGNED BY  
ORIGINAL SIGNED BY

**Roy Gray**  
**Manager, By-laws**  
**Band Governance**  
**and Estates Directorate**  
**OTTAWA ON K1A 0H4**

c.c.: **Roger Cardinal**  
**Manager**  
**Alberta Region**

**TSUU T'INA NATION**

**OFFENCES PROCEDURE BYLAW**

**1998**

# INDEX

	Page	Section
DEFINITIONS	1	
<b>PART I</b>		
<b>GENERAL</b>		
● Application of Bylaw	2	3
● Application of Criminal Code	3	4
● Limitation Period	3	5
● Failure to Attend Court Proceedings	3	6
● Witnesses	5	7
● Penalties	6	8
● Compensation for Property Damage	6	9
● Terms of Imprisonment	7	10
● Absolute Liability Offence	7	11
● Time for Payment	7	12
● Orders Relating to Payment	8	13
● Civil Recovery	8	14
● Ownership of Money Received	9	15
● Report of Conviction	9	16
● No Seal Required on Documents	10	17
● Transcripts of Evidence	10	18
● Appeals	10	19
● Judicial Note	11	20

**INDEX**  
**Page Two**

	<b>Page</b>	<b>Section</b>
● Address for Service	12	21
● Part 2 and Part 3 Offences	13	22
● Service of Summons	14	23
<b>PART II</b>		
<b>SUMMONS VIOLATION TICKETS</b>		
● Use of Violation Tickets	14	24
● Violation Ticket	14	25
● Voluntary Payment	15	26
● Appearances	17	27
● Failure to Answer Summons	18	28
● Late Payment	19	29
<b>PART III</b>		
<b>OFFENCE NOTICE VIOLATION TICKETS</b>		
● Use of Violation Ticket	19	30
● Violation Ticket	19	31
● Evidence of Service	21	32
● Trial Date	22	33
● Failure to Appear	22	34
● Plea of Guilty with Representations	23	35
● When Payment or Charges Not Disputed	23	36

**INDEX**  
**Page Three**

	<b>Page</b>	<b>Section</b>
● Failure to Respond to Offence Notice	24	37
● Setting Aside a Conviction	25	38
● Affidavit of Evidence	25	39
● Penalty	26	40
● Failure to Pay Fine	26	41

<b>REGULATIONS</b>	26	
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**TSUU T'INA NATION**  
**OFFENCES PROCEDURE BYLAW**

THE TSUU T'INA NATION, Chief and Council in the interest of preserving law and order on Tsuu T'ina Lands and pursuant to the provisions of the *Indian Act*, enacts as follows:

S.1 This Bylaw may be cited as the *Tsuu T'ina Nation Offences Procedure Bylaw*.

**DEFINITIONS**

S.2 In this bylaw:

- (a) **“address for service”** means the address indicated on the defendant's operator's licence unless the defendant, on being served with a summons under Part 2 or an offence notice under Part 3, states another address;
- (b) **“clerk”** means clerk of the Court or a person designated by a clerk of the Court to perform the duties of a clerk of the Court;
- (c) **“court”** means The Provincial Court of Alberta and includes a Court designated for sittings on Tsuu T'ina Lands;
- (d) **“defendant”** means
  - (i) a person to whom a summons is issued on the basis of an information or complaint alleging the commission by that person of an offence, or
  - (ii) a person in respect of whom an offence notice is issued under Part 3 of this bylaw;
- (e) **“initial appearance date”** means the date indicated on the offence notice or summons, on or before which a defendant is required to respond to the offence notice;
- (f) **“interceptor”** means the person who intercepts a vehicle (or driver) by stopping a vehicle or by causing a photograph of the vehicle to be taken;

- (g) **“issuer”** means the person signing a violation ticket as the complainant;
- (h) **“justice”** means a justice of the peace or a judge of the Court;
- (i) **“offence”** means a violation of the provisions of any Tsuu T’ina Nation Bylaw duly enacted by Chief and Council pursuant to the provisions of the *Indian Act*;
- (j) **“operator’s licence”** means a licence to operate motor vehicles issued by a proper issuing authority;
- (k) **“peace officer”** means a member of the Tsuu T’ina Nation Police Service or the Royal Canadian Mounted Police, in the exercise or discharge of their powers or duties;
- (l) **“specified penalty”** means an amount specified in a duly enacted bylaw or under the *Indian Act* that can be paid by a defendant who is issued a violation ticket and is authorized to make a voluntary payment without a Court appearance;
- (m) **“Tsuu T’ina Lands”** means those lands held by the Tsuu T’ina Nation pursuant to Treaty 7, and any lands acquired by the Tsuu T’ina Nation subsequent to the signing of Treaty 7 or through aboriginal entitlement or other means and, in particular those lands commonly known as Sarcee Reserve No. 145 including designated lands or conditionally surrendered lands to which the Tsuu T’ina Nation holds a legally enforceable reversionary interest.

**PART 1  
GENERAL**

**Application of Bylaw**

S.3 This bylaw applies to every case in which a person commits or is suspected of having committed an offence under any Tsuu T’ina Nation Bylaw for which that person may be liable to imprisonment, fine, penalty or other punishment.

S.4 The council of a band may make bylaws not inconsistent with the *Indian Act* or with any regulation made by the governor in council or the Minister; including for the purposes of

- (a) the observance of law and order; and
- (b) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty (30) days or both.

#### **Limitation Period**

S.5.(1) Subject to any express provision in another bylaw, no proceedings to which this bylaw applies may be instituted more than six (6) months after the time when the alleged offence occurred.

S.5(2) In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day or part of a day on which it continues and no proceedings may be instituted more than six (6) months after the last occurrence of the alleged offence.

#### **Failure to Attend Court Proceedings**

S.6(1) A person who, being at large on an undertaking or recognizance given to or entered into before a justice, fails without lawful excuse, the proof of which lies on that person, to attend Court in accordance with an order of the justice, as the case may be, is guilty of an offence.

S.6(2) A person who, being at large on an undertaking or recognizance given to or entered into before a justice and being bound to comply with a condition of that undertaking

or recognizance directed by a justice, fails without lawful excuse, the proof of which lies with that person, to comply with that condition, is guilty of an offence.

S.6(3) A person who is served with a summons and who fails without lawful excuse, the proof of which lies on that person, to attend Court in accordance with that summons is guilty of an offence.

S.6(4) A person who is named in

- (a) an appearance notice,
- (b) a promise to appear, or
- (c) a recognizance entered into before an officer in charge,

that has been confirmed by a justice and who fails without lawful excuse, the onus of proof of which is on that person, to attend Court in accordance with the appearance notice, promise to appear or recognizance, is guilty of an offence.

S. 6(5) For the purpose of subsection (4), it is not a lawful excuse that an appearance notice, promise to appear or recognizance does not correctly state the substance of the alleged offence.

S.6(6) If at the trial of a person for an offence, that person does not appear at the time and place appointed for the trial or the resumption of the trial and the justice proceeds to conduct the trial *ex parte*, no proceedings shall be instituted under this section arising out of the failure of the person to appear.

S.6(7) In proceedings under subsection (1), (3) or (4), a certificate purporting to be signed by the clerk or a justice before whom the person is alleged to have failed to attend, stating that

- (a) in the case of proceedings under subsection (1), the person gave or entered into an undertaking or recognizance before a justice and failed to attend Court in accordance with the undertaking or recognizance,
- (b) in the case of proceedings under subsection (3), a summons was issued to an served on the person and the person failed to attend Court in accordance with the summons, and
- (c) in the case of proceedings under subsection (4), the person was named in an appearance notice, a promise to appear or a recognizance entered into before an officer in charge, that was confirmed by a justice, and the accused failed to attend Court in accordance with the appearance notice, promise to appear or recognizance,

is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

S.6(8) A certificate shall not be received in evidence pursuant to subsection (7) unless the party intending to produce it has, before the trial, given to the accused reasonable notice of the intention to produce it, together with a copy of the certificate.

### **Witnesses**

S.7(1) If a person is required to attend to give evidence before the Court, the Court shall issue a subpoena directed to that person which shall be signed by a clerk or a justice.

S.7(2) On proof to the satisfaction of the Court

- (a) of the service of a subpoena or Notice to Attend as a Witness on a witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and
- (b) that the presence of the witness is material to the proceedings,

the Court may, by its warrant directed to any peace officer, cause the witness to be apprehended anywhere within Alberta, to be brought before a justice forthwith and to be detained in custody as the justice may order until his/her presence as a witness is no longer required or, in the discretion of the justice, to be released on a recognizance with or without sureties.

### **Penalties**

S.8(1) Subject to any express provision in another enactment, every person who is convicted of an offence is liable to a fine of not more than \$ 1,000.00 or to imprisonment for not more than thirty (30) days or to both or such other penalty as the Court may determine in consultation with the Office of the Peacemakers of the Nation.

S.8(2) Subject to any express provision in another enactment, if the imposition of a fine or the making of an order for the payment of money is authorized by an enactment but the enactment does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the Court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than thirty (30) days. A Court may direct payment of a fine by way of any Fine Option Program operated by the Nation.

S.8(3) This section does not apply if proceedings are commenced under Part 3.

### **Term of Imprisonment**

S.9(1) When a defendant is sentenced to a term of imprisonment, the term, unless otherwise directed in the sentence, begins on and from the day on which the defendant is taken

into custody under the sentence of imprisonment.

- S.9(2) Any time during which the defendant is lawfully at large on judicial interim release does not count as part of a term of imprisonment to which he/she is sentenced.

#### **Time for Payment**

- S.10(1) When time has been allowed for payment and a justice has ordered imprisonment in default of payment of the fine, a justice shall not issue a warrant of committal until the expiration of the time allowed for payment.

- S.10(2) Notwithstanding subsection (1), if, before the expiration of the time allowed for payment, the defendant who has been allowed time for payment appears before a justice and signifies in writing that he prefers to be committed immediately rather than await the expiration of the time allowed, the justice may immediately issue a warrant of committal

- S.10(3) When time has been allowed for payment any justice may, on application by or on behalf of the person allowed time for payment, allow further time for payment.

#### **Orders Relating to Payment**

- S.11 When a justice, in a conviction or order, imposes a fine or penalty, the conviction or order is not void nor is the right to collect a fine or to enforce a penalty under the conviction or order impaired because

- (a) time has been allowed for the payment of all or any part of the fine or penalty,
- (b) payment of part of the fine or penalty has been received,

- (c) the justice has accepted security for the payment of all or any part of the fine or penalty, or
- (d) the conviction is under appeal, unless a judge of the Court of Queen's Bench stays the right to collect the fine or to enforce the penalty.

### **Civil Recovery**

S.12(1) When a fine is imposed on a defendant but imprisonment of the defendant in default of payment of the fine is not ordered and the fine is not paid forthwith or within the time allowed by the justice, the Tsuu T'ina Nation or a person authorized by the Tsuu T'ina Nation may, by filing the conviction, enter as a judgment in the Court of Queen's Bench the amount of the fine plus the late payment charge prescribed in this bylaw, if any, and the judgment is enforceable against the convicted defendant in the same manner as if it were a judgment rendered against the defendant in that Court in a civil proceeding.

S.12(2) If a fine or penalty imposed on a conviction for an offence occurring on Tsuu T'ina Lands has not been entered as a judgment under subsection (1), an agent of the Tsuu T'ina Nation may enter the amount of a fine payable by the convicted defendant for that offence as a judgment under subsection (1).

### **Ownership of Money Received**

S.13(1) Pursuant to the *Indian Act*, every fine, penalty of forfeiture imposed under this bylaw belongs to Her Majesty for the benefit of the Nation or one or more members of the Nation, with respect to which the offence was committed or to which the offender, if an Indian, belongs

- S.13(2) The Governor-in-Council may from time to time direct that a fine, penalty or forfeiture described in subsection (1) shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purpose of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.

### **Report of Conviction**

- S.14(1) If a defendant is convicted of an offence, a justice or clerk shall, upon request by an interested party complete a certified conviction respecting the conviction.
- S.14(2) A copy of a report under subsection (1) purporting to be certified by a clerk or by the justice who convicted the defendant, or proved to be a true copy, shall, without proof of the identity of the person to whom the report relates, be admitted in evidence in any legal proceedings as prima facie proof of the conviction of that person for the offence mentioned in the report.

### **No Seal Required on Documents**

- S.15 In any proceeding under a Tsuu T'ina Nation Bylaw,
- (a) it is not necessary for the justice to affix a seal of a justice of the peace to a document, and
  - (b) no document is invalid by reason only of the lack of a seal even if the document purports to be sealed.

### **Transcripts of Evidence**

- S.16(1) Except as provided in subsection (2) there shall be no transcript of evidence.
- S.16(2) If evidence is recorded in a proceeding, the clerk shall, on payment of the applicable fee, provide either a copy of a mechanical recording of the evidence or a transcript of the evidence if it is
- (a) requested by one of the parties,
  - (b) required for an appeal from a conviction or order,
  - (c) required by the Tsuu T'ina Nation;
  - (d) required by the prosecutor, or
  - (e) ordered by a justice.
- S.16(3) When a trial is conducted, the evidence shall be recorded.

### **Appeals**

- S.17(1) The Tsuu T'ina Nation, a prosecutor, a defendant, or a person affected by a judgment, order or sentence to which this bylaw applies may appeal a judgment, order or sentence of a justice to the Court of Queen's Bench in the judicial district in which the trial was held.
- S.17(2) Following the decision of the Court of Queen's Bench, any justice has authority to enforce the judgment or Order on the Appeal.

### **Leave to Appeal to Court of Appeal**

- S.18(1) When it appears to a judge of the Court of Appeal, on the application of the Tsuu T'ina Nation, a prosecutor, a defendant or a person affected by a conviction or Order to which this bylaw applies, that a judgment or Order of the Court of Queen's Bench made on appeal involves a question of law of sufficient importance to justify a further appeal, the judge of the Court of appeal may certify that and appeal then lies to the Court of Appeal from the judgment or Order of the Court of Queen's Bench.
- S.18(3) The procedure on the appeal to the Court of Appeal shall, be the same as that provided in the provisions that relate to summary convictions in the *Criminal Code* (Canada) and the rules relating to appeal procedures insofar as they are applicable to appeals involving questions of law.
- S.18(3) Following the decision of the Court of Queen's Bench, any justice has authority to enforce the judgment or order on the appeal.

### **Address for Service**

- S.19(1) In the case of a defendant who is an individual, the address for service is the address indicated on the defendant's operator's licence unless the defendant, on being served with a summons under Part 2 or with an offence notice under Part 3, states another address.
- S.19(2) If a defendant is not in possession of an operator's licence when served as described in subsection (1) or that person's address for service is not the address indicated on that person's operator's licence, that person shall provide an address for service to the person serving him/her.

- S.19(3) Under Part 2 and Part 3 the address for service, in the case of a defendant that is
- (a) a non First Nation person, is the address which appears on the operator's licence or, alternatively, the person's regular mailing address,
  - (b) a First Nation member, is the member's address on First Nation lands as it appears on the operator's licence, and
  - (c) a corporation, is the most recent address recorded in the motor vehicle registry for the Province of Alberta but if an address is not indicated on those records the address for service is the registered office of the corporation.
- S.19(4) A defendant, after being served with a summons, may provide a clerk with a new address for service for the purpose of subsequent proceedings related to the summons.

#### **Part 2 and Part 3 Offences**

- S.20(1) The procedure in this Bylaw for laying an information and for issuing a summons, may be followed with respect to offences arising from any proceedings pursuant to enforcement of bylaws of the Tsuu T'ina Nation instead of the procedure set out in the *Criminal Code* (Canada).
- S.20(2) The use on a violation ticket of a word, figure or expression or any combination of them which clearly defines the offence under an enactment is sufficient for all purposes to describe the offence so designated.
- S.20(3) Proceedings with respect to an offence may be commenced under either Part 2 or Part 3. The proceedings shall be commenced under Part 3 unless it is in the public interest to compel the defendant to appear before a Justice in proceedings under Part 2.

- S.20(3)(a) If the proceedings with respect to an offence referred to in subsection (3) are commenced under Part 2, the Peace Officer shall issue a summons in accordance with section 24(1) of this bylaw.
- S.20(4) Failure to complete any information required in a violation ticket does not invalidate the violation ticket or any part of it if
- (a) the defendant is identified with reasonable clarity,
  - (b) the offence with which the defendant is charged is specified in accordance with this bylaw,
  - (c) the date on which the offence is alleged to have occurred is specified, and
  - (d) the place at or near which the offence is alleged to have occurred is specified.

#### **Service of Summons**

- S.21(1) Service of a summons and of an offence notice may be made on a holiday.
- S.21(2) An affidavit signed by the person effecting service attesting to the fact that service was effected on the defendant shall be received in evidence in all legal proceedings as proof of that service without the necessity of proof of the signature of the person making the affidavit.

### **PART 2**

#### **SUMMONS VIOLATION TICKETS**

##### **Use of Violation Tickets**

- S.22(1) Proceedings under this Part may be commenced by issuing a summons by means of

a violation ticket described in section 25.

S.22(2) If proceedings are commenced under Part 2, Part 3 does not apply to those proceedings.

### **Violation Ticket**

S.23(1) A violation ticket under this Part shall include the following parts:

- (a) a complaint, and
- (b) a summons.

S.23(2) The complaint part of the violation ticket shall be

- (a) sworn before a commissioner for oaths by a complainant who believes on reasonable and probable grounds that an offence has been committed, and
- (b) filed with a clerk prior to the initial appearance date indicated on the violation ticket.

S.23(3) A summons shall indicate how the defendant may respond to the summons.

S.23(4) A summons shall be served on a defendant,

- (a) in the case of a defendant who is an individual, by delivering it personally to the defendant or, if the defendant cannot conveniently be found, by leaving it for the defendant at the defendant's residence with a person on the premises who appears to be at least eighteen (18) years of age,
- (b) in the case of a defendant that is a corporation or a municipality,
  - (i) by sending it by single registered mail to the registered office of the corporation or municipality, or

- (ii) by delivering it personally to the manager, secretary or other executive officer of the corporation or municipality, or the person apparently in charge of a branch office of the corporation or municipality at an address held out by them to be their address.

S.23(5) A justice, on application and on being satisfied that service cannot be made effectively on a corporation in accordance with subsection (4)(b), may by order authorize another method of service.

### **Voluntary Payment**

S.24(1) When authorized by a bylaw order and by a summons served on a defendant, the defendant who wishes to plead guilty may make a voluntary payment in respect of a summons by delivering the summons together with

- (a) an amount equal to the combined amounts of the specified penalty for the offence and any applicable surcharge, if any, or
- (b) if the defendant is charged with an offence under a bylaw, an amount equal to the specified penalty for the offence and applicable surcharge as provided in the relevant bylaw,

to a Court office designated by the Chief Judge of the Provincial Court of the Province of Alberta on or before the initial appearance date.

S.24(2) When a clerk records in the Court records the receipt of voluntary payment under subsection (1) in cash or by cheque, that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

S.24(3) If a voluntary payment is made by cheque and the cheque is dishonored on the grounds that no funds or insufficient funds were on deposit to the credit of the

defendant in the institution on which the cheque was drawn

- (a) the conviction continues but the fine and any applicable surcharge remain outstanding whether or not the plea is signed in the manner provided for on the summons, and
- (b) the clerk shall give notice to the defendant by ordinary mail at his/her address for service that the cheque has been dishonored, the conviction continues and the fine and any applicable surcharge remain outstanding,

but a warrant of committal in respect of the defendant shall not issue until 15 days after the notice has been sent by ordinary mail.

### **Appearances**

S.25(1) Subject to subsection (2), a defendant shall appear, either personally or by an agent, before a justice on the date and at the place and time stated on the summons to answer that summons.

S.25(2) A defendant is not required to appear before a justice on the initial appearance date to answer a summons if

- (a) the defendant enters a plea of guilty before a justice prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,
- (b) the defendant enters a plea of not guilty prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,
- (c) the defendant obtains an adjournment of the proceedings prior to the initial appearance date, or
- (d) if authorized by a bylaw and the summons indicates that the defendant can make a voluntary payment, the defendant makes a voluntary payment.

S.25(3) If it is in the public interest to compel the defendant to appear before a justice in proceedings under this Part, a peace officer may, if authorized by the bylaw, issue a summons respecting any offence for which a voluntary payment may be made, requiring the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.

S.25(4) A prosecutor, may permit a defendant referred to in subsection (3) to make a voluntary payment if it appears prudent and appropriate in all the circumstances.

#### **Failure to Answer Summons**

S.26(1) If a defendant fails to enter a plea or make a voluntary payment in the manner provided for on the summons on or before the initial appearance date, the justice may

- (a) enter a plea of not guilty on behalf of the defendant and set a time for a trial,
- (b) issue a warrant for the arrest of the person, or
- (c) direct that a new summons be issued requiring the attendance of the person before a justice and set a time at which the attendance is required.

S.26(2) When a time is set for a trial pursuant to subsection (1)(a), the justice shall direct that the defendant be notified by ordinary mail at the defendant's address for service of the time fixed for the trial.

S.26(3) If a defendant fails to appear in Court in person or by an agent at the time fixed for the trial, a justice, on proof of service of the summons, shall

- (a) on application by a prosecutor, adjourn the proceedings, set a new trial date and direct that the defendant be notified of the new trial date by ordinary mail at the defendant's address for service,

- (b) on application by a prosecutor, issue a warrant for the arrest of the defendant, or
- (c) proceed to conduct the trial *ex parte*.

S.26(4) If the proceedings are adjourned under subsection (3)(a) and the defendant fails to appear at the new trial date, a justice shall proceed to conduct the trial *ex parte* and if the defendant is convicted the clerk shall give the defendant notice by ordinary mail at the defendant's address for service of the conviction and of the time allowed for payment of the fine.

### **Late Payment**

S.27(1) If a voluntary payment is tendered after the initial appearance date, a justice may, without a hearing and notwithstanding any action taken under this Part, direct that the voluntary payment be accepted as if it had been made in the time allowed.

S.27(2) Acceptance of a voluntary payment with respect to a summons under this section constitutes cancellation of a warrant issued under 28(1)(b) for failure to respond to that summons.

## **PART 3**

### **OFFENCE NOTICE VIOLATION TICKETS**

#### **Use of Violation Ticket**

S.28(1) Proceedings under this Part may be commenced by issuing an offence notice by means of a violation ticket described in Section 31.

S.28(2) If proceedings are commenced under Part 3, Part 2 does not apply to those proceedings.

### **Violation Ticket**

S.29(1) A violation ticket under this Part shall be in a form which shall include the following parts:

- (a) a certificate of offence, and
- (b) an offence notice.

S.29(2) A certificate of offence

- (a) shall be completed and signed by a peace officer who believes on reasonable and probable grounds that an offence has been committed,
- (b) shall be filed with a clerk prior to the initial appearance date indicated on the violation ticket, and
- (c) does not need to be sworn.

S.29(3) An offence notice shall

- (a) indicate the specified penalty for the offence or, if a surcharge is payable in respect of the offence, the combined amount of the specified penalty and the applicable surcharge, and
- (b) indicate
  - (i) how and when the defendant may respond to the offence notice, and
  - (ii) that the defendant may be convicted in his/her absence without a hearing if he/she fails to respond to the violation ticket by the initial appearance date indicated on the offence notice or of he/she pleads

not guilty and fails to appear in Court in person or by an agent on his/her trial date.

- S.29(4) An offence notice shall be served on a defendant
- (a) in the case of a defendant who is an individual, by delivering it personally to the defendant,
  - (b) in the case of a defendant that is a corporation or municipality,
    - (i) by sending it by single registered mail to the registered office of the corporation or municipality, or
    - (ii) by delivering it personally to the manager, secretary or other executive officer of the corporation or municipality, or the person apparently in charge of a branch office of the corporation at an address held out by the corporation to be its address.

- S.29(5) Notwithstanding subsection (4), if
- (a) the defendant has been charged under the *Tsuu T'ina Nation Traffic and Vehicles Bylaw*, or
  - (b) the offence notice relates to an alleged parking violation,

the offence notice may be served by sending it by ordinary mail to the defendant's address as indicated on the operator's licence.

- S.29(6) A justice, on application and on being satisfied that service cannot be made effectively on a corporation in accordance with this Part, may by order authorize another method of service.

#### **Evidence of Service**

- S.30(1) If an offence notice is served by the peace officer who issued it, the officer shall complete and sign a certificate of service on the violation ticket that the officer

personally served the offence notice on the person charged and the officer shall indicate the date of service.

- S.30(2) A certificate of service does not need to be sworn.
- S.30(3) If an offence notice is served by a person other than the peace officer who issued it, that person shall complete an affidavit of service.
- S.30(4) A certificate of service or an affidavit of service shall be received in evidence and in the absence of evidence to the contrary is proof of personal service.

#### **Trial Date**

- S.31(1) If an offence notice is served on a defendant, the defendant may plead not guilty by signing the not guilty plea on the offence notice and delivering it to the Court office indicated on the offence notice for that purpose.
- S.31(2) On receipt of an offence notice under subsection (1) the clerk shall, as soon as practicable, give notice to the defendant of the time and place of the trial by ordinary mail at his address for service.

#### **Failure to Appear**

- S.32(1) If a defendant pleads not guilty but fails to appear in Court in person or by an agent on his/her trial date the justice shall, if the certificate of offence is complete and regular on its face,
- (a) enter a conviction in the defendant's absence and without a hearing and impose the specified penalty plus applicable surcharges,

- (b) on application by a prosecutor, proceed to conduct the trial *ex parte*, or
- (c) on application by a prosecutor, adjourn the proceedings, set a new trial date, and direct that the defendant be notified of the new trial date by ordinary mail at his address for service.

S.32(2) If a defendant fails to appear in Court for trial set pursuant to subsection (1)(b) the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty plus applicable surcharges.

S.32(3) If a defendant is convicted under this section the defendant shall be notified, by ordinary mail at his/her address for service, of the conviction, the combined amount of the specified penalty and the applicable surcharge, if any, and the time allowed for payment.

S.32(4) If section 31(5) (a) or (b) applies, the notice referred to in subsection (3) may be sent by ordinary mail to the defendant's address which appeared on the operator's licence.

#### **Plea of guilty with Representations**

S.33(1) If an offence notice is served on a defendant and the defendant does not wish to dispute the charge but wishes to make submissions as to the penalty, including the extension of time for payment, the defendant may attend at the time and the place specified in the notice for that purpose and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to penalty.

S.33(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.

- S.33(3) On accepting a guilty plea under subsection (1) the justice shall enter a conviction and impose a fine equal to the specified penalty or a lesser fine permitted by law and indicate the amount of any applicable surcharge.

#### **When Payment or Charges Not Disputed**

- S.34(1) If an offence notice is served on a defendant and the defendant wishes to plead guilty to the charge, the defendant may make a voluntary payment by delivering the offence notice together with an amount equal to the specified penalty set out in the *Tsuu T'ina Nation Traffic and Vehicles Bylaw*, Schedules A and B.
- S.34(2) When a clerk records in the Court records the receipt of a voluntary payment under subsection (1), that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

#### **Failure to Respond to Offence Notice**

- S.35(1) If an offence notice has not been delivered in accordance with this Part and a plea of guilty has not been accepted pursuant to the provisions of this bylaw, the defendant is deemed not to wish to dispute the charge and a justice shall examine the certificate of offence and the certificate of service or the affidavit of service sworn pursuant to the provisions of this bylaw, and
- (a) if they are complete and regular on their face, the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty, or
  - (b) if they are not complete and regular on their face, the justice shall quash the proceedings.

- S.35(2) The clerk shall cause notice of the convictions and the imposition of the specified penalty and of any applicable surcharge payable to be given to the defendant by ordinary mail at the defendant's address for service.
- S.35(3) If section 3(5)(a) or (b) applies, the notice referred to in subsection (2) may be sent by ordinary mail to the defendant's address.
- S.35(4) If proceedings are quashed under subsection (1)(b), proceedings may be recommenced by issuing an offence notice under this Part if not more than six (6) months has elapsed since the alleged offence occurred.

#### **Setting Aside a Conviction**

- S.36 Where a defendant has a reasonable excuse for failing to dispute the charge or failing to appear in person or by agent at a trial, the defendant or the defendant's agent may, if not more than fifteen (15) days have elapsed since the conviction first came to the attention of the defendant, appear before a justice and the justice being satisfied by affidavit that the defendant's excuse is reasonable shall set aside the conviction and
- (a) give the person appearing a notice of trial in accordance with section 33, or
  - (b) proceed in accordance with section 33.

#### **Affidavit of Evidence**

- S.37(1) Where a defendant is charged with a contravention of the *Tsuu T'ina Nation Traffic and Vehicles Bylaw*, the evidence of the interceptor of the motor vehicle and the issuer of the violation ticket may be given by affidavit.

- S.37(2) An affidavit referred to in subsection (1) is, in the absence of evidence to the contrary, proof as to the motor vehicle that was intercepted and the driver of the motor vehicle.
- S.37(3) A copy of an affidavit referred to subsection (1) must be served on the defendant by ordinary mail at the defendant's address for service at least fourteen (14) days before the date of the hearing.
- S.37(4) The defendant may, with leave of the court, require attendance of any person giving evidence by affidavit pursuant to subsection (1) for the purpose of cross-examination.

#### **Penalty**

- S.38 If proceedings have been commenced under Part 3 with respect to an offence, the fine imposed with respect to that offence shall not be more than \$250.00 excluding any applicable surcharge and the defendant is not liable to imprisonment.

#### **Failure to Pay Fine**

- S.39 A defendant who is convicted of an offence pursuant to proceedings commenced under this Part and fails to pay a fine imposed by a justice within the time allowed for payment, or, if no time is allowed, forthwith, shall be liable to pay an amount equal to the fine imposed plus any applicable surcharge and the late payment charge of up to twenty (20%) percent of the amount of the fine imposed.

#### **REGULATIONS**

- S.40 Proceedings may be commenced under either Part 2 or Part 3 of this bylaw for a contravention.

S.40(1) Without limiting the factors that may be considered in determining the public interest under section 22(3) or 27(3) of the Act, the following factors may be considered:

- (a) the seriousness of the nature of consequences of the offence;
- (b) the number of previous convictions and outstanding fines levied against the accused;
- (c) the number of outstanding proceedings commenced against the accused under either Part 2 or Part 3 of the Act.

S.40(2) A Peace Officer may, if it is in the public interest, issue a summons respecting any offence for which a voluntary payment may be made requiring the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.

S.41 If a person is issued a violation ticket for a contravention of this bylaw or any other enacted bylaw, that person may make a voluntary payment.

S.41(1) An offence shall be designated on a violation ticket in a manner that is sufficient to permit the defendant to identify the offence.

S.41(2) In addition to any other method of designating an offence, an offence may be designated on a violation ticket by either

- (a) placing a mark beside the name of the enactment, if the enactment is named on the violation ticket, or
- (b) stating the name of the enactment in the appropriate space, if the enactment is not named on the violation ticket,

and specifying the section number of the provision under which the offence is alleged.

S.41(3) For the purpose of subsection (2), the name of a bylaw may be stated by specifying

- (a) the number of the bylaw, and
- (b) the name commonly applied to the authority that made the bylaw.

S.42(1) A defendant who is convicted of an offence pursuant to proceedings under Part 3 of the Act and fails to pay a fine imposed by a justice within the time allowed for payment or, if no time is allowed, forthwith shall be liable to pay a late payment charge equal to

- (a) \$20.00, or
- (b) 20% of the outstanding balance of the fine imposed,

whichever is greater.

S.42(1.1) The amount calculated under subsection (1)(b) shall be rounded down to the nearest dollar.

S.42(2) Unless otherwise ordered by a justice, a late payment charge shall not apply if the full amount of the fine is received within 48 hours after the date on which the fine is required to be paid.

S.43 If a justice convicts a defendant at an ex-parte trial, the defendant shall be given at least 15 days from the date of the conviction to pay the fine imposed.

S.44 No person shall be required to appear before a justice in answer to a summons or to respond to an offence notice until 21 days have elapsed from the day that the summons or offence notice is issued.

S.45 An offence notice shall not be considered to be delivered to a Court office until actually received by the Court office.


S.46(1) A violation ticket under Part 2 of the Act shall be in Form 1 of Schedule 1.

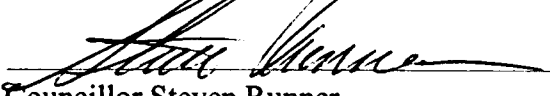
S.46(2) A violation ticket under Part 3 of the Act shall be in Form 2 of Schedule 1.

**THIS BYLAW IS HEREBY** made at this duly convened meeting of the Council of the Tsuu T'ina Nation this En day of September, 1998, by Band Council Resolution.


Voting in favour of the Bylaw, as evidenced by signatures, are the following members of the Council:

  
Chief Roy Whitney

  
Councillor Gilbert Crowchild


  
Councillor Steven Runner


  
Councillor Sanford Big Plume

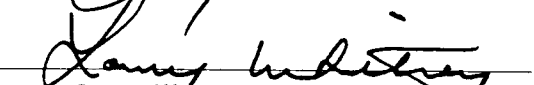
  
Councillor Ronald Dodginghorse

  
Councillor Paul Whitney

  
Councillor Tony Starlight

  
Councillor Jerry Simon

  
Councillor Gordon Crowchild

  
Councillor Larry Whitney

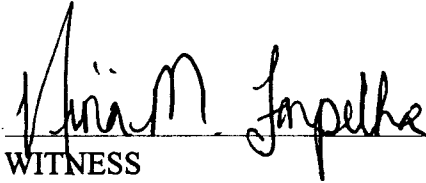
  
Councillor Kevin Littlelight

being the majority of those members of the Council of the Tsuu T'ina Nation present at the aforesaid meeting of the Council.

The quorum of the Council is seven (7) members.

Number of members of the Council present at the meeting: \_\_\_\_\_

I, Chief Roy Whitney of the Tsuu T'ina Nation, do hereby certify that a true copy of the foregoing Bylaw was mailed to the Minister of Indian Affairs and Northern Development at the Regional office pursuant to subsection 82(1) of the *Indian Act*, this 8th day of September, 1998.

  
WITNESS

  
CHIEF ROY WHITNEY



**VIOLATION TICKET**  
**TSUU T'INA NATION**  
**CANADA**

PART 1  
**02183064 M**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at or near TSUU T'INA (SARCEE), Alberta

NAME \_\_\_\_\_  
last first middle

ADDRESS \_\_\_\_\_  
street

city, town, village province postal code

**DID UNLAWFULLY  
CONTRAVENTE SECTION**

sec. #, Sub-Sec. #, Description

\_\_\_\_\_ OF THE

- Traffic & Vehicles Bylaw
- Animal Control Bylaw
- Liquor Control Bylaw
- Littering Bylaw

Other Acts or Regulations \_\_\_\_\_  Bylaw \_\_\_\_\_

Certificate of Offence and Service  
I believe on reasonable and probable grounds and certify that the person named above committed the offence as indicated and certify that I served an Offence Notice personally upon the person charged on the offence date.

Complaint  
I believe on reasonable and probable grounds and swear that the person named above committed the offence as indicated and that I served a Summons personally upon the person charged on the offence date.

or

Complainant Signature \_\_\_\_\_ Print Name \_\_\_\_\_ No. \_\_\_\_\_ Force \_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, Alberta

Commissioner for Oaths Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Expiry Date of Commission \_\_\_\_\_

**IN THE NAME OF HER MAJESTY THE QUEEN YOU ARE THEREFORE COMMANDED TO APPEAR BEFORE A JUSTICE AT:**

Justice of the Peace Counter

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ a.m. / p.m.  
**AND TO ATTEND THEREAFTER AS REQUIRED BY LAW.**

**THE FOLLOWING DOES NOT FORM PART OF THE CHARGE**

Speed Limit \_\_\_\_\_ km/h Recorded Speed \_\_\_\_\_ km/h  Clocked  Estimated  Camera  Radar/Laser

Court Appearance Required

Specified Penalty Option \$ \_\_\_\_\_

Adult  Youth

Place of Offence: at or near TSUU T'INA (Sarcee) Offence Time: \_\_\_\_\_ a.m. / p.m.

Operator Licence Number: \_\_\_\_\_ Province  Alta.  Other \_\_\_\_\_ Sex: M / F

Birth Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Treaty Number: \_\_\_\_\_ M.V.I.D. Number \_\_\_\_\_

National Safety Code Number: \_\_\_\_\_ Safety Number Province: \_\_\_\_\_

Particulars of Offence: \_\_\_\_\_

Vehicle Licence Number: \_\_\_\_\_ Province  Alta.  Other \_\_\_\_\_

Vehicle Make: \_\_\_\_\_ Year: \_\_\_\_\_ Color: \_\_\_\_\_ Licence Year: \_\_\_\_\_

**ADJUDICATION**

Charge Read & Plea:  Guilty  Not Guilty Finding of Court:  Guilty  Quashed  Withdrawn  
 Dismissed  Convicted in Absence

Fine: \_\_\_\_\_ or \_\_\_\_\_ Time to Pay to: \_\_\_\_\_

Date: \_\_\_\_\_ Adjudicating Provincial Judge or Justice: \_\_\_\_\_



**VIOLATION TICKET  
TSUU T'INA NATION  
CANADA**

**PART 3  
OFFENCE NOTICE**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at or near TSUU T'INA LANDS IN Alberta

NAME \_\_\_\_\_  
last first middle

ADDRESS \_\_\_\_\_  
street

city, town, village province postal code

**DID UNLAWFULLY  
CONTRAVENE SECTION**

sec. #, Sub-Sec. #, Description

OF THE

Other Acts or Regulations \_\_\_\_\_  Bylaw \_\_\_\_\_

Offence Notice

I believe on reasonable and probable grounds and certify that the person named above committed the offence as indicated and certify that I served an Offence Notice personally upon the person charged on the offence date. [PART 3]

Complainant Signature \_\_\_\_\_ Print Name \_\_\_\_\_ No. \_\_\_\_\_ Force \_\_\_\_\_

**READ FACE AND BACK OF OFFENCE NOTICE CAREFULLY**

**IN THE NAME OF HER MAJESTY THE QUEEN YOU ARE THEREFORE COMMANDED TO APPEAR BEFORE A JUSTICE AT:**  
 Justice of the Peace Counter  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ a.m. / p.m.  
**AND TO ATTEND THEREAFTER AS REQUIRED BY LAW.**

**THE FOLLOWING DOES NOT FORM PART OF THE CHARGE**

Speed Limit \_\_\_\_\_ km/h Recorded Speed \_\_\_\_\_ km/h  Clocked  Estimated  Camera  Radar/Laser

\_\_\_\_\_

Specified Penalty \$ \_\_\_\_\_  
Option \_\_\_\_\_

Adult  Youth

You may plead guilty to the offence charged by mailing or delivering this offence notice together with the specified penalty in the amount indicated.

Mail or deliver this summons together with the specified penalty in the amount indicated to:

**ADULT**

**YOUTH**

**WARNING**  
If you choose the specified penalty option,  
**YOUR PAYMENT MUST BE RECEIVED ON OR BEFORE THE ABOVE APPEARANCE DATE TO AVOID LATE PAYMENT CHARGES.**  
Should you be convicted of the offence in your absence and fail to pay the fine imposed within the time allowed if any, you will be subject to late payment charges. The amount of the late payment charge will be \$20 or 20% of the above specified penalty whichever is greater.

You have the right to retain and instruct counsel regarding this matter.

If you fail to respond to this offence notice as required by law by the appearance date indicated above, or if you plead not guilty and fail to appear in court in person or by agent on your trial date, you will be deemed not to dispute the charge and a justice may convict you of the offence in your absence without a hearing.

Until the specified penalty amount plus any late payment charges are paid in full, you will not be allowed to obtain or renew your drivers licence and or motor vehicle licences. In some cases your drivers licence will be suspended.



**VIOLATION TICKET  
TSUU T'INA NATION  
CANADA**

**PART 4  
POLICE RECORD**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at or near TSUU T'INA (SARCEE), Alberta

NAME \_\_\_\_\_  
last first middle

ADDRESS \_\_\_\_\_  
street

\_\_\_\_\_ city, town, village province postal code

**DID UNLAWFULLY  
CONTRAVENTE SECTION**

\_\_\_\_\_ sec. #, Sub-Sec. #, Description \_\_\_\_\_ OF THE

- Traffic & Vehicles Bylaw
- Animal Control Bylaw
- Liquor Control Bylaw
- Littering Bylaw

Other Acts or Regulations \_\_\_\_\_  Bylaw \_\_\_\_\_

Certificate of Offence and Service  
I believe on reasonable and probable grounds and certify that the person named above committed the offence as indicated and verify that I served an Offence Notice personally upon the person charged on the offence date.

Complaint  
I believe on reasonable and probable grounds and swear that the person named above committed the offence as indicated and that I served a Summons personally upon the person charged on the offence date

or

Complainant Signature \_\_\_\_\_ Print Name \_\_\_\_\_ No. \_\_\_\_\_ Force \_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, Alberta

Commissioner for Oaths Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Expiry Date of Commission \_\_\_\_\_

**IN THE NAME OF HER MAJESTY THE QUEEN YOU ARE THEREFORE COMMANDED TO APPEAR BEFORE A JUSTICE AT:**

Justice of the Peace Counter  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ a.m. / p.m.  
**AND TO ATTEND THEREAFTER AS REQUIRED BY LAW.**

**THE FOLLOWING DOES NOT FORM PART OF THE CHARGE**

Speed Limit \_\_\_\_\_ km/h Recorded Speed \_\_\_\_\_ km/h  Cloked  Estimated  Camera  Radar/Laser

Court Appearance Required  Specified Penalty \$ \_\_\_\_\_  
Option \_\_\_\_\_

Adult  Youth  
Place of Offence: at or near TSUU T'INA (Sarcee) Offence Time: \_\_\_\_\_ a.m. / p.m.

Operator Licence Number: \_\_\_\_\_ - \_\_\_\_\_ Province  Alta.  Other \_\_\_\_\_

Birth Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Treaty Number: \_\_\_\_\_ M.V.I.D. Number \_\_\_\_\_  
Year Month Day

National Safety Code Number: \_\_\_\_\_ Safety Number Province: \_\_\_\_\_

Particulars of Offence: \_\_\_\_\_

Vehicle Licence Number: \_\_\_\_\_ Province  Alta.  Other \_\_\_\_\_

Vehicle Make: \_\_\_\_\_ Year: \_\_\_\_\_ Color: \_\_\_\_\_ Licence Year: \_\_\_\_\_