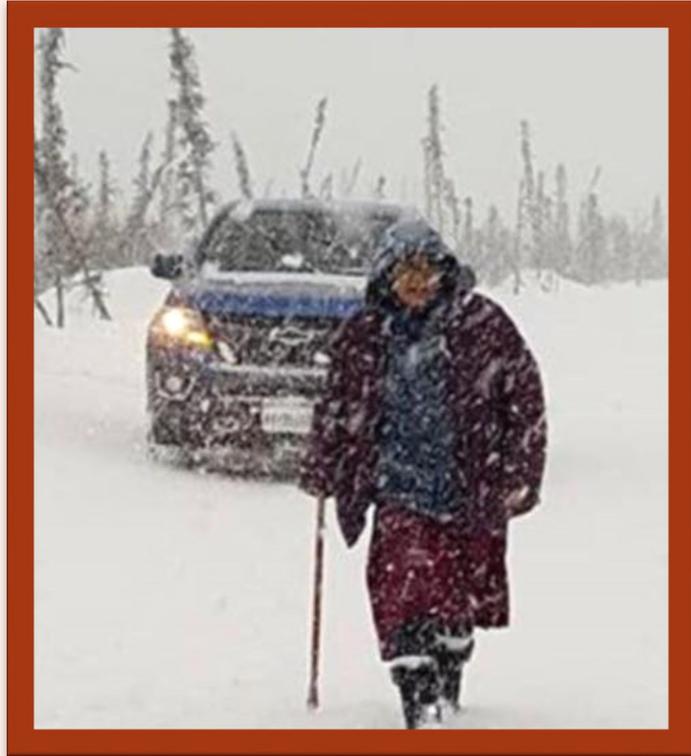




Nishnawbe-Aski Legal Services Corporation By Law Program Newsletter

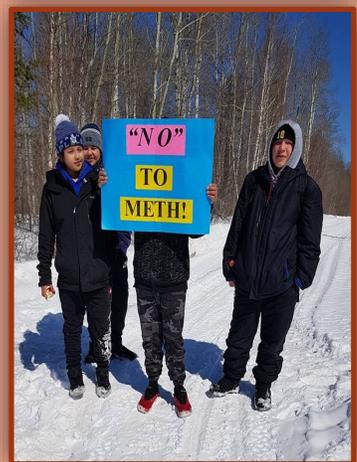
2018-2019
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Walk Against Drugs : Bearskin Lake, Sachigo Lake, Muskrat Dam

"Walk Against Drugs" by three communities: Bearskin Lake and Sachigo Lake walked to Muskrat Dam. The walkers, including Muskrat Dam, met up at the Sachigo Lake winter road turnoff and walked into the community of Muskrat Dam. There was lunch served at the Treatment Centre, included were speakers from each community. There were workshops at the school in the afternoon and a jamboree in the evening. The purpose of the walk is for the communities (Weagamow included, community did not participate in the walk due to death in their community) to work together in preventing the drugs and alcohol from going into their communities.

Their plan was to draft up a plan on how to work together. They will include Nishnawbe-Aski Legal Services Corporation to assist in how to make it happen.



Welcome submitted by: Chantelle Johnson- Mainville, Restorative Justice Supervisor



Hello, Boozhoo!

Welcome to our first ever 2018 Nishnawbe-Aski Legal Services Corporation By-Law Newsletter. This year we are excited to announce our new Band By-Law Worker Program. In this edition you will find educational information of the processes and implementation of band by-laws.

We are immensely fortunate to have Cecilia Fiddler, from Bear-

skin Lake on our team. Cecilia has brought her expertise from developing and implementing the current by law process in Bearskin Lake and has been vigorously traveling to communities to share her knowledge with others. Therefore, because of the successes of this initiative we have expanded to add two more By Law Workers. One for the James Bay Coastal Communities

and one for the Central Communities of NAN. Also on our roster is the incredibly talented Staff Lawyer Danielle Wood, who has partnered up with Cecilia to further the public legal education of the band by law process.

These two remarkable ladies have been travelling non-stop from coast to coast to the communities of NAN delivering information sessions and assisting in the development of individual process of By Law. This year as well we have had two very successful By Law Symposiums; one held in Thunder Bay, to which we invited one representative from the Western NAN Communities and one in Timmins which was held for the Eastern communities of NAN.

To request a Clinic Day, fill out the form available on our website www.nanlegal.on.ca. Fax, mail or email the completed form to our office to the attention of the Public Legal Education & Communications Officer. Fax: (807) 622-3024 Mail: 1805 Arthur St East, Thunder Bay, ON P7E 2R6 Email: fjacob@nanlegal.on.ca

Meegwetch and enjoy!



Cecilia Fiddler, By Law Restorative Justice Worker



My name is Cecilia Fiddler. I am from Bearskin Lake First Nation. I started working for Nishnawbe Aski Legal Services Corporation (NALSC) as a Band By-Law Worker on September 5, 2017.

Originally, the plan was for me to work with six NAN communities. In order to find out the needs of the target communities on their Band By-Laws, NALSC held a Band By-Law conference on January 16 – 18, 2018, which was held in Thunder Bay at the Valhalla Inn. Several communities shared information about their alternative justice systems that they are in the process of or have already implemented. These communities are Bearskin Lake, Kasabonika Lake and Muskrat Dam Lake. After a successful conference, NALSC held a Band By-Law

Summit in Timmins on February 27 – March 1, 2018. The agenda was similar to the West NAN Band By-Law Summit.

I have been to the following NAN communities to meet with Chief and Council to discuss Band By-laws: Bearskin Lake, Kasabonika Lake, Muskrat Dam Lake, Mishkeegogamang, Fort Albany, Kashechewan and Nibinamik.

Prior to this position, I worked as Band By-Law Worker in Bearskin Lake. The Council passed a Band Council Resolution on the “Bearskin Lake Intoxicant Band By-Law” in 2010 that entitled the community to enforce its own Intoxicant By-Law infractions. Like other NAN communities, the courts and local police service are not enforcing the Band By-Law infractions and Intoxicant By-Laws infractions.

Based on my experience working and implementing the Bearskin Lake Intoxicant Band By-Law, I believe, each NAN community has the potential to develop and implement their own alternative justice systems within their community. Each community has their own strengths and people who are committed to make change for a positive and healthy community. You have resources in your community that you can utilize to make this happen. This is my vision for the Band By-Law program.

Enforcement of Band By-laws

Submitted by Mary Bird, LAO Area Director

A law is as good as its enforceability. If a law cannot or is not being enforced, it is the same as having no law at all.

BY-LAWS

Band Councils can make by-laws regarding a number of matters. For example, Section 81 (1) of the Indian Act includes the power to make bylaws for health, traffic, the observance of law and order, disorderly conduct and nuisance, animal control, etc. If a person breaks any of these by-laws they can be fined up to \$1,000.00 or up to 30 days in jail, or both.

Section 85.1 (1) deals specifically with intoxicants and allows by-laws:

- (a) Prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band; If a person is found guilty of doing any of these things they can be fined up to \$1,000.00 or sentenced to up to six months in jail, or both.
- (b) Prohibiting any person from being intoxicated on the reserve;
- (c) Prohibiting any person from having intoxicants in his possession on the reserve.

If a person is found guilty of doing any of these things, they can be fined up to \$100.00 or sentenced to up to three months in jail, or both.

There are other matters that Band Councils can make by-laws for but I will focus on the enforcement of these particular types of by-laws. The enforcement of intoxicant by-laws are the ones most frequently asked about by the NAN communities.

The first step in enforcing any by-law is to review it to see if it is appropriate for the community's needs. If a community does not have a by-law then one needs to be drafted. It is a good idea to have the community's lawyer review the by-law to ensure it meets the requirements of the Indian Act. Nishnawbe-Aski Legal Services can provide examples of by-laws that can assist a community in drafting a by-law. (See Workbook information on the next page.)

Except for an intoxicant by-law, the other by-laws referred to here, can be made by a simple majority of a quorum of Council. For intoxicant by-laws they can only be passed by a majority of the electors of the Band at a special meeting of the Band called by Council for the purpose of considering the by-law. The by-law can include things that help enforcement of the by-law. For example, Council could pass a by-law for intoxicants that would include appointing and directing Enforcement Officers and community-based enforcement processes other than prosecution.

Right now although most NAN communities are "dry", neither NAPS or OPP are enforcing by-laws in the communities. They are not doing that because the Crown Attorneys are refusing to prosecute these by-laws. Both NAPS and OPP have advised that they want to lay charges but have been told not to because nothing will happen.

The Crown Attorney's Office has indicated that they will not prosecute. They have told NALSC that they will not do so for different reasons. They say the court does not want these charges, or there are not enough Crown Attorneys to prosecute. We do not know what the real reason is. This is unfortunate and we at NALSC continue to insist that Crown Attorneys have a responsibility to prosecute these by-laws.

Although intoxicants are not the only cause of crime, they are a significant cause, or at least, lead to more serious incidents. Enforcement of by-laws would not prevent all misuse of intoxicants but would go a long way to reducing the misuse and thereby the problems that arise out of the misuse. Both NAPS and OPP support the communities' efforts to have by-laws enforced by the courts.

The Crown Attorney's Office has suggested that the communities hire a private prosecutor. This has been done in other communities but is very expensive and does not relieve the government's obligation to provide the same protections to citizens of NAN communities as it provides to all other citizens not living on reserve.

Communities should be demanding that the Crown Attorney prosecute Band by-laws, particularly, intoxicant bylaws and demanding that the courts hear these cases. Communities can make it a condition of coming on reserve that the Crown Attorney prosecutes and the Court hears these cases.

There are other ways of enforcing these by-laws, such as community based models, which could include options such as Restorative Justice circles that would require people to attend and discuss how their actions affect the community, and steps they can take to heal themselves and stop negative behaviours.

There are many models of community based enforcement out there already in operation. In NAN, Bearskin Lake First Nation has already started and has kindly agreed to have their model shared. NALSC has developed a Workbook for this model and we will gladly share it with any community. Please request a Clinic Day if you wish to have us attend and discuss this or other possible models of Band By-law Enforcement.

TABLE OF CONTENTS

INTRODUCTION	1
LIST OF IMPORTANT WORDS	2
THINKING THROUGH THE PROCESS	4
IMPLEMENTING THE LAW	12
ENACTMENT FLOWCHART	15
ENFORCEMENT FLOWCHART	16
APPENDICES	17
A. Bearskin Lake First Nation Intoxicant Bylaw	
B. Bearskin Lake Community Summons	
C. Wabaseemong Independent First Nation Inhalant Bylaw	
D. Sample Appearance Notice	
E. Sample Promise of Confidentiality	
F. List of Contacts	



Band Bylaws By Danielle Wood, Staff Lawyer

Hello Boozhoo!

I'm a staff lawyer with Nishnawbe-Aski Legal Services Corporation. I have been with the organization in various roles for two years now. Throughout my time serving citizens of the Nishnawbe Aski Nation, I have had the pleasure of traveling to various communities. Most recently, I have been working with Cecilia Fiddler and the rest of the team to learn, educate, and assist those looking to develop intoxicant bylaws.

As a bit of a background, a bylaw is a local law created to regulate affairs and govern conduct in a community. For example, cities create bylaws for traffic, parking, and littering. The provinces passed law giving authority to cities to create these bylaws. Similarly, First Nations have been given bylaw-making authority from the federal government through the Indian Act.

Indian Act bylaws are legal tools that are available for immediate use in First Nation governance. Under three sections, the Indian Act describes specifically on what areas First Nations may make bylaws. First, section 81 is a general power over 22 local matters, for example law and order, traffic, and animal control. Second, section 83 allows for bylaws to be made about money and taxation. Third, section 85.1 is a power to make bylaws on intoxicants, alcohol, their consumption, production, sale, and possession.

There are some issues with Indian Act bylaws. The Indian Act sets out certain requirements for "enactment" – or proper approval – and these steps must be followed. Following the Indian Act requirements alone may not be enough for your community needs. For example, if you only have 40 band members turn out to vote on the bylaw, you may not have enough notice and community support. Bylaws must also be in line with other Canadian laws. Laws like the Charter of Rights and Freedoms limit First Nations' abilities to search band housing and use banishment as a punishment.

Bylaws apply to every person on the land, whether they are a member of the community or not. Enforcing bylaws on band members can be tricky, especially when it comes to banishment. Punishments for Indian Act bylaws are described in the Indian Act itself. The punishments are not as serious as those under the Criminal Code. The punishments, fines and imprisonment, are not an effective nor the Anishnawbe way of dealing with community issues. Also, much to the dismay of communities, the Ontario government decided in the 1990s that it would no longer enforce First Nation bylaws through the provincial court system.

One important question that we need to ask ourselves is "why is this important"? First Nations, as independent and sovereign people, need control of their government and legal systems. Indigenous communities have been and continue to be oppressed by the laws of Canada. As First Nations continue to fight for the rights, culture, identity, and languages that were never surrendered, it is important for us to continue to look at our legal system. There are more Indigenous people incarcerated than any other group of people in this country. Half of the children in care in this country are Indigenous. This must be addressed. Innovative ways must be used to look at the justice system. Healing by returning to traditional ways must occur.

Questions of drafting, enforcement, and funding are hurdles that can be overcome. Communities like Bearskin Lake, Kasabonika Lake, and Muskrat Dam are pushing forward with Indian Act bylaws and being creative with addressing these issues.



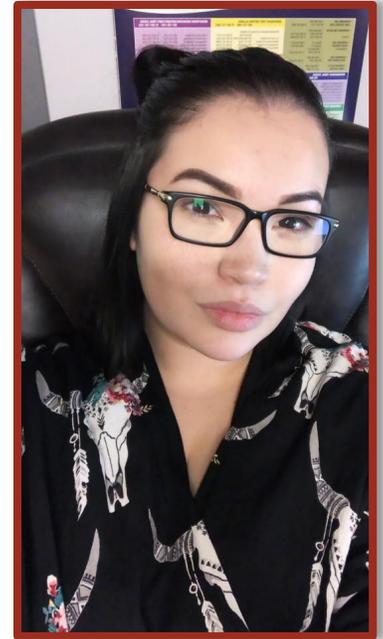
By Law Worker Central Introduction

Hello! Booshoo! Wacheeyah!

My name is Elizabeth Johnson and I am from North Caribou Lake First Nation. I have been with Nishnawbe-Aski Legal Services for 2 years. I am relatively new to the By-law program as my position started in August and I am still learning new things each day about the Nishnawbe-Aski Nation communities, their by-laws, and how we can assist each other. Coming from a dry community like North Caribou Lake, I understand the frustration of having limited access to legal resources and legal information. The impact that by-laws have on each of our lives and also the lack of assistance to enforce these by-laws.

I have enjoyed travelling to the communities of Nishnawbe-Aski Nation and also to various events and conferences to gather information and share with our people of Nishnawbe-Aski Nation. From each community visit I have done this year I have learned that each community leadership has their right to self-governance and self-determination as an independent first nation.

For further information you may contact me at 1-800-465-5581 or by e-mail at ejohnson@nanlegal.on.ca



“I am still learning new things each day about the Nishnawbe-Aski Nation communities...”

By Law Worker Coastal Introduction

I am Martha K. Kataquapit from Attawapiskat, Ontario. I have been with Nishnawbe-Aski Legal services for 5 years. I am currently with the Restorative Justice by-law program and enjoy going to all the James Bay Communities, working with the local community members, and getting to know the people. I strongly believe we are capable of working together to build a better future and healthy communities for the youth. Since I have become a mother I am more empathic with my work and more open and understanding of our history and what has brought us here

today. I have always believed people can change if they are willing to do the work by choice. I have a great deal understanding community safety because I have worked as Constable Auxiliary, a one-time funded opportunity in my own community of Attawapiskat. Its was great way to learn policing in the area of the drug and alcohol problems within the reserve. We can have our own structure of the by-law and empower our people. I believe we are capable of working in our own frame work with the first nations.



Speech to the NAN East Bylaw Conference – February 27, 2018 – Law’s Journeys



Boozhoo Chiefs, council members, delegates here representing your communities. It is an honour to be here with you today. I acknowledge that I am in a room of experts about the topics that I want to address in this talk.

My name is Simon Owen. I am a settler Canadian, English on my mother’s side and a Maritimer for 200 years on my

father’s. I was raised in Tsleil-waututh territory, near what we now call Vancouver. I studied to be a lawyer and spent several years working in the Nishnawbe-Aski Nation, before moving to the Indigenous Law Research Unit at the University of Victoria. The work that ILRU does will come up again a bit later in this talk.

Let me start with the obvious. Canada is a huge blanket covering so many territories, so many nations. And for far too long it has covered this territory – every Indigenous nation – with its own laws, without recognizing or caring about what was already here. But, as my boss at ILRU at UVic, Professor Val Napoleon says, Indigenous laws haven’t gone anywhere, and people have been doing the work of law even when that work itself was denied, discouraged, or even called illegal by the Canadian state. Anishinaabe law – Anishinaabe inaakonigewin – continues to guide life in your communities – but it is long past time that its legal authority and integrity is again recognized, revitalized, and made central, as explicitly and as powerfully as Canadian law has ever tried to be. I believe that we – meaning Canada – are starting to wake up to this truth – but there is much distance to go before the different legal traditions that exist in this territory – Canadian and Anishinaabe – find balance, respect, and true reconciliation.

I must speak from only my own experience, from my own perspectives. In this spirit, let me offer you one Canadian lawyer’s take on why community laws – as known in the Indian Act, band bylaws – matter so much in this journey.

My colleague and teacher in the law, John Borrows, who is Anishinaabe from Cape Croker in southern Ontario, says that law – or at least not the Anishinaabe law that he has learned from his own teachers and experiences – is not just about rules and punishments, but about living well in the world, living well together: mino-bimaadiziwin – living a good life.

This, of course, is not the law that I grew up learning, and it is not the law that I spent 7 years practicing as a lawyer working in the Nishnawbe-Aski Nation. But I am coming to understand that mino-bimaadiziwin is at the heart of good laws – and especially the laws that govern the communities you live in.

Story about the failures of law and living a good life

Law, of course, must respond to the failures of our search for a good life. One of the first cases I became involved in as a young lawyer

working in NAN was a homicide - one young man accused of killing another. The night didn’t start out with such violence, of course – and it never needed to end the way it did, with one young man dead and another in jail. This was just a group of young people, searching – as all young people have – for mino-bimaadiziwin, for the good life that every human heart wants, and needs to learn about finding. But these young men were lost in their search, and they were hurt in their search. They were searching, but could not find mino-bimaadiziwin, and, of course, they could not find it in the bottles that were in their hands. These were young men seeking, I think, to live well together, but they did not have what they needed – and their community did not have what it needed – to help guide them on that path, instead of the path that they so tragically took.

Something about this story tells me why I believe you are here today, are committing yourselves to the hard work of rebuilding laws that guide the search for mino-bimaadiziwin. Because I believe that law – the law that is known, taught, and lived by Mishomis and Kokum, which is the same law that is so needed by those young people who are searching for a good life – I believe that law can offer – and maybe actually IS that guidance, just as much as law also responds to challenges, harms and changes in communities.

But I was not taught about mino-bimaadiziwin in law school, and did not find it in any legal textbook or case. It is not important in the laws and law enforcement that Canada has long forced upon Anishinaabe communities, without asking for consent or participation. Canadian law, as you know, only shows up after the bottles have been broken and the blood has been spilled, and it is the law that separates, judges, punishes, and – far too often – fuels the cycle of hurt, anger, loss, and ever-increasing distance from mino-bimaadiziwin. Canada’s laws are not guides on that journey – and you don’t need me to tell you that, although of course that’s a lesson I needed to learn.

A question that I have kept coming back to – when I was practicing Canadian law in Anishinaabe communities and also now that I am working directly with supporting the re-growth of Indigenous laws, is how a legal tradition like Canada’s – with its uniforms, codes, parliaments and prisons – can uphold (much less understand) Anishinaabe laws that, for thousands of years, have not depended on written rules, states or their professional agents – lawyers, especially! Can we understand mino-bimaadiziwin, or the Grandfather teachings, not just as nice words, but as real legal principles with real legal importance? In these times where the words of reconciliation are heard so frequently, can these different ways of understanding and expressing law really be reconciled?

journey – fundamentally, we are all human, and our societies have always had, and always needed, reasonable, publically accountable ways to respond to problems, protect those who are vulnerable, and maintain the rights, responsibilities, and relationships that matter to us. After generations of living together in unjust ways, we must take steps toward living together more justly. But for this to happen, we need to clarify who is leading this journey, and who needs to take several steps back to humbly follow.

I do believe that each legal tradition has much to offer in this Law comes from several different sources, but at the risk of oversimplifying, we can focus on two main 'types': There are the laws that take shape from community deliberation, made official by recognized leaders, and put into practice by those with the right training and authority. Band bylaws, or any federal or provincial law, are examples of this type, and this is probably what most people think of when they think of law. But these laws – which in some form have always been part of every human society – can only be good, be just, and be effective, not only as representations of power, but as responsible authority, when they are informed, guided, and supported by another kind of law, the kind that runs much deeper in a society's lived experiences and learned values – over time, with each other, and within a shared environment. These are the legal principles that help us decide what our day-to-day laws and legal decisions should be... our constitutions. They can be written (like the Charter) or unwritten, expressed within language and taught within stories told through generations, or learned from the land itself. And while I believe that we must work together to recognize and support both types of law, no society – I mean no outside lawyer, court, judge, police officer, or professor – can be the authority or the expert in another nation's constitutional laws – so this is where my (where Canada's) understanding of mino-bimaadiziwin, or the Niizhwaashiwaan Mishoomisinaan – the 7 Grandfather Teachings – must stand – as acknowledgers, supporters, not as interpreters or authorities. We have a long way to go in this work. But this much is certain - This is your law, and you – your communities – are the legal experts.

But I also believe that the work of rebuilding good laws – deliberations, codes, and practices, for example, that truly uphold grounded constitutional principles – is shared work. We are in a time of great challenge and great change, and it is needless to think that Canadian or Anishinaabe legal traditions can or should be completely separate or work well in isolation. I have heard about how important it is for young Anishinaabe and Anishinaabekwe to walk in both these 'worlds', and to be able to strongly live and communicate in each, and across both. This brings me back to the work that I am lucky enough to be involved in at the Indigenous Law Research Unit. Here, scholars, lawyers, and students from many different backgrounds – Indigenous and settler – are working to build the tools by which Indigenous legal traditions – the practical, rich, fundamentally reasoned and reasonable principles and processes of social governance and problem-solving that communities have used, taught, and developed for thousands of years – will again be truly living legal orders. Part of this work involves using skills developed in one legal tradition (in my case, a Canadian lawyer's training) to support the articulation of Indigenous law from the past, to the present, and from one worldview to another. So we learn to work with stories, for example, like we do with legal cases – as rich intellectual resources for teaching and expressing law, which can be applied to the problems of everyday life.

Legal teachings have always reached across distances, distances of time and distances between people, between generations, and between ideas. People have always moved, always collaborated, always shared the technologies of 'what works', what helps mino-bimaadiziwin. And younger generations have always needed the guidance of those who walk before them. Law needs to reach across these distances ever more strongly, in these times of great

change, and draw strength and meaning from both worlds.

Lawmaking and law-doing – especially as we try to come out of the darkness of colonialism – requires the support and hard work of many people, many groups. This includes, I believe, people, institutions, and even ideas that come from outside the Anishinaabe legal tradition, but which have the capacity to listen, learn, and change to really support the legal principles and processes of mino-bimaadiziwin. NAPS, for example, can be understood as an example of what is possible – and what is necessary – when resources, ideas, and energy from different legal traditions come together in a good way. The work that ILRU does can be another way to rebuild that strength and support for upholding Anishinaabe inaakonigewin, for bringing those principles and processes that guide your people, respond to harms and injuries, to continue to do the "hard work" of law now now and into the future.

Band bylaws – or in better words – laws of community governance – are essential places where mino-bimaadiziwin is made central, and supported by institutions and resources from both Anishinaabe and Canadian legal traditions.

I want to end with another Anishinaabe legal concept that John Borrows' work has taught me: Dibinindizowin – freedom – liberty within ourselves and within our relationships. This is not exactly the same meaning as many people from the Western traditions understand freedom – as an individual right to do whatever we please. As I have begun to understand it, this is the freedom we have from standing as strong members of our own communities, of upholding our responsibilities as much as we exercise our own rights. Of not "worshipping law as rules", but rather law's responsibilities and rights within all of our relationships. I have struggled to understand how law – including community bylaws – fit within the concept of dibinindizowin. The law that I brought with me when I moved to NAN, the law that I was an 'expert' in, didn't have much to do with freedom at all, except perhaps with me trying to keep my clients as free as possible within a system that set down rules to take freedom away.

But I am learning that law and freedom are related – and this is especially true in laws that seek to guide people away from pain, hurt, and violence, towards mino-bimaadiziwin. Especially laws that deal with intoxicants. No amount of punishment, no system of rules, will be enough to eliminate intoxicants from our communities, or the violence that goes with it. No amount of fines or trips to jail will do it. Law – even the best laws – will only ever be one among the many factors that help people find mino-bimaadiziwin, health and well-being in their lives and families and communities. But it can be a part, it should be a part, and you are helping to make it a part. How these parts fit together, of course, is up to you – each person, each community – but also all of us. Dibinindizowin, I think does not separate people, but draws them more strongly together.

This is important work, and this is hard work – this job of upholding law that helps people be safe and be well, in themselves, in their families, and in their communities. As Elder Barney Batise reminded us at another of these conferences a few years ago, "whatever you build, build it right". And that is what you are doing, what we are here to do. Miigwetch.



Authorities

Under the *Indian Act*, band council may make by laws for several purposes

Section 81 by-laws include matters such as health, traffic, animal control, nuisances, trespassing, residency and zoning

Section 83 by-laws include money matters, property taxation, expenditure of band moneys and business licensing

Section 85.1 by-laws relate to intoxicants (alcoholic beverages)



Process of Adopting a By-law: Section 81

A by-law made under section 81 of the *Indian Act* must be adopted by the band council by resolution. The *Indian Act Amendment and Replacement Act*, which came into force in December 2014, provides that a by-law only comes into force when it is published on a website, in the *First Nations Gazette*, or in a newspaper that has general circulation on the reserve.

A First Nation does not need to send its enacted by-laws to the Department and the Minister does not have a power to disallow them as he/she once did.

Process of Adopting a By-law: Section 83

Section 83 of the Indian Act provides for by-laws pertaining to money matters, property taxation, expenditure of band moneys and business licensing.

When a band council makes a by-law under this section, it must be explicitly approved by the Minister of Aboriginal Affairs and Northern Development.

Section 83 by-laws are reviewed by the First Nations Tax Commission which makes recommendations to the Minister on their approval.

Process of Adopting a By-law: Section 85.1

Section 85.1 of the Indian Act provides for by-laws on the prohibition of sale, supply, manufacture and possession of intoxicants, as well as the prohibition of public intoxication on reserve.

These by-laws must be approved by a majority of the electors of the First Nation who voted at a special meeting of the band, called for that specific purpose.

*As per the Indian Act Amendment and Replacement Act, the intoxicant by-law only comes into force when it is published on a website, in the *First Nations Gazette*, or in a newspaper.*

A First Nation does not need to send an enacted intoxicant by-law to the Department.

Role of the Department in By-laws

The Department no longer reviews enacted by-laws. Should a First Nation send us a copy, we will return the by-law along with a letter explaining the publication requirements of the Indian Act Amendment and Replacement Act.

However, the Governance Policy and Implementation Directorate of the Treaties and Aboriginal Government Sector at HQ continues to provide advisory services to First Nations who wish to have their draft by-laws under section 81 or 85.1 reviewed before enactment.

The Directorate will also continue to hold workshops in regional locations where there is demand from First Nations.

By-laws on the First Nations Gazette

The Department supported an undertaking by the First Nations Tax Commission (publishers of the First Nations Gazette) to make all by-laws that were in force prior to December 2014 available on their website.

Anyone looking for information on by-laws in force for any given First Nation should be directed to the First Nations Gazette website at www.fng.ca

Some First Nations have published by-laws made after December 2014 on the site.

Enforcement – Types of By-laws

There are generally two kinds of by-laws:

- Those that are administrative or quasi-civil in nature, such as building codes or a zoning by-law; and
- those that are quasi-criminal in nature (dealing with law and order), such as prohibition of intoxicants, disorderly conduct, traffic and, at times, animal control.

Generally speaking, the policing authority responsible for policing the reserve will enforce only quasi-criminal by-laws. By-law enforcement officers appointed by the band council will enforce those of an administrative quasi-civil nature.

Enforcement

There are two main methods of enforcing by-laws:

- Verbal and 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. Where there is a suspected violation of an administrative or quasi-civil type by-law, the council may issue a warning to correct the situation. If the behaviour persists, the enforcement officer may lay a charge, which is prosecuted in the courts.

Violations of quasi criminal by-laws, such as those regulating traffic and of a law and order nature, normally proceed directly with the laying of a charge at the discretion of the police. If there is enough evidence and it is desirable to do so, the officer will swear a charge before a justice of the peace or a provincial court judge. The justice will then prepare and sign a summons which will be given to an officer to be served on the accused.

Penalties

The penalties available to a court upon convicting a person of violating a by-law are limited by the provisions of the Indian Act and the terms of the by-law itself.

For by-laws made under section 81: Maximum of a \$1000 fine, 30 days imprisonment, or both

For by-laws made under paragraph 85.1(4)(a) (Sale and supply of intoxicants): Maximum of \$1000 fine, six months imprisonment, or both

For by-laws made under paragraphs 85.1(4)(b) and (c) (being intoxicated or in possession of intoxicants): Maximum \$100 fine, three months imprisonment, or both

Intoxicant Bylaws: Where to Start

Step 1: Drafting the Bylaw

Section 85.1 of the *Indian Act* gives Band Councils the power to make bylaws that prohibit the sale, barter, supply, or manufacture of intoxicants, and to prohibit anyone from being intoxicated or possessing intoxicants on reserve.

This power is very broad. To create an effective bylaw, it should be as specific as possible so it can meet the unique needs of the community.

The specific intoxicant problems the community is experiencing should be closely considered:

- Are street drugs a problem? Section 81 of the *Indian Act* allows Band Councils to make general bylaws for health, law and order, and preventing disorderly conduct and nuisances. Consider whether or not to include this or make a separate bylaw for this.
- Are other intoxicating substances (*i.e.* glue, lacquer, gasoline, yeast) causing a problem? If so, decide whether to include them in the bylaw's definition of intoxicants by specifically naming each prohibited substance in the bylaw or create a separate clause or bylaw prohibiting them.
- Is underage drinking an issue? If so, consider including this prohibition in the bylaw or creating a separate bylaw.

Specifically spell out and prohibit unacceptable conduct in the bylaw.

Also consider:

- Including any traditional laws, values or customs, and
- Including potential issues that might arise in the future.

Step 2: Enforcing the Bylaw

Next determine how the bylaw(s) will be enforced. Section 85.1 of the *Indian Act* allows for the creation of a summary offence with a maximum penalty of a fine of \$1000 and 6 months imprisonment for the sale, supply or manufacture of intoxicants. It also sets out the maximum penalty of \$100 and imprisonment for 3 months for possessing or using intoxicants.

History has shown this penal system to be ineffective and especially given the crown's reluctance to prosecute, other enforcement systems should be put in place.

To create an enforcement system, establish the following:

- Who will be enforcing these bylaws? *I.e.* who will conduct the search and seizures, and lay the charges? Band-appointed peacekeepers? The police force serving your community?
- How residents' rights under the *Canadian Charter of Rights and Freedoms* will be accounted for, such as the right against unreasonable search and seizure? The *Indian Act* requires search warrants issued by Justices of the Peace for searches of homes and does not allow peacekeepers to make seizures. Consider creating mechanisms such as a band-appointed committee to review and approve requests for searches of homes and an appeal process for these decisions.
- How will the infractions be dealt with? Restorative Justice Circles? Attendance before Chief and Council? Elder's committee? Individuals can be compelled to attend these alternative processes and if they fail, officers have 6 months from the time of every incident to lay formal charges.

All of the above information must be written into the bylaw(s).

Step 3: Implementing the Bylaw

Determine whether there is already an intoxicant bylaw in force. If so, decide whether to repeal and replace, or amend it.

To pass a bylaw under s. 85.1, a special meeting is necessary. At this meeting, the consent of a majority of the electors (on-reserve and off-reserve) is required. Therefore it is important to garner community support before the bylaw is put to a vote.

After the bylaw is passed, the law must be publicized on the internet, in the First Nations Gazette or in a newspaper that circulates in the community.

Post the bylaw around the community so that everyone is aware of its existence.

Bylaws made under s. 81 and 85.1 of the *Indian Act* are no longer required to be sent to the Minister for approval.

What can Nishnawbe-Aski Legal Services Do For You?

- We have developed an “Intoxicant Bylaw Community Workbook” with detailed information on developing and enforcing intoxicant bylaws.
- We have knowledge in Restorative Justice and other traditional justice models and can offer training on facilitation.



Bearskin Lake Info

Intoxicant By-law: Bearskin Lake FN

While there is a 2010 Intoxicant by-law currently in place, Bearskin Lake First Nation ("BLFN") has been operating under a 'dry reserve' by-law passed in November, 1985.



Bearskin Lake First Nation
BY-LAW #2010-01

1. The Peace Keepers have authority to ask any arriving passenger to open up his/her luggage. If contraband is found, it will be confiscated and turned over to Chief and Council.
2. Peace Keepers are to check any suspected packages or envelopes once they are in the airlines agent hands, Peace Keepers are to examine the contents within. A Police officer or Band Council member must be present.
3. Body searches can and will be executed if the person is known, directly or indirectly, for smuggling contraband. Body searches will be conducted by Peace Keepers or Band Council members. All persons are to comply with the Rules & Regulations set forth by Bearskin Lake First Nation.
4. Any luggage arriving unescorted will be examined by the Peace Keepers. If any contraband is found, it shall be turned over to Police or to Band Council.
5. If any threats or acts of violence occurs to the Peace Keepers, the person or persons responsible can and will be charged with Assaulting a Peace Officer under the criminal code of Canada. Anyone not complying with a body search will be reported to Police and Band Council.
6. Police Officers or Peace Keepers may arrest anyone who is intoxicated and is attempting to come into the community.
7. The Peace Keepers or any other policing force may at times be required to escort incoming freight, including mail.
8. Any prescription drugs found in luggage or on-person, must be provided with current and correct prescription information. Failure to comply will result in seizure and/or penalties stated in "BY-LAW" #2010.

Current Circumstances

- While searches occur at the airport and the winter roads, charges are not being laid as the Crown Prosecutors and the Courts have declined to prosecute and try band by-law cases
- The Ontario Court of Justice has not presided over any prosecutions relating to band by-laws in the Northwest Region since 2011.

How NAPS Can Assist in By-law Enforcement

If a Community **passes a by-law** that enables NAPS, NAPS officers can initiate Enforcement Proceedings of the by-law with a Certificate of Offence (the "ticket").

The options presented on the ticket need to be described in the by-law. The Options are:

- Community option (i.e. Community Circle if individual is prepared to acknowledge responsibility)
- Fine of \$100 option (if over 18)
- Trial Option (Ontario Court)
- If none of the above, an individual is deemed responsible and Chief and Council may impose consequences.

A Community's by-law **needs to clarify** the distinction of the roles and authority of community Enforcement Officer and NAPS Officer

Difference in roles of NAPS Officers vs. Enforcement Officers

• **SEARCH OF BUILDING**

NAPS officers need a search warrant prior to searching any building, unless it is reasonable in all the circumstances to act otherwise. **Enforcement Officers** can search any building if they are authorized by the Enforcement Committee.

• **SEARCH OF PERSON**

While **Enforcement Officers** are expected to search every person entering the reserve, a **NAPS officer** may conduct entry/exit searches if he/she has reasonable and probable grounds to believe a person on the reserve may be committing an offence against the By-law.

RE: Restorative Justice Resolution Process for Intoxicants

Please accept this letter as an invitation to our services. We are thankful to be involved in assisting Nishnawbe Aski Nation communities address the issues of alcohol, marijuana and drugs in the community. We welcome the opportunity and challenge to continue to provide support on these issues as requested.

We understand that issues surrounding intoxicants are widespread and affect all communities in the Nishnawbe Aski Nation. We also know that there is no short-term, easy way to overcome the issues associated with alcohol, marijuana and drugs. On this note, we would like to offer the suggestion of restorative justice to our member communities.

Nishnawbe-Aski Legal Services Corporation was founded in 1990 at the direction of the Chiefs of Nishnawbe Aski Nation with support from the Ministry of the Attorney General, Legal Aid Ontario, and the Department of Justice. Part of our mandate was to create and promote alternative, community-based justice systems. So, in 1996, the restorative justice program was created and it has been growing successfully ever since.

Restorative justice has an important history, having been practiced by Indigenous people around the world since time immemorial. It is an avenue for conflicts to be resolved meaningfully by the community in a way that involves the wrong-doer and provides opportunity for reparation and rehabilitation.

We are committed to helping you in any way we can and this includes offering a dedicated band bylaw worker who will attend the community and conduct restorative justice circles as required. The dedicated worker will have full training and knowledge of restorative justice in accordance with our program. All of the worker's travel costs to your community will be paid for by Nishnawbe

Aski Legal Services Corporation.

The service that we are proposing is simple. Once we receive a referral with detailed information on the incident and contact information, we can begin the circle process. On your end, this could involve issuing tickets to those in breach of the bylaw and requiring attendance at restorative justice circles. The ticket could also offer optional payment of a fine as prescribed under your intoxicant bylaw and the *Indian Act*. We can also offer assistance in developing a ticket for this resolution process. We are suggesting this service as an interim solution while you work with your community and partners, or as a long-term permanent solution.

If this is of interest to you, we are happy to have further discussions on this topic.

Sincerely,

The Band Bylaw Team
Nishnawbe-Aski Legal Services Corp.



Feedback from NALSC East & West Bylaw Conference

- “Our young people will be affected if we don’t make changes in our community. Our young people are the future, we need to make the right decisions on their behalf.”
- “The reality of more outside influences impacting our communities is not avoidable. We need to participate in a working group or committee to address training and the development of bylaws that reflect the communities desires.”
- “My community need to be informed of the importance of having band bylaws in place.”
- “I would like my community to be safer and that the bylaws work. We need to help our people have productive lives by the enforcement of these by laws.”
- “We need more understanding about bylaws for our community members.”
- “Update and enforce our intoxicant bylaw.”
- “I see our community benefiting for the betterment of our people and children”
- “Our community needs check points.”



Pictures of Bylaw Conferences



How to Request a Clinic Day

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How to Request a Clinic Day

A Clinic Day provides community members with an opportunity to access legal information and legal assistance, whether or not they have a matter before the courts.

Clinic Days give community members greater access to legal services; and for lawyers, an opportunity to spend time in the community.

A Clinic Day may also be used for other NALSC presentations and workshops.

To request a Clinic Day, fill out the form available on our website www.nanlegal.on.ca. Fax, mail or email the completed form to our office to the attention of the Public Legal Education & Communications Officer.

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