

SUGGESTED PROCEDURE FOR ENACTING INTOXICANT BY-LAWS **(PURSUANT TO SECTION 85.1 OF THE *INDIAN ACT*, R.S.C. 1985, c. I-5)**

Please note that this suggested procedure and sample documents are only to be used as a guide when drafting and enacting intoxicant by-laws. First Nations will want to consider local factors and concerns. It is recommended that drafts of letters, notifications, affidavits and by-laws be submitted to a Department By-law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the present and future validity or enforceability of a by-law that is based on this sample or suggested enactment procedure.

THE PROCESS

NOTE: *Due to the restrictive nature of intoxicant by-laws, s. 85.1 of the Indian Act requires that they be approved by the electors of the First Nation at a special meeting. The following procedure has been developed to help First Nations comply with this requirement of the Indian Act. Failure to demonstrate that it has been met (i.e. providing the affidavit and necessary exhibits) may result in the Minister refusing to provide certified copies of the by-law and the by-law being considered invalid.*

Step 1: Reflect on the Necessity and Scope of an Intoxicant By-law

We encourage First Nations to think about what they wish an intoxicant by-law to accomplish, the scope of any by-law and the manner in which it will be enforced.

Step 2: Consult with the By-law Advisory Service of AANDC

The By-law Advisory Service of AANDC is available to assist and offer general advice to First Nations in drafting by-laws. First Nations may wish to speak with a By-law Advisor about their projects and the motivations behind them.

Step 3: Draft a By-law to Prohibit Intoxicants on the Reserve

First Nations may wish to draft a *By-law to Prohibit Intoxicants on the Reserve*, similar to the sample provided.

Step 4: Notify the Electors of the Special Meeting

The band council should arrange a place and date to hold a special meeting of the electors of the First Nation to discuss and vote on the proposed intoxicant by-law.

NOTE: The term “elector” is defined at s. 2 of the Indian Act and includes a person who:

- (a) is registered on a Band list,
- (b) is of the full age of eighteen years, and
- (c) is not disqualified from voting at band elections

In other words, “electors” includes members of the First Nation living both on and off reserve.

At least ten days before the special meeting is to be held, communicate with the electors of the First Nation (by mail or by email), notifying them of the date, time, place and purpose of the special meeting. Include a copy of the proposed by-law with the letter/email. Also post public notices throughout the reserve to the same effect.

Step 5: Hold a Special Meeting of the Electors

Intoxicant by-laws must be assented to by the majority of the electors of the First Nation who are present at the special meeting. This procedural requirement is set out in section 85.1(2) of the *Indian Act*:

A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

NOTE: In plain language, a majority of the electors of the First Nation must attend the special meeting. In turn, the by-law must be assented to by at least a majority of those present at the special meeting. For example, if a First Nation has 1000 electors, at least 500 must attend the special meeting and at least 251 must vote in favour of the by-law.

Step 6: Have the Council Enact the By-law

Once the by-law has been assented to by a majority of the electors of the First Nation, the band council should then immediately pass a resolution enacting the by-law.

NOTE: The last page of the sample by-law includes a signature page for this step.

Step 7: Have the Chief Swear an Affidavit

After the by-law has been enacted by the council, an affidavit should be sworn by the First Nation’s chief in front of a commissioner for oaths and affidavits. This affidavit attests that the procedural requirements for enacting the by-law were met.

NOTE: The affidavit is submitted as proof to the Minister that the band council held a special meeting and that the by-law was assented to by a majority of the electors of the First Nation.

Step 8: Mail the By-law and the Affidavit to the Minister

A copy of the by-law enacted by the band council (Step 3) along with the sworn affidavit and appended exhibits (Step 4) must be mailed to the Minister within four (4) days of it being enacted as per section 85.1(3) of the *Indian Act*:

A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

Step 9: The Superintendent Certifies a True Copy of the By-law

When the by-law is submitted to the Minister, it will be forwarded to the superintendent in the First Nation's region for certification. The superintendent will then return certified true copies to the band council for its records. A certified true copy of the by-law is proof that all procedural requirements for enacting the by-law were met and can be used as proof in court pursuant to s. 86 of the *Indian Act*:

A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form.

NOTE: A certified true copy of the by-law reduces the risk that an offender will successfully argue that the by-law is invalid because of a procedural defect.

Step 10: Forward Certified Copies to the RCMP and/or Law Enforcement Agencies

Once the band council receives certified true copies of the enacted by-law, a copy should be forwarded to the local RCMP detachment and/or to local law enforcement agencies for enforcement. The band council should also provide the local Crown Attorney with a copy.

THE DOCUMENTS

In this information kit, the following sample documents have been provided:

- **A sample letter** from the council to the electors of the First Nation notifying them of the time, date, place and purpose of the special meeting
- **A sample notice** of the special meeting
- **A sample intoxicant by-law**
- **A sample affidavit**

SAMPLE LETTER TO ELECTORS (RE SPECIAL MEETING)

Please note that this sample letter is only to be used as a guide. It is recommended that drafts of letters, notifications, affidavits and by-laws be submitted to a By-law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the present and future validity or enforceability of a by-law that is based on this sample or suggested enactment procedure.

TO: All Electors of the _____ First Nation
[insert address information]

RE: NOTICE OF SPECIAL MEETING TO VOTE ON AN INTOXICANT BY-LAW

The time has come to determine whether our community wants the band council to exercise its powers under Section 85.1 of the *Indian Act* to prohibit the possession, supply, barter, manufacture and sale of intoxicants on the reserve, as well as to prohibit any person from being intoxicated on the reserve [**adjust the descriptor of the by-law as required**].

To this end, we have prepared a by-law to address intoxicant-related problems in our community, which will have the effect of making our reserve dry. You will find a copy of the by-law enclosed for your review and consideration.

Section 85.1(2) of the *Indian Act* provides that the by-law must be assented to by a majority of the electors of the First Nation who vote at a special meeting of the First Nation. The band council will therefore be holding a special community meeting for the sole purpose of considering this by-law. The meeting will take place as follows:

DATE: [insert]
TIME: [insert]
PLACE: [insert]

Please attend this meeting to give your views on the proposed by-law and to vote on whether you want the band council to enact it. Note that changes may be made to the proposed by-law at the special meeting before it is enacted, so it is important to come out and have your voice be heard.

Sincerely,

The Chief and Council of the _____ First Nation
Enclosure

NOTE: *Be sure to enclose a copy of the draft by-law and to send out the letter/email at least 10 days before the special meeting so that the electors have sufficient notice.*

SAMPLE NOTICE (RE SPECIAL MEETING)

Please note that this sample notice is only to be used as a guide. It is recommended that drafts of letters, notifications, affidavits and by-laws be submitted to a By-law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the sufficiency of a notice based on this sample.

TO ALL ELECTORS OF THE _____ FIRST NATION

NOTICE OF SPECIAL MEETING: INTOXICANT BY-LAW

There will be a special meeting of the electors of the _____ First Nation to consider a by-law prohibiting the sale, barter, supply, manufacture and possession of alcohol (i.e. intoxicants), as well as intoxication on the reserve [**adjust by-law descriptor as necessary**].

A vote will be taken at the special meeting to determine whether the electors approve of this by-law.

A copy of the by-law may be obtained at the Band Office, located at [**insert address**].

PLACE:

DATE:

TIME:

NOTE: This notice of the special meeting and the proposed intoxicant by-law are made pursuant to section 85.1 of the Indian Act.

SAMPLE INTOXICANT BY-LAW

Please note that this sample intoxicant by-law is only to be used as a guide. First Nations will want to consider local factors and concerns. It is recommended that drafts of by-laws be submitted to a By-law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the present and future validity or enforceability of a by-law that is based on this sample.

By-law Number _____
By-law to Prohibit Intoxicants on the Reserve

NOTE: *if repealing an existing intoxicant by-law, use the title below instead:*

By-law Number _____
By-law to Prohibit Intoxicants on the Reserve
(Repealing and Replacing By-law Number _____)

Enacted on the [day] of [month] in [year]

THE COUNCIL of the _____ First Nation (“the Council”) desires to make a by-law to protect the health and safety of the reserve’s inhabitants in regards to alcohol and intoxication on the reserve;

NOTE: *The preamble should outline the specific concerns and motivations that led to the adoption of the by-law.*

SECTION 85.1 of the *Indian Act*, R.S.C. 1985, c. I-5 (hereinafter “the Act”) provides that the council of a band may make by-laws to prohibit the sale, barter, supply, manufacture or possession of intoxicants and to prohibit any person from being intoxicated on the reserve;

A MAJORITY of the electors of the _____ First Nation, who attended a special meeting on the [day] of [month] in [year] called by the Council for the purpose of considering this by-law, assented to the contents of this by-law;

NOTE: *if repealing an existing intoxicant by-law, include this paragraph:*

THE COUNCIL enacted By-law Number _____ on the [day] of [month] in [year], and wishes to repeal it and replace it with this by-law;

THE COUNCIL hereby makes the following by-law:

Short Title

1. This by-law may be cited as the _____ First Nation Intoxicants By-law.

Interpretation

2. In this by-law:

“**on the reserve**” means physically located within the area defined as a “reserve” in the Act, and set apart for the use and benefit of the _____ First Nation and known as Indian Reserve number(s) _____ (and) _____;

“**intoxicant**” means “intoxicant” as defined in the Act; and

“**intoxicated**” means any recognizable degree of intoxication.

Prohibitions

3. No person shall sell, barter, supply or manufacture intoxicants on the reserve.

NOTE: *The prohibitions above do not all need to be included in the by-law. For example, First Nations may pass a by-law only prohibiting the sale of intoxicants, or alternatively, only the manufacture of intoxicants.*

4. No person shall be intoxicated on the reserve.
5. No person shall be in possession of intoxicants on the reserve.

NOTE: *The prohibitions above do not all need to be included in the by-law. For example, First Nations may pass a by-law only prohibiting intoxication on the reserve. In other words, by-laws may include the three prohibitions in any combination suitable for their needs.*

Exceptions

6. No person contravenes section 5 because he/she is in possession of an intoxicant for the purpose of transporting it across the reserve from a point of origin outside of the reserve to a destination outside of the reserve, provided that the intoxicant is in a bottle, receptacle or package that is unopened and the seal unbroken.
7. No priest or church official contravenes section 5 because he/ she is in possession of an intoxicant for religious purposes.

NOTE: First Nations can make other exceptions to the prohibitions against being intoxicated and possessing intoxicants. No exceptions to the sale, barter, supply or manufacture of intoxicants are permitted.

Penalties

8. Any person who contravenes any provision of this by-law is guilty of an offence and liable on summary conviction:
- (a) in the case of a by-law made under paragraph 85.1(1)(a), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and
- (b) in the case of a by-law made under paragraph 85.1(1)(b) or (c), to a fine not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.

A NOTE ON PENALTIES:

Intoxicant by-laws must not specify any additional penalties. It is not necessary to include the penalties listed above in the by-law itself, but First Nations may wish to append them so that community members are made aware of the prescribed penalties. These penalties cannot be modified.

Severance

9. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

Effective Date

10. This by-law comes into force on the [day] of [month] in [year].

NOTE: if repealing an existing intoxicant by-law, include this paragraph:

Repeal

11. By-law Number _____ enacted on the [day] of [month] in [year], and being a By-law to _____, is now repealed.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the _____ First Nation this [day] of [month] in [year].

Voting in favour of the by-law are the following members of the Council:

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

These being the majority of the members present at the above dated meeting of the Council.

Quorum of the Council is _____members.

The number of members present at the above dated meeting was _____.

NOTE: Remember that the by-law must be mailed to the Minister within four (4) days of it being passed by the band council.

SAMPLE AFFIDAVIT

Please note that this sample affidavit is only to be used as a guide. It is recommended that drafts of letters, notifications, affidavits and by-laws be submitted to a By-Law Advisor for comment and review. Neither the Minister nor the Department of Aboriginal Affairs and Northern Development Canada (AANDC) guarantees the validity of an affidavit based on this sample.

I, [insert full name of Chief], Chief of the _____ First Nation of [insert reserve name/identifier], make oath and say as follows:

1. On the [day] of [month] in [year], a special meeting of the electors of the _____ First Nation was held at [insert address of meeting location] for the purpose of voting on the form and contents of *By Law Number* _____: *A By-law to Prohibit Intoxicants on the Reserve*, being “Exhibit A” to this my affidavit.

NOTE: *Include a copy of the by-law as “Exhibit A” with the affidavit.*

2. The attached by-law truthfully reproduces the by-law in its final form, as approved by the electors of the First Nation at the aforementioned special meeting.
3. Between the dates of [insert dates], the band council communicated with the electors of the _____ First Nation, as far as practicable, notifying them of the date, time, place and purpose of the special meeting and enclosing a copy of the proposed by-law. Attached is a copy of the letter/email that was sent to electors, being “Exhibit B” to this my affidavit.

NOTE: *Include a copy of the letter/email sent to electors as “Exhibit B” with the affidavit.*

4. Public notices indicating the date, time, place and purpose of the special meeting were posted at the following areas on the reserve(s):
 - a. [insert location address/description where notice was posted]
 - b. [insert location address/description where notice was posted]
 - c. [insert location address/description where notice was posted]

Attached is a copy of the notice, being “Exhibit C” to this my affidavit.

NOTE: *Include a copy of the notice as “Exhibit C” with the affidavit.*

5. The meeting commenced at [insert time].
6. The number of electors of the _____ First Nation in attendance at this special meeting was [insert number].

7. The number of votes in favour of the Intoxicants By-law was [insert number].
8. The number of votes against the Intoxicants By-law was [insert number].
9. The number of abstentions was [insert number].

I make this affidavit in support of the enactment of the enclosed by-law, and for no illegal or improper purpose.

SWORN before me at the)
)
 City/Town of _____)
 this [day] of [month] in [year].)
)
)
)

 Signature of Chief

 Signature of Commissioner for
 Oaths and Affidavits