

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.
- ✓ We offer training on facilitation.

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INTOXICANT BYLAWS:

WHERE TO START

NISHNAWBE-ASKI LEGAL SERVICES

Restorative Justice Bylaw Program

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.

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 causing a problem? If so, decide whether to include in the bylaw's definition of intoxicants by specifically naming each in the bylaw or create a separate clause or bylaw prohibiting them.
- ❖ Is underage drinking an issue? If so, consider include this prohibition in the bylaw or creating separate bylaw.

Specifically spell out and prohibit unacceptable conduct in the bylaw.

Also consider:

- ❖ Including any traditional laws, values or customs
- ❖ 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.

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.