

INTOXICANT BYLAWS

DEVELOPMENT AND ENFORCEMENT IN NAN FIRST NATIONS

COMMUNITY WORKBOOK

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FOR NAN LEGAL SERVICES CORPORATION

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Introduction

This workbook is designed to help NAN First Nations develop and enforce laws that respond to the abuse of intoxicants in their communities, to improve the safety and well-being of their members.

If your nation does not already have an intoxicant bylaw, or if you want to update the law that you already have, this workbook will explain the steps that you can take to develop a bylaw that works for your community. This may involve discussing the challenges that your First Nation has with intoxicants, deciding which legal options and resources you can use to respond to these challenges, and building community support through consultation and consent.

This workbook also provides information on what needs to be done to make your intoxicant bylaw enforceable, so that people in your community, and others, can understand and rely on it. This includes making sure the law is properly passed and made public, and that your nation has the resources and support you need to put the law's words into action.

Finally, the workbook discusses the bigger picture that your intoxicant bylaw will operate within, including how the law might be used at the community level, by the police, by lawyers, and by Canadian courts. Flowcharts of basic enactment and enforcement procedures, and examples, are also included to help your First Nation develop an intoxicant bylaw that fits your needs, hopes, and resources.

Whether your community is just beginning to consider whether or not this kind of law is a good idea, or whether you already have a law that you are ready to put into practice, this workbook will help guide your decision-making. Of course, there will be many challenges that are not dealt with here, and any future changes to Canadian law might change the steps that your First Nation needs to take. It is important to use this resource in collaboration with partners inside and outside your First Nation (elders, community leaders, NAN Legal, and other consultants) to make sure that the path you follow is the right one for your people.

List of Important Words

Laws use words, phrases, and ideas that are not common in everyday language. Here are the definitions of some of the words that this workbook uses. If you see a word or phrase in **bold**, you can find its definition in this section of the workbook.

Appeals Committee: In the Bearskin Lake First Nation Intoxicant **Bylaw**, a group of five community members, appointed by Band Council Resolution, which meets to hear appeals of decisions made by the **Enforcement Committee** not to return property that has been seized by **Enforcement Officers**. See pages 12-13 and 15 for more discussion about the role of the Appeals Committee under this intoxicant bylaw, and the Bearskin Lake First Nation Intoxicant Bylaw at Appendix “A”.

Appearance Notice: A document given to a person charged with a bylaw, usually by a **police officer**, that tells them they have to come to a Canadian court to deal with their charge. See page 14 for more discussion, and the sample Appearance Notice at Appendix “D”.

Arrest: When someone who is suspected of breaking a law is officially brought into custody by a police officer. Under Canadian law, only police officers can arrest people for breaking bylaws, and only if the police officer finds the person actually committing a bylaw offence. See page 13 for a discussion on arrests.

Bylaw: Under Canadian law, a law that is created by a municipality (town, city, village) or a First Nation under the requirements of the **Indian Act**. These punishments set out in these laws are usually not as serious as for criminal laws, and the responsibility for funding and enforcing them usually depends on the resources of the municipality or First Nation that creates them, not on the provincial or federal government.

Charge: The legal process to make someone appear in a Canadian court to plead guilty or not guilty to breaking a law, including a bylaw. See page 14 for more discussion on bylaw charges.

Charter: The Canadian constitutional document that sets out the rights and freedoms that all people in Canada have. All legal actions and decisions taken by governments and public officials, including **arrests**, charges, and court processes must respect these guarantees of individual rights. See pages 11-12 and 17 for more discussion on how the Charter affects the development and enforcement of bylaws.

Community Summons: In the Bearskin Lake First Nation Intoxicant Bylaw, a document that is given to someone who is identified as breaking a bylaw, but who has not yet been charged, that gives them the choice of dealing with the matter in the community instead of in a Canadian court. See page 14 for more discussion, and the sample Community Summons used by Bearskin Lake First Nation at Appendix “B”.

Crown: The Canadian legal authority officially, the Queen, but represented by a government-appointed lawyer who prosecutes criminal charges in Canadian courts. See pages 8, 9, and 14 for more discussion on how the Crown may be involved with bylaw charges.

Enact: To bring a law into force. There are particular Canadian legal requirements for bringing a bylaw into force. See page 18 for more discussion, and the Enactment Flowchart at page 21.

Enforce: The decisions and actions that are taken to carry out the rules made under a law. Enforcement is discussed throughout this workbook. Also see the Enforcement Flowchart at page 22.

Enforcement Committee: In the Bearskin Lake First Nation Intoxicant Bylaw, a group of three community members, appointed by Band Council Resolution, that meets to decide whether or not **Enforcement Officers** should be allowed to search private buildings and houses to look for evidence of bylaw offences. The Enforcement Committee also listens to people's requests to have property returned to them, if it has been **seized** by an Enforcement Officer. See pages 12 and 15-16 for more discussion about the role of the Enforcement Committee under this intoxicant bylaw, and the Bearskin Lake First Nation Intoxicant Bylaw at Appendix "A".

Enforcement Officer: In the Bearskin Lake First Nation Intoxicant Bylaw, a **Peacekeeper** or a police officer who has been appointed by Band Council Resolution to enforce the rules of this bylaw. See pages 12 and 15 for more discussion about the role of Enforcement Officers under this intoxicant bylaw, and the Bearskin Lake First Nation Intoxicant Bylaw at Appendix "A".

Indian Act: The Canadian law that creates the legal requirements for Indians, bands, and reserves. The most important sections of the *Indian Act* for bylaws are sections 81 and, especially, 85.1. See pages 8-10 and 18 for more discussion on how the Indian Act affects your First Nation's ability to create and enforce laws dealing with intoxicants.

Intoxicant: Any substance that, when consumed, impairs a person's body and/or mind. The *Indian Act* defines intoxicant mostly to mean alcoholic drinks. See page 9 for more discussion on how the definition of intoxicant may affect your First Nation's lawmaking.

Judge: A Canadian court official who is responsible for listening to cases and making decisions about whether or not a person is guilty, and, if guilty, what punishment they should get. Judges can also be asked to listen to appeals of decisions made by "lower" courts, Justices of the Peace and other government decision-makers. See page 16-17 for more discussion about how judges might get involved in dealing with bylaw cases.

Justice of the Peace (JP): A Canadian court official that is similar to a judge but hears different cases. JPs hear some criminal proceedings, including: bail, **search warrants**, peace bonds, and weapons prohibitions hearings. JPs also deal with provincial and municipal regulatory offences, such as traffic offences, MNR and, in the past, First Nation bylaw infractions. Their decisions can be appealed to a judge. See pages 11-12 and 16-17 for more discussion about how JPs might get involved in dealing with bylaw cases.

Peacekeeper: someone hired and trained under the authority of band councils to enforce the rules of bylaws. Under Canadian law, Peacekeepers cannot make **arrests** or request search warrants, but they can search people's belongings when they are entering or leaving a reserve, seize items, and issue

Community Summonses. See page 12 for more discussion on how Peacekeepers are important for bylaw enforcement.

Police Officer (or Peace Officer): someone hired and trained by a Canadian government-appointed policing organization like NAPS or the OPP to enforce Canadian criminal laws. Police officers can also enforce bylaws, make **arrests**, lay charges, and issue **Appearance Notices** and **Community Summonses**. See page 12 for more discussion on how police officers are important for bylaw enforcement.

Preamble: The ‘story’ of why a law or a bylaw is being made, under what authority, and for what purposes. Preambles are found at the start of most Canadian and First Nation written laws. See pages 7-8 for more discussion about preambles, and the sample in the Bearskin Lake First Nation Intoxicant Bylaw at Appendix “A”.

Search Warrant: A document that is issued and signed by a JP, which authorizes police officers to search a particular building at a particular time, for a particular reason. Police officers apply for search warrants when they think they have good enough reasons to go inside a private place to look for evidence of a crime or a bylaw offence. See page 12 for more discussion about how search warrants may be used in bylaw enforcement.

Seizure: The decision made by a Peacekeeper or police officer to take away items that are against the rules of a bylaw (such as alcohol), or property that has been used to break the bylaw (such as a vehicle that brings alcohol onto a reserve). See pages 12-13 for more discussion about how seizures may be used as an important tool in bylaw enforcement.

Thinking through the Process

Good laws begin with good planning. When you are starting to think about your community's need for an intoxicant **bylaw**, the following questions will help you develop your plan. These questions may be used to structure discussions both around the council table and in larger community meetings, as well as when you are discussing your plans with other organizations (like **police**, the **Crown**, and court officials). A list of some important contacts is included in this workbook at Appendix "F").

What are the challenges that our First Nation is facing, regarding intoxicants?

If you are reading this workbook, you have probably already thought a lot about the problems that **intoxicants** are causing. Every community in the Nishnawbe-Aski Nation is affected by the abuse of alcohol, drugs, or other intoxicating substances, but each has its own experiences of how these problems weaken the health and well-being of its members. Sharing this knowledge within your community may be difficult, but it is also an important first step to developing a law that really helps people. Discussing the kind of intoxicant problems that are affecting your First Nation will help shape the law that is meant to reduce these harms. Is bootlegging a major issue? Importation? Homebrew? Public intoxication, or the manufacture or use in private homes that then contributes to violence? Are children being targeted by traffickers in the community? Are people addicted and in need of treatment? Are drinking parties getting out of control? A well-written intoxicant bylaw can have sections that deal with all of these problems, and will also be flexible enough to respond to new issues as they come up.

What are the Laws, Values, and Customs that our Nation wishes to uphold?

Laws can be powerful expressions of how people want to behave. Indigenous people have been living by powerful legal principles like the Grandfather Teachings since long before Canada existed, and you can use the wisdom of these traditions to help with today's problems.

Are there stories, teachings, or traditions that you can use to help guide your law-making? Who are the "legal experts" in your community, or in NAN, that you can ask for guidance?

Good laws don't need to just be lists of rules about what is not allowed, but can also include positive messages about how to live in better ways. For example, your First Nation may want to write a **preamble** to the bylaw, not only to set out the Canadian legal authority for the law (the **Indian Act**) but also to speak about the deeper Indigenous laws, values, and practices that 'tell the story' of why your bylaw is necessary. The preamble, although not actually part of the written law itself, can also be a useful guide to how the bylaw is meant to be interpreted and applied.

Bearskin Lake First Nation's Intoxicant Bylaw, for example, which is included in this workbook at Appendix A, contains a short preamble of "whereas..." ("because...") statements about why and how it has passed its bylaw. Your First Nation may consider creating a preamble to your own bylaw, using your own words, knowledge, and experience.

To think about: *What are our nation's legal traditions and practices – about relationships, authority, individual rights and community well-being? How do they relate to Canadian legal institutions and practices? How will this bylaw reflect our own traditions, practices, and needs?*

Do we already have an Intoxicant Bylaw? How do intoxicant laws apply to our community?

Many NAN communities already have a 'dry reserve' bylaw, most of which were passed under the *Indian Act* in the 1980s. These laws may still be used, and are often the Canadian legal basis for searches that are done at airports and winter road checkpoints usually by **Peacekeepers** hired by individual First Nations. Section 85.1 of the *Indian Act* remains the only Canadian legal authority for band councils to make intoxicant bylaws. The first part of this section states:

Indian Act, RSC 1985, c I-5

85.1 (1) Subject to subsection (2), the council of a band may make by-laws

- (a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;
- (b) prohibiting any person from being intoxicated on the reserve;
- (c) prohibiting any person from having intoxicants in his possession on the reserve; and
- (d) providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

This means that every band council has the legal power to pass laws that prohibit anyone from using, making, or bringing "intoxicants" onto a reserve, or from being intoxicated. It is likely, however, that the intoxicant bylaw in your community is not as effective as it is meant to be at preventing intoxicants from negatively affecting people's lives. There are many reasons for why this may be so, and sharing your community's knowledge about what *doesn't* work, and why, will help you to build something better.

One major limitation with the *Indian Act* authority over intoxicants is that it is only allowed to apply to a few substances, principally alcohol. This Act defines intoxicants as follows:

“intoxicant” includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating.

This means, basically, that under Canadian law, a band is not allowed to pass its own laws dealing specifically with drugs. The *Controlled Drugs and Substances Act* (“CDSA”) takes legal priority in this area, and it defines and restricts many intoxicating drugs, such as marijuana and oxycodone. The possession, trafficking, and use of these substances are dealt with as criminal **charges**, prosecuted in Canadian courts by lawyers hired by the Federal government.

Your First Nation may already have policies or protocols for how drugs are dealt with if they are found by Peacekeepers during their searches. Generally, the police are called to take over in these cases. If your community is experiencing problems with the way drug investigations and charges are being done, you should bring this up in discussions with **police** and the **Crown**. Later in this workbook we will also look at how your nation may choose to assert greater authority over drugs.

Substances other than alcohol may be regulated under an *Indian Act* bylaw, if they are not otherwise dealt with in the CDSA. Things like gasoline, lacquer, glue, and yeast, while not included as “drugs” or as “intoxicants” under Canadian law, may be a big part of your community’s challenges with intoxicant abuse. Section 81 of the *Indian Act* gives many general bylaw-making powers to band councils, including “to provide for the health of residents on reserve”, “the observance of law and order”, and “the prevention of disorderly conduct and nuisances”. As long as the need for controlling such substances is a real and pressing issue, a First Nation may choose to create a bylaw that specifically regulates these or other intoxicating substances. For example, Wabaseemoong (White Dog) First Nation, in Treaty 3, has created a bylaw that specifically deals with its problem with the importation and abuse of intoxicating inhalants, such as lacquer. A copy of the Wabaseemoong bylaw is included in this workbook at Appendix “C”.

In 2014, the *Indian Act* was changed to take away the power of the Minister of Indigenous and Northern Affairs (INAC) to “disallow” s. 81 bylaws (in other words, to stop them from becoming enforceable under Canadian law). This change puts more self-government authority in the hands of band councils.

Finally, your First Nation may consider the possibility of using the Ontario law dealing with alcohol regulation, the *Liquor Licence Act* (“LLA”). This is not currently being done in any NAN community, and there are many issues that must be carefully considered before such a decision is made. The LLA imposes a much different type of alcohol regulation than an *Indian Act* intoxicant bylaw does. Under the LLA, for example, persons may possess or consume liquor in their residences, or in premises for which a permit has been issued, or in other “private places” as provided for by the law’s regulations. The LLA prohibits people from being intoxicated in any area open to the “general public”, and allows **police officers** to **arrest** intoxicated persons in these areas, but only if the officer is of the opinion that this is “necessary for the safety of any person”. The LLA also allows people to manufacture their own alcoholic substances for their own personal use. A more detailed discussion of the pros and cons of First Nations using provincial laws such as the LLA is beyond the scope of this workbook, but it is mentioned here as a potential option to consider.

If your First Nation has decided that it is not currently using the right legal tools to deal with the harms caused by intoxicants, and that an intoxicant bylaw may be helpful for improving the health and safety of your members, the next step in the planning process is determining how a new or updated bylaw should be written so as to best respond to the challenges you face.

What should an effective Intoxicant Bylaw look like?

As we have started to see, the *Indian Act* puts a number of requirements and limitations on band councils who want to pass a strong and effective intoxicant bylaw. Protections of individual rights, which Canadian law sets out in the *Charter of Rights and Freedoms* (the “Charter”) should be considered in deciding how you want your bylaw to be understood and applied, both by community members and others who may be asked to **enforce** or interpret it. Questions about people’s rights are important to consider when developing your law. For example, what should the authority to search cars and houses look like? How should this authority be applied and overseen? While Canadian legal requirements such as those set out in the *Charter* are important to consider in answering these questions, they should not stand in the way of a fair, reasonable, and, in your community’s view, necessary intoxicant bylaw. These issues are discussed in greater detail below.

The *Indian Act*, unfortunately, has not been helpful at encouraging creativity or flexibility in the creation and enforcement of intoxicant bylaws. The Act provides very little guidance or authority for the effective funding, management, and enforcement of an intoxicant bylaw. The penalty provisions that s. 85.1(4) of the Act sets out are a good example of this limitation:

Indian Act, RSC 1985, c I-5

(4) Every person who contravenes a by-law made under this section is guilty of an offence and liable on summary conviction

(a) in the case of a by-law made under paragraph (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 (1)(b) or (c), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.

This means that, under the strict terms of the *Indian Act*, band councils are not allowed to provide for other consequences for breaking a bylaw, and Canadian courts are unable to take different approaches to punishing bylaw convictions. As can be seen from the mostly unsuccessful history of dry reserve bylaws passed in the 1980s, which were prosecuted in the court system, this model of ‘prohibit, fine, imprison’ has not appropriately responded to the needs or hopes of people in many NAN First Nations, and has contributed to a breakdown in virtually all law-enforcement activities (beyond checkpoint searches). So how can your First Nation build a stronger bylaw? Here are a few ideas to help you make decisions about how you want your bylaw to work:

- *Searches, Seizures, and Arrests – the Duties of Police and Peacekeepers*

Intoxicant bylaws under the *Indian Act* are enforceable by both police officers (NAPS or OPP) and band-appointed Peacekeepers. How they carry out their duties, however, may be different depending on the grants of authority and responsibilities given to them by various laws. An effective bylaw requires the cooperation between police and Peacekeepers, because, depending on the specific bylaw your First Nation develops, each group will have somewhat different powers, training, resources, and obligations.

Let’s start with searches. Under the *Charter*, every search (of someone’s baggage, car, clothes, body, or residence), done by a person enforcing a law, must be reasonable. But what counts as reasonable depends on the situation: Canadian courts have already decided that it is reasonable for Peacekeepers to search all vehicles and baggage, and even do respectful ‘pat down’ searches of people’s clothing, when they are entering or exiting a reserve, as long as the bylaw that authorizes them to do so is official and therefore publicly known and fairly applied. Likewise, your bylaw can state that all packages mailed into your community are subject to being searched for **intoxicants**. Mailed items, even under Canadian law, have a lower “expectation of privacy”, and your nation may have good reasons to make sure that harmful intoxicants are not coming into the community this way.

The search of buildings, especially people’s houses, however, is more complicated. If your nation feels that its problems with intoxicants require a bylaw that allows for searches of buildings and homes in the community, your bylaw should make clear how these searches can be done in a way that ‘reasonably’ balances the rights of individuals (the privacy of those whose homes are being searched, for example) with the community’s need to reduce the harm caused by intoxicants. It is also important to clearly understand how police and Peacekeepers may have different kinds of authority, training, and, therefore, ability to conduct searches and **seizures** under your bylaw.

Canadian law says that people should be given a high “expectation of privacy” when they are in their own homes, even if these homes are rented or owned by someone else. How will your bylaw both protect people’s privacy and effectively reduce the harm of intoxicants?

Police officers have the authority, under s. 103(4) of the *Indian Act*, to conduct searches of homes and other places to **enforce** an intoxicant bylaw, but only after they have obtained a **search warrant** (judicial

authorization) to do so by a **Justice of the Peace (JP)**. This process requires that the police prepare and send an application to a JP that explains specifically what grounds they have to believe that the bylaw is being broken, and what evidence they expect to gather if they go inside the building.

Police officers are trained to request search warrants in serious drug and other criminal cases, but they may not have the resources or willingness to do this for bylaw enforcement. The search warrant process may also take too long, or be too cumbersome, to be very effective in quickly responding to potential problems. This is something that you should discuss with the police force serving your First Nation.

Peacekeepers, on the other hand, unless they are specifically named in a search warrant, have no more authority under Canadian law than any other member of the public to go inside a person's house without their permission. Some NAN First Nations, recognizing this difficulty, have put into their intoxicant bylaws specific processes for how Peacekeepers can be authorized to conduct searches of homes even without an *Indian Act* search warrant.

For example, the Bearskin Lake First Nation Intoxicant Bylaw (the "Bearskin Lake Law") creates an **Enforcement Committee**, made up of three community members appointed by band council, to review and approve requests for the search of people's homes. In this community's view, this model allows for a quicker, more flexible, and locally-controlled way to oversee searches conducted by Peacekeepers than the *Indian Act* model, which in its experience has never worked. This section of the Bearskin Lake Law has not yet been put into practice, and has not been tested in a Canadian court. It should be noted that NAPS and OPP police officers, because they get their authority directly from Canadian law, will likely not feel able to conduct searches of people's homes without an *Indian Act* search warrant.

To think about: What kind of training and support will our Enforcement Committee need? What should they do if they feel threatened, or if they face uncomfortable situations (like being asked to authorize the search of a family member's home?).

Once a search has discovered something that is against the bylaw (like alcohol) or was used to break the law (like a car transporting the alcohol), **Enforcement Officers** have to decide what to do with it. Again, s. 103 of the *Indian Act* provides for a process that authorizes police officers to seize items that the officer "believes on reasonable grounds" were used to commit the offence. These items can be held for up to three months or, if a court case is started during that period, until the end of the case.

Like searches, the **seizure** provisions of the *Indian Act* provide no space for community-based control or flexibility, and do not authorize Peacekeepers to make any seizures whatsoever. The Bearskin Lake Law, therefore, has built in its own seizure provisions, for the use of its own Enforcement Officers, which are overseen both by the community's Enforcement Committee and a five-member **Appeals Committee**. Again, these aspects of the Bearskin Lake Law have not yet been put into effect, but are meant to provide much more local authority and control than what a standard *Indian Act* intoxicant bylaw allows for.

Finally, it is important to understand the legal differences between police and Peacekeepers when it comes to making **arrests**. Police officers, as trained peace officers, are allowed by Canadian law to arrest people who they find committing band bylaw offences (this power is given to them under s. 495 of the *Criminal Code*), while Peacekeepers do not have any more legal authority to make arrests than the average person. As will be discussed later in the workbook, most bylaw enforcement duties should not require anyone to be arrested, but this is another issue to remember when planning for the cooperation between police and Peacekeepers under your First Nation's intoxicant bylaw. Generally speaking, Peacekeepers, once they are appropriately trained and resourced, may have more of the day-to-day duties in carrying out bylaw enforcement, including conducting reasonable searches, but police officers will also have important responsibilities in supporting fair and effective investigations. It is important that they work together, or your bylaw will probably not work very well.

- *Responding to Harms: Community and Courts*

Along with deciding what kind of problems an intoxicant bylaw should deal with, and how police and Peacekeepers should carry out their enforcement duties, your First Nation will need to implement clear pathways for responding to people who are found breaking the rules.

As we have already seen, the *Indian Act* provides only for fines and/or prison sentences as punishments for people convicted by Canadian courts of breaching intoxicant bylaws. This model has not worked very well in NAN communities. There are various reasons for why this is so – police have been reluctant to lay bylaw **charges**, **Crown** prosecutors have been reluctant to prosecute them in court, and courts have been reluctant to make or **enforce** fines that are hard to collect or prison terms that only make a family's problem's worse. Fundamentally, however, the problem seems to come down to whether the law is developed and controlled from within a community, or from outside. As this workbook is designed to show, your First Nation can come up with other, better ways of responding to the harms caused by intoxicants, using your own knowledge, experience, and a combination of available resources both within and outside your communities. This is a great challenge, but also a great opportunity to build self-governance and effective strategies of change.

Every officer or Peacekeeper who finds someone breaking the law has to decide what to do. Your bylaw does not have to answer this question in the law itself, as every situation will be different, but enforcement officers must be able to use their decision-making skills within a context that gives them the guidance and resources they will need to make good choices.

As may currently be happening in your First Nation, if someone is caught bringing alcohol into the community, the alcohol will probably just be taken away and dumped out, but there will be no other formal follow-up under the law. No charges are laid. No consequences or expectations are imposed. And no records are kept to tell the story of what happened, why, and what the person and the community can learn about making things better. And there may be even fewer effective responses to people who are intoxicated in the community, or who are making homebrew, or bootlegging. Here are some ideas for how your First Nation can create pathways for more effective responses. You can build on these in your community discussions.

○ *To Charge or Not to Charge?*

Under most Canadian criminal and ‘quasi-criminal’ laws like bylaws, officers who find a person breaking the rules, whether or not the person is **arrested**, must serve that person with a written notice that they have to pay a fine, or that they have to appear in a court. Under an intoxicant bylaw, your First Nation can decide to have officers or Peacekeepers give people ‘tickets’ to pay a fine, or, in cooperation with the Ontario Court of Justice, to **charge** them and have them appear in court the next time it comes to the community. However, as many NAN First Nations have already found, the courts, **Crown** prosecutors, and police have not been very willing to ‘take on’ charges under intoxicant bylaws, or at least not without significant community involvement.

Bearskin Lake First Nation is responding to these challenges with a community-based model for responding to people who break the rules. Under this approach, officers and Peacekeepers, instead of charging people, give them a **Community Summons**. The summons is provided either at the time of the incident, or, more likely, within a short time after any investigation is complete. A copy of Bearskin Lake’s Community Summons is included in this workbook at Appendix “B”.

This document tells the person that they have the choice to meet with a circle of community members to talk about what happened, why, and what should be done. These circles, which are guided by Anishinaabe values and practices of ‘restorative justice’, can take up to six months to work with people before deciding whether or not it is necessary for a case to be brought to a Canadian court with a formal ‘charge’. The hope is that most bylaw cases can be effectively dealt with at this community level, without charges ever being laid or courts ever becoming involved. At least in theory, this lets First Nations practice their own methods of responding to harmful or wrongful behaviour, more quickly, flexibly, and creatively than any Canadian court. Laying charges may sometimes be necessary for example, when a person does not want to participate in a circle, does not admit to doing anything wrong, or does not fulfill the circle’s expectations. But the hope, which Bearskin Lake First Nation is starting to test, is that courts will be more willing to get involved, and support intoxicant bylaws, if they see that communities have first made efforts to resolve problems at a local level. Much more important than the support of courts or other outside institutions, however, is the authority, control, and flexibility that such an approach gives back to the community itself.

To think about: Circle processes often work best when a person is motivated to change their harmful behaviour. But what if they aren’t, or what if they refuse to respect the law? Should possible responses include loss of housing, employment, benefits or banishment in extreme circumstances? How should these consequences be fairly applied?

If community-based attempts to resolve the problem do not work, or if the case is too big or complicated to handle, a formal charge may be laid against a person. Enforcement officers have six months from the time of every incident to lay a formal charge against a person, but in practice will have to begin this process well before this deadline. Charges can be laid in bylaw cases by serving the person accused of the offence an **Appearance Notice** that tells them exactly what they are being charged with, and when they have to come to court. See Appendix “D” of this workbook for a sample Appearance

Notice. This information will also need to be given to the court to let it know that the case will be appearing before it. Police officers in your community have the training and documents required to complete this process, but it is important to make sure that there is good communication and cooperation between the Peacekeepers, police officers, and the community or council members involved in each case. The limited role of courts and the **Crown** in enforcing your First Nation's intoxicant bylaw is discussed below.

All of these options, of course, require significant resources if they are to work properly in carrying out the purposes of your intoxicant bylaw. Next, we will look at some of the resources that will help create and maintain a strong law.

What do we need, within and outside our community, for our law to really work?

Here are some of the nuts and bolts that will be required for your intoxicant **bylaw** to operate effectively, even without the involvement of Canadian institutions like courts and lawyers. While it is beyond the scope of this workbook to identify specific sources of financial support for these tools, the following suggestions will hopefully help you determine your own nation's capacities and needs.

- *Community Resources – Local Coordination, Enforcement, and Response*

Your First Nation probably has a member on Council who oversees justice and policing or peacekeeping, and they will likely be the councillor responsible for making sure the intoxicant bylaw is working well. This may include receiving and responding to tips, suggestions, and questions from community members, and overseeing enforcement activities. If resources are available, a coordinator can be hired to do a lot of this important work, such as keeping records of every case to make sure they are being properly dealt with.

Enforcement officers, as mentioned, will likely include both **police officers** and **Peacekeepers**. It is especially important for Peacekeepers to be properly trained and equipped to take on the enforcement duties that the bylaw gives them, which may include, access to vehicles, uniforms, notebooks and records logs, and office space. Your nation may also think about what kind of searches it wants Peacekeepers to do, and how these may be done in a reasonable and respectful way. For example, is there a place at the airport where baggage and 'pat down' searches can be done in private? Is there a locked area where seized goods can be kept? If your law allows Peacekeepers to go into people's houses, are training and other policies in place for how these will be safely done?

Other members of council and the community will also have important roles to play, especially if your intoxicant bylaw includes detailed procedures on how searches and seizures will happen, or if you want to practice a model of pre-charge community based resolution. For example, the three members of the Bearskin Lake First Nation **Enforcement Committee** are council members, who must meet to decide on when a search or seizure should be done. The five-member **Appeals Committee**, on the other hand, is made up of community members who meet only when someone thinks their property has been wrongly seized and wants this committee to give it back.

Community volunteers may be especially important for resolution meetings, or circles. Your First Nation has elders and other members who have the wisdom and experience or expertise that will help people with their problems, and they should be invited to participate in resolution discussions. Counsellors and other health-care providers in the community may also have very important information to help people who are in need of treatment for addiction, and should be consulted or included when necessary.

Every person who is involved in a case should have the right training to do a good job. Everyone should also be aware of your First Nation's policies about confidentiality and when information can and cannot be shared with others outside a circle. While community-based processes in small communities are difficult, if not impossible, to keep secret, people called to participate in circles also deserve to know that what they say won't be used against them as evidence if the case goes to court, for example. A sample "Promise of Confidentiality" is included in this workbook at Appendix "E".

- *Regional and NAN-wide Resources*

Clearly, running a good intoxicant bylaw is not an easy job, and your community may consider how it can share resources with other First Nations, or regional organizations. Here are just a few ideas:

- Contacting NAN Legal and NAPS to organize joint training sessions for community coordinators, Peacekeepers, council members, and circle volunteers;
- Asking NAN Legal's trained Restorative Justice workers to facilitate the first resolution circles in your community, until local facilitators are ready to do so;
- Having regular meetings within tribal councils or with other NAN First Nations, to share what works, what doesn't, and how to improve your intoxicant bylaws;
- In situations where there are bylaw charges that have to be referred to a Canadian court for prosecution, considering whether you can hire a lawyer to take these cases in multiple communities.

Down the road, it is also possible that groups of First Nations may share even more strategies and resources for effective bylaw enforcement, such as creating regional committees or Anishinaabe Justice Courts to oversee searches, seizures, and other decision-making proceedings beyond the local level.

- *Court Resources*

When a Canadian court oversees the prosecution of a bylaw charge, it follows the same basic process as for a criminal charge under Canadian law. An accused person is told to appear in court, and enters a plea of guilty or not guilty. The charge, as mentioned, will need to be prosecuted, probably by a lawyer if the case is heard by a **Judge** of the Ontario Court of Justice. If, in the future, special bylaw courts are set up so that **Justices of the Peace** can hear cases, the **Crown** and defence representative, if the accused

person wants one, can be someone who is not a lawyer. Sometimes bylaw offences are even prosecuted by police officers themselves.

If a person pleads guilty, the court can only give them a fine and/or prison term as a punishment, up to the maximums set out in the **Indian Act** (see above). If the person pleads not guilty, there will be a trial at which the prosecutor has to prove that the bylaw is valid (see the discussion about this in the next section), and that the person committed the offence without a valid defence. Issues such as a person's **Charter** rights against unreasonable search and **seizure** may also be raised at a trial. Finally, the Canadian court system has processes by which decisions at trial can be appealed to other 'higher' courts, if one of the sides does not agree with it.

For a basic summary of the steps required for community-based bylaw enforcement, please see the flowchart on page 21. Below, we look more at what steps are required to get your intoxicant bylaw up and running.

Implementing your Law: Making it Official

Holding a Community Meeting and Vote

Any intoxicant **bylaw** passed under s. 85.1 of the *Indian Act* must be “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”.

This means that, in addition to the good practice of holding community consultations and dialogues in the process of coming up with a proposed bylaw, there must be an official ‘special meeting’ held at which all a band’s electors both on and off-reserve have the opportunity to consider the draft law before it is passed. At this meeting there must be a chance for all electors to vote on whether or not they support the planned law, and no intoxicant bylaw can be passed unless it receives more votes in favour than votes opposed.

This *Indian Act* requirement is unique to intoxicant bylaws, and, despite it being a Canadian legal imposition on First Nation governments, can result in a much stronger and more effective law than one which is made without community involvement and support. Both community members, who are most affected by the law’s operation, and Canadian courts, who may be asked to uphold the law’s validity if it is challenged in court, are more likely to support the law if they are aware of its requirements and see that it is carried out by the will of the people.

Publicizing the Law

The special community meeting and vote should be carefully recorded and made public in the community. A copy of bylaw, signed by at least a majority of Chief and Council, together with the results of the community vote, can also be sent to the Minister of Indigenous and Northern Affairs (INAC), although the bylaw itself will take effect after it is **enacted** by Council *and* published in a newspaper that circulates in your community, on the internet, and/or in the *First Nations Gazette*, an online publication (www.fng.ca). Your bylaw can also say that it will come into effect on any later date after it is enacted and published.

The Minister’s approval of intoxicant bylaws is *not* required, and the 2014 *Indian Act* amendments also remove the requirement that intoxicant bylaws must be sent to the Minister for registration; this means that making laws is now much more under the control of your own nation. If your bylaw is reviewed by a Canadian court, however, you should be prepared to prove its Canadian legal validity. This means, according to the *Indian Act*, that it has been passed by a majority of Council after its approval by the community at a special meeting and vote, and adequately made public to the people it might affect. Again, this Canadian legal requirement simply reinforces a basic truth that your nation may uphold in your own ways – that your laws have the consent and understanding of your people.

A very important step in making your bylaw official, and functional, is making sure that everyone is aware of its existence, requirements, and date(s) when it will be **enforced**. Your First Nation should

consider post signs or notices that can be seen by everyone who enters or leaves the community, as well as at key community locations such as the Band office and stores. Announcements over the radio, or notices in newspapers, will also help to make sure that people are aware of the law and when it will come into effect. Full copies of the law should also be made available to anyone who is interested, both in paper and, if your First Nation has an active website, on the Internet. Signed originals of the bylaw should be kept both at the Band office and at your tribal council or lawyer's office, in case a court asks to see them. The police officers serving your First Nation should also be provided with copies of the law, especially if they – or anyone else – are being asked to help enforce it.

Telling People how the Law will be Enforced

Your First Nation may decide to begin enforcing its intoxicant bylaw in stages, as you build resources and experience. People should be informed, in the same ways as indicated above, exactly when different sections of the law will come into force. The basic guideline is that everyone should have enough information to know *what* the law is, *how* it is being applied, and *what* their rights and responsibilities are.

When someone is being identified as breaking the law, providing them with good information about their rights and responsibilities is especially important. For example, if a person is being asked to come to a resolution meeting, they must know exactly where, when, and what this meeting will be about. They should know who will likely be at the meeting (at the very least, which groups in the community will be represented – elders, youth, council, health care and counselling, etc). If it is not possible to tell someone exactly when a meeting will be held, they should be told that someone will be contacting them to arrange for a meeting before a certain date.

People should also have information on what will happen if they decide not to participate or follow through with a circle's recommendations. Finally, if anything is being seized (taken away) from the person, they should know how long the seizure may be for, and what rights they may have to ask for it back.

This information should be both given to the person in writing, and clearly explained in a person's language, by the police officer or Peacekeeper who is investigating the incident.

Finally, written records of every case should be kept – by investigators as well as by the coordinator of your First Nation's intoxicant bylaw. Notes of resolution meetings, including recommendations and deadlines, should be included in every case file, as well as the person(s) responsible for following up to make sure things are done. This is important to keep each case on track, and to make sure no deadlines or other important steps in the case are missed.

For a basic summary of the steps required for community-based bylaw development, please see the flowchart on page 21.

Conclusion

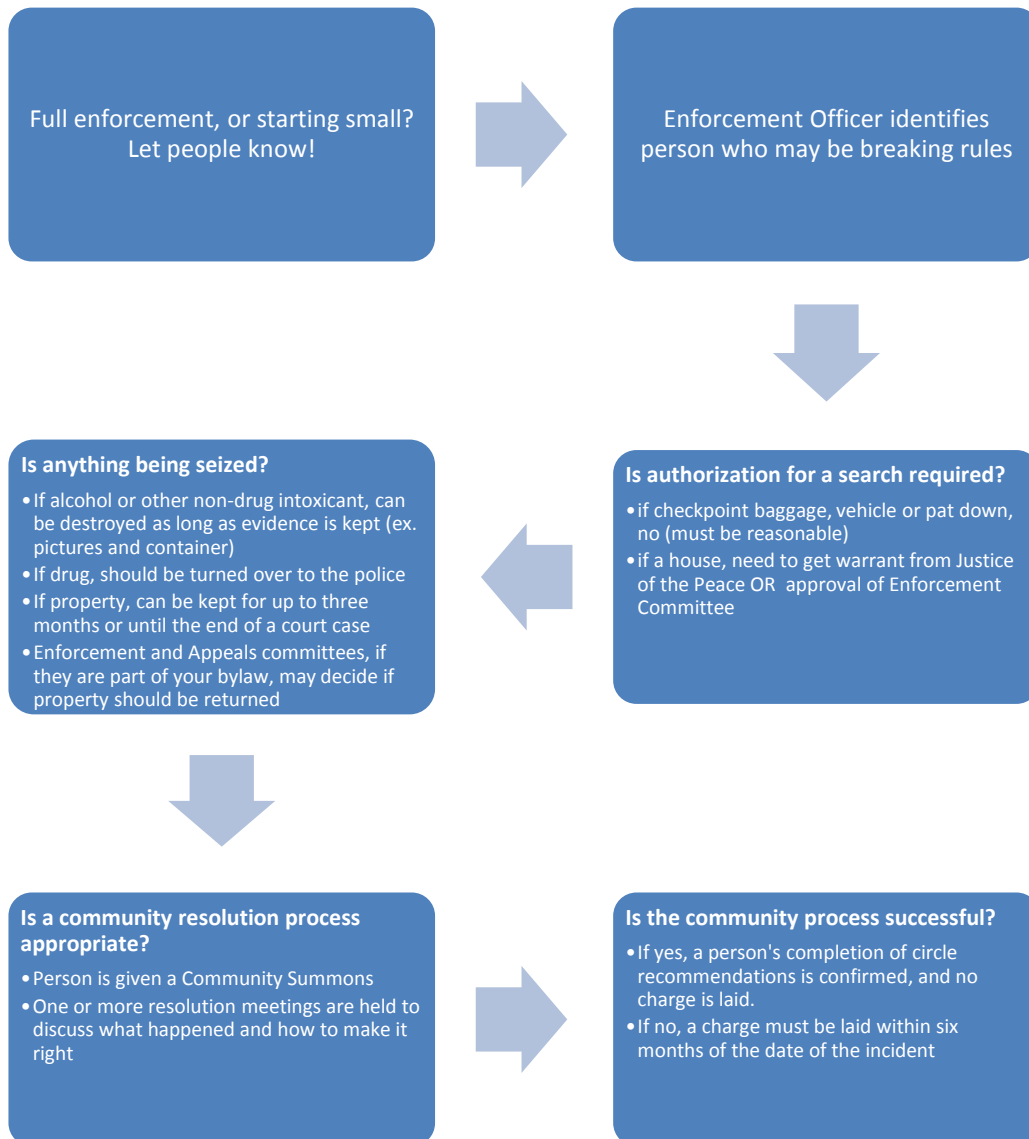
After reading through this workbook, you may wonder whether an intoxicant bylaw is indeed part of the solution in your community – as we have seen, an effective law requires a lot of community support, organization, and resources to work properly to reduce the harm caused by intoxicants. You may wonder whether it is better to focus your attention on other issues, or approach the problem from other directions, instead of putting precious energy into bylaw enforcement.

These are very important questions. The problem of intoxicant abuse has many causes, so there is no *one* best or right way of trying to make the problem better. The wisdom, experience, and resources that your First Nation has in the areas of health, education, and overall community well-being are as much, if not more important than any intoxicant bylaw will be. A bylaw is just one piece of the puzzle – and, as this workbook has tried to show, that piece can be quite different depending on your First Nation’s own challenges, resources, and values. But with the right kind of patience, planning, and cooperation, an intoxicant bylaw can be a powerful tool to help build your community as a safe and healthy home, step by step, day by day.

Creating an Intoxicant Bylaw – Basic Steps



Enforcing an Intoxicant Bylaw – Basic Steps





**BEARSKIN LAKE FIRST NATION
FIRST NATION LAW RELATING TO INTOXICANTS
BY-LAW #2010 - 01**

WHEREAS the abuse of intoxicants represents a major threat to the communal well-being of the Bearskin Lake First Nation and to the lives of its members;

AND WHEREAS the abuse of intoxicants has been demonstrated to be a major contributor to ill-health, social disorder and to breaches of the public peace within the community;

AND WHEREAS it is necessary for the effective control of intoxicants to take special measures which respond to the community needs of the Bearskin Lake First Nation in Ontario and in Canada, its location, and its unique history, traditions and culture;

AND WHEREAS the authority to enact a by-law respecting intoxicants and intoxication on Reserve is granted to the Band Council under section 85.1 of the *Indian Act*;

AND WHEREAS the Chief and Council called a special meeting of the members of the Bearskin Lake First Nation in order that they have an opportunity to contribute to the provisions of a law which will reflect the view of the community of the appropriate balance of the collective and individual rights of the Bearskin Lake First Nation and its members;

AND WHEREAS the members of the Bearskin Lake First Nation have shown their support of this law through a vote at that special meeting;

THEREFORE the Chief and Council of the Bearskin Lake First Nation enacts this by-law.

1.0 SHORT TITLE

1.1. This by-law may be cited as the "Bearskin Lake First Nation Intoxicant By-Law".

2.0 DEFINITIONS

In this By-Law, unless something in the subject matter or context is inconsistent therewith:

2.1 "Enforcement Officer" means a Peacekeeper, a Band Constable, a First Nations Constable or any other authorized peace officer, who has been granted permission by Chief and Council to enforce this By-Law.

2.2 "Indicators of Illicit Activity" refers to such circumstances that give rise to a reasonable apprehension of non-compliance with this or any other by-law or law, including but not limited to those cases where:

- a) a person attempts to purchase a ticket for a flight or passage on an aircraft after the searches are conducted and the searchers appear to be leaving or appear to have left;
- b) a person has a ticket or passage on an aircraft and does not attempt to board the aircraft until after the searches are conducted and the searchers appear to be leaving or appear to have left;
- c) a known drug trafficker, dealer, mule, user or abuser is known to reside, stay, visit or attend at a building, dwelling house or office from which goods and chattels were seized where residents of the Bearskin Lake First Nation have been advised of this subsection and subsections 6.8, 6.9 and 6.10 via general announcement or proclamation;
- d) a known money launderer or mule is known to reside, stay, visit or attend at a building, dwelling house or office from which goods and chattels were seized where residents of the Bearskin Lake First Nation have been advised of this subsection and subsections 6.8, 6.9 and 6.10 via general announcement or proclamation; and

- e) if, during a search under this by-law, it becomes apparent that a person is carrying money, goods or chattels in such a manner as to be construed as an attempt to conceal it from a person doing a search under this by-law.

2.3 "Intoxicants" means any substance, liquid or the vapors thereof which can be used to produce a state of intoxication, and includes, without limiting the foregoing;

- a) alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks and drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;
- b) gasoline, naphtha and other fuels or vapors thereof;
- c) glues, cements and similar compounds, and the vapors thereof;
- d) cleaning solvents, disinfectants, anti-freeze, de-icers, perfumes, hair sprays, mouth-washes containing intoxicants, and the vapors thereof;
- e) home-made mixtures capable of producing a state of intoxication, and/or the yeast utilized to make such mixtures; and,
- f) illegal drugs as defined in the *Controlled Drugs and Substances Act*.

In addition to its ordinary meaning, any person 18 years of age or less who has in any manner consumed intoxicants is deemed to be intoxicated for the purposes of this by-law.

2.4 "Intoxication" means the state of being intoxicated by intoxicants, that is, drunkenness or inebriety, the mental and physical condition induced by sniffing solvents, or the mental and physical condition induced by drinking excessive quantities of alcoholic liquors.

2.5 "Peacekeeper" means a person appointed by the Band to enforce this by-law.

2.6 "Person" means;

- a) any member of the Bearskin Lake First Nation;
- b) any resident of the Bearskin Lake First Nation;
- c) any other who is present within the boundaries of the Bearskin Lake First Nation.

2.7 "Traffic" means to:

- a) manufacture an intoxicant; or
- b) to give, buy, sell, exchange or barter or trade an intoxicant; or
- c) to offer to give, buy, sell, manufacture, barter or trade an intoxicant.

3.0 OFFENCES AND PENALTIES

3.1 Any person who **is intoxicated** within the boundaries of the Bearskin Lake First Nation is guilty of an offence and is liable on summary conviction to a fine of not more than One Hundred Dollars, or imprisonment for a period not exceeding three months, or both.

3.2 Any person who is in **possession of an intoxicant** within the boundaries of the Bearskin Lake First Nation is guilty of an offence and is liable on summary conviction to a fine of not more than One Hundred Dollars, or imprisonment for a period not exceeding three months, or both.

3.3 Any person who,

- a) traffics in an intoxicant, or
- b) supplies an intoxicant to a minor, or
- c) is in possession of an intoxicant for the purposes of trafficking,

within the boundaries of the Bearskin Lake First Nation is guilty of an offence and is liable on summary conviction to a fine of not more than One Thousand Dollars, or imprisonment for a period not exceeding six months, or both.

- 3.4 No offence is committed against this by-law where the intoxicant is used or intended to be used:
- a) for medicinal purposes in cases of sickness or accident;
 - b) for personal, domestic or commercial purposes that do not involve human consumption or involve producing a state of intoxication; or
 - c) for traditional, sacred or other similar purposes which do not involve producing a state of intoxication.

4.0 APPOINTMENT

- 4.1 The Chief of Bearskin Lake First Nation or the Chief and Council may appoint a person to be a Peacekeeper for the purposes of enforcing this by-law.
- 4.2 The term of appointment as a Peacekeeper shall be:
- a) For a period of two years on a renewable basis for an appointment made by the Chief; or
 - b) For an indefinite period, at the pleasure of Chief and Council, for an appointment made pursuant to a Band Council Resolution.

5.0 AUTHORITY

- 5.1 A Peacekeeper may enforce the provisions of this by-law for as long as this by-law remains in effect or until the end of their term or employment as a Peacekeeper, whichever is shorter.
- 5.2 All other Enforcement Officers may enforce this by-law at the pleasure of the Chief and Council while this by-law is in effect.

6.0 POWERS

- 6.1 Where an Enforcement Officer has reasonable and probable grounds to believe that a person on the Reserve may be committing an offence against this or any other by-law or law, that Enforcement Officer may conduct a reasonable search of the person and any items immediately in his possession.
- 6.2 An Enforcement Officer shall, without discretion, search every person entering or exiting the Reserve via plane, automobile, boat or other vehicle or vessel to determine whether or not he has in his possession any intoxicant, whether on his person or among the luggage, bags, packages or other containers being brought to or removed from the Reserve.
- 6.3 An Enforcement Officer shall, without discretion, search every person entering or exiting the Reserve via plane, automobile, boat or other vehicle or vessel to determine whether or not he has in his possession any chattel or goods relating to an offence under this or any other by-law or law, whether on his person or among the luggage, bags, packages or other containers being brought to or removed from the Reserve.
- 6.4 Similar searches shall be conducted on persons entering or exiting the Reserve by foot, air or by water without the use of such vehicles if:
- a) They have not, to the best of the knowledge of the Enforcement Officer, previously been searched in accordance with this by-law; or
 - b) The Enforcement Officer believes, on reasonable and probable grounds, that an offence under this or any other by-law or law has been, will be, or is being committed and that such a search will turn up evidence to support such belief.
- 6.5 An Enforcement Officer may, without warrant, conduct a reasonable search of any building situated within the territory of Bearskin Lake First Nation, including offices and dwelling houses, where:

- a) That Enforcement Officer has reasonable grounds to believe that an offence against this or any other by-law or law has been, will be, or is being committed; and
- b) That Enforcement Officer has prior approval from the majority of the Enforcement Committee, where:
 - i) The Enforcement Committee is appointed by the Chief and Council by Band Council Resolution;
 - ii) The Enforcement Committee is comprised of three members;
 - iii) Members of such committee, if satisfied on a balance of probabilities that an offence has been, will be, or is being committed, must approve the search without discretion; and
 - iv) The Enforcement Committee does not need to formally convene a meeting in order to grant approval.

6.6 An Enforcement Officer may, without warrant, conduct a search of a building, dwelling house, or office if that Enforcement Officer, in his capacity as such, is lawfully within such building, dwelling house or office for reasons other than a search under subsection 6.5 subject to the following restrictions:

- a) Such search involves only the visual inspection of things or the smelling of the air and does not involve the touching, moving or manipulation of objects; and
- b) Such visual search is only of such areas within sight of the areas related to the lawful cause for the Enforcement Officer's presence within the building, dwelling house, or office; or
- c) Such sniff test is only of such areas directly related to the lawful cause for the Enforcement Officer's presence within the building, dwelling house, or office.

6.7 Whenever an Enforcement Officer believes on reasonable grounds that an offence pursuant to this or any other by-law or law has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed, subject to the following conditions:

- a) If the good or chattel is an intoxicant, and if that intoxicant is, in its form, a liquid, it shall be held as evidence until it is no longer needed for enforcement or prosecutorial purposes. Once such liquid is no longer needed, it shall be:
 - i) Dumped; or
 - ii) If the liquid is highly toxic and poses a threat to life if dumped, then the liquid shall be disposed of in a manner that is safe.
- b) If the good or chattel is an intoxicant which is an illegal drug as defined in the *Controlled Drugs and Substances Act*, and is found pursuant to a search by such Enforcement Officer, the illegal drug as defined in the *Controlled Drugs and Substances Act*, shall be seized, a local Peace Officer shall be summoned if the Enforcement Officer conducting the search is a Peacekeeper, and the person searched shall be detained.

6.8 All goods and chattels seized pursuant to this or any other by-law or law may be detained subject to the following restrictions:

- a) In the case of an intoxicant in liquid form, the good or chattel contemplated shall be the bottle or container holding the intoxicant, as the intoxicant itself shall be dumped or otherwise disposed of; and
- b) Such detention shall be for a period of three months following the day of seizure unless proceedings are undertaken under the Act in respect of the offence, in which case the goods and chattels may be further detained until the proceedings are finally concluded.

- 6.9 An Enforcement Officer, when asked for the return of goods or chattels seized or detained, must return all goods and chattels that are not intoxicants and have not been identified as a good suspected to relate to an offence under this or any other by-law or law.
- 6.10 For the purpose of section 6.9, a good or chattel may be identified as a good suspected to relate to an offence under this or any other by-law or law where the Enforcement Committee has deemed as such, where:
- a) The Enforcement Committee has duly called a meeting;
 - b) The Enforcement Committee considers the reasons of the Enforcement Officer for considering the good or chattel as a suspect good;
 - c) The Enforcement Committee considers any and all alternative explanations provided to the Enforcement Officer; and
 - i) The Enforcement Committee, without discretion, must declare a good a good suspected to relate to an offence where:
 - ii) on a balance of probabilities, even in light of alternative explanations, it concludes that the good, chattel or property is indeed or is likely a good relating to an offence under this or any other by-law or law; or
 - iii) one or more of the Indicators of Illicit Activity are present.
- 6.11 The Enforcement Committee must provide written reasons to the Enforcement Officer, who will then provide a copy of the written reasons to the person requesting return of the goods or chattels.
- 6.12 Within two days of the decision of the Enforcement Committee, a person who made a request for the return of goods and chattels and was refused on the basis of subsection 6.9 and 6.10 may bring an appeal to the Appeals Committee, where

- a) The Appeals Committee is appointed by Chief and Council via Band Council Resolution and may not contain any members of the Enforcement Committee;
- b) The Appeals Committee is comprised of five members, who must sit in numbers of three or five in a duly called meeting to provide a decision; and
- c) The Appeals Committee must overturn a decision of the Enforcement Committee made pursuant to subsection 6.10, without discretion, if, on a balance of probabilities, it is convinced that the decision of the Enforcement Committee was erroneous.

6.13 The Appeals Committee must provide written reasons to the person making the appeal, the Enforcement Committee, and the Enforcement Officer.

7.0 NOTICE OF THIS BY-LAW

7.1 All persons preparing to enter Bearskin Lake First Nation shall have advance notice of the existence of this by-law, be permitted to view a synopsis of this by-law, and shall have indicated to them that all persons entering or exiting the Bearskin Lake First Nation shall be searched pursuant to this by-law.

7.2 Such notice shall also indicate to all persons preparing to enter Bearskin Lake First Nation that if they do not wish to be searched, they must not disembark from the aircraft that has landed there, or otherwise attempt to enter the Reserve by land, air or water.

7.3 Notice of this by-law shall be presented in the following methods:

- a) The Band Council shall erect signs at each of the following locations advising all persons that they shall be searched upon entering and exiting the First Nation in accordance with the terms of subsections 6.2 and 6.3:
 - i) At any airport from which a scheduled flight with the First Nation as a destination is known to take off;

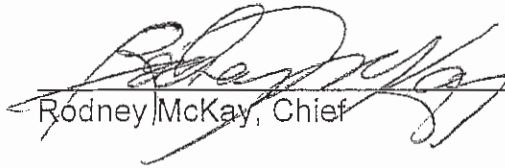
- ii) At the local airport of the First Nation;
 - iii) Along any road, winter or otherwise, leading to the First Nation;
 - iv) At any dock; and
 - v) On any waterway entering the First Nation.
- b) The Band Council shall pay for newspaper advertisements to announce this by-law in major newspapers of the cities, towns or other First Nations:
- i) From which a direct flight to the Bearskin Lake First Nation is known to depart from;
 - ii) Which are, at any point, connected or reasonably close to a winter or all-year road leading to the First Nation;
 - iii) Connected to the Bearskin Lake First Nation via bodies of water or waterways; and
 - iv) That is connected to the First Nation via snowmobile trail; and
- c) The Band Council shall pay for periodic radio advertisements to announce this by-law on local and regional radio stations.

8.0 SEVERABILITY

- 8.1 The invalidity of any particular provision of this by-law shall not affect any other provision hereof, but the by-law shall be construed as if such invalid provision were omitted.


This By-Law is hereby made at a duly convened meeting of the Council of the Bearskin Lake First Nation this 13 day of September, 2010.

Voting in favour of the By-Law are the following members of the Council:


Rodney McKay, Chief


Wesley Nothing, Deputy Chief


Roderick Kamenawatamin, Councillor


George Kamenawatamin, Councillor

Joyce McKay, Councillor

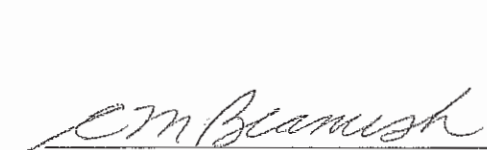
Tommy Fiddler, Councillor

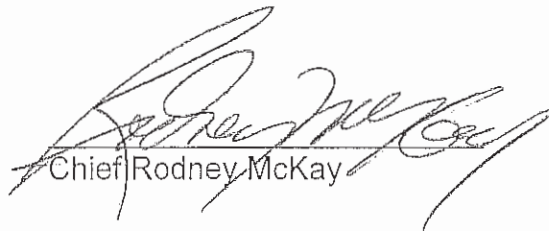
Being the majority of those members of the Council of the Bearskin Lake First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 4 members.

Number of members of the Council present at the meeting 4.

I, Rodney McKay, Chief of Bearskin Lake First Nation, do hereby certify that a true copy of the foregoing By-Law was mailed to the Minister of Indian Affairs and Northern Development at the Thunder Bay office of the department pursuant to subsection 86 of the *Indian Act*, this 13th day of September, 2010.


Witness


Chief Rodney McKay

APPENDIX B

BEARSKIN LAKE COMMUNITY SUMMONS

APPENDIX “B”

COMMUNITY SUMMONS

**Bearskin Lake First Nation
First Nation Law Relating to Intoxicants
By-Law #2010-01**

THIS IS NOTICE that _____, an Enforcement Officer as defined in By-Law # 2010-01, has reasonable grounds to believe that you, _____, a member/resident/guest of Bearskin Lake First Nation, have acted in a way contrary to this By-Law, as follows:

(attach additional sheets as necessary) NO CHARGE has been laid against you at this time. You have the opportunity to enter into a Community Resolution Process to respond to the concerns raised by your conduct. Someone may contact you to arrange for your attendance at a Resolution Meeting, that is if you opt for a Resolution Meeting. Other members of the community may also be asked for their input as to the most appropriate way to respond to your conduct. If you choose not to opt for or participate in Resolution Meetings, you could face charges under the By-Law, which will be prosecuted in the Ontario Court of Justice. In addition, you may be subject to loss of entitlements or other penalties imposed by the community.

**For further information, please contact _____,
Bylaw Project Coordinator (phone) (email)**

APPENDIX C

WABASEMOONG INDEPENDENT FIRST NATION INHALENT BYLAW

BY-LAW
NUMBER #2008-01
OF WABASEEMOONG
INDEPENDENT
FIRST NATION BAND

**“A BY-LAW TO PROHIBIT INHALENTS IN THE
COMMUNITY”**

**ENACTED:
ON THE 31st DAY OF MARCH, 2008**

By-Law 2008-01 – Prohibit Inhalants in the Community

WHEREAS the Community of Wabaseemoong is experiencing detrimental effects from the abuse of Inhalants by some of its members; and

WHEREAS intoxicating substance abuse is destructive and unhealthy to the members and residents of Wabaseemoong Independent Nations; and

WHEREAS the Council of Wabaseemoong considers it necessary to adopt special measures to address the harm caused by the unauthorized presence, improper use and unregulated sale of Inhalants on the reserve; and

WHEREAS The Band Council of Wabaseemoong Independent Nations has the authority to make by-laws under the Indian Acts R.S., c. 1-6, s.1. 81 s. (1) (c), (d), (q) and (r) to provide a safe and healthy community, and to prevent misconduct and nuisances, the observance of law and order, with respect to any matter arising out of or ancillary to exercise the powers under section 81, and the imposition, on summary conviction, of a fine or imprisonment for violation thereof; and

WHEREAS The form and substance of this By-law set out below were assented to by a majority of electors of Wabaseemoong First Nation who voted in a special meeting of the Band on the 31 day of March, 2008 called by the Council of Wabaseemoong First Nation for the purpose of considering the said By-law; and

WHEREAS the Band Council of Wabaseemoong Independent Nations has experienced problems with enforcement and prosecution of previous by-laws.

THEREFORE the Band Council of Wabaseemoong Independent Nations hereby repeals the following by-laws:

<u>Description</u>	<u>By-Law Number</u>	<u>Enacted Date</u>
By-Law Respecting the Prohibition against the Inhalation of Solvent and Gasoline Vapours	2002-01	2002/06/06
By-Law Respecting the Control of Toxic Substances	2004-1A	2004/04/29

FINALLY be it resolved that the Band Council of Wabaseemoong Independent Nations hereby enacts this by-law to be known as By-Law # 2008-01 Prohibiting Inhalants.

Purpose

1. The purpose of this *By-law to Prohibit Inhalants in the Community* is to declare in effect a prohibition against the sale, barter, supply, manufacture, possession and consumption of Inhalants in order to protect the community and the community Members against the injurious effects of intoxicating substance abuse.

Short Title

2. This by-law may be cited as the Wabaseemong Inhalant By-law 2008-01.

**By-Law 2008-01 – Prohibit Inhalants in the Community
Interpretation**

3. In this By-Law

"intoxicating substance" means

- (a) glues, adhesives, cements, cleaning solvents, thinning agents and dyes containing toluene or acetone and the vapours thereof,
- (b) petroleum distillates or products containing petroleum distillates including naphtha, mineral spirits, Stoddard solvent, kerosene, gasoline, mineral seal oil and other related distillates of petroleum and the vapours thereof,
- (c) fingernail or other polish removers containing acetone, aliphatic acetates or methyl ethyl ketone, and the vapours thereof;
- (d) any substance that is required, under the Hazardous Products Act (Canada) or the regulations to that Act, to bear the label "Vapour Harmful", "Vapour Very Harmful" or "Vapour Extremely Harmful",
- (e) aerosol disinfectants and other aerosol products containing ethyl alcohol, and
- (f) any other product or substance that, when inhaled, produces an intoxicating affect.

"Traffic" means give, sell, barter, supply, manufacture or attempts to sell, barter, supply or manufacture an intoxicating substance.

Prohibition on Possession

4. No Person shall have an intoxicating substance in their possession.

Offence and penalty (Possession)

5. Any person who is in possession of an intoxicating substance is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars (\$100.00) or imprisonment for a term not exceeding 30 days or both.

Prohibition on consumption

6. No person shall inhale, ingest or otherwise consume an intoxicating substance.

Offence and penalty (Consumption)

- 7 Any person who contravenes subsection section 6 is liable, on summary conviction, to a fine not exceeding one hundred dollars (\$100.00) or imprisonment for a term not exceeding 60 days or both.

By-Law 2008-01 – Prohibit Inhalants in the Community

Prohibition on Possession for the Purpose of Trafficking

8. No person shall possess an intoxicating substance in quantities or in the totality of the circumstances that establish, by inference, that it is for the purpose of trafficking.

Prohibition on Trafficking

9. No person shall traffic in an intoxicating substance where they know that the person will use the intoxicating substance, or cause or permit the intoxicating substance to be used, as an intoxicant; or knows that that the person will use the intoxicating substance, or cause or permit the intoxicating substance to be used, as an intoxicant and is reckless with or willfully blind to that knowledge.

Exception

10. The Provisions of this by-law do not apply where the intoxicating substance is used or intended to be used appropriately,
 - (a) in cases of sickness or accident
 - (b) for domestic or commercial purposes that do not involve human consumption.
 - (c) when the intoxicating substance is being used as prescribed by a licensed health practitioner.

Offence and penalty (Possession for the Purpose of Trafficking and Sales)

11. Any person who contravenes subsection 8 or subsection 9 is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.00 or imprisonment for a term of not more than 30 days, or both.

Alternative Justice Program

12. In the event that the community has constituted a functioning Elders Council or Alternative Justice Program any person who is prepared to plead guilty to an offence under this by-law may chose to appear before a Council of Elders or Tribunal established as part of an Alternative Justice Program within 30 days of being charged under this by-law.
13. By voluntarily electing to appear before an Elders Council or Alternative Justice Tribunal any person who is guilty of an offence under this by-law agrees to expose themselves to the penalties described in subsection 14.
14. The Elders Council or Tribunal established as part of an Alternative Justice Program will consider and impose an appropriate sentence which may include, but are limited to;
 - a) requiring the accused person to apologize to individuals or the broader community for any wrong doing in person and in writing;

By-Law 2008-01 – Prohibit Inhalants in the Community

(b) requiring the accused person to consult, over the course of a reasonable time frame, with a professional counselor;

(c) requiring the accused person to do community service work; or

(d) any other sentence that may be appropriate under the circumstances.

15. No court shall impose a sentence under this by-law if an accused person has agreed to plead guilty and elected to appear before a functioning Elders Council or Alternative Justice Program.

16. A person who has failed to adhere to the conditions of a sentence imposed under subsection 14 commits an offence under this by law and is subject to the penalties described in subsection 11 without an option to elect the alternative justice provisions 12-15 inclusive.

Enforcement

17. This By-Law may be enforced by the following , Band Constables, Ontario Provincial Police, Treaty Three Police and the Canadian Royal Mounted Police.

18. Should a Court of competent jurisdiction strike down a section of this By-Law, the remaining portions of the By-Law shall continue to stand.

19. On the first business day following September 1st of each year, the Band Council shall request in writing, disbursement of any fines collected pursuant to this by-law to the community to support Alternative Justice Programs.


20. This by-law comes into force 40 days after a copy has been forwarded to the Minister, unless the minister declares the by law to be in force at an earlier date.

Application


21. This By-law applies to the Wabaseemong Reserves which includes Wabaseemong 06268, One Man Lake 29 – 06269 and Swan Lake 29 – 06270.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the band council of Wabaseemoong Independent Nations this 31st day of March, 2008.

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

Chief


Councillor




Councillor

By-Law 2008-01 – Prohibit Inhalants in the Community

Councillor




Councillor



Councillor

Councillor

Councillor



Councillor

Being the majority of those members of the Band Council of Wabaseemoong Independent Nations present at the aforesaid meeting of the Band Council.

The quorum of the council is _____ Members.

Number of members of the Band Council present at the meeting _____.

I, _____ Chief of the Wabaseemoong Independent Nations Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the Ottawa office of the department pursuant to subsection 82(1) of the Indian Act, this 1st day of April, 2008.

Chief

Witness

Witness

Wabaseemoong Independent Nations

Band By-Law Number # 2004 -1A

Being a By-Law Respecting the Control of

Toxic Substances

1. Wabaseemoong Independent Nations band by-law may be cited as the "The Control Of Toxic Substance".

INTERPRETATION

2. Definitions - In this By-law,

"Toxic Substances" include gasoline, solvents, adhesives, cleaning agents, glues, light fluids, paints, paint thinners, lacquers, naphtha and any other substance which, though intoxicating if swallowed, inhaled or otherwise ingested, are not manufactured for their intoxicating effect.

"Traffic" means:

- a) to sell, administer, give, transport, send or deliver; and
- b) to offer to do anything mentioned in paragraph (a).

"Possession" means possession within the meaning of s. (4(3) of the criminal code of Canada.

- (a) a person has anything in possession when he has it in his possession or knowingly,
- (b) has it in the actual possession or custody of another person, or
- (c) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (d) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

"Intoxicating" is to be given its ordinary meaning, and includes the inducement of any altered physical, mental or emotional state through the inhalation, swallowing or other ingestion of a substance.

OFFENCES AND PENALTIES

3. (1) **Possession of Toxic Substance**- No person shall possess a Toxic Substance upon the Reserve of Wabaseemoong Independent Nations.

(2) **Exception**- No offence is committed if the person in possession of the Toxic Substance is:

- (a) in possession under the direction of a qualified health professional; or
- (b) in possession for the purpose of using the toxic substance for its intended non-intoxicating domestic, commercial, industrial, business or other purpose.

(3) Evidence- Evidence that an accused possessed the toxic substance in a container or containers other than that in which it is normally commercially available for non-intoxicating purposes is, in the absence of evidence to the contrary, evidence of possession contrary to s.3(1) of this By-Law.

(4) Punishment- Every person who contravenes subsection (1) is guilty of an offence punishable by summary conviction and is liable to a fine not exceeding three hundred dollars or imprisonment for a term not exceeding 30 days, or both.

4. (1) Trafficking in a Toxic Substance- No person shall traffic in a Toxic Substance upon the Reserve of Wabaseemoong Independent Nations.

(2) Possession For The Purpose Of Trafficking- No person shall, for the purpose of trafficking, possess a Toxic Substance upon the Reserve of Wabaseemoong Independent Nations.

(3) Evidence- Evidence that an accused is,

(a) in possession of a quantity of the toxic substance substantially in excess of the quantity reasonably necessary to achieve the non-intoxicating domestic, commercial, industrial, business or other purpose intended by the manufacture;

(b) in possession of individual containers of the toxic substance in numerical excess of those reasonably necessary to achieve the non-intoxicating domestic, commercial, industrial, business or other purpose intended by the manufacture;

in the absence of evidence to the contrary, proof of possession for the purpose of trafficking under this By-Law.

(4) Punishment - Every person who contravenes subsection (1) or (2) is guilty of an offence is punishable by summary conviction and is liable to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding 30 days, or both.

(5) Aggravating Circumstances For Sentencing Purposes - Where a court is imposing sentence for a conviction for trafficking under subsection (1), proof that the person to whom the toxic substance administered, sold, delivered or otherwise distributed was the time

(a) under the age of 17 years; or

(b) in an already intoxicated condition

Shall be considered an aggravating circumstance.

The Wabaseemoong Independent Nations Band

By-Law Number # 2002- 01

**Being a By-Law respecting the Prohibition
against the inhalation of Solvent and Gasoline Vapours**

Whereas the Band Council of Wabaseemoong Independent Nations is experiencing the effects of solvent and gasoline abuse, this practice of inhaling solvents and gasoline has demonstrated to be destructive and unhealthy to the members and residents of Wabaseemoong Independent Nations,

And Whereas the Band Council of Wabaseemoong Independent Nations has the authority to make by-laws under the Indian Act paragraph 81sec(1),(a),(c),(d),(q) and (r) to provide a safe and healthy community, and the prevention of disorderly conduct and nuisances, the observance of law and order, with respect to any matter arising out of or ancillary to the exercise the powers under section 81, on the imposition on summary conviction of a fine or imprisonment for violation thereof,

Now Therefore the Band Council of Wabaseemoong Independent Nations hereby enacts this by-law to be known as the Solvent and Gasoline Abuse By-Law.

Definition

1. "Intoxication" means being under the influence of an intoxicating matter or vapour to the extent that a person's physical and mental functioning is impaired;

"Intoxicating matter" includes plastic solvents, adhesive cement, cleaning agents, glue, nail polish remover, lighter fluids, gasoline, paint or lacquer thinner, naphtha, and any other substance which induces a state of impairment;

"Intoxicating vapour" means any vapour, fume or liquid that is emitted or produced from an intoxicated matter;

"Possession and possession for sale" means any person physically carrying an intoxicating matter or by reason of having inhaled intoxicating vapour or is believed to administer, sell, transport for the purpose of distributing to a person,

Prohibitions Against Sale

2. Every one who sells for the purpose of trafficking, administers, transports, sends, delivers or distributes any intoxicating matter to a person,
 - a) who is or is believed to be using the intoxicating matter for the purpose of being intoxicated,
 - b) who is believed to be of unsound mind, is impaired by drugs, alcohol or by having inhaled intoxicating vapour,
3. Everyone who contravenes S.2 of this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding \$ 1000.00 (one thousand dollars) or imprisonment for a term not exceeding 30 days, or both.

Penalty For Possession of intoxicating Matters

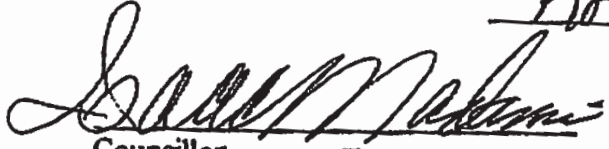
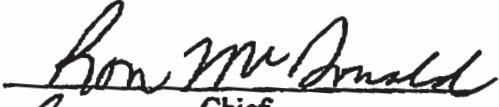

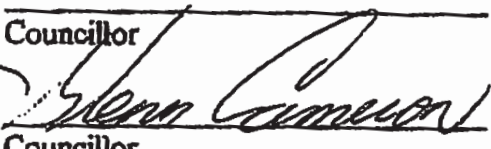

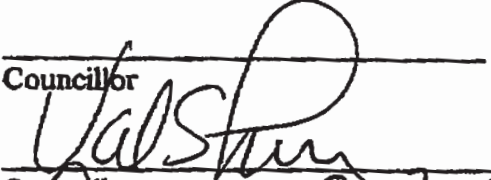

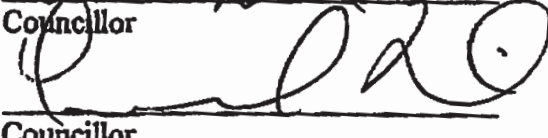

4. Every one who is found in possession of intoxicating matter upon the Reserve of Wabaseemoong Independent Nations for the purpose of inhaling,
 - a) inhaling, administering or otherwise introducing into his/her respiratory system, or
 - b) assisting or causing another person to inhale, administer or otherwise introduce into his/her respiratory system
5. Everyone who contravenes S.4 of this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding \$ 100.00 (one hundred dollars) or imprisonment for a term not exceeding 30 days, or both.

Exceptions

5. Not with standing anything in this by-law no offence is committed if the person who is in possession of an intoxicating matter is;
 - a) under the supervision of a physician or dentist or a person acting under the direction of a physician or dentist who assists or causes another to inhale or administer or otherwise introduce into his/her respiratory system a intoxicating vapour,
 - b) not prohibiting the purpose of domestic, commercial, business or other purpose that do not involve in producing a state of intoxication.
6. A copy of this By-Law made under section 81 of the Indian Act has been forwarded by mail by the Chief of the Wabaseemoong Independent Nations Band to the Minister within four days after it is made. A By-Law made under section 81 comes into force forty days after thereof is mailed to the Minister.
7. When this By-Law comes in to force under section 81 that a Court of competent Jurisdiction strike down a section of this By-Law, that the remaining portions of the By-Law shall continue to stand if practicable.

THIS BY-LAW IS HEREBY made at the duly convened meeting of the Council of the Wabaseemoong Independent Nations this 6th day of June, 2002.

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

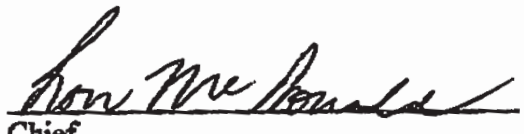
 Councillor	 Chief	
 Councillor		 Councillor
 Councillor		 Councillor
 Councillor		 Councillor
 Councillor		

Being the majority of those members of Council of the Wabaseemoong Independent Nations present at the aforesaid meeting of the Council.

The quorum of the Council is 5 Members.
Number of members of the Council present at the meeting 8.

I, Ron R. McDonald Chief of the Wabaseemoong Independent Nations Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the Thunder Bay office of the department pursuant to subsection 82(1) of the Indian Act, this 6th day of June, 2002.


Witness


Chief


Witness

APPENDIX D

SAMPLE APPEARANCE NOTICE

APPENDIX "D"

APPEARANCE NOTICE ISSUED BY A PEACE OFFICER TO A PERSON NOT YET CHARGED WITH AN OFFENCE

Canada,
Province of,
(territorial division).

To A.B. of (occupation);

You are alleged to have committed (set out substance of offence).

1. You are required to attend court on day, the day of A.D., at o'clock in the noon, in courtroom No., at court, in the municipality of, and to attend thereafter as required by the court, in order to be dealt with according to law.

2. You are also required to appear on day, the day of A.D., at o'clock in the noon, at (police station), (address), for the purposes of the Identification of Criminals Act, (Ignore, if not filled in.)

You are warned that failure to attend court in accordance with this appearance notice is an offence under subsection 145(5) of the *Criminal Code*.

Subsections 145(5) and (6) of the *Criminal Code* state as follows:

"(5) Every one who is named in an appearance notice or promise to appear, or in a recognizance entered into before an officer in charge, that has been confirmed by a justice under section 508 and who fails, without lawful excuse, the proof of which lies on him, to appear at a time and place stated therein, if any, for the purpose of the Identification of Criminals Act, or to attend court in accordance therewith, is guilty of

- a. an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- b. an offence punishable on summary conviction.

(6) For the purposes of subsection (5), it is not a lawful excuse that an appearance notice, promise to appear or recognizance states defectively the substance of the alleged offence."

Section 502 of the *Criminal Code* states as follows:

"502. Where an accused who is required by an appearance notice or promise to appear or by a recognizance entered into before an officer in charge to appear at a time and place stated therein for the purposes of the Identification of Criminals Act does not appear at that time and place, a justice may, where the appearance notice, promise to appear or recognizance has been confirmed by a justice under section 508, issue a warrant for the arrest of the accused for the offence with which he is charged".

Issued at a.m./p.m. this day of A.D.
at

.....
(Signature of peace officer)

.....
(Signature of accused)

APPENDIX E

SAMPLE PROMISE OF CONFIDENTIALITY

APPENDIX "E"

Promise of Confidentiality

I, _____ understand that the Community Justice Circle is meant to be a safe and sacred space. I will listen and share with respect, and I will not repeat what is said in this space to anyone else, unless I have the consent to do so by the person for whom this Circle has been gathered. Without this consent, I am guided by my promise that "what is said in the Circle stays in the Circle".

Signature

Witness

APPENDIX F

LIST OF CONTACTS

APPENDIX “F”

List of Contacts

Ministry of Attorney General (Ontario)

District of Kenora:

Crown Attorney

c/o Court House
216 Water St.
Kenora, Ontario P9N 1S4
Phone: 807-468-2835
Fax: 807-468-2840

Court Services

Court House
216 Water St.
Kenora, Ontario P9N 1S4
Phone: 807-468-2842
Fax: 807-468-2749

District of Thunder Bay:

Crown Attorney

125 Brodie St. N.
Thunder Bay, Ontario P7C 0A3
Phone: 807-626-7100
Fax: 807-626-7199

Court Services

125 Brodie St. N.
Thunder Bay, Ontario P7C 0A3
Phone: 807-626-7155

In Toronto:

Aboriginal Justice Division
McMurty-Scott Bldg
4th Flr
720 Bay St
Toronto ON M7A2S9
Phone: 416-212-9347

Public Prosecution Service of Canada (Federal)

Chief Federal Prosecutor
Public Prosecution Service of
Canada
Ontario Regional Office (Toronto)
2 First Canadian Place,
Suite 3400
Exchange Tower, Box 36
Toronto, Ontario
M5X 1K6
Phone: 416-973-09602

Aboriginal Affairs and Northern Development Canada

100 Anemki Place, Suite 101
Fort William First Nation, ON
P7J 1A5
Phone: 1-800-567-9604
Fax: 807-623-3536, 1-866-817-3977
TTY: 1-866-553-0554

Nishnawbe-Aski Police Services (HQ)

309 Court Street South
Thunder Bay, ON
P7B 2Y1
Phone: 1-800-654-NAPS (6277)

