

BY-LAW NO. 2019-08-15
of Brokenhead Ojibway Nation

A BY-LAW TO PROHIBIT ILLEGAL DRUGS

WHEREAS: pursuant to the *Indian Act* and inherent powers of self-government, the Chief and Council of the Brokenhead Ojibway Nation is empowered to act on behalf of the Brokenhead Ojibway Nation;

WHEREAS: the abuse and sale of illegal drugs represents a major threat to the community well-being of Brokenhead Ojibway Nation and to the lives of its members;

WHEREAS : the abuse and sale of illegal drugs has been demonstrated to be a major concern to the members of Brokenhead Ojibway Nation and has been a major contributor to ill-health; social disorder; breach of peace and within the community; and general sense of a lack of safety and security within the community;

WHEREAS: the Council of the Brokenhead Ojibway Nation wishes to take steps to protect its members and the community by limiting the abuse and sale of illegal drugs within the community;

WHEREAS: Subsection 85.1(1) of the *Indian Act* authorizes council of and to make bylaws:

- a. Prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of a band;
- b. Prohibiting any person from being intoxicated on the reserve;
- c. Prohibiting any person from having intoxicants in his/her possession on the reserve Lands; and

- d. Providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

WHEREAS: a majority of the electors of the Brokenhead Ojibway Nation who attended a special meeting of the Brokenhead Ojibway Nation on _____, 2019 called by the Council of the Brokenhead Ojibway Nation on July 3, 2019 for the purpose of considering the contents of this by-law, assented to the contents of this By-law;

NOW THEREFORE, it is hereby enacted pursuant to Section 85.1 of the *Indian Act*:

1.00 TITLE

- 1.1 This by-law may be cited as the Brokenhead Ojibway Nation Illegal Drug By-Law (the By-Law”).

2.00 INTERPRETATION

- 2.1 In this By-Law

“*Brokenhead Ojibway Nation*” means the Brokenhead Ojibway Nation Band.

“*Lands*” means all of those lands defined as a “Reserve” within the meaning of the *Indian Act*, R.S.C. 1985, c-15, and set apart for the use and benefit of the Brokenhead Ojibway Nation Band.

“*Illegal Drugs*” means those drugs and substances prohibited or controlled under the *Controlled Drugs and Substances Act*, S.C. 1996, C. 19; for greater clarity this specifically includes prescription drugs which are used or in the possession of a person other than the person for whom the drugs were prescribed.

“*Council*” means the Chief and Council of the Brokenhead Ojibway Nation.

"Person" means any person who is present on the Land, and includes members of Brokenhead Ojibway Nation and persons who are not members of Brokenhead Ojibway Nation.

"Possession" means "possession" within the meaning of subsection 4(3) of the Criminal Code of Canada, R.S.C. 1985, c C-46.

3.00 PROHIBITIONS

- 3.1 No person shall sell, barter, supply or manufacture an Illegal Drug on the Lands.
- 3.2 No person shall sell, barter, supply of manufacture cannabis or any cannabis deprived product on the Lands.
- 3.3 No person shall sell, barter, supply, manufacture for sale, or re-sell any alcohol or alcohol products on the Lands.
- 3.4 No person shall use or be in possession of an Illegal Drug on the Lands.
- 3.5 No person shall harbour or house an individual who has been removed or banished pursuant to this By-Law.

4.00 EXCEPTIONS

- 4.1 No person contravenes Section 3.00 of this By-law where Illegal Drugs are possessed, used or intended to be used solely for medical purposes upon prescription by a medical doctor in accordance with the *Controlled Drugs and Substances Act*, S.C. 1996, C. 19.

5.00 ENFORCEMENT

- 5.1 Every person who fails or refuses to comply with a provision of this By-law commits an offence.

5.2 The Chief and Council of Brokenhead Ojibway Nation will exercise their authority to give permission and to authorize any Special Constable who has been appointed as a peace officer under Part 8 of *The Police Services Act*, S.M. 2009, c. 32, along with the assistance of the local RCMP Constables, the right to search any home or person(s) suspected or reported of providing, supplying or selling illegal drugs or intoxicants on the Lands and to lay appropriate charges. Once a home or person(s) have been identified in dealing in any of the above, random checks will be done of the premises occupied by the individual(s) without notification to the homeowners.

6.00 PENALTY

6.1 Every person who commits an offence under this By-Law is liable on summary conviction:

- a) in the case of any offence under paragraph 3.1 - 3.4 of this By-law, to a fine of not more than \$1,000.00 or to imprisonment of a term not exceeding six months, or to both;
- b) in the case of an offence arising out of paragraph 3.5 of this By-law, to a fine of not more than \$100.00 or to imprisonment of a term not exceeding three months, or to both.

6.2 In addition or in substitution to the above penalties, every person who commits an offence under the By-Law may also be subject to the following penalties:

- a) termination of employment with the Brokenhead Ojibway Nation;
- b) termination or denial of assistance of any kind, including but not limited to social assistance, economic and educational support;
- c) denial of housing on the Lands;
- d) removal of names from the housing list;

- e) eviction from housing on the Lands;
- f) publication of the names of offenders;
- g) refusal by the Brokenhead Ojibway Nation and its affiliated or related companies and their agencies to do business with such persons;
- h) removal or banishment from the Lands for a term as set by Chief and Council;
- i) a monetary penalty as set by Chief and Council; and/or,
- j) a restitution order as set by Chief and Council.

6.3 Every person whom is subject to any penalty under this By-Law will be notified of the specific penalty in writing (the "Penalty Notice"). The Penalty Notice shall contain:

- a) the date of the offence;
- b) the name of the person whom committed the offence;
- c) the penalty imposed;
- d) the date for which a fine under 6.1 must be paid;
- e) the date for which a penalty under 6.2 expires, if there is an expiry date; and,
- f) the form and requirements for an appeal of a decision or penalty pursuant to the procedure set out in 9.0.

7.00 BAND COUNCIL RESOLUTIONS

7.01 The Council may make Band Council Resolutions respecting any matter that the Council considers necessary or advisable to meet or further the objectives of this

By-Law.

8.00 DRUG TESTING

8.1 To further the objective of this By-Law, the Council, from time to time may declare by Band Council Resolution, or otherwise, that the Chief and Council and all employees or prospective employees of all entities of Brokenhead Ojibway Nation undergo drug testing as a condition of their employment.

9.00 PROCEDURE

9.1 All penalties provided for under section 6.02 shall be imposed pursuant to any rules, guidelines, contracts, or other procedures that govern the corresponding service or relationship.

9.2 In applying section 9.01 to corresponding procedural provisions, attention should be paid to the severity of the offence, including whether it falls under section 3.1 – 3.5.

9.3 Any person who has been removed or banished from the Lands pursuant to section 6.02(h) has may appeal that decision to Chief and Council; or an Appeal Committee appointed by Chief and Council for this purpose.

a) That person must notify the Chief and Council or the Appeal Committee in writing of their intention to appeal the banishment decision within twenty (20) days of the decision having been communicated to the banished person ("Notice of Appeal");

b) The Notice of Appeal shall be in the any form as required by Chief and Council as it may determine from time to time;

c) The Notice of Appeal form or requirements will be expressly written on any Penalty Notice.

- d) Within fifteen (15) days of Notice of the Appeal being provided to Chief and Council or the Appeal Committee, a hearing must be held at which the banished person shall have the opportunity to plead their case. In doing so, the banished person shall have the opportunity to present evidence, information, or testimony that is relevant to the decision that is being appealed. This hearing will be limited to a maximum of 2 hours, unless otherwise approved by Chief and Council. This hearing will be closed to the public, unless otherwise provided by Chief and Council.
- e) In making their decision on appeal, Chief and Counsel or the Appeal Committee shall take into account the following factors:
- i. The nature and severity of the offence, including whether it was an offence under section 3.1, 3.2, 3.3, 3.4 or 3.5 of this By-Law;
 - ii. Any attempts made by the individual at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm;
 - iii. The connection of the individual to the community and its members, including whether the individual has any dependents for whom their removal from the community could be detrimental;
 - iv. The extent to which banishment in the specific case contributes to the objective of this type of sanction, specifically whether banishment of the individual would be in the best interests of the safety and protection of the community;
 - v. Any other consideration that Chief and Council or the Appeal Committee deems relevant.
- f) Chief and Council or the Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.

g) Decisions made by Chief and Council or the Appeal Committee are final.

9.4 Banishment pursuant to section 6.2(h) shall take effect upon the expiry of thirty (30) days after notice of the decision has been communicated to the affected person. However, if the individual has appealed the decision, an additional ten (10) days shall be provided after notice of the decision on appeal has been communicated to the person, prior to the banishment taking effect.

9.5 Chief and Council may use their discretion in providing conditions on individuals who have been banished pursuant to section 6.2(h) including allowing the banished individual to temporarily re-enter the lands in specified circumstances such as a funeral, or any other circumstance they see fit. Any conditions must be made in writing by a quorum of Chief and Council.

10.00 MISCELLANEOUS

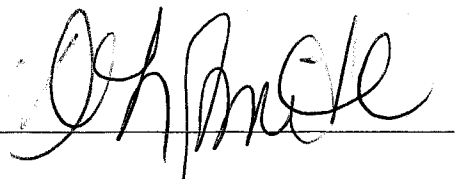
10.1 Should a court determine that a provision of this By-Law is invalid for any reason, the provision shall be severed from the By-Law and the validity of the rest of this By-Law shall not be affected.

10.2 This By-Law comes into force on the day of enactment.

10.3 The provisions of this By-Law apply to all Lands of the Brokenhead Ojibway Nation.

10.4 Nothing in this By-Law shall derogate or abrogate from existing Indigenous Aboriginal or inherent Treaty Rights.

PASSED AT A DULY CONVENED MEETING OF BROKENHEAD OJIBWAY NATION
COMMUNITY MEETING WITH THE FIRST NATION CITIZENS OF BROKENHEAD
OJIBWAY NATION THIS 15th DAY OF August 2019 AND ENDORSED BY THE CHIEF
& COUNCIL



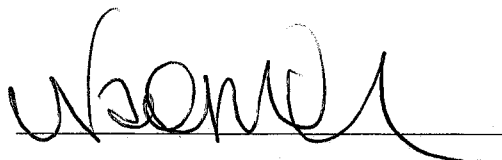
Chief Deborah Smith



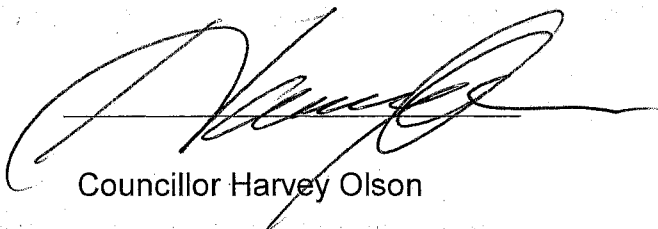
Councillor Winston Desjarlais



Councillor Shawn Kent



Councillor Naomi Nicholas



Councillor Harvey Olson

