

MIAWPUKEK BAND

ALCOHOL BY-LAW NO. 2-87

I, the undersigned, Linda A. McDonald, Keeper of the Wampum of the Miawpukek Band, hereby certify in respect of the Miawpukek Band By-Law No. 2-87, the original copy of which is joined hereto and inserted into the Register of By-Laws of the Miawpukek Band, the following:

1. Such by-law was duly enacted at a meeting of the Representatives of the Miawpukek Band Representatives held on the Aosamiaji'jij Miawpukek Reserve on the 4th day of September, A.D., 1987;
2. The signatures appearing upon the original copy are those of the Saqamaw and Representatives present at the time the by-law was enacted and of the Keeper of the Wampum;
3. The approval of the majority of the electors of the Miawpukek Band expressed at a special band meeting or referendum, was obtained on the 11th day of September, A.D., 1987;
4. Such by-law came into force on the 11th day of September, A.D., 1987;
5. A copy of such by-law was forwarded to the Minister of Indian Affairs and Northern Development on the 14th day of September, A.D., 1987.

SIGNED AT THE AOSAMIAJI'JIJ MIAWPUKEK RESERVE, this 14th day of September, A.D., 1987.

Linda A. McDonald  
Keeper of the Wampum

MIAWPUKEK BAND

ALCOHOL BY-LAW NO. 2-87

Pursuant to the authority of the Miawpukek Band and further pursuant to the authority vested in the Miawpukek Band pursuant to Section 85.1 of The Indian Act, R.S.C., 1970, c. I-6, The Representatives of the Miawpukek Band at a meeting of the Band held at the Aosamiaji'jij Miawpukek Reserve enacts the following:

SHORT TITLE

1. This by-law may be cited as the Miawpukek Band Alcohol By-Law No. 2-87.

INTERPRETATION

2. (1) Unless otherwise indicated by express terms or necessary implication, the words and expressions used in this by-law have the same meaning as in The Indian Act, R.S.C., 1970, c. I-6.

(2) In this by-law, the following words and expressions shall have the meaning set forth below:

- (a) "Act": The Indian Act, R.S.C., 1970, c. I-6;
- (b) "Alcohol": The product of distillation of any fermented liquid, whatever its origin, rectified once or more often, also synthetic ethyl alcohol and alcohol;
- (c) "Alcoholic Liquor" or "Liquor" or "Alcoholic Beverages": Means any alcoholic, spiritous, vinous, fermented or malt liquor or combination of liquors and consumable solids, or not, containing three percent and upwards of alcohol by volume including the following five (5) varieties of beverages, namely: alcohol, spirits, wine, cider and beer, as well, as liquids or solids containing alcohol, spirits, wine, cider or beer and capable of being consumed by human beings;
- (d) "Band": the Miawpukek Band;
- (e) "Council": Means the Saqamaw and Representatives of the Miawpukek Band;
- (f) "Minor": A person who is not of the age of 19 years;
- (g) "Peace Officer": Any member of the Band Police Force, and constable or officer of the Royal Canadian Mounted Police;
- (h) "Permit": Means a permit issued under these by-laws;
- (i) "Person": A natural person, a corporation, or a partnership;
- (j) "Public Place": Any place within or on the lands described in section 3 to which persons lawfully residing on the Reserve or elsewhere have access as of right or by invitation, expressed or implied, whether on payment of a sum of money or not, including any land not specifically granted in writing by the Band for the exclusive use or occupation of a designated person;

- (k) "Reserve": Means the Apsamiaji'jij Miawpukek Reserve located at Conne River, Newfoundland;
- (l) "Residence": The dwelling, including any portion thereof, of a person;
- (m) "Sell": with reference to alcoholic beverages:
  - (i) to solicit or receive an order;
  - (ii) to keep or expose them for sale;
  - (iii) to deliver for value or otherwise than gratuitously;
  - (iv) to keep or possess with intent to sell them;
  - (v) to traffic;
  - (vi) to procure for, or allow to be procured by another person, for any consideration promised or attained directly or indirectly on any pretext or by any means whatsoever.

#### GENERAL

3. This by-law shall apply to all lands within the reserve.

#### PROHIBITION OF THE SALE OR EXCHANGE OF ALCOHOLIC BEVERAGES

4. Subject to section 6, no person shall sell, keep or expose for sale, offer to sell, barter or exchange alcoholic beverages to or with any other person on any land contemplated in section 3 except where that person has been issued a permit pursuant to section 7 of this by-law.

#### POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES

5. (1) Subject to subsection (2) and (3) to section 6, no person shall possess or consume alcoholic beverages in any public place.

(2) A person may possess alcoholic beverages in a public place provided that such person is transporting such alcoholic beverages unopened and in a sealed package, directly to his residence.

(3) The council may, by by-law, permit the consumption or possession of alcoholic beverages in a public place to be defined in the said by-law, during the celebration of such public games, sports event, and other amusements, family and community celebrations and upon such terms and conditions as it may specify in such by-law, but no such by-law shall permit, nor be construed as permitting a minor to possess or consume alcoholic beverages in a public place.

(4) The council may charge a fee for the issuance of a permit pursuant to subsection (3) herein.

#### EXCEPTIONS

6. (1) The provisions of this by-law relating to the sale exchange, possession or consumption of alcoholic beverages shall not apply where the alcoholic beverages are used or intended to be used in a case of sickness or accident. However, in any prosecution under this by-law, the burden of proof that alcoholic beverages were used or were intended to be used in a case of sickness or accident is upon the person alleging same.

(2) This by-law shall not prohibit the sale or exchange of

a product which contains an alcoholic beverage but whose principal use is as a cosmetic product, a food product normally destined for human consumption, or a pharmaceutical or medical preparation. However, in any prosecution under this by-law, the burden of proof that alcoholic beverages are principally to be used for such purposes is upon the person alleging same.

#### PERMIT

7. (1) The council may grant a permit to any person to sell alcoholic liquor including beer and wine, such permit being valid for such time as the council determines.

(2) The council may charge a fee for the issuance of the permit referred to in subsection (1) herein.

(3) A person who is given a permit under subsection (1) herein shall supply all information on sales of alcoholic liquor, beer and wine as is from time to time requested by the council.

#### SALE TO A MINOR

8. No person shall sell, give or otherwise supply liquor to a minor.

#### PERSONS INTOXICATED

9. No person shall be in an intoxicated condition in a public place.

#### STILL

10. No person shall possess a still or part or parts thereof or other contrivance commonly used for the manufacture of alcoholic liquor and the possession of a still or part thereof or other contrivance shall be prima facie proof of a violation of this section.

#### SEIZURE AND DESTRUCTION OF ALCOHOLIC BEVERAGES

11. (1) Whenever a peace officer believes on reasonable grounds that an offence is being committed or has been committed against sections 4, 5, 8, 9, or 10 he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence is being or was committed.

(2) All goods and chattels seized pursuant to subsection (1) may be detained for a period of three (3) months following the day of seizure unless during that period proceedings under this by-law in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

(3) Where a person is convicted of an offence against sections 4, 5, 8, 9, and 10, the convicting court or judge may order that the goods and chattels by means of or in relation to which the offence was committed, in addition to any penalty imposed, are forfeited to Her Majesty in trust for the Band.

#### PROSECUTIONS

12. (1) In proving a sale for the purpose of any proceeding under this by-law, it is not necessary to show that any money actually passed, if the judge hearing the case is satisfied that a transaction in the nature of a sale took place.

(2) Every delivery of alcoholic liquor made otherwise than purely gratuitously shall be considered a sale.

(3) In any proceeding under this by-law, the burden of proving that a delivery was made purely gratuitously shall be upon the defendant.

(4) If it is proven that upon a search any alcoholic liquor has been found on premises in any place which in the opinion of the judge is constructed or designed for purposes of concealment, such proof is prima facie evidence of keeping with intent to sell on the part of the occupier of such premises.

(5) For the purpose of any prosecution under this by-law, a statement by the Government of Newfoundland analyst or assistant analyst that any liquid or substance contains three per cent or upwards of alcohol by volume is prima facie proof that the liquid or substance is alcoholic liquor.

(6) In any case, the judge trying a case may, in the absence of evidence to the contrary, infer that a liquid is alcoholic liquor from the fact that a whiskey, gin, wine, ale, beer or by any other name which is commonly applied to alcoholic liquor.

#### IMMUNITY

13. No peace officer, nor any person acting under his instructions, shall incur any civil or penal liability by reason of any act performed in the official exercise of his powers of enforcement and seizure of prohibited substances under this by-law.

#### OFFENCES AND PENALTIES

14. Every person who contravenes this by-law is guilty of an offence and is liable on summary conviction.

- (a) in the case of section 4 and 8 to a fine of not more than one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding six (6) months or, both;
- (b) in the cases of any other offences under this by-law, to a fine of not more than one hundred dollars (\$100.00) or to imprisonment for a term not exceeding three (3) months or both.

Be it known that this by-law hereby enacted by the Representatives of the Miawpukek Band at a duly convened meeting of the said Representatives dated on the 11<sup>th</sup> day of September, A.D., 1987.

Michael J. [Signature]  
[Signature]  
Linda G. McDonald  
Kenneth D. [Signature]  
Marilyn [Signature]  
[Signature]  
Henry M. [Signature]

Alma Benoit  
Witness