

Attawapiskat First Nation Protection from Illegal Substances

By-Law. No. 2024-1

Contents

Preamble	1
Interpretation.....	2
Prohibition re: Illegal Substances	2
Exceptions.....	3
Smuggling by airplane and vehicle.....	3
Notice and consent.....	5
Steps after locating illegal substances	6
General.....	7
Schedule A: Airport Notice.....	8
Schedule B: Winter Road Notice.....	8

Preamble

Whereas Attawapiskat First Nation (“AFN”) possesses unextinguished and inherent jurisdiction over our lands, our people, and topics related thereto;

Whereas illegal substances as defined herein have caused a crisis that is destroying our families, harming our children, undermining our traditional ways of life, and killing our people;

Whereas AFN is especially vulnerable to illegal substances due to the legacies of colonialism, such as residential schools, taking of our lands, theft of our children by a discriminatory child welfare system, destruction of our traditional livelihoods, suppression of our language, suppression of our culture, discriminatory underfunding of public services, and other wrongful Crown government actions and policies;

Whereas Crown laws and institutions have failed to rectify the harms caused by colonialism including the illegal substance abuse crisis, and it is necessary to adopt measures that respond to AFN’s unique needs;

Whereas AFN’s By-Law 1985/1 prohibits the possession, sale, barter, supply or manufacture of intoxicants, including alcohol and alcoholic liquors;

Whereas AFN’s By-Law 1997-3 prohibits the inhalation of intoxicating vapours, including vapours from plastic solvents and gasoline;

Whereas AFN intends to exercise its jurisdiction to help protect people, children, families, and culture by combatting the flow of illegal substances into AFN’s Reserve;

Now therefore the Council of the Attawapiskat First Nation enacts a law as follows:

Interpretation

Definitions

1. In this law:

- (a) “AFN” means Attawapiskat First Nation, having the capacity of a band as defined in s. 2 of the *Indian Act*, R.S.C. 1985, c. I-5, an Indigenous people as defined in the United Nations Declaration on the Rights of Indigenous Peoples and an aboriginal people as referenced in section 35 of Canada’s *Constitution Act 1982*;
- (b) “illegal substances” means those substances prohibited under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, Schedules I, II and III; cannabis and its by-products; intoxicants including alcohol and alcoholic liquors, as defined in AFN’s By-law 1985/1; and any other substances prohibited under a law or by-law of AFN;
- (c) “First Nation officer” means an individual appointed by AFN for the purpose of enforcing this Law;
- (d) “Law” means this herein Law;
- (e) “peace officer” has the same meaning as “peace officer” as defined in the *Criminal Code*, R.S.C., 1985, c. C-46 and for greater clarity includes a police officer employed by a police service;
- (f) “Reserve” means all those lands defined as a “reserve” within the meaning of the *Indian Act*, and set apart for the use and benefit of the members of AFN; and
- (g) “vehicle” includes any land-based vehicle or watercraft, such as a car, truck, snowmobile, boat, or canoe.

Purpose

- 2. The purpose of this law is to prevent illegal substances from entering the Reserve in order to safeguard the safety, health, and security of the AFN’s members and protect the AFN’s people, children, families, and culture from the harm, sorrow, and death caused by illegal substances.

Prohibition re: Cannabis

- 3. No person shall be in possession of, use, sell, barter, supply or manufacture cannabis or cannabis byproducts on the Reserve.

Exceptions

4. No person contravenes this Law where cannabis is possessed, used, or intended to be used solely for medical purposes upon prescription by a medical physician.

Smuggling by aircraft and vehicle

Searches re: arriving aircraft

5. A peace officer or First Nation officer may search any individual who has arrived on an aircraft at the AFN Reserve and such individual's belongings as have arrived on such flight.
6. No individual may disembark from an aircraft that has arrived at the Reserve unless such individual is crew of the aircraft, consents to a search, or must disembark for health or safety reasons.
7. An individual shall comply with a request from a peace officer or First Nation officer to undergo a search authorized by this Law and shall provide access to their person and belongings for such search.

Refusal of search request

8. If an individual refuses to comply with a search request under section 5, such individual shall leave the Reserve on the next available flight at their own expense.
9. If an individual refuses to cover the expense of this flight, AFN shall cover the expense and the amount of such expense shall be a debt due to AFN and payable on a forthwith basis, and AFN may collect such payment of debt by withholding the amount from any payments of any nature that AFN may owe or make to such individual. Any such debt not repaid to AFN by the time such individual returns to the Reserve is grounds for AFN refusing entry to the Reserve as if such individual refused a search request on such return.
10. If an individual refuses to comply with a search request under section 5 and the next available flight out of the Reserve is on the same calendar day as the search request, a peace officer or First Nation officer may prevent the individual from leaving the AFN Airport and ensure that the individual boards the next available flight.
11. If the next available flight out of the Reserve is the next calendar day or later, the individual who refused the search request shall be permitted to enter portions of the Reserve other than the airport to wait for their departure on the condition that the individual shall (a) return to board the next available flight; (b) refrain from any use, possession or exchange of any illegal substances on the Reserve; and (c) take no luggage with them except as necessary for medical and safety reasons.

Searches re: arriving vehicles

12. A peace officer or First Nation officer may search any individual entering the Reserve or passing through a checkpoint set up pursuant to this Law in a vehicle or on foot, and any belongings on the person or in the vehicle, and may search the vehicle.
13. An individual shall comply with a request from a peace officer or First Nation officer under section 12 to undergo a search and shall make themselves and their belongings and vehicle accessible to such search.
13. A peace officer or First Nation officer may use a checkpoint set up at an entrance to the Reserve to physically prevent individuals and vehicles from entering the Reserve until they have been searched.
14. With the authorization of the owner or operator of the winter road, an officer may set up and use a checkpoint on a winter road leading to the Reserve to physically prevent individuals and vehicles from proceeding further on the winter road toward the Reserve until they have been searched.

Searches re: drones

15. A peace officer or First Nation officer may search any drone that appears within the Reserve that appears to be carrying a payload of any kind.
16. An individual controlling a drone shall comply with instructions from a peace officer or First Nation officer as necessary to allow a search under section 15 to occur.

Refusal of search request

17. If an individual in a vehicle refuses to comply with a search request under sections 12-14, such individual is prohibited from entering the Reserve or proceeding along the winter road toward the Reserve, as the case may be, and a peace officer or First Nation officer may order the individual not to do so and take reasonable steps to block the individual from doing so.
18. If an individual refuses to comply with an order under section 17, a peace officer may impound the vehicle and place the individual in a cell or other secure location until the individual can be removed from the Reserve via the next available flight (and in which event section 8 shall apply).

Manner of search and least intrusive search possible

19. All searches conducted under this Law:
 - (a) Shall use the least intrusive method that will provide reasonable assurances that the individual does not possess one or more illegal substances;

- (b) Shall use the least amount of physical contact, restraint or pressure that enables the search to be carried out;
 - (c) Shall not include a strip search or body cavity search;
 - (d) Shall not include any abusive, obscene or offensive language or behaviour;
 - (e) May use a drug detecting dog if the dog and an appropriately trained peace officer or First Nation officer are available when the search is to occur and, if this is the case, shall only proceed to a physical search where the dog indicates that an illegal substance may be present; and
 - (f) May use an x-ray machine or other scanner for belongings where the machine and an appropriately qualified peace officer or First Nation officer is available when the search is to occur and, if this is the case, shall only proceed to a physical search of the belongings where the x-ray or scanner results indicate that an illegal substance may be present.
20. Peace officers and First Nation officers exercising any search and related powers under this Law shall maintain confidentiality over any information gathered therefrom except as necessary to carry out their duties pursuant to this Law and any other applicable law.

Smuggling by Mail

21. An employee or agent of the Canada Post Corporation may use a drug detecting dog or an x-ray machine to determine if there are reasonable grounds to suspect that mail sent to an address in the Reserve or mail physically located in the Reserve contains an illegal substance, but only if in doing so they do not contravene s. 48 of the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10.

Notice and consent

Notice

22. The AFN Council shall take the following steps to notify individuals that they and their belongings will be subject to a search for illegal substances upon entry to the Reserve:
- (a) Maintaining the posting of a copy of this Law and a synopsis of this Law on the First Nation Gazette and on the internet;
 - (b) Providing a notice to each residence on the Reserve;
 - (c) Maintaining the posting of a notice in the office of the AFN Council and administration;
 - (d) Making announcements on local radio;

- (e) Making announcements in online social media;
- (f) Maintaining signs at the AFN Airport and all other vehicle entrances to the Reserve;
- (g) Requesting that notices be erected in airports with flights to the Reserve as set out in Schedule A: Airport Notice;
- (h) Requesting that notices be provided by airlines flying to the Reserve; and
- (i) Requesting that signs be erected at the entrance to the winter road as set out in Schedule B: Winter Road Notice.

Use of land and buildings by air carriers

23. Except in the event of an emergency, an owner, operator, or pilot of an aircraft shall not enter onto or land within the Reserve unless, within 90 days following receipt of a copy of this Law, they have:

- (a) Posted notices, as set out in Schedule A: Airport Notice, in locations that will be prominently visible to all passengers boarding such aircraft;
- (b) Added a checkbox on their online ticket purchasing system that must be selected to purchase a ticket to the Reserve that states: "I acknowledge that I may be required to undergo a search for illegal substances upon arrival at the Attawapiskat First Nation Reserve, including a search of my person and belongings. I irrevocably consent to any such searches. If I refuse to comply with any such search, I will be unable to enter the Attawapiskat First Nation Reserve and I may be detained and compelled to leave. For more information, see the text of the Attawapiskat First Nation's *Protection from Illegal Substances Law* and a synopsis of the law here (online link).";
- (c) Instructed their sales staff to obtain the consent described in paragraph (b) with respect to any tickets sold outside of the online ticket purchasing system; and
- (d) Agreed to advise passengers upon arrival at the AFN Reserve that no individual may disembark unless they are crew of the aircraft, they consent to a search, or if necessary for health or safety.

24. The AFN Council may extend the 90-day period in section 23.

Steps after locating illegal substances

Seizure and referral to rehabilitation and medication

25. A peace officer or First Nation officer who finds what appears to be an illegal substance using powers under this Law shall:

- (a) Seize the illegal substance unless such officer determines it is unsafe to do so;
 - (b) Refer the individual to rehabilitation resources; and
 - (c) Refer the individual to providers of Opioid Agonist Therapy, such as methadone, when the illegal substance is or may be an opioid.
26. A First Nation officer who seizes an illegal substance or suspected illegal substance under this Law shall give it to a peace officer as soon as reasonably possible and may possess the substance only for so long as necessary to do so.
27. A peace officer who seizes or obtains a suspected illegal substance shall determine whether it is an illegal substance as soon as possible. If the peace officer determines that the substance is not an illegal substance, such officer shall return it to its owner as soon as possible or notify such owner that it is available for retrieval for 30 days at the AFN police detachment where it shall be stored in a secure manner for such 30 days and if not so retrieved shall thereafter be disposed of in a safe manner.

Charges where individual is an AFN member

28. An individual charged under this Law who is a member of the AFN shall to the extent possible be offered a diversion program as an alternative to conviction, incarceration or a fine.

General

Appointment of First Nation officers

29. AFN may appoint an individual or class of individuals to be a First Nation officer by way of a resolution passed by the AFN Council.

General offence and penalty

30. Any individual who contravenes this Law or a requirement under this Law is guilty of an offence and on conviction is liable for a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for each contravention.

Trespass

31. All arrest powers and remedies under the *Trespass to Property Act*, R.S.O. 1990, c. T.21, are available as against a person entering or seeking to enter the Reserve in contravention of this Law.

Criminal Code and common law arrest and search powers

32. Nothing herein derogates from powers of arrest and search under the *Criminal Code* and the common law.

Protection from liability

- 33. No First Nation officer or peace officer shall be liable for actions carried out under this Law in accordance with its terms in good faith and without malice.
- 34. AFN shall not be liable for any damage or harm arising from this Law or the execution of this Law.

Inherent and other *Indian Act* Jurisdiction

- 35. This Law shall be interpreted and applied as a law deriving from AFN's inherent jurisdiction, and as a by-law pursuant to section 81 of the *Indian Act*, R.S.C., 1985, c. I-5, including under sub-sections 81(1)(a), (c), (d), (h), (n), (p), (q), and (r), to the extent that such latter interpretation and application is not in conflict with the former, in which event the former shall apply. References to this "Law" include "By-law."

Severability

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

Schedule A: Airport Notice

Notice: Search Mandatory to Enter Attawapiskat First Nation

All passengers arriving in the Attawapiskat First Nation Reserve are subject to a search upon arrival, including a search of their person and belongings, for illegal substances such as illegal drugs, cannabis, and alcohol. Individuals who refuse a request to undergo a search will be breaking the law, will be required to leave the First Nation, and may be detained. By boarding an airplane bound for the Attawapiskat First Nation Reserve, you consent to searches on arrival. For more information, see the text of the Attawapiskat First Nation's *Protection from Illegal Substances Law* and a synopsis of the law [here](#) (online link).


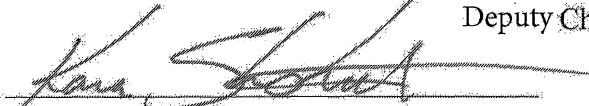
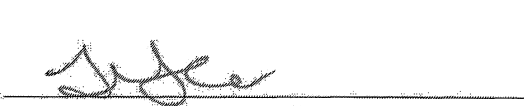
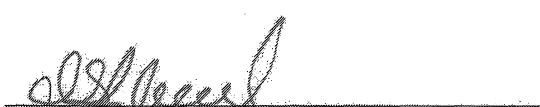
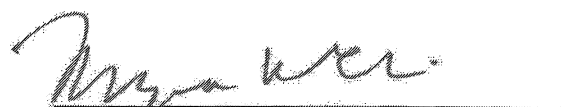
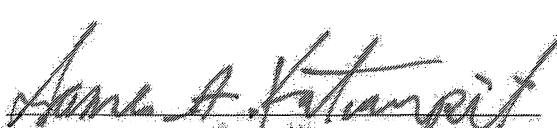
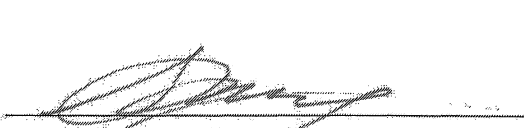

Schedule B: Winter Road Notice

Notice: Search Mandatory to Enter Attawapiskat First Nation

All vehicles and individuals trying to enter the Attawapiskat First Nation Reserve are subject to a search upon arrival, including a search of their person and belongings, for illegal substances such as illegal drugs, cannabis and alcohol. Individuals who refuse a request to undergo a search will be breaking the law, will be required to leave the First Nation, and may be detained. By proceeding on this road to the Attawapiskat First Nation Reserve, you consent to searches on arrival. For more information, see the text of the Attawapiskat First Nation's *Protection from Illegal Substances Law* and a synopsis of the law [here](#) (online link).

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Attawapiskat First Nation this 21st day of March, 2024.

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

	
Deputy Chief	
 Councillor	 Councillor
 Councillor	 Councillor
 Councillor	 Councillor
	

being the majority of those members of the Council of the Attawapiskat First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 7 members.

Number of members of the Council present at the meeting: 10.