



**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

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.

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;

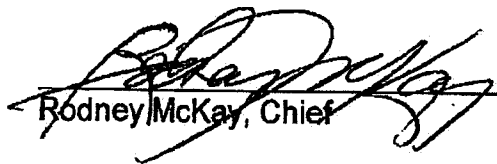
- ii) At the local airport of the First Nation;
 - iii) Along any road, winter or otherwise, leading to the First Nation;
 - iv) At any dock; and
 - v) On any waterway entering the First Nation.
- b) The Band Council shall pay for newspaper advertisements to announce this by-law in major newspapers of 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

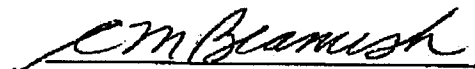
Tommy Fiddler, Councillor

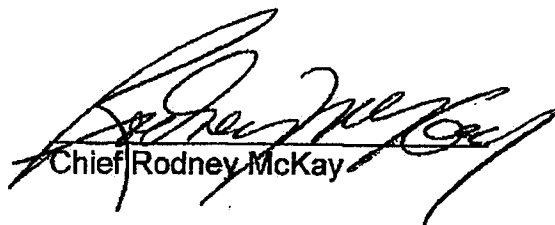
Being the majority of those members of the Council of the Bearskin Lake First Nation present
at the aforesaid meeting of the Council.

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