

**BY-LAW NO. 2004-01
of the Fisher River Cree Nation Band**

A By-Law to Prohibit Illegal Drugs

WHEREAS: the Fisher River Cree Nation has and continues to exercise an inherent right to self-government;

WHEREAS: in addition to their inherent right of self-government, Fisher River Cree Nation has authority under the Indian Act to make By-laws;

WHEREAS: the use, possession and selling of illegal drugs on the Fisher River Cree Nation is causing misery and turmoil amongst the people of Fisher River Cree Nation and is a major cause of social concerns and problems in the community;

WHEREAS: the Fisher River Cree Nation considers it necessary to undertake measures for the protection and safety of the community and residents of Fisher River Cree Nation (the "Objective");

WHEREAS: the Council of the Fisher River Cree Nation are desirous of declaring in effect a prohibition against the use, sale and possession of illegal drugs on the Fisher River Cree Nation (subject to exceptions provided herein);

WHEREAS: Subsection 85.1(1)(a) and (c) on the Indian Act authorizes the Council of the Fisher River Cree Nation to make such a By-law;

WHEREAS: a majority of the electors of the Fisher River Cree Nation who attended a special meeting of the Fisher River Cree Nation on May 13th, 2004 called by the Council of the Fisher River Cree Nation on April 29th, 2004 for the purpose of considering the contents of this by-law, assented to the contents of this By-law;

WHEREAS: this by-law was amended on May 31, 2018;

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

1.00 TITLE

1.01 This by-law may be cited as the Fisher River Cree Nation Illegal Drug By-Law

2.00 INTERPRETATION

2.01 In this By-Law,

- a) "*Fisher River Cree Nation*" means the Fisher River Cree Nation Band;
- b) "*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 Fisher River Cree Nation Band;
- c) "*Illegal Drugs*" means those drugs and substances prohibited or controlled under the Controlled Drugs and Substances Act, S.C. 1996, C. 19;
- d) "*Council*" means the Chief and Council of the Fisher River Cree Nation.

3.00 PROHIBITIONS

- 3.01 No person shall sell, barter, supply or manufacture an illegal drug on the Lands.
- 3.02 No person shall use or be in possession of an illegal drug on the Lands.
- 3.03 No person shall harbour an individual who has been removed or banished pursuant to this By-Law.

4.00 EXPECTATIONS

- 4.01 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 and the Marijuana Medical Access Regulations, S.O.R. 2001/227.

5.00 ENFORCEMENT

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

6.00 PENALTY

- 6.01 Every person who commits an offence under this By-Law is liable on summary conviction:
 - a) in the case of an offence under paragraph 3.01 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 3.02 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.
- c) in the case of an offence arising out of paragraph 3.03 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.

6.02 In addition to the above penalties, every person who commits an offence under the By-Law may also be subject to the following sanctions:

- a) termination of employment with the Fisher River Cree 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 Fisher River Cree Nation and its affiliated or related companies and their agencies to do business with such persons; and
- h) removal or banishment from the Lands.

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

8.01 In furtherance of the Objective of this By-Law, Fisher River Cree Nation may engage in drug testing practices for its employees in certain circumstances, pursuant to the Fisher River Cree Nation Illegal Drug Policy for Employees.

9.00 PROCEDURE

- 9.01 All sanctions 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.
- 9.02 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 3.01 or 3.02. As an example and for greater certainty, sanctions under section 6.02(a) for an offence under section 3.02 shall be carried out in accordance with the procedures outlined in section IX of the Fisher River Cree Nation Illegal Drug Policy for Employees. In contrast, an offence under section 3.01 shall be interpreted as cause for immediate termination pursuant to the terms of an employee's contract.
- 9.03 Any person who has been removed or banished from the Lands pursuant to section 6.02(h) has an automatic right to appeal that decision.
- a) That person must notify the Appeal Committee of their intention to appeal the banishment decision within twenty (20) days of the decision having been communicated to the banished individual.
 - b) Within fifteen (15) days of notice of the appeal being provided to Appeal Committee, a hearing must be held at which the banished individual shall have the opportunity to plead their case. In doing so, the banished individual shall have the opportunity to present evidence relevant to the decision that is being appealed.
 - c) In making their decision on appeal, 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 3.01, 3.02 or 3.03 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 the Appeal Committee deems relevant.
 - d) The Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.
 - e) Decisions made by the Appeal Committee are final.
 - f) All hearings conducted by the Appeal Committee shall be open to the public.
- 9.04 The Appeal Committee shall be constituted of five (5) members as follows:
- a) The Chief and Council shall appoint one (1) member to the Appeal Committee from each of the following groups:
 - i. One elder;
 - ii. One youth;
 - iii. One community member;
 - iv. One member of council;
 - v. One lawyer or individual with an education in law.
 - b) Whenever an Appeal Committee member has a conflict of interest in a matter coming before the Appeal Committee, the affected person shall fully disclose the nature of the interest and withdraw from adjudicating on the matter.
- 9.05 Banishment pursuant to section 6.02(h) shall take effect upon the expiry of thirty (30) days after notice of the decision has been communicated to the affected individual. 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 individual, prior to the banishment taking effect.
- 9.06 Individuals who have been banished pursuant to section 6.02(h) may apply to the Appeal Committee to have the banishment lifted after five (5) years. Applications shall outline the reasons why the Appeal Committee ought to overturn this decision, including why the individual is no longer a threat to re-offend and further jeopardize the safety and security of the community.
- 9.07 The Appeal Committee may use their discretion in providing conditions on individuals who have been banished pursuant to section 6.02(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.

10.00 MISCELLANEOUS

- 10.01 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.
- 10.02 This By-Law comes into force on the day of enactment.
- 9.03 The provisions of this By-Law apply to all Lands of the Fisher River Cree Nation.
- 9.04 Nothing in this By-Law shall derogate or abrogate from existing Indigenous Aboriginal or inherent Treaty Rights.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Fisher River Cree Nation this ___ day of _____, 2018.

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

Chief David Crate

Councillor Shirley Anne Cochrane

Councillor Darryl Thaddeus

Councillor Carl Cochrane

Councillor Vince Crate

Being the majority of those members of the Council of the Fisher River Cree Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

The number of members of the Council present at the meeting: 4