

NISICHAWAYASI NEHETHOWUK LAWS

2019

LAW 2019-1

A Law to enact a Community Protection Law 2019, c. C-1

Proposal: May 1, 2018

First Reading: October 2018

General Assembly: March 14, 2019

Adopted: July 10, 2019

Approved: August 22, 2019

CCLNCN 2019, c. C-1

Nisichawayasi Community Protection Law

WHEREAS *Kihche’othasowewin* (the Great Law of the Creator) and the customary law principles of the *Nisichawayasi Nehethowuk* are to guide the conduct of *Ethiniwuk* (individuals) and *Ka’esi’pisketuskan’nesichik* (the Nation);

WHEREAS the customary law principles outlined in Article 1.2 of *Othasowewin* are to be adhered to and followed, particularly *Kistethichikewin* (respect), *Oh’chinewin* (cause and effect) and *Asehewewin* (spiritual responsibility); *Pastamowin* (failure to speak out against wrongdoing) and *Pastahowin* (breaching sacred laws);

WHEREAS it is in the best interests of the Nisichawayasihk Cree Nation to enact an NCN Law to protect the safety of the community, children and other vulnerable persons from exposure to violent crime, gang activity, illegal drugs, bootlegging, abuse of alcohol, sexual exploitation, human trafficking and abuse on or adjacent to NCN Lands;

WHEREAS NCN recognizes the importance of collective rights and the priority of those rights over individual rights in order to maintain peace, order and safety within the community;

WHEREAS NCN may prohibit harmful substances or people from entering *N’Tuskenan* (NCN traditional ancestral lands) , grant authority to persons to conduct inspections of persons and vehicles entering NCN Lands and banish people who engage in harmful activities including gang activity, harbouring persons engaged in human trafficking, criminal activity or other conduct that is harmful to NCN from NCN Lands;

WHEREAS NCN has the authority under Article 14.13 of *Othasowewin* and Article 8.1 of *Aski-Pumenikewin* to enact NCN Laws urgently required for public health or safety or to stop or prevent criminal activity on or adjacent to NCN Lands

THIS LAW in accordance with *Othasowewin* 2017, c. O-1 and *Aski-Pumenikewin* 2017, c. A-1 by and with the advice of the citizens of the Nisichawayasihk Cree Nation is enacted as follows:

Title

1 This law may be cited as the *Nisichawayasi* Community Protection Law, 2019, c. C-1.

PART I

INTERPRETATION AND APPLICATION

Definitions

2 In this *Nisichawayasi* Protection Law,

“alcohol” means beer, wine, liquor, home brew and any other product intended for human consumption that contains more than 1% alcohol by volume.

“cannabis” means any part of a cannabis plant as defined in the laws of Canada.

“director” means the person appointed by chief and council or the chief executive officer as the director, and includes any designate, for the purposes of this law.

“drone” means a powered air vehicle that is designed to operate without a human operator on board and which may include cameras or other audio-visual technology.

“drugs” means a controlled substance as defined in the laws of Canada.

“drug activity” means producing, providing, selling, storing, trafficking, or possessing alcohol, drugs, prescription drugs without a valid prescription or intoxicants without a valid permit.

“gang activity” means activities undertaken by an organized group of people who rely on intimidation, violence and the commission of criminal acts in order to gain power, recognition or to control other people or certain areas of unlawful activity.

“harbouring” means a person who hides another person who the person knew or ought to know is a vulnerable person in need of protection, a criminal offender, suspect or an accessory to a crime or that there is an outstanding warrant for that person’s arrest.

“human trafficking” means the recruitment, transportation, or exercising control, direction or influence over the movements of a person in order to exploit that person through sexual or other types of exploitation or forced labour.

“intoxicants” means industrial, commercial or household products including but not limited to hand sanitizer, fertilizer, duct tape, and Lysol which are not meant to be ingested or inhaled.

“NCN Lands” means the reserve lands more particularly described in *Aski-Pumenikewin*;

“*N’tuskenan*” means the traditional lands occupied and used by the *Nisichawayasi Nehethowuk* prior to signing the adhesion to Treaty 5 and includes NCN Lands and the Resource Management Area;

“motorized vehicle” includes but is not limited to cars, trucks, motorcycles, boats, personal water craft, recreational vehicles, snowmobiles and all terrain vehicles with or without a human operator.

“non-motorized vehicle” includes but is not limited to bicycles, dog sleds and canoes.

“prescription drug” means a drug that is obtained or supposed to be obtained by a prescription issued by an authorized practitioner.

“peace officer” means a peace officer as defined in the Criminal Code of Canada and includes a First Nations Safety Officer appointed by Chief and Council, with authority to enforce NCN Laws and to maintain peace, order and safety on or adjacent to NCN Lands.

“permit” means giving *Tawinamakewin* (formal consent) by issuing a written authorization to engage in certain legal activities or to do certain things.

Scope and Application

3 This law applies to the protection and safety of people throughout *N'tuskenan*.

PART II

PROHIBITIONS ON ALCOHOL AND ILLEGAL DRUGS

Unauthorized manufacture or sale of alcohol, drugs, prescription drugs or intoxicants

4 Except as authorized by permit under this Law, no person shall manufacture, produce, grow or sell alcohol, cannabis, drugs, prescription drugs or intoxicants on NCN Lands.

Unlawful purchase of alcohol, drugs, prescription drugs or intoxicants

5 A person must not purchase alcohol, cannabis, drugs, prescription drugs or intoxicants from a person who is not authorized to sell such substances.

Prohibition on buying or selling drugs

6 No person shall buy, sell or transport alcohol, cannabis, drugs, intoxicants or prescription drugs without a valid prescription on NCN Lands without a permit.

Unlawful transportation onto NCN Lands

7 A person must not transport or conceal in a drone, motorized vehicle or non-motorized vehicle, for transportation onto NCN Lands more alcohol, cannabis or intoxicants than the limits established by regulation.

Prohibition of alcohol or cannabis in public places

8 Except as permitted under this NCN Law, a person must not distribute or consume alcohol or cannabis in a public place.

Places alcohol or cannabis can be used

9 Alcohol or cannabis may only be consumed in a residence or on premises where a permit has been issued by the director, and the occupier of a residence or other building on NCN Lands must ensure no gang activity, harbouring, human trafficking or illegal drug activity occurs in the residence or premises.

Alcohol or drugs not to be provided to intoxicated persons

10 A person must not give, sell or otherwise supply alcohol, cannabis, drugs, prescription drugs without a valid prescription or intoxicants to a person who is or who appears on reasonable grounds to be intoxicated.

Obligation to prevent disturbances from alcohol consumption

11 The occupier of a residence or other premises must not allow any person to become intoxicated and cause violence or other disturbances in the residence or premises or in its immediate vicinity from the consumption of alcohol and the occupier of a residence or other premises shall be responsible for the safety of any person who consumes alcohol, cannabis, drugs, prescription drugs without a valid prescription and intoxicants at the occupier’s residence or other premises.

Transporting alcohol or cannabis in motorized vehicles

12 A person must not drive or have the care and control of motorized vehicles, whether or not the vehicle is in motion, if there is alcohol or cannabis in the motor vehicle unless the alcohol or cannabis has not been opened or unsealed and it is stored in a trunk, behind the last seat in a vehicle with open trunk space, in an exterior carrier or in a storage area that is part of the motor vehicle where it cannot be accessed by persons in the motor vehicle.

Minors

13 A person must not give, sell or otherwise supply alcohol, cannabis or other drugs to a minor unless such cannabis or other drugs have been prescribed by a doctor, dentist or nurse practitioner for the minor or are available for purchase from a duly licensed vendor or pharmacy.

PART III

PERMITS

Permits to transport alcohol or cannabis

14 (1) Subject to subsections (2) to (4), any person who wishes to transport alcohol or cannabis onto NCN Lands in accordance with any limits established by Chief and Council shall make an application to the director to issue a permit to transport such alcohol or cannabis.

Social permits

14(2) A person who wishes to serve alcohol at a social event must obtain a permit from the director prior to holding the social event.

No permits for Mystery Lake Lands

14 (3) Any person wishing to transport or consume alcohol or cannabis on the Mystery Lake Lands in designated areas shall not be required to obtain a permit from the director but must comply with all relevant provincial laws.

Permit Terms and Conditions

14 (4) Chief and Council may by regulation establish terms and conditions for the granting of permits including but not limited to:

- (a) the quantity and size of any alcohol or cannabis that may be transported onto NCN Lands;
- (b) the type of any drugs that may be transported onto NCN Lands;
- (c) restrictions on the transportation of alcohol, cannabis or other drugs;
- (d) the destruction of alcohol, cannabis or other drugs over the limits in a permit;
- (e) permit fees; and
- (f) any matter or thing Chief and Council considers relevant in the circumstances including a requirement to produce receipts for the alcohol, cannabis or other drugs being transported.

Driver of motorized vehicle

14 (5) The driver of, and any passenger in, a motorized vehicle or non-motorized vehicle used to transport alcohol or cannabis must have a valid permit and in the case of prescription drugs being transported a person may be required to show a peace officer evidence of a valid prescription for the drugs.

Violations of permit conditions

14 (6) Any permit issued to a person who violates the terms and conditions of a permit issued under this Law shall be immediately cancelled and the person shall be subject to the penalties in this Law.

Ban on Transportation or Consumption

15 Chief and Council may by order ban the transportation and consumption of alcohol, cannabis or other drugs on NCN Lands or a portion of NCN Lands if it is considered in the public interest to do so.

PART IV

CHECKSTOP AND OTHER SEARCHES

Checkstop

16 (1) Chief and Council may establish a checkstop on or adjacent to NCN Lands for peace officers to conduct inspections of persons, motorized vehicles and non-motorized vehicles on or entering NCN Lands to the confirm persons in such vehicles

- (a) have proper licencing and insurance;
- (b) having possession of, or transporting alcohol, cannabis, drugs, prescription drugs or intoxicants are not doing so contrary to this Law or the regulations;
- (c) are not being inappropriately harboured on NCN Lands;
- (d) are not being exploited or the subject of human trafficking or gang activity;
- (e) have any required residency or work permits issued in accordance with NCN Laws;
- (f) are not in violation of any banishment order issued pursuant to NCN Laws or any court order issued by a court of competent jurisdiction; and
- (g) are not violating any other laws.

Search and Refusal of Entry onto NCN Lands

16(2) All motorized vehicles, non-motorized vehicles, persons and any personal property in such vehicles or on such persons may be searched prior to being allowed entry onto NCN Lands and any person who refuses to be searched shall not be allowed entry onto NCN Lands.

Special procedures to search sacred bundles

16(3) A peace officer shall request a person who is in possession of a sacred bundle or object to open the bundle or object and show the peace officer its contents who shall not examine or touch the sacred

bundle or its contents without the permission of the owner but if the person refuses to open the bundle at the request of the peace officer, the person shall not be allowed entry onto NCN Lands.

Confiscation illegal substances

16 (4) Any illegal substances found during a search of a person, a sacred bundle or vehicle will be confiscated by the peace officer.

Other Authorized Searches

16(5) If Chief and Council believes on reasonable and probable grounds that bootlegging, drug activity, gang activity, human trafficking or harbouring is occurring on NCN Lands or adjacent to NCN Lands, Chief and Council may make any order it considers advisable to allow a peace officer to inspect the NCN Lands and any buildings on the such lands.

Revocation of Benefits or Interests

16(6) Without limiting any order made by Chief and Council under subsection (5), the order may include temporary or permanent removal of the person and the person’s family from the residence or any other building on NCN Lands, removal from NCN Lands, notification of the relevant child and family services authority if children are involved and revocation of any benefits being received by the person who is subject to the search or any interest a person may have in NCN Lands.

Reconsideration

16(7) Any person directly affected by an order under this section may within seven (7) days of the order apply to the Peacekeepers Tribunal for reconsideration of the order.

16(8) Onus

The onus is on the applicant in a request for reconsideration to establish that the order was

- (a) unnecessary because no drug activity, gang activity, human trafficking or harbouring was occurring;
- (b) not made on reasonable and probable grounds; or
- (c) inappropriate in the circumstances.

Remedies

16(9) The Peacekeepers Tribunal may set aside, vary with or without conditions, or confirm the order.

PART V

EVICTION AND BANISHMENT

Authority to evict or banish

17 (1). A person who

- (a) poses a significant threat to the health, safety or wellbeing of NCN or any person residing on or visiting NCN Lands,
- (b) has engaged in human trafficking, harbouring or other criminal activity, or
- (c) refuses to comply with NCN Laws,

may be evicted from any residence, building or other premises or banished from NCN Lands by order of Chief and Council or any person or entity to whom Chief and Council has delegated such authority by regulation.

Process to be followed

17 (2) If Chief and Council approve an order of eviction or banishment pursuant to subsection (1), the CEO or designate shall issue a notice of the eviction or banishment order within two (2) business days which notice shall contain

- (a) the name, address, and date of birth, if known of the person evicted or banished;
- (b) a photograph or description of the person or both;
- (c) a brief description of the basis for the eviction or banishment;
- (d) any other information Chief and Council considers relevant and appropriate in the circumstances.

and a copy of the notice of the eviction or banishment order shall be delivered to the director, the RCMP and if possible, to the person named in the order within three (3) business days of it being issued.

Eviction order hearings

17 (3) Any person who receives a notice of an eviction order may request a hearing before the Peacekeepers Tribunal within seven (7) days from the date the notice is issued to present information about why the eviction order should be rescinded.

Banishment order hearings

17 (4) Any person who is banished from NCN Lands may, as part of restorative justice, request a hearing before the Peacekeepers Tribunal no earlier than five (5) years from the date of the banishment order or if the person has been sentenced to jail, no earlier than five (5) years from the date the person is released from jail, to request that the banishment order be rescinded.

Submissions at hearing

17 (5) The Peacekeepers Tribunal shall take into consideration any submissions made by or on behalf of the person who is the subject of an eviction or banishment order, Chief and Council, and any victims of the person and shall decide whether to rescind or confirm the order, with or without conditions.

Decisions following hearing

17 (6) If a person could not be served with a copy of the order after reasonable attempts were made, does not appear at a hearing scheduled pursuant to this section or appears and makes submissions but the order is not rescinded, the Peacekeepers Tribunal shall confirm the date the order is to take effect and the director or designate shall forthwith notify the RCMP and post the order on NCN Lands and on the NCN website.

Register

17 (7) The director shall establish and maintain a register of persons who have been evicted or banished in accordance with the regulations or any band council resolution issued prior to this law coming into force.

Trespass

17 (8) Any person who

- (a) is the subject of a banishment order that has not been rescinded and enters upon NCN Lands;
- (b) is the subject of an eviction order that has not been rescinded and enters into the building or premises from which the person has been evicted;
- (c) does not have a valid residency or work permit to enter NCN Lands; or
- (d) where no permit has been issued, has failed to report to the director upon entry onto NCN Lands,

shall be guilty of trespassing and may be removed by a peace officer.

PART VI
ENFORCEMENT

Offences

18 (1) Any person who violates the provisions of this Law is guilty of an offence and is subject to the penalties imposed by this Law or any other NCN Law in addition to any other penalties imposed by Canada or Manitoba.

Penalty

18 (2) Any person who is guilty of an offence under this Law is liable on summary conviction to a fine of not more than five thousand dollars (\$5,000.00) or to a term of imprisonment not exceeding six (6) months or both.

Community Service

18 (3) A person who is sentenced under ss. 18 (2) may in addition be required to perform community service as part of giving effect to the customary law principles of *Kwayaskonikiwin* (reconciliation) and *Ponethetakewin* (forgiveness).

PART V
COMING INTO FORCE

Effective date

19 This law comes into force on October 1st, 2019.

Transition

The Council Resolution dated January 22, 2013 establishing the limits of alcohol that can be transported onto NCN Lands shall be considered a valid and subsisting regulation passed in accordance with this NCN Law until such time as it is replaced and all banishment orders issued by Chief and Council by Band Council Resolution pursuant to the Indian Act (Canada) shall be considered valid and continue in effect under this NCN Law.

Members of the Appeal Committee appointed in accordance with the *Nisichawayasi* Election Law 1998, c. E-1 shall be considered the Peacekeeper Tribunal for purposes of this Law until a separate Peacekeepers Tribunal Law is enacted and persons are appointed to the Peacekeepers Tribunal.