



**SIKSIKA NATION OFFENCES PROCEDURES BY-LAW NO. 2023-XX**

BY-LAW NO. \_\_\_\_\_

**SIKSIKA NATION**

**SIKSIKA NATION OFFENCES PROCEDURES BY-LAW**

BEING A BY-LAW OF THE SIKSIKA NATION WITH THE PURPOSE OF ENFORCING LAW AND ORDER;

**WHEREAS** the Siksika Nation Reserve #146 has been set apart for the use and benefit of Siksika Nation members and the exclusive use of the Siksika Nation Reserve #146 by Siksika Nation members is an inherent right and an aboriginal treaty right that is recognized and affirmed by Section 35 of the *Constitution Act 1982*;

**AND WHEREAS** the Siksika Nation has and continues to exercise their inherent right to self-determination, including the inherent right of self-government, as recognized and affirmed by the Government of Canada, the *United Nations Declaration on the Rights of Indigenous Peoples* (2021), and Section 35 of the *Constitution Act 1982*, Schedule B to the *Canada Act 1982* (UK), 1982 c. 11 and as protected by Blackfoot Treaty of 1877 (Treaty No. 7), and as exercised and affirmed by the *Siksika First Nation Constitution*;

**AND WHEREAS** the Siksika Nation affirms its authority to maintain, grow, and preserve a system of governance, law, and order for its people, its land, and the Siksika Nation as a whole;

**AND WHEREAS** the Siksika Nation through time immemorial and to this day, has undertaken the observance and enforcement of traditional, customary, and contemporary laws of the Siksika Nation to maintain *Pomiikapi* (peace and harmony);

**AND WHEREAS** the Siksika Nation continues to strive to ensure that matters related to the observance and enforcement of laws are carried out in a conscientious, respectful, peaceful and prompt manner for the benefit of the Siksika Nation and its people;

**AND WHEREAS** the Council of the Siksika Nation has, through its inherent right of self-government, the right to maintain, enforce, and ensure the observance of customary laws, and to make, enforce, and ensure the observance of new laws for the protection of the Siksika Nation, and its people's interests;

**AND WHEREAS** pursuant to Section 81 of the *Indian Act*, R.S.C. 1985, C. 1-5, a Council may make by-laws for any or all of the purposes set out in Section 81(1);

**AND WHEREAS** the Council of the Siksika Nation deems it to be expedient and in the best interests of the Siksika Nation, and necessary for the benefit, comfort and safety of residents of the Siksika Nation Reserve #146 and for the protection of the Siksika Nation Reserve #146, to make a by-law for the purpose of enforcing law and order on Siksika Nation Lands;

NOW THEREFORE, THE COUNCIL OF THE SIKSIKA NATION, DULY ASSEMBLED, ENACTS AS FOLLOWS:

## PART I – TITLE, DEFINITIONS, AND APPLICATION

### 1. SHORT TITLE

- 1.1. This By-law may be known as the "*Siksika Nation Offences Procedures By-law*".

### 2. DEFINITIONS

- 2.1. In this By-law, unless the context otherwise requires, or unless otherwise specifically defined:

- (a) **"Accused"** means a person to whom a By-law Offence Notice has been issued under this By-law;
- (b) **"Address for Service"** means the address at which the Accused may be served in accordance with the provisions of this By-law, as determined under subsection 16.1 of this By-law;
- (c) **"Aiskapimohkiiks"** means the Siksika Nation's Traditional Justice Dispute Resolution Program, as varied, modified or replaced from time to time;
- (d) **"Band Council Resolution"** means a written resolution signed and adopted by a quorum of Council at a duly convened meeting;
- (e) **"By-law"** means this *Siksika Nation Offences Procedures By-law*, unless otherwise specified in this By-law;
- (f) **"Citizen"** means a citizen of the Nation under the *Siksika Nation Membership Code & Regulations*;
- (g) **"Clerk"** means the Clerk of the Court or a Person who is designated by the Clerk of the Court to perform the duties of a Clerk of the Court;
- (h) **"Council"** means the Council of the Siksika Nation, comprised of the Chief and Councillors of the Nation, duly elected from time to time in accordance with the *Siksika Nation Customary Election Code*;
- (i) **"Court"** means a Court of competent jurisdiction in the Province of Alberta, and includes a Tribal Court or any other First Nation or Indigenous Court acting under the inherent jurisdiction of an Indigenous Group;
- (j) **"Criminal Code"** means the *Criminal Code*, RSC 1985, c C-46 and any

amendments thereto;

- (k) **"Disposal of Forfeited Goods and Chattels Regulations"** means the *Disposal of Forfeited Goods and Chattels Regulations*, CRC, c 948 and any amendments thereto;
- (l) **"Enactment"** means any Siksika Nation by-law, regulation, or other form of legislation in relation to any matter over which the Council has authority;
- (m) **"Indian Act"** means the *Indian Act*, RSC 1985, c I-5 and any amendments thereto;
- (n) **"Justice"** means a Justice of the Alberta Court of Justice;
- (o) **"Holiday"** means any Provincial or Federal Statutory holiday;
- (p) **"Minister"** means the Minister of Indigenous Services;
- (q) **"Nation"** means the Siksika Nation;
- (r) **"Notice of Dispute"** means a notice completed by a Person to dispute a By-law Offence Notice issued by a Peace Officer, or any other individual authorized to issue a By-law Offence Notice, for an Offence under an Enactment;
- (s) **"Offence"** means an offence under an Enactment;
- (t) **"Operator's License"** means a license to operate motor vehicles issued by an authority that has the power to issue such license;
- (u) **"Peace Officer"** means an individual appointed as a Peace Officer for the Nation pursuant to Section 7 of the *Peace Officer Act*, SA 2006, c P-3.5;
- (v) **"Person"** includes, but is not limited to, an association, society, corporation, Indigenous Group, partnership, or any other entity or individual that the law regards as capable of having rights and duties;
- (w) **"Prosecutor"** means a lawyer employed as a Prosecutor as part of the Siksika Nation's Prosecutor's Office and includes the Chief Prosecutor of the Siksika Nation's Prosecutor's Office;
- (x) **"Recording"** means a recording taken of a proceedings that is either in audio form or combined video and audio form;
- (y) **"Reserve"** means Indian Reserve No. 146, or any other lands reserved for the Nation within the meaning of the *Indian Act*;
- (z) **"Specified Penalty"** means an amount set out or specified in an Enactment that

can be paid by an Accused who is issued a By-law Offence Notice and is permitted under this By-law, as set out on a By-law Offence Notice, to make a payment without a Court appearance;

(aa) **“Surcharge”** means a surcharge under the *Siksika Nation Victim Surcharge By-law*;

### **3. APPLICATION**

- 3.1. This By-law applies on the Reserve and to any Offence that a person has committed or is suspected of having committed that violates any Enactment.
- 3.2. Where any Federal or Provincial act, law, or regulation, or any Nation by-law applies to any matter covered by this By-law, compliance with this By-law shall not relieve a Person from also complying with the provisions of any other applicable act, law, regulation or by-law.

## **PART II – GENERAL**

### **4. SEPARATE CHARGES**

- 4.1. A Peace Officer or any other individual who is authorized to issue a By-law Offence Notice under an Enactment may lay a separate charge, pursuant to Part III or Part IV this By-law, for each day an Offence under this By-law is ongoing.
- 4.2. A Peace Officer or any other individual who is authorized to issue a By-law Offence Notice under an Enactment may lay a separate charge for each separate Offence under an Enactment, notwithstanding that such Offences may have been committed by the same Person, during the same timeframe.

### **5. WITNESSES**

- 5.1. If a Person is required to provide evidence before the Court in respect of a By-law Offence Notice issued against an accused, the Court shall issue a subpoena directed to that Person, which shall be signed by either a Clerk or a Justice of the Court.
- 5.2. Where a Person who has been served with a subpoena issued pursuant to subsection 5.1 of this By-law fails to attend Court or remain in attendance at the Court in accordance with the requirements of the subpoena, the Court may, by warrant directed to any peace officer, including a peace officer who is not a Peace Officer of the Nation, cause the witness to be apprehended anywhere within Alberta, to be brought before a Justice forthwith and to be detained in custody as the Justice may order until the presence of the witness is no longer required or, in the discretion of the Justice, to be

released on a recognizance with or without sureties.

## **6. PENALTIES AND PUNISHMENT**

- 6.1. Subject to any provision in another Enactment, every Person who is convicted of an Offence that does not have a Specified Penalty and which is an Offence under an Enactment that has been made pursuant to Section 81 of the *Indian Act*, is liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding thirty days, or both.
- 6.2. Subject to any provision in another Enactment, every Person who is convicted of an Offence that does not have a Specified Penalty and which is an Offence under an Enactment that has been made pursuant to Section 85.1 of the *Indian Act* is liable:
  - (a) in the case of an Enactment made under Section 85.1(1)(a) of the *Indian Act*, to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and
  - (b) in the case of an Enactment made under Section 85.1(1)(b) or (c) of the *Indian Act*, to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.
- 6.3. Nothing in this By-law, or any other Enactment shall be deemed as precluding the Court from exercising its power to restrain under either Sections 81(2) or (3) of the *Indian Act*.
- 6.4. Where an Accused is convicted of an Offence under an Enactment and a fine is imposed against that person, the Court may order that in default of payment of the fine the accused shall be imprisoned for a period of not more than;
  - (a) in the case of an Enactment made under Section 81 of the *Indian Act*, thirty days;
  - (b) in the case of an Enactment made under Section 85.1(1)(a) of the *Indian Act*, six months; and
  - (c) in the case of an Enactment made under Section 85.1(1)(a) of the *Indian Act*, three months.
- 6.5. For greater certainty, where an Accused is convicted of an Offence under an Enactment and is sentenced to both a fine and a term of imprisonment, the Court shall not impose a period of imprisonment in default of payment that would, when combined with the Offence penalty of imprisonment, amount to a total term of imprisonment in excess of the maximum term of imprisonment that is specified for that offence in subsection 6.1 or 6.2 of this By-law, as the case may be.
- 6.6. Where an Accused is a Citizen and has been convicted of an Offence under an

Enactment and a fine is imposed against that Citizen, before ordering a term of imprisonment in default of payment of the fine under subsection 6.4 of this By-law, the Court must consider the ability of the Citizen to pay the fine, the history of mistreatment of Indigenous persons by the justice systems in Canada, and the overrepresentation of Indigenous persons in the justice systems in Canada, and in doing so may refuse to impose a term of imprisonment in default of payment of the fine where imprisonment would not serve the interest of the Nation or its people.

## **7. IMPRISONMENT**

- 7.1. Where an Accused is sentenced to a term of imprisonment, unless otherwise directed by the Court imposing the sentence, the term begins on the day on which the Accused is taken into custody under that specific sentence of imprisonment.
- 7.2. Where an Accused is lawfully at large on a Judicial Interim Release, that time of release does not count as part of any term of imprisonment to which the Accused is sentenced.

## **8. DISPOSITION OF FINES AND PROPERTY**

- 8.1. Where a Person is convicted of an Offence under an Enactment and a fine is imposed against the Person as a penalty, the monies owed under the fine belong to the Nation pursuant to Section 104(3) of the *Indian Act*.
- 8.2. Any Surcharge payable by a Person who is convicted of an Offence under an Enactment, when paid, shall be deposited into the Siksika Victims and Public Safety Fund pursuant to the *Siksika Nation Victim Surcharge By-law*.
- 8.3. Where goods and chattels have been seized and detained by a Peace Officer under Sections 103(1) and (2) of the *Indian Act*, and are thereafter made subject to an order of forfeiture under Section 103(3) of the *Indian Act*, the Peace Officer may continue to possess and detain the goods and chattels until such time as the Minister issues a direction under the *Disposal of Forfeited Goods and Chattels Regulations*, as to their disposal.

## **9. TIME FOR PAYMENT**

- 9.1. When time has been allowed for payment and a Justice has ordered imprisonment in default of payment of the fine, a Justice shall not issue a warrant of committal until the expiration of the time allowed for payment.
- 9.2. Notwithstanding subsection 9.1, if, before the expiration of the time allowed for payment, where an Accused who has been convicted of an Offence and who has been allowed time for payment applies in writing to the Court to be committed immediately rather than await the expiration of the time allowed, the Justice may immediately issue a warrant of committal without requiring that Accused to appear in person before the

Justice.

- 9.3. When time has been allowed for payment any Justice may, on application by or on behalf of the Person allowed time for payment, allow further time for payment.

## **10. CONVICTION AND RESTRAINT NOT VOID**

- 10.1. Where a Justice imposes a fine or other penalty in a conviction or in an order, including any order made under Sections 81(2) or 81(3) of the *Indian Act*, that conviction or order is not void, nor is the right of the Nation to collect the fine or enforce the penalty under the conviction or to enforce the terms of any order lost or impaired because:

- (a) time has been allowed for the payment of all or any part of the fine or penalty;
- (b) payment of part of the fine or penalty has been received; or
- (c) the Justice has accepted security for the payment of all or any part of the fine or penalty.

## **11. CIVIL RECOVERY AND INTEREST IN FORFEITED PROPERTY**

- 11.1. When a fine is imposed on an Accused but imprisonment of the Accused in default of payment of the fine is not ordered and the fine is not paid forthwith or within the time allowed by the Justice, the Nation or a Person authorized by the Nation may, by filing the conviction, enter as a judgment in the Alberta Court of King's Bench the amount of the fine plus any Surcharge imposed, and the judgment is enforceable against the convicted Accused in the same manner as if it were a judgment rendered against the Accused in the Alberta Court of King's Bench in a civil proceeding.
- 11.2. Where goods and chattels have been seized and detained by a Peace Officer under Sections 103(1) and (2) of the *Indian Act*, and are thereafter made subject to an order of forfeiture under Section 103(3) of the *Indian Act*, the Nation shall be deemed to have an interest in those goods and chattels for so long as the Accused who was convicted of the Offence resulting in such forfeiture continues to owe any amount of a fine the Nation where that fine was imposed by a Justice as a result of a conviction arising from that Offence.
- 11.3. Where the Nation applies under Section 4 of the *Disposal of Forfeited Goods and Chattels Regulations*, for a determination of their interest in any goods and chattels that have been forfeited under Section 103(3) of the *Indian Act*, and where the Nation receives either the whole of or a portion of the goods and chattels or an amount of monies from the auction of those goods and chattels that are deemed to be commensurate with their determined interest in the goods and chattels so forfeited, such amount shall be offset as against any amount of fine owed to the Nation by the

Accused who was convicted of the Offence resulting in the forfeiture of the goods and chattels.

- 11.4. For greater certainty, and in respect of subsection 11.3 of this By-law, where the amount of property or monies received by the Nation in respect of its determined interests in forfeited goods and chattels is:
- (a) less than the amount of the fine still owing to the Nation by the Accused who was convicted of the Offence which resulted in the forfeiture of the goods and chattels, the Accused shall continue to owe to the Nation the difference between that amount of the fine still owing on the date the Nation receives the property or monies relating to the forfeited goods and chattels and the value of that property or monies received; or
  - (b) greater than the amount of the fine still owing to the Nation by the Accused who was convicted of the Offence which resulted in the forfeiture of the goods and chattels, the Accused shall be deemed to have satisfied the payment of their fine owing to the Nation, but shall not receive any repayment or reimbursement for any amount by which the value of the property or monies exceeds the amount of the fine that remains owing to the Nation by the Accused.
- 11.5. In addition to subsections 11.1 through 11.4 of this By-law, where a Accused is in default of a payment of a fine under this By-law, and where the Nation owes any amounts payable to the Accused, for any reason, the Nation may, in its sole and absolute discretion, withhold an amount payable by the Nation to such Person from time to time and shall apply such amount to the unpaid fine. The amount withheld by the Nation shall not to exceed the amount of the unpaid fine.

## **12. FAILURE TO ATTEND**

- 12.1. A Person who is at large on a release order and fails, without lawful excuse, the proof of which lies on that Person, to attend Court in accordance with that release order, or to surrender themselves in accordance with the terms of that release order, or to surrender themselves in accordance with the order of a Justice, is guilty of an Offence under this By-law.
- 12.2. A Person who is at large on a recognizance or an undertaking given to or entered into before a Justice and fails without lawful excuse, the proof of which lies on that Person, to attend Court in accordance with the terms of that recognizance or undertaking or order of the Justice is guilty of an Offence under this By-law.
- 12.3. An Accused who is served with a By-law Offence Notice under Part IV of this By-law and who fails, without lawful excuse, the proof of which lies on that Accused, to attend

Court in accordance with that By-law Offence Notice is guilty of an Offence under this By-law.

- 12.4. For the purposes of subsection 12.3 of this By-law, it is not a lawful excuse that the By-law Offence Notice in question was missing required information, so long as that By-law Offence Notice remains in compliance with subsection 17.5 of this By-law.
- 12.5. Where an Accused fails to attend Court in circumstances set out in subsection 12.3 of this By-law, upon application by a Prosecutor, the Justice may proceed to conduct a trial of the Offence of which the Accused is charged on an *ex parte* basis, and in the case of such no proceedings shall be instituted under subsection 12.3 of this By-law arising out the Accused having failed to attend at Court.
- 12.6. A Person who, without lawful excuse, the proof of which is upon that Person, fails to comply with any conditions of an undertaking is guilty of an Offence under this By-law.
- 12.7. In proceedings under subsections 12.1, 12.2, and 12.3 of this By-law a certificate purporting to be signed by the Clerk or a Justice before whom the Person or Accused is alleged to have failed to attend, stating that:
- (a) in the case of proceedings under subsection 12.1 of this By-law, a Person who being at large on a release order failed to attend Court;
  - (b) in the case of proceedings under subsection 12.2 of this By-law, the Person gave an undertaking or entered into a recognizance before a Justice, and that Person failed to attend Court in accordance with the undertaking or recognizance; or
  - (c) in the case of proceedings under subsection 12.3 of this By-law, a By-law Offence Notice was issued to and served on the Accused and the Accused failed to attend Court in accordance with the required Court appearance set out therein,

is evidence of the statements contained in the certificate without proof of the signature or the official character of the Person appearing to have signed the certificate.

- 12.8. A certificate shall not be received in evidence pursuant to subsection 12.7 of this By-law unless the party intending to produce it has, before the trial, given to the Person or Accused named in the certificate as having failed to attend reasonable notice of the party's intention to utilize a certificate, together with a copy of the certificate.

### **13. REPORT OF CONVICTION**

- 13.1. If an Accused is convicted of an Offence, a Clerk shall, on request, by an interested party, complete a report respecting the conviction.

- 13.2. A copy of a report under subsection 13.1 of this By-law purporting to be certified by a Clerk, or proved to be a true copy of a certified report, shall, without proof of the identity of the Accused to whom the report relates, be admitted in evidence in any legal proceedings as proof, in the absence of evidence to the contrary, of the conviction of the Accused for the Offence mentioned in the report.

#### **14. NO SEAL REQUIRED ON DOCUMENTS**

- 14.1. In any proceeding under any Enactment:

- (a) it is not necessary for a seal of a Justice of the Peace, a Clerk, or a Justice to be affixed to a document; and
- (b) no document is invalid by reason only of the lack of a seal even where the document purports to be sealed.

#### **15. TRANSCRIPTS OF EVIDENCE**

- 15.1. Transcripts of any proceeding under this By-law shall only be prepared and provided under subsection 15.2 of this By-law.

- 15.2. Where evidence is recorded in a proceeding before a Court, the Clerk shall, on payment of the applicable fee, provide a copy of a transcript of the evidence if it is:

- (a) requested by one of the parties to the proceedings;
- (b) required by the Nation; or
- (c) ordered by a Justice.

- 15.3. Evidence shall be recorded where:

- (a) a trial is conducted, regardless of whether such trial proceeds on an ex parte basis;
- (b) an Accused fails to appear and is convicted in absence after failing to respond to a By-law Offence Notice; and
- (c) an Accused is convicted in absence after failing to attend Court on a Court appearance date set as a result of the Accused having filled out a Dispute Note.

- 15.4. Where an Offence charged under a By-law Offence Notice has been referred to resolution proceedings through *Aiskapimohkiiks*, there shall be no Recording of the proceedings unless *Aiskapimohkiiks* specifically directs that the proceedings shall be recorded, or unless an Enactment specifically provides that any proceedings arising from

an Offence under that Enactment shall be recorded by *Aiskapimohkiiks*.

## **16. ADDRESS FOR SERVICE**

- 16.1. Where an Accused has been served with a By-law Offence Notice, that Accused's Address for Service is:
- (a) in the case of an Accused who is an individual, the address indicated on the Accused's Operator's License unless the Accused, at the time of being served with the By-law Offence Notice, provides another Address for Service;
  - (b) in the case of an Accused who is an individual who does not possess an Operator's License, the Address for Service that the Accused provides to the Person serving the Accused with the By-law Offence Notice;
  - (c) in the case of a municipality, the municipal office;
  - (d) in the case of a Metis settlement, its permanent office;
  - (e) in the case of a First Nation, the mailing address for the Tribal Council of that First Nation, as listed on the Government of Canada First Nation Profiles webpage at <https://fnp-ppn.aadnc-aandc.gc.ca/FNP/>; and
  - (f) a corporation other than a municipality or Metis Settlement or First Nation, the registered office of the corporation.
- 16.2. Where an Accused is served with an Offence By-law Notice and who does not possess an Operator's License at the time of service, that Accused must provide an Address for Service to the Person serving the Accused with the By-law Offence Notice, the failure of which is an offence under this By-law.
- 16.3. An Accused, after being served with a By-law Offence Notice, may provide a Clerk with a new Address for Service for the purpose of subsequent proceedings related to the By-law Offence Notice.
- 16.4. Where an Accused provides a false Address for Service to either a Clerk or the Person serving the Accused with a By-law Offence Notice, service of any documents to that false address shall be deemed valid service on that Accused for any purpose under this By-law.

## **17. BY-LAW OFFENCE NOTICES**

- 17.1. Instead of the procedure in the *Criminal Code* for laying an information and for issuing a summons, the procedure set out in Part III and IV of this By-law, as the case may be, may be followed with respect to Offences provided for in any Enactment.

- 17.2. Where the procedure set out in the *Criminal Code* for laying an information is not followed, the procedures set out in Part II or III of this By-law, as the case may be, must be followed.
- 17.3. If it is in the interest of the Nation and its people to do so, an individual who is authorized under an Enactment to issue a By-law Offence Notice may issue a By-law Offence Notice under Part IV of this By-law.
- 17.4. The use on a By-law Offence Notice of a word, figure or expression or any combination of them which clearly describes or defines an Offence under an Enactment is sufficient for all purposes to describe the Offence so charged.
- 17.5. Failure to complete any information required in a By-law Offence Notice does not invalidate the By-law Offence Notice or any part of it if:
- (a) the Accused is identified with reasonable clarity;
  - (b) the Offence with which the Accused is charged is specified in accordance with this By-law and the Enactment under which the Offence is specified;
  - (c) the date on which the Offence is alleged to have occurred is specified; and
  - (d) the place at or near which the Offence is alleged to have occurred is specified.

## **18. SERVICE OF A BY-LAW OFFENCE NOTICE**

- 18.1. Service of a By-law Offence Notice may be made on a Holiday.
- 18.2. An affidavit signed by the Person effecting service attesting to the fact that service was effected on the Accused shall be received in evidence in all legal proceedings as proof of that service without the necessity of proof of the signature of the Person making the affidavit.

## **19. ELECTRONIC DATA**

- 19.1. Notwithstanding anything in this By-law or any other Enactment, the Court may, with respect to any matter coming under this By-Law, use electronic documents in carrying out the Court's functions.

## **20. SIGNATURES**

- 20.1. Where a document used under this By-law is to be signed, that document, whether in electronic or non-electronic form, may, instead of being signed, be marked, subscribed, endorsed, acknowledged or given any other form of signification.

## **21. PROCEEDINGS BY VIDEOCONFERENCING OR AUDIOCONFERENCING**

21.1. In this section:

- (a) “audioconferencing” means any method of telecommunication that allows the Justice and any individual to communicate orally in a proceeding; and
- (b) “two-way videoconferencing” means any means of telecommunication that allows the Justice and any individual to engage in simultaneous visual and oral communication in a proceeding.

21.2. Notwithstanding any provision in this By-law, a Justice may permit any party to participate in proceedings by two-way videoconferencing or audioconferencing.

21.3. Notwithstanding any provision in this By-law, a Justice may preside at a proceeding by two-way videoconferencing or audioconferencing.

21.4. Where an Accused seeks to attend proceedings by way of videoconferencing or audioconferencing, that Accused must obtain permission from the Justice prior to the date of the proceeding, by writing to the Clerk with a request for permission.

21.5. Where a request is made by an Accused under subsection 21.4 of this By-law, the Clerk must provide a copy of that request to the Siksika Nation Prosecutor’s Office, and shall not provide the request to a Justice until either the Siksika Nation Prosecutor’s Office has provided a response to the request in writing, or five (5) business days have passed, whichever occurs earlier.

21.6. Where the Siksika Nation Prosecutor’s Office provides a response to a request made by an Accused under subsection 21.4 of this By-law, within the time period set out in subsection 21.5 of this By-law, the Clerk shall provide that response to a Justice at the same time as providing the Accused’s request for permission to attend by way of two-way videoconferencing or audioconferencing.

21.7. A Justice who has been provided with a request from an Accused under subsection 21.4 of this By-law may either make a decision without further information from either the Accused or a Prosecutor, or may, at the Justice’s discretion, require the Accused and the Prosecutor to attend before the Justice by way of audioconferencing to obtain further information as is deemed reasonably necessary by the Justice, prior to determining whether the Accused’s request should be granted or denied.

## **22. ROUTINE COURT MATTERS**

22.1. In this section, “routine Court matters” include:

- (a) entering pleas;

- (b) applications for adjournment;
  - (c) applications for time to pay; and
  - (d) any other matter determined to be a routine Court matter by the Court.
- 22.2. Notwithstanding any provision in this By-law, the Court may deal with and dispose of routine Court matters by telephone, email, or any other electronic means it determines appropriate and any notice required to be given or sent by the Clerk may be given or sent in the same manner by which the application was dealt.

### **PART III – BY-LAW OFFENCE NOTICES WITH NO COURT APPEARANCE REQUIRED**

#### **23. COMMENCING PROCEEDINGS**

- 23.1. Proceedings under this Part may be commenced by issuing a By-law Offence Notice in the form described in section 24 of this By-law.
- 23.2. Proceedings are commenced under this Part where a Person, who has the authority to issue a By-law Offence Notice under an Enactment reasonably believes that:
- (a) the circumstances of the Offence; and
  - (b) the interests of the Nation and its people,
- do not warrant or require a penalty of imprisonment, and that a fine will satisfy the principles of both general and specific deterrence.

#### **24. BY-LAW OFFENCE NOTICE**

- 24.1. A By-law Offence Notice that is issued under this Part must:
- (a) set out the fine amount sought for the Offence and the amount of Surcharge payable in respect of the Offence;
  - (b) set out how the Accused may respond to the By-law Offence Notice;
  - (c) set out that a failure to respond to the By-law Offence Notice within the specified period of time will be deemed as a guilty plea to the Offence and the Accused may be convicted without further notice;
  - (d) set out that where the Accused fills out a Notice of Dispute to the By-law Offence Notice, and thereafter fails to appear in Court at proceedings relating to that Notice of Dispute, they may be convicted in their absence;

- (e) include a Certificate of Offence; and
- (f) include a Certificate of Service.

24.2. A Certificate of the Offence, as included in the By-law Offence Notice must:

- (a) be completed and signed by a Person who is authorized under an Enactment to issue a By-law Offence Notice, and who believes on reasonable and probable grounds that an Offence has been committed;
- (b) where an Accused has filled out a Notice of Dispute in relation to the By-law Offence Notice, be filed with a Clerk prior to any trial date set in relation to the Notice of Dispute;
- (c) where an Accused has failed to respond to the By-law Offence Notice within the period of time indicated on the By-law Offence Notice, be filed with a Clerk prior to the Prosecutor commencing proceedings before the Court in relation to seeking a conviction arising from the Accused's deemed guilty plea; and
- (d) does not need to be sworn.

## **25. SERVICE OF A BY-LAW OFFENCE NOTICE**

25.1. A By-law Offence Notice, must be served upon an Accused:

- (a) in the case of an Accused who is an individual, either by delivering it personally to the Accused, or where the Accused's Address for Service is known to the Nation, or any of its authorized agents, delegates, or representatives, by way of ordinary mail to that Accused's Address for Service;
- (b) in the case of an Accused that is a municipality, by delivering it personally to the chief elected official or chief administrative officer of the municipality;
- (c) in the case of an Accused that is a Metis Settlement, by delivering it by way of single registered mail to the address of that Metis Settlement as listed on the Government of Alberta website: <https://www.alberta.ca/metis-settlements-locations.aspx>;
- (d) in the case of an Accused that is a First Nation, by delivering it by way of single registered mail to that First Nation's Address for Service as set out in subsection 16.1(e) of this By-law;
- (e) in the case of an Accused that is a corporation other than a municipality, Metis Settlement or First Nation by sending it by way of single registered mail to the office of the corporation;

- (f) in the case where the Province of Alberta is the Accused, by emailing a digital copy of the By-law Offence Notice to [jsg.servicehmq@gov.ab.ca](mailto:jsg.servicehmq@gov.ab.ca); and
  - (g) in the case where the Government of Canada is the Accused, by sending it by way of single registered mail to the Alberta Regional Office of the Deputy Attorney General of Canada, as listed at: <https://www.justice.gc.ca/contact>.
- 25.2. Where a By-law Offence Notice is mailed to an Accused by way of ordinary mail, and the date of the mailing is set out in the related Certificate of Offence, that By-law Offence Notice is, in the absence of evidence to the contrary, deemed to have been served on the Accused on the 7<sup>th</sup> day from that indicated date of mailing, except where that By-law Offence Notice is mailed to an address outside of the Province of Alberta, then that By-law Offence Notice is, in the absence of evidence to the contrary, deemed to have been served upon the Accused on the 14<sup>th</sup> day from that date of mailing.
- 25.3. Where a By-law Offence Notice is mailed to an Accused by way of single registered mail, service of the By-law Offence Notice is effected on the earlier of:
- (a) the date of acknowledgement of receipt is signed; or
  - (b) seven (7) days after the date on which the registered mail is sent.
- 25.4. If a By-law Offence Notice is personally served on the Accused, by the individual who issued it, that individual issuing the By-law Offence Notice shall complete and sign a Certificate of Service on the By-law Offence Notice setting out that that individual effected personal service upon the Accused along with the date of service.
- 25.5. If a By-law Offence Notice is served upon an Accused by a Person other than the individual who issued it, that Person shall swear an Affidavit of Service setting out the date and manner in which the By-law Offence Notice was served upon the Accused.
- 25.6. A Certificate of Service or an Affidavit of Service may be filed with a Clerk and in the absence of evidence to the contrary, is proof of service upon the Accused.
- 25.7. Notwithstanding subsections 25.5 and 25.6 of this By-law, where an Accused is served with a By-law Offence Notice by either ordinary mail, single registered mail, or email, neither a Certificate of Service nor an Affidavit of Service is required.

## **26. NOTICE OF DISPUTE**

- 26.1. After having been served with a By-law Offence Notice, if an Accused wishes to:
- (a) dispute the Offence charged and enter a plea of not guilty; or
  - (b) plead guilty to the Offence charged, but wishes to make submissions in respect

to the fine set out on the By-law Offence Notice,

the Accused may fill out a Notice of Dispute in accordance with the procedure set out in the By-law Offence Notice.

- 26.2. Where an Accused has filled out a Notice of Dispute in compliance with the appropriate procedure, the Nation shall file the Notice of Dispute with a Clerk, along with the Certificate of Offence.

## **27. TRIAL DATE**

- 27.1. Where the Nation files a Notice of Dispute and associated Certificate of Offence with a Clerk, under subsection 26.2 of this By-law, the Clerk shall, as soon as is practicable, give notice to the Nation of the time and place of the trial, by way of email to the Nation at an email address so provided.
- 27.2. Upon receipt of the notice in subsection 27.1 of this By-law, the Nation shall forthwith advise the Accused, by way of ordinary mail at the Accused's Address for Service, of the time and place of the trial.

## **28. GUILTY PLEA AND PAYMENT**

- 28.1. Where an Accused wishes to plead guilty to the charges in a By-law Offence Notice that has been served on that Accused, and does not wish to make submissions as to the fine, the Accused may make a voluntary payment of the amount of the fine and Surcharge that are indicated on the By-law Offence Notice, as instructed in the By-law Offence Notice.
- 28.2. Where an Accused submits a payment of a fine and Surcharge in accordance with subsection 28.1 of this By-law, the Nation shall file with a Clerk the Certificate of Offence along with a Certificate of Payment evidencing receipt of payment of the fine and Surcharge by the Accused.
- 28.3. When a Clerk files the Certificate of Offence along with the Certificate of Payment, that act of filing constitutes the Court's acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine and Surcharge in the amount set out on the By-law Offence Notice.
- 28.4. Where an Accused submits payment of a fine and Surcharge in accordance with subsection 28.1 of this By-law, but:
- (a) the payment amount is less than the combined amount of the fine and Surcharge on the By-law Offence Notice; or
  - (b) is a payment made by cheque and the cheque is dishonoured on the grounds

that no funds or insufficient funds were on deposit to the credit of the Accused in the institution on which the cheque was drawn,

the Nation shall file with a Clerk the Certificate of Offence along with a Certificate of Attempted Payment setting out the manner in which the attempted payment was made, the amount actually paid, the amount still owing, and whether an Accused's cheque was dishonoured.

- 28.5. When a Clerk files the Certificate of Offence along with the Certificate of Attempted Payment, that act of filing constitutes the Court's acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine and Surcharge in the amount set out on the By-law Offence Notice, but the unpaid amount of the fine and Surcharge remain outstanding.
- 28.6. When a conviction has been entered along with the imposition of a fine and Surcharge under subsection 28.5 of this By-law, the Nation shall give notice to the Accused, by way of ordinary mail to the Accused's Address for Service, which:
- (a) advises of the conviction;
  - (b) encloses a copy of the filed Certificate of Attempted Payment evidencing the amount paid, if any, and the amounts still owing; and
  - (c) advises that if the amounts still owing are not received within fifteen (15) days from the date of service of the notice, the Nation may proceed to either enforce the amounts owed through civil remedies or attend before a Justice, without further notice, to seek an order of imprisonment in default of payment of the fine still owing, along with a warrant of committal.
- 28.7. For greater certainty, any notice given to the Accused under subsection 28.6 of this By-law shall be deemed as having been served, in the absence of evidence to the contrary, on the 7<sup>th</sup> day after the notice has been sent by ordinary mail.

## **29. FAILURE TO RESPOND TO BY-LAW OFFENCE NOTICE**

- 29.1. Where an Accused has been served with a By-law Offence Notice and has not, within fourteen (14) days after the By-law Offence Notice was served on that Accused, either paid the fine and Surcharge on the By-law Offence Notice or filled out a Notice of Dispute in accordance with the procedure set out in the By-law Offence Notice:
- (a) the Accused shall be deemed to have pleaded guilty to the offence so charged on the By-law Offence Notice; and
  - (b) the fine and Surcharge indicated on the By-law Offence Notice are immediately owing and payable to the Nation.

- 29.2. Where a charge is dealt with under subsection 29.1 of this By-law, the Nation shall file with a Clerk the Certificate of Offence along with a Certificate of Non-Response setting out that the Accused failed to either pay the fine and Surcharge or to fill out a Notice of Dispute.
- 29.3. Upon filing the Certificate of Offence and Certificate of Non-Response under subsection 29.1 of this By-law, a Clerk shall enter a conviction against the Accused indicating the fine and Surcharge imposed, without the charge being brought before or being reviewed by a Justice.
- 29.4. When a conviction has been entered along with the imposition of the fine and Surcharge, under subsection 29.3 of this By-law, the Nation shall give notice to the Accused, by way of ordinary mail to the Accused's Address for Service, which:
- (a) advises of the conviction and the fine and Surcharge imposed;
  - (b) encloses a copy of the filed Certificate of Non-Response; and
  - (c) advises that if the amount of the fine and Surcharge imposed are not received within fifteen (15) days from the date of service of the notice, the Nation may proceed to either enforce the fine and Surcharge owed through civil remedies or attend before a Justice, without further notice, to seek an order of imprisonment in default of payment of the fine still owing, along with a warrant of committal.

### **30. ATTENDANCE BEFORE A JUSTICE TO ENTER CONVICTIONS**

- 30.1. Notwithstanding the procedures for entering convictions and the imposition of fines and Surcharges set out in sections 28 and 29 of this By-law, a Prosecutor may, upon filing the required documents set out in subsections 28.2, 28.4, or 29.2 of this By-law, as the case may be, request that a Clerk set the corresponding charge or charges before the Court at a date and time as is determined by the Clerk.
- 30.2. Where a charge or charges have been set to go before a Court under subsection 30.1 of this By-law, no notice shall be given to the Accused of the proceedings in relation to that charge or charges.
- 30.3. Where a charge or charges are put before the Court under subsection 30.1 of this By-law, the Justice shall, if the documents required under subsections 28.2, 28.4, or 29.2 of this By-law, as the case may be, have been filed, and if the Certificate of Offence is complete and regular on its face:
- (a) enter a conviction against the Accused, without a hearing, and imposed the penalty and charge as set out on the By-law Offence Notice;
  - (b) determine whether a period of imprisonment in default of payment of the fine

and Surcharge should be imposed; and

- (c) in the event that a period of imprisonment in default of payment is ordered under subsection 30.3(b) of this By-law, specify the period of time in which the Accused shall be permitted to pay the fine and Surcharge after receiving notice of their conviction before a warrant of committal shall be issued.

30.4. If a conviction is entered under the procedure in this section, the Nation shall give notice to the convicted Accused, by way of ordinary mail to the Accused's Address for Service, which:

- (a) advises of the conviction and the fine and Surcharge imposed;
- (b) advises of any order of imprisonment in default of payment of the fine and Surcharge;
- (c) advises of any period of time for payment of the fine and Surcharge during which a warrant of committal shall not be issued by the Court in respect of any order of imprisonment in default of payment; and
- (d) sets out the date on which the notice is being mailed.

30.5. Notice to an Accused under subsection 30.4 of this By-law shall be deemed to have been given on the 7<sup>th</sup> day from the date on which the notice is mailed, as indicated in the notice.

### **31. FAILURE TO APPEAR AT COURT**

31.1. Where an Accused has filled out a Notice of Dispute and has been given notice of the time and place of their trial date under subsection 27.2 of this By-law but fails to appear in Court on their trial date, the Justice shall, if the Certificate of Offence is complete and regular on its face:

- (a) enter a conviction in the Accused's absence, without a hearing, and impose the fine and Surcharge set out in the By-law Offence Notice;
- (b) determine whether a period of imprisonment in default of payment of the fine and Surcharge should be imposed; and
- (c) in the event that a period of imprisonment in default of payment is ordered under subsection 31.1(b) of this By-law, specify the period of time in which the Accused shall be permitted to pay the fine and Surcharge after receiving notice of their conviction before a warrant of committal shall be issued.

31.2. If an Accused is convicted under subsection 31.1 of this By-law, the Nation shall give

notice to the convicted Accused, by way of ordinary mail to the Accused's Address for Service, which:

- (a) advises of the conviction and the fine and Surcharge imposed;
  - (b) advises of any order of imprisonment in default of payment of the fine and Surcharge;
  - (c) advises of any period of time for payment of the fine and Surcharge during which a warrant of committal shall not be issued by the Court in respect of any order of imprisonment in default of payment; and
  - (d) sets out the date on which the notice is being mailed.
- 31.3. Notice to an Accused under subsection 31.2 of this By-law shall be deemed to have been given on the 7<sup>th</sup> day from the date on which the notice is mailed, as indicated in the notice.

#### **PART IV – BY-LAW OFFENCE NOTICES WITH A COURT APPEARANCE REQUIRED**

### **32. COMMENCING PROCEEDINGS**

- 32.1. Proceedings under this Part may be commenced by issuing a By-law Offence Notice in the form described in section 33 of this By-law.
- 32.2. Proceedings are commenced under this Part where a Person, who has the authority to issue a By-law Offence Notice under an Enactment reasonably believes that:
- (a) the circumstances of the Offence; and
  - (b) the interests of the Nation and its people,
- warrant or require a penalty of imprisonment, and that a standalone fine will not satisfy the principles of both general and specific deterrence.
- 32.3. Where proceedings are commenced under this Part, Part III of this By-law does not apply to those proceedings.
- 32.4. As proceedings under this Part are only commenced where the Nation is seeking a penalty of imprisonment, no proceedings under this Part may be commenced against a Person who is a corporation, a municipality, a Metis Settlement, a First Nation, a Province, or the Government of Canada.
- 32.5. Notwithstanding subsections 32.3 and 32.4 of this By-law, where proceedings under this Part are commenced against a corporation, a municipality, a Metis Settlement, a First

Nation, a Province, or the Government of Canada, by way of a By-law Offence Notice, that By-law Offence Notice:

- (a) is not void or invalid by reason only of having been commenced under this Part;
- (b) shall be deemed to be a By-law Offence Notice issued under Part III of this By-law;
- (c) shall be subject to procedures and provisions set out in Part III of this By-law; and
- (d) shall be read as seeking a penalty of the maximum fine and Surcharge amount permitted under this By-law and the *Siksika Nation Victim Surcharge By-Law*, regardless of what fine or Surcharge is actually indicated on the By-law Offence Notice.

### **33. BY-LAW OFFENCE NOTICE WITH REQUIRED COURT APPEARANCE**

33.1. A By-law Offence Notice that is issued under this Part must:

- (a) set out any fine amount sought for the Offence, if any, and the amount of Surcharge payable in respect of the Offence, if any;
- (b) clearly indicate that the Accused is required to appear in Court to respond to the By-law Offence Notice;
- (c) indicate when and where the Accused is to appear in Court to respond to the By-law Offence Notice;
- (d) set out that if the Accused fails to appear in Court to respond to the By-law Offence Notice, at the specified date and time, a warrant for their arrest may be issued by the Court;
- (e) indicate that the Nation will be seeking a penalty of imprisonment in relation to the Offence charged; and
- (f) include a complaint made under oath.

33.2. The complaint part of the By-law Offence Notice:

- (a) must be completed and signed by a complainant who believes on reasonable and probable grounds that an Offence has been committed;
- (b) must be filed with a Clerk prior to the initial appearance indicated on the By-law Offence Notice,

and is deemed to have been made under oath, notwithstanding that the complaint has

not been sworn before a commissioner for oaths, or any other individual who has the authority to administer an oath.

#### **34. SERVICE OF A BY-LAW OFFENCE NOTICE WITH REQUIRED COURT APPEARANCE**

- 34.1. A By-law Offence Notice, must be served upon an individual Accused either by delivering it personally to the Accused, or if the Accused cannot conveniently be found, by leaving it for the Accused at the Accused's residence with a Person on the premises who appears to be at least 18 years of age.
- 34.2. Where a Justice, on application, is satisfied that service cannot be made effectively upon an Accused under subsection 34.1 of this By-law, may by order authorize another method of service that is reasonable in all the circumstances.

#### **35. COURT APPEARANCE REQUIRED**

- 35.1. An Accused who has been served with a By-law Offence Notice under this Part shall appear, either personally or by agent, before a Justice on the date and at the time and place stated on the By-law Offence Notice.
- 35.2. Notwithstanding subsection 35.1 of this By-law, if, prior to the first appearance date, the Accused has obtained agreement from a Prosecutor, in writing, to adjourn the first appearance date, the Accused is not required to attend before a Justice on the date and at the time and place stated on the By-law Offence Notice, and the Prosecutor shall advise the Court of the agreement to adjourn and shall set a new date for the Accused to attend Court to respond to the By-law Offence Notice.

#### **36. FAILURE TO APPEAR AT COURT**

- 36.1. Where an Accused fails to appear in Court on the date and time as set out in the By-law Offence Notice, a Justice, upon being satisfied of proof of service of the By-law Offence Notice, may:
- (a) enter a plea of not guilty on behalf of the Accused and set a date and time for a trial and direct that the Nation provide notice to the Accused of the trial date and time by sending such by ordinary mail to the Accused's Address for Service; or
  - (b) proceed to conduct the trial ex parte.
- 36.2. If a Justice enters a plea of not guilty on behalf of the Accused and sets a time for trial under subsection 36.1 of this By-law and the Accused fails to appear at the new trial date a Justice shall proceed to conduct the trial ex parte.
- 36.3. Where a Justice proceeds to conduct a trial ex parte, under either subsections 36.1(b) or

36.2 of this By-law, and the Accused is convicted:

- (a) if a term of imprisonment is imposed as a penalty, regardless of whether a fine is also imposed as a penalty in addition to imprisonment, the Justice shall issue a warrant for the arrest of the Accused; or
- (b) if no term of imprisonment is imposed as a penalty, but a fine is imposed, the Justice shall:
  - (i) determine whether a period of imprisonment in default of payment of the fine and any Surcharge should be imposed, and
  - (ii) in the event that a period of imprisonment in default of payment is ordered, specify the period of time in which the Accused shall be permitted to pay the fine, and any Surcharge, after receiving notice of their conviction, before a warrant of committal shall be issued.

36.4. Where an Accused is convicted under subsection 36.3(b) of this By-law, the Nation shall give notice to the convicted Accused, by way of ordinary mail to the Accused's Address for Service, which:

- (a) advises of the conviction and the fine and Surcharge imposed;
- (b) advises of any order of imprisonment in default of payment of the fine and Surcharge;
- (c) advises of any period of time for payment of the fine and Surcharge during which a warrant of committal shall not be issued by the Court in respect of any order of imprisonment in default of payment; and
- (d) sets out the date on which the notice is being mailed.

36.5. Notice to an Accused under subsection 36.4 of this By-law will be deemed to have been given on the 7<sup>th</sup> day from the date on which the notice is mailed, as indicated in the notice.

## **PART V - SENTENCING**

### **37. PURPOSE**

37.1. The fundamental purpose of sentencing under this By-law and any Enactment of the Nation is to:

- (a) protect the people of the Nation, the Nation's culture, the Nation's land, and the

interests of the Nation;

- (b) contribute to the knowledge of, respect for, and enforcement of the Nation's laws and a safe and peaceful society and environment for the Nation and its people; and
- (c) preserve the interests and rights of future generations of the Nation's people in and to their culture, their heritage, and their land.

### **38. OBJECTIVES - GENERAL**

- 38.1. When a Court imposes a penalty for an Offence under an Enactment, the Court shall give consideration to the objectives of specific and general deterrence of the conduct that forms the basis of the Offence.

### **39. OBJECTIVES – ACCUSED NOT AN INDIGENOUS PERSON**

- 39.1. When a Court imposes a penalty for an Offence that involved an Accused who was not a Nation member or a an Indigenous person, it shall consider:

- (a) the history of the victimization, marginalization, and exploitation of Indigenous people;
- (b) the Government of Canada's acknowledgement that Indigenous people face systemic racism and systemic barriers in Canada's legal system,

and give primary consideration to not only the objectives of specific and general deterrence, but also the objective of denouncing and deterring conduct of a non-Indigenous person that forms the basis of an offence committed against a First Nation or its people.

### **40. OBJECTIVES – ACCUSED A CORPORATION OR OTHER NON-INDIVIDUAL ENTITY**

- 40.1. When a Court imposes a penalty for an Offence where an Accused is a Person who is a corporation, a municipality, a Metis Settlement, a First Nation, a Province, or the Government of Canada, the Court shall consider that a penalty of imprisonment is not available for a corporation, a municipality, a Metis Settlement, a First Nation, a Province, or the Government of Canada, when determining the appropriate fine that would satisfy the objectives of specific and general deterrence.

### **41. OBJECTIVES – OFFENCE AGAINST A VULNERABLE PERSON**

- 41.1. When a Court imposes a penalty for an Offence that involved the abuse of a person who is vulnerable because of personal circumstances, including, but not limited to:

- (a) because the person is Indigenous and female;
- (b) because the person is an *Omahkitapi* or *Omahkitapiiks*, as is defined in the *Siksika Nation Omahkitapiiks (Elder) And Vulnerable Persons Protection By-Law*;
- (c) because the person is a child under the age of 18; or
- (d) because the person is Indigenous and the person convicted of the offence is not an Indigenous person,

the Court shall give primary consideration to the objectives of denunciation and specific and general deterrence of the conduct that forms the basis of the Offence.

## **PART VI - AISKAPIMOHKIIKS**

### **42. AISKAPIMOHKIIKS – PART III PROCEEDINGS**

- 42.1. Where an Accused is a Citizen or a member of another First Nation and proceedings have been commenced against that Accused under Part III of this By-law, that Accused may elect, within fourteen (14) days of being served with the By-law Offence Notice, to have the charge referred to *Aiskapimohkiiks* for a resolution hearing, rather than the matter proceeding under Part III of this By-law.
- 42.2. An election under subsection 42.1 of this By-law shall be in accordance with the procedure set out in the By-law Offence Notice.
- 42.3. Within seven (7) days of an election to *Aiskapimohkiiks* being made, the Nation shall provide a copy of the election and a copy of the By-law Offence Notice to both *Aiskapimohkiiks* and an individual designated by Council to act on behalf of Council with respect to elections made under this section.
- 42.4. Within five (5) business days of the copy of the election and a copy of the By-law Offence Notice being received by the individual designated to act on behalf of Council, that individual may submit, in writing, to both *Aiskapimohkiiks* and the Accused, Council's opposition to the charge being referred to *Aiskapimohkiiks*, along with the reasons for Council's opposition.
- 42.5. If *Aiskapimohkiiks* does not receive any notice of opposition from Council, as set out in subsection 42.4 of this By-law, *Aiskapimohkiiks* shall within fourteen (14) days of having been provided the documents in subsection 42.3, advise the Nation and the Accused, in writing, whether the election for referral of the charge to *Aiskapimohkiiks* has been accepted.

- 42.6. Where *Aiskapimohkiiks* receives a notice of opposition from Council, as set out in subsection 42.4 of this By-law, *Aiskapimohkiiks* shall, within fourteen (14) days of having received that notice of opposition, advise the Nation and the Accused, in writing, whether the election for referral of the charge to *Aiskapimohkiiks* has been accepted.
- 42.7. Where Council opposes a referral to *Aiskapimohkiiks*, and *Aiskapimohkiiks* accepts the referral notwithstanding that opposition, the notice of acceptance as issued under subsection 42.6 of this By-law shall also set out the reasons as to why *Aiskapimohkiiks* has accepted the referral even in the presence of Council's opposition.
- 42.8. Where *Aiskapimohkiiks* accepts the referral of the charge, their notice of acceptance shall also provide a date and time for the resolution hearing.
- 42.9. Where a matter is referred to *Aiskapimohkiiks*, the proceedings commenced under Part III of this By-law, in relation to that matter, shall be suspended subject to subsections 42.15 and 42.17.
- 42.10. Where the dispute is referred to *Aiskapimohkiiks* pursuant to subsections 42.5 or 42.6 of this By-law, *Aiskapimohkiiks* shall be provided with a copy of all documents and information regarding the Offence that is in possession of the Nation and which, were the matter not referred to *Aiskapimohkiiks*, would have formed the Prosecutor's file.
- 42.11. At the resolution hearing referred to subsections 42.5 or 42.6 of this By-law, *Aiskapimohkiiks* shall hear from:
- (a) the Accused;
  - (b) the Person who issued the By-law Offence Notice, as a representative of the Nation;
  - (c) any other Person designated by Council to act as a representative of the Nation, if not the Person in subsection 42.11(b) of this By-law;
  - (d) the victim of the Offence, if the victim is a Person;
  - (e) any other individuals, including Peace Officers, who have relevant information relating to the Offence; and
  - (f) any other individual that *Aiskapimohkiiks* permits to provide information or speak to the matter.
- 42.12. If the Accused and the Nation come to a resolution at the resolution hearing, that resolution shall be recorded in writing and a copy shall be provided to the Accused, the individual designated to act on behalf of Council, and the Prosecutor.

- 42.13. If the Accused and the Nation do not come to an agreement as to resolution at the resolution hearing, within thirty (30) days of the resolution hearing *Aiskapimohkiiks* shall decide the issue of appropriate resolution and issue a written decision setting out its decision.
- 42.14. Where *Aiskapimohkiiks* issues a written decision under subsection 42.13 of this By-law, that decision shall be provided to the Accused, the individual designated to act on behalf of Council, and the Prosecutor.
- 42.15. Where the resolution of a charge does not require an Accused to comply with any terms or conditions or penalties subsequent to the date of resolution, the resolution shall be recorded by the Prosecutor in the Siksika Nation Justice Services records system, and the By-law Offence Notice shall be withdrawn.
- 42.16. Where the resolution of a charge or charges imposes conditions, terms, or penalties that the Accused is required to comply with subsequent to the date of resolution, the resolution shall be recorded by the Prosecutor in the Siksika Nation Justice Services records system, and the proceedings under Part III as they relate the charge or charges, shall continue to be suspended until such time as the Accused has shown proof of satisfying the terms, conditions, or penalties set out in the resolution, after which time the By-law Offence Notice shall be withdrawn.
- 42.17. Where an Accused does not comply with conditions, terms, or penalties set out in a resolution, the Nation may resume the proceedings that were commenced under Part III of this By-law in relation to the charge or charges, and provide notice by ordinary mail to the Accused's Address for Service that the proceedings in relation to the charges are recommencing under Part III of this By-law.

#### **43. AISKAPIMOHKIIKS – PART IV PROCEEDINGS**

- 43.1. Where an Accused is a Citizen or a member of another First Nation and proceedings have been commenced against that Accused under Part IV of this By-law, that Accused may apply, within fourteen (14) days of being served with the By-law Offence Notice, to Council to have the charge referred to *Aiskapimohkiiks* for a resolution hearing, rather than the matter proceeding under Part IV of this By-law.
- 43.2. An application under subsection 43.1 of this By-law shall be in accordance with the procedure set out in the By-law Offence Notice.
- 43.3. Within seven (7) days of an application to Council being made, the Nation shall provide a copy of the application and a copy of the By-law Offence Notice to both the individual designated by Council to act on behalf of Council with respect to applications made under this section, and to the Prosecutor.

- 43.4. Within thirty (30) days of receiving the documents set out in subsection 43.3 of this By-law, the individual designated by Council shall advise the Accused and the Prosecutor, in writing, whether the application for referral to *Aiskapimohkiiks* has been granted.
- 43.5. Where an application for referral to *Aiskapimohkiiks* has been denied, the charge or charges shall proceed by way of the proceedings commenced under Part IV of this By-law.
- 43.6. Where an application for referral to *Aiskapimohkiiks* has been granted, *Aiskapimohkiiks* shall be advised of the referral and shall provide the Accused, the individual designated by Council, and the Prosecutor with notice of the date and time for the resolution hearing.
- 43.7. After an application for referral to *Aiskapimohkiiks* has been granted, the process and procedure as set out in subsections 42.9 to 42.17 of this By-law, shall apply to the proceedings commenced against the Accused, with necessary modifications.

#### **44. AISKAPIMOHKIIKS – NOT AVAILABLE TO NON-CITIZENS**

- 44.1. For greater certainty, where an Accused is not a Citizen nor a member of another First Nation, no referral of any proceedings to *Aiskapimohkiiks* shall be permitted.
- 44.2. In the event that a matter is referred to *Aiskapimohkiiks* and the Accused is not a Citizen nor a member of another First Nation, any resolution arising from a resolution hearing with *Aiskapimohkiiks* shall be considered invalid and the proceedings commenced against that Accused shall proceed under the Part of this By-law under which they were commenced.

### **PART IX – MISCELLANEOUS**

#### **45. APPLICATION OF CRIMINAL CODE**

- 45.1. Except to the extent that they are inconsistent with this By-law and subject to any specific provisions stating otherwise in any Enactment, all provisions of the *Criminal Code*, including the provisions in Part XV respecting search warrants, that are applicable in any manner to summary convictions and related proceedings apply in respect of every matter to which this By-law applies.

#### **46. JUDICIAL NOTICE**

- 46.1. The following shall be judicially noted:

(a) any Enactment of the Nation that is published in the *First Nation Gazette*

pursuant to Section 86(1) of the *Indian Act*; and

- (b) that the inherent right to self-government is an Aboriginal Right that is recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

#### **47. LIMITATION OF LIABILITY**

- 47.1. No action or other proceeding for damages shall be instituted against the Nation, any employee of the Nation, or any Person acting on behalf of the Nation for any act done in good faith in the performance or intended performance of any duty under this By-law or in the exercise or in the intended exercise of any power under this By-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power under this By-law.

#### **48. MISCELLANEOUS**

- 48.1. Nothing in this By-law relieves a Person from complying with any applicable law, regulation, other Enactment or any requirements of any lawful permit, order, or other direction.
- 48.2. Where this By-law refers to another Enactment, act, regulation or agency, it includes reference to any Enactment, act, regulation or agency that may be varied, modified or replaced from time to time.
- 48.3. Every provision of this By-law is independent of all other provisions. If any provision of this By-law is declared invalid for any reason by a Court, all other provisions of this By-law shall remain valid and enforceable.
- 48.4. Words and phrases in this By-law importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neutral.

#### **49. AMENDMENT**

- 49.1. This By-law may be amended by Council resolution. Any amendments will come into force on the date of publication in accordance with Section 86(4) of the *Indian Act*.

#### **50. EFFECTIVE DATE**

- 50.1. This By-law comes into force on the date of publication in accordance with Section 86(4) of the *Indian Act*.

**THIS BY-LAW IS HEREBY** passed at a duly convened meeting of the Council this \_\_\_\_\_ day

of \_\_\_\_\_, 2023.

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Nioksskaistamik  
Chief Ouray Crowfoot

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Piitaisa'ksinam  
Councillor Samuel Crowfoot

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Councillor Owen Cranebear

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Asinaipoka  
Councillor Reuben Breaker

---

Kistsiponista  
Councillor Kendall Panther Bone

---

Councillor Candace Backfat

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Councillor Strater Crowfoot

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Councillor Hector Winnipeg

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Councillor Marsha Wolf Collar

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Ksistsikomia'ki  
Councillor Tracy McHugh

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Councillor Lou Ann Solway

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Kanaikito  
Councillor Ike Solway

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Councillor Carlin Black Rabbit