



SIKSIKA NATION PROSECUTION BY-LAW NO. 2023-XX

BY-LAW NO. _____

SIKSIKA NATION

SIKSIKA NATION PROSECUTION BY-LAW

BEING A BY-LAW OF THE SIKSIKA NATION WITH THE PURPOSE OF APPOINTING A PROSECUTION OFFICE AND PROSECUTORS FOR THE SIKSIKA NATION;

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), as exercised and affirmed by the *Siksika First Nation Constitution*;

AND WHEREAS the Siksika Nation affirms its authority to establish a system for peace, good order and governance of 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 Siksika Nation and its people;

AND WHEREAS the Council of the Siksika Nation has, through its inherent right of self-government, the right to observe and enforce customary law, and to make and enforce laws for the protection of the Siksika Nation, its land and its people's interests;

AND WHEREAS in addition to its inherent right to self-government 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 appointing a Siksika Nation Prosecution Office who shall have the responsibilities as outlined in this By-law, recognizing that a gap in the enforcement and prosecution of First Nation laws has been acknowledged by the Federal and Provincial Governments as having existed for many years which has resulted in a lack of process, consistency and enforcement with respect to the prosecution of Indigenous community by-

Laws;

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 Prosecution By-law*".

2. DEFINITIONS

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

- (a) **"Ad Hoc Prosecutor"** means a lawyer, who is not employed at the Siksika Nation Prosecutor's Office, and who has been appointed as an *ad hoc* prosecutor pursuant to subsection 14.1 of this By-law;
- (b) **"Aiskapimohkiiks"** means the Siksika Justice Traditional Justice Dispute Resolution Program, as varied, modified or replaced from time to time;
- (c) **"Band Council Resolution"** means a written resolution signed and adopted by a quorum of Council at a duly convened meeting;
- (d) **"By-law"** means this *Siksika Nation Prosecution By-law*, unless otherwise specified in this By-law;
- (e) **"By-law Offence Notice"** means a Bylaw Offence Notice that is issued under either Part III or Part IV of the *Siksika Nation Offence Procedures By-law*;
- (f) **"Chief Prosecutor"** means the Chief Prosecutor appointed as part of Siksika Nation's Prosecutors Office and/or any other individual designated by Council to complete the duties pursuant to subsection 5.1 of the By-law or any designated individual in an acting capacity;
- (g) **"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;
- (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) **"Enactment"** means any Siksika Nation by-Law, regulation, or other form of legislation in relation to any matter over which the Council has authority

- (j) **“Indian Act”** means the *Indian Act*, RSC 1985, c I-5 and any amendments thereto;
- (k) **“Justice”** means a Justice of the Alberta Court of Justice or the Alberta Court of King’s Bench, as the case may be, or an individual or individuals appointed to a Tribal Court or Indigenous Court who carry out the role and duties of a Trier or Fact;
- (l) **“Nation”** means the Siksika Nation;
- (m) **“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 a violation an Enactment;
- (n) **“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;
- (o) **“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;
- (p) **“Prosecutor”** means a lawyer employed as a Prosecutor as part of the Siksika Nation’s Prosecutors Office and includes the Chief Prosecutor;
- (q) **“Reserve”** means Indian Reserve No. 146, or any other lands reserved for the Nation within the meaning of the *Indian Act*; and
- (r) **“Siksika Nation Prosecutor’s Office”** means the office of the Prosecutors for the Nation.

3. APPLICATION

- 3.1. This By-law applies on the Reserve.
- 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 will not relieve a Person from also complying with the provisions of any other applicable act, law, regulation or by-law.

PART II – POWERS AND DUTIES

4. APPOINTMENT

- 4.1. The Council may create a Siksika Nation Prosecution Office for the Nation by Band Council Resolution as the Council considers necessary.
- 4.2. The Council may appoint a Chief Prosecutor for the Nation.

- 4.3. The Chief Prosecutor may appoint qualified individuals as Prosecutors.
- 4.4. Any appointments that Council has made respecting a Siksika Nation Prosecution Office or a Chief Prosecutor that predate the coming into force of this By-Law shall hereafter be considered valid appointments under subsections 4.1 and 4.2 of this By-Law.

5. CHIEF PROSECUTOR

- 5.1. The Chief Prosecutor shall have the authority to:
 - (a) appoint qualified individuals as Prosecutors;
 - (b) directly oversee the day-to-day activities of Prosecutors and the Siksika Nation Prosecution Office;
 - (c) investigate and respond to any public complaints regarding an alleged misuse of power under this By-law; and
 - (d) impose disciplinary or corrective action where it has been determined that there has been a misuse of power under this By-law, including the suspension or termination of the appointment of a Prosecutor.
- 5.2. If the Chief Prosecutor has a conflict of interest, as defined by the Siksika Nation Administration Personnel Policies and Procedures, the duties of the Chief Prosecutor under this By-law shall be delegated to a qualified individual as determined by the Chief Prosecutor in consultation with Council and such delegation shall be confirmed in writing to Council.

6. APPEALS COMMITTEE

- 6.1. The Council shall create an Appeals Committee with the sole mandate of considering appeals under section 21 of this By-law.
- 6.2. The Appeals Committee shall be composed of three individuals appointed by Council, with at least one such member being a Councillor of Siksika Nation.
- 6.3. If any member of the Appeals Committee has a conflict of interest in hearing any Appeal, as defined by the Siksika Nation Administration Personnel Policies and Procedures, Council shall appoint an alternate individual as an *Ad Hoc* Appeals Committee Member for the Appeal in which a conflict of interest has arisen.

7. SIKSIKA NATION PROSECUTION OFFICE

- 7.1. The Siksika Nation Prosecution Office has the following functions, responsibilities, and authority:
 - (a) to approve and conduct, on behalf of the Nation, all prosecutions of offences of any Enactment;

- (b) where a Nation by-Law provides a right to appeal, to initiate and conduct, or respond to, on behalf of the Nation, all appeals and other proceedings in respect of any prosecution of an offence of any Enactment;
- (c) to advise the Council on all matters regarding any Enactment;
- (d) to develop policies and procedures in respect of the administration of prosecuting Enactments;
- (e) to carry out any powers, duties, or functions necessary to fulfil their responsibility under this By-law; and
- (f) any other function or responsibility assigned to the Siksika Nation Prosecution Office by the Council.

8. AGENTS OF COUNCIL

- 8.1. When acting under the authority of this By-Law, the Chief Prosecutor, the Siksika Nation Prosecution Office and every Prosecutor appointed under this By-law does so as an agent of Council.

PART III - PROSECUTOR

9. QUALIFICATION

- 9.1. No Person shall be appointed as a Prosecutor or act as a Prosecutor if such Person is not a member in good standing of the bar of Alberta.

10. JURISDICTION

- 10.1. Subject to subsection 10.2 of this By-Law, a Prosecutor shall have the jurisdiction to prosecute any offence of any Nation by-Law or offence of any Enactment subsidiary to a Nation by-Law.
- 10.2. Council, by way of Band Council Resolution, may impose limitations upon, or restrict, the jurisdiction or authority of a Prosecutor to prosecute:
 - (a) any specific offence(s) under an Enactment or Enactments; or
 - (b) all offences or violations under any specific Enactment.

11. RESPONSIBILITIES OF PROSECUTOR

- 11.1. Subject to subsection 10.2 of this By-law, each Prosecutor is authorized to represent the Nation before all Courts in relation to the prosecution of all offences of Enactments that are brought before a Court.

- 11.2. A Prosecutor shall conduct the prosecution of offences or Enactments that are delegated to the Prosecutor by the Chief Prosecution and shall be subject to the direction and supervision of the Chief Prosecution.
- 11.3. Subject to the directions of the Chief Prosecutor, the Council, or to the alternative dispute processes set out in any Enactment, including those that engage *Aiskapimohkiiks*, each Prosecutor is authorized to:
- (a) examine all relevant information, examinations, depositions, recognizances, inquisitions and papers connected with offences of Enactments and, following the examination, to approve for prosecution any offence of any Enactment that the Prosecutor considers appropriate and, where necessary, cause such additional charges to be further investigated, and additional evidence to be collected, and set out the process to compel the attendance of witnesses and the production of documents, so that prosecutions may not be delayed unnecessarily or fail through want of proof;
 - (b) conduct the prosecution of offences of any Enactment;
 - (c) supervise prosecutions of offences of enactments that are being initiated or conducted by individuals who are not Prosecutors and, if the interests of justice require, intervene and conduct those prosecutions if so requested in writing by a Justice who, in the request, states the particular case, advise and instruct such Justice with respect to matters regarding the particulars of an Enactment or other matters brought before the Justice for preliminary investigation or for adjudication; and
 - (d) generally, assist in the administration of justice on the Reserve and for the Nation and, without restricting the generality of the foregoing, assume, perform, and discharge, all duties and services that:
 - (i) are required respecting, or that arise out of or in connection with, or with respect to, the enforcement of, or prosecution of an offence of an Enactment,
 - (ii) might be performed by the Chief Prosecutor,
 - (iii) the Council prescribes as part of the duties of a Prosecutor; or
 - (iv) the assumption, performance, or discharge of, which may be deemed necessary or advisable by the Chief Prosecutor.

12. RESTRICTIONS ON THE RIGHT OF PROSECUTOR TO ACT

- 12.1. A Prosecutor shall not:

- (a) by themselves or their partner in legal practice, act or be directly or indirectly concerned as legal counsel or solicitor for any Person in respect of a charge against such Person relating to an offence of an Enactment;
- (b) act in a disorderly or inappropriate manner;
- (c) act in a manner that would be harmful or is likely to discredit the reputation of the Siksika Nation Prosecution Office or the Nation or negatively impact, or be contrary to, the exercise, recognition, or assertion of Aboriginal Rights of Siksika Nation or any other Indigenous Group;
- (d) withhold or suppress a complaint against, or a report made about, a Prosecutor;
- (e) neglect, without a lawful excuse, to perform their duties promptly or diligently;
- (f) willfully or negligently make or sign a false, misleading, or inaccurate statement in any official document or record;
- (g) without lawful excuse:
 - (i) destroy, mutilate, or conceal an official document or record, or
 - (ii) alter or erase an entry in any official document or record;
- (h) without lawful excuse, use their official position for personal advantage or another Person's personal advantage;
- (i) exercise authority when it is unlawful or unnecessary to do so; and
- (j) apply excessive or otherwise inappropriate force in defence against force first used against the Prosecutor or another Person.

12.2. In carrying out their duties under this By-Law, a Prosecutor shall not violate:

- (a) an act or regulation of the Parliament of Canada;
- (b) an act or regulation of the Legislature of Alberta; and
- (c) any Enactment, Band Council Resolution, or directive of Council.

13. AISKAPIMOHKIIKS

13.1. Where an Enactment provides for a dispute relating to an offence of that Enactment to be referred to *Aiskapimohkiiks* for resolution, if the Person charged with such an offence elects to have the matter referred to *Aiskapimohkiiks* for resolution, no Prosecutor shall proceed to approve the prosecution of the offence before a Court unless subsection 13.2 of this By-law applies.

- 13.2. Where an offence is directed to *Aiskapimohkiiks*, but is not accepted by, or deemed ineligible for resolution by way of *Aiskapimohkiiks*, a Prosecutor may proceed to approve and prosecute the offence before a Court.
- 13.3. Where an offence is resolved through *Aiskapimohkiiks*, but as a term of that resolution the Person charged with the offence is required to comply with specified terms or conditions for the offence to be withdrawn, and the Person so charged fails to comply with the terms and conditions specified by *Aiskapimohkiiks*, a Prosecutor may proceed to approve and prosecute the offence before a Court.

PART IV – APPOINTMENT OF *AD HOC* PROSECUTORS

14. *AD HOC* PROSECUTORS

- 14.1. If the Chief Prosecutor considers it is in the public interest of the Nation, they may appoint a lawyer, who is not employed at the Siksika Nation Prosecution Office, as an *Ad Hoc* Prosecutor to advise on or prosecute a specific offence of an Enactment.
- 14.2. No Person shall be appointed as an *Ad Hoc* Prosecutor if such Person is not a member in good standing of the Law Society of Alberta.
- 14.3. An *Ad Hoc* Prosecutor must carry out their mandate, as set out in writing by the Chief Prosecutor, and in particular must:
 - (a) examine all relevant information and documents and report to the Chief Prosecutor with respect to the approval and conduct of any specific prosecution;
 - (b) carry out any other responsibilities respecting the initiation and conduct of a specific prosecution; and
 - (c) not act in a manner that is contrary to this By-law or any other Enactment.
- 14.4. Before the Chief Prosecutor appoints an *Ad Hoc* Prosecutor, the Chief Prosecutor must provide the Council with fourteen (14) days notice, in writing:
 - (a) that an *Ad Hoc* Prosecutor is being proposed for appointment;
 - (b) the name of the proposed *Ad Hoc* Prosecutor;
 - (c) the reason for the appointment of the *Ad Hoc* Prosecutor; and
 - (d) the proposed mandate, as contemplated under subsection 14.3 of this By-law, for the *Ad Hoc* Prosecutor.
- 14.5. The Council may, in writing:

- (a) deny the appointment of the *Ad Hoc* Prosecutor;
 - (b) request further particulars or information regarding the proposed *Ad Hoc* Prosecutor;
 - (c) request further particulars or information regarding the reason for the appointment of the *Ad Hoc* Prosecutor;
 - (d) approve the appointment of the *Ad Hoc* Prosecutor with a directive setting out specific terms or limitations as determined in the discretion of the Council; or
 - (e) approve the appointment of the *Ad Hoc* Prosecutor without any limitations or terms, other than those set out in the mandate as proposed by the Chief Prosecutor.
- 14.6. If, after an *Ad Hoc* Prosecutor is appointed, the Chief Prosecutor or Council gives a direction to the *Ad Hoc* Prosecutor in respect of any matter within the mandate of the *Ad Hoc* Prosecutor, that direction must be given in writing and, if by the Council, authorized by Band Council Resolution.
- 14.7. Subject to the mandate given to the *Ad Hoc* Prosecutor by the Chief Prosecutor or to a directive referred to in subsections 14.5(d) or 14.6 of this By-law, the decision of an *Ad Hoc* Prosecutor with respect to any matter within his or her mandate is final.

PART VII – DIRECTIONS FROM COUNCIL

15. DIRECTIONS FROM COUNCIL ON SPECIFIC PROSECUTIONS

- 15.1. If the Council gives the Siksika Nation Prosecution Office a direction with respect to the approval or conduct of any specific prosecution or appeal, that direction must be:
- (a) given in writing to the Chief Prosecutor; and
 - (b) authorized by a Band Council Resolution.

16. POLICIES AUTHORIZED BY COUNCIL

- 16.1. The Siksika Nation Prosecution Office may create written policies and guidelines respecting:
- (a) the ethical conduct of Prosecutors;
 - (b) the decision to prosecute offences of Enactments;
 - (c) practice protocols respecting disclosure of relevant materials to Persons charged with offences of Enactments;

- (d) practice protocols respecting appeals of Court decisions respecting offences charged under any Enactment;
 - (e) reporting and record keeping and retention in relation to offences charged under any Enactment; and
 - (f) any other matter that is relevant to a Prosecutor's ability to carry out the responsibilities under this By-law.
- 16.2. No policy or guideline created by the Siksika Nation Prosecution Office is to be given force or effect until it is approved by the Council by way of Band Council Resolution.

PART VIII – COMPLAINTS, DISCIPLINE, AND APPEALS

17. COMPLAINTS

- 17.1. In this Part, "**Prosecutor**" includes an *Ad Hoc* Prosecutor and the Chief Prosecutor.
- 17.2. Any complaint concerning the alleged misuse of power by a Prosecutor shall be dealt with in accordance with the provisions set out in this Part.

18. RECEIPT OF COMPLAINT

- 18.1. All complaints shall be in writing and any complaints received verbally shall be confirmed in writing.
- 18.2. Upon receipt of any complaint, it shall immediately be forwarded to the Chief Prosecutor.
- 18.3. The Chief Prosecutor shall provide written acknowledgement of the complaint to the complainant and to the Prosecutor against whom the complaint was made within thirty (30) days.

19. INVESTIGATION

- 19.1. The Chief Prosecutor shall investigate the complaint.
- 19.2. The Prosecutor who is the subject of the complaint shall be given the opportunity to make a full response to the allegations making up the complaint, and such response shall be in writing and directed to Chief Prosecutor.
- 19.3. The Chief Prosecutor may require either the person making the complaint, the Prosecutor who is the subject of the complaint, or both, to provide any additional information that the Chief Prosecutor believes to be of relevance to the complaint.
- 19.4. Upon review of the response of the Prosecutor and any other information the Chief Prosecutor believes to be relevant in the circumstances, the Chief Prosecutor shall:

- (a) dismiss the complaint as unfounded;
 - (b) dismiss the complaint as unsubstantiated; or
 - (c) find that there has been a misuse of power by the Prosecutor.
- 19.5. If the Chief Prosecutor determines that a misuse of power has occurred, corrective disciplinary procedures pursuant to subsection 20.1 of this By-law shall be commenced.
- 19.6. The Chief Prosecutor may resolve complaints informally, arriving at a solution that is satisfactory to the complainant and the Prosecutor against whom the complaint was directed.
- 19.7. The Chief Prosecutor must provide a copy of any complaint made against a Prosecutor to the Council, within five (5) business days of receipt of the complaint.
- 19.8. Within five (5) business days of making a decision respecting a complaint, pursuant to subsection 19.4 of this By-Law, the Chief Prosecutor must provide a copy of this decision, and the reasons for the decisions, to the person who made the complaint, the Prosecutor who is the subject of the complaint, and the Council.
- 19.9. Where a complaint has been made as against the Chief Prosecutor, the Chief Prosecutor shall appoint an *Ad Hoc* Prosecutor, pursuant to section 14 of this By-Law, for the sole purpose of carrying out the duties and role of the Chief Prosecutor as set out in subsections 19.1 through 19.8 of this By-Law.

20. DISCIPLINARY ACTION

- 20.1. If it has been determined that a misuse of power has been committed by a Prosecutor, any one of the following measures may be taken by the Chief Prosecutor:
- (a) a reprimand of the Prosecutor;
 - (b) a suspension of the Prosecutor from duties as a Prosecutor for a period of time as deemed appropriate by the Chief Prosecutor; or
 - (c) termination of the appointment of the Prosecutor.
- 20.2. Where it has been determined that a misuse of power has been committed by the Chief Prosecutor, the *Ad Hoc* Prosecutor who has made such a determination shall direct the matter to Council for Council to determine the appropriate disciplinary measure under section 20.1 that should be imposed upon the Chief Prosecutor.

21. APPEALS

- 21.1. If the complainant is a registered Siksika Nation Member or entitled to be registered as a Siksika Nation Member in accordance with the Siksika Nation Band Membership Code, and wishes to appeal the decision of the Chief Prosecutor, the appeal shall be delivered

to the Appeals Committee within thirty (30) days of the date of receipt of notice of the results of the investigation.

- 21.2. Within sixty (60) days from the date of the receipt of the notice of appeal, as provided for in subsection 21.1 of this By-law, the Appeals Committee shall review the complaint, the decision of the Chief Prosecutor, speak to Person(s) involved as deemed necessary by the Appeals Committee, and review any other related documents associated with the complaint.
- 21.3. The Appeals Committee, in considering the appeal, may:
 - (a) confirm the decision of the Chief Prosecutor;
 - (b) reverse the decision of the Chief Prosecutor; or
 - (c) vary the decision of the Chief Prosecutor by imposing disciplinary action pursuant to subsection 19.04 of this By-law that the Appeals Committee deems as appropriate in the circumstances.
- 21.4. The Appeals Committee shall, within sixty (60) days from the date of receipt of the notice of appeal, as provided for in subsection 21.1 of this By-law, notify the complainant and the Prosecutor, in writing as to the results of the appeal. The decision of the Appeals Committee regarding the appeal is final.

PART IX – GENERAL

22. LIMITATION OF LIABILITY

- 22.1. No action or other proceeding for damages shall be instituted against the Siksika Nation Prosecution Office, a Prosecutor, any employee of the Siksika Nation Prosecution Office, or any Person acting on behalf of the Siksika Nation Prosecution Office for any act done in good faith in the performance or intended performance of any duty under this By-law or in the exercise of 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.

23. MISCELLANEOUS

- 23.1. 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.
- 23.2. Where this By-Law refers to another Enactment, it includes reference to Enactment that may be varied, modified or replaced from time to time.

23.3. 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.

23.4. 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.

24. AMENDMENT

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

25. EFFECTIVE DATE

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

THIS BY-LAW IS HEREBY passed at a duly convened meeting of the Council this _____ day of _____, 2023.

Niokkskaistamik
Chief Ouray Crowfoot

Piitaisa'ksinam
Councillor Samuel Crowfoot

Councillor Owen Cranebear

Asinaipoka
Councillor Reuben Breaker

Kistsiponista
Councillor Kendall Panther Bone

Councillor Candace Backfat

Councillor Strater Crowfoot

Councillor Hector Winnipeg

Councillor Marsha Wolf Collar

Ksistsikomia'ki
Councillor Tracy McHugh

Councillor Lou Ann Solway

Kanaikito
Councillor Ike Solway

Councillor Carlin Black Rabbit