

BRIEFING NOTE

To:	Ermineskin Cree Nation Attention: Chief and Council
From:	MLT Aikins LLP
Date:	April 22, 2020
Re:	Summary of the Draft Emergency Measures and Public Access Law

I. Introduction

On March 20, 2020, the Ermineskin Cree Nation's (the "**Nation**") Chief and Council (collectively, "**Council**") declared a state of emergency due to pandemic COVID-19. Council is proposing to enact the *Ermineskin Cree Nation Emergency Measures and Public Access Law* pursuant to the *Ermineskin Tribal System Constitution* and the Nation's inherent rights recognized under section 35 of the *Constitution Act, 1982* and the *United Nations Declaration on the rights of Indigenous Peoples* (hereafter referred to as the "**Emergency Measures Law**" or the "**Law**"). The Law's stated purpose is to secure the health and safety of individuals attending at or residing on the Nation's reserve lands, to encourage the observation of law and order and to prevent disorderly conduct and nuisances on its reserve lands.

As discussed further below, the Law establishes a curfew on reserve and prohibits a person from being in a public place on the reserve between certain hours. The Law establishes enforcement mechanisms for those found to be in contravention of the Law, including the imposition of fines, removal of non-residents from the reserve, and restriction or denial of residents from residing on reserve or entering on the reserve.

II. Summary

Curfew

- The Emergency Measures Law prohibits a person from being in a public place on the reserve between the hours of 10:00 p.m. MST and 6:00 a.m. MST (the "**Curfew Period**").
- This prohibition does not apply to a person that is travelling to or from their place of employment or performing an essential service (such as the work performed by first responders, health care workers, critical infrastructure workers, and workers who are essential to supply critical goods such as food and medicines).
- This prohibition applies to any person who is ordinarily resident on the Nation's reserve (a "**Resident**") and any non-Resident who is on the Nation's reserve.

Enforcement

- If a person is in a public place during the Curfew Period, a peace officer may:
 - in the case of a Resident, direct the person to immediately return to their residence, or
 - in the case of a non-Resident, direct the person to immediately vacate the reserve.
- If the person does not comply with the peace officer, then the peace officer may escort such person to their residence, in the case of a Resident, or off the reserve, in the case of a non-Resident.
- A person who contravenes the Emergency Measures Law is guilty of an offence and liable on summary conviction to a fine of not more than one thousand (\$1,000.00) dollars or to imprisonment for a term of not more than thirty (30) days, or both.
- A peace officer may also issue a voluntary payment ticket to anyone who has violated the Law.
- All fines imposed under the Law belong to the Nation, and will be used for purposes to advance the community interests of the Nation as determined by the Council by way of a BCR.
- Where an Ermineskin citizen does not pay a fine that has been issued under the Law, the Nation may withhold that amount from that citizen's per capita distribution or other payments made by the Nation to the citizen from time to time.
- If a Resident has been convicted of an offence under the Law and Council considers it in the best interests of the Nation, its citizens and the Residents, or otherwise in the public interest to do so, Council may decide to (in each case, a "**Residency Decision**"):
 - restrict or deny the right of the Resident to reside on the reserve in a dwelling owned by the Nation;
 - otherwise restrict or deny the right of the Resident to reside on the reserve; or
 - restrict or deny the right of the Resident to enter onto, and to be on, the reserve.

Restorative Justice Option

- Council shall appoint a three-person committee to hear restorative justice referrals under the Law (the "**Committee**").
- The Committee will hear referrals on any of the following matters:
 - If a person has been charged with, but not yet convicted of, an offence under the Law; and
 - If a Resident receives notice of a Residency Decision by Council and wishes to appeal the decision.

- The Committee may, in its sole discretion, confirm, reverse or vary the charge, fine or Residency Decision (whichever applies in the circumstances). In any case, the committee must serve the person charged with the offence, or the person who is subject to the Residency Decision, and Council with a written copy of its decision and the reasons for that decision.

