

JULY 11, 2018



BEAVER FIRST NATION

DEBT RECOVERY POLICY

BEAVER FIRST NATION
BOX 270 HIGH LEVEL, ALBERTA T0H 1Z0
780-927-3544

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Section 1: Definitions

"Agency" means any board, tribunal, commission, committee of the Nation including a society or a non-profit corporation but it does not include a corporation or any type of business structure that is operated for the purpose of making a profit, even if controlled by the Nation;

"Asset" means any type or kind of equipment, machinery, vehicle, tool, or instrument;

"Band Owned Entity Payments" means payments from Band owned Entities for dividends or otherwise;

"Claim Settlement Funds" means any funds payable to a Member from the settlement of a legal claim, either through the Specific Claims process or litigation, by the Nation;

"Council" means the duly elected Chief and Council of the Nation;

"Debt" means an amount of money owing to the Nation which includes, but is not limited to, rental arrears, utility arrears, outstanding cash loans, individual housing subsidies that have been recovered by Indigenous Services Canada, Crown-Indigenous Relations and Northern Affairs Canada, or applicable government agency, amounts in default that the Nation has had to pay on behalf of a Member, and amounts owing to the Nation for damaging or losing a Nation Asset, but "Debt" does not include Employee payroll advances;

"Debt Repayment Agreement" means an agreement between a Member and the Nation setting out the frequency and amount of repayment of a Debt;

"Employee" means all categories of Nation staff, including full-time, part-time, casual, temporary and seasonal employees and excludes contractors;

"Entity" means a corporation, partnership, joint venture or any unincorporated association or organization

"Member" means a person whose name appears on the Band List of the Nation maintained by Indigenous and Northern Affairs Canada, or its successor, or on a list maintained by the Nation, should the Nation adopt its own membership code pursuant to section 10(1) of the *Indian Act*;

"Nation" or **"BFN"** means the Beaver First Nation;

"Nation Asset" means any Asset owned (partially or fully), leased, or possessed by the Nation;

“Payable Amounts” means any or a combination of: Employee wages; tobacco tax payments; contractor payments; honoraria; lease payments; Claim Settlement Funds; expense reimbursements; basic needs allowance; and/or living allowance payments;

“Policy” means a program of actions adopted by the Council and the principles upon which they are based;

“Reserve” means IR 164, IR 164A and any other lands for which Indian Reserve status has been sought further to the federal Policy on Additions to Reserve/Reserve Creation, being Section 10 of INAC’s Land Management Manual; and

“Resolution” means a validly enacted Band Council Resolution by the Council.

Section 2: Introduction

Purpose

- 2.1 The purpose of this Debt Recovery Policy is to:
 - a) ensure that Nation funds are managed responsibly;
 - b) where Debts are owing to the Nation, ensure that reasonable steps are taken for their collection; and
 - c) to provide clear direction on when and how Debts are to be recovered.

- 2.2 Nothing in this Debt Recovery Policy shall abrogate or derogate from BFN's inherent right to self-governance and self-determination, Treaty 8 rights, or any of BFN's other rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

Content

- 2.3 This Debt Recovery Policy contains operational policies and procedures that have been approved and adopted by Council. Operational policies and procedures assist Council and the Nation Administrator in managing the ongoing operations of the Nation. Operational policies and procedures are created and updated at the discretion of Council. It is not necessary for operational policies and procedures to be ratified by the Members as they are not laws.

Interpretation and Severability

- 2.4 In this Debt Recovery Policy, words in the singular include the plural and *vice versa*, words importing gender include all genders, and a reference to any Act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule or regulation or provision enacted in substitution therefore or amendment thereof.

- 2.5 The provisions of this Debt Recovery Policy shall be deemed severable. If any provision of these Policies and Procedures shall be held unenforceable by any court of competent jurisdiction, such provision shall be modified to the extent necessary to be enforceable, and the remaining provisions shall remain in full force and effect.

Application

- 2.6 This Debt Recovery Policy applies to all Debts owed by Members. Employee payroll advances are governed by the Personnel Policies and Procedures.

Amounts owing to the Nation by Entities are governed by the Financial Policies and Procedures.

Section 3: Debts Owning to the Nation

- 3.1 Unless authorized by Resolution, the Nation does not provide loans or loan guarantees to Members for any reason.
- 3.2 Any Debts owed by Members shall be collected and repaid in accordance with this Debt Recovery Policy.
- 3.3 Members who owe Debts are not to be eligible for further funding opportunities offered through the Nation until their Debts have been paid in full.
- 3.4 Council may, by Resolution, set the amount of interest to be charged on Debts.
- 3.5 The Finance Department is responsible for maintaining a list of all Members who have Debts and keeping records of all Debt balances.

Section 4: Repayment of Debts

- 4.1 Immediately following the adoption of this Debt Recovery Policy, Members with Debts owing, will be advised of the amount owing and that action will be taken according to this Debt Recovery Policy.
- 4.2 After advising a Member in accordance with section 4.1, the Finance Director must seek, or cause to be sought, a Repayment of Debt Agreement with that Member. A copy of the Repayment of Debt Agreement is attached as an Appendix to this Debt Recovery Policy.
- 4.3 A Repayment of Debt Agreement for Debt under \$1,000.00 must provide for full payment of the Debt within 12 months, unless otherwise approved by Resolution.
- 4.4 A Repayment of Debt Agreement for Debt over \$1,000.00 must provide for full payment of the Debt within 24 months, unless otherwise approved by Resolution.
- 4.5 Repayment of Debt Agreements will be held by the Finance Department and payments will be collected and/or deductions will be made by the Finance Department according to the agreements.
- 4.6 Where there is no Repayment of Debt Agreement in effect, or where a Repayment of Debt Agreement has been terminated in accordance with the terms of the agreement, Debts will be recovered from one or a combination of: Payable Amounts; Claim Settlement Funds; Band Owned Entity Payments; utilization of a credit bureau; and/or initiation of legal action.
- 4.7 Debts that are to be recovered from Claim Settlement Funds and/or Band Owned Entity Payments will be deducted at a rate of 100 percent.
- 4.8 Debts that are to be recovered from other Payable Amounts will be deducted according to the following scale:

Payable Amount(s)	\$0 - \$1,500	\$1,501 - \$4,000	\$4,001 and up	\$10,000 and up
Deductions	10%	15%	20%	
	10%	20%	40%	100%

- 4.9 Council may, by Resolution, forgive any amount of Debt owing by a Member

APPENDIX 1: REPAYMENT OF DEBT AGREEMENT

Member Name: _____

Account Number: _____

Amount of Debt: _____

REPAYMENT OF DEBT AGREEMENT

Between

**BEAVER FIRST NATION
(the "Nation")**

And

(the "Member")

WHEREAS:

The Member has outstanding Debt as defined in the Debt Recovery Policy owing to the Nation; and

The Member is desirous of paying the outstanding Debt through a repayment schedule to the Nation.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Total Debt

- 1.1 The Member hereby acknowledges the amount owing to the Nation on account as at _____, _____, 20__ of \$_____ (the "Debt").
(Date)

2. Account Statements

- 2.1 The Nation will issue an account statement to the Member monthly.
- 2.2 An account statement will contain the total amount of Debt owing to the Nation and the total amount of payment made by the Member in the preceding month.

3. Repayment

- 3.1 The Member agrees to pay the Nation \$_____ per month plus interest calculated at the rate of ____% annually. The monthly payment must be made on or before the ____ day of the month.
- 3.2 In addition to the amount specified in section 3.1, the Member may, at any time, pay to the Nation any percentage of the Debt owing, up to 100 percent.

4. Termination of Repayment of Debt Agreement

- 4.1 The Member agrees that if it fails to make the repayment in accordance with section 2, this constitutes grounds for the immediate termination of this Repayment of Debt Agreement.
- 4.2 The Member understands that if this Repayment of Debt Agreement is terminated, the Nation may take corrective action as outlined in the Debt Recovery Policy.

5. General

- 5.1 This Repayment of Debt Agreement contains the entire agreement between the parties.
- 5.2 The Member acknowledges that they have reviewed this Repayment of Debt Agreement and have been provided with an opportunity to seek independent legal advice.

IN WITNESS WHEREOF the parties have executed this Repayment of Debt Agreement on at _____, Alberta, as of _____, _____, 20__.

SIGNED by on behalf of Beaver)
First Nation in the presence of:)

Witness Signature)

BEAVER FIRST NATION

Print Name)

Print Name

Address)

SIGNED by)
_____ in the presence of:)

Witness Signature)

Print Name)

MEMBER

Address)

Print Name