

July 6, 2026

via Email: [REDACTED]

Fisher River Cree Nation Band
[REDACTED]

Dear Chief and Council:

RE: *By-Law No. 2004-01 of the Fisher River Cree Nation Band: A By-Law to Prohibit Illegal Drugs*

Charter Advocates Canada is a civil liberties organization committed to defending the constitutional and civil rights of all Canadians, including members of Fisher River Cree Nation ("FRCN"). We write in relation to *By-Law No. 2004-01 of the Fisher River Cree Nation Band: A By-Law to Prohibit Illegal Drugs* (the "*By-Law*").

In particular, we inform you that the *By-Law* provisions relating to banishment are likely unlawful under the principles of administrative law, and unconstitutional under the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

We urge you to immediately repeal the *By-Law* or amend it to include procedural and *Charter* safeguards, as required by law.

BACKGROUND

Section 3.00 of the *By-Law* lists prohibited activities that may result in banishment:

- a) Possession, use, sale, barter, supply or manufacture of an illegal drug on FRCN lands;
- b) Harboursing of an individual who has been previously removed or banished under the *By-Law*.

Pursuant to section 9.06, the minimum term of banishment is 5 years, as that is how long a person must wait in order to apply for readmission to FRCN lands.

Readmission is at Council's sole discretion. Absent such an application, a banishment order may endure indefinitely.

Further, the *By-Law* does not provide for any prior notice or a chance to be heard prior to Council making an initial banishment or removal decision.

The *By-Law* applies equally to FRCN members and non-members alike.

THE BY-LAW IS ULTRA VIRES

Sections 81 and 85.1 of the *Indian Act*¹ permit First Nation bands, including FRCN, to enact bylaws concerning a variety of matters, including for law and order and the presence of intoxicants on reserve lands. However, neither sections 81, 85.1 nor any other provision of the *Indian Act* permits FRCN to enact bylaws which empower FRCN's Chief and Council to unilaterally banish band members effectively for a minimum of 5 years. Nor is FRCN authorized to do so without affording band members a sufficient degree of procedural fairness, as described below. Further, no government, including FRCN, is authorized to enact bylaws which offend the *Charter*, as discussed further below.

BANISHMENT UNDER THE BY-LAW IS PROCEDURALLY UNFAIR

When a person's rights are affected by the decision of a public body, that person is entitled to adequate procedural fairness. The content of the duty of procedural fairness varies according to the impact the decision will have. When decisions will have serious effects on those affected, more stringent safeguards are required.²

Courts have described banishment as "an extreme measure" that is "justified only in exceptional cases".³ The Nunavut Court of Appeal recently explained:

It may have significant consequences on the offender – who may be scratching for a place to live, with no job and few connections to family or friends – as well as significant consequences on the communities affected. Where banishment as a term of sentence is considered, the accused is entitled to make submissions or *lead evidence* if he chooses.⁴

The *By-Law* does not provide for any prior notice to an affected person, or a chance to be heard, prior to Council making an initial banishment or removal decision.

Banishment or removal orders issued without additional procedural safeguards, including a hearing before a neutral decision maker with the right to lead evidence, fail to provide adequate procedural fairness to affected members.

¹ RSC 1985, c I-5 at ss [81](#), [85.1](#).

² *Baker v Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#) at para 25.

³ *R v GN*, [2019 NUCA 5 \[GN\]](#) at paras 17-18.

⁴ *GN*, *supra* at para 18 [emphasis in original].

BANISHMENT UNDER THE *BY-LAW* IS UNCONSTITUTIONAL

All government actors, including First Nations, are bound by the *Charter* pursuant to subsection 32(1)(a) of the *Constitution Act, 1982*.⁵ FRCN bylaws may thus be struck down if they violate *Charter* rights or freedoms.

Banishment under the *By-Law* infringes section 6(1) of the *Charter*

Section 6(1) of the *Charter* provides that Canadian citizens have the right to enter, remain in, and leave Canada. Section 6(1) supports a general right of mobility, both within and across provincial borders, without state restraint or a requirement for state authorization.⁶

Banishment or removal limits members' ability to freely move within, or even enter, FRCN territory. Under the *Bylaw*, this restriction could be of an indefinite duration and would be in place for a minimum of 5 years before affected members have any right to reconsideration. This limits members' ability to move freely within a particular territorial catchment in a non-fleeting, non-trivial manner.⁷ Such banishment or removal thus infringes section 6(1) of the *Charter*.

Banishment under the *By-Law* infringes section 7 of the *Charter*

Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person, and not to be deprived thereof except in accordance with the principles of fundamental justice.

The liberty interest in section 7 protects individuals from state-imposed physical restraint, as well as their ability to make inherently private choices that go to the core of what it means to enjoy individual dignity and independence.⁸ Security of the person, *inter alia*, protects against state-imposed psychological harms to the individual.⁹

Members who are subject to banishment or removal under the *By-Law* are barred from entering FRCN territory. This would apply to attending familial, work, administrative, and cultural sites. They are effectively shunned from the life of their communities and prevented from exercising their treaty and other Aboriginal rights that are their birthright and form integral parts of their heritage and identity. Such banishment or removal deprives affected members of their liberty and may cause these members psychological harm, impairing their security of the person.

Further, banishment for an effective minimum of 5 years in all cases renders the *By-Law* arbitrary and grossly disproportionate.

⁵ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, [1982 c 11](#), including the *Canadian Charter of Rights and Freedoms*. See also *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at paras 57-58.

⁶ *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#) [Taylor] at para 166.

⁷ *Taylor*, *supra* at para 68.

⁸ *R v Heywood*, [1994 CanLII 34 \(SCC\)](#) at p 789; *Godbout v Longueuil (City)*, [1997 CanLII 335 \(SCC\)](#) at para 66.

⁹ *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999 CanLII 653 \(SCC\)](#) at paras 58-60.

Therefore, banishment under the *By-Law* infringes the section 7 *Charter* rights of affected members in a manner not in accordance with the principles of fundamental justice.

Banishment under the *By-Law* infringes section 12 of the *Charter*

Section 12 of the *Charter* provides that everyone has the right not to be subject to any cruel and unusual punishment or treatment.

A state-imposed treatment or punishment is cruel and unusual if it is grossly disproportionate to a judicially-determined fit treatment or punishment for a given instance of misconduct.¹⁰ Banishment or removal orders under the *By-Law* have no inherent end point and remain in place for a minimum of 5 years. This is effectively a 5-year mandatory minimum sentence, which is grossly disproportionate to much of the prohibited conduct in the *By-Law* that attracts banishment. Accordingly, banishment or removal under the *By-Law* constitutes cruel and unusual treatment or punishment and is contrary to section 12 of the *Charter*.

CONCLUSION

Like any other level of government in Canada, First Nation band councils, including FRCN, are constrained by the rule of law and the *Charter*. The authority granted to Council by the *By-Law* to enact banishment orders is unlawful, procedurally unfair, and unconstitutional.

We therefore request that you immediately amend the *By-Law* to include robust procedural and constitutional safeguards as required by law.

Failure to do so may result in legal action against you without further notice.

Sincerely,

CHARTER ADVOCATES CANADA

Marty Moore, J.D.
Litigation Director

¹⁰ *R v Nur*, 2015 SCC 15 at para 39.