

SAWRIDGE FIRST NATION

MEMBER LOAN ACT

**Introduced at a General Assembly Held – October 28, 2023
Pursuant to Provisions of the Sawridge Constitution**

**First Reading – October 28, 2023
Second Reading – November 18, 2023
Third Reading – December 9, 2023**

Came in to Force – December 9, 2023

Member Loan Act

The Sawridge General Assembly enacts as follows:

Title

1. This Act may be cited as “the Sawridge Member Loan Act”.

Purpose and Application

2. (1) The purpose of this Act is:
 - a. to provide for rules and procedures for the issuance, administration and collection of Loans made by the First Nation to Members of the First Nation; and
 - b. to provide a process for reconciling disputes between Members and the First Nation with respect to loans made to those Members.
- (2) This Act shall apply to all outstanding and future Loans made by the First Nation to Members.

Definitions

3. In this act,

“Correction” means a correction to the First Nations records and, if the correction results in a credit owing to a Member, the payment of that credit to the Member;

“Demand Loan” means a Loan, given before this Act came into force, which is payable on demand with no other requirement for ongoing payments by the borrower;

“Entitlement” means any amount that a Member is entitled to receive from the First Nation, including but not restricted to wages, salary, Christmas bonuses, Assembly Payments, Per Capita Distributions, Dividends, Honoraria or any other payment;

“in good standing” with reference to debts owed to the First Nation means that no payments due to the First Nation or a First Nation corporation, as defined by regulation, pursuant to the agreement through which the debt was incurred, may be more than 90 days overdue on the date a certificate of good

standing is issued for purposes of eligibility for nomination. Where no payment terms are specified in a loan, the loan is due upon demand. A payment on a demand loan is not due until demanded. (as defined in the *Elections Act*)

“Other Indebtedness” means an obligation to pay money, which is not a Loan, but has accrued due from a Member to the First Nation otherwise than through a loan agreement, including but not limited to:

- (a) through the provision of goods and services by the First Nation to the Member for which payment is expected and anticipated;
- (b) through loss or damage to First Nation property that is caused by a Member; or
- (c) because the First Nation incurred an obligation or made a payment on behalf of a Member for which it was expected and anticipated that the Member would reimburse the First Nation;

“Loan” means a form of indebtedness where the First Nation has agreed to lend money to a Member and the Member has agreed to repay that money to the First Nation and based on that agreement the First Nation has advanced money to the Member, or to any person or entity at the direction of the member. The loan agreement may be express or implied, written or verbal. Loan includes a Demand Loan and Payment Loan;

“Member” means a Member as that term is defined in the Sawridge Constitution.

“Payment Loan” means a Loan where the Loan agreement requires regular periodic payments or authorizes regular periodic deductions from an Entitlement to be applied to interest and in reduction of the principle amount of the Loan.

“Record” means a Member’s written request for dispute resolution, the First Nation administration response, the First Nation Administration report to Council, the Council’s response, the Member’s request for binding arbitration, the Member’s selection of the arbitrator and any additional documents provided by the member with such request.

Council’s Role

4. In accordance with the Sawridge Constitution, all Loans by the First Nation to Members must be approved by the Council at a duly convened Council meeting and must be in accordance with this Law. For the purposes of this Act, a matter shall be deemed to have been approved at a duly convened Council meeting if:
 - a. notice of the meeting had been given to all members of the Council as required by the Constitution, or Notice of the meeting was waived by the entire Council as permitted pursuant to the Constitution, and a quorum of the Council was present at the meeting where a majority of those present approved the matter; or
 - b. the entire Council provides their approval either electronically, or in writing with respect to a matter.

Granting of Loans

5. The Council may only grant a Loan to a Member if all of the following conditions are met:
 - a. The First Nation has sufficient funds available for the purpose of making the Loan such that the First Nation will be able to reasonably meet its other financial obligations during the term of the Loan;
 - b. The Member has paid off all past loans within a reasonable period of time and has no outstanding loans or Other Indebtedness to the First Nation;
 - c. There is a reasonable expectation that the Loan will be repaid within a reasonable period of time (not to exceed 2 years);
 - d. The Member requires the Loan to meet an extraordinary need in unforeseen circumstances and has no other means to meet that need;

- e. The Member has made a written request for the Loan to the Council;
 - f. The Member must sign a Loan Agreement and a promissory note with respect to the Loan prior to its advance; and
 - g. The Member must be 18 years old or older.
6. Only a Member can request or receive a Loan for themselves. No other person may request or receive a Loan on behalf of any other person.
7. The Council shall not issue any new Demand Loans.
8. The Council's decision's with respect to the granting of Member Loans, including the denial of a Loan, the amount of a Loan and the terms of the Loan, may not be appealed.
9. The Council shall announce the amount of the Loan at the next session of the Assembly following the granting of the Loan. Any Member can request in writing from Council further details of the Loan, including the name of the borrower, after the Assembly.

Loan Terms

10. All loans granted by the Council after the passage of this Act will have the following terms:
- a. All Loans will be Payment Loans;
 - b. All Loans shall bear interest at the rate paid by Canada on the First Nation's Capital and Revenue Accounts held by Canada from time to time from the date which is one year after the advance of the Loan until it is repaid;
 - c. The Loan must be fully repaid within two years of its advance;
 - d. The Amount of the Loan shall not exceed the amount of the immediate need and in any event must not exceed \$5,000.
 - e. The Loan must have a reasonable repayment plan acceptable to the Council;

- f. Where the Member has failed to make one or more payments on the Loan as required in the repayment plan, the First Nation shall withhold from Entitlements otherwise payable to that Member an amount sufficient to make up those payments provided that the amount so deducted does not exceed:
 - i. in the case of an entitlement to wages or salary – 10% of the Entitlement; and
 - ii. in the case of any other Entitlement – 50% of the Entitlement;
11. Where a Member has not been paying their Payment Loan in accordance with the terms of their Payment Loan, has Other Indebtedness to the First Nation, or has an outstanding Demand Loan with no payment terms other than after demand, the First Nation shall withhold from all Entitlements otherwise payable to that Member the amount, not to exceed the balance of the indebtedness, of:
- (a) in the case of an Entitlement to wages or salary – 10% of the Entitlement; and
 - (b) in the case of any other Entitlement – 50% of the Entitlement.
12. A Member may agree to repay a Payment Loan in whole or in part from a particular Entitlement due to that Member. If such an Entitlement has enough certainty and is expected to occur within a reasonable amount of time, it may be considered by the Council as a reasonable repayment plan or part of a reasonable repayment plan. If that Entitlement does not occur within a reasonable time, then the Member shall provide equivalent other payments on the Payment Loan to repay it, or the Council may withhold payments from other Entitlements as set forth in paragraph 11.
13. Where a Member has more than one outstanding Loan from the First Nation or Other Indebtedness to the First Nation, all payments and withholdings shall be applied as follows:
- a. Where the Member has Other Indebtedness, a Demand Loan and/or a Payment Loan requiring payments, any payment shall be applied to the Payment Loan unless otherwise directed by the Member. Any

withholdings shall be applied firstly to make up any missed Payment(s), then to the Demand Loan and finally to Other Indebtedness.

- b. Where the Member has more than one Demand Loan, Payment Loan or Other Indebtedness, all payments attributable to that class of Loan shall be applied to the oldest loan or indebtedness of that class first.

14. Where in the opinion of the Council a Member is experiencing a period of extreme need, the Council may suspend or reduce any payment requirements or withholding requirements in such amounts and for such periods as the Council deems appropriate. Member's must request such suspension or reduction from the Council in advance of the date of required payment or entitlement. If the Council does not consider or approve the request prior to the date of required payment or the date the entitlement accrues, the request shall be considered denied.

Statements

15. The First Nation shall provide each Member with a "Statement" setting out their Loans, Other Indebtedness and the payments and deductions applied to their Loans and Other Indebtedness

- a. at least once each year; and
- b. at any time that a Member requests such a Statement, provided that such requests may not occur more than monthly;

but a failure to provide a Statement as required shall not relieve the Member of the requirement to pay the Loan or Other Indebtedness. Failure to include any Loan or Other Indebtedness in a Statement shall not relieve the Member of the requirement to pay such Loan or Other Indebtedness.

Foregiveness

16. The First Nation shall not foregive any Member Loans or Other Indebtedness, but may write off a Member Loan or Other Indebtedness if the Member has passed away and their estate is not able to repay it.

Dispute Resolution

Disputes

17. Where a Member believes that:

- a. they do not owe a particular Loan because they did not borrow it or do not owe a particular Other Indebtedness;
- b. the amount that the First Nation administration says that they owe is incorrect;
- c. that a deduction from an Entitlement should not have been made;
- d. that the Member did not have capacity to take the Loan or incur the Indebtedness; or
- e. that a payment or deduction was applied to the wrong Loan or Indebtedness;

the Member may seek to resolve the dispute under this Act.

Limitation

18. A Member may not seek to resolve a dispute under this Act if:

- a. the Loan or Other Indebtedness that is the subject of the dispute was repaid more than two years prior to the date that the Member commences the dispute resolution process;
- b. the payment or deduction that is the subject of the dispute occurred more than two years prior to the date that the Member commences the dispute resolution process;
- c. the dispute involves a lack of capacity to take a Loan or incur Other Indebtedness and it has been more than two years since the Member gained capacity, and learned of the Loan or Other Indebtedness or should have learned of the Loan or Other Indebtedness.

Dispute Resolution Commencement

19. A Member may commence dispute resolution under this Act, by providing a written Request to the First Nation's Principal Office setting out the details of the dispute, a request for a Correction, any relevant facts and the Member's contact information.

Response by First Nation

20. Upon receiving a written Request from a Member to resolve a dispute, the First Nation administration shall investigate the allegations set out in the Request and provide a written Response to the Member within 30 days advising of the Correction, if any, that has been made.

Report to Council

21. Where the response from the First Nation administration does not fully accept the Member's requested Correction, the First Nation administration shall provide a Report to the Council within 30 days of the date upon which it provided its response to the Member. The Report to Council shall include any supporting documentation. The Report to Council shall be sent to the Member at the same time that it is provided to Council.

Council Review

22. Within 60 days of receiving a Report from the First Nation administration with respect to a Member's written request, the Council shall provide a written Decision to the Member and the administration. The written Decision may:
 - a. accept the Member's requested Correction and direct the administration to make the Correction;
 - b. accept the First Nation Administration's response; or
 - c. provide a different response, with a different Correction, if any.

Member's Appeal of Council's Decision

23. Where a Member is not satisfied with the Decision provided by the Council, the Member may provide a written Appeal to the Council that the matter should be submitted to binding arbitration within 90 days after the Council's Decision was provided to the Member.

Selection of Arbitrator

24. (1) When the Council receives an Appeal for binding arbitration under this Act, the Council shall within 60 days provide the Member with the names of three proposed independent arbitrators and the rates that they charge.

(2) Within 30 days of receiving the Council's proposed arbitrators, the Member shall advise the Council of the name of the arbitrator that the Member wishes to

decide the matter and whether the Member wishes to proceed with a hearing or with no hearing.

Record

25. The Record shall include the following:
- a. The Member's complete Request;
 - b. The First Nation Administration's complete Response;
 - c. The First Nation Administrations' complete Report to Council;
 - d. The Council's complete Decision; and
 - e. The Member's complete Appeal;

Arbitration without a Hearing

26. Where a Member chooses arbitration without a hearing, the Council shall provide the Arbitrator with a full copy of the Record within 30 days of the Member's notice of the arbitrator. The arbitrator shall be asked to provide a decision within 60 days.

Arbitration with Hearing

27. Where a Member requests a hearing, the Council shall provide the Arbitrator with such request along with a full copy of the Record within 30 days of the Member's notice of the arbitrator. The arbitrator shall be asked to hold a hearing within 90 days. The hearing shall be held as follows:
- a. The hearing will be by telephone conference or video conference, unless all parties agree otherwise;
 - b. Each of the Member and the First Nation shall have a maximum of two hours to present their case and one hour for rebuttal and closing statements;
 - c. The hearing shall be held on a single day;

Arbitrators Decision is Final and Binding

28. The decision of the Arbitrator shall be final and binding on all parties. There shall be no appeal from the Arbitrator's decision and the Member may not commence a new dispute resolution regarding the same matter.

Costs

29. The costs of the Arbitration shall be shared equally between the Member and the First Nation, unless the Arbitrator otherwise orders.

Dispute Resolution Act

30. The *Dispute Resolution Act* of the Sawridge First Nation shall not apply in respect of Member Loans or any decision made with respect to Member Loans.

Regulations and Coming Into Force

Regulations

31. The Council may make regulations that the Council considers necessary for carrying out the purposes and provisions of the Act, including but not limited to regulations:
- a. Providing forms of Loan Agreement and Promissory Notes to be used for Member Loans.
 - b. Providing a form for Loan applications.
 - c. Setting out criteria that it will consider in deciding on whether or not to grant a Loan.

Coming into Forces

32. This Act shall come into force on the date it is passed by the Assembly.