

The Council of the Mississauga Band of Indians Band
of Indians at a meeting held Nov. 3 1958
makes the following by-law pursuant to paragraph (f) of section 80 of the
Indian Act.

By-law No. 2

A by-law to provide for the construction and maintenance of line
fences in the Tyendinaga Indian Reserve, in the Province
of Ontario.

1. (1) The holder of a certificate of possession or certificate of occupation of adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them.
(2) The holder of a certificate of possession or the holder of a certificate of occupation of unoccupied land which adjoins occupied land shall be liable to keep up and repair such proportion, and in that respect shall be in the same position as if his land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned.
2. Where a holder of a certificate of possession or a holder of a certificate of occupation desires fence viewers to view and arbitrate as to what portion of such fence each holder of a certificate of possession or of a certificate of occupation shall make, keep up and repair, or as to the condition of an existing line fence and as to repairs being done to the same
 - (a) either the holder of a certificate of possession or holder of a certificate of occupation may notify (form 1) the other holder of a certificate of possession or certificate of occupation that he will, on a day named, not less than one week from the service of such notice, cause three fence viewers of the reserve to arbitrate in the premises;
 - (b) the holder of a certificate of possession or holder of certificate of occupation so notifying shall also notify (form 2) the fence viewers not less than one week before their services are required;
 - (c) the notices in both cases shall be in writing signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and the said notices may be

served by leaving the same at the place of abode of the holder of a certificate of possession or holder of a certificate of occupation with some grown-up person residing thereat, or, in case the land being untenanted, by leaving the notice with any agent of such holder of certificate of possession or certificate of occupation.

3. An occupant, who is not the holder of a certificate of possession or holder of a certificate of occupation, notified shall immediately notify the holder of the certificate of possession or holder of a certificate of occupation and if he neglects so to do shall be liable for all damage caused to the holder of the certificate of possession or the holder of a certificate of occupation by such neglect.

4. The fence viewers shall examine the premises, and if required by either party shall hear evidence, and may examine the parties and their witnesses on oath.

5. (1) The fence viewers shall make an award (form 3) signed by any two of them respecting the matters in dispute and the award shall specify the locality, quantity, description and the lowest price of the fence awarded to be made and the time within which the work shall be done, and shall state by which of the parties or in what proportion the costs of the proceedings shall be paid.

(2) In making the award the fence viewers shall have regard to the nature of the fences in use in the locality, the pecuniary circumstances of the parties and the suitability of the fence to the wants of each of them.

(3) Where, from the formation of the ground by reason of streams or other causes, it is, in the opinion of the fence viewers, impracticable to locate the fence upon the line between the lands of the parties, they may locate it either wholly or partly on the land of either of the parties where it seems to be most convenient, but such location shall not in any way affect the rights of the parties in the land.

(4) The fence viewers may employ a duly qualified land surveyor and have the locality described by metes and bounds.

6. The award shall be deposited in the office of the Superintendent and may be proved by a copy certified by the Superintendent, and notice in writing of its being made shall be given by the Superintendent to all parties interested.

7. (1) The party desiring to enforce the award shall serve upon the holder of a certificate of possession or holder of a certificate of occupation of the adjoining land a notice in writing requiring him to obey the award (form 4), and if it is not obeyed within two weeks after service of the notice may do the work which the award directs.

(2) The party entitled to enforce the award may obtain a certificate from the Superintendent of the amount due with costs in respect of such award and shall lodge the same with the council and if the amount due with costs is not paid within thirty days, such amount shall be a charge against the land liable for the payment thereof.

8. (1) Any person dissatisfied with the award may appeal therefrom to the Council.

(2) The person appealing shall within one week from the time when he was notified of the award, serve upon the fence viewers and all interested parties a notice in writing of his intention to appeal and the notice may be served as other notices mentioned in this by-law.

(3) The person appealing shall also deliver a copy of the notice to the Superintendent who shall immediately notify the Council of such appeal and the Council shall fix a time and place for the hearing of the appeal, and if the Council thinks fit may order such sum of money to be paid by the person appealing to the Tyendinaga Indian Agency Trust Account as will be a sufficient indemnity against the costs of the appeal.

(4) The Superintendent shall notify the fence viewers and all parties interested of the time and place of the hearing in the manner hereinbefore provided for the service of other notices under this by-law.

(5) The Council shall hear and determine the appeal and may set aside, alter or affirm the award or correct any error therein, and

may examine the parties and their witnesses on oath, and may inspect the premises and may order payment of the costs by either party and fix the amount of such costs.

(6) The decision of the Council shall be final and the award, as altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

9. (1) Each fence viewer shall be entitled to the current rate of wage paid road labourers on the reserve for every day's work under this by-law, and a witness shall be entitled to the same compensation and a surveyor the current rate of pay.

(2) The Council shall, at the expiration of the time for appeal or after appeal as the case may be, by resolution recommend the payment to the fence viewers for their fees and shall, unless the same be forthwith repaid by the person adjudged to pay the same, place the same as a charge against the property liable for the payment thereof.

10. Any agreement in writing by a holder of a certificate of possession or holder of a certificate of occupation respecting a line fence may be filed with the Council of the band and enforced as if it was an award of the fence viewers.

11. The owner of whole or part of a line fence which forms part of the fence enclosing the occupied or improved land of another person shall not take down or remove any part of such fence,

(a) without giving at least six months' previous notice of his intention to the holder of a certificate of possession or holder of a certificate of occupation of such adjacent enclosure unless such last mentioned holder of a certificate of possession or holder of a certificate of occupation, after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum determined as provided by section 5, or

- (b) if such holder of a certificate of possession or holder of a certificate of occupation will pay to the owner of such fence or part thereof such sum as the fence viewers may award to be paid therefor under section 5.
12. (1) If any tree is thrown down by accident or otherwise across a line fence or in any way in and upon the land adjoining that upon which such tree stood, causing damage to the crop upon such land or to such fence, the holder of a certificate of possession or holder of a certificate of occupation of the land on which said tree stood shall remove the same forthwith, and also forthwith repair the fence and otherwise make good any damage caused by the falling of the tree.
- (2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the tree the injured person may remove the same in the most convenient and inexpensive manner, and may make good the fence so damaged and may retain such tree to remunerate him for such removal and may also recover any further amount of damages beyond the value of such tree from the person liable to pay it as provided in subsection (2) of section 7.
- (3) For the purpose of such removal the owner of the tree may enter into and upon such adjoining land doing no unnecessary spoil or waste.
- (4) All questions arising under this section shall be adjusted by three fence viewers of the reserve, the decision of any two of whom shall be binding upon the parties.

Phil Nelson Green
Albert A. Maracle
Tom The Hill
Mark Hill
Carl Beart

FORM 1

(Section 2 a)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr _____, Mr _____, and
Mr. _____, three fence-viewers of this locality,
will attend on the _____ day of _____ 19 _____,
at the hour of _____, to view and arbitrate upon the line
fence in dispute between our lands, being lots (or parts of lots)
_____ and in the _____ Concession of Tyendinaga
Indian Reserve, in the County of Hastings.

Dated the _____ day of _____ 19 _____

Holder of Lot _____ Con. _____

To

Holder of Lot _____ Con. _____

FORM 2
(Section 2b)

NOTICE TO FENCE-VIEWERS.

Take notice that I require you to attend at _____ on the
_____ day of _____, 19____, at _____
o'clock a.m., to view and arbitrate on the line fence between
my land and that of Mr. _____, being lots (or parts
of lots) Nos. _____ in the _____ concession of the
Tyendinaga Indian Reserve.

dated the _____ day of _____ 19____

Holder of Lot No.

To

(Fence-viewers)

FORM 3
(Section 5)

Award

We, the fence-viewers of Tyendinaga Indian Reserve, having been nominated to view and arbitrate upon the line fence between _____ of Tyendinaga Indian Reserve and _____ which fence is to be made and maintained between _____

and having examined the land and duly acted according to the Line Fence By-Law, award as follows: that part of the line which commences at _____ and ends at _____ shall be fenced, and the fence maintained by _____ and that part thereof which commences at _____ and ends at _____ shall be fenced, and the fence maintained by _____

The fence shall be of the following description

and shall cost at least _____ per rod. The work shall be commenced within _____ days, and completed within _____ days from this date, and the costs shall be paid by _____

dated the _____ day of _____ 19____

Witnesses:

(Signatures of fence-viewers)

FORM 4

(Section 7 (1)).

AGREEMENT

We

and

holders respectively of lots (or parts of lots) in the
Concession of Tyendinaga Indian Reserve in the County of Hastings,
do agree that the line fence which divides our lands shall be made
and maintained by us as follows:

Dated the

day of

19

Witnesses:
