

**BY-LAW FOR THE ESTABLISHMENT OF THE  
ROD MCGILLIVARY MEMORIAL CARE HOME FOUNDATION**

NO. 1999-01

**PASSED AND ENACTED BY THE CHIEF AND COUNCIL OF THE OPASKWAIYAK  
CREE NATION, THIS 12<sup>th</sup> DAY OF May A.D. 1999.**

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**Table of Contents**

	Preamble	1
1.	Name	2
2.	Definitions	2
3.	Council Authorized	3
4.	Establishment of McGillivary Care Home Foundation	3
5.	Duties of Council	3
6.	Duties of Foundation	3
7.	Board of Directors	4
8.	Duties of the Board of Directors	6
9.	Administrator	7
10.	Duties of Administrator	7
11.	Confidentiality	7
12.	Confidentiality Oath and Duty	8
13.	Reports	8
14.	Protection of Directors and Officers	8
15.	Indemnities to Directors and Officers	9
16.	Insurance	9
17.	Conflict of Interest	9
18.	By-Law to be Complied With	11
19.	Incorporation by Reference	11
20.	Severability	11
	SIGNATURES	11
	Certification	12

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**Preamble**

**WHEREAS** the people of the Opaskwayak Cree Nation have a right to health services and care for their elderly and infirm at an adequate and proper level as to meet the needs of their community;

**AND WHEREAS** the Opaskwayak Cree Nation entered into solemn Treaty arrangements with Her Majesty's Government of the Dominion of Canada by adherence to Treaty #5;

**AND WHEREAS** the Opaskwayak Cree Nation did not through said Treaty give up their authority to be a self governing people;

**AND WHEREAS** Section 81(1)(a), (d), (f), (g), (h), (p.1), (q) and (r) of the Indian Act, R.S.C. 1970, Ch. 1-6 as amended empowers the Council of the Opaskwayak Cree Nation to make By-Laws inter alia:

- (a) To provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;
- (d) The prevention of disorderly conduct and nuisances;
- (f) The construction and maintenance of water courses, roads, bridges, ditches, fences and other works;
- (g) The dividing of the reserve or a portion thereof into zones and prohibition of the construction of buildings or the carrying on of any class of business, trade or calling in any such zone;
- (h) The regulation of the construction, repair and use of buildings, whether owned by Opaskwayak Cree Nation or by its individual members;
- (p.1) The residence of Opaskwayak Cree Nation members and other persons on the reserve;
- (q) With respect to any matter arising out of or ancillary to the exercise of powers under this section;
- (r) The imposition on summary conviction of fines not exceeding one thousand (\$1,000.00) dollars or imprisonment for a term not exceeding thirty (30) days, or both for violations of By-Laws made pursuant to this section.

**AND WHEREAS** the Opaskwayak Cree Nation has enacted a number of By-Laws which touch on health matters;

**AND WHEREAS** nothing in this By-Law shall alter, diminish, abrogate, derogate or breach the Treaty and/or Aboriginal rights of the Opaskwayak Cree Nation or its members;

**AND WHEREAS** nothing in this By-Law shall alter, diminish, abrogate, derogate or breach the Treaty status of the Opaskwayak Cree Nation or its members under Treaty #5 with Her Majesty's Government of Canada, nor shall it be interpreted or construed to do so;

**AND WHEREAS** the Council of the Opaskwayak Cree Nation have constructed and operated a facility known as the Rod McGillivray Memorial Care Home, to serve and care for elderly and infirm members of the community;

**AND WHEREAS** the Council of the Opaskwayak Cree Nation desire, through this By-Law, to create an administrative body with the responsibility for the administration, operation and maintenance of the Rod McGillivray Memorial Care Home, and the programs, services, policies and procedures relating thereto;

**BE IT ENACTED AND THEREFORE IT IS HEREBY ENACTED** as a By-Law of the Council of the Opaskwayak Cree Nation as follows:

**1. Name**

This By-Law shall hereinafter be known as "The Rod McGillivray Memorial Care Home Foundation By-Law".

**2. Definitions**

"Foundation" shall mean the Rod McGillivray Memorial Care Home Foundation.

"By-Law" shall, except where otherwise specifically stated, refer to the Rod McGillivray Memorial Care Home By-Law.

"Board" shall mean the Board of Directors of the Rod McGillivray Memorial Care Home.

"Council" shall mean the Chief and Council of the Opaskwayak Cree Nation.

"Director(s)" shall mean a member or members of the Board of Directors of the Rod McGillivray Memorial Care Home Foundation.

"Officer(s)" shall mean any person appointed by the Board to act as an Officer of the foundation to carry out duties, and shall include the positions of Chairman and Vice-Chairman.

**3. Council Authorized**

The Council is hereby authorized to enter into such agreements and declaration as in its sole discretion it deems appropriate to create, maintain and operate the Rod McGillivray Memorial Care Home, Rod McGillivray Memorial Care Home Foundation, and the Rod McGillivray Memorial Care Home Foundation By-Law, to serve the needs of the members of the Opaskwayak Cree Nation and the residents of the Rod McGillivray Memorial Care Home.

**4. Establishment of Rod McGillivray Memorial Care Home Foundation**

The Council hereby enacts and it is hereby enacted and established that there shall be the Rod McGillivray Memorial Care Home Foundation, an entity or body created under this By-Law to operate and administer the Rod McGillivray Memorial Care Home and to serve the needs of the members of the Opaskwayak Cree Nation and the residents of the Rod McGillivray Memorial Care Home.

**5. Duties of Council**

The Council shall hereby be responsible for:

- (a) Developing and amending this By-Law and related By-Laws in co-operation and consultation with the Board;
- (b) Monitoring the activities of the Foundation and suggesting improvements by Band Council Resolution or motion of Council, duly recorded;
- (c) Reviewing and approving budgets for the Foundation by a motion of Council, duly recorded;
- (d) Reviewing, approving and providing comments on the Annual Report of the Foundation;
- (e) Appointing or dismissing the Directors of the Foundation, by way of Band Council Resolution;
- (f) Providing advice and support to the Board upon request of the Board;
- (g) Providing a forum for appeal through the Council or an Appeal Board designated by the Council;

- (h) Taking over the responsibilities of the Board of Directors, if necessary, by way of Band Council Resolution where it has been determined that the Board has substantially failed to administer the Rod McGillivray Memorial Care Home, or has failed to fulfill its duties under Section 8 of this By-Law.

**6. Duties of the Foundation**

The Foundation, subject to review and oversight by Council or their designate, through its Board, shall have the power to maintain, control and manage the affairs, administration, operation, maintenance, policies, procedures, programs and services of the Rod McGillivray Memorial Care Home. The Foundation, subject to review and oversight by Council or their designate, shall further possess the power to disburse funds in accordance with and pursuant to the budget, from its own separate and distinct bank accounts established for the management of the Foundation budget and to disburse any other grants, fees, donations or other monies received by the Foundation and approved by the Council.

**7. Board of Directors**

The operations of the Foundation shall be managed by a Board of Directors collectively and individually responsible and accountable to the Council:

- (a) First Directors: The First Directors of the Foundation are hereby appointed for terms as set out in this By-Law, the First Directors of the Board are:

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- (b) Number: There shall be five voting Directors.
- (c) Appointment of Council Directors: Two Voting Directors shall be appointed by Band Council Resolution of the Council from the membership of the Council of the Opaskwayak Cree Nation.

- (d) Appointment of General Directors: A minimum of three Voting Directors shall be appointed by Band Council Resolution of the Council upon recommendation by written resolution of the Board, from the membership of the Opaskwayak Cree Nation. Prior to the appointment of Directors, either at regular periods or on an interim basis, the Board shall publicly post a notice setting out the duties and terms of the Directors and Board and shall accept applications for consideration.
- (e) Term: A Director's term of office, excluding Directors who are members of Council, shall be a minimum of two years or until their office is vacated. Sitting Directors may be reappointed at the expiration of their term. Directors who are members of Council may sit at Council's pleasure, so long as they are members of Council. Directors appointed to replace Directors who have vacated office shall sit for the unexpired term of the original Directors.
- (f) Elder: The Council may appoint an Elder of the Opaskwayak Cree Nation to sit as a non-voting Director to provide guidance, direction and wisdom. The Council may also appoint an Alternate Elder in the event that the designated Elder is unavailable to act.
- (g) Ex-Officio: The Board may appoint "Ex-Officio Directors", who shall be non-voting Directors sitting on the Board for a specified term, and may further limit or describe the duties or authorities of said Ex-Officio Directors, who may otherwise participate in Board activities as any other Directors;
- (h) Officers: The Board may designate one or more of its members, or members of the Council or members of the Opaskwayak Cree Nation, or other persons as Officers of the Foundation, such as, but not necessarily limited to, Chairman, Vice-Chairman, and may prescribe the duties and terms for any Officer it designates. The Administrator, for the purposes of this By-Law shall be deemed to be an Officer of the Foundation.
- (i) Quorum: Three voting Directors shall constitute a Quorum of the Board.
- (j) Operating Procedures: The Board shall establish its own operating procedures, and the operating procedures of the Foundation, dealing, as examples, with such matters as quorums, meetings, duties of Directors, committees and so forth.
- (k) Meetings: The Board shall meet not less than eight (8) times per year. The Directors are empowered to include in their operating procedures a provision for meetings by telephone conference where circumstances warrant.
- (l) Vacation of Office: The office of a Director shall be vacated automatically, when:

- i) by notice in writing, the Director resigns from office;
  - ii) the Director dies;
  - iii) the Director misses three (3) consecutive regular meetings of the Board without reasonable excuse;
  - iv) the Director is found to be of unsound mind;
  - v) the Director ceases to be a member of the Opaskwayak Cree Nation or as the case may be, a member of Council;
  - vi) the Director is dismissed for "Just Cause" in accordance with the procedures herein.
- (m) Just Cause: Upon a written complaint by a Director, or the Board, or the Council or a member thereof, calling for the removal, resignation or dismissal of a Director or Officer, the following procedures shall be employed;
- i) the Director or Officer against whom the complaint is made must be notified of the complaint and charges in writing, in a form sufficient to clearly disclose the nature of the complaint and charges;
  - ii) Council or their designates shall forthwith, upon due notice, hold a hearing, in accordance with principles of fairness and fundamental justice, and receive submissions and evidence from both sides in the dispute;
  - iii) Council or their designates shall, within (30) days of being appointed and holding a hearing, provide to the Director, the Board and the complaining party a written decision indicating whether there is "Just Cause" for the dismissal of the Director, such report to be placed in the records of the Council;
  - iv) if Council or their designates finds that there is "Just Cause" the office of the Director shall be deemed to be vacated;
  - v) the decision of the Council, as a whole, of the Opaskwayak Cree Nation, shall be final, and from which there shall be no further appeal;
  - vi) in determining "Just Cause", the Council or their designate may be guided by the OCN Code of Conduct and other relevant policies and enactments, for further clarification, such matters as serious misconduct, breach of confidentiality, missing meetings too frequently, conviction of a serious



criminal offence, failure to disclose conflict of interest, failure to abide by directions of the Board on a conflict of interest, failure to responsibly perform the duties of a Director, or other serious offence, breach or failure, may fall within the meaning of "Just Cause";

#### 8. Duties of the Board of Directors

The Foundation, through its Board, shall be responsible for the overall administration and maintenance of the Rod McGillivray Memorial Care Home, and shall further be responsible for the safety, care and well being of, and delivery of services to clients, guests and visitors to the Rod McGillivray Memorial Care Home, and without restricting the generality of the foregoing, shall be responsible specifically to:

- (a) Develop operating procedures and policies for the Foundation;
- (b) Approve administrative, personnel, financial and other policies and operating procedures;
- (c) Receive, approve and recommend budgets to the Council, through the Finance and Administration Committee of the Council;
- (d) Spend money, and acquire and dispose of, and manage all forms of personal or real property, as set out in budgets approved by Council;
- (e) Borrow money upon the approval of Council upon recommendation of the Board and of the Finance and Administration Committee of the Council;
- (f) Receive, review, approve and provide to Council an annual report on the activities and finances of the Foundation;
- (g) Supervise and monitor the Administrator, assign duties and responsibilities to the Administrator, and if deemed necessary, impose disciplinary sanctions upon the Administrator in accordance with the policies of the Foundation and of the Opaskwayak Cree Nation;
- (h) Inform Council with regard to the hiring and dismissal of the Administrator;
- (i) Enter into negotiations and contracts with outside third parties, in accordance with terms of policies or budgets, or as approved by Council, to facilitate the maintenance, operation, administration or delivery of services of and by the Foundation;
- (j) Subject to this By-Law and the normal operating procedures and policies of the Rod McGillivray Memorial Care Home and the Rod McGillivray Memorial Care Home

Foundation, the Board may consult and maintain communication with the members of the Opaskwayak Cree Nation, and receive and respond to requests of members of the Opaskwayak Cree Nation with respect to the maintenance, operation, administration or delivery of services of the Foundation and the Rod McGillivray Memorial Care Home.

- (h) From time to time, as it deems advisable, develop and recommend amendments to this By-Law, and related By-Laws, as they relate to the Foundation and the operation, maintenance, administration and delivery of services of the Rod McGillivray Memorial Care Home, for approval of the Council.

**9. Administrator**

The Board shall appoint by way of Resolution in writing, a person to act as Administrator of the Rod McGillivray Memorial Care Home, which resolution shall set out the term of office and remuneration of the Administrator.

**10. Duties of the Administrator**

The duties of the Administrator shall be the day to day administration and operations of the Rod McGillivray Memorial Care Home, and without restricting the foregoing, specifically:

- (a) To attend meetings of the Foundation, report regularly to the Foundation, to provide the Foundation with such information as it may request, and to assist the Foundation in preparing budgets and reports and developing policies and procedures;
- (b) To implement the policies and operating procedures approved by the Foundation;
- (c) To supervise and evaluate employees, and to recommend to the Foundation, hiring, firing duties and disciplinary actions, and where appropriate, to undertake disciplinary actions, in accordance with Foundation and OCN policies and in accordance with applicable labour legislation or regulations;
- (d) Program supervision, financial management, liaison with other agencies, as related to the management of the Rod McGillivray Memorial Care Home;
- (e) Such other related duties as the Foundation may, from time to time, in writing, direct.

**11. Confidentiality**

Subject to this By-Law, the medical and financial records of the residents of the Rod McGillivray Memorial Care Home are confidential and no person shall requisition, obtain, disclose or communicate these records in any form to any person except:

- (a) To the Administrator, or to a person employed, retained or consulted by the Foundation, for the purpose of, and as necessary to, administering or delivering services and programs to the residents of the Rod McGillivray Memorial Care Home or enforcing this or other health related by-laws;
- (b) To the resident, their authorized family members, or the resident's legal guardian or representative, provided that the release of the information to the resident, their authorized family members, or the resident's legal guardian or representative, has been approved in writing by the Administrator.
- (c) The Administrator may, in writing setting out reasons, refuse disclosure of records or parts of records where the identity of a person who has supplied information in confidence may be revealed, or where there are reasonable grounds to believe the disclosure of records might result in serious physical or psychological harm.

## 12. Confidentiality Oath and Duty

Every employee, Officer and Director of the Foundation shall be required to swear and sign an oath of confidentiality in which they will undertake to protect and honour the confidentiality and privacy of the residents of the Rod McGillivray Memorial Care Home. Further, it shall be the duty of every Director, Officer or Employee to comply with the confidentiality provisions of this By-Law. Breach of confidentiality may be grounds for dismissal.

## 13. Reports

The Foundation shall produce an Annual Report and audited financial statements for delivery to Council and the membership of the Opaskwayak Cree Nation within ninety (90) days of fiscal year end. The Annual Report shall include, but not be restricted to, a review of program activities. The Foundation audit shall be a part of the overall Opaskwayak Cree Nation Audit.

## 14. Protection of Directors and Officers

No Director or Officer of the Foundation shall be liable for:

- (a) the acts, receipts, neglects or defaults of any other Director or Officer or employee;
- (b) for joining in any receipt or act for conformity;
- (c) for any loss, damage or expense happening to the Foundation through the insufficiency or deficiency to title to any property acquired for or on behalf of the Foundation;

- (d) for the insufficiency or deficiency of any security upon which any of the monies of the Foundation are placed or invested;
- (e) for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation, including any firm, person or corporation with which any monies, securities or effects shall be deposited or lodged;
- (f) for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any monies, securities or other assets belonging to the Foundation;
- (g) for any other loss, damage or misfortune whatsoever;

unless the above shall happen by their failure to exercise the powers and to discharge the duties of their office of trust honestly, in good faith and in the best interests of the Foundation, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### 15. Indemnities to Directors and Officers

Subject to the provisions of this By-Law and within the limits of the coverage of insurance referred to herein, every Director and Officer, their heirs, executors, administrators and other legal personal representatives and persons acting on instruction of the Authority shall be indemnified by the Foundation for:

- (a) Any liabilities, costs, charges and expenses that they sustain or incur in respect of any action, suit or proceeding that is proposed or commenced against them in respect of the bona fide execution of the duties of their office; and
- (b) All other charges and expenses which they sustain or incur in respect of the affairs of the Foundation, as approved by the Foundation.

#### 16. Insurance

- (a) The Foundation shall purchase insurance, which may include primary coverage for the Authority, Directors, employees, facilities and equipment.
- (b) The Foundation shall purchase insurance for motor vehicles from the Manitoba Public Insurance Corporation and said insurance shall provide for not less than One Million (\$1,000,000.00) Dollars coverage per incident for personal injuries, death and dismemberment.

- (c) The Foundation shall require professionals and contractors to maintain adequate insurance coverage through their professional or other associations. Such requirement of coverage shall be a term of every contract.

**17. Conflict of Interest**

The Board may determine conflict of interest guidelines and requirements in accordance with the following principles:

- (a) Employees: Persons employed by the Foundation shall not be eligible to sit as a Director on the Board.
- (b) Disclosure: All Directors or Officers shall disclose in writing to the Board all direct or indirect, actual or potential interests, obligations, assets or businesses, either directly on their own behalf or indirectly through a spouse, business associate or relative by blood or marriage which may conflict with the Director's or Officer's obligations and duties to the Foundation, (hereinafter known as an actual or potential "Conflict of Interest"), at the time of their becoming aware of it.
- (c) Failure to Disclose: A Director or Officer who knowingly fails to disclose such a Conflict of Interest in writing at the time they become aware of such Conflict of Interest may be subject to such penalties may include the removal of the Director from the Board, or termination of the Officer.
- (d) Outside Disclosure: Any other person or party may, in writing, notify the Board of an actual or potential Conflict of Interest of any Director or Officer.
- (e) Board Review: On receiving written notice of any actual or potential Conflict of Interest, the Board shall review the matter and determine whether or not an actual conflict of interest exists, and shall advise the affected Director or Officer of such decision in writing. Further, the Board, with regard to an actual or potential Conflict of Interest may take such measures as they deem necessary to safeguard the interests of the Foundation.
- (f) Non-Participation: Where a Director or Officer has an actual or potential Conflict of Interest, the Director or Officer affected by that Conflict of Interest shall not participate in any discussions that deal with the matter which is in conflict, shall not be present at any meeting or shall absent themselves from any part of a meeting at which the area of Conflict of Interest is being reviewed, shall not vote on any matter in which a Conflict of Interest exists, and shall at all times refrain from attempting to influence the matter, unless and until said Director or Officer receives a written determination that he or she is not in a position of Conflict of Interest.

- (g) Appeal: If the Board is unable to determine whether or not a Conflict of Interest exists, or a Director or Officer is not satisfied with determinations of the Board, then the matter may be referred to the Council or their designates, with a request for a written determination which shall be binding upon the Board and the Director or Officer in question. There shall be no further appeal from a decision of the Council of the Opaskwayak Cree Nation.
- (h) Quorum: Where by reason of an exclusion due to Conflict of Interest the number of Directors remaining would not constitute a quorum, then the matter under consideration shall be tabled until such time as a sufficient number of Directors are present without Conflict of Interest to constitute a quorum. In the event that no members of the Board of Directors are available for a quorum, then the matter shall be referred to the Council for decision.

#### 18. By-Law to be Complied With

Every individual, person or corporate body shall comply with this By-Law, and in particular, this By-Law shall govern and apply to the operation and administration of the Rod McGillivary Memorial Care Home, the Directors, Officers and Employees of the Rod McGillivary Memorial Care Home Foundation, and to the residents of the Rod McGillivary Memorial Care Home.

#### 19. Incorporation by Reference

Insofar as they are not inconsistent with this By-Law, policies or procedures developed, implemented or enacted pursuant to this By-Law, or any other By-Laws of the Opaskwayak Cree Nation, Provincial laws, regulations and policies relating or applicable to the operation, maintenance, administration of, or delivery of programs and services by the Rod McGillivary Memorial Care Home are hereby incorporated as part of this By-Law and may be enforced as part of this By-Law.

#### 20. Severability

In the event that a court of competent jurisdiction or other body with jurisdiction determines that any provision herein is unlawful or beyond the jurisdiction of the Council and/or the Government of Canada, said provision shall be severable from this By-Law and the remainder of the terms of this By-Law or any other by-laws mentioned in the preamble and any policies and procedures thereunder or future by-laws, shall remain in full force and effect.

DONE AND PASSED by Chief and Council assembled this 12<sup>th</sup> day of May,  
A.D. 1999.

OPASKWAYAK CREE NATION

[Signature]  
Chief

[Signature]  
Councillor

[Signature]  
Councillor

[Signature]  
Councillor

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Councillor

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Councillor

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Councillor

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Council

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Councillor

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Councillor

A quorum of the Council of the Opaskwayak Cree Nation is five (5) members.

I, William G. Bathin, Chief of the Opaskwayak Cree Nation, do hereby certify that a true copy of the foregoing By-Law was forwarded to the Minister of Indian Affairs and Northern Development pursuant to Section 82(1) of the Indian Act this 13<sup>th</sup> day of May, A.D. 1999.

[Signature]  
Witness

[Signature]  
Chief