

BY-LAW NO. 2003-900(L)
OF THE ENOCH CREE NATION
A BY-LAW GOVERNING THE RESIDENCE OF BAND
MEMBERS AND OTHER PERSONS ON THE
ENOCH CREE NATION

WHEREAS the Council of the Enoch Cree Nation desires to make a By-law governing the residence of Band members and other persons on the reserve;

AND WHEREAS the Council of the Enoch Cree Nation is empowered to make such By-law pursuant to paragraphs 81 (1) (p.1), (q) & (r) of the Indian Act (See Appendix 1.A);

AND WHEREAS it is considered necessary for the health, welfare and integrity of the Enoch Cree Nation to regulate the residence of Band members and other persons on the reserve;

AND WHEREAS nothing in this By-law shall deem to alter, diminish, derogate or abrogate Treaty number 6, including the spirit and intent of our Treaty Rights and the inherent right as understood by the Elders of Treaty 6.

NOW THEREFORE the Council of the Enoch Cree Nation hereby makes the following By-law:

1.0 SHORT TITLE

1.1 This By-law may be cited as "The Enoch Cree Nation Residency By-law".

2.0 INTERPRETATION

2.1 In this By-law:

"applicant" means a person who has submitted an application for permission to be a resident of the reserve in accordance with section 5;

"child", includes a child born in or out of wedlock and a legally adopted child;

"Council" means the Chief and Council, as defined in the Indian Act .;

"ECN" – means the Enoch Cree Nation;

"dwelling" means any house, apartment, mobile home, or room located therein, or any similar lodging suitable for habitation;

"member of the Band" means a person whose name appears on the ECN Membership list or who is entitled to have his/her name appear on the ECN Membership list pursuant to the membership code of the Band;

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“minor” means any person under the legal age of eighteen (18) in the province of Alberta;

“non-member” means any person who’s name does not appear on the Enoch Cree Nation Membership List;

“officer” means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a By-law enforcement officer or any other person appointed by the Council for the purpose of maintaining law and order;

“principal residence” means the place at which a person resides on a more permanent basis than at any other place at which the person may reside from time to time;

“R.C.M.P” means the Royal Canadian Mounted Police;

“reserve” means the Enoch Cree Nation lands;

“reside” means to live in a dwelling, otherwise than as a visitor to the ECN;

“resident” means a person who is entitled to reside on the Enoch Cree Nation, as provided by section 3;

“spouse” means a person who is married to, or who co-habits in a relationship of some permanence and commitment, akin to a conjugal relationship, with a resident of the Enoch Cree Nation.

3.0 ENTITLEMENT TO RESIDE ON RESERVE AS OF MEMBERSHIP RIGHTS

3.1 A person is entitled to reside on the ECN only if the following criteria are met:

- (a) has his/her principal residence on the ECN at the time this By-law comes into force;
- (b) is authorized to reside on the ECN pursuant to one of the following provisions of the Indian Act: sections 18.1, 20 and 24 and subsections 28(2) and 58(3); (See Appendix 1A)

3.2 Notwithstanding subsection (2), any spouse or dependent child of a person who has been granted permission to reside on the ECN for a defined period is not entitled to reside on the ECN after the end of that defined period.

- a) In the event that an individual wishes to reside on the ECN after the expiration of the defined period, the individual may be eligible to reapply for residence.

4.0 REGISTRAR OF RESIDENTS

- 4.1 Chief and Council shall appoint a sanctioning body to provide for the administration of applications, petitions made under this Bylaw and to maintain records related to the residents of the ECN.
- 4.2 The sanctioning body shall be appointed by Chief and Council and shall maintain a Residents List, on which is recorded:

- (a) the name of each resident and proper identification;
- (b) an indication as to whether each resident is a resident for an indefinite or defined period;
- (c) the length of any defined period of residence;
- (d) the location of each resident's dwelling;
- (e) whether the resident is a Treaty Indian or a Non- Treaty Indian;
- (f) records of all applications.

5.0 APPLICATION TO BE A RESIDENT

- 5.1 Any person may apply to the sanctioning body as appointed by Chief and Council for permission to be a resident of the ECN or to extend any defined period for which permission was previously granted to the person by the sanctioning body as appointed by Chief and Council to be a resident of the ECN.
- 5.2 The application shall be filed with the sanctioning body and shall include:
- (a) the applicant's reasons for applying to be a resident;
 - (b) if the applicant proposes to reside on the ECN for a limited time, the approximate duration of the proposed residence;
 - (c) the location at which the applicant proposes to reside;
 - (d) the name of the applicant's spouse, if any;
 - (e) the names of the applicant's dependent children, if any;
 - (f) any additional information the applicant wishes to provide relating to the considerations listed in subsection 7(2);

- (g) criminal records check from R.C.M.P;
- (h) all adult non ECN member applicants requesting to be a resident on ECN acknowledge that a residency fee of one hundred dollars (\$100.00) per month per individual, payable directly to the Enoch Cree Nation, will be applicable for the duration of their entitlement to reside on ECN premises. Exemptions may apply if the Non ECN Member spouse of an Enoch Cree Nation member have resided on the ECN for a period of ten years or more, have displayed exemplary community service standing and/or is elderly, at the discretion of the sanctioning body.

6.0 HEARING

- 6.1 Within thirty (30) days after the filing of a properly completed application, the sanctioning body shall hold a hearing with respect to the application.
- 6.2 At least fourteen (14) days prior to the hearing, the sanctioning body shall:
 - (a) give written notice to the applicant of the date, time and place of the hearing and inform the applicant that he/she has to appear at the hearing and can be heard in support of the application;
 - (b) post in the Band Administration office a copy of the notice.
- 6.3 At the hearing, the sanctioning body shall:
 - (a) provide the applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of the application;
 - (b) provide any ECN Member present at the hearing with an opportunity to be heard.
- 6.4 The sanctioning body may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

7.0 SPECIAL AND / OR EMERGENCY HEARING:

- 7.1 a) in the event that an offence is committed against any By-law, law or policy of general application on Enoch lands, the Chief and Council may determine that the sanctioning body and / or Chief and Council will address the matter as urgently as is reasonably possible;

- b) the offender may have his/her residency revoked immediately should the Chief and Council and/or the sanctioning body determine that the offence was serious enough that it would be detrimental to the best interests of ECN to permit the person to continue to reside on the ECN.
- c) where a minor who is in the legal care or custody of a resident within the Enoch Cree Nation Housing Authority premises commits an offence under this By-law on Enoch premises, the parent(s) and or legal guardian(s) as well as the offender will appear before the sanctioning body and/or Chief and Council at a special or emergency hearing.
- d) where the offence committed by the minor is determined serious enough that the Chief and Council and/or sanctioning body may have his/her residency revoked immediately along with the parent(s) and/or legal guardian(s) should the Chief and Council and / or the sanctioning body determine that the offence was serious enough that it would be detrimental to the best interests of ECN to permit the person to continue to reside on the ECN.
- e) where a resident has been asked to leave a residence, been evicted by a tenant or a marriage or common law union has broken down, the resident may make application for a special/emergency hearing and may be eligible to continue to reside on ECN premises if law abiding, if there are available accommodations and their continued residence is not detrimental to the best interests of ECN to permit the person to continue to reside on the ECN.

8.0 DECISION

- 8.1 After it has heard all of the evidence and submissions, the sanctioning body shall meet in private to consider the application.
- 8.2 In determining whether an application for permission to be a resident of the ECN should be granted, the sanctioning body shall take into consideration each of the following:
 - (a) whether the applicant has arranged for a place to reside on the ECN;
 - (b) whether the applicant's residing on the ECN would be compatible with the culture, society and community of the Band and welfare of the members of the Band residing on the ECN;

- (c) whether the applicant is of good moral character;
- (d) the extent to which the applicant is prepared to commit his/her personal and economic resources to the welfare and advancement of the community residing on the ECN;
- (e) the availability on the ECN of adequate housing, land and services;
- (f) whether the applicant is or will be employed on the ECN;
- (g) a criminal records check.

8.3 Where the applicant is a member of the Band, the sanctioning body shall consider only the criteria enumerated in Section 3.0

8.4 Within ten (10) days after the hearing, the sanctioning body shall notify the applicant in writing of their decision by:

- (a) granting the applicant permission to be a resident of the ECN for an indefinite period until such time as the applicant ceases to reside on the ECN;
- (b) granting the applicant permission to be a resident of the ECN for a defined period;
- (c) extending any defined period for which permission was previously granted to the person by the sanctioning body to be a resident of the ECN; or
- (d) by determining the application is denied.

8.5 Within five (5) days after the hearing for residency the sanctioning body shall notify the individual in writing of their decision on the application, the sanctioning body shall also post a notice of its decision in the Band Administration office.

8.6 Any applicant whose application is refused under this section may appeal to Chief and Council pursuant to section 13.

9.0 REAPPLICATION

9.1 Where an application made under section 6 is refused pursuant to the provisions of section 6, the sanctioning body is not required to consider any further application by that person for a period of one (1) year or indefinitely as may be determined by the sanctioning body or Chief and Council.

10.0 POWERS OF THE OFFICER & ENFORCEMENT

- 10.1 An officer who finds an individual who is or, in the absence of evidence to the contrary, appears to be residing in an ECN residence contrary to this By-law, may order any person who is residing in the residence to be removed immediately if that person has not been sanctioned by the sanctioning body.
- 10.2 Any person who fails or refuses to comply with an order made under Section 10.1 commits an offence and is subject to applicable penalties.
- 10.3 Any one who assists a person who has been ordered to cease to reside on the ECN, to continue to reside on the ECN commits an offence. → *
- 10.4 It is acknowledged and agreed by Chief and Council and the members of the ECN community that an officer as defined in section 2.1, has full and sufficient authority to enforce this bylaw to the best of his / her ability.

11.0 REVOCATION OF ENTITLEMENT TO RESIDE

- 11.1 On the petition in writing of any resident and the details/outline as to the offence committed, and a \$100.00 Appeal Fee, the sanctioning body may revoke the entitlement of any person to reside on the ECN who is referred to in section 3, other than a member of the Band or a person referred to in paragraph 3 (1) (b), where, after a hearing, it has been shown that:
- (a) the personal safety of the petitioner or another resident of ECN is in danger;
 - (b) the person, while residing on the ECN, has committed an offence under the Criminal Code (Canada), against the person or property of another resident, for which he/she has been convicted and for which a pardon or pardons have not been granted;
 - (c) the person, while a resident of the ECN, has been convicted of an indictable offence under the Criminal Code (Canada) for which a pardon has not been granted;
- and/or that it would be detrimental to the best interests of the Band to permit the person to continue to be a resident of the ECN.
- 11.2 Within thirty (30) days after the petition referred to in subsection 11.1 is received by the sanctioning body, the sanctioning body shall hold a hearing into the matter.

- 11.3 At least fourteen (14) days prior to the hearing, the sanctioning body shall:
- (a) give written notice to each petitioner and to the affected resident of the date, time and place of the hearing and informing the petitioner and the affected resident that he/she has to appear at the hearing and can be heard; and
 - (b) post in the Band Administration office a copy of the notice.
- 11.4 At the hearing, the sanctioning body shall:
- (a) provide each petitioner and the affected resident with an opportunity to present evidence and to make oral and written submissions, or both, on the petition; and
 - (b) provide any ECN member present at the hearing with an opportunity to be heard.
- 11.5 The sanctioning body may make rules of procedure governing the hearing of petitions under this section and shall keep records of its proceedings.
- 11.6 After it has heard all of the evidence and submissions, the sanctioning body shall meet in private to consider the petition.
- 11.7 Any revocation of entitlement of a person to reside on the ECN shall require a quorum of the sanctioning body, voting in favor of the petition and shall incorporate written reasons in support thereof.
- 11.8 Within ten (10) days after the hearing, the sanctioning body shall render its decision in writing to the petitioner(s) and the affected resident(s).
- 11.9 Within five (5) days after the sanctioning body's decision, the sanctioning body shall post a notice of the decision in the Band Administration office.
- 11.10 No revocation of a resident's entitlement to reside on the ECN shall affect the entitlement of the spouse and children of that resident to continue to reside on the ECN.
- 11.11 A resident whose entitlement to reside on the ECN has been revoked by the sanctioning body under this section may appeal the decision of sanctioning body to the Chief and Council.

12.0 APPEALS BODY

- 12.1 The Chief and Council will hear all appeals and shall appoint 1 (one) or 2 (two) Elders to assist in hearing appeals pursuant to sections 6 and 11 and to make recommendations to Chief and Council.
- 12.2 Any recommendations from the Elders will be given strong consideration in the Chief and Council decision making process.
- 12.3 The Chief and Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings

13.0 APPEALS

- 13.1 Within thirty (30) days after the posting of a notice of the sanctioning body's decision in the Band Administration office, the applicant in the case of section 6, or the affected resident in the case of section 11, may appeal the sanctioning body's decision to Chief and Council by filing a written request with the sanctioning body that Chief and Council hear the appeal.
- 13.2 Within thirty (30) days after the filing of the request, the Chief and Council shall conduct a hearing with respect to the appeal.
- 13.3 At least fourteen (14) days prior to the date of the hearing, Chief and Council shall:
 - (a) give written notice to the appellant of the date, time and place of the hearing and shall inform the appellant that he/she has to appear and can make oral or written submissions, or both, at the hearing in support of the appeal. Written submissions or any documentation must be submitted to the appeals committee seven (7) days prior to the hearing; and
 - (b) post in the Band Administration office a copy of the notice.
- 13.4 At the hearing, the Chief and Council shall:
 - (a) provide the appellant with an opportunity to present evidence and to make oral or written submissions, or both, at the hearing in support of the appeal; and
 - (b) provide any ECN Member present at the hearing with the opportunity to be heard.
- 13.5 After it has heard all of the evidence and submissions, Chief and Council shall meet in private to consider the appeal.

- 13.6 In determining whether an appeal should be allowed, Chief and Council shall take into consideration the criteria set out in subsections 6 (2) in the case of a section 6 appeal, and the criteria set out in subsection 11 (1) in the case of a section 11 appeal.
- 13.7 Chief and Council shall give written notice of its decision to the appellant by:
- (a) granting the applicant permission to be a resident of the ECN for an indefinite period until such time as the applicant ceases to reside on the ECN;
 - (b) granting the applicant permission to be a resident of the ECN for a defined period;
 - (c) extending any defined period for which permission was previously granted to the person by Chief and Council to be a resident of the ECN; or
 - (d) refusing the application.
- 13.8 Within five (5) days after notifying the applicant, Chief and Council shall post a notice of its decision in the Band Administration office.

14.0 SEVERABILITY

- 14.1 Should a court determine that a provision of this By-law is invalid for any reason, the provision shall be severed from the By-law and the validity of the rest of the By-law shall not be affected.

15.0 PENALTIES

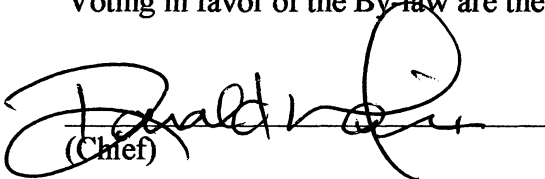
- 15.1 Any person who contravenes any of the provisions of this By-law commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1000.00) or to imprisonment for a term not exceeding thirty (30) days or to both a fine and imprisonment.

16.0 AMENDMENTS

- 16.1 These By-laws can only be amended by a quorum of Chief and Council at a duly convened meeting after all three (3) readings have been passed

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Chief and Council of the Enoch Cree Nation this 5th day of July, 2004.

Voting in favor of the By-law are the following members of Chief and Council:

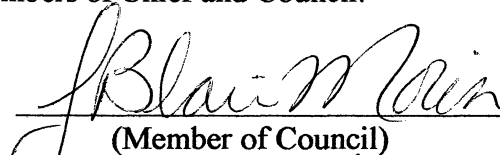

(Chief)

(Member of Council)

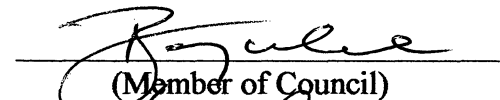
(Member of Council)

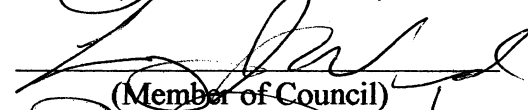
(Member of Council)

(Member of Council)


(Member of Council)


(Member of Council)


(Member of Council)


(Member of Council)



(Member of Council)

being the majority of those members of the Council of the Enoch Cree Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 5 members.

Number of members of the Council present at the meeting: 6.

I, Donald Morin Chief/Councillor of the Enoch Cree Nation, do hereby certify that a true copy of the foregoing By-law was mailed to the Minister of Indian Affairs and Northern Development at the District/Regional/Hull office pursuant to subsection 82(1) of the Indian Act, this 6th, day of July, 2004.


(Witness)


(Chief/Councillor)

APPENDIX 1.A

INDIAN ACT

POWERS OF THE COUNCIL

81. (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

(p.1) the residence of band 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; and

(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section

RESERVES

RESERVES TO BE HELD FOR USE AND BENEFIT OF INDIANS

18. (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

USE OF RESERVES FOR SCHOOLS, ETC

(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band, and may take any lands in a reserve required for those purposes, but where an individual Indian, immediately prior to the taking, was entitled to the possession of those lands, compensation for that use shall be paid to the Indian, in such amount as may be agreed between the Indian and the Minister, or, failing agreement, as may be determined in such manner as the Minister may direct.

R.S., c. I-6, s. 18.

CHILDREN OF BAND MEMBERS

18.1 A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom the member has custody.

R.S., 1985, c. 32 (1st Supp.), s. 8.

POSSESSION OF LANDS IN RESERVES

POSSESSION OF LANDS IN A RESERVE

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

CERTIFICATE OF POSSESSION

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

LOCATION TICKETS ISSUED UNDER PREVIOUS LEGISLATION

(3) For the purposes of this Act, any person who, on September 4, 1951, held a valid and subsisting Location Ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

TEMPORARY POSSESSION

(4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

CERTIFICATE OF OCCUPATION

(5) Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

EXTENSION AND APPROVAL

(6) The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force.

(a) approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or

(b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.

R.S., c. I-6, s. 20.

TRANSFER OF POSSESSION

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister

GRANTS, ETC., OF RESERVE LANDS VOID

28. (1) Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

MINISTER MAY ISSUE PERMITS

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

R.S., c. I-6, s. 28.

UNCULTIVATED OR UNUSED LANDS

58. (1) Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,

LEASE AT REQUEST OF OCCUPANT

(3) The Minister may lease for the benefit of any Indian, on application of that Indian for that purpose, the land of which the Indian is lawfully in possession without the land being designated.