

COPY

BY-LAW NO. 1998.1
of the Clearwater River Dene Nation
A BY-LAW GOVERNING THE
RESIDENCE OF BAND MEMBERS AND OTHER PERSONS
ON THE CLEARWATER RIVER INDIAN RESERVE

ENACTED ON THE 30th DAY OF March, 1998.

WHEREAS the Council of the Clearwater River Dene 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 Clearwater River Dene Nation is empowered to make such by-law pursuant to paragraphs 81(1)(p.1), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered necessary for the health and welfare of the Clearwater River Dene Nation to regulate the residence of Band members and other persons on the reserve;

NOW THEREFORE the Council of the Clearwater River Dene Nation hereby makes the following by-law:

Short Title:

1. This by-law may be cited as the "Clearwater River Dene Nation Residency By-Law".

Interpretation

2. 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;

"*band*" means the Clearwater River Dene Nation;

"*child*", includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian Custom;

"*council*" means the Council, as defined in the *Indian Act*, of the Clearwater River Dene Nation;

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

"*member of the Band*" means a person whose name appears on the Clearwater River Dene Nation Band list or who is entitled to have his name appear on the Clearwater River Dene Nation Band list pursuant to the *Indian Act* or the membership rules of the Band;

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

“*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 and that they reside there at least six(6) months of the year;

“*reserve*” means the Clearwater River Dene Nation Indian Reserve number(s) 221, 222 and 223;

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

“*resident*” means a person who is entitled to reside on the reserve, 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 Clearwater River Dene Nation Band for a period of more than 12 consecutive months.

Entitlement to Reside on Reserve

- 3(1) A resident is a person who:
- (a) has his principal residence on the reserve at the time this by-law comes into force and only until he ceases to have a principal residence on the reserve;
 - (b) is authorized to reside on the reserve pursuant to one of the following provisions of the *Indian Act*: sections 18.1, 20 and 24 and subsections 28(2) and 58(3); or
 - (c) has the permission of the Council pursuant to section 7, or of the Committee of Elders pursuant to section 12, to be a resident of the reserve.
- (2) A spouse or dependent child of a resident, who actually resides with the resident at or after the time the entitlement arises, is entitled to reside on the reserve until such time as the resident ceases to reside on the reserve.,
- (3) Notwithstanding subsection (2), any spouse or dependent child of a resident who has been granted permission to reside on the reserve for a defined period is not entitled to reside on the reserve after the end of that defined period.
- (4) Notwithstanding subsection (2), the spouse or dependent child of a resident is only given the right to reside on the reserve with the resident and their rights are limited to that.

Registrar of Residents

4(1) The Council shall appoint a Registrar of Residents to provide for the administration of applications, petitions and appeals made under this by-law and to maintain records related to the residents of the reserve.

- (2) The Registrar of Residents shall maintain a Residents List, on which is recorded
- (a) the name of each resident;
 - (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; and
 - (d) the location of each resident's dwelling.

Application to be a Resident

5(1) Any person may apply to the Council for permission to be a resident of the reserve or to extend any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve.

- (2) The application shall be filed with the Registrar of Residents and shall include:
- (a) the applicant's reasons for applying to be a resident;
 - (b) if the applicant proposes to reside on the reserve 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), and
 - (g) their address for the giving of notices.

Hearing

6(1) Within ninety (90) days after the filing of a properly completed application, the council shall hold a hearing with respect to the application.

- (2) At least fourteen (14) days prior to the hearing, the Registrar of Residents shall:
- (a) give written notice to the applicant of the date, time and place of the hearing and inform the applicant that he has a right to appear at the hearing and be heard in support of the application; and
 - (b) post in the Band office a copy of the notice.
- (3) At the hearing, the Council 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; and
 - (b) provide any resident present at the hearing with an opportunity to be heard.

PROVIDED that any written submissions must be filed with the Registrar three (3) days prior to the date of the hearing.

(4) The council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings. All records of proceedings shall be kept in the possession of the Council.

Decision

7(1) After it has heard all of the evidence and submissions, the Council shall meet in private to consider the application:

(2) In determining whether an application for permission to be a resident of the reserve should be granted, the Council shall take into consideration each of the following:

- (a) whether the applicant has arranged for a place to reside on the reserve;
- (b) whether the applicant's residing on the reserve would be compatible with the culture, society and community of the Band and welfare of the members of the Band residing on the reserve;
- (c) whether the applicant is of good moral character;
- (d) the extent to which the applicant is prepared to commit his personal and economic resources to the welfare and advancement of the community residing on the reserve;
- (e) the availability on the reserve of adequate housing, land and services; and
- (f) whether the applicant is or will be employed on the reserve.

(3) Where the applicant is a member of the Band, the Council shall consider only the criteria enumerated in paragraphs (2)(a) and (e).

(4) Within ten (10) days after the hearing, the Council shall determine the success of the application by:

- (a) granting the applicant permission to be a resident of the reserve for an indefinite period until such time as the applicant ceases to reside on the reserve;
- (b) granting the applicant permission to be a resident of the reserve for a defined period;
- (c) extending any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve; or
- (d) refusing the application,

and shall give written notice of its decision to the applicant, incorporating reasons in support of its decision.

(5) Within five (5) days after determining the success of the application, the Council shall post a notice of its decision in the Band office.

(6) Any applicant whose application is refused under this section may appeal to the Review Committee pursuant to section 12.

Reapplication

8. Subject to an appeal pursuant to section 12, where an application made under section 5 is refused pursuant to the provisions of section 7, the Council is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a material change of circumstances.

Enforcement

9(1) An officer may order any person who is residing on the reserve, and who is not a resident, to cease to reside on the reserve.

(2) Where a person who has been ordered under subsection (1) to cease to reside on the reserve fails or refuses to do so within thirty (30) days after the order is made under subsection (1), an officer may issue a further order prohibiting the person from being on or re-entering the reserve for a period of sixty (60) days.

(3) Any person who fails or refuses to comply with an order made under subsection (2), commits an offence.

(4) Every one who assists a person who has been ordered to cease to reside on the reserve, to continue to reside on the reserve, commits an offence.

Revocation of Entitlement to Reside

10(1) On the petition of any ten (10) residents, filed with the Registrar of Residency the Council may revoke the entitlement of any person to reside on the Reserve 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 from and after the date this By-law comes into effect:

- (a) the person, while a resident of the reserve, has been convicted of an indictable offence under the *Criminal Code* (Canada), for which a pardon has not been granted; or
- (b) the person, within any period of two years while residing on the reserve, has committed two (2) or more offenses under the *Criminal Code* (Canada), against the person or property of another resident, or the property of the Band for which he has been convicted and for which a pardon or pardons have not been granted;

and that it would be detrimental to the best interests of the Band to permit the person to continue to be a resident of the reserve.

(2) Within thirty (30) days after the petition referred to in subsection (1) is received by Council, the Council shall hold a hearing into the matter.

(3) At least fourteen (14) days prior to the hearing, the Registrar of Resident 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 has a right to appear at the hearing and to be heard; and
 - (b) post in the Band office a copy of the notice.
- (4) At the hearing, the Council 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 resident present at the hearing with an opportunity to be heard.
- (5) The Council may make rules of procedure governing the hearing of petitions under this section and shall keep records of its proceedings.
- (6) After it has heard all of the evidence and submissions, the Council shall meet in private to consider the petition.
- (7) Any revocation of entitlement of a person to reside on the reserve shall require a special majority of three-quarters (3/4) of all members of the Council voting in favour of the petition and shall incorporate written reasons in support thereof.
- (8) Within ten (10) days after the hearing, the Council shall render its decision in writing to the petitioners and the affected resident.
- (9) Within five (5) days after the Council's decision, the Council shall post a notice of the decision in the Band office.
- (10) A petition shall not be considered under this section in respect of a resident who, at the time of the petition, is under the age of sixteen (16) years.
- (11) No revocation of a resident's entitlement to reside on the reserve shall affect the entitlement of the spouse and children of that resident to continue to reside on the reserve.
- (12) A resident whose entitlement to reside on the reserve has been revoked by the Council under this section may appeal the decision of Council to the Committee of Elders pursuant to section 12.

Review Committee

11(1) The Council shall appoint a Review Committee, consisting of five (5) members of the Clearwater River Dene Nation, to hear appeals pursuant to sections 7 and 10 and to make recommendations to the Band Council.

- (2) Any recommendations of the Review Committee requires the support of at least three (3) members.

(3) The Review Committee may make rules of procedure governing appeals and shall keep records of its proceedings, which records shall be confidential and shall only be released with the written permission of the applicant or appellant.

Appeals

12(1) Within thirty (30) days after the posting of a notice of the Council's decision in the Band office, the applicant in the case of section 7, or the affected resident in the case of section 10, may appeal the Council's decision to the Review Committee by filing a written request with the Registrar of Residents that the Review Committee hear the appeal.

(2) Within thirty (30) days after the filing of the request, the Review Committee shall conduct a hearing with respect to the appeal.

(3) At least fourteen (14) days prior to the date of the hearing, the Registrar of Residents shall:

- (a) give written notice to the appellant of the date, time and place of the hearing and shall inform the appellant that he has the right to appear and make oral or written submissions, or both, at the hearing in support of the appeal; and
- (b) post in the Band office a copy of the notice.

(4) At the hearing, the Review Committee shall:

- (a) provide the appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal; and
- (b) provide any resident present at the hearing with the opportunity to be heard. PROVIDED that any written submissions shall be filed with the Registrar three (3) days before the hearing of the appeal.

(5) After it has heard all of the evidence and submissions, the Review Committee shall meet in private to consider the appeal.

(6) In determining whether an appeal should be allowed, the Review Committee shall take into consideration the criteria set out in subsections 7(2) and (3) in the case of a section 7 appeal, and the criteria set out in subsection 10(1) in the case of a section 10 appeal.

(7) Within ten (10) days after hearing the appeal the Review Committee shall make written recommendations to the Council.

(8) The Review Committee shall give written notice of its decision to the appellant.

Final Decision

13(1) Within ten (10) days after the Council has received the recommendations referred to in subsection 12(7), the Council shall dispose of the application by:

- (a) granting the applicant permission to be a resident of the reserve for an indefinite period until such time as the applicant ceases to reside on the reserve;

- (b) granting the applicant permission to be a resident of the reserve for a defined period;
- (c) extending any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve; or
- (d) refusing the application,

and shall give written notice of its decision to the applicant.

(2) Within five (5) days after disposing of the application, the Council shall post a notice of its decision in the Band office.

Additional Powers of Council

14(1) Notwithstanding the other provisions of this By-law, the Council shall be entitled to review the resident status of any person who while a resident, abandons his dwelling on the reserve;

(2) For the purposes of this section, a person is deemed to have abandoned his dwelling if he is gone from the dwelling for a continuous period of three (3) months without having previously advised the Registrar of Residents in writing that he shall be away from his dwelling but shall return within ten (10) months of leaving;

(3) The Council shall have discretion at all times to extend the residency of the non-resident spouses and children of residents in exceptional circumstances. The Council shall determine what constitutes an exceptional circumstance and the terms and conditions of any extension of residency which they may grant;

(4) All records of proceedings are to be kept by the Council for a period of five (5) years and are reviewable by Council at any time during that period. In the event the Council receives an application for residency, and determines that residency shall be denied, such determination shall be made in writing and notice given to the affected resident. Thereafter, the provisions of Section 12 and 13 herein shall apply.

Penalties


15. 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 (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.

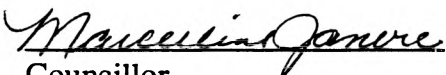
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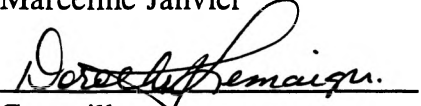
THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the Clearwater River Dene Nation this 30th day of March, 1998.

Voting in favour of the by-law are the following members of the Council:

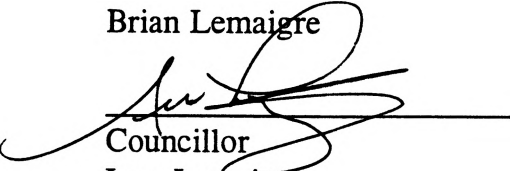

Chief Roy Cheecham


Councillor
Walter Haineault


Councillor
Marceline Janvier



Councillor
Dorothy Lemaigre

Councillor
Brian Lemaigre

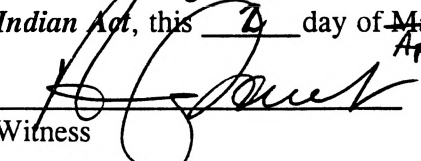

Councillor
Ivan Lemaigre


being a majority of those members of the Council of the Clearwater River Dene Nation Band present at the aforesaid meeting of the Council.

The quorum of the Council is Four (4) members.

Number of members of the Council present at the meeting ~~Five (5)~~ Five (5) ✓ 

I, WALTER HAINEAULT, Councillor of the Band, 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 (as the case may be) pursuant to subsection 82(1) of the *Indian Act*, this 4 day of ~~March~~ ^{April} 1998.


Witness


Councillor, Walter Haineault