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BY-LAW NO. 1995 - 04
of the Millbrook Band
A BY-LAW GOVERNING THE RESIDENCE
OF BAND MEMBERS AND OTHER PERSONS
ON RESERVE

WHEREAS the Council of the Millbrook Band desires to make a by-law governing the residency of Band Members and other persons on the reserve;

AND WHEREAS the Council of the Millbrook Band 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 Band to regulate the residence of Band members and other persons on the reserve;

NOW THEREFORE the Council of the Millbrook Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Millbrook Band 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 Millbrook Band;

"committee" means those Band members appointed by the Council pursuant to Section 11, to hear applications made pursuant to Sections 5 and 8, and make determinations pursuant to this by-law related to those applications;

"child" includes a child born in or out of wedlock and a legally adopted child who has not reached the age of nineteen (19) years;

"council" means the Council, as defined in the Indian Act, of the Band;

"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 Band list or who is entitled to have his name appear on the Millbrook 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 this by-law;

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"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;

"reserve" means the Beaver Lake Indian Reserve No. 17, Cole Harbour Indian Reserve No. 30, Millbrook Indian Reserve No. 27, Sheet Harbour Indian Reserve No. 36, Truro Indian Reserves No. 27A, 27B and 27C;

"visitor" 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;

"Millbrook First Nation" means the Millbrook Band of Indians as defined by the Indian Act, R.S.C. 1985, Chapter I-5 as amended;

"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 band member of the Millbrook Band;

Entitlement to Reside on Reserve

3. (1) A person is entitled to reside on the reserve only if the person:

(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 section 18.1, or subsection 28(2) of the Indian Act or under the provisions of this by-law;

(c) has the permission of the committee pursuant to section 5 or 8 or of the Band Council pursuant to section 12, to be a resident of the reserve.

(2) A spouse or dependent child of a person who is entitled to reside on the reserve under subsection (1), who actually resides with that person at or after the time the entitlement arises, is entitled to reside on the reserve until such time as the spouse or dependent child ceases to reside on the reserve, and such entitlement is independent of the entitlement of that person.

(3) Notwithstanding subsection (2), any spouse or dependent child of a person 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.

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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 Committee 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 Committee or 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 residency;
- (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; and
- (f) any additional information the applicant wishes to provide relating to the considerations listed in subsection 7 (2).

Hearing

6. (1) Within thirty (30) calendar days after the filing of a properly completed application, the Committee shall hold a hearing with respect to the application.

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

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(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 Committee 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.

(4) The Committee may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Decision

7. (1) After it has heard all of the evidence and submissions, the Committee 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 Committee shall take into consideration all matters it considers relevant including, but not limited to, 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 comparable 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 the 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 or a person with permission granted by the council pursuant to section 28(2) of the Indian Act, the Council shall consider only the criteria enumerated in paragraphs (2) (a) and (e).

(4) Within ten (10) calendar days after the hearing, the Committee shall dispose of the application by:

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(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 Committee or 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) calendar days after disposing of the application, the Committee 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 Council pursuant to section 12.

Reapplication

8. Where an application made under section 5 is refused pursuant to the provisions of section 76, the Committee 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 forthwith or within the time limit he may set forth and in no case greater than 30 days.

(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 the time designated in the order made under subsection (1), that person may be removed by a peace officer upon the written request of the council.

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

(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 offense.

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Relocation of Entitlement to Reside

10. (1) On the petition of any ten (10) residents, the Committee 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:

(a) the person, while a resident of the reserve, has been convicted of an indictable offense 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 an offense under the Criminal Code (Canada), against the person or property of a Band member or another resident, 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) calendar days after the petition referred to in subsection (1) is received by the Committee, the Committee shall hold a hearing into the matter.

(3) At least fourteen (14) calendar days prior to the hearing, the Registrar of Residents 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 Committee 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 Committee 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 Committee shall meet in private to consider the petition.

(7) Any revocation of entitlement of a person to reside on the reserve shall require the Committee's written reasons in support thereof.

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(8) Within ten (10) calendar days after the hearing, the Committee shall render its decision in writing to the petitioners and affected the resident.

(9) Within five (5) days after the Committee's decision, the Committee 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 nineteen (19) 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 Committee under this section may appeal the decision of the Committee to the Council pursuant to section 12.

Committee of Elders

11. (1) The Council shall appoint a Committee of Band members consisting of no more than five (5) members of the Millbrook Band, to hear applicants pursuant to sections 5 and 8 and to make determinations pursuant to the provisions of this by-law.

(2) Any recommendation of the Committee requires the support of a majority of Committee members, three shall constitute a quorum for all purposes.

(3) The Committee may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Appeals

12. (1) Within thirty (30) calendar days after the posting of a notice of the Committee'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 Committee's decision to the Council by filing a written request with the Registrar of Residents that the Council hear the appeal.

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

(3) At least fourteen (14) calendar 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 and written submissions, or both, at the hearing in support of the appeal; and

(b) post in the Band office a copy of the notice.

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(4) At the hearing, the Council 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.

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

(6) In determining whether an appeal should be allowed, the Council 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) calendar days after hearing the appeal the Council shall render its decision.

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

Final Decision

13. (1) The decision of the Council is final and binding on all parties.

(2) The Council shall dispose of the appeal 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 Committee or 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.

(3) Within five (5) calendar days after disposing of the appeal the Council shall post a notice of its decision in the Band office.

Penalties

14. (1) Any person who contravenes any of the provisions of this by-law commits an offense 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,

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or both. Section 81(2) and (3) may be utilized at the discretion of the judge in reaching a penalty for the contravention of this band by-law.

(2) Each day a person is in contravention of the provisions of this by-law represents a separate offense under this by-law and subject to the penalties set forth in 14 (1).

THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the Band this 26 day of APRIL, A.D., 1976. Voting in favour of the by-law are the following members of the Council:

Councillor Barry Gloude
Councillor Peter Cape
" Don [unclear]
Chieftain A. Bernard
Chief A. Harman

being a majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is five (5) members. Number of members of the Council present at the meeting:

I, BARRY GLOUDE, Chief / 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 the subsection 82 (1) of the Indian Act, this 27 day of APRIL, A.D., 1976.

(Witness) Bonnie Paul, Band Clerk / Secretary
 (Chief / Councillor) Barry Gloude