

BY-LAW NO. 19 91-22
of the Edmundston Indian Band
A By-law respecting the
construction and maintenance of fences

WHEREAS the Council of the Edmundston Indian Band desires to make a by-law governing the construction and maintenance of fences on the Edmundston Indian Reserve;

AND WHEREAS the Council of the Edmundston Indian Band is empowered to make such by-law pursuant to paragraphs 81(1)(c), (d), (f), (q) and (r) of the Indian Act;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and well-being of the inhabitants of the Edmundston Indian Reserve and for each individual owner's right to the use and peaceful enjoyment of their land on the Reserve;

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

SHORT TITLE

1. This by-law may be cited as the "Edmundston Band Fencing By-Law".

INTERPRETATION

2. In this by-law,

"Band" means the Edmundston Indian Band;

"Band Administrator" means the band administrator of the Edmundston Indian Band who is appointed by resolution of the Council for the purposes of this By-Law;

"Council" means the Council of the Edmundston Indian Band;

Band:	Edmundston
Section:	551(1)(f)
Date passed:	910806
Date mailed:	910814
Date received:	910819
40 day:	910928
Date effective:	

"fence" means a fence marking the boundary between separately owned or controlled parcels of land within the Reserve;

"owner" means a lessee, the holder of a Certificate of Possession, Occupation, or Location Ticket as referred to in the Indian Act; and

"Reserve" means that tract of land the legal title to which is vested in Her Majesty that has been set apart for the use and benefit of the Edmundston Indian Band, and known as the Edmundston Indian Reserve number 10.

APPROVAL OF NEIGHBOUR

3. No person shall remove, cut or damage the whole or any part of a fence without first obtaining the written approval of the owners of the lands enclosed by or abutting such fence.

AGREEMENTS BETWEEN NEIGHBOURS

4. Owners of adjoining lands may enter into any written agreement in respect to the type of fence and the responsibilities of each in respect to its erection and maintenance, which agreement shall be filed in the Office of the Band Administrator and enforced as if it is a decision made by the Band Administrator pursuant to section 16.

COUNCIL'S APPROVAL OF ALLOTMENTS

5. Prior to the granting or approval of any lease or allotment of land, the Council may require the construction, reconstruction, alteration, removal or repair of any fence related to the lands to be so leased or allotted, including the division of any costs or responsibilities.

NOTICES

- 6.(1) Any notice required by this by-law shall be in writing and may be served in person or by registered mail on the owner, the occupant of the land in question, or the Band Administrator, as the case may be, or with an adult person apparently residing at the place of abode of the owner, occupant or the Band Administrator.
- (2) An occupant, not being the owner of the land, who has received a notice in the manner set forth in subsection (1), shall immediately forward such notice to the owner.

OBLIGATIONS OF OWNERS

- 7.(1) Every owner shall make, keep up, and repair a just proportion of every fence marking the limits of lands controlled by him, or if there is no fence, shall make,

keep up and repair a just proportion of any fence which may be subsequently constructed.

(2) For the purpose of subsection (1), the just proportion of any fence for which an owner is responsible may be determined as follows:

(a) all fences or parts thereof separating a public road or road allowance and the lands of the owner; and

(b) when standing on his lands and facing the lot line in question, that half of any such fence lying to his right.

FENCE SPECIFICATIONS

8.(1) No person shall erect or construct a fence within the Reserve unless it is:

(a) constructed of timber, steel, iron or wire of a type other than barbed wire; and

(b) having a height of not less than 3 feet and not more than 4 feet 6 inches with the posts thereof being not more than twenty feet apart;

provided however that where the fence consists of a hedge, the hedge shall not be less than 3 feet in height or more than 4 feet 6 inches in height with the plants spaced not more than 1 foot 6 inches apart.

(2) Notwithstanding subsection (1), a fence may

(a) be constructed of any material or of any dimensions which the owners of the adjoining or abutting properties may agree to in writing pursuant to section 4; or

(b) be constructed of such material, dimensions, or style as ordered by the Band Administrator upon arbitration.

FENCE NOT TO OBSTRUCT

9. Notwithstanding sections 7 and 8, no fence shall be constructed of such material, design, or height so as to obstruct or interfere with

(a) the safe passage of vehicles on roads adjoining the lands where the fence is situate, or

(b) the lawful use and enjoyment by any owner or occupant of adjoining or abutting lands or premises.

NOTICE OF FENCING DISPUTE

- 10.(1)** If an owner refuses or neglects to build or maintain his portion of a fence, or erects or constructs a fence contrary to sections 7, 8, or 9, the owner of the adjoining land may by notice in writing require him to do so.
- (2)** If a fence is not erected, constructed, altered, removed, or repaired, as the case may be, in accordance with the requirements set forth in the notice given pursuant to subsection (1), within 14 days from the date that the notice is issued, the owner may request the Band Administrator in writing to direct and determine the matter in dispute.
- (3)** Upon receipt of a request pursuant to subsection (2), the Band Administrator shall make all necessary arrangements to arbitrate the dispute and shall notify, in writing, each owner in the dispute, of the date, time and place of the meeting for arbitration which shall be not less than 7 days nor more than 14 days from the date of the notification.
- (4)** A notice pursuant to subsection (3) may be in Form "A", attached hereto and forming part of this By-Law.

DETERMINATION OF DISPUTE

- 11.(1)** The Band Administrator shall, at the time appointed in section 10, examine the lands and fence and make a decision respecting the matters in dispute.
- (2)** Any decision made pursuant to subsection (1) shall be in writing and shall specify the locality, quantity, description and the minimum cost of the fence ordered to be made, or whether the fence shall be removed or altered, as the case may be, and the time in which the work shall be done, and shall state by which of the said parties the costs of work and materials shall be paid, or whether either party shall pay a certain or specified portion of such costs.
- (3)** A decision made pursuant to subsection (1) may be in Form "B", attached hereto and forming part of this By-Law.
- (4)** In making such a decision, the Band Administrator shall take into consideration
 - (a)** the nature of the fences in use in the locality,
 - (b)** the pecuniary circumstances of the persons between whom he is arbitrating,
 - (c)** the requirements set forth in this by-law for the erection of fences, and

- (d) generally, the suitability of the fence to the needs of each party to the arbitration.
- (5) The Band Administrator shall deposit his decision with the Band Council within 48 hours of his determination of the matters in dispute and shall within the same time period deposit a copy of the decision with all parties to the dispute.

APPEAL

- 12.(1) Within 7 days of the date that the Band Administrator's decision is deposited with the Band Council, any person dissatisfied with the decision may appeal to the Council by leaving a notice in writing at the Band Office and with the other party to the dispute.
- (2) The Council shall hear and determine the appeal within one month of the depositing of the appeal and may set aside, alter or confirm the decision, and may examine the parties and witnesses including the Band Administrator.
- (3) Any decision of the Band Administrator which has been so altered, confirmed or set aside by the Council is final.
- (4) All parties to a dispute shall comply with any decision made by the Band Council pursuant to this section, or, where a decision of the Band Administrator is not appealed to the Band Council, of the Band Administrator's decision, as the case may be, within the time stated for such compliance.

COMPLIANCE

13. Where a person has, without lawful excuse, refused or neglected to comply with a decision made by the Council pursuant to section 12, or, to a decision made by the Band Administrator pursuant to section 11 where no appeal has been filed, the Band Administrator or his agent or agents may effect all and any work necessary for such compliance and may recover the value and the costs of such work and materials, if any, from the person who has so refused or neglected to comply.

PENALTY

14. Any person who violates any of the provisions of this By-Law commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days, or to both.

This by-law is hereby made at a duly convened meeting of the Council of the Edmundston Indian Band this 6 day of August, 1991

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

Richard Wallace
(Member of the Council)
Patricia Wallace
(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

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

The quorum of the Council is 2 members.

Number of members of the Council present at the meeting: 2

I, Richard Wallace Chief/Councillor of the Edmundston Indian 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 offices (as the case may be) pursuant to subsection 82(1) of the Indian Act, this 6 day of August, 1991

Renda Wallace (Witness) Richard Wallace (Chief/Councillor)

THE EDMUNDSTON BAND OF INDIANS BY-LAW NO. 1991-02

FORM "A"

NOTICE TO THE PARTIES
TO THE DISPUTE

TO _____

AND TO _____

PURSUANT to Section ___ of By-Law Number ___ of the Council of the Edmundston Band of Indians TAKE NOTICE THAT the Band Administrator, as requested by _____ will attend on the ___ day of _____, 19 ___, at the hour of _____ o'clock(local time), to view and arbitrate upon the line fence in dispute between lands controlled by _____ and by _____, and being lot _____ and lot _____.

DATED at _____, this _____ day of _____, 19 ____.

Band Administrator

THE EDMUNDSTON BAND OF INDIANS BY-LAW NUMBER 1991-02

FORM "B"

BAND ADMINISTRATOR'S DECISION

I, _____, the Band Administrator of the Edmundston Band of Indians, having been appointed to view and arbitrate upon the line fence between _____ and _____ which fence is to be made and maintained/ altered / removed (as the case may be) between (describe properties), and having examined the premises and duly acted according to by-law number _____ do decide as follows:

DATED this _____ day of _____, 19____

Band Administrator