

BY-LAW NO. _____**of the Samson Cree Nation****A BY-LAW GOVERNING THE RESIDENCE OF MEMBERS AND OTHER PERSONS
ON THE SAMSON CREE NATION RESERVE**

WHEREAS the Chief and Council of the Samson Cree Nation desire to make a by-law governing the residence its citizens and other persons on the Samson Cree Nation's reserve lands;

AND WHEREAS the Samson Cree Nation is empowered by its inherent right of self-government, including jurisdiction over its reserve lands and citizenship as recognized and affirmed by s. 35(1) of the *Constitution Act, 1982*, to enact the present by-law;

AND WHEREAS nothing in this by-law may be interpreted as abrogating or derogating from the rights of the Samson Cree Nation under Treaty No. 6, 1876;

AND WHEREAS the Samson Cree Nation is empowered to make such a by-law pursuant to paragraphs 81(1) (p.1), (q) and (r) of the *Indian Act*;

AND WHEREAS the Chief and Council of the Samson Cree Nation are deeply concerned by recent incidents of violence and undesirable activity on the Samson reserve, and the dangers that such circumstances present to life and safety of the persons present on the Samson reserve;

AND WHEREAS it is considered necessary for the health and welfare of the Samson Cree Nation to regulate the residence of its citizens and other persons on the reserve;

NOW THEREFORE the Chief and Council of the Samson Cree Nation hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Samson Cree 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;

"*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 duly elected Chief and Council of the Samson Cree Nation;

"*dwelling*" means any house, apartment, mobile home, or a room located therein, or any similar lodging, whether or not condemned or suitable for habitation;

"*indictable offense*" includes a hybrid offense that proceeded by way of summary conviction;

"*member of the Nation*" means a person whose name appears on the Samson Cree Nation's membership list or who is entitled to have his or her name appear on the Samson Cree Nation's membership list;

"*Nation*" means the Samson Cree Nation;

"*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 duly 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;

"*reserve*" means the Samson Indian Reserve No. 137 & No. 137A, and Samson Cree Nation housing on Pigeon Lake Indian Reserve No. 138A;

"*reside*" means to live in a dwelling as one's primary place of abode;

"*resident*" means a person who resides on the reserve, and includes persons who are temporarily absent from the reserve because of schooling, work, travel, or similar purposes, and includes persons whose right to reside on the reserve has been revoked on an interim basis in accordance with this by-law, but excludes persons visiting the reserve for 30 days or less;

"*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 Samson Cree Nation.

Entitlement to Reside on Reserve

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

(a) resides on the reserve at the time this by-law comes into force and only until he ceases to have a 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 been authorized to reside on the reserve pursuant to this by-law.

(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.

Registrar of Residents and Residency Tribunal

4.(1) The Council shall appoint a Registrar of Residents to provide for the administration of applications, reapplications, 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;

(d) the location of each resident's dwelling; and

(e) whether each resident is a Status Indian.

(3) The Council shall appoint, and prepare a written mandate and terms of reference for, a Residency Tribunal of three (3) or more members of the Nation to hear and determine applications for residence pursuant to section 5, and petitions for revocation of entitlement to reside on reserve pursuant to section 9.

(4) The Residency Tribunal may establish rules governing the conduct of hearings and procedures under this by-law and shall retain records of its proceedings.

(5) For the purposes of hearing and determining applications under this by-law, a quorum of the Residency Tribunal shall require at least three (3) members.

Application to be a Resident

5.(1) Any person or family who wishes to reside on the reserve must apply to the Residency Tribunal for permission to be a resident or residents of the reserve or to extend any defined period for which permission was previously granted to the person or family to be a resident or residents of the reserve.

(2) Where a family wishes to apply to the Residency Tribunal to reside on reserve, it shall do so through the eldest member of the family who shall be identified in the family's application as the applicant.

(3) An application for residency on the reserve 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 any spouse with whom the applicant proposes to reside;
- (e)** the names of any dependent children with whom the applicant proposes to reside;
- (f)** the names of any additional persons with whom the applicant proposes to reside;
- (g)** any additional information the applicant wishes to provide relating to the considerations listed in subsection 7(2);
- (h)** signed written authorizations in a form satisfactory to the Registrar authorizing the Registrar to seek and obtain a criminal records check for the applicant and all other persons over the age of 12 years with whom the applicant proposes to reside; and
- (i)** for each person who is proposed to reside on the reserve, copies of that individual's driver's license, and Status Card, if any.

Hearing of Application to be a Resident

6.(1) As soon as is reasonably practicable after the filing of a properly completed application, but subject to the notice requirements of sub-section (2), the Residency Tribunal 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 or she has a right to appear at the hearing and to be heard in support of the application; and

(b) post publicly in the Cree Tribal Administration building a copy of the notice.

(3) At the hearing, the Residency Tribunal 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 insofar as time and circumstances reasonably permit.

Decision on Application to be a Resident

7.(1) After it has heard all of the evidence and submissions, the Residency Tribunal 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 Residency Tribunal 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 Nation and welfare of the members of the Nation 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;

(f) whether the applicant is or will be employed on the reserve; and

(g) whether the entitlement of the applicant to reside on the reserve has previously been revoked, the circumstances surrounding any such revocation, any change in the person's circumstances, and whether the presence of the person on the reserve presents or would present a danger to the health or safety of the community.

(3) Where the applicant is a member of the Nation, the Residency Tribunal shall consider only the criteria enumerated in paragraphs (2)(a), (e), and (g).

(4) As soon as is reasonably practicable after a hearing, the Residency Tribunal shall dispose of an application for permission to be a resident on the reserve by

- (a) granting the applicant permission to be a resident of the reserve 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 Residency Tribunal 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) The Residency Tribunal shall post publicly a notice of its decision in the Cree Tribal Administration building.

(6) A decision by the Residency Tribunal pursuant to sub-section (5) shall be final and not subject to appeal.

(7) Where the applicant is a person whose right to reside on the reserve has been and remains revoked by resolution of the Council pursuant to sub-section 12(1), no decision by the Residency Tribunal to grant permission to the applicant to reside on the reserve shall be valid unless affirmed by a resolution of the Council at a duly convened Council meeting with a special majority of at least two-thirds (2/3) of the Chief and Councilors present at the Council meeting voting in favour of such resolution.

Reapplication for Residence

8. Where an application made under section 5 is refused pursuant to sub-paragraph 7(5)(d), the Residency Tribunal 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.

Petition to Revoke Resident's Right to Reside on Reserve

9.(1) Any twenty-five (25) residents may submit a petition to the Registrar of Residents for revocation of the entitlement of any person to reside on the reserve on an interim basis on the basis that:

(a) there are reasonable grounds to believe that the person, while a resident of the reserve, has committed an indictable offense contrary to the *Criminal Code* or other federal enactment, which offense has endangered the life or safety of one or more persons;

(b) the resident has been charged with committing the offense referred to in subparagraph (a);

(c) the resident's charge(s) have not yet been brought to trial or otherwise resolved; and

(d) there are reasonable grounds to believe that the presence of the person on the reserve presents or would present a danger to the health or safety of the community.

(2) Any twenty-five (25) residents may submit a petition to the Registrar of Residents for revocation of the entitlement of any person to reside on the reserve permanently or for a defined period on the basis that:

(a) the person, while a resident of the reserve, has been convicted of an indictable offense under the *Criminal Code* or other federal enactment for which a pardon has not been granted, which offense has endangered the life or safety of one or more persons; or

(b) the person, within any period of two (2) years while residing on the reserve, has been convicted of two (2) or more offenses against the person or property of another resident and for which a pardon has not been granted;

and that the presence of the person on the reserve presents or would present a danger to the health or safety of the community.

(3) 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 twelve (12) years.

Hearing of Petition for Revocation of Right to Reside on Reserve

10.(1) Following the receipt of a petition pursuant to s. 9, and subject to the advance notice provisions in sub-sections (2) (3), and (4) the Residency Tribunal shall hold a hearing as soon as is reasonably practicable, but may, in its sole discretion, grant reasonable adjournments at the request of an affected party.

(2) At least seven (7) days prior to the hearing of a petition submitted pursuant to s. 9, the Registrar of Residents shall

(a) give written notice by way of personal service upon the affected resident or their legal counsel informing the affected resident of the date, time and place of the hearing and that he or she has a right to present submissions to the Residency Tribunal in writing, by telephone, or in person; and

(b) use reasonable efforts to give written notice by mail to each petitioner of the date, time and place of the hearing and informing each petitioner that he or she has a right to appear at to present submissions in writing or in person; and

(c) post publicly a copy of the notice in the Cree Tribal Administration building.

(3) If the affected resident is incarcerated, service of notice pursuant to s. 2(a) will be sufficient if it is sent to the attention of the affected resident at the correctional facility.

(4) If the affected resident is less than eighteen (18) years of age, notice pursuant to subparagraph (2)(a) shall also been given to any of the affected resident's parents or guardians who reside on the reserve, as well as the Kasohkowew Child Wellness Society.

(5) At the hearing, the Residency Tribunal shall

(a) provide each petitioner, the affected resident, and if sub-section 10(3) applies, the affected resident's parents or legal guardians, and the child welfare agency, 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 insofar as time and circumstances reasonably permit.

Decision on Petition for Revocation of Right to Reside on Reserve on Interim Basis

11.(1) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall meet in private to consider the petition, and shall determine whether or not, in the opinion of the Residency Tribunal, the requirements of 9(1) or 9(2) as the case may be, are present.

(2) The Residency Tribunal shall then dispose of a petition pursuant to sub-section 9(1) by

(a) revoking the entitlement of the affected resident to reside on reserve on an interim basis pending the final resolution of the charges; or

(b) refusing the petition.

(3) Where the Residency Tribunal has resolved to revoke the entitlement of a resident to reside on reserve on an interim basis pending the resolution of the charges pursuant to subparagraph (1)(a), such revocation shall expire

(a) in any case where the final resolution of the charges after trial and any resulting appeals is an acquittal or stay of proceedings, on the date that the charges are so resolved;

(b) in any case where the final resolution of the charges after trial and any resulting appeals is a conviction, and where no petition pursuant to section 10 has been submitted

to the Registrar of Residents in respect of such person within 30 days from the date of the conviction; and

(c) in any case where the affected resident is convicted of the charges and a petition has been submitted to the Registrar of Residents in respect of such person within 30 days from the date of the conviction, upon the final resolution of such petition by the Residency Tribunal or the Council as the case may be.

(4) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall dispose of a petition pursuant to sub-section 9(2) to revoke the entitlement of a person who is not a member of the Nation to reside on the reserve by

- (a) revoking the entitlement of the person to reside on the reserve permanently;
- (b) revoking the entitlement of the person to reside on the reserve for a defined period;
- (c) extending any defined period for which the person's entitlement to reside on the reserve was previously revoked; or
- (d) refusing the petition.

(5) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall dispose of a petition pursuant to sub-section 9(2) to revoke the entitlement of a person who is a member of the Nation to reside on the reserve by

- (a) recommending that the Council revoke the entitlement of the person to reside on the reserve permanently;
- (b) recommending that the Council revoke the entitlement of the person to reside on the reserve for a defined period;
- (c) recommending that the Council extend any defined period for which the person's entitlement to reside on the reserve was previously revoked; or
- (d) refusing the petition.

(6) A decision of the Residency Tribunal pursuant to sub-sections (2), (4), or (5) shall be final and not subject to appeal.

(7) A decision by the Residency Tribunal pursuant to sub-section (2), (4), or (5) shall be sent to the RCMP, the petitioners, the affected resident, and if the affected resident is less than eighteen (18) years of age, the affected resident's parents or legal guardians who reside on the reserve, and the child welfare agency, and shall be posted publicly in the Cree Tribal Administration building.

Council Resolution on Petition to Revoke Member's Right to Reside on Reserve

12.(1) If the Residency Tribunal recommends that the Council revoke the entitlement of a member of the Nation to reside on the reserve pursuant to sub-paragraphs 11(5)(a), (b) or (c), the Council shall consider such recommendation at a duly convened Council meeting, and may

- (a) revoke the entitlement of the person to reside on the reserve permanently;
- (b) revoke the entitlement of the person to reside on the reserve for a defined period;
- (c) extend any defined period for which the person's entitlement to reside on the reserve was previously revoked;
- (d) dismiss the petition; or
- (e) make such further or other resolution as the Council deems appropriate and necessary for ensuring the health and safety of the community.

(2) Any resolution to revoke the entitlement of a person who is a member of the Nation to reside on the reserve pursuant to sub-section 12(1) shall require a special majority of at least two-thirds (2/3) of the Chief and Councilors present at the Council meeting to vote in favour of such resolution, failing which the resolution shall be of no force or effect.

(3) A resolution by the Council pursuant to sub-section 12(1) shall be sent to the RCMP, the petitioners, the affected resident, and if the affected resident is less than eighteen (18) years of age, the affected resident's parents or legal guardians who reside on the reserve, and the child welfare agency, and shall be posted publicly in the Cree Tribal Administration building.

Effective Time of Revocation

13. Where the right of a resident to reside on reserve has been revoked by a decision or resolution under this by-law, the resident's right to reside on the reserve shall expire 24 hours from the time that the decision is communicated to the resident, and if the affected resident is less than eighteen (18) years of age, 24 hours from the time that the decision is communicated to the affected resident's parents or legal guardians who reside on the reserve.

Cessation of Services

14. Where the entitlement of a person to reside on reserve has been revoked on an interim basis, permanently or for a defined period, all services provided by the Samson Cree Nation to the person shall be discontinued throughout the currency of the revocation.

Visits

15.(1) A person whose entitlement to reside on reserve has been revoked on an interim basis, permanently, or for a defined period, may apply to the Residency Tribunal for permission to visit the reserve for the purposes of funerals, ceremonies, and other special occasions.

(2) A person making application under sub-section (1) shall include in his or her application the dates upon which the person proposes to visit the reserve, the purpose of the visit, where on reserve the person will be present, and any additional information or submissions the person wishes the Residency Tribunal to consider.

(3) The Residency Tribunal shall use its best efforts to consider and determine applications under this section expeditiously, and in advance of the proposed visitation dates.

(4) The Residency Tribunal may consider and determine applications pursuant to sub-section (1) on the basis of the written application, and is not required to hold a hearing into the matter.

(5) A decision by the Residency Tribunal under this section is final and not subject to appeal.

Persons Not Affected by Revocation

16. No revocation of a resident's entitlement to reside on the reserve shall affect the entitlement of the spouse or children of that resident to continue to reside on the reserve.

Enforcement

17.(1) An officer may order any person who is, or in the absence of evidence to the contrary, appears to be, residing on the reserve contrary to this by-law, and who is not entitled to reside on the reserve, to cease to reside on the reserve.

(2) Any person who fails or refuses to comply with an order made under sub-section 17(1) commits an offense and is subject to the applicable penalties.

(3) 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.

(4) It is acknowledged and agreed by the Chief and Council and the members of the Nation that an officer has full and sufficient authority to enforce this by-law and other lawful by-laws of the Samson Cree Nation to the best of his or her ability, including the authority to arrest and/or forcibly remove persons from the reserve who are not authorized to be present upon the reserve.

Judicial Review

18. On any application for judicial review in respect of a decision or resolution made pursuant to this by-law, the Court shall take notice of the specialized knowledge and expertise of the members of the Residency Tribunal and Council with respect to the history, culture and values of the Samson Cree Nation, as well as the best interests of the Samson Cree Nation community.

Penalties

19. 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, or both.

Severability

20. 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.

Amendments

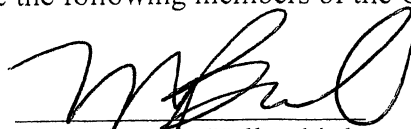
21. This by-law may only be amended by a quorum of the Council at a duly convened Council meeting.




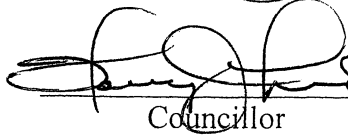

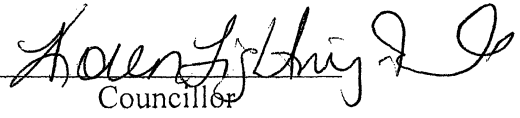

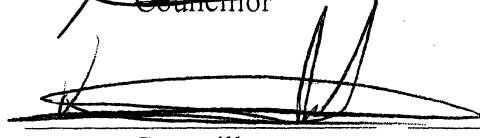

Reviews

22. This by-law and proceedings taken under it shall be reviewed annually, or so often as Council may direct, by persons appointed by Council for this purpose, and the product of such reviews shall be laid before Council and made available to any resident of the reserve or member of the Samson Cree Nation upon request.

THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the Samson Cree Nation this 5th day of January, 2012.

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


Chief Marvin Yellowbird

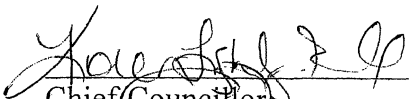
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being a majority of those members of the Council of the Samson Cree Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 7 members.

Number of members of the Council present at the meeting: 13

I, Koreen Lightning Seal Chief/Councillor of the Band, do hereby certify that a ^{original kit} ~~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 6th day of January, 2012.


Chief/Councillor

