

ALEXANDER FIRST NATION RESIDENCY AND BANISHMENT LAW NO. ◆

LAW NO. ◆

**ALEXANDER FIRST NATION
RESIDENCY AND BANISHMENT LAW**

BEING A LAW OF THE ALEXANDER FIRST NATION WITH A PURPOSE OF ESTABLISHING RULES FOR THE BANISHMENT OF PERSONS ENGAGING IN ILLEGAL ACTIVITIES THAT AFFECT THE LIVES AND SAFETY OF PERSONS PRESENT ON THE ALEXANDER FIRST NATION RESERVE #134, 134A, 134B (THE "NATION").

WHEREAS, the Alexander First Nation has and continues to exercise an inherent right to self-government that is recognized and affirmed by nehiyo law, Treaty Number Six, the Canadian common law, reference to *Constitution Act, 1867*, and section 35 of the *Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982 c.11 and is protected by Treaty No. 6, 1876; and

WHEREAS the Alexander First Nation from time immemorial undertook the issue of banishment to maintain traditional practices and standards with enforcement by the Alexander First Nation; and

WHEREAS the Alexander First Nation strives to ensure that matters related to banishments are carried out in a conscientious, respectful and prompt manner; that is consistent with standards at law and nehiyo traditional practices and

WHEREAS pursuant to Section 81 of the *Indian Act*, R.S.C.1985, c.I-5 (the "**Indian Act**"), a council may make by-laws not inconsistent with the *Indian Act* and regulations made thereunder for any or all of the purposes set out in paragraph 81(1)(p.1),(q) or (r) thereof; and

WHEREAS the Council of the Alexander First Nation deems it to be expedient and in the best interests of the Alexander First Nation, and necessary for the benefit, comfort and safety of the residents of the Nation and for the protection of the Nation, to make a Law for the purpose of regulating the residency of individuals on the Nation and providing for the banishment of residents from the Nation in certain circumstances;

NOW THEREFORE COUNCIL OF THE ALEXANDER FIRST NATION DULY ASSEMBLED ENACTS AS FOLLOWS:

PART I – TITLE AND DEFINITIONS

Short Title

I. This Law may be cited as the "*Residency and Banishment Law*".

Interpretation

2. In this Law

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

"banishment" shall have the same meaning as the revocation of the entitlement to reside on the Nation for a defined period;

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

"Complainant" means a member of the Nation who files a complaint with the Registrar of Residents to consider the revocation of residency;

"Complaint" means the application process as set out in section 9 of this Residency and Banishment Law by a Complainant;

"Council" means the Council of the Nation, comprised of the Chief and Councillors, duly elected from time to time in accordance with the Alexander First Nation Customary Election Regulations, as amended from time to time;

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

"illegal activities" shall have the same meaning as offences;

"offence" includes all actions by Residents that may be indictable or hybrid offences;

"member of the Nation" or *"member"* means a person whose name appears on the Alexander First Nation's membership list or who is entitled to have his or her name appear on the Alexander First Nation's membership list, as according to the *Alexander Tribal Membership Rules*;

"Nation" means the Alexander First Nation Indian Reserve No. 134, 134A and 134B, Treaty Land Entitlement lands and any lands acquired after the coming into force of this Law;

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

"Order to Revoke" means a decision by the Residency Tribunal to revoke residency of any resident pursuant to this Law;

"Registrar of Residents" or *"Registrar"* means the independent registrar appointed by Council, in conjunction with In-house legal counsel;

"reside" means to live in a dwelling as one's primary place of abode, otherwise than as a visitor to the Nation, including persons who are temporarily absent from the Nation because of schooling, travel, or similar purposes,

and including persons whose right to reside on the Nation has been revoked on an interim basis in accordance with this Law;

“*Residency Tribunal*” means the Residency Tribunal of the Alexander First Nation Legal Department;

“*resident*” means a person who is entitled to reside on the 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 member of the Alexander First Nation.

PART II – AUTHORIZED RESIDENCY

Entitlement to Reside on Nation

3.(1) A registered member, in accordance with the AFN membership code is *de facto* entitled to reside on the Nation.

(2) A common-law partner who is at least eighteen (18) years of age, of a registered member, who has been given the approval to reside on the Nation only if the person has completed an application pursuant to section 5 of this Law.

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

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

PART III – ADMINISTRATION AND ENFORCEMENT

Registrar of Residents and Residency Tribunal

4.(1) The Council shall appoint a Registrar of Residents to provide for the administration of applications for residence and applications for revocation made under this Law and to maintain an accurate and up to date registry of residents on the Nation. The Registrar will conduct a census of records related to the residents of the Nation, with criteria for frequency to be set by regulations from Council.

(2) The Registrar of Residents shall maintain an up to date registry, “Residents List”, on which is recorded

- (a)** the name(s) of all persons residing in a residency;
- (b)** an indication as to whether each resident is a resident for an indefinite or defined period;
- (c)** work with membership department to determine, status of the residents
- (d)** the length of any defined period of residence; and

- (e) the location of each resident's dwelling.
- (3) When required, the Registrar and In-house Legal Counsel will make recommendations to Council to appoint a Residency Tribunal, and prepare a written mandate and terms of reference for, a Residency Tribunal of five (5) to form a Residency Tribunal to review, hear and determine applications for residency pursuant to section 5, and applications for revocation of entitlement to reside on Nation pursuant to section 9.
- (4) The Residency Tribunal may establish rules governing the conduct of hearings and procedures under this Law and shall retain records of its proceedings.
- (5) The Residency Tribunal shall make unanimous decisions on applications for residence.

Application to be a Resident

5.(1) Any person who is entitled to reside on the Nation pursuant to this Law must apply, in the prescribed form, to the Residency Registrar for permission to be a resident of the Nation pursuant to subsection 5(2) or to extend any defined period for which permission was previously granted to the person to be a resident of the Nation.

- (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 Nation for a limited time, the approximate duration of the proposed residence;
 - (c) the location at which the applicant proposes to reside;
 - (d) the names of the applicant's dependent children, if any;
 - (e) the names of any additional persons with whom the applicant proposes to reside;
 - (f) subject to subsection 5(3), if one or more of the applicants is an adult who is not a member of the Nation, must include with their signed agreement a one-time, non-refundable residency application fee of one hundred and fifty dollars (\$150.00) due at the time of filing application directly to the Nation, for the duration of their entitlement to reside on the Nation;
 - (g) any additional information the applicant wishes to provide relating to the considerations listed in subsection 7(2); and
 - (h) a written consent in a form satisfactory to the Registrar for a criminal record check for the applicant, and any other persons over the age of 12 years with whom the applicant proposes to reside.
- (3) An applicant's application may include an application to the Residency Tribunal for an exemption from subparagraph 5(2)(f), which application shall be determined by the Residency Tribunal along with the application in accordance with sections 6 and 7.

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 Alexander First Nation Administration Building and on the Alexander First Nation website 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 members of the Nation 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 Nation 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 Nation;

(b) whether the applicant's residing on the Nation would be compatible with the culture, society and community of the Nation and welfare of the members of the Nation residing on the Nation;

(c) whether the applicant is of good moral character;

(d) the extent to which the applicant is prepared to commit their personal and economic resources to the welfare and advancement of the community residing on the Nation;

(e) the availability on the Nation of adequate housing, land and services; and

(f) whether the applicant is or will be employed on the Nation.

(3) In determining whether an exemption from the requirement of sub-paragraph 5(2)(g) shall be granted, the Residency Tribunal may take into consideration the following:

(a) whether the applicant is the spouse of a member of the Nation;

- (b) whether the applicant is elderly;
- (c) whether the applicant has displayed exemplary community service;
- (d) whether or not the person has been declared by the Court to be a dependent adult; and
- (e) any other matter that the Residency Tribunal deems relevant.

(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 Nation by:

- (a) granting the applicant permission to be a resident of the Nation until such time as the applicant ceases to reside on the Nation;
- (b) granting the applicant permission to be a resident of the Nation 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 Nation; 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 Alexander First Nation Administration building and the Alexander First Nation website.

(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 Nation 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 Nation shall be valid unless affirmed by resolution of the Council at a duly convened Council meeting.

Reapplication for Residence

8.(1) 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.

(2) Reapplications must have paid the previous residency fee before the Residency Tribunal will consider any reapplication for residence.

Complaint to Consider Resident's Right to Reside on Nation

9.(1) Any Complainant may file a Complaint with the Registrar of Residents to consider revocations of the entitlement of any person to reside on the Nation on an interim basis that:

(a) there are reasonable grounds to believe that an offence has been committed on the Nation, or the resident has been charged with committing an offence, which offence has endangered the life or safety of one or more persons present on the Nation;

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

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

(2) Any Complainant may file a Complaint with the Registrar of Residents for revocation of the entitlement of any person to reside on the Nation permanently or for a defined period on the basis that:

(a) the person, while residing on the Nation, has been convicted of an offence under the Canadian *Criminal Code*, R.S.C. 1985, c.C-46, for which a pardon has not been granted; or

(b) the person, while residing on the Nation, has been convicted of one (1) or more offences against the person or property of another resident and for which a pardon or pardons have not been granted;

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

(3) Any Complaint made shall include:

(a) The Complainant's contact details (name, address and telephone number);

(b) Grounds upon which the complaint is being made;

(c) Material facts to support the complaint in a statutory declaration or affidavit; and

(d) a Complaint bond at a rate to be prescribed by the Registrar to be set annually on January 1, to cover administrative costs of processing the complaint.

(4) The safety of the applicant or the member of the Nation or the affected residence of whom the application applies to concerning the application for revocation, as either case maybe, will be at all times considered by the Residency Tribunal.

(5) A Complaint 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 Complaint to Consider Revocation of Right to Reside on the Nation

10.(1) Following the receipt of a Complaint pursuant to s. 9, and subject to the advance notice provisions in subsections (2) (3), and (4) the Residency Tribunal may assess the complaint, and shall have the sole discretion to determine if the complaint meets the standards as outlined in s.9.

(2) 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.

(3) At least fourteen (14) 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) give written notice by mail to the applicant by the member of the Nation who filed the complaint of the date, time and place of the hearing and informing the applicant of the member of the Nation who filed the complaint and the affected resident 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 Alexander First Nation Tribal Administration building and on the Alexander First Nation website.

(4) If the affected resident is incarcerated, service of notice pursuant to s. 4(a) will be considered sufficient if it is sent to the attention of the affected resident at the correctional facility.

(5) If the affected resident is less than eighteen (18) years of age, notice pursuant to subparagraph 4(a) shall also be given to any of the affected resident's parents or guardians who reside on the Nation, as well as to the child welfare agency serving the interests of the Nation.

(6) At the hearing, the Residency Tribunal shall

(a) provide, the Complainant, the affected resident, and if sub-section 10(6) 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 Complaint; and

(b) provide any members of the Nation present at the hearing with an opportunity to be heard insofar as time and circumstances reasonably permit.

(7) After it has heard all of the evidence and submissions, the Residency Tribunal shall meet in private to consider the Complaint, 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.

Decision on Petition for Revocation of Right to Reside on Nation

11. (1) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall dispose of a Complaint pursuant to sub-section 9(1) by:

(a) subject to section 11(2)(c), revoking the entitlement of the affected resident to reside on the Nation on an interim basis pending the final resolution of the charges; or

(b) refusing the Complaint.

(2) Where the Residency Tribunal has resolved to revoke the entitlement of a resident to reside on the Nation on an interim basis pending the resolution of the charges pursuant to sub-paragraph (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 Complaint pursuant to section 9(2) has been submitted to the Registrar of Residents in respect of such person within 30 days from the date of the conviction, on the 30th day following the final resolution of the charges; and

(c) in any case where the affected resident is convicted of the charges and a Complaint 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 Complaint by the Registrar of Residents or the Council as the case may be.

(3) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall dispose of a Complaint 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 Nation by:

(a) revoking the entitlement of the person to reside on the Nation permanently;

(b) revoking the entitlement of the person to reside on the Nation for a defined period;

(c) extending any defined period for which the person's entitlement to reside on the Nation was previously revoked; or

(d) refusing the Complaint.

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

(a) making an Order to Revoke the entitlement of the Resident to reside on the Nation permanently;

(b) defining the period within the Order to Revoke the entitlement of the Resident to reside on the Nation;
or

(c) extending any defined period for which the Resident's entitlement to reside on the Nation was previously revoked.

(5) An Order to Revoke by the Residency Tribunal pursuant to sub-sections (1), (2), (3) or (4) shall be final and not subject to appeal.

(6) All Orders to Revoke by the Residency Tribunal pursuant to sub-section (1), (2), (3) or (4) shall be sent to Council, any Officer authorized by Council, 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 Nation, and the child welfare agency, and shall be posted publicly in the Alexander First Nation Administration building and website.

Council Resolution on Order to Revoke Resident's Right to Reside on Nation

12.(1) Upon receipt of an Order to Revoke pursuant to sub-paragraphs 11(4), the Council may pass a band council resolution:

- (a) revoking the entitlement of the Resident to reside on the Nation permanently;
- (b) revoking the entitlement of the Resident to reside on the Nation for a defined period;
- (c) extending any defined period for which the Resident's entitlement to reside on the Nation was previously revoked;
- (d) dismissing the Complaint; or
- (e) making such further or other resolution as the Council deems appropriate and necessary for ensuring the health and safety of the community.

(2) A resolution by the Council pursuant to sub-section 12(1) shall be sent to an Officer authorized by Council, the RCMP, the Complainant, 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 Nation, and the child welfare agency, and shall be posted publicly in the Alexander First Nation Administration building and website.

Persons Not Affected by Revocation

13. No revocation of a resident's entitlement to reside on the Nation shall affect the entitlement of the spouse or children of that resident to continue to reside on the Nation, where non-Member spouses apply under this Law to reside on the Nation.

Enforcement

14.(1) An officer may order any person who is, or in the absence of evidence to the contrary, appears to be, residing on the Nation contrary to this Law, and who is not entitled to reside on the Nation, to cease to reside on the Nation.

(2) Any person who fails or refuses to comply with an order made under sub-section 14(1) is guilty of an offence and is subject to the applicable penalties.

(3) Every person who assists a person who has been ordered to cease to reside on the Nation, to continue to reside on the Nation, is guilty of an offence.

(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 Law and other lawful by-laws of the Alexander First Nation to the best of his or her ability, including the authority to arrest and/or forcibly remove persons from the Nation who are not authorized to be present upon the Nation.

Judicial Review

15. On any application for judicial review in respect of a decision or resolution made pursuant to this 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 Nation, as well as the best interests of the Alexander First Nation.

Penalties

16. Any person who contravenes any of the provisions of this Law is guilty of an offence and is liable on summary conviction to a fine not exceeding three thousand dollars (\$3,000.00) and imprisonment for a term not exceeding thirty (30) days.

PART IV – GENERAL PROVISIONS

Severability

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

Amendments

18. This Law may only be amended by a quorum of the Council at a duly convened Council meeting.

Reviews

19. (1) This 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 Nation or member of the Alexander First Nation upon request.

(2) This Law and proceedings taken under it shall be reviewed by all newly elected Chief and Councillors.

THIS LAW IS HEREBY passed at a duly convened meeting of the Council of the Alexander First Nation this _____ day of _____, 20_____.

Quorum 4

(Chief) Kurt Burnstick

(Councillor) Anita Arcand

(Councillor) Sheldon Arcand

(Councillor) Christopher Arcand

(Councillor) Cheryl Savoie

(Councillor) Marcel Paul

(Councillor) Joseph Kootenay

- Being the majority of those members of the Council of the Alexander First Nation present at an aforementioned meeting of the Council;
- The quorum of the Council is 4 members;
- Number of members of the Council present at the meeting was [__]