



**A Law Governing the Residence of Members and Other Persons within
Pikwàkanagàn
Residency Law**

Whereas the Council of the Algonquins of Pikwàkanagàn desires to make a law governing the residence of members and other persons in Pikwàkanagàn;

And Whereas the Council of the Algonquins of Pikwàkanagàn is empowered to make such law pursuant to paragraphs 81(a)(p.1), (q) and (r) of the Indian Acts;

Whereas the Council believes it is the Algonquin's inherent right to determine residency with their community;

Whereas it is considered necessary for the health and welfare of the Algonquins of Pikwàkanagàn to regulate the residence of members and other persons in Pikwàkanagàn;

And Whereas, consultation has been completed;

NOW THEREFORE, the Council of the Algonquins of Pikwàkanagàn, having duly enacted by-law No. 2004- 1 on the 31ST day of August 2004, and being a by-law to regulate the residence of members or other persons in Pikwàkanagàn, do hereby repeal all previous by-law in its entirety and replace it with the following law:

1. SHORT TITLE

This law may be cited as the “Residency Law”.

2. INTERPRETATION:

In this Law

“**Applicant**” means a person who has submitted an application for permission to be a resident of Pikwàkanagàn under Section 5.

“**Appeal Board**” means a group of members, appointed by Band Council Resolution, to sit on and make decisions and hear appeals and objections on all Administrative Laws.

“**Child**” includes an individual between (one) 1 and (eighteen) 18 years of age born in or out of wedlock and a legally adopted child.

“**Council**” means the Council, as defined in the *Algonquins of Pikwàkanagàn Custom Election Code*.

“**Dependant**” means a person whose support and maintenance is contingent upon the aid of another.

“**Dwelling**” means house, apartment, mobile home, or a room located herein, or any similar lodging suitable for habitation or being inhabited.

“**Member of the Algonquins of Pikwàkanagàn**” means a person whose name appears on the Algonquins of Pikwàkanagàn Membership Register who is entitled to have his name appear on the Algonquins of Pikwàkanagàn Membership Register pursuant to the *Membership Code* of the Algonquins of Pikwàkanagàn.

“**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 appointed by the Council to maintain law and order within Pikwàkanagàn First Nation.

“**Pikwàkanagàn First Nation**” means the land reserved for the use and benefit of the Algonquins of Pikwàkanagàn, Indian Reserve #39.

“**Principle Residence**” defined as 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.

“**Residency**” means to live in a dwelling, otherwise than as a visitor in Pikwàkanagàn.

“**Residency Right**” means the right to reside in Pikwàkanagàn under the Residency Law.

“**Spouse**” means a person who is married to, or who cohabits with a member in a conjugal relationship outside of marriage and provides proof of such.

In this Law, reference to the masculine includes the feminine, and references to the singular include the plural.

3. ENTITLEMENT TO RESIDE IN PIKWAKANAGAN

3.1 No person shall reside in lands reserved for the Algonquins of Pikwàkanagàn except

- a) A person who is a member of the Algonquins of Pikwàkanagàn;
- b) A person to whom permission to reside has been granted pursuant to this by-law, and who has not, since permission has been granted, taken up ordinary residency outside of Pikwàkanagàn;
- c) A person who is a dependent of and who resides with a person mentioned in subsections a and b of this section 3;

- 3.2 No person shall be eligible for permission to reside in Pikwàkanagàn except:
- a) a spouse of a member of the Algonquins of Pikwàkanagàn, or
 - b) a person, who would benefit the community through the person's employment to assist in the revival and promotion of our Algonquin language, culture, society and community values; or
 - c) a spouse of a deceased member of the Algonquins of Pikwàkanagàn who has lawfully resided in Pikwàkanagàn with that member immediately before the member's death; and has permission from the Certificate Holder of the land to remain in the house or property and;
 - d) has the permission of the Registrar according to section 6, or of the Council under section 11, to be a resident in Pikwàkanagàn.
- 3.3 A person will be deemed to be residing in Pikwàkanagàn if they live in a dwelling in Pikwàkanagàn for contiguous a period greater than 90 days, or more than 180 days of any 365 days. This presumption may be rebutted by presenting proof to the Registrar appointed under this law that the person is only visiting Pikwàkanagàn, however, whether or not this presumption is rebutted is the sole and unappealable discretion of the Registrar.

4. REGISTRAR OF RESIDENTS

- 4.1 The Registrar shall be appointed by Council by resolution for a term specified in the resolution; and may be removed for just cause at any time during this term by Council resolution.
- 4.2 The Registrar shall not be a member of the Council or the Appeal Board.
- 4.3 The Registrar shall receive applications and make decisions in accordance with Sections 3 and 6, on behalf of Council.
- 4.4 The Registrar shall, as necessary and from time to time, set and/or amend the application form for use under this law.
- 4.5 The Registrar of Residents shall maintain a Residents List, on which is recorded
- a) the name of each resident;
 - b) whether or not the person is a member of the Algonquins of Pikwàkanagàn;
 - c) The date on which the person has been granted permission to reside in Pikwàkanagàn
 - d) The date the person moved into Pikwàkanagàn
 - e) an indication as to whether each resident is a resident for an indefinite or defined period, and
 - f) the length of any defined period of residence.

5. APPLICATION TO BE A RESIDENT

- 5.1 Any person, who wishes to reside in Pikwàkanagàn, must apply in writing, by completing the “Application for Residency” form and submitting it to the Registrar. An “Application for Residency” must be completed to extend any defined period for which permission was previously granted to be a resident of Pikwàkanagàn.
- 5.2 The completed application form shall be filed with the Registrar of Residents and shall include:
- a) The name, mailing address, date of birth, marital status, and membership of the applicant.
 - b) Excepting dependents, each person requesting to reside in Pikwàkanagàn must complete an application;
 - c) if the applicant proposes to reside in Pikwàkanagàn for a limited time, the approximate duration of the proposed residence;
 - d) the location at which the applicant proposes to reside;
 - e) the name of the applicant’s spouse, if any; (If common law, a declaration to that effect must be included and signed by both)
 - f) the names of the applicant’s dependent children, if any; and
 - g) any additional information the applicant wishes to provide relating to the considerations listed in subsection 6.2.
 - h) the applicant’s and their spouse, if applicable, signatures;
 - i) if a non-member, a Canadian Police Information Check;
 - j) the applicant’s means of support;
 - k) any additional information the applicant wishes to provide for consideration.
- 5.3 Incomplete application forms shall not be accepted.

6. DECISION

- 6.1 Within thirty (30) days after the filing of a properly completed application, the Registrar shall make a decision concerning the application.
- 6.2 In determining whether an application for permission to be a resident of Pikwàkanagàn should be granted, the Registrar shall take into consideration each of the following:

- a) whether the applicant has arranged for a place to reside in Pikwàkanagàn;
 - b) the availability within Pikwàkanagàn of adequate housing, land, and services;
 - c) whether the applicant's residing in Pikwàkanagàn would be compatible with the culture, society and community and welfare of the members residing in Pikwàkanagàn;
 - d) whether the applicant is of good moral character;
 - e) the extent to which the applicant is prepared to commit his personal and economic resources to the welfare and advancement of the community;
 - f) whether the applicant is or will be employed in Pikwàkanagàn;
 - g) the applicant has a criminal record;
 - h) and such further and other criteria as are in the best interest of the Algonquins of Pikwàkanagàn.
- 6.3 Where the applicant is a member of the Algonquins of Pikwàkanagàn, the Registrar shall consider the criteria enumerated in section 6.2.
- 6.4 Within ten (10) days after the decision, the Registrar shall dispose of the application by
- a) granting the applicant permission to be a resident of Pikwàkanagàn for an indefinite period until the applicant ceases to reside in Pikwàkanagàn;
 - b) granting the applicant permission to be a resident of Pikwàkanagàn for a defined period;
 - c) extending any defined period for which permission was previously granted to the person by the Council or by the Registrar to be a resident of Pikwàkanagàn; or
 - d) refusing the application.
 - e) referring the application to the Appeal Board for a decision and shall give written notice of the decision to the applicant, providing reasoning in support of the Appeal Board's decision.
- 6.5 Once a month, the Registrar shall post the Residents List in the Administration Office.
- 6.6 Any member applicant whose application is refused under this section may send the appeal to the Appeal Board pursuant to Section 11.

7. REAPPLICATION

- 7.1 Where an application made under Section 5 is refused pursuant to the provisions of Section 6, the Registrar 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 circumstance.

8. ENFORCEMENT

- 8.1 An officer may order any person who is residing in Pikwàkanagàn, who does not have permission, to cease to reside in Pikwàkanagàn.
- 8.2 Where a person who has been ordered under subsection 8.1 to cease to reside in Pikwàkanagàn fails or refuses to do so within thirty (30) days after the order is made under subsection 8.1, an officer may issue a further order prohibiting the person from being on or re-entering Pikwàkanagàn.
- 8.3 Any person who fails or refuses to comply with an order made under subsection 8.2 commits a trespass summary offence.
- 8.4 Any person who assists a person to continue to reside in Pikwàkanagàn contrary to the order of an officer acting under this law, provided that the person providing the assistance knew, or ought to have known, of the order prior to providing such assistance, commits an offence.
- 8.5 Any person or spouse of a member residing in Pikwàkanagàn without permission will not receive any type of benefit until the member and the member's spouse has obtained permission from the Lands, Estate, and Membership Department to reside in Pikwàkanagàn.

9. REVOCATION OF PERMISSION TO RESIDE

- 9.1 When a member advises the Registrar that their relationship with a non-member has ended, the Registrar shall automatically revoke the non-member's permission to reside in Pikwàkanagàn.
- 9.2 On the petition of any ten (10) resident members of the Algonquins of Pikwàkanagàn, the Council may revoke permission of any person to reside in Pikwàkanagàn who is referred to in Section 3 if it has been shown that;

- a) the person, while a resident of Pikwàkanagàn, has been convicted of an indictable offence under the Criminal Code (Canada) for which a pardon has not been granted; and, or
 - b) The person, within any period of two (2) years while residing in Pikwàkanagàn, has committed two (2) or more offences under the *Criminal Code* (Canada), against the person or property of another resident, for which they have been convicted and for which a pardon or pardons have not been granted;
 - c) That it would be detrimental to the best interest of Pikwàkanagàn to permit the person to continue to reside in Pikwàkanagàn.
- 9.3 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 eighteen (18) years.
- 9.4 No revocation of a resident's permission to reside in Pikwàkanagàn shall affect the permission of the member spouse and dependent children of that person to continue to reside in Pikwàkanagàn
- 9.5 The Chief and Council shall deal with a petition for revocation.

10. REVOKING RESIDENCY RIGHTS OF REGISTERED MEMBERS

- 10.1 The Council may, on sixty (60) days written notice to a member, convene a general meeting of the Algonquins of Pikwàkanagàn to consider whether a member should be expelled from Pikwàkanagàn on the grounds that the member constitutes a serious threat to the life, safety, or physical and/or mental and/or spiritual well-being of any other person residing in Pikwàkanagàn, or their property.
- 10.2 A general meeting called under subsection 10.1 shall only be effective if the Council provides thirty (30) days in advance, written notice to the Algonquins of Pikwàkanagàn membership of the time, place and purpose of the meeting.
- 10.3 The member whose expulsion as a resident is being considered must be given the opportunity to make submissions and give answers to the general membership before any vote to expel is called.
- 10.4 A resolution expelling a member from the community shall be effective only if supported by at least three-quarters of the total votes cast by the members present at the general meeting convened to consider the expulsion.
- 10.5 The expulsion of a member as a resident shall not affect the rights of others residing in the household.
- 10.6 A person who has been expelled from the community shall not be eligible to reapply for residency until the fifth (5th) anniversary of their residency rights.

11. APPEAL BOARD MEMBERS

- 11.1 The Council shall appoint members to the Appeal Board, which will consist of members of the Algonquins of Pikwàkanagàn. An Appeal Board hearing, pursuant to Section 6 and 9 of this law, making recommendations to Council, shall consist of three (3) members.
- 11.2 The Appeal Board Members shall make rules of procedure governing appeals for the Chief and Council's approval and shall keep records of its proceedings.
- 11.3 An Appeal Board Member shall not be the Registrar or a member of the Council.

12. APPEALS

- 12.1 Within thirty (30) days after the posting of a notice of the Registrar's decision in the Administration Office, the applicant in the case of Section 6, the affected resident in the case of Section 9, or any member of the Algonquins of Pikwàkanagàn, may appeal the decision to the Appeal Board by filing a written request with the Registrar of Residents that the Appeal Board hear the appeal.
- 12.2 Within thirty (30) days after the filing of the request, the Appeal Board shall conduct a hearing with respect to the appeal.
- 12.3 At least fourteen (14) days prior to the date of the hearing, the Registrar of Residents shall;
 - a) give written notice to the appellant and/or petitioners of the date, time and place of the hearing and shall inform the appellant and/or petitioners that they must appear and make oral or written submissions, or both, at the hearing in support of the case; and
 - b) post in the Administration office a copy of the notice.
- 12.4 At the hearing, the Appeal Board members shall;
 - a) provide the appellant and/or petitioners with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal or petition; and
 - b) provide any resident present at the hearing with the opportunity to be heard.
- 12.5 After it has heard all of the evidence and submissions, the Appeal Board members shall meet in private to consider the appeal.
- 12.6 In determining whether an appeal should be allowed, the Appeal Board members shall take into consideration the criteria set out in subsections 6.2 and 6.3 in the case of a

section 6 appeal and the criteria set out in Section 9 in the case of a petition for revocation.

12.7 The Appeal Board Members shall give written recommendations to the Council.

13. FINAL DECISION

13.1 Any revocation of entitlement of a person to reside in Pikwàkanagàn shall require a quorum of the Council voting in favour of the petition.

13.2 Within twenty (20) days after the Council has received the petition referred to in subsection 12.7, the Council shall dispose of the application by;

- a) granting the applicant permission to be a resident in Pikwàkanagàn for an indefinite period until such time as the applicant ceases to reside in Pikwàkanagàn;
- b) granting the applicant permission to be a resident in Pikwàkanagàn 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 in Pikwàkanagàn; or
- d) Refusing the application – if refused a Band Council Resolution will be signed and a copy provided to the OPP for enforcement.

13.3. Within five (5) days after disposing of the application, the Council shall post a notice of its decision in the Administration Office.

14. PENALTIES

14.1 Any person who contravenes any of the provisions of this law commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars (\$5,000) or to imprisonment of not more than two years less a day or both.