



AN ACT RESPECTING MEMBERSHIP

LEGAL AFFAIRS
AND JUSTICE





AN ACT RESPECTING MEMBERSHIP

IN THE [NAME] FIRST NATION | TEMPLATE – DRAFT I

Assembly of First Nations

April 1st, 2019

An Act Respecting Membership In The [Name] First Nation

Adopted by the [NAME] Council on [DATE]
Resolution [NUMBER].

Preamble

WHEREAS the [Name] First Nation has inherent jurisdiction to determine citizenship and other related issues since time immemorial; and

WHEREAS the [Name] First Nation recognizes that jurisdiction over citizenship is an essential function of First Nation governments; and

WHEREAS membership and citizenship are core jurisdictions of First Nations, which has been maintained through customary and traditional process, and are integral to our distinctive culture; and

WHEREAS the United Nations Declaration on the Rights of Indigenous Peoples affirms that Indigenous individuals have a right to belong to their Nation. By that right, [Name] First Nation may freely determine the requirements of citizenship in their nation; and

WHEREAS section 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal and Treaty rights of the Aboriginal Peoples of Canada; and

WHEREAS section 25 of the *Constitution Act, 1982* provides that the guarantee of certain rights and freedoms in the Canadian Charter of Rights and Freedoms shall not be used to abrogate or derogate from any Aboriginal, Treaty, or other rights and freedoms related to the Aboriginal Peoples of Canada; and

WHEREAS the inherent right of self-government is an existing inherent right under section 35 of the *Constitution Act, 1982* and the inherent right may find expression in Treaties and in the context of the Crown's relationship with Treaty First Nations; and

WHEREAS the *Indian Act* has been dividing our families and our communities by imposing a colonial membership definition for the First Nation, which is contrary to the United Nations International Covenant on Civil and Political Rights of which Canada is a signatory to and has been found by the courts in various jurisdictions to be discriminatory; and

THEREFORE BE IT RESOLVED that the Chief and Council of the [Name] First Nation with the advice and consent of the people of the [Name] First Nation, do hereby assert jurisdiction over the establishment of membership and enact this membership act as follows:

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Section 1.

Title

This Act shall be known as the “[Name] First Nation Membership Act”.

Section 2.

Purpose

The purpose of this Act is to provide proper and just procedures and their explanation to all applicants and members for enrollment in the [Name] First Nation.

Section 3.

Definitions

For this Act, these words have the following meaning and they will be used throughout this document.

“Band” refers to the [Name] First Nation;

“Band list” deals with the list of members maintained by the Indian Registrar before this First Nation affirmed its sovereign jurisdiction over membership;

“Chief and Council” point out the Chief and the Council of the [Name] First Nation;

“Elder” refers to a member of the [Name] First Nation who is [Enter age] or older;

“Elector” has the same meaning as noted in the [Name] *First Nation Custom Election Act* (or any other corresponding documents);

“First Nation” means the [Name] First Nation;

“Family” refers to spouse, common-law spouse, mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, son, stepson, daughter, stepdaughter, grandparents, grandchildren, great-grandparents, and includes family members who have been adopted via Indian custom;

“Member” means any person who is listed on the Membership Roll of the [Name] First Nation

Section 3.

Definitions

“Membership Committee” refers to the committee on the [Name] First Nation enrollment process established in accordance with this Act;

“Membership List” means a record of each and every duly enrolled Member of the [Name] First Nation, which includes legal names, identification number, and date of birth, and which is maintained in accordance with this Act;

“Tribunal of Elders” pertains to the Tribunal of Elders instituted in accordance with this Act;

“Relinquishment” means voluntary withdrawal of membership in the [Name] First Nation.

Section 4.

Rights

4.1 Every single [Name] First Nation Member, of the time of their registration of the [Name] First Nation Membership List, has the full membership rights provided to any [Name] First Nation member, as manifested in the [Name] First Nation customs, traditions, and laws.



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Section 5. Membership eligibility Prior enrollment

5.1 Any person whose name appears on the [Name] First Nation Band List before this Act came into force and effect, shall be a member of the [Name] First Nation, and his or her name shall be listed in the [Name] First Nation Membership List.

Lineal Descent

5.2 Any person who can prove direct lineal descent from a previously enrolled [Name] First Nation-registered person, shall be eligible for membership in the [Name] First Nation.

5.3 Parental links. Any person born to natural parents, both of whom are, or if deceased, had the entitlement to membership in the [Name] First Nation, shall be a member of the [Name] First Nation and his or her name shall be placed on the [Name] First Nation Membership List.

Degree of Indian Blood

5.4 Unless otherwise specified in the [Name] First Nation rules, no minimum blood quantum requirements shall be imposed for membership in the [Name] First Nation. *[Change if otherwise].*

Dual membership

5.5 Unless otherwise specified in the [Name] First Nation rules, customs, and laws, simultaneous enrollment in the [Name] First Nation and in another Indian First Nation shall not be allowed.

5.6 Provided, effective [Date], any First Nation Member, who is dually enrolled, shall be required to relinquish membership in all other First Nations before being eligible to receive federally-funded benefits, services, or privileges from the [Name] First Nation; and

Residency

5.7 Unless specifically indicated in the governing Acts of the [Name] First Nation, there shall be no residency requirements instituted for membership in the [Name] First Nation.

Section 6. Membership Committee

6.1 The [Name] First Nation's Council shall create a Membership Committee that will determine eligibility of membership of an applicant in accordance with the [Name] First Nation laws, provisions, customs, and traditions. The Council and the Chief may review an application and provide their opinion at their discretion.

6.2 The Committee shall consist of, five (5) Members selected by the secret ballot by the Council and confirmed by the Chief. Of these five (5) members, two (2) must be Elders of the [Name] First Nation.

Duties and Authority

6.3 The Committee shall have the authority and responsibility to interpret this Code in proceedings before it.

6.4 The Committee shall be subject to the [Name] First Nation's [Name of applicable acts], and other applicable laws.



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6.5 The Committee shall have the authority, in addition to any powers granted to them by the [Name] First Nation Council and Chief, the power to:

- (a) Receive and process information given or related to a membership application;
- (b) Launch inquiries in the community related to a membership application;
- (c) Require an applicant to produce documentation or further information to support their application, or to appear before the Membership Committee to provide further information;
- (d) Report at all regular [Name] First Nation Council meetings on the status of any applications before it.
- (e) Present their final determination of the applicant's application to the Council and Chief for their final approval.

Term of Office

6.6 The members of the Membership Committee shall remain in office for such a term as the [Name] First Nation Council and Chief establish and review, provided that it does not exceed three years. No Membership Committee member shall be elected to the Membership Committee office more than twice.

Section 7

Criteria for membership

7.1 While considering and deciding an application for membership, the Membership Committee, the Council and the Chief shall consider the following factors for all eligible applicants:

7.1 Cultural links. An applicant must demonstrate that he or she follows a way of life that is consistent with the traditions of the [Name] First Nation, its well-being, advancement and social cohesion.

7.2 Ties to the community. An applicant must demonstrate that he or she holds cultural, social, and family ties to the [Name] First Nation.

7.3 Temporal relationship to the community. An applicant should provide information with regard to how long he or she has lived in, or around, the [Name] First Nation.

7.4 All other factors. The Membership Committee, the Chief, and the Council may take into consideration all other factors that are relevant to the application in determining the applicant's membership request.

7.5 Notwithstanding section 7, no person shall be excluded from membership solely on the grounds of lack of such identification or evidence there of, where, taking into account the person's life circumstances, they have not had a reasonable opportunity to maintain such information or identity.

7.6 The Committee, the Council and the Chief (in instances where their involvement in an application was present) will maintain confidentiality of all Membership information consistent with this Code and other applicable laws and regulations of the [Name] First Nation.

Section 8.

Membership application requirements

8.1 All fees associated with the Membership application, and incurred during any stage of such application, shall be paid by an Applicant.



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Membership applications content

8.2 Each membership application must be completed in full and must contain sufficient personal information to properly ascertain the applicant's eligibility for membership in the [Name] First Nation. Such personal information includes, but not limited to:

- (a) All names ever used by the applicant, or by which the applicant has been known;
- (b) The residential address of the applicant;
- (c) A completed family tree of the applicant created to the best of the applicant's knowledge and ability. That information should demonstrate the applicant's links to the [Name] First Nation;
- (d) The name and locations of other First Nation(s) and degree(s) of Indian blood (if known) of any other First Nations in either Canada or the United States of America, in which the applicant claims membership or descent;
- (e) Information as to whether the applicant has previously applied or been enrolled with the [Name] First Nation, and if so, during what periods of time;
- (f) A declaration that the applicant's enrollment is sought based on genuine descent or relation to the [Name] First Nation;
- (g) The signature of the applicant, or legal guardian for the applicant, witnessed before a notary; and
- (h) The date of filing of the application.

Membership application form

8.4 The Membership Committee shall have the authority to create, change, and make available a form or forms in which applications shall be made, in either online or printed formats.

Form and Completeness

8.5 The Membership Committee shall review the application for form and completeness. Where the Committee determines that the application can not be adequately assessed without involving additional documentation or information, the Committee shall advise the applicant as soon as possible to grant him or her an opportunity to provide the requested information, to amend the application, to withdraw it, or to let it stand.

Membership Committee's Recommendation

8.6 Within ninety days (90) of receipt of an application, the Membership Committee shall review the application and forward it to the Chief and Council with the Committee's recommendation for acceptance, rejection, or rejection for further verification.

Determination by Chief and Council

8.7 Within the period of one hundred and twenty days (120) of the Membership Committee's receipt of an application, the Chief and Council shall make their own determinations and provide the applicant with written notice of its determination.

Section 9.

Denial, Appeals, and Reapplication procedures

Notice of Denial

9.1 Upon denial by the Membership Committee of an application for enrollment, the Membership Committee shall send written notification to the applicant by certified mail, return receipt requested, within fifteen (15) days of the Membership Committee's decision, advising the applicant that his or her application has been denied and the reasons for the denial. Each notification shall contain a copy of the Membership Committee's resolution, a standard notice of the rights and procedures for appealing the decision to the Tribunal of Elders, and a standard form prepared by the Membership Committee for filing the appeal.



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9.2 An applicant seeking to contend the denial of eligibility for membership must first file a written appeal to the Membership Committee for sixty (60) days of the receipt of the notice of denial. The written appeal shall state the grounds for appeal, and the evidence supporting these grounds. The appeal must be mailed directly to the Membership Committee. The Membership Committee shall decide on all appeals within sixty (60) days of the receipt of the appeal. Should the applicant's appeal be decline, the applicant has a right for a review of the decision by a Tribunal of Elders.

9.3 Any person whose application for membership is declined shall have the right to reapply for membership within two years from the date of the decision. Such application shall be treated as a new application.

9.4 Any person whose second application is declined shall have the right to apply to the Chief and Council within one year of the decision for a review of the decision by a Tribunal of Elders.

Section 10.

Tribunal of Elders

Administrative structure

10.1 Three (3) individuals shall represent the Tribunal of Elders. Upon the request for the Tribunal of Elders, the [Name] First Nation Chief and Council shall appoint two (2) people, one man and one woman, who are elders of the [Name] First Nation, to the Tribunal.

10.2 The individuals appointed by Chief and Council shall not be: the Chief, a councilor, or a member of the Membership Committee.

10.3 The applicant shall appoint one person to the Tribunal who is an Elder of the [Name] First Nation.

10.4 The individual appointed by the Applicant shall not be: the Chief, a councilor, a member of the Membership Committee, or an immediate relative of an applicant.

Duties and responsibilities of the Tribunal of Elders

10.5 The Tribunal of Elders shall review the application and all documents relating to it, including all previous decision and the reasons for them. As such, the Tribunal may:

- (a) Receive orally or in writing any information related to the application;
- (b) Make inquiries within the [Name] First Nation community and elsewhere related to the application;
- (c) Request the applicant or any other [Name] First Nation community member to provide any further required information;
- (d) Request the applicant, the [Name] First Nation Chief and Council, the [Name] First Nation Membership Committee, or any other [Name] First Nation member to provide additional documents related to the application;
- (e) Consult with other Elders of the [Name] First Nation with regard to First nation customs, traditions, laws, and history.

10.6 The Tribunal of Elders shall have sixty (60) days after the date of its creation to determine the disposition of the application by whatever means they shall deem appropriate. Should the members of the Tribunal not be able to reach an agreement as to a method of making a decision, then the decision shall be made by simple majority vote of the Tribunal of Elders.

10.7 The Tribunal of Elders shall advise the [Name] First Nation Chief, the Council, and the applicant, of their decision in writing. Such decision shall be binding on the [Name] First Nation Chief, the Council, the applicant, and the [Name] First Nation.

10.8 If the Tribunal of Elders rejects the application for membership, the applicant has no further right to apply for membership in the [Name] First Nation.

10.9 If the Tribunal of Elders approves the application for membership, the name of the applicant shall be placed on the [Name] First Nation's Membership List.



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Section 11. Loss or relinquishment of membership.

11.1 If a member of the [Name] First Nation obtains membership in another First Nation, he or she shall be deemed to have renounced his or her membership in the [Name] First Nation, and his or her name shall be removed from the [Name] Membership List.

11.2 No person may give up membership on behalf of another person, and no one may give up membership on behalf of his or her spouse, or a child over the age of eighteen (18).

Adult Relinquishment

11.3 Any competent and able-bodied adult member of the [Name] First Nation may voluntarily relinquish membership in the [Name] First Nation. Such a decision must be addressed to the Chief of the [Name] First Nation and Council; it must be done in writing and notarized. Upon receipt of such a written statement, the [Name] First Nation Chief and Council shall direct the Membership Clerk to remove the person's name from the Membership List.

Minor Child Relinquishment

11.4 The parent or legal guardian of a child may relinquish the membership on behalf of the child and regardless of the child's consent. Relinquishment must be in writing and the signature must be notarized. The [Name] First Nation shall be responsible for verifying that the individual who signed the relinquishment request has legal custody or guardianship of the minor. Verification shall be provided by birth certificate or court order. Minors whose membership was relinquished by a parent or a legal guardian can reapply for membership at any time after reaching eighteen (18) years of age or getting emancipation as evidence by court order.

11.5 If a person becomes a member of the [Name] First Nation as a result of fraud or willful misrepresentation of relevant information, the acceptance of that person into the [Name] First Nation membership shall be nullified.

Section 12. Administration Membership List

12.1 For the purpose of maintaining its Membership List, the [Name] First Nation shall institute a Membership List, in which shall be inserted the names of every person who is a member of the [Name] First Nation and the date when such person became a member of the [Name] First Nation, or was removed as a member of the [Name] First Nation.

Membership Clerk

12.2 For the purpose of facilitating operations related to the Membership List, the [Name] First Nation shall institute the position of a Membership Clerk. A Membership Clerk's responsibilities will be the following:

- (a) Maintenance of the Membership List;
- (b) Making additions and deletions to the Membership List in accordance with this Act;
- (c) Recording dates of Membership List additions and deletions;
- (d) Processing applications for further review by corresponding authorities;
- (e) Band members notification of membership applications;
- (f) Maintenance of an organized filing system for all documents and correspondence related to the issues of Band membership.
- (g) Informing the Chief and the Council of all his or her decisions regarding applications;
- (h) Informing all applications of his or her decision in writing;
- (i) Processing Membership Act amendment proposals;
- (j) Processing appeals;



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- (k) Providing required assistance to the Membership Committee, the Chief, and the Council, as may be necessary from time to time;
- (l) Perform any other duties related to the membership administration as sanctioned or delegated to the Clerk by the Chief and the Council.

Section 13. Application Fee/Lost Cards

Application Fee

13.1 Effective immediately, all new applicants for [Name] First Nation membership shall be required to pay a \$[Amount] application fee.

Lost Cards

13.2 Any [Name] First Nation member requesting a replacement for a lost [Name] First Nation membership card, shall be required to pay a processing fee of \$ [Amount] and submit, if required, any additional information related to a membership application.

Section 14. Amendments

14.1 This Membership Act may be amended when required with the consent of the majority of the electors (50% plus one) in attendance at a meeting assembled specifically for the purpose of amending this Act. The Membership Committee shall establish the format and appropriate procedures for obtaining and determining the consent of the electors.

14.2 The Chief and the Council shall give thirty (30) days written notice to the members of the First Nation informing them of the meeting called to amend the Act. That notice shall contain the text of the proposed amendment, as well as an explanation of the reasons why that amendment is being proposed.

Effective Date.

This Act shall be in effect starting on [Date].