



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 2nd, 2019

An Act Respecting Membership In The [Name] First Nation

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

Preamble

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

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

WHEREAS membership is a core jurisdiction of First Nations, which has been maintained through customary and traditional process and is 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 membership in their Nation; and

WHEREAS the determination of Indian status and membership arbitrarily set out in the Indian Act 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 [Name] First Nation enact this Membership Act to determine our own membership in accordance with historical practice and in accordance with our inherent rights, and the rights guaranteed by the United Nations Declaration on the Rights of indigenous Peoples, and the United Nations International Covenant on Civil and Political Rights.

Short Title

1. This act may be cited as the "Membership Act of the [name] First Nation".

2. The purpose of this Act is to provide reasonable and fair laws and procedures to all applicants and members determining the rules of the membership enrollment process in the [Name] First Nation.

Definitions

3. For purposes of this Act, these words have the following definitions:

"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;

"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;

"Renunciation" means voluntary withdrawal of membership in the [Name] First Nation;

"Revocation" means involuntary nullification of membership in the [Name] First Nation by the [Name] First Nation authorities.



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Part I

Rights And Eligibility

Right of Membership

4. All [Name] First Nation members, regardless of the time of their registration on the [Name] First Nation Membership List, shall have the full rights of membership afforded to any [Name] First Nation member in compliance with [Name] First Nation laws, customs, and traditions.

Eligibility for Membership

5. A person is entitled to be a member of the [Name] First Nation provided that the person:

- (a) as of the date of this Act's entering into force, has his or her name appear on the [Name] First Nation Band List prior to the date this Act came into force and effect;
- (b) can trace their descent through at least one parent who is a signatory to Treaty No. #; (only for numbered treaty nations);
- (c) can trace their descent through at least one parent to the original people of the [Name] First Nation;
- (d) has at least one parent who is a member currently registered with the [Name] First Nation;
- (e) the person can trace their descent through at least one parent to a status Indian who is registered or entitled to be registered with the [Name] First Nation; or
- (f) the is a descent of a person who was entitled to become a citizen but for any reason failed to make an application to retain his/her membership under the Act or did make such an application that subsequently was not approved due to flawed legislation;
- (g) was born to natural parents, both of whom are, or if deceased, had the right to membership in the [Name] First Nation.

6. A No citizen of the First Nation who is adopted by a non-member shall, by reason of that adoption, lose any rights to membership.

7. There shall be no discrimination of any kind by the registrar or the designated person in charge of registration against an applicant to membership based on gender, religion, physical handicap, political affiliation, or marital status if the applicant meets the condition set out in paragraph 3.

Part II

Grants Of Membership

Criteria for Membership

8. In considering and determining an application for membership, the Membership Committee shall consider the following factors for every applicant:

- (a) whether an applicant pursues a way of life that conforms to the purpose of the common good of the [Name] First Nation;
- (b) family, social, cultural, and spiritual ties of the applicant to the [Name] First Nation;
- (c) the length of the applicant living in the territory of, or in the proximity of, the [Name] First Nation;
- (d) any other consideration that in the opinion of the Membership Committee is relevant to the application, or to the well-being, advancement, prosperity and social cohesion of the [Name] First Nation.

9. Notwithstanding section 5, no person shall be excluded from membership uniquely on the grounds of lack of such identification or evidence thereof, where, given consideration of the person's life circumstances, they have not had a reasonable opportunity to maintain such records or identity.



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Adoptees - Minors

10. On application, the Membership Committee shall grant membership to a person who, while a minor child, was adopted by a citizen of the First Nation, provided that the adoption:

- (a) was in the best interest of the child;
- (b) created a genuine relationship of parent and child;
- (c) was in accordance with the laws of the place where adoption took place and the laws of the country of residence of the adopting member;
- (d) did not circumvent the legal requirements for international adoptions and was not entered primarily for acquiring membership status.

11. Where a minor has been adopted by custom within his extended family, the adopting parents shall assume full legal parental responsibility for the minor, to care for and make decisions on behalf of the minor, as if the adoption had taken place pursuant to provincial legislation.

12. The following materials are required to support an application for membership of an adopted minor, whether through custom or provincial process:

- (a) court order where adoption took place under provincial legislation; or;
- (b) affidavits by the adopting parents or parent consenting to the custom adoption;
 - (i) affidavits by the birth parents confirming that they consent to a custom adoption;
 - (ii) where the consent of any birth parent cannot be obtained, by reason of death, illness, incapacity, estrangement or other cause, the affidavits of elders shall provide that explanation; and
 - (iii) affidavits by at least two elders confirming that the adoption has taken place by custom and by agreement within the extended family, where applicable.

Adoptees – Adults

13. The Membership Committee may, on application, grant membership to a person who is over eighteen years of age and who is not a citizen of the First Nation, where adopted by a citizen of the First Nation if the following elements are present:

- (a) There is a need for the adoption to take place in the best interests of the person.
- (b) The person's birth parents, if they are alive, consent to the adoption.
- (c) The person's adopting parent's consent to the adoption.
- (d) The person consents to the adoption.
- (e) At least one of the adopting parents is a citizen of the First Nation.

14. The following materials, which shall constitute the adoption record, shall be provided to the Membership Committee in support of an application for membership of a person over eighteen years old:

- (a) affidavits by the birth parents confirming that they consent to the adoption by custom. Where the consent of any birth parent cannot be obtained, by reason of death, illness, incapacity, estrangement or other cause, the affidavits of elders shall provide that explanation;
- (b) affidavits by the adopting parents or parent consenting to the adoption by custom.
- (c) affidavits by at least two elders from the First Nation confirming that the adoption has taken place by custom and by agreement;
- (d) affidavits by at least two members of the person's extended family setting out the reasons for the adoption; and
- (e) evidence that an adoption ceremony for the custom adoption took place in the First Nation at a public occasion at which all citizens of the First Nation were welcome to participate.



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Other First Nation Nationals

15. The Membership Committee may grant membership to a person who is a member or eligible for enrollment in another First Nation or Band of North American Indians, subject to the following provisions:

- (a) an affidavit setting out the reasons for the application, for example marriage;
- (b) documentation evidencing membership or eligibility of membership in another First nation or Band;
- (c) evidence of social and economic ties to the First Nation, and other relevant considerations; and
- (d) evidence that applicant is of good moral character.

16. The granting of membership of members of other tribes shall be done by a majority vote of a quorum of the Membership Committee.

Other First Nation Nationals

17. No person of the age of majority shall be a citizen of [Name] First Nation if the person is enrolled with any other First Nation, Band or other Aboriginal group of Canada, except as provided in article 13 of this section.

18. Minor children's membership shall be retained in the First Nation even though the parent may choose to enroll his or her minor child with another federally recognized First Nation or band. Upon reaching the age of 18, the child shall be notified in writing by the Enrollment Department requesting that the First Nation be informed of which band the child wishes to maintain their membership with.

19. A person who is enrolled with any other First Nation, Band or other Aboriginal group of Canada will be given ninety (90) days' notice to produce evidence that he/she has formally revoked membership, and such revocation has been accepted, by the other group. Where no evidence is provided to confirm that steps have been made to renounce dual membership, such person will automatically lose membership with the [Name] First Nation.

20. A person may be a dual citizen of the [Name] First Nation, where they are enrolled in a Tribe located in the United States or America.

Relationship to Entitlement to Registration under the federal Indian Act

21. So long as there continues to be a federal Indian Act, the citizens of _____ First Nation as determined by this law, are to be entitled to registration as "Indians" and "band members" for the purpose of that Act, and negotiations with the Crown on matters relating to funding supports and agreements for _____ First Nation shall be conducted on the basis of the Crown's obligation to accept First Nation's determination of membership as the basis for all funding supports and agreements for the First Nation.

Part III

Application Process

22. All persons not on the membership roll of the [Name] First Nation on the date of the coming into force of this Membership Act who wish to apply for membership shall submit a written application upon such forms as shall be approved by the First Nation from time to time.

23. The Membership Department shall promptly examine the application to determine whether the requisites for membership have been sufficiently established.



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24. The Membership Department may request additional information or documentation from the applicant, and it may conduct investigations of its own. If the Membership Department is satisfied that the applicant has sustained his burden of proof that he meets the requisites for membership, the Registrar shall forward the application to the Membership Committee for consideration.

25. If the Membership Department is not satisfied the applicant has not provided a complete application and the application remains deficient for a period of six (6) months, it shall reject the application and shall promptly furnish to the applicant written reasons for the rejection, along with notice of the applicant's right to appeal the rejection to the First Nation membership at the next available public meeting.

Part IV

Membership Department

26. The Membership Department shall review, research and make written recommendations to the Membership Committee on the eligibility of applicants for membership or other enrollment matters.

27. Recommendations made by the Membership Department shall be based on documents provided by the applicant or citizen and such other information as may be obtained through provincial vital statistic records in the normal course of inquiry concerning enrollment matters.

28. The Membership Department shall be responsible for handling all written and oral communications relating to membership matters.

29. The Membership Department shall be responsible for the maintenance of all membership and membership records.

30. The Membership Department shall provide administrative support and appropriate assistance to the Membership Committee in all enrollment matters.

31. The Membership Department shall render a written decision based on all information gained during its investigation in each application for membership presented for investigation and review.

32. The Chairperson of the Membership Committee or Director of the Membership Department shall be responsible for presentation of all enrollment matters to the Chief and Council for final approval.

Membership Committee

33. The First Nation shall by resolution establish a Membership Committee of seven (7) members who will serve for a term of three (3) years. No Committee member may hold office more than two terms.

34. The Membership Committee shall have the authority to review all enrollment matters, including, but not limited to, eligibility for membership, dual membership and disenrollment, and changes or corrections to records of the First Nation Membership records.

35. The Membership Committee shall render a written decision based on all information gained during committee investigation in each enrollment matter presented for review.



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36. All applications for membership which have been reviewed and decided by the Membership Committee shall be presented without undue delay to the Chief and Council.

37. The Chair on of the Membership Committee or the Director of the Membership Department shall be responsible for presentation of all enrollment matters to the Tribal Council.

Appeal Process

38. Any person who has made an application with the registrar or any person vested with authority to register is entitled to a right of appeal.

39. An appeal to the decision of a Membership Committee shall be made before the membership of the First Nation at a duly convened public meeting and subject to a majority vote.

40. Decisions made by the First Nation's citizens at the public meeting are final and no further appeal is allowable.

Part V

Renunciation And Revocation Of Membership

Renunciation of Membership

41. A person may, on application, renounce his/her membership with the First Nation.

42. The Membership Department will issue a certificate of renunciation to the applicant and the applicant ceases to be a member upon issuance of the certificate.

Revocation of Membership

43. The Membership Committee may revoke a person's membership or renunciation of the person where there is sufficient proof that the person has obtained or retained his/her status by fraud or by false misrepresentation or by knowingly concealing material circumstances or facts.

44. The Membership Committee shall provide its decision to the person in writing.

Part VI

Administration

Membership List

45. The [Name] First Nation shall maintain a Membership List in which shall be entered the names of every person who is a member of the [Name] First Nation, and the date such person became a member of the [Name] First Nation or was removed as a member of the [Name] First Nation.

Membership Clerk

46. To facilitate operations concerning the Membership List, the [Name] First Nation shall create the position of a Membership Clerk. A Membership Clerk's duties and 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 reviewal by corresponding authorities;
- (e) Band members notification of membership applications;



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- (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;
- (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.

Part VII

Amendments

47. 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 formulate the format and relevant procedures for receiving and determining the consent of the electors.

48. 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 placed forward.

Effective Date.

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