

TE'MEXW TREATY ASSOCIATION TRIPARTITE NEGOTIATIONS
AGREEMENT-IN-PRINCIPLE
ELIGIBILITY AND ENROLMENT CHAPTER
MAY 2010

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CHAPTER 3 – ELIGIBILITY AND ENROLMENT

DEFINITIONS

“Applicant” means a person applying for Enrolment on behalf of him or herself, a Minor, or an adult whose affairs he or she has the legal authority to manage;

“**Enrol**,” “**Enrolled**,” or “**Enrolment**” means being entered in the Enrolment Register;

“**Enrolment Appeal Board**” or “**Board**” means the body which hears appeals of any decision of the Enrolment Committee made pursuant to paragraph 15d) or 17;

“**Enrolment Committee**” or “**Committee**” means the body to which an Applicant may apply for Enrolment and which maintains the Enrolment Register prior to end of the Initial Enrolment Period;

“**Enrolment Register**” means the official record containing the name of each person who has been Enrolled; and

“**Initial Enrolment Period**” means an agreed upon period of up to two years commencing at an agreed upon date after the approval of this Agreement by the Parties.

ENROLMENT UNDER THE FINAL AGREEMENT

1. A person who is Enrolled on or after the Effective Date will be a Te'mexw Member First Nation Citizen under the Final Agreement.

ELIGIBILITY CRITERIA

2. A person is eligible to be enrolled in a Te'mexw Member First Nation if that person:
 - a) is entitled to have his or her name entered on the Band List of the Te'mexw Member First Nation pursuant to the provisions of the *Indian Act* as of the Effective Date of the Final Agreement;
 - b) identifies with the Te'mexw Member First Nation, is of Te'mexw Member First Nation ancestry, and has a substantial connection to the Te'mexw Member First Nation;
 - c) has been legally adopted by a person described in subparagraph 2a) or b); or

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- d) is a descendant, notwithstanding any intervening adoption or any birth outside marriage, of a person described in subparagraphs a), b), or c) and has a substantial connection to the Te'mexw Member First Nation.
3. For the purpose of determining whether a person has a substantial connection to the Te'mexw Member First Nation, the following factors will be considered cumulatively, and no single factor will be determinative:
- a) the number and degree of ancestral connections of the person to the Te'mexw Member First Nation;
 - b) the person's residence;
 - c) the person's work on behalf of or for the benefit of the Te'mexw Member First Nation;
 - d) the degree to which the person has participated in the cultural life of the Te'mexw Member First Nation;
 - e) the degree to which the person has participated in the cultural practices of the Coast Salish; and
 - f) such other factors as may, in the opinion of the Enrolment Committee or its successor, be relevant.
4. Notwithstanding paragraph 3, the determination of whether a person has a substantial connection to the Te'mexw Member First Nation:
- a) will also take into consideration any factor determined by the courts to be relevant to the determination of whether a person is aboriginal for the purposes of section 35 of the *Constitution Act, 1982*, and which is not already included in paragraph 3; and
 - b) will not take into consideration any factor, including any factor in paragraph 3, expressly determined by the courts to be irrelevant to the determination of whether a person is aboriginal for the purposes of section 35 of the *Constitution Act, 1982*.
5. Enrolment under the Final Agreement will not:
- a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any rights or benefits under the *Indian Act*; or

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- b) except as set out in the Final Agreement or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

OTHER TREATIES OR LAND CLAIMS AGREEMENTS

- 6. A person who is a member of a First Nation that is a signatory to a treaty or land claims agreement in Canada or who is a beneficiary under another treaty or land claims agreement in Canada, other than a Douglas Treaty, will not be Enrolled.
- 7. A person described in paragraph 6 may apply to be Enrolled under the Final Agreement provided that, if the application succeeds, he or she will:
 - a) withdraw from enrolment under the other treaty or land claims agreement; or
 - b) if there is no enrolment procedure or register under the other treaty or land claims agreement, not exercise or assert any rights as a beneficiary under the other treaty or land claims agreement.
- 8. Where the Enrolment Committee determines that an Applicant meets the criteria under paragraph 3, but is ineligible to be Enrolled pursuant to paragraph 6, the Applicant will be conditionally Enrolled and their name entered on the Enrolment Register, and his or her Enrolment will be effective when he or she ceases to be enrolled under, or agrees not to exercise or assert any rights as a beneficiary of, the other treaty or land claims agreement.
- 9. A person who has been conditionally Enrolled will, within sixty days of written notification by the Enrolment Committee, demonstrate that he or she has ceased to be enrolled under, or agreed not to exercise or assert any rights as a beneficiary of, the other treaty or land claims agreement.
- 10. The Enrolment Committee may, in its discretion, extend the time period under paragraph 9. If a person fails to satisfy the requirements of this paragraph his or her enrolment will not be effective and the Enrolment Committee will remove his or her name from the Enrolment Register.
- 11. Notwithstanding paragraph 9, a Minor who is an Applicant who meets the criteria under paragraph 3 but is ineligible to be Enrolled pursuant to paragraph 6, may elect to be Enrolled provided that:
 - a) such election takes place within two years of the Minor attaining the age of majority; and
 - b) the Applicant demonstrates that he or she has ceased to be enrolled under, or agreed not to exercise or assert any rights as a beneficiary of, the other treaty or land claims agreement.

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THE ENROLMENT COMMITTEE

12. As soon as practicable after the approval of this Agreement, Te'mexw Member First Nation Indian Bands will establish an Enrolment Committee or Committees comprised of three Te'mexw Member First Nation Indian Band members.
13. An Applicant may apply to the Enrolment Committee for Enrolment.
14. The Enrolment Committee will:
 - a) establish Enrolment procedures and time limits;
 - b) publish its procedures, including the documentation and information required of each Applicant;
 - c) publish the eligibility criteria and provide information and application forms;
 - d) review and consider each application, make any determinations required, request further information if required, Enrol each Applicant who meets the eligibility criteria, and refuse to Enrol other Applicants;
 - e) will keep a record of its proceedings and decisions;
 - f) establish and maintain the Enrolment Register;
 - g) notify in writing each Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada and British Columbia of its decision and, where Enrolment is refused, provide written reasons;
 - h) upon request, provide information to the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada, British Columbia, the Ratification Committee, and the Enrolment Appeal Board in respect of a person's Enrolment application;
 - i) add or delete names from the Enrolment Register in accordance with decisions of the Enrolment Appeal Board;
 - j) subject to this Chapter, keep information provided by and about Applicants confidential; and
 - k) provide a true copy of the Enrolment Register to Canada and British Columbia on request.

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15. Subject to the provisions of this Chapter, all decisions and orders of the Enrolment Committee will be final and binding.
16. During the Initial Enrolment Period, the Enrolment Committee may, prior to the bringing of an appeal, vary a decision on the basis of new information where it considers the decision was in error.
17. Where the Enrolment Committee fails to decide upon an application for Enrolment within the time established in its procedures, the application will be deemed to be refused pursuant to paragraph 14d).
18. The burden of demonstrating eligibility to the Enrolment Committee will be on the Applicant.
19. Where a person applies to have his or her name removed from the Enrolment Register, the Enrolment Committee will remove the name and so notify the person.

THE ENROLMENT APPEAL BOARD

20. During the Initial Enrolment Period, the Te'mexw Member First Nation Indian Band will establish an Enrolment Appeal Board comprised of not less than three persons appointed by the Te'mexw Member First Nation Indian Band, which Board shall continue as the Board upon the Effective Date of the Final Agreement.
21. No member of the Enrolment Committee may be a member of the Enrolment Appeal Board.
22. An Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada or British Columbia may appeal to the Enrolment Appeal Board any decision of the Enrolment Committee made or deemed to be made pursuant to paragraph 14d) or 16.
23. The Enrolment Appeal Board will:
 - a) establish its own procedures and time limits;
 - b) hear and determine any appeal brought pursuant to paragraph 22 and decide whether the Applicant will be Enrolled;
 - c) conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality which outweigh the public interest in having an open hearing;
 - d) provide written reasons for its decisions to the appellant, the Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada and British Columbia.

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24. The Final Agreement will provide that as of the Effective Date the Enrolment Appeal Board may:
- a) by summons require any person to appear before the Enrolment Appeal Board as a witness and produce any document in his possession; and
 - b) require any witness to answer on oath or solemn affirmation any question posed to him or her.
25. The Final Agreement will provide that where a person fails to comply with a direction of the Enrolment Appeal Board made under paragraphs 24a) or 24b), on application by the Enrolment Appeal Board, a judge of the Provincial Court of British Columbia or other court of competent jurisdiction may enforce the direction.
26. The Enrolment Appeal Board will permit any Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada, British Columbia, or any witness appearing before it to be assisted by counsel or an agent.
27. No action lies against the Board or any of its members for anything done or omitted in good faith in the performance or intended performance of a duty under this Chapter.
28. Subject to paragraphs 29 to 33, all decisions of the Enrolment Appeal Board will be final and binding.

JUDICIAL REVIEW

29. An Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be, Canada, British Columbia, or anyone whose legal interests are directly affected by a decision of the Enrolment Appeal Board may apply to the Supreme Court of British Columbia to review and set aside a decision of an Enrolment Appeal Board, on the grounds that the Enrolment Appeal Board acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction, failed to observe procedural fairness, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
30. On an application pursuant to paragraph 29 the court may either dismiss the application, or set aside the decision and refer the matter back to the Enrolment Appeal Board for determination in accordance with such directions as the Court considers appropriate.
31. Where an Enrolment Appeal Board refuses or fails to hear or decide an appeal, an Applicant, the Te'mexw First Nation Indian Band or the Te'mexw Member First Nation, as the case may be,

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Canada or British Columbia may apply to the Court for an order directing the Enrolment Appeal Board to hear or decide the appeal in accordance with such directions as the court considers appropriate.

32. An application pursuant to paragraph 29 will be made within sixty days of notification of the decision of the Board or such other period as may be determined by the court.
33. No court shall review a decision of the Enrolment Committee or the Enrolment Appeal Board except in accordance with this chapter.

COSTS

34. Canada and British Columbia will pay the amounts agreed upon by the Parties to cover the reasonable and necessary costs of the Enrolment Committee and the Enrolment Appeal Board in respect of applications, appeals or appeals from applications commenced before the end of the Initial Enrolment Period.
35. The Te'mexw Member Indian Bands will submit a budget for the operation of the Enrolment Committee and Enrolment Appeal Board to Canada and British Columbia for review and approval.
36. The Enrolment Committee and the Enrolment Appeal Board will operate within their approved budgets.
37. If the reasonable and necessary costs of the Enrolment Committee or the Enrolment Appeal Board exceed the amounts set out in the budget referred to in paragraph 36 the Te'mexw Member Indian Bands may submit a revised budget to Canada and British Columbia for consideration. Canada and British Columbia, if they approve the revised budget, will fund the Enrolment Committee or the Enrolment Appeal Board in accordance with the revised budget.

ENROLMENT AFTER THE INITIAL ENROLMENT PERIOD

38. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered decisions in respect of those applications, appeals or appeals from applications commenced before the end of the Initial Enrolment Period.
39. On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to the appropriate Te'mexw Member First Nation Government.
40. Following the Initial Enrolment Period, the Te'mexw Member First Nation Government will:

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- a) be responsible for the enrolment process under the Final Agreement;
- b) maintain the Enrolment Register;
- c) provide a true copy of the Enrolment Register to Canada and British Columbia each year or as otherwise requested by Canada or British Columbia; and
- d) provide information respecting enrolment to Canada or British Columbia upon request.