

CHAPTER 20 ELIGIBILITY AND ENROLMENT

ELIGIBILITY CRITERIA

1. An individual is eligible to be enrolled under this Agreement if that individual is:
 - a. of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes;
 - b. a descendant of an individual described in subparagraphs 1 (a) or 1 (c);
 - c. an adopted child of an individual described in subparagraphs 1 (a) or 1 (b); or
 - d. an aboriginal individual who is married to someone described in subparagraphs 1 (a), (b), or (c) and has been adopted by one of the four Nisga'a tribes in accordance with *Ayuukhl* Nisga'a, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.
2. Enrolment under this Agreement does 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 of the rights or benefits under the *Indian Act*; or
 - b. except as set out in this Agreement or in any federal or provincial law, impose any obligation on Canada or British Columbia to provide rights or benefits.

OTHER LAND CLAIMS AGREEMENTS

3. An individual who is enrolled under another land claims agreement in Canada may not at the same time be enrolled under this Agreement.
4. An individual enrolled under another land claims agreement in Canada may apply to enrol under this Agreement, but if their application succeeds that individual must withdraw from enrolment under the other land claims agreement.
5. If the Enrolment Committee determines that an individual who is enrolled under another land claims agreement in Canada meets the eligibility criteria, the individual will be conditionally enrolled, and the individual's enrolment will be effective when the individual ceases to be enrolled under the other land claims agreement.
6. If an individual who has been conditionally enrolled does not, within 60 days after receiving written notification by the Enrolment Committee, demonstrate that they have ceased to be enrolled under the other land claims agreement, the Enrolment Committee will remove that individual's name from the enrolment register.

APPLICANTS

7. An individual may:
 - a. apply to the Enrolment Committee for enrolment;
 - b. appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; or
 - c. seek judicial review of a decision of the Enrolment Appeal Board

on their own behalf, or on behalf of a minor, or an adult whose affairs they have the legal authority to manage.

ENROLMENT COMMITTEE

- 8.** The Enrolment Committee is a committee established by the General Executive Board of the Nisga'a Tribal Council and governed by enrolment rules adopted by the General Executive Board of the Nisga'a Tribal Council.
- 9.** The Enrolment Committee comprises eight Nisga'a individuals, as follows:
 - a. two members from the *Laxsgiik* (Eagle) tribe, as selected by that tribe;
 - b. two members from the *Gisk'aast* (Killer whale) tribe, as selected by that tribe;
 - c. two members from the *Ganada* (Raven) tribe, as selected by that tribe; and
 - d. two members from the *Laxgibuu* (Wolf) tribe, as selected by that tribeeach of whom must understand *Ayuukhl* Nisga'a, Nisga'a culture, Nisga'a ancestry, Nisga'a tribes, and Nisga'a community institutions, and must reside in a Nisga'a Village.
- 10.** During the initial enrolment period, the Nisga'a Tribal Council or the Nisga'a Nation, as the case may be, will notify Canada and British Columbia of the names of the individuals appointed to the Enrolment Committee.
- 11.** During the initial enrolment period, the Enrolment Committee will:
 - a. consider each application and:
 - i. enrol each applicant who demonstrates that they meet the eligibility criteria, and
 - ii. refuse to enrol each applicant who does not demonstrate that they meet the eligibility criteria;
 - b. establish and maintain, as a public document, an enrolment register containing the name of each individual who is enrolled;
 - c. take reasonable steps to publish the enrolment rules and the eligibility criteria;
 - d. provide an application form to any individual who wishes to apply for enrolment;
 - e. provide written notification to each applicant of its decision in respect of their application, and if enrolment is refused, include written reasons for that decision;
 - f. provide a copy of the notification referred to in subparagraph 11 (e), including any reasons, to the Nisga'a Tribal Council or the Nisga'a Nation, as the case may be, and to Canada;
 - g. upon request, provide in confidence a Party or the Enrolment Appeal Board with information in respect of an individual's enrolment application;
 - h. add names to, or delete names from, the enrolment register in accordance with this Chapter;

- i. subject to this Chapter, keep information provided by and about applicants confidential; and
 - j. provide a copy of the enrolment register to the Parties each year and at other times on request.
- 12. In addition to the functions set out in paragraph 11, before the completion of the referendum in respect of this Agreement under paragraph 2 of the Ratification Chapter, the Enrolment Committee will:
 - a. provide the Ratification Committee with the name of each individual who is enrolled, and any other information requested by the Ratification Committee; and
 - b. if the Enrolment Committee forms the opinion that an applicant will be refused enrolment, provide the applicant with a reasonable opportunity to present further information or representations, in accordance with the enrolment rules.
- 13. Each applicant has the burden of proving to the Enrolment Committee that they meet the eligibility criteria.
- 14. Subject to this Chapter, all decisions of the Enrolment Committee are final and binding.
- 15. The Enrolment Committee may, before an appeal of a decision is commenced, vary the decision on the basis of new information, if it considers the decision was in error.
- 16. If the Enrolment Committee does not make a decision in respect of an application for enrolment within the time established in the enrolment rules, the application will be deemed to be refused.

APPLICATION TO REMOVE APPLICANTS FROM ENROLMENT REGISTER

- 17. If a Nisga'a participant, or an individual having legal authority to manage the affairs of a Nisga'a participant, applies to have the Nisga'a participant's name removed from the enrolment register, the Enrolment Committee will remove the Nisga'a participant's name and will notify the individual who made that application.

ENROLMENT APPEAL BOARD

Appeals

- 18. An applicant, a Party, or a Nisga'a Village may appeal to the Enrolment Appeal Board any decision of the Enrolment Committee made under subparagraph 11 (a) or paragraph 15.

Establishment of Enrolment Appeal Board

- 19. On the effective date, the Nisga'a Nation and Canada will establish the Enrolment Appeal Board consisting of three members. The Nisga'a Nation and Canada will each appoint one member and will jointly appoint a chairperson.
- 20. The Enrolment Appeal Board will:
 - a. establish its own procedures and time limits;

- b. hear and determine each appeal brought under paragraph 18 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 that outweigh the public interest in having an open hearing; and
 - d. provide written reasons for its decision to the appellant, the applicant and the Parties.
- 21.** The Enrolment Appeal Board:
- a. by summons, may require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in their possession; and
 - b. may direct a witness to answer on oath or solemn affirmation questions posed to the witness.
- 22.** A judge of the Supreme Court of British Columbia, on application by the Enrolment Appeal Board, may enforce a summons or direction made under paragraph 21.
- 23.** An applicant, a Party, a Nisga'a Village or a witness appearing before the Enrolment Appeal Board may be represented by counsel or agent.
- 24.** No action lies or may be instituted against the Enrolment Appeal Board, or any member of the Enrolment Appeal Board, for anything said or done, or omitted to be said or done, in good faith in the performance, or intended performance, of a duty or in the exercise or intended exercise of a power under this Chapter.
- 25.** Subject to paragraphs 26 to 29, all decisions of the Enrolment Appeal Board are final and binding.

JUDICIAL REVIEW

- 26.** An applicant, a Party, or a Nisga'a Village may apply to the Supreme Court of British Columbia to review and set aside a decision of the Enrolment Appeal Board, on the grounds that the Enrolment Appeal Board acted without jurisdiction, acted beyond its jurisdiction, 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.
- 27.** On an application for judicial review, 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 any directions that the Court considers appropriate.
- 28.** If the Enrolment Appeal Board fails to hear or decide an appeal within a reasonable time, an applicant, a Party, or a Nisga'a Village may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board to hear or decide the appeal in accordance with any directions that the Court considers appropriate.
- 29.** An applicant, a Party, or a Nisga'a Village may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board or a longer time determined by the Court.

FUNDING

30. During the initial enrolment period, Canada and British Columbia will pay the costs of the Enrolment Committee and the Enrolment Appeal Board as set out in the “Eligibility and Enrolment Funding Agreement for a Nisga’a Final Agreement” dated October 23, 1997.

DISSOLUTION OF ENROLMENT COMMITTEE AND ENROLMENT APPEAL BOARD

31. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have made a decision in respect of every application or appeal made or commenced before the end of their respective initial enrolment period.
32. On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to Nisga’a Lisims Government.

NISGA’A NATION RESPONSIBILITIES FOR ENROLMENT

33. Subject to the funding agreement referred to in paragraph 30, after the initial enrolment period the Nisga’a Nation will:
 - a. be responsible for an enrolment process and the administrative costs of that process;
 - b. maintain the enrolment register;
 - c. provide a copy of the enrolment register to Canada and British Columbia each year or as they request; and
 - d. provide information concerning enrolment to Canada and British Columbia as they request.