



ESKETEMC

AGREEMENT-IN-PRINCIPLE ESKETEMC ELIGIBILITY AND ENROLMENT CHAPTER

**Public Release Chapter
March 31, 2010**

This public release document is for consultation purposes only. It is not necessarily representative of the final position which may be taken in respect of a matter, and is subject to change. It is without prejudice to the position of the parties in any proceeding before any court or in any other forum and will not be construed as an admission of fact or liability and will not be tendered or relied upon in any such proceedings.

ESKETEMC ELIGIBILITY AND ENROLMENT CHAPTER

BACKGROUND

Canada, British Columbia and the Esketemc are engaged in treaty negotiations in the British Columbia Treaty Commission process. Our treaty negotiations include public consultation and internal review of documents under negotiation by the three Parties.

This document is part of a group of chapters under negotiation for the purposes of an Agreement-in-Principle.

OBJECTIVE

The Parties are releasing this document as a sample for public information. However, it is intended that the Chapters in any future Esketemc Agreement-in-Principle would be read and understood in the context of the Agreement-in-Principle as a whole.

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ESKETEMC ELIGIBILITY AND ENROLMENT CHAPTER

GENERAL

1. Enrolment under this 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 of the rights or benefits under the *Indian Act*; or
 - b. except as set out in this Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.

ELIGIBILITY CRITERIA

2. An individual is eligible to be enrolled under this Agreement if that individual:
 - a. was a member, or was entitled to be a member of the Esketemc First Nation under the *Indian Act* as of the day before the Effective Date;
 - b. is of Secwepemc ancestry;
 - c. was adopted under laws recognized in Canada or by Esketemc custom by an individual eligible for enrolment;
 - d. after the Effective Date, is accepted according to a community acceptance process set out in Esketemc Law; or
 - e. is a Descendant of an individual eligible for enrolment under subparagraphs a, b, c, or d.
3. Notwithstanding subparagraph 2.e, where an individual having no aboriginal ancestry became a member of the Esketemc First Nation prior to April 17, 1985 because of marriage to a Esketemc member, and that individual subsequently has a Child with another individual having no Esketemc ancestry, that Child will not be entitled to be enrolled.

APPLICATIONS

4. 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 an individual whose affairs they have the legal authority to manage.
5. Each individual who applies to be enrolled, or who has the legal authority to manage the affairs of an Applicant, has the burden of proving that the Applicant meets the Eligibility Criteria.

OTHER LAND CLAIM AGREEMENTS

6. An individual may not at the same time be enrolled under this Agreement and:
 - a. receive benefits under another treaty or land claims agreement in Canada;
 - b. be enrolled under another treaty or land claims agreement in Canada; or
 - c. be on an Indian Act band list, other than that of the Esketemc First Nation under the Indian Act.
7. An individual described in subparagraphs 6.a or 6.b may apply to enroll under this Agreement and if their application is accepted that individual will, on or after the Effective Date:
 - a. withdraw from enrolment under the other treaty or land claims agreement; or
 - b. where there is no enrolment procedure or registry 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. An individual who has been enrolled under paragraph 7 will:
 - a. within 120 days after the Effective Date; or
 - b. where the decision to accept his or her application to be enrolled under paragraph 7 is made after the Effective Date, within 120 days of receiving

written notification from the Enrolment Committee or a body established under paragraphs 38 to 40 that he or she has been enrolled;

provide written evidence to a body established under paragraphs 38 to 40 to demonstrate that he or she has ceased to be a beneficiary of, or has withdrawn his or her application for enrolment under, another treaty or land claims agreement in Canada.

9. If an individual enrolled under paragraph 7 fails to satisfy the requirements of paragraph 8 his or her name will be removed from the Enrolment Register.
10. An individual described in paragraph 8 or 9 whose application has been accepted will be notified in writing by the Enrolment Committee, or by Esketemc in accordance with subparagraph 39.a that the individual has been enrolled.
11. An individual enrolled under paragraph 7 is not entitled to exercise any rights or receive any benefits under this Agreement until he or she has satisfied the requirements of paragraph 8.

MEMBERSHIP IN A BAND OTHER THAN ESKETEMC

12. For greater certainty, as provided in paragraph X in the General Provisions Chapter, after the Effective Date, upon becoming an Esketemc member an individual ceases to be a member or a registered Indian of any Band.
13. Notwithstanding subparagraph 6.c, where an individual described in paragraph 8, whose application has been accepted, demonstrates that they have requested in writing that they be removed from the *Indian Act* band list on which they were registered, within 120 days of the later of:
 - a. the Effective Date; or
 - b. receiving written notification of enrolment by the Enrolment Committee, or by Esketemc in accordance with subparagraph 6.c, the Enrolment Committee, or by Esketemc in accordance with paragraph 8, will add that individual's name to the Citizenship Register and Esketemc will request that Canada change the individual's affiliation on the Indian Registry list and issue a new status card for the individual.

THE ENROLMENT COMMITTEE

14. Esketemc will establish an Enrolment Committee at a time agreed upon by the Parties that will be responsible for the enrolment process and will be comprised

of a total of three representatives appointed by Esketemc.

15. Esketemc will notify Canada and British Columbia of the members of the Enrolment Committee, as soon as practicable upon their appointment.
16. The Enrolment Committee, or a body established under paragraphs 38 to 40, will:
 - a. establish enrolment procedures and time limits;
 - b. publish its procedures, including a list of the documentation and information required of each Applicant;
 - c. publish the Eligibility Criteria, provide information on the enrolment process and provide application forms to any individual who wishes to apply for enrolment;
 - d. take reasonable steps to notify individuals, who are potentially eligible to be enrolled, of the Eligibility Criteria and enrolment procedures;
 - e. receive enrolment applications, consider each application, request further information if required, make a decision on each application, enrol the Applicants who meet the Eligibility Criteria, and maintain a record of those decisions;
 - f. establish and maintain a record of its decisions and an Enrolment Register;
 - g. add names to, delete names from or amend names on the Enrolment Register in accordance with this Chapter and decisions of the Enrolment Appeal Board;
 - h. notify in writing each Applicant and the Parties of its decision and, if enrolment is refused, provide written reasons;
 - i. on the request of a Party, provide information with respect to an Applicant's enrolment application, in confidence, to the Parties and the Enrolment Appeal Board;
 - j. unless otherwise provided in this Chapter, keep information provided by and about Applicants confidential;
 - k. unless otherwise provided in this Chapter, keep information provided by and about Applicants confidential; and

- I. provide a copy of the Enrolment Register, and any other relevant information requested, to the Ratification Committee in a timely manner.
17. Subject to this Chapter, all decisions and orders of the Enrolment Committee will be final and binding.
18. After a decision of the Enrolment Committee and before any appeal of that decision is commenced, the Applicant may submit new information to the Enrolment Committee.
19. 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.
20. If the Enrolment Committee fails to decide upon an application for enrolment within the time limit established in its enrolment procedures, the application is deemed to be refused and the failure to decide will constitute grounds for appeal to the Enrolment Appeal Board.
21. If an Applicant applies to have his or her own name, or the name of a Child or an adult whose affairs he or she has the legal authority to manage, removed from the Enrolment Register, the Enrolment Committee will remove the name and will notify the Applicant.
22. No action lies, or may be commenced, against the Enrolment Committee or any member of the Enrolment Committee, 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 of a power under this chapter.

THE ENROLMENT APPEAL BOARD

23. Esketemc and Canada will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
24. Esketemc and Canada will each appoint one member to the Enrolment Appeal Board and will jointly select a chairperson who will be the third member of the Board.
25. An individual under paragraph 4, or a Party may appeal by written notice to the Enrolment Appeal Board:
 - a. any decision of the Enrolment Committee made under paragraphs 16.e and 18; and

- b. any application that is deemed to be refused under paragraph **Error! Reference source not found.**
26. A member of the Enrolment Committee cannot also be a member of the Enrolment Appeal Board.
27. The Enrolment Appeal Board will:
 - a. establish, maintain and publish its own procedures and time limits;
 - b. hear and determine any appeal brought under paragraph 25 and decide whether the Applicant should 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;
 - d. provide written reasons for its decisions within 90 days from the hearing to the appellant, Applicant, the Enrolment Committee, and the Parties; and
 - e. maintain a record of its decisions and communicate them to the Enrolment Committee as required.
28. As of the Effective Date, the Enrolment Appeal Board may:
 - a. by summons require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in their possession; and
 - b. direct any witness to answer on oath or solemn affirmation any relevant question posed to the witness.
29. If a person fails to comply with a summons or direction of the Enrolment Appeal Board made under paragraph 27, on application by the Enrolment Appeal Board, a judge of the Supreme Court of British Columbia may enforce the summons or direction.
30. Any appellant, Party or witness appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
31. No action lies or may be commenced 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 of a power under this chapter.
32. Subject to paragraphs 33 to 36, all decisions of the Enrolment Appeal Board will

be final and binding.

JUDICIAL REVIEW

33. An individual under paragraph 4 or a Party may apply to the Supreme Court of British Columbia for judicial review of a decision of the Enrolment Appeal Board, or any body established by Esketemc to undertake the responsibilities under paragraphs 38 to 40, on the grounds that the Enrolment Appeal Board or body:
- a. acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - b. failed to observe procedural fairness;
 - c. erred in law; or
 - d. 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.
34. On an application for judicial review under paragraph 33, the Supreme Court of British Columbia may either dismiss the application, or set aside the decision and refer the matter back to the Enrolment Appeal Board or any body established by Esketemc to undertake the responsibilities under paragraphs 38 to 40, for determination in accordance with such directions as the court considers appropriate.
35. If the Enrolment Appeal Board, or any body established by Esketemc to undertake the responsibilities under paragraphs 38 to 40, refuses or fails to hear or decide an appeal within a reasonable time, an individual or a Party may apply to the Supreme Court of British Columbia for an order directing the Board or body to hear or decide the appeal in accordance with such directions as the court considers appropriate.
36. An individual under paragraph 4 or Party may apply for judicial review within 60 days of notification of the decision of the Enrolment Appeal Board, or any body established under paragraphs 38 to 40, or a longer time that may be determined by the court.

COSTS

37. Canada and British Columbia will provide an agreed amount of funding for the Enrolment Committee and the Enrolment Appeal Board to carry out the functions referred to in paragraphs 14 to 32 during the Initial Enrolment Period.

ENROLMENT AFTER THE INITIAL ENROLMENT PERIOD

38. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered final decisions with respect to those applications or appeals commenced during the Initial Enrolment Period.
39. After the Initial Enrolment Period Esketemc will:
 - a. be responsible for the enrolment process, including the application of the Eligibility Criteria;
 - 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 without cost; and
 - d. provide information respecting enrolment to Canada or British Columbia upon request without cost.
40. On dissolution, the Enrolment Committee and Enrolment Appeal Board will provide their records to Esketemc and, upon request, to Canada or British Columbia.