

KITAMAAT BAND MEMBERSHIP LAWS

**SUBMITTED TO THE HONOURABLE
W. McKNIGHT, MINISTER OF THE
DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS**

**BY
Kitamaat Village Council and
The Membership of the Kitamaat Band**

(June 09, 1987)

TABLE OF CONTENTS

	PAGE NO.
I	TITLE OF KITAMAAT BAND MEMBERSHIP LAWS
A.	Effective Date.....3
B.	Formal Name of Laws.....3
C.	Inherent Right of Laws.....3
D.	Purposes and Objectives of Laws.....3
II	PREAMBLE
A.	Introductory Comments.....4
B.	Intent and Reasons for Laws.....4
C.	Historical Facts.....4
III	DEFINITIONS
A.	A Precise Meaning of Key Words.....5
IV	GENERAL MEMBERSHIP PROVISIONS
A.	Duty of Members.....7
B.	Eligibility Criteria.....7
C.	Renouncing Membership.....8
D.	Cessation of Membership.....8
E.	Non Member Rights and Privileges.....8
F.	Enabling Provision to Handle Special Cases.....9
G.	Application Procedure.....10
H.	Transfer Procedures.....10
I.	Powers of Elected Council.....10
V.	APPEAL MECHANISM
A.	Eligible Appellants10
B.	Appeal Procedures10
VI.	ADMINISTRATION OF MEMBERSHIP LAWS
A.	General Duties and Responsibilities.....11
VII.	AMENDING PROCEDURES
A.	Process of changing laws12
VIII.	CERTIFICATION OF MEMBERSHIP LAWS13

KITAMAAT BAND MEMBERSHIP LAWS

A. Enacted this day of , 1987

I TITLE

These Membership Laws shall be known as Kitamaat Band Membership Laws.

A. INHERENT RIGHT

These laws are enacted pursuant to Bill C-31 and the inherent right of the Kitamaat Band to determine its' own membership

B. PURPOSE:

The purpose of these laws is to:

- (a) preserve the cultural and political integrity of the Haisla people;
- (b) preserve the sovereignty of the Kitamaat Band through the exercise of the Nation's inherent rights; and
- (c) provide the basis for the exercise of the rights and obligations of the members of the Kitamaat Band and others under the jurisdiction of the Kitamaat Band, as represented by the Kitamaat Village Council.

II PREAMBLE

As it is recognized that "...Canada is founded upon principles that recognize the supremacy of God and the rule of law...", it is the intention of these Membership Laws to assist in achieving self-government for the general welfare and benefit of the Haisla People. It is also the position of the Kitamaat Village Council, on behalf of the Haisla People, that no federal or provincial jurisdiction possess the legislative or judicial authority to determine membership of the Haisla Nation as this power and authority remains inherent only with the Haisla People, and as described in Bill C-31, and also through any membership by-laws that may be enacted.

It has long been a contention of the Haisla People that the overt discriminatory clauses of the Indian Act did not consider the varying customs, languages and preferences amongst Indian communities across Canada, and as a consequence, led to the simplistic definitions of a "status Indian" versus "non status". This was a cause of much tribulation and grief to the community, but has not been totally accepted, even under the legalistic scrutiny of the Department of Indian Affairs.

Under the Constitution Act of 1982, Section 15, Clause 1, we read that "...every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, [and] sex..." Subsequently, these Membership Laws are meant to establish, preserve and protect in an orderly manner, the sovereignty, authorities, and obligations of the members and others of the Haisla Nation. These regulations shall not prejudice nor be interpreted to mean to prejudice any lands or monies belonging to the Kitamaat Band.

III. DEFINITIONS OF KEY WORDS

- A (a) "Adoption" means a child or adult adoption either by the traditional laws and customs of the Haisla or by the laws of the province of British Columbia.
- (b) "Child"; means a child born within the confines of a marriage, as well as one that may be born within a permanent relationship, one that may be adopted, or one that may be born into an illegitimate situation.
- (c) "Community" means the geographical boundaries of Indian Reserve Number Two ("Haisla").
- (d) "Haisla" means an individual who is of Haisla descent whether it be through marriage (or another permanent relationship), birth, or adoption.
- (e) "Haisla" also could mean and refer to the geographical community reference name.
- (f) "Indigenous" means originating in and characterizing a particular region in North and South America.
- (g) "Interest"; means to have, possess, or take a share or part therein.
- (h) "Kitamaat Village Council"; means the elected Council of members of the Kitamaat Village Council.
- (i) "Marriage" means a male/female relationship that has been bonded through the legal provisions of the provincial law, or permanent "common law relationship
- (j) "Member" means a member of the Kitamaat Band in the first instance.
- (k) "Membership Laws"; means and refers to these laws entitled the "Kitamaat Band Membership Laws"
- (l) "Plebiscite"; means a direct vote by the membership of the Kitamaat Band taken either through a ballot process or through that of a door-to-door process.

(m) "Separation" means the living apart of two individuals for more than one year who previously had entered into a marital relationship as defined within the perimeters of these regulation.

(n) "Spouse"; means and includes

- i) a person married under the laws of the province or
- ii) a person in a permanent relationship.

IV. MEMBERSHIP PROVISIONS

A. DUTY AND RESPONSIBILITY OF MEMBERS:

As with citizenship in any country, membership in the Kitamaat Band carries with it special privileges, duties and responsibilities, such as respect for the law, respect for the institutions of culture and government, respect for community and its' membership, and participation in the affairs of the community. In all affairs of the community, members should be willing to constructively do all they are required to ensure that the Haisla Nation is protected against those influences that may negatively detract from the culture and sovereignty of the Haisla People.

B. ELIGIBILITY CRITERIA:

A person is a member of the Kitamaat Band if that person has at least one parent who is also a member of the Kitamaat Band, regardless of place of birth, or whether or not that person's parents were raised in the community. This law is also applicable to all individuals who were affected, either directly or indirectly by the discriminatory clauses or the Indian Act before the enactment of Bill C-31, in specific, June 28, 1985.

A person may be adopted as a member of the Kitamaat Band if that person:

- (a) Is an adopted child of a member of the Kitamaat Band; or
- (b) Becomes a spouse of a member of the Kitamaat Band; or
- (c) Is of indigenous and native ancestry, as defined in the first Instance, and desires to be transferred to the Kitamaat Band Membership Roll, and
- (d) When a person meets at least one of the above three aforementioned requirements, then receives the consent and formal approval of the elected council, and also
- (e) Following a 65% favourable vote of a plebiscite held for those Band Members who are resident at any given time in Kitamaat Village. This consent shall give the person interest in the lands and monies of the Kitamaat Band, as with other members of the Bands;
- (f) If a person became a member through marriage, and the marriage has terminated because of divorce, the membership of that person ceases;

- i) however, if the marriage relationship has terminated because of the death of a spouse, the person shall retain membership in the Kitamaat Band.”

- (g) If a marriage relationship can be shown that it has terminated through separation, the membership of that person shall cease; however, in the case of a wrongful decision, that person shall have the option of appealing directly to the Membership Committee at his convenience.

C. RENOUNCING MEMBERSHIP:

A person ceases to be a member when that person:

- (a) in writing renounces membership in the Kitamaat Band:
 - i) In the case where a parent or parents had previously renounced membership in the Kitamaat Band, the off-spring shall, upon reaching the legal age of the province of British Columbia, and upon written application, to be given the opportunity to seek and regain membership in the Kitamaat Band.

D. CESSATION OF MEMBERSHIP

A person ceases to be a member when that person:

- (a) became a member through marriage and the marriage terminated in divorce, or
- (b) if a person found to have been enrolled as a member who did not qualify for membership at the time of enrolment, shall be removed from the Kitamaat Band Membership Roll and shall be considered never to have been a member of the Kitamaat Band.

E. NON MEMBER RIGHTS AND PRIVILEGES

It is recognized that non members who reside on reserve play a role in the affairs of the community and the following represents the rights and privileges of such and individual, notwithstanding Section IV, Clause (B)(C), of these same Membership Laws.

- (a) Non members shall not have voting privileges in any Band Elections, or other privileges related to capital grant, education,

social development, or economic initiative monies, nor any interest therein.

- (b) Upon invitation from the elected Council, non members may be permitted to participate in open membership meetings of the Band, or to sit as a resource person on any formal Council committees;
- (c) a person not a member of the Kitamaat Band, but is a spouse or dependent of a member, may reside on lands belonging to the Kitamaat Band, unless a resident member of the Band objects directly in writing to the Membership Committee outlining the reason or reasons therein. Residence on any lands by these people, belonging to the Kitamaat Band does not give these people any interest in the Kitamaat Band lands;
- (d) Other persons who are not members of the Kitamaat Band may reside on the lands belonging to the Kitamaat Band:
 - i) With the consent and formal approval of the elected Council; and
 - ii) If there has been a recognized shortage of a particular type of skilled labour, then this person will be issued a special work permit by the elected Council. This consent shall not give the person any interest in the lands of the Kitamaat Band.
- (e) Any non-compliance with the bylaws of the community will lead to the removal of a non member from the lands belonging to the Kitamaat Band.

F. SPECIAL CASES:

It is conceivable that an unusual set of circumstances could cause a person to be wrongly effected by a membership law. In such cases, a vote of no less than 75% of the eligible electors will be required in favour of the individual's entitlement to be held no more than once per fiscal year. A further plebiscite may be granted if more than 50% but less than 75% of the eligible electors vote in favour in the first plebiscite.

G. APPLICATION PROCEDURE:

Application for membership in the Kitamaat Band will be through the submission of a written and signed letter, which will be addressed to the elected Council of the Haisla People, and the application will be subject to Section IV, Clause (B) of these same membership Laws.

H. TRANSFER PROCEDURE:

Transfer from another Indian nation to the Kitamaat Band will be through the submission of a written and signed letter, outlining the reason or reasons for the desire to transfer and this letter will be addressed to the elected Council of the Haisla People.

I. POWERS OF THE KITAMAAT VILLAGE COUNCIL:

Respecting these Membership Laws, the elected Council, acting on behalf of the Haisla People, shall administer these Membership Laws in an equitable manner, and at its' discretion shall appoint a Membership Committee to manage the Membership Laws. In such cases the Membership Committee will direct all recommendations to the elected Council to be formally read into the historical minutes of the Kitamaat Band.

V. APPEAL MECHANISM

A. ELIGIBLE APPELLANTS:

In the case of an appeal, where a decision by the Membership Committee was reached, the elected Council shall be responsible for the hearing appeals directly from a appellant or group of appellants resulting from the decision(s) of the Membership Committee.

B. APPEAL PROCEDURE:

The rules of order of the appeal process shall be established according to the following:

- (a) A person or group of persons who appeared before the Membership Committee may appeal the decision of the Committee to the elected Council, and the appellants(s) shall have a period of up to one (1) year to submit a formal appeal.
- (b) The elected Council shall set a date for a hearing as soon as possible, and in any case, no later than thirty (30) days after the elected Council receives notice of the appeal;

- (c) The elected Council shall invite both the Membership Committee and any person or group of persons who appeared before the Membership Committee to appear before the elected Council;
- (d) The elected Council shall hear both sides of the case, and may accept any evidence that seems relevant to the case, including the evidence of witnesses;
- (e) The elected Council shall make a decision as soon as possible, and in any case no later than thirty (30) days after the hearing, and give reasons for the decision(s);
- (f) The elected Council may:
 - i) uphold the decision of the Membership Committee
 - ii) order the Membership Committee to add a name or names to, or delete a name or names from, the Band Membership Roll; or
 - iii) make any other order appropriate in the circumstances.
- (g) The decision of the elected Council shall be final.

VI. GENERAL ADMINISTRATION OF MEMBERSHIP LAWS

The Membership Committee shall be established, consisting of:

- (a) one member from the village public at large, and one alternate;
- (b) one representative of the elected Council, and one alternate;
- (c) one person who at one time had lost Indian "status" through the operation of the Indian Act, and one alternate; and
- (d) one "elder" from the community and one alternate.

The Membership Committee shall;

- (a) consider proposed amendments to the Kitamaat Band Membership Laws;

- (b) make recommendations on matters relating to the Kitamaat Band Membership Laws to the elected Council; and
- (c) make provision for the alternates to attend and participate in committee meeting and shall be given a vote in the absence of the primary member.

VII. AMENDMENT PROCEDURES

These Kitamaat Band Membership Laws may be amended in part or in whole after:

- (a) A 70% majority of the elected Council request a change;
- (b) The proposed changes are then supported by a 51% majority vote of the Kitamaat Band Membership who attend a Band Membership Meeting; and
- (c) When deemed appropriate, through the use of a plebiscite where a decision may be made in respect to proposed changes to these regulations.