

TOQUAHT NATION GOVERNMENT

CITIZENSHIP ACT

TNS 10/2011



OFFICIAL CONSOLIDATION – CURRENT TO SEPTEMBER 16, 2015

This is a certified true copy of the consolidated Citizenship Act TNS 10/2011, Current to September 16, 2015

Date: October 8th, 2015

Kristen Johnson

Signed: _____
Law Clerk

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PREAMBLE

The Toquaht Nation asserts that, since time immemorial, we have lived on our lands as self-governing peoples with our own laws and governance systems. Despite the arrival of settlers on our lands we have preserved and protected our traditional territory and have continued to exist as a distinct, self-governing Nation.

In the past the government of Canada has imposed rules for determining who is and who is not a member of the Toquaht Nation. As part of our renewed self-government, the Toquaht Nation reclaims our inherent right to determine our own citizenship and, in doing so, we pledge to honour who we are and where we have come from as a peoples.

To assist with realizing these goals, the Toquaht Nation wishes to establish a citizenship law that sets out the criteria for Toquaht citizenship and enrolment under the Maa-nulth Treaty and establishes rules and procedures aimed at ensuring those criteria are applied fairly and consistently to all individuals.

The Toquaht Nation adopts this Act based on these values.

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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Citizenship Act.

Executive oversight

1.2 The member of the Executive holding the community services portfolio is responsible for the executive oversight of this Act.

Application

1.3 This Act applies to

- (a) the granting, renunciation and revocation of Toquaht citizenship, and
- (b) after the initial enrolment period, the granting, renunciation and revocation of enrolment under the Maa-nulth Treaty.

Definitions

1.4 In this Act,

“Citizenship and Enrolment Committee” means the committee established under section 4.2;

“Eligibility and Enrolment Chapter” means Chapter 26 Eligibility and Enrolment of the Maa-nulth Treaty;

“legal guardian” means,

- (a) in relation to a child, the child’s guardian within the meaning of the Family Relations Act (British Columbia), and
- (b) in relation to an adult, a person appointed as the adult’s committee under the Patients Property Act (British Columbia);

“registrar” means the citizenship and enrolment registrar;

“Toquaht band list” means the “band list” of the Toquaht Nation within the meaning of section 2(1) of the Indian Act (Canada).

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PART 2 - ELIGIBILITY CRITERIA

Citizenship eligibility criteria

- 2.1 (a) An individual is a Toquaht citizen if that individual is a Toquaht enrollee.
- (b) An individual is entitled to become a Toquaht citizen if that individual
- (i) was on the Toquaht band list as of the day immediately preceding the Maa-nulth Treaty effective date,
 - (ii) has been adopted as a child by a Toquaht citizen under Canadian law, the Maa-nulth Treaty or in accordance with Nuu-chah-nulth custom, or
 - (iii) is a descendant of a Toquaht citizen.

Dual citizenship not permitted

- 2.2 Despite section 2.1, an individual who is a citizen or a member of another first nation may not at the same time be a Toquaht citizen.

Enrolment eligibility criteria

- 2.3 An individual is entitled to become a Toquaht enrollee if that individual meets the eligibility criteria under 26.1.1 of the Eligibility and Enrolment Chapter.

Dual enrolment not permitted

- 2.4 As provided in the Eligibility and Enrolment Chapter, despite section 2.3, an individual who is on the enrolment register of another Maa-nulth First Nation, or enrolled under another land claims agreement, may not at the same time be a Toquaht enrollee.

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PART 3 - CITIZENSHIP AND ENROLMENT REGISTRAR

Office of the citizenship and enrolment registrar established

- 3.1**
- (a) The office of the citizenship and enrolment registrar is established as an office within the Department of Community Services.
 - (b) The director of operations must appoint an individual to hold the office of the registrar.
 - (c) The registrar reports to the director of community services.

Duties of the registrar

- 3.2** The registrar must perform the following duties:
- (a) provide application forms, information and assistance to individuals who wish to
 - (i) apply for Toquaht citizenship or enrolment under the Maa-nulth Treaty,
 - (ii) request a review of any decision of the Citizenship and Enrolment Committee, or
 - (iii) renounce his or her Toquaht citizenship or enrolment under the Maa-nulth Treaty;
 - (b) maintain a permanent record of all
 - (i) applications to the Citizenship and Enrolment Committee,
 - (ii) refusal notices delivered by the Citizenship and Enrolment Committee,
 - (iii) renunciation notices received by the Citizenship and Enrolment Committee,
 - (iv) notices of revocation delivered by the Citizenship and Enrolment Committee, and
 - (v) minutes of all meetings of the Citizenship and Enrolment Committee;
 - (c) establish and maintain
 - (i) the Toquaht citizenship register, and
 - (ii) the Toquaht enrolment registerin accordance with this Act;

- (d) assist the Citizenship and Enrolment Committee and, as requested, the Enrolment Committee in the performance of its duties; and
- (e) any other duties assigned or delegated to the registrar
 - (i) under this or any other Toquaht enactment, or
 - (ii) by the director of community services.

Delegation authority

- 3.3**
- (a) Upon the approval of the director of community services, the registrar may delegate, in writing, the performance of any of the registrar's duties or the exercise of any of the registrar's powers to another Toquaht government employee.
 - (b) Despite the delegation of any duties or powers under subsection (a), the registrar remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

PART 4 - CITIZENSHIP AND ENROLMENT COMMITTEE

Definitions

4.1 In this Part,

“Committee” means the Citizenship and Enrolment Committee.

Citizenship and Enrolment Committee established

4.2 The Citizenship and Enrolment Committee is established as

- (a) the standing committee on citizenship referred to in section 2.36(d) of the Constitution, and
- (b) a Toquaht public institution under 13.11.1a of Chapter 13 Governance of the Maa-nulth Treaty.

Mandate

4.3 The mandate of the Committee is to make decisions regarding the granting and revocation of Toquaht citizenship and, after the initial enrolment period, the granting and revocation of enrolment under the Maa-nulth Treaty.

Composition

4.4 Council must appoint three Toquaht citizens as members of the Committee.

Term of appointments

- 4.5
- (a) Members of the Committee hold office for a term of four years or until they resign or are replaced in accordance with this Act.
 - (b) A member of the Committee may be removed or replaced at any time by Council by motion.

Rules of order and procedure

- 4.6
- (a) Subject to this Act, the Committee may establish its own rules of order and procedure.
 - (b) A quorum for decision-making at a meeting of the Committee is two members of the Committee.
 - (c) The members of the Committee must appoint from amongst themselves a chair for the Committee.

- (d) The Committee must attempt to reach decisions by consensus, but if consensus is not possible, questions arising at a meeting of the Committee must be determined by a majority of the Committee members present and voting.

Duties of the Committee

4.7 The Committee must perform the following duties:

- (a) during the initial enrolment period,
 - (i) review applications for Toquaht citizenship and determine whether the applicant is entitled to become a Toquaht citizen,
 - (ii) periodically or upon request by any individual, determine whether an individual's Toquaht citizenship should be revoked, and
 - (iii) as requested, assist the Enrolment Committee in the performance of its duties;
- (b) after the initial enrolment period,
 - (i) review applications for Toquaht citizenship and determine whether the applicant is entitled to become a Toquaht citizen,
 - (ii) review applications for enrolment under the Maa-nulth Treaty and determine whether the applicant is entitled to become a Toquaht enrollee,
 - (iii) periodically or upon request by any individual, determine whether an individual's Toquaht citizenship should be revoked,
 - (iv) periodically or upon request by any individual, determine whether an individual's enrolment under the Maa-nulth Treaty should be revoked; and
- (c) any other duties assigned to the Committee
 - (i) under this or any other Toquaht enactment, or
 - (ii) by the Executive.

PART 5 - APPLICATION PROCESS

Citizenship application

- 5.1** (a) An individual described in section 2.1(b) who wishes to become a Toquaht citizen must submit an application in the prescribed form to the Citizenship and Enrolment Committee.
- (b) For certainty, a Toquaht enrollee is automatically a Toquaht citizen without having to submit an application under subsection (a).

Enrolment application

- 5.2** After the initial enrolment period, an individual described in section 2.3 who wishes to become a Toquaht enrollee must submit an application in the prescribed form to the Citizenship and Enrolment Committee.

Decision on application

- 5.3** (a) Subject to section 5.4, the Citizenship and Enrolment Committee must grant Toquaht citizenship to each applicant under section 5.1(a) if the Citizenship and Enrolment Committee is satisfied that the applicant meets the eligibility criteria under section 2.1.
- (b) Subject to section 5.5, the Citizenship and Enrolment Committee must grant enrolment under the Maa-nulth Treaty to each applicant under section 5.2 if the Citizenship and Enrolment Committee is satisfied that the applicant meets the eligibility criteria under section 2.3.

Conditional grant of citizenship

- 5.4** (a) If an applicant under section 5.1(a) is, at the time of the application, an individual described in section 2.2, the Citizenship and Enrolment Committee must conditionally grant Toquaht citizenship to that applicant if the Citizenship and Enrolment Committee is satisfied that the applicant meets the eligibility criteria under section 2.1.
- (b) The registrar may, upon 60 days written notice to an applicant who has been conditionally granted Toquaht citizenship under subsection (a), remove the applicant's name from the Toquaht citizenship register unless, within the 60 day notice period, the applicant demonstrates that he or she is no longer an individual described in section 2.2.

Conditional grant of enrolment

- 5.5** (a) If an applicant under section 5.2 is, at the time of the application, an individual described in section 2.4, the Citizenship and Enrolment Committee must

conditionally grant enrolment under the Maa-nulth Treaty to that applicant if the Citizenship and Enrolment Committee is satisfied that the applicant meets the eligibility criteria under section 2.3.

- (b) The registrar may, upon 60 days written notice to an applicant who has been conditionally granted enrolment under the Maa-nulth Treaty under subsection (a), remove the applicant's name from the Toquaht enrolment register unless, within the 60 day notice period, the applicant demonstrates that he or she is no longer an individual described in section 2.4.

Refusal notice

- 5.6** If the Citizenship and Enrolment Committee refuses to grant Toquaht citizenship or enrolment under the Maa-nulth Treaty to an applicant under section 5.1(a) or 5.2, the Citizenship and Enrolment Committee must deliver in accordance with Toquaht law notice of the refusal, with reasons, to the applicant.

Right to reapply

- 5.7** An individual who has renounced his or her Toquaht citizenship or enrolment under the Maa-nulth Treaty under section 6.1 may reapply for Toquaht citizenship or enrolment under the Maa-nulth Treaty under section 5.1(a) or 5.2.

PART 6 - RENUNCIATION AND REVOCATION PROCESSES

Renunciation of citizenship or enrolment

- 6.1** (a) In this section, “renunciation notice” means a notice under subsection (b) or (c).
- (b) An individual may renounce his or her Toquaht citizenship by delivering a notice in the prescribed form to the Citizenship and Enrolment Committee.
- (c) After the initial enrolment period, an individual may renounce his or her enrolment under the Maa-nulth Treaty by delivering a notice in the prescribed form to the Citizenship and Enrolment Committee.
- (d) A renunciation notice takes effect when the Citizenship and Enrolment Committee receives the notice.

Revocation of citizenship or enrolment

- 6.2** (a) If the Citizenship and Enrolment Committee has reason to believe that an individual
- (i) has been granted Toquaht citizenship on the basis of a material error in the facts, or
- (ii) no longer meets the eligibility criteria under section 2.1 or 2.2,
- the Citizenship and Enrolment Committee may deliver in accordance with Toquaht law notice to that individual advising him or her that it intends to revoke his or her Toquaht citizenship.
- (b) If, after the initial enrolment period, the Citizenship and Enrolment Committee has reason to believe that an individual
- (i) has been granted enrolment under the Maa-nulth Treaty on the basis of a material error in the facts, or
- (ii) no longer meets the eligibility criteria under section 2.3 or 2.4,
- the Citizenship and Enrolment Committee may deliver in accordance with Toquaht law notice to that individual advising him or her that it intends to revoke his or her enrolment under the Maa-nulth Treaty.

Revocation notice

- 6.3** A written notice under section 6.2 must set out
- (a) the reasons for the proposed revocation, and

- (b) that the individual is entitled to make representations regarding the proposed revocation by delivering a written response to the Citizenship and Enrolment Committee within 30 days of receipt of the notice.

Revocation directive

- 6.4**
- (a) Upon considering any written response under section 6.3 and on being satisfied that one or more of the circumstances described in section 6.2 exist, the Citizenship and Enrolment Committee may revoke the individual's Toquaht citizenship or enrolment under the Maa-nulth Treaty.
 - (b) The Citizenship and Enrolment Committee must deliver in accordance with Toquaht law notice of the revocation to the individual a copy of any order under subsection (a) to the individual whose Toquaht citizenship or enrolment under the Maa-nulth Treaty was revoked under subsection (a).

PART 7 - REVIEW PROCESS

Decisions final and binding

- 7.1 Subject to sections 7.2 to 7.4, all decisions of the Citizenship and Enrolment Committee are final and binding.

New information

- 7.2 An individual whose
- (a) application for Toquaht citizenship or enrolment under the Maa-nulth Treaty has been refused, or
 - (b) Toquaht citizenship or enrolment under the Maa-nulth Treaty has been revoked by a decision of the Citizenship and Enrolment Committee may submit new information to the Citizenship and Enrolment Committee at any time and the Citizenship and Enrolment Committee may reconsider its decision based on such new information.

Review of Citizenship and Enrolment Committee decision

- 7.3 An individual whose
- (a) application for Toquaht citizenship or enrolment under the Maa-nulth Treaty has been refused, or
 - (b) Toquaht citizenship or enrolment under the Maa-nulth Treaty has been revoked by a decision of the Citizenship and Enrolment Committee may request a review of that decision under the Administrative Decisions Review Act.

Judicial review of Administrative Decisions Review Board decision

- 7.4 For certainty, as provided in 26.7.1 of the Eligibility and Enrolment Chapter and despite section 4.7(m) of the Administrative Decisions Review Act, an individual who requests a review under section 7.3 may apply to the Supreme Court to review and set aside the Administrative Decisions Review Board
- (a) acted without jurisdiction,
 - (b) acted beyond its jurisdiction,
 - (c) refused to exercise its jurisdiction,
 - (d) failed to observe procedural fairness,

- (e) erred in law, or
- (f) 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.

PART 8 - CITIZENSHIP AND ENROLMENT REGISTERS

Citizenship register

8.1 The registrar must establish and maintain a Toquaht citizenship register that contains the names of all individuals who are Toquaht citizens.

Placement of names on citizenship register

- 8.2** (a) No individual's name may be placed on the Toquaht citizenship register except in accordance with this section.
- (b) The registrar must place an individual's name on the Toquaht citizenship register if
- (i) that individual is a Toquaht enrollee,
 - (ii) that individual has been granted Toquaht citizenship under section 5.3,
 - (iii) that individual has been conditionally granted Toquaht citizenship under section 5.4, or
 - (iv) that individual's Toquaht citizenship has been granted or reinstated as a result of
 - (A) a reconsideration under section 7.2,
 - (B) a review under section 7.3, or
 - (C) a judicial review under section 7.4.

Removal of names from citizenship register

- 8.3** (a) No individual's name may be removed from the Toquaht citizenship register except in accordance with this section.
- (b) The registrar must remove an individual's name from the Toquaht citizenship register
- (i) if that individual has died,
 - (ii) if that individual has been conditionally granted Toquaht citizenship under section 5.4 and fails to demonstrate within the time period required in section 5.4 that he or she is no longer an individual described in section 2.2,
 - (iii) on receipt of a notice of renunciation under section 6.1(b), or

- (iv) if that individual's Toquaht citizenship has been revoked under section 6.4.

Enrolment register

8.4 After the initial enrolment period, the registrar must establish and maintain a Toquaht enrolment register that contains the names of all individuals who are Toquaht enrollees.

Placement of names on the Toquaht enrolment register

- 8.5**
- (a) No individual's name may be placed on the Toquaht enrolment register except in accordance with this section.
 - (b) The registrar must place an individual's name on the Toquaht enrolment register if
 - (i) on the last day of the initial enrolment period, that individual's name was on the enrolment register maintained by the Enrolment Committee,
 - (ii) that individual has been granted enrolment under the Maa-nulth Treaty under section 5.3,
 - (iii) that individual has been conditionally granted enrolment under the Maa-nulth Treaty under section 5.5, or
 - (iv) that individual's enrolment under the Maa-nulth Treaty has been granted or reinstated as a result of
 - (A) a reconsideration under section 7.2,
 - (B) a review under section 7.3, or
 - (C) a judicial review under section 7.4.

Removal of names from Toquaht enrolment register

- 8.6**
- (a) No individual's name may be removed from the Toquaht enrolment register except in accordance with this section.
 - (b) The registrar must remove an individual's name from the Toquaht enrolment register
 - (i) if that individual has died,
 - (ii) if that individual has been conditionally granted enrolment under the Maa-nulth Treaty under section 5.5 and fails to demonstrate within the

time period required in section 5.5 that he or she is no longer an individual described in section 2.4,

- (iii) on receipt of a notice of renunciation under section 6.1(c), or
- (iv) if that individual's enrolment under the Maa-nulth Treaty has been revoked under section 6.4.

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PART 9 - GENERAL PROVISIONS

Regulations

- 9.1 The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

Authority of legal guardians

- 9.2 For certainty, an individual's legal guardian may
- (a) submit an application under section 5.1 or 5.2,
 - (b) submit a renunciation notice under section 6.1,
 - (c) make representations under section 6.3,
 - (d) submit new information under section 7.2, or
 - (e) file a review request under section 7.3,
- on behalf of the individual for whom he or she is a legal guardian.

Limitation on actions

- 9.3 (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Toquaht official or former Toquaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Toquaht institution, Toquaht official or former Toquaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

Offence

- 9.4 (a) An individual commits an offence under this Act if that individual, by false representation, fraud, or knowingly concealing a material fact
- (i) becomes a Toquaht citizen or Toquaht enrollee,
 - (ii) attempts to become a Toquaht citizen or Toquaht enrollee, or
 - (iii) assists another individual in becoming or attempting to become a Toquaht citizen or Toquaht enrollee.

- (b) An individual who commits an offence under subsection (a) is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months.

Commencement

9.5 This Act comes into force on the Maa-nulth Treaty effective date.

LEGISLATIVE HISTORY

Citizenship Act TNS 10/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
3.2(b)(iv)	TNS 8/2014, s.4.4(a)	June 10, 2014
6.2	TNS 8/2014, s.4.4(b)	June 10, 2014
6.3	TNS 8/2014, s.4.4(c)	June 10, 2014
6.4(a)	TNS 8/2014, s.4.4(d)	June 10, 2014
6.4	TNS 8/2014, s.4.4(e)	June 10, 2014
	◆ complete when we determine below	

Amending Acts:

TNS 8/2014 Enforcement Framework Amendment Act No. 2 enacted June 10, 2014

◆ TNS 8/2014 Enforcement Framework Amendment Act No. 2 Official Consolidation enacted
September 16, 2015

or

◆ TNS 4/2015 Miscellaneous Amendment Act No. 2 enacted September 16, 2015

Regulations:

TNR 1/2011 Citizenship and Enrolment Forms Regulation enacted April 1, 2011

TNR 3/2014 Citizenship and Enrolment Forms Amendment Regulation enacted January 24,
2014