

ASHCROFT INDIAN BAND MEMBERSHIP CODE

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ASHCROFT INDIAN BAND MEMBERSHIP CODE

PREAMBLE

Whereas:

- A. The Band as one of the aboriginal peoples of Canada has the inherent right to self-government within its traditional territory, including the right to control its own membership;
- B. The existing aboriginal rights and freedoms of the Band as one of the aboriginal peoples of Canada are, by reason of sections 25 and 35 the *Constitution Act, 1982*, constitutionally protected in Canada;
- C. The Band under section 10 of the *Indian Act* regained from the Department of Indian Affairs and Northern Development (“DIAND”), the right to control its own membership by way of the Ashcroft Indian Band Membership Rules (the “**Membership Rules**”), which came into effect on June 26, 1987;
- D. As a result, the *Indian Act* rules by which DIAND determined the membership of other Indian bands in Canada, have not applied to the Band since June 26, 1987;
- E. The Membership Rules are repealed and replaced by this Code, by which the Band will continue to exercise the communal right to control its own membership; and
- F. A majority of the Electors of the Band have approved this Code.

1. OBJECTS

1.1 **Objects:** The objects of this Code are:

- (a) to have a simple, objective standard for membership in the Band;
- (b) to eliminate male-female discrimination in relation to membership;
- (c) to allow the Band membership to focus on its unique collective history, identity, strength and accomplishments, and on planning for the future as a community;
- (d) to foster governance of our traditional territories;
- (e) to foster a sense of community among the Band membership as a base for:
 - (i) consultation, transparency and better communication within the membership;

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- (ii) consistent policy development within the Band; and
- (iii) strong self governance processes for future generations of Band Members;
- (f) to set out comprehensive and fair provisions for both Protests and Appeals of changes to the Membership List, as a means of protecting the sovereignty of our Band;
- (g) to allow our survival as a distinct people within Canada in a manner consistent with our heritage, our culture and our values; and
- (h) to balance the protection of cultural integrity and social harmony with the maintenance of economic stability.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions: For the purposes of this Code:

- (a) **“Administration Office”** means the Band administration office currently located at 414 Cornwall Road, Ashcroft Indian Reserve No. 4, PO Box 440, Ashcroft, BC V0K 1A0.
- (b) **“Appeal”** means an appeal, in the form of Appendix C to this Code, of the decision of the Investigator made on a Protest.
- (c) **“Appellant”** means the Protestor, any Interested Person or Chief and Council, as the case may be, who files under Article 9 of this Code, an Appeal of the decision of the Investigator made on a Protest.
- (d) **“Applicant”** means the person applying for membership in the Band.
- (e) **“Application for Membership”** means the application in the form of Appendix A to this Code to be completed by or on behalf of a person who wishes to become a Member of the Band.
- (f) **“approval by a majority of the Electors of the Band”** has the meaning set out in section 11.1.
- (g) **“Authorized Dual Membership”** has the meaning set out in section 5.5.
- (h) **“band”** means any Indian Band or First Nation in Canada, other than the Ashcroft Indian Band.
- (i) **“Band”** means the Ashcroft Indian Band.
- (j) **“Band bylaw, policy or procedure”** means any duly enacted or adopted bylaw, policy, procedure, regulation, manual, or law of the Band.
- (k) **“Band Manager”** means the person appointed by Chief and Council to manage Band operations.

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- (l) **“Canadian Charter of Rights and Freedoms”** means the *Canadian Charter of Rights and Freedoms*, being Schedule B to the *Constitution Act, 1982*, of Canada, as amended or replaced from time to time.
- (m) **“Chief”** means the member of Chief and Council who oversees Council meetings and is the primary community and political representative of the Band.
- (n) **“Chief and Council”** means the council established or chosen by the Band from time to time, consisting of a chief and councillors, exercising legal authority as the governing body of the Band.
- (o) **“child”** means only the biological child, includes a person born in or out of wedlock, but does not include an adoptive child or step child.
- (p) **“CIRNA”** means the Department of Crown-Indigenous Relations and Northern Affairs of the federal government, or any successor department or division of that government exercising jurisdiction over indigenous affairs.
- (q) **“Code”** means this Ashcroft Indian Band Membership Code.
- (r) **“common law relationship”** means a marriage-like relationship in which there is conjugal cohabitation for a continuous period of at least one year.
- (s) **“Complaints Policy”** means the Complaints Policy of the Band, as amended or replaced from time to time.
- (t) **“confidential information”** means information that could possibly harm the interests of individuals or the Band if disclosed to persons not authorized by Band bylaws, policies or procedures to access that information.
- (u) **“conflict of interest”** means any situation where the private interest of the Membership Coordinator or any of the other Personnel may conflict with the duty of that person to the Band.
- (v) **“Constitution Act (1982)”** means the *Constitution Act (1982)* of Canada, as amended or replaced from time to time.
- (w) **“Council Member”** means any of the Chief or councillors of the Band.
- (x) **“Council Resolution”** means a resolution consented to by the Chief and Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Council Members.
- (y) **“Court”** means the BC Supreme Court, which hears and decides any Appeal filed under Article 9 of this Code.
- (z) **“Effective Date”** means the date on which this Code is brought into legal effect under section 11.1.

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- (aa) “**Electoral Officer**” means the person appointed by Chief and Council to conduct a Referendum Vote of the Electors, in relation to this Code, under Article 11.
- (bb) “**Electors**” means all Members of the Band, 18 years of age or older, who are not disqualified from voting in Band elections.
- (cc) “**General Band Membership**” means all persons whose names appear on the Membership List maintained by the Band, or who are entitled under this Code to have their names appear on that list, and who are 18 years of age or older.
- (dd) “**Hearsay**” means evidence which is a repetition of what others have heard or seen, rather than based on the personal knowledge or observation of the witness.
- (ee) “**Housing Policy**” means the Housing Policy of the Band, as amended or replaced from time to time.
- (ff) “**Indian Act**” means the *Indian Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time.
- (gg) “**Indian Register**” means the register of Status Indians maintained by CIRNA under section 5 of the *Indian Act*.
- (hh) “**Interested Person**” means any Band Member or other person who provides the Band Manager with a written statement of support for, or opposition to, a Protest.
- (ii) “**Investigator**” means the person having conduct of the investigation of a Protest, pursuant to section 8.4.
- (jj) “**Member**” means a person whose name appears in the Membership List, or who is entitled under this Code to have his or her name appear in that list.
- (kk) “**Membership Coordinator**” means the Band employee, acting under the direction of the Band Manager, responsible for administering on a day to day basis, the Membership List, this Code, and the membership programs and services of the Band.
- (ll) “**Membership List**” means the list of the names of the Band Members, kept by the Membership Coordinator.
- (mm) “**Membership Rules**” means the Ashcroft Indian Band Membership Rules which came into force on June 26, 1987, by which the Band assumed control of its own membership from the Department of Indian Affairs and Northern Development.
- (nn) “**Nlaka’pamux Nation**” means the indigenous people of North America known as the Nlaka’pamux Nation, of which the Band is part.
- (oo) “**Non-Indian**” means a person who is not a Status Indian.
- (pp) “**Non-Member**” means a person who is not a Member of the Band.

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- (qq) **“parent”** means only the biological parent, and does not include an adoptive parent or step parent.
- (rr) **“Personnel”** means:
- (i) the staff working for the Band, whether full time, part time, on fixed term or month to month contracts, on a temporary basis, or as casual relief; and
 - (ii) all members of Chief and Council;
- but does not include:
- (iii) employees of companies, societies or businesses in which the Band has an ownership interest;
 - (iv) independent contractors of the Band; or
 - (v) any other employees who are not the direct responsibility of the Band administration.
- (ss) **“Policies”** has the meaning set out in section 4.3.
- (tt) **“Protest”** means a protest, in the form of Appendix B to this Code, of the decision of the Membership Coordinator to add, refuse to add, or remove, as the case may be, the name of any person to or from the Membership List.
- (uu) **“Protestor”** means the person filing a Protest under Article 8 of this Code.
- (vv) **“Referendum Vote”** has the meaning set out in section 11.3.
- (ww) **“Registrar”** means the officer of CIRNA who is in charge of the Indian Register, and the Band Membership List maintained by CIRNA for the period prior to June 26, 1987.
- (xx) **“Spouse”** means a person who:
- (i) is married to another person; or
 - (ii) is in a common law relationship with another person.
- (yy) **“Status Indian”** means a person who, under the *Indian Act*:
- (i) is registered or entitled to be registered in the Indian Register as an Indian; or
 - (ii) if no longer living:
 - (A) was registered or entitled to be registered at the time of death; or

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(B) would have been entitled to be registered under any later amendments to the *Indian Act*, had he or she not died.

(zz) “**traditional territory**” means that portion of the traditional territory of the Nlaka’pamux Nation which the Band administers.

2.2 **Headings:** Headings inserted in this Code are for convenience of reference only, and in no way define, limit or enlarge the scope or meaning of this Code or any provision.

2.3 **Issuing Authority:** This Code is issued under the authority of the Chief and Council of the Band, following consent by a majority of the Electors of the Band.

2.4 **Amendments to Code:** This Code may be amended, revoked or replaced, either in whole or in part, by Chief and Council, following approval of a majority of the Electors of the Band in a Referendum Vote.

2.5 **Amendment and Replacement of Laws:** Reference to any Band bylaw, policy or procedure includes that item as amended or replaced from time to time.

2.6 **Liberal Construction:** This Code is to be liberally construed and interpreted so as to remedy any disadvantage to a woman or her descendants, born before April 17, 1985, with respect to the entitlement to have his or her name appear in the Membership List, and to enhance the equal treatment of women and men and their descendants under this Code.

3. **BAND MEMBERSHIP**

3.1 **Maintaining the Membership List:** The Membership Coordinator shall in accordance with this Code, maintain the Membership List, in which shall be recorded:

- (a) the name of every person who is registered as a Band Member under this Code;
- (b) the Status Indian number from the Indian Register for each Member;
- (c) the date each name was added to or deleted from the Membership List;
- (d) the birthdate and place, and if applicable, the date and place of death for each Member; and
- (e) the last known mailing address, e-mail address and phone number for each Member, the date that information was supplied to the Membership Coordinator, and whether the information is current;

and may include other information which Chief and Council or the Membership Coordinator consider appropriate.

3.2 **Existing Membership List:** The names in the Membership List immediately prior to the Effective Date:

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- (a) shall constitute the Membership List on the Effective Date whether or not those names were entitled to be on the Membership List under the Membership Rules; and
 - (b) shall not be disputed for any reason either under the Membership Rules or this Code, before any court, tribunal, board or other adjudicative body having legal authority to make decisions binding on the Band and its Members regarding the Membership List.
- 3.3 **Changes from the Effective Date:** Commencing on the Effective Date, a person is entitled to have his or name entered in the Membership List if:
- (a) the name of that person was entered in the Membership List immediately prior to the Effective Date; or
 - (b) that person is entitled to have his or her name entered in the Membership List, pursuant to this Code, on or after the Effective Date.
- 3.4 **Changes Prior to June 26, 1987:** Sections 3.2 and 3.3 are subject to section 3.5, to acknowledge that the Membership List can still be changed by the Registrar on or after the Effective Date for any point in time prior to June 26, 1987, as CIRNA has legal control of the Membership List for the whole period prior to June 26, 1987, rather than the Band.
- 3.5 **Changes to Membership List by Registrar:** The Registrar is entitled under section 11(3) of the *Indian Act* to make changes to the Band Membership List on or after the Effective Date, for any point in time prior to June 26, 1987, as CIRNA has legal control of the Membership List for the whole period prior to June 26, 1987, rather than the Band. These changes to the Band Membership List by the Registrar:
- (a) may result from amendments to the *Indian Act* made in 1985 and subsequent years, intended to eliminate the discrimination and other inequalities in the entitlement to membership, which existed prior to the 1985 amendments; and
 - (b) may have consequential amendments to the Membership List at any point in time on or after June 26, 1987.
- 3.6 **Deletions and Additions:** The Membership Coordinator shall:
- (a) add to or remove from the Membership List the name of any person who, in accordance with this Code, is entitled or not entitled, as the case may be, to have his or her name included in the Membership List on or after the Effective Date;
 - (b) make the changes to the Membership List as advised by the Registrar under section 3.5; and
 - (c) remove from the Membership List the name of any person who has not reported a current mailing address to the Membership Coordinator, but will add that person's name back to the list when that person reports a current mailing address.

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3.7 **Application for Membership:** The name of a person who is entitled to membership in the Band is not required to be recorded in the Membership List unless an Application for Membership is made to the Membership Coordinator.

3.8 **Unknown or Unstated Parentage:** If a parent, grandparent, or other ancestor of a person in respect of whom an Application for Membership is made, is either:

- (a) unknown; or
- (b) unstated on a birth certificate that, if the parent, grandparent or other ancestor were named on it, would help to establish the person's entitlement to membership;

the Membership Coordinator shall, without being required to establish the identity of that parent, grandparent or other ancestor, determine, after considering all the relevant evidence, whether that parent, grandparent or other ancestor is, was or would have been entitled to membership in the Band. In making that determination, the Membership Coordinator shall rely on any credible evidence that is presented by the Applicant in support of the Application for Membership, or that the Membership Coordinator otherwise has knowledge of, and shall draw from it every reasonable inference in favour of the person in respect of whom the Application for Membership is made.

3.9 **No Presumption:** For greater certainty, if the identity of a parent, grandparent or other ancestor of an Applicant is unknown or unstated on a birth certificate, there is no presumption that this parent, grandparent or other ancestor is not, was not or would not have been entitled to membership in the Band.

3.10 **Entitlement to Membership:** Subject to sections 3.11 and 3.12, the following persons are entitled to be Members of the Band:

- (a) all persons on the Membership List immediately prior to the Effective Date; and
- (b) Status Indians who have at least one biological parent who is both:
 - (i) a Status Indian; and
 - (ii) a Band Member;

or if that biological parent is no longer living, that biological parent:

- (A) was both a Status Indian and a Band Member at the time of death; or
- (B) was entitled both to registration as a Status Indian and to have his or her name appear on the Membership List, at the time of death; or
- (C) would have been entitled both to registration as a Status Indian under any later amendments to the *Indian Act*, and to have his or her name appear on the Membership List under this Code, had he or she not died.

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3.11 **Exclusions from Membership:** Status Indians are excluded from membership in the Band if:

- (a) they have only one natural parent who is a Band Member; and
- (b) that parent is a female Non- Indian, whose name was added to the Indian Register prior to April 17, 1985 upon her marrying a Status Indian.

3.12 **Adoption:** Entitlement to Band membership under this Code is not either lost or gained by any adoption process for a child, whether under provincial or indigenous traditional law. The reasons for this are:

- (a) the preservation of the collective Band culture and identity, in the face of an overwhelming Non-Indian and Non-Member population, in a manner consistent with the heritage, culture and values of the Band, by requiring the Members to have a bloodline connection to other Members;
- (b) only those Members with a demonstrable historic connection to our Band can claim aboriginal rights under section 35 of the *Constitution Act (1982)*;
- (c) approximately one half the Members of the Band live off reserve;
- (d) the Band has no way of determining whether children adopted by Band members and living off reserve have been raised with the required knowledge of our heritage, culture and values, so as to become functioning Members of our community;
- (e) as the Band has a small population, the Band may not survive as a distinct community if membership is opened up to people who have no bloodline connection to other Members; and
- (f) the Band Manager is authorized and directed to bring to the attention of Chief and Council:
 - (i) any harsh or punitive consequences created for any child subject to an adoption process, which child has a connection to the Band; or
 - (ii) any prejudice to the rights as a Status Indian of any such child;

for consideration by Chief and Council on issues other than membership, in their absolute discretion.

3.13 **Adoption of a Band Member Child:** Adoption of a Band Member child:

- (a) by Non-Indian parents pursuant to a provincial adoption act, cannot affect that child's Indian status, and does not affect that child's entitlement to Band membership under this Code; and
- (b) by one or more Status Indian, Non-Member parents, pursuant to either an indigenous traditional law or a provincial adoption act, cannot affect that child's Indian status, and does not affect that child's entitlement to Band membership under this Code, provided

that any Authorized Dual Membership of that child in another band and this Band shall be dealt with under section 5.5 of this Code.

- 3.14 **Marriage:** Entitlement to Band membership under this Code is not either lost or gained by marriage or common law relationship.
- 3.15 **Loss of Status:** The name of any Band Member who is deleted from the Indian Register shall also be deleted immediately from the Membership List.
- 3.16 **Onus:** The onus is on the person claiming to be a Member, to make an Application for Membership and supply the necessary evidence, which together demonstrate entitlement to be a Member, pursuant to this Code.
- 3.17 **Rights of Non-Member Spouses and Children:** The Housing Policy addresses the circumstances in which Non-Member Spouses and Non-Member children of Band Members may reside on reserve lands of the Band.
- 3.18 **Application on Behalf of a Child:** An Application for Membership to be submitted on behalf of a person less than 18 years old, may be completed and signed by the parent or legal guardian.
- 3.19 **Applying Again:** A person whose Application for Membership is refused by the Band, may on the conclusion of any Protest and Appeal regarding that application, at any time submit any new material evidence of eligibility for membership he or she has received, to the Membership Coordinator with a new Application for Membership.
- 3.20 **Saving from Liability:** For greater certainty, no claim lies against the Band, Chief and Council, any Member, employee or agent of the Band, or any other person or body in relation to the addition, refusal to add, omission or removal of the name of a person from the Membership List, including, without limitation, for denial or loss of any of the rights of membership in the Band set out in section 6.1, pursuant to either:
- (a) the Membership Rules prior to this Code coming into effect; or
 - (b) this Code.
- 3.21 **Inquiry Not Required:** The Membership Coordinator is not required to conduct an inquiry or give an Applicant a hearing when considering an Application for Membership. The Membership Coordinator functions as an historian to review the evidence supporting the Application, to determine if it is sufficient to support entitlement to membership. That entitlement does not have to be proved to the Membership Coordinator on a balance of probabilities, or beyond any reasonable doubt. The view of the Membership Coordinator of the entitlement to membership of the Applicant binds no one, and the Membership Coordinator is free to change that view at any time and to add or remove a name from the Membership List, accordingly, upon new evidence being received or reconsideration of the matter.
- 3.22 **Judicial Review Not Allowed:** Judicial review in Federal Court of the decision of the Membership Coordinator to add, refuse to add or remove the name of a person from the

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Membership List is not allowed. The proper remedy is to file a Protest, and an Appeal if necessary, under this Code.

4. ADMINISTRATION

4.1 **Membership Coordinator:** Chief and Council shall appoint the Membership Coordinator, who shall be responsible for administering on a day to day basis all matters relating to membership in accordance with this Code, including:

- (a) reviewing each Application for Membership, applying the provisions of this Code and the Policies, making a decision as to the entitlement to membership, advising the Applicant in writing of the decision, and providing written reasons to the Applicant if that application was rejected;
- (b) the maintenance of the Membership List by adding the names of all those persons entitled under this Code to be Members, and removing the names of all those persons who, under this Code, have ceased to be Members, and advising each such person in writing of that decision and the reasons;
- (c) providing Applications for Membership, Protest and Appeal forms, and relevant information to those requesting;
- (d) the processing of Applications for Membership, Protests and Appeals in accordance with this Code;
- (e) maintaining a permanent record of all births, deaths, marriages, common law relationships, divorces, adoptions, changes of name, transfers of membership, ceasing of membership, Protests, Appeals, and other information pertinent to the administration of this Code;
- (f) making a copy of the Membership List available for inspection by any Member or other person, in the Administration Office;
- (g) answering any inquiries from any person representing that he or she is entitled to have his or her name appear in the Membership List;
- (h) providing at the Administration Office, a copy of this Code and any Policies, to any person requesting these;
- (i) providing to the Electoral Officer for the Band prior to each election of Chief and Council or Referendum Vote, the voters list, being the list of all Electors of the Band whose names appear in the Membership List;
- (j) maintaining and keeping current all membership files;
- (k) administering this Code in a fair and transparent manner;
- (l) explaining this Code and the Policies to all Members and Applicants for Membership; and

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- (m) all other procedures and matters ancillary to the administration of this Code.
- 4.2 **Other Employees May Assist:** Chief and Council may appoint other employees to assist the Membership Coordinator to administer this Code.
- 4.3 **Policies:** Chief and Council may establish policies, including membership criteria guidelines, consistent with this Code, to assist in the administration of this Code (the “**Policies**”).
- 4.4 **Conflict of Interest:** If the Membership Coordinator is in a conflict of interest in respect of any Application for Membership or other matter under this Code, the Band Manager, and failing him or her, any other employee of the Band designated by the Band Manager, may act in the place of the Membership Coordinator. This Code is to be read together with any Policies dealing with conflicts of interest.
5. **TRANSFERS IN AND OUT**
- 5.1 **Transfers Out:** The name of any Band Member who transfers membership out of this Band to another band shall be deleted immediately by the Membership Coordinator from the Membership List.
- 5.2 **Transfers In:** For all Applications for Membership from persons holding membership in another band, and seeking to transfer their membership to this Band, the Applicants must:
- (a) have entitlement to membership in this Band, in accordance with sections 3.10 and 3.11 of this Code;
 - (b) be in good financial standing with the Band, having no outstanding debt owed to the Band;
 - (c) not have previously transferred his or her membership out of the Band;
 - (d) not have a history of violence, destruction of property, theft, fraud, drug or substance abuse, child abuse or threatening behaviour, as evidenced by:
 - (i) a criminal records check, paid for and submitted by the Applicant to the Membership Coordinator; or
 - (ii) the records at the Band Office; and
 - (e) set out any extenuating circumstances relevant to subsection (d) and attach these to the Application for Membership, which demonstrate that the cause of the offending behaviour has been resolved, and that the Applicant has undergone healing sufficient to ensure that the offending behaviour will not recur.
- 5.3 **Decision:** The Membership Coordinator shall:
- (a) decline any Application for Membership by a person seeking to transfer his or her membership in another band to this Band, which does not meet all the conditions set out in section 5.2, advise that person in writing of the decision and the reasons;

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- (b) add the name and other particulars of any successful Applicant for transfer of membership to this Band, to the Membership List; and
- (c) confirm by letter to the new Member's previous band, that person's transfer of membership to this Band and resignation from membership in the previous Band.

5.4 Dual Membership Forbidden: Subject to:

- (a) subsection 3.13(b) dealing with a Band Member child also having membership in another band by reason of adoption; and
- (b) any other circumstance in which a Band Member child also has membership in another band;

no person can have membership in both another band and this Band at the same time.

5.5 Rights of the Band on Dual Membership: Where a Band Member child also has membership in another Band, as set out in either of subsections 5.4(a) or (b) ("**Authorized Dual Membership**"), the Band shall have the rights to ensure:

- (a) that there is no doubling up on health and welfare, education or other social benefits paid for that child by any other band and this Band;
- (b) that where the child is less than 18 years of age at the time of the Authorized Dual Membership, that the child upon achieving his or her 18th birthday files with both that band and this Band a statutory declaration electing as to which of the two bands he or she chooses to be a member; and
- (c) that where the child is 18 years of age or older at the time of the Authorized Dual Membership, that the child files with both that band and this Band a statutory declaration electing as to which of the two bands he or she chooses to be a member.

6. RIGHTS OF MEMBERSHIP

6.1 The Rights of Membership: Membership shall include the following rights:

- (a) to hunt, fish and carry out the other traditional practices of the Nlaka'pamux Nation, within the traditional territory;
- (b) to own land and to live within the traditional territory;
- (c) to reside on a reserve of the Band, subject to housing being available;
- (d) to have lawful possession of land within a reserve of the Band;
- (e) to access health and welfare, education or other social benefits administered by the Band;

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- (f) to access the Administration Office, other Band facilities on reserve and lands owned by the Band on reserve;
- (g) on becoming 18 years of age:
 - (i) to vote in all elections for Chief and Council, Referendum Votes and in all other matters brought to the General Band Membership for decision;
 - (ii) being nominated for a position on Chief and Council, and serving on Chief and Council if elected; and
- (h) to provide input to Chief and Council or the Band administration on issues affecting the Band and its Members.

6.2 **When Membership Effective:** Membership rights shall not exist prior to a person's name being added to the Membership List.

6.3 **Restricting Membership Rights:** Members are subject to progressive discipline, including the loss of some or all the membership rights set out in section 6.1, to and including the loss of membership in the Band, for failure to comply with the code of conduct set out in the Complaints Policy.

7. CEASING TO BE A MEMBER

7.1 **Removal From Membership List:** The name of a person will be removed from the Membership List by the Membership Coordinator, where:

- (a) that person is no longer a Status Indian;
- (b) that person becomes a member of another band in addition to this Band, other than by Authorized Dual Membership;
- (c) that person is at least 18 years of age and files with this Band a statutory declaration requesting that his or her name be removed from the Membership List;
- (d) the Authorized Dual Membership of that person has come to an end under section 5.5, and that person has chosen to be a member of another band rather than this Band;
- (e) the name of that person is ordered to be removed from the Membership List following:
 - (i) a Protest filed under Article 8;
 - (ii) an Appeal filed under Article 9; or
 - (iii) a complaint filed under the Complaints Policy;
- (f) that person had his or her name entered on the Membership List on or after the Effective Date, on the basis of either:

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- (i) a material error in the facts on which his or her entitlement to membership was based; or
 - (ii) any false or misleading statements made by that person on the Application for Membership; or
 - (g) the removal is otherwise authorized under this Code.
- 7.2 **Lawful Possession of Lands:** The removal of the name of a person from the Membership List under section 7.1, will be delayed for six months where that person provides to the Membership Coordinator, prior to the removal, a statutory declaration confirming his or her lawful possession under section 20 of the *Indian Act*, of lands within the reserves of the Band, so that the transfer of those lands to a Band Member may be arranged.
- 7.3 **Loss of Membership Rights:** No rights of membership survive the removal of that person's name from the Membership List.
- 7.4 **No Payment on Loss of Membership:** On the removal of the name of a person from the Membership List, for any reason whatsoever under this Code, that person shall not be entitled to any payment from any trust moneys, land claims settlement, capital, assets or other funds of the Band, whether held by the federal or provincial government, the Band or any third party for the Band, regardless of whether the funds were, are or will be available to the Band at any time prior to, on or after the removal of the name.
8. **PROTESTS**
- 8.1 **Time Limit:** A Protest may be made to the Band regarding the addition, refusal to add, or removal of the name of any person to or from the Membership List, within 90 days after that decision. The Protest is made by filing notice in writing with the Band Manager in the form of Appendix B to this Code, containing a brief statement of the grounds. The date when any person discovers that decision is not relevant to the running of this limitation period.
- 8.2 **Person Eligible:** The Protest may be filed by any Member, the person who has been subject to addition, refusal to add, or removal from the Membership List, Chief and Council, or the legal representative of any of these.
- 8.3 **Onus of Proof:** The onus of establishing the grounds of a Protest under this Article lies on the person making the Protest, on a balance of probabilities.
- 8.4 **Investigation:** Where a Protest is made to the Band under this Article, Chief and Council shall cause an investigation to be made into the matter by an Investigator, who shall be an independent third party neutral, as Chief and Council shall in its absolute discretion determine.
- 8.5 **Stay of Decision Under Protest:** Once a Protest has been filed under section 8.1, that Protestor may apply to Chief and Council in writing for a stay of the decision under Protest, pending the conclusion of the Protest and any Appeal. That application shall set out any harsh, punitive or unfair circumstances or effects created for the Protestor or members of his or her family, by the decision under Protest. Chief and Council shall conduct a hearing at which the Protestor, any

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Interested Persons, and the Band Manager are heard from, each party will know the case against it, and may present evidence or witnesses, all of whom may be questioned by each of the other parties. Chief and Council shall consider the balance of convenience between the Protestor, any Interested Persons and the Band in deciding whether to grant the stay. Chief and Council may:

- (a) refuse the stay, grant the stay, or grant the stay on conditions;
- (b) make any other order, direction, declaration or record necessary in the discretion of Chief and Council to fairly and justly dispose of the stay application; and
- (c) give the Protestor, each Interested Person and the Band Manager, written notice of the decision on the stay application, together with a written statement of the reasons.

8.6 **Stay Decision Not Subject to Appeal:** The decision of Chief and Council under section 8.5 about the stay application is not subject to appeal or judicial review.

8.7 **Canadian Charter of Rights and Freedoms:** As the Investigator does not have the jurisdiction to determine any issues raised in the Protest under the *Canadian Charter of Rights and Freedoms*, these may be considered only on Appeal of the decision made on the Protest.

8.8 **Procedure:** The Investigator shall determine all matters of procedure for the Protest, subject to this Code.

8.9 **Confidential Information:** Confidential information about the Protestor, any Interested Person, any witnesses, and the Protest will only be disclosed as necessary to complete the investigation, hearing and other processes for the Protest, outlined in this Code.

8.10 **Contact with Protestor:** To preserve the integrity of the investigation process, the only person from the Band who shall talk to, interview, correspond with, or follow up in any way with the Protestor, any Interested Person or any witnesses, about the Protest, is the Investigator. All other Personnel are forbidden from doing so.

8.11 **Interviews:** The Investigator shall interview in person, the Protestor, any Interested Person and any witnesses, each separately from the others.

8.12 **Purposes of Investigation:** The purposes of the investigation of the Protest are to determine:

- (a) what evidence exists, based on first hand observation and not Hearsay, of the facts giving rise to the Protest;
- (b) whether the Protest is justified;
- (c) if there is a factual basis to the Protest, and if the Protest is justified, how to correct the Membership List; and

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- (d) what adjustments should be made to the Membership Code and Policies to minimize the risk of the circumstances giving rise to the Protest occurring again.

8.13 **Co-operation with Investigation:** The Protestor, any Interested Person, and all witnesses shall co-operate fully with the investigation of the Complaint by the Investigator, including:

- (a) answering all questions fully, completely, honestly and directly when asked;
- (b) providing any documents requested;
- (c) assisting with all follow up to be made with any witnesses; and
- (d) complying with any other reasonable request of the Investigator;

provided that if:

- (e) the Protestor does not co-operate after being verbally warned by the Investigator, the Investigator shall terminate the investigation, and advise the Protestor, any Interested Persons and any witnesses by letter, of the termination of the investigation and the reason; and
- (f) any Interested Person or witness does not co-operate after being verbally warned by the Investigator, the Investigator shall conclude the investigation of the Protest without any further involvement of that person, and the Protestor and any other Interested Persons shall be advised to that effect by letter from the Investigator.

8.14 **Other Interviews:** Once the Investigator has completed the investigation to and including the steps in section 8.13 above, the Investigator shall:

- (a) interview the Membership Coordinator, to determine what additional facts, witnesses or documents are available to assist the investigation; and
- (b) interview on an individual basis, any other Personnel or witnesses, having information or documents which may assist the investigation.

8.15 **Reasonable Opportunity for Protestor and Interested Persons:** The Investigator is to be satisfied that:

- (a) any Interested Persons have had a reasonable opportunity to know the case against them, to provide a written response to the Protest, to produce any witnesses, witness statements, and other evidence, to provide written or verbal answers to all questions about the Protest, to provide any relevant documents to the Investigator, and to question under oath the Protestor and any witnesses; and

- (b) the Protestor has had a reasonable opportunity to know the case against him or her, to produce any witnesses, witness statements and other evidence, to provide written or verbal answers to all question about the Protest, to provide any relevant documents to the Investigator, and to question under oath any Interested persons and any witnesses.

8.16 **Evidence:** The Investigator:

- (a) may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as the Investigator, in his or her discretion, sees fit or deems just;
- (b) shall consider oral history without independent corroboration;
- (c) shall, where the father or mother of the Applicant is unknown, consider any evidence which is capable of giving rise to the inference that the unknown father or mother may have been a Band Member, which constitutes sufficient proof of maternity or paternity for the purposes of this Code, in the absence of any evidence to the contrary;
- (d) shall consider a statutory declaration from the Applicant stating that he or she has no basis for believing that his or her father, mother, grandfather, grandmother or other male or female ancestor, would not have been entitled to membership;
- (e) will accept:
 - (i) birth certificates or baptismal certificates;
 - (ii) court orders declaring paternity or maternity;
 - (iii) statutory declarations, from both parents or two close relatives, confirming paternity or maternity from personal knowledge;
 - (iv) DNA testing; or
 - (v) previous Band Membership Lists;
 to determine ancestry; and
- (f) will hold an oral hearing.

8.17 **Settlement:** Any settlement of the Protest made as a result of the investigation shall be agreed to in writing and signed by the Protestor and any other Interested Parties, and approved in writing by the Investigator. The Investigator shall be responsible to see that the terms of the settlement are carried out by all the parties to it. Any additions to or removals from the Membership List, resulting from the settlement, shall be made by the Membership Coordinator.

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- 8.18 **Disposition of Protest:** At the conclusion of the investigation, the Investigator shall:
- (a) either dismiss or confirm the Protest;
 - (b) make any necessary order for the addition to or removal of the name of the person who was the subject of the Protest, from the Membership List;
 - (c) make any other order, direction, declaration or record necessary in the discretion of the Investigator to fairly and justly dispose of the Protest; and
 - (d) give the Protestor and any Interested Persons written notice of the decision of the Investigator, together with a written statement of the reasons showing that the decision is justified, transparent and intelligible.
- 8.19 **Bringing the Decision into Effect:** Following the decision by the Investigator on the Protest, the Membership Coordinator and all other Personnel shall take whatever steps are necessary to bring that decision into effect.
- 8.20 **Distribution of the Decision:** The decision of the Investigator shall be distributed by him or her to the Protestor, any Interested Persons, and to the Band Manager and Membership Coordinator. The Band Manager will decide whether that decision contains any confidential information that is protected by section 8.9, and whether the decision can be available to the General Band Membership.
- 8.21 **Appeal of Decision of Investigator:** The decision made by the Investigator under section 8.18 as to the disposition of the Protest, is final and conclusive, subject to Article 9, Appeals.
- 8.22 **Costs:** The Band shall pay all the costs of the Investigator. The Protestor and all Interested Persons shall each pay his or her own costs of representation to the Investigator.
9. **APPEALS**
- 9.1 **Time Limit:** The Protestor, any Interested Person, Chief and Council, or the legal representative of any such person, may by filing an Appeal in the form of Appendix C to this Code within 90 days from the date of the decision on the Protest made by the Investigator under section 8.18, appeal that decision. The date when any person discovers that decision is not relevant to the running of this limitation period.
- 9.2 **Filing:** The Appeal is filed in the Kamloops, BC registry of the BC Supreme Court, together with the filing fee required by the Court.
- 9.3 **Parties to the Appeal:** The parties to the Appeal shall be the Investigator, the Band and any other parties to the Protest.
- 9.4 **Grounds of Appeal:** The grounds of Appeal shall be any errors in facts, law or procedure made by the Investigator in the decision on the Protest.
- 9.5 **Canadian Charter of Rights and Freedoms:** If the Appellant wishes to raise arguments under the *Canadian Charter of Rights and Freedoms* on the Appeal, the Appellant shall in addition to

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the Appeal file a separate Notice of Civil Claim in the BC Supreme Court raising the charter arguments. The two matters shall be heard by the same judge at the same time.

- 9.6 **Informing the Investigator:** The Appellant shall forthwith deliver to the Investigator, the Band, and the other parties to the Protest, a copy of the Appeal after filing in the Court registry.
- 9.7 **Material to be Provided to the Court:** On receipt under section 9.6 of a copy of an Appeal filed, the Investigator shall forthwith provide to the Court copies of this Code, the Protest, the decision including written reasons being appealed, together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings that were held before the Investigator.
- 9.8 **Conduct of the Appeal:** The Appeal will be conducted as follows:
- (a) the Appeal may be on facts, law or procedure, but is not a rehearing of the Protest before the Investigator;
 - (b) the Court may only consider the evidence that was before the Investigator on the Protest, and may not consider new evidence;
 - (c) as the Investigator has expertise in determining factual matters, the findings of fact by the Investigator should only be set aside on Appeal where they are clearly wrong;
 - (d) the Court will determine all matters of procedure for the Appeal, subject to this Code;
 - (e) the onus of establishing the merits of the Appeal shall be on the Appellant;
 - (f) the Court may confirm, vary, set aside or substitute its own decision for that under Appeal, or refer the subject-matter of the Appeal back to the Investigator for reconsideration or further investigation; and
 - (g) the Court may make any other order, direction, declaration or record necessary in its discretion to fairly and justly dispose of the Appeal.
- 9.9 **Judicial Review:** Judicial review of any decisions made under this Code is not permitted until any rights of Protest and Appeal for that matter have been exhausted.
- 9.10 **Bringing the Decision into Effect:** Following the decision by the Court on the Appeal, the Membership Coordinator, Investigator and all other Personnel shall take whatever steps are necessary to bring that decision into effect.
- 9.11 **Distribution of the Decision:** The reasons of the Court shall be made available by the Membership Coordinator, for distribution to the General Band Membership.
10. **NOTICE**
- 10.1 **Method:** Any notice to be given to a person pursuant to this Code shall be in writing, have the signature of the sender at the end, be dated, and shall be:

- (a) sent in a fully prepaid envelope mailed in the Province of British Columbia, addressed to the person receiving. Any such notice shall be deemed to have been given and received by the persons concerned on the fourth business day following the mailing thereof;
 - (b) delivered, and if delivered shall be deemed to have been given and received by the persons concerned upon delivery thereof. If delivering to a residence, business or other building at which no one answers, it shall be sufficient to complete the delivery by putting the notice in a mail box, putting it through a mail slot, or fixing it right to the entrance door; or
 - (c) e-mailed or faxed, and shall be deemed to have been given and received by the persons concerned on the next business day after e-mailing or faxing.
- 10.2 **Band Newsletter and Website:** The Band may, in addition to the methods specified in section 10.1, give written notice to the Band Members by placing the notice:
- (a) in the Band newsletter, in which case the notice shall be deemed to have been given and received, according to the method of forwarding as specified in section 10.1, of the newsletter by the Band to that Band Member; or
 - (b) on the Band website, in which case the notice shall be deemed to have been given and received by all Band Members on the fourth business day after placing by the Band on the website.
- 10.3 **Invalid Notice:** Any notice received by the Band from a Band Member or other person under this Code, has to be in writing, have the signature of the Band Member or other person at the end, and be dated, to be a valid legal notice.
- 10.4 **Current Addresses:** All Band Members shall be responsible to advise the Band administration office of their current mailing, delivery and e-mail addresses, and fax number, if applicable.
11. **COMING INTO EFFECT**
- 11.1 **Approval Process:** Following the approval by a majority of the Electors of the Band of this Code in a Referendum Vote, this Code shall be brought into legal effect by Council Resolution. The phrase, "approval by a majority of the Electors of the Band" means approval by the Electors of the Band in a Referendum Vote in which a majority of the Electors vote, and a majority of the Electors who vote, approve this Code to come into immediate legal effect.
- 11.2 **Repeal of the Membership Rules:** The Membership Rules are repealed and replaced by this Code on the date this Code is brought into legal effect.

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11.3 **Referendum Vote:** The Referendum Vote is a formal vote carried out among all the Electors of the Band, held in accordance with the *Referendum Regulation* of the Band.

12. **APPENDICES**

12.1 The Appendices attached to and forming part of this Code are:

Appendix A - Application for Membership

Appendix B - Protest

Appendix C - Appeal

Coming into Effect

The ASHCROFT INDIAN BAND CHIEF AND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Council duly convened and held on the _____ day of _____, 20____ that:

A Referendum Vote of the Electors having been held on the _____ day of _____, 20____, in which a majority of the Electors voted, and a majority of the Electors who voted, approved this Code, this Code is to brought into legal effect for the Ashcroft Indian Band, on today's date being the _____ day of _____, 20____.

ASHCROFT INDIAN BAND

Per:

Chief

Councillor

Councillor

ASHCROFT INDIAN BAND

MEMBERSHIP CODE

CRAIG NIXON LAW CORPORATION

Barristers and Solicitors
880 - 175 Second Avenue
Kamloops, BC V2C 5W1
Telephone: (250) 374-1555
Fax: (250) 374-9992

E-mail: cnlc@CNixonLaw.ca
www.CNixonLaw.ca

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