

Understanding Fort William First Nation's 1987 Membership Code

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Before proceeding:

In order to follow along with this presentation, please note that the sections in the 1987 Membership Code require proper numbering. As it stands now, each section of the Code has its own numbering system, which makes it confusing to follow.

Please see the attached copy of the Code (found at end of this presentation), as its sections are numbered continuously (from 1 to 66). It is not possible to follow this presentation without the continuous numbering.

Orienting the 1987 Code

This presentation explains the Code in two ways:

- How the Code works in terms of Roles;
- How the Code provides Entitlements to Band Membership.

Orienting the 1987 Code

Roles:

- Membership Clerk (7, 8, 14)*
- Membership Committee (16)
- Probationary Membership (2 – 12)
- Membership Court (50)
- Band Council (16, 43, 51)

Entitlement Provisions:

- Birth (40, 41)
- Marriage (23)
- Adoption (45)
- Probationary (13)
- Transfers (32)
- Transitional (1)
- Enfranchisement (46)
- Indian Status?

*Sections in the Code

Roles: Membership Clerk

- Receives applications for Probationary Membership (6)
- Sets dates for referendum re probationary member (7)
- Receives medical reports for Probationary applications (14)
- Receives marriage certificates/proof of marriage by “Indian custom” (26)
- Receives notice of transfers to other bands (34)

Roles: Membership Committee

- Committee consists of five members of the band (16)
- Reviews all applications for Probationary Membership (16.b) (except for Enfranchisees: 46-49)
- Declines Membership *without* referendum *if*:
 - Applicants have serious criminal record (17.a), and/or,
 - Applicants have “dangerous communicable disease” (17.b).

Roles: Probationary Membership

- Probationary Period lasts for five years (6).
- Probationary Period ends with a referendum (11).
- Probationary Members have the right to:
 - Live on the reserve (2)
 - Apply for full membership after five years (6)
- Probationary Members *cannot*:
 - Possess land on the reserve (3)
 - Vote in Elections or Referenda (4. a, b)
 - Stand for councillor or Chief position (4. c)
- Probationary Members may appeal decisions to the Membership Court (19, 58, 59, 60).

Roles: Membership Court

- Membership Court consists of nine members of the band, appointed by BCR (51)
- Court hears appeals regarding:
 - Membership Committee decisions (19)
 - Administrative concerns (58)
 - Against the Membership Code (59)
 - Against referendums (60)
- Receives applications from probationary members in special cases only:
 - Where a probationary member's spouse dies (31).
 - Where the applicant is an enfranchisee, or the child of an enfranchisee (49)

Roles: Band Council

The FWFN Chief and Council:

- Establishes the Membership Committee (16);
- Appoints members to the Membership Court (51);
- Approves out-adoption of children adopted by other bands (43).

The role of Indian Status?

- According to the 1987 Membership Code, Indian status is not a pre-requisite for band membership at Fort William First Nation.
- Section 4.1 of the *Indian Act, 1985* outlines the rights of non-status Band Members. See:
<http://laws-lois.justice.gc.ca/eng/acts/i-5/>

Entitlement Provisions

Provisions for Entitlement to Membership according to the 1987 Membership Code are straight forward. See the corresponding sections:

- Birth (40, 41)
- Marriage (23)
- Adoption (45)
- Probationary (13)
- Transfers (32)
- Transitional (1)
- Enfranchisement (46)

End

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DEFINITIONS

In this Code,

"Band" means the Fort William Band of Indians.

"Band Council" and "Council" mean the Council of the Fort William Band of Indians.

"Child" means a person under the age of eighteen years.

"Court" means the Membership Court established pursuant to this Membership Code, except where the context otherwise demands.

"Member of the Band" means a member of the Fort William Band of Indians, and includes people who are entitled to be registered as members, whether they have been registered or not.

"Reserve" means the Fort William Indian Reserve.

"Spouse" means husband or wife.

Please Note: The sections in this copy of the Membership Code have been changed to continuous numbering for educational purposes only.

TRANSITIONAL PROVISIONS

1 Every person who was entitled to have his name appear on the band membership list on the date this Code is adopted is a member of the Band.

PROBATIONARY MEMBERS

2 A probationary member of the Band has the right to reside on the Reserve.

3 A probationary member of the Band does not have the right to possess land or any interest in land on the Reserve.

4 A probationary member of the Band does not have the right:

- a] to vote in Band elections;
- b] to vote in Band referendum votes;
- c] to stand as a candidate for the office of Chief or councillor.

5 No probationary member of the Band may carry on business on the Reserve unless he has been given a permit to do so by the Council of the Band.

6 A person who has been a probationary member of the Band for the full period of five years may apply for full membership in the Band. The application shall be made in writing and shall be filed with the Membership Clerk.

7 Where a probationary member of the Band has applied for full membership, the Membership Clerk shall, within two months of the application, set a date for a referendum on the application.

8 The date for the referendum set by the Membership Clerk shall be no less than one year and no more than two years from the date the application was filed.

9 Between the date of the application and the date of the referendum, the applicant shall continue to be a probationary member of the Band unless he ceases to hold that status through the operation of any section of this Code.

10 The applications of one or more probationary members may be the subject of referendum votes on the same day and at the same time.

11 (a) Where a probationary member has applied for full membership in the Band, the members of the Band, in the referendum, may:

- i] accept the application for membership;
- ii] reject the application for membership; or
- iii] continue the applicant's probationary status.

(b) Where the application has been accepted, the probationary member shall, as of the date of the referendum, have all the rights and privileges of a full member of the Band.

(c) Where the application has been rejected, the applicant shall not become a full member of the Band and shall, as of the date of the referendum, cease to be a probationary member of the Band.

(d) Where the result of the referendum is that the applicant's probationary status shall be continued, the probationary member shall have the right to apply again for full membership in the Band two years after the date of the referendum.

Termination of probationary membership:

12. A person shall cease to be a probationary member of the Band if:

- a] he is convicted of an indictable criminal offence involving sexual assault or abuse, homicide, assault causing bodily harm, wounding, robbery or narcotics;
- b] a majority of the electors of the Band sign a petition demanding the termination of the person's probationary membership, and the Council of the Band by resolution approves the petition;

SCREENING APPLICATIONS FOR PROBATIONARY MEMBERSHIP

13 Every person who applies for probationary membership shall fill out a written application for that status in the form prescribed by the Band Council.

14 Every person who applies for probationary membership shall provide the Membership Clerk with a report from a doctor of a medical examination in the form prescribed by the Band Council.

15 The application and the medical report described in Sections 1 and 2 are confidential documents and shall remain in a secure location in the custody of the Membership Clerk after review by the Membership Committee.

16 (a) The Band Council shall establish a Membership Committee, which shall be composed of five members of the Band.

(b) The Membership Committee shall review all applications for probationary membership.

(c) No member of the Membership Committee shall participate in the review of an application if the applicant is his son, daughter, sister, brother, parent, grandparent, grandchild, spouse, son-in-law or daughter-in-law.

17 An application for probationary membership shall be refused by the Membership Committee if the applicant:

a] has been convicted within the ten years previous to the application of any criminal offence involving homicide, wounding, robbery with violence, rape or sexual relations with minors, or

b] is reported in the medical report to have a dangerous and communicable disease.

18 The Membership Committee shall inform the applicant in writing of its decision and, where the application is refused, shall inform the applicant of the reasons for the refusal. The decisions of the Membership Committee are confidential between the applicant and the Committee.

19 A decision of the Membership Committee may be appealed by the applicant to the Membership Court.

REFERENDUM RULES:

20 A referendum conducted pursuant to this Code shall be conducted in a manner similar to that prescribed by the Referendum Regulations made under the Indian Act.

21 In any referendum on a question of membership, the issue shall be decided by a majority of the people who voted in the referendum.

22 In a vote on an application by a probationary member for full membership, there shall be three options for the voters:

a] -to accept the person as a member;

b] -to reject the application, and to terminate the applicant's probationary membership;

c] -to continue the applicant's probationary status for another five years.

If there is no majority voting for [a] or [b], then the applicant's probationary status will be continued for another five years.

MARRIAGE

23 A person who is not a member of the Band, and who is married to a member of the Band, may apply to become a probationary member of the Band.

24 No person shall automatically gain or lose membership in the band as a result of marriage.

25 "Marriage" includes marriages according to provincial law and according to Indian custom, as well as common law marriages.

26 To be recognized by this Code, a marriage must be registered with the Membership Clerk. In the case of legal marriages, a certificate of the marriage shall be registered. In the case of common law marriages, the husband and wife will register affidavits stating that they are living together as husband and wife.

DIVORCE OR SEPARATION DURING PROBATIONARY PERIOD

27 (a) Subject to Section 3 of this Part, a person who has become a probationary member of the Band who becomes legally separated from his spouse, or ceases to live with his spouse as husband and wife for a period of three months, shall cease at that time to be a probationary member of the Band.

(b) If the couple begins to live together again, the non-member's probationary status shall be reinstated, but it shall be deemed to have begun on the date that they resumed living together.

28 Subject to Section 3 of this Part, a person who has become a probationary member of the Band who becomes divorced from his spouse, or whose marriage is annulled, shall cease at that time to be a probationary member of the Band.

29 Where in a marriage between a member of the Band and a probationary member of the Band, there has been a divorce, annulment, or separation of more than three months, and there are children of that marriage who are members or probationary members of the band and who are in the custody of the probationary member, the probationary member's status shall not be affected by the divorce, annulment or separation.

DEATH OF A MEMBER SPOUSE

30 If a band member dies while his or her spouse is a probationary member of the Band, the probationary status of the spouse shall not be affected.

31 A probationary member whose band member spouse has died may apply to the Membership Court to have the referendum on the probationary member's membership deferred for a period of up to one year, and the Court may on compassionate grounds grant that deferral.

TRANSFERS FROM OTHER BANDS:

32 A person who is registered or entitled to be registered as a member of another Band of Indians in Canada may apply to become a probationary member of the Band.

TRANSFERS TO OTHER BANDS:

33 A person who is a member of the Band may cease to be a member of the Band by becoming a member of another Band of Indians in Canada.

34 If a member of the Band wishes to withdraw from membership in the Band and become a member of another Band of Indians in Canada, that member shall notify the Membership Clerk of the Band in writing, and the Membership Clerk shall remove that person's name from the Band List.

35 Where a member of the Band has applied to withdraw from membership in the Band to become a member of another Band, that member may also apply to have his children's names removed from the Band List so that they may become members of that other Band.

If both parents are members of the Band, the consent of both parents is required to any application made under this Section.

If an application under this Section is made on behalf of any child who is over twelve years of age, the consent of the child shall also be required.

36 A person whose name is removed from the Band list pursuant to this Part shall cease to be a member of the Band as of the date of the removal of his name from the Band list.

37 A person whose name is removed from the Band list under this Part shall not be entitled to any share in the Band's revenues, funds or lands as a result of ceasing to be a member of the Band.

38 Where a member of the Band has become a member of another band of Indians in Canada, that other band shall not become entitled to any part or share of the revenues, funds or lands of the Band as a result of the transfer of that person's membership.

CHILDREN

39 (a) For the purposes of this Code, both parents of everyone who was registered or entitled to be registered as a member of the Band on the date the Code came into effect shall be deemed to have been members of the Band.

(b) In this Part, "child" does not include children adopted by members of the Band who were adopted after this Code came into effect and who were not members of the Band before their adoption.

40. A person born after the adoption of this Code is a member of the band if:

- a] both of his parents are members of the Band.
- b] one of his parents is a member of the Band.

41(a) A person born after the adoption of this Code shall not automatically be a member of the Band if he has one parent who is a member of the Band, and that parent also has only one parent who is a member of the Band.

(b) A person described in paragraph (a) of this section shall have the right to apply to be a probationary member of the Band.

ADOPTION OF BAND MEMBERS

42 Subject to Section (2), no Band member shall cease to be a member of the Band as a result of his adoption by persons who are not members of the Band.

43 Where a member of the Band is adopted by a person or persons who are members of another Band of Indians in Canada, the adopting parents may make application to the Council, and the Council may consent to the child ceasing to be a member of the Band and becoming a member of the Band of his adopting parents.

If the child is more than twelve years old, the consent of the child to the transfer of membership shall also be required.

44 A child who was originally a member of the Band, and who, by reason of adoption, was transferred to another Band, shall have the right, upon application in writing, to become a member of the Band again.

ADOPTION BY BAND MEMBERS

45 A child who is adopted by a member or members of the Band shall, as of the date of the adoption, become a member of the Band.

ENFRANCHISED PERSONS

46

A person who was enfranchised pursuant to the Indian Act as a result of any of the following circumstances shall have the right, upon written application to the Clerk of the Membership Court, to be reinstated as a full member of the Band:

- a] a person who was enfranchised because he lived outside Canada for more than five years without the permission of the Minister of Indian Affairs;
- b] a person who was enfranchised because he became a doctor, lawyer, university graduate, priest or nun;
- c] a person who was enfranchised as a result of the enfranchisement of his parents;
- d] a person who, in the opinion of the Membership Committee, was enfranchised in circumstances that indicate that he did not consent to being enfranchised.

47

A person who was enfranchised as a result of his own application for enfranchisement may apply to become a probationary member of the Band.

48

The child of a person who was enfranchised in one of the ways described in Section 1 may apply to become a probationary member of the Band.

49

Applications under Sections 2 and 3 above shall be made to the Membership Court, and shall be submitted in writing to the Clerk of the Court. The Membership Court may accept or reject the application.

APPEALS

The Membership Court:

Composition and Term:

- 50** There shall be a Membership Court.
- 51** Nine members of the Band shall be appointed to the Membership Court by a Resolution of the Band Council.
- 52** The term of office of the members of the Membership Court shall be ten years.
- 53** A judge of the Membership Court may be removed by a petition signed by a majority of the electors of the Band.
- 54** On any case heard by the Membership Court, there shall be three judges of the Court sitting.
- 55** No person shall be both a member of the Band Council and a judge of the Membership Court.
- 56** No judge of the Membership Court shall participate in a case in which the applicant is:
 - a] the judge's spouse (husband or wife);
 - b] the judge's son or daughter;
 - c] the judge's grandchild;
 - d] the judge's brother or sister;
 - e] the judge's father or mother;
 - f] the judge's son-in-law or daughter-in-law;
- 57** The Membership Court shall establish its own rules of procedure and shall cause those rules to be posted in a conspicuous place in the Band Office.

58 Appeals against Administrative Decisions and the way the Membership Code is applied:

Any member of the Band,
any person who has applied for membership in the Band,
any person who has applied for probationary membership in the Band,
and any person who has applied on behalf of another person for membership or probationary membership in the Band,
may appeal to the Membership Court

- 1] if he feels that the Band or the Band's administrative staff have acted unfairly, or have unfairly failed to act,
- 2] if he feels that in dealing with his application the terms of the Membership Code were not applied or followed properly;
- 3] if he feels that in any proceeding or hearing by the Band or any body of the Band, he was denied a full opportunity to be heard, or denied natural justice.

In appeals under this section, the Membership Court shall in each case be governed and decide by the terms and provisions of the Membership Code.

59 Appeals against the Membership Code:

Any member of the Band
and any person who has applied for membership or probationary membership in the Band

may appeal to the Membership Court

- 1] if he feels that a provision of the Membership Code is discriminatory on the basis of sex or religion;
- 2] if he feels that a provision or process of the Membership Code violates rules of natural justice;
- 3] if he feels that a provision of the Membership Code is otherwise unfair.

60 Appeals against referendum votes:

Any member of the Band, and

any person who is the subject of a referendum vote

may appeal to the Membership Court if he feels that:
in a referendum on a membership issue:

- 1] the matter to be voted on was presented to the voters in an improper, insufficient or unfair manner;
- 2] there were improprieties in the voting procedures;
- 3] there were people who voted who should not have been allowed to vote or who had no right to vote;
- 4] there were improprieties in the counting of the votes or other procedures of the referendum.

61 A person who appeals to the Membership Court may appear before that Court in person or may choose to be represented by any other person.

Powers of the Membership Court:

62 In any appeal, the Court may:

- 1] Order that a new referendum take place.
- 2] Order a person's name removed from the Membership List.
- 3] Order a person's name added to the Membership List.
- 4] Order that a person be granted probationary membership in the Band.
- 5] Order any employee or official of the Band to perform any administrative task pursuant to the Membership Code.
- 6] Order any provision of the Membership Code to be struck out;

The decisions of the Membership Court shall be given in writing.

63 Jurisdiction of the Membership Court:

The decisions of the Membership Court shall be final. There shall be no appeal from the decisions of the Membership Court to any other body, court or tribunal.

The Membership Court shall have exclusive jurisdiction over all matters concerning the membership of the Band and the administration and contents of the Membership Code. No other body, court or tribunal shall hear any matter concerning these issues.

The decisions of the Membership Court are binding on the Band, its Council, and on Her Majesty and the Government of Canada.

64 Form of Appeals:

Every appeal shall be made in writing and shall be registered with the clerk of the Membership Court at the Band Office.

Every appeal shall state the name of the person making the appeal, the date of the appeal, and the reasons for the appeal.

65 Limitations:

No appeal to the Membership Court resulting from a referendum shall be made more than two years after the referendum is held.

No appeal against an administrative act by the Band or its staff shall be made more than two years after the act took place.

66 Costs:

Where the Court finds that

a] an appeal has been frivolous, vexatious, or an undue waste of the court's time, or

b] the actions of any party to the proceedings have been in bad faith,

the Court may order that the appellant, the Band, or any other party to an appeal pay the costs of the appeal to the Court.