

Chapter 3 - Eligibility and Enrollment

3.1.0 Definitions

In this chapter, the following definitions shall apply.

"Adopted Child" means a Person who, while a Minor, is adopted pursuant to Law relating to adoption recognized in Canada or pursuant to aboriginal customs.

"Descendant" means direct descendant by either maternal or paternal line, notwithstanding any intervening adoption and independent of whether any child of the line was born within or outside a marriage.

"Dispute Resolution Board" means the Board established pursuant to 26.5.0.

"Enrollment Commission" means the commission established pursuant to 3.6.0.

"Enrollment Committee" means a committee established pursuant to 3.5.0.

"Minor" means a Person who has not yet reached the age of majority as determined from time to time by the Laws of the Yukon.

"Ordinarily Resident" means a Person who lived or has lived the majority of his life in the Yukon. In making such determination, temporary absences from the Yukon for reasons such as travel, education, medical treatment, military service, or incarceration, shall be considered periods of residence provided the Person was Ordinarily Resident prior to such temporary absences.

"Person" means a natural person.

3.2.0 Eligibility Criteria

3.2.1 Eligibility for enrollment under a Yukon First Nation Final Agreement shall be determined by the process set out in this chapter.

3.2.2 A Person is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person is a Canadian citizen, and:

3.2.2.1 establishes that he is of 25 percent or more Indian ancestry and was Ordinarily Resident in the Yukon between January 1, 1800 and January 1, 1940;

3.2.2.2 establishes that he is a Descendant of a Person living or deceased eligible under 3.2.2.1;

3.2.2.3 establishes that he is an Adopted Child of a Person living or deceased eligible under 3.2.2.1 or 3.2.2.2; or

3.2.2.4 upon application within two years of the Effective Date of a Yukon First Nation Final Agreement to the Enrollment Commission by that Yukon First Nation, is determined by the

Enrollment Commission in its discretion, and upon consideration of all relevant circumstances, to have a sufficient affiliation with that Yukon First Nation so as to justify enrollment.

3.2.3 Notwithstanding the requirement for Canadian citizenship in 3.2.2, a Person who is not a Canadian citizen is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person meets one of the criteria set out in 3.2.2.1 to 3.2.2.4.

3.2.4 Enrollment of a Person under 3.2.3 shall not confer on that Person any rights or benefits under the *Indian Act*, R.S.C. 1985, c. I-5, rights of entry into Canada or of Canadian citizenship.

3.2.5 Any Person eligible for enrollment as a Yukon Indian Person pursuant to 3.2.2 or 3.2.3 is entitled to be enrolled under one, and no more than one, Yukon First Nation Final Agreement.

3.2.6 Where a Person applying for enrollment is eligible for enrollment under more than one Yukon First Nation Final Agreement, the Enrollment Commission shall take into account the wishes of that Person and any affected Yukon First Nation in deciding under which Yukon First Nation Final Agreement that Person will be enrolled.

3.2.7 Membership in a Yukon Indian Band under the *Indian Act*, R.S.C. 1985, c. I-5 does not necessarily result in eligibility for enrollment under a Yukon First Nation Final Agreement.

3.2.8 A Minor may apply on his own behalf to an Enrollment Committee for enrollment under a Yukon First Nation Final

3.3.0 Applications on behalf of Another Person

3.3.1 The Government, Yukon First Nations and Enrollment Committees shall work together to ensure that adoptive parents or legal guardians of Minors eligible for enrollment as a Yukon Indian Person under a Yukon First Nation Final Agreement are made aware of the Minor's eligibility.

3.3.2 Any adult Person may apply to an Enrollment Committee to enroll a Minor under a Yukon First Nation Final Agreement.

3.3.3 Any Person who, by order of a court, aboriginal custom in Canada or pursuant to Legislation, has been vested with the authority to manage the affairs of an adult incapable of managing his own affairs, may apply to an Enrollment Committee to enroll that adult under a Yukon First Nation Final Agreement.

3.4.0 Other Settlements

3.4.1 Subject to 3.4.2, a Person who is enrolled in any other aboriginal land claims settlement in Canada shall not be enrolled as a Yukon Indian Person under any Yukon First Nation Final Agreement.

3.4.2 Any Person who is enrolled as a Yukon Indian Person under a Yukon First Nation Final Agreement and who is also enrolled under another aboriginal land claims settlement in Canada, shall have 60 days to elect between the two settlement agreements following notice in writing

from a Yukon First Nation or the Enrollment Commission. If that Person elects to remain enrolled in the other settlement agreement, then that Person shall cease to be enrolled under the Yukon First Nation Final Agreement.

3.4.3 A Person who is enrolled under another aboriginal land claims settlement in Canada is entitled to apply to be enrolled under a Yukon First Nation Final Agreement on the condition that, if accepted for enrollment, that Person shall cease to be enrolled under that other settlement.

3.4.4 Notwithstanding 3.4.1 and 3.4.2, a Minor who is enrolled under any other aboriginal land claims settlement in Canada, and who is eligible for enrollment as a Yukon Indian Person, may elect to be enrolled as a Yukon Indian Person provided such election takes place within two years of the Minor attaining the age of majority, whereupon the Minor ceases to be enrolled under the other settlement.

3.5.0 Enrollment Committees

3.5.1 Each Yukon First Nation shall establish an Enrollment Committee composed of no more than five members of that Yukon First Nation. Each Yukon First Nation shall notify the Enrollment Commission of the composition of its Enrollment Committee and of any changes made in it from time to time.

3.5.2 A Yukon First Nation may join with one or more Yukon First Nations to establish a joint Enrollment Committee to be composed of no more than five members of those Yukon First Nations. The affected Yukon First Nations shall notify the Enrollment Commission of the composition of the joint Enrollment Committee and any changes made in it from time to time.

3.5.3 Each Enrollment Committee shall:

3.5.3.1 establish its own procedures;

3.5.3.2 publish its own procedures;

3.5.3.3 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation;

3.5.3.4 review, update and amend existing Yukon First Nation enrollment lists of that Yukon First Nation;

3.5.3.5 supply application forms to any Person wishing to apply for enrollment and to any Person wishing to make an application pursuant to 3.3.0;

3.5.3.6 decide promptly, upon receiving an application for enrollment, whether such applicant is entitled to be enrolled in accordance with 3.2.0 or 3.4.0;

3.5.3.7 prepare an initial list of all Persons who, in its opinion, are entitled to be enrolled in accordance with 3.2.0 or 3.4.0;

3.5.3.8 prepare a list of all applicants who have been refused inclusion on the list of Persons prepared pursuant to 3.5.3.7;

3.5.3.9 provide to the Enrollment Commission the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 together with relevant information and documentation within a reasonable time period established by the Enrollment Commission;

3.5.3.10 provide to the Enrollment Commission amendments to the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 within a reasonable time period established by the Enrollment Commission;

3.5.3.11 notify promptly each applicant, in writing, of the Enrollment Committee's decision respecting his application; and

3.5.3.12 forward to the Enrollment Commission applications which, in its opinion, should be considered by another Enrollment Committee.

3.5.4 If a Yukon First Nation is not represented on an Enrollment Committee or does not establish an Enrollment Committee within three months of a request to do so from the Enrollment Commission, or an Enrollment Committee has not carried out its responsibilities as set out in 3.5.3 within a reasonable time period established by the Enrollment Commission, the Enrollment Commission may exercise any or all of the responsibilities of the Enrollment Committee.

3.5.5 The Enrollment Commission shall not exercise the responsibilities of an Enrollment Committee unless the Enrollment Commission has attempted to assist the Enrollment Committee in the performance of its responsibilities. The Enrollment Commission shall relinquish such responsibilities when the Enrollment Committee demonstrates to the reasonable satisfaction of the Enrollment Commission that it is ready, willing and able to perform its responsibilities.

3.5.6 The Enrollment Commission, in accordance with standards set by it, shall reimburse each Enrollment Committee for its reasonable out-of-pocket expenses incurred over the period of three years from the date of each Enrollment Committee's inception. Each Enrollment Committee shall prepare a budget and submit it for approval to the Enrollment Commission when requested to do so by it.

3.5.7 Where an Enrollment Committee fails or neglects to make a decision in respect of an application for enrollment within 120 days, then that application shall be deemed to have been rejected and a right of appeal lies to the Enrollment Commission.

3.6.0 Enrollment Commission

3.6.1 The Enrollment Commission was established by the parties to the Umbrella Final Agreement on July 1, 1989.

3.6.2 Settlement Legislation shall:

3.6.2.1 give the Enrollment Commission and the Enrollment Committees the powers required to carry out their responsibilities;

3.6.2.2 deem the Enrollment Commission to have had, as of July 1989, the jurisdiction, power and authority provided under the Umbrella Final Agreement, other than those set out in 3.6.2.4;

3.6.2.3 provide for the enforcement after the effective date of Settlement Legislation of any order or decision of the Enrollment Commission in a like manner as an order of the Supreme Court of the Yukon; and

3.6.2.4 provide the Enrollment Commission with the power to direct and compel the production of documents and the attendance of witnesses, with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137.

3.6.3 The Enrollment Commission shall be comprised of:

3.6.3.1 one Person nominated by the Council for Yukon Indians and an alternate to act in the absence of the Person so nominated;

3.6.3.2 one Person nominated jointly by Canada and the Yukon and an alternate to act in the absence of the Person so nominated; and

3.6.3.3 one Person and an alternate to act in the absence of that Person, each nominated by the two members nominated under 3.6.3.1 and 3.6.3.2. If the two members are unable to agree on a third member of the Commission, or an alternate, then either may refer the matter of appointment to the dispute resolution process under 26.3.0, or, in the absence of that process, to the Supreme Court of the Yukon.

3.6.4 The Minister shall appoint all Persons nominated pursuant to 3.6.3. In the event of a vacancy, the appropriate party shall promptly make a new nomination, and the Minister shall appoint the new nominee.

3.6.5 The Enrollment Commission:

3.6.5.1 shall establish and publish its own procedures including procedures in respect of appeals from decisions of Enrollment Committees;

3.6.5.2 shall only spend funds allocated to it for the carrying out of its functions and responsibilities in accordance with its approved budget;

3.6.5.3 shall assist Enrollment Committees in carrying out their responsibilities;

3.6.5.4 shall prepare and provide such information and forms as may be necessary to facilitate enrollment through Enrollment Committees;

3.6.5.5 shall refer to the appropriate Enrollment Committee those applications for enrollment which are submitted by Persons directly to the Enrollment Commission and those applications which appear to have been made to an inappropriate Enrollment Committee;

3.6.5.6 shall prepare, certify, publish and advertise the initial official enrollment list for each Yukon First Nation;

3.6.5.7 shall enter on the initial official enrollment lists the name of each Person who, in the opinion of an Enrollment Committee, is entitled to be enrolled as a Yukon Indian Person, provided the Enrollment Commission is satisfied all Persons named are in fact eligible for enrollment in accordance with 3.2.0 or 3.4.0;

3.6.5.8 where it appears to the Enrollment Commission that an applicant recommended by an Enrollment Committee pursuant to 3.5.3.7 is not entitled to be enrolled, the Commission may, on its own motion, institute an appeal pursuant to 3.6.5.9 in respect of that Person's application;

3.6.5.9 shall hear and determine any appeal initiated on its own motion or by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, arising from any decision of an Enrollment Committee with respect to enrollment and to provide such remedy or remedies as the Enrollment Commission in its absolute discretion deems appropriate;

3.6.5.10 shall hear and determine matters before it in accordance with the principles of natural justice; and

3.6.5.11 shall notify the applicant, Government, Council for Yukon Indians, any affected Yukon First Nation and affected Enrollment Committees of additions to or deletions from official enrollment lists as a result of decisions made by the Enrollment Commission pursuant to 3.6.5.8 and 3.6.5.9.

3.6.6 The Enrollment Commission shall be an independent body, operating at arm's length from the parties to the Settlement Agreements.

3.6.7 Where the Enrollment Commission fails or neglects to make a decision in respect of an appeal pursuant to 3.6.5.9, then that appeal shall be deemed to have been rejected and a right of appeal shall lie to the Supreme Court of the Yukon. The Supreme Court may give direction to the Enrollment Commission and refer the matter back to the Enrollment Commission.

3.6.8 All Persons on the official enrollment list for a Yukon First Nation as of the Effective Date of that Yukon First Nation Final Agreement shall be deemed to be enrolled under that Yukon First Nation Final Agreement, subject to 3.7.0, without further action being required.

3.7.0 Judicial Review

3.7.1 All decisions and orders of the Enrollment Commission shall be final and binding and not subject to appeal or judicial review in any court provided, however, that an application for judicial review by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, shall lie to the Supreme Court of the Yukon upon the grounds that the Enrollment Commission:

3.7.1.1 failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

3.7.1.2 erred in law in making its decision or order, whether or not the error appears on the face of the record; or

3.7.1.3 based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

3.7.2 The application for a judicial review by an applicant pursuant to 3.7.1 shall be made:

3.7.2.1 in the case of a decision made prior to the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of that Yukon First Nation's Final Agreement coming into effect; or

3.7.2.2 in the case of a decision made after the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of the decision being made.

3.8.0 Budget

3.8.1 The Enrollment Commission shall prepare an annual budget in respect of its operations and in respect of the operations of the Enrollment Committees and shall submit the proposed annual budget to Canada for approval. Canada shall pay the approved expenses.

3.9.0 Dissolution of Enrollment Committees

3.9.1 The responsibilities of each Yukon First Nation's Enrollment Committee shall cease, except with respect to matters pending before it, two years after the day on which the Yukon First Nation's Final Agreement comes into effect. Upon dissolution, each Enrollment Committee shall deliver all its documents and records to the affected Yukon First Nation.

3.9.2 A joint Enrollment Committee shall deliver to a Yukon First Nation documents and records relating to applications for enrollment under that Yukon First Nation's Final Agreement.

3.9.3 Upon dissolution of an Enrollment Committee the Yukon First Nation shall have the powers and responsibilities to:

3.9.3.1 maintain, update and amend the official enrollment list for that Yukon First Nation after the initial official enrollment list has been published by the Enrollment Commission;

3.9.3.2 deliver to the Yukon the official enrollment list on each anniversary of the dissolution of the Enrollment Committee;

3.9.3.3 decide promptly upon all applications received, and advise all Persons in writing of the Enrollment Commission or the Dispute Resolution Panel's disposition of their application;

3.9.3.4 supply application forms to any Person wishing to apply for enrollment;

3.9.3.5 establish its own procedures;

3.9.3.6 publish its own procedures; and

3.9.3.7 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation.

3.10.0 Continuation of Enrollment

3.10.1 After the dissolution of an Enrollment Committee, a Person seeking enrollment as a Yukon Indian Person, and a Person making application pursuant to 3.3.2 or 3.3.3 shall apply to the appropriate Yukon First Nation which shall determine, according to this chapter, whether such Person or the Person on whose behalf the application is being made, is entitled to be enrolled under its Yukon First Nation Final Agreement.

3.10.2 If the Yukon First Nation rejects the application or fails or refuses to make a decision within 120 days, then an appeal shall lie to either:

3.10.2.1 the Enrollment Commission, if it has not been dissolved pursuant to 3.10.4; or

3.10.2.2 a single arbitrator appointed by the chairperson of the Dispute Resolution Board.

3.10.3 Upon a decision to enroll a Person under 3.10.1, the Yukon First Nation shall provide written notice to Government. Such enrollment shall not come into effect until 30 days following Government's receipt of such notice or, in the event of a dispute, until a determination has been made pursuant to 3.11.0.

3.10.4 The responsibilities of the Enrollment Commission shall cease, except with respect to matters pending before it, on the day two years after the Effective Date of the last Yukon First Nation Final Agreement or 10 years after the effective date of Settlement Legislation, whichever comes first. Upon dissolution, the Enrollment Commission shall deliver all its documents and records to the Dispute Resolution Board.

3.11.0 Dispute Resolution

3.11.1 The Dispute Resolution Board shall maintain the confidentiality of the documents and records delivered to it by the Enrollment Commission pursuant to 3.10.4.

3.11.2 Upon the dissolution of the Enrollment Commission, the Dispute Resolution Board, in addition to its powers and duties under Chapter 26 - Dispute Resolution, shall have the following powers and duties:

3.11.2.1 to establish and publish its own procedures, including procedures in respect of appeals from decisions of a Yukon First Nation respecting eligibility and enrollment under this chapter;

3.11.2.2 the chairperson of the Dispute Resolution Board shall appoint a single arbitrator to hear and determine an appeal from any decision of a Yukon First Nation with respect to enrollment and to provide such remedy or remedies as the arbitrator in his discretion deems appropriate;

3.11.2.3 to direct and compel the production of documents and the attendance of witnesses with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137;

3.11.2.4 to hear and determine matters before it arising under this chapter in accordance with the principles of natural justice;

3.11.2.5 powers necessarily incidental to the discharge of the arbitrator's duties in considering matters under this chapter;

3.11.2.6 to notify the applicant, Government, the Council for Yukon Indians and the affected Yukon First Nations of additions to or deletions from official enrollment lists as a result of decisions made by the arbitrator; and

3.11.2.7 to carry out any other responsibilities assigned to the Enrollment Commission under this chapter.

3.11.3 Any affected Yukon First Nation, Government, and any other affected Person shall be entitled to be a party in respect of an appeal or application for judicial review under this chapter.

3.11.4 Any decision or order of the arbitrator shall be enforceable in a like manner as an order of the Supreme Court of the Yukon.

3.11.5 All decisions of the arbitrator shall be subject to judicial review in the same manner as provided in 3.7.0.

3.12.0 Public Access

3.12.1 Any Person may examine the official enrollment list maintained by an Enrollment Committee or Yukon First Nation during its usual business hours.