

*Confidential Draft  
for Discussion Purposes Only*

DRAFT APRIL 4, 2018

PAUQUCHIN FIRST NATION

**MEMBERSHIP CODE**

PFNC ♦/2018



This Membership Code enacted on \_\_\_\_\_, 201♦

Signed \_\_\_\_\_  
Rebecca David,  
Elected Chief of the Pauquachin First Nation

**NOTE TO READER:**

Those matter highlighted in **YELLOW** will be the subject of separate questions in the Referendum held on May 16, 2018.

Draft

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## PREAMBLE

We, the people of the Pauquachin First Nation, recognizing our inherent right to govern ourselves within our traditional territories, and in order that we may survive as a distinct people within Canada in a manner consistent with our heritage, our culture and our values, we do hereby proclaim this Pauquachin First Nation Membership Code.

## PART 1 - DEFINITIONS AND INTERPRETATION

### Definitions

**1.1 (a)** In this Membership Code:

"Appeals Committee" means the individuals appointed by Council in accordance with section 7.2 to the committee established under section 7.1;

"acquired member" means an individual accepted as a member under section 3.3 and whose name is entered on the membership list;

"DIA list" means the former list of members of the Pauquachin First Nation maintained by the Department of Indian Affairs (as it was then called) prior to June 26, 1987;

"conflict of interest" has the meaning given to that term in the policies;

"Council" means the chief and council of the Pauquachin First Nation, within the meaning of section 2(1) of the *Indian Act*, as elected from time to time;

"descendant member" means an individual accepted as a member under section 3.1 and whose name is entered on the membership list;

"eligible voter" means an individual entitled to vote in an election for Council;

"First Nation" means any "band", within the meaning of section 2(1) of the *Indian Act*, or any tribe, nation or community in Canada with aboriginal or treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982* or a self-government agreement with Canada or one of its provinces or territories;

"former membership register" means the list of members of the Pauquachin First Nation called the "General Membership register" maintained by the Pauquachin First Nation in accordance with the 1987 Membership Code;

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"Indian" means an individual who, under the *Indian Act*, is registered as an Indian or is entitled to be registered as an Indian;

"Indian child" means an Indian that is less than 18 years old;

"Indian register" means the register of individuals that is maintained under section 5 of the *Indian Act*;

"lineal member" means an individual accepted as a member under section 3.2 and whose name is entered on the membership list;

"member" means a member of the Pauquachin First Nation under section 2.1;

"Membership Code" means this document ratified by the eligible voters of the Pauquachin First Nation on [date this Membership Code is approved];

"Membership Committee" means the individuals appointed by Council in accordance with section 6.2 to the committee established under section 6.1;

"membership list" means the list of members maintained by the registrar in accordance with section 5.3(f);

"Pauquachin administration offices" means the principal administrative office of the Pauquachin First Nation;

"Pauquachin administrator" means the office of the most senior administrative employee of the Pauquachin First Nation or the individual appointed to hold that office;

"Pauquachin First Nation" means the band of Indians known as the Pauquachin First Nation, as represented by Council, within the meaning of section 2(1) of the *Indian Act*;

"policies" means policies approved by Council under section 5.1;

"registrar" means the office established under section 5.2(a) or the individual appointed by Council to hold that office in accordance with section 5.2(b);

"status" means an individual who is registered as an Indian and whose name is entered on the Indian register.

"1987 Membership Code" means the "Pauquachin Band Council Membership Code – '87", also known as the "Pauquachin Membership Code" or "Rules", enacted by the "Pauquachin People" on June 26, 1987;

- (b) Council may, in the policies, define other words and phrases used in this Membership Code and the definitions of those words or phrases must, for all purposes, be deemed to form part of, and be used to interpret, this Membership Code.

## **Interpretation**

- 1.2**
- (a) Subject to this Membership Code, the rights of every member are equal, regardless of whether they are a descendant member, a lineal member or an acquired member.
  - (b) This Membership Code will be interpreted in accordance with the interpretation principles set out in the policies.
  - (c) This Membership Code is divided into the following divisions represented and referred to by the number or letter and name as indicated in ascending order:

PART 1;

1.1 (section);

(a) (subsection);

(i) (paragraph); and

(A) (subparagraph).

## **PART 2 - MEMBERSHIP**

### **Pauquachin members**

- 2.1** The members of the Pauquachin First Nation are those individuals whose names are entered on the membership list as descendant members, lineal members or acquired members.

### **Membership list**

- 2.2** The membership list must include
- (a) the names and birth dates of all living individuals who are, or have been accepted as, members in accordance with this Membership Code,
  - (b) each individual's designation as a descendant member, lineal member or acquired member, and

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- (c) the date on which the name was entered on the membership list, and may include other information which the Membership Committee or Council considers appropriate.

### Inspection of list

- 2.3** Subject to applicable privacy laws, a member may inspect a copy of the membership list at the Pauquachin administration offices during regular business hours.

## PART 3 - MEMBERSHIP ENTITLEMENT

### Descendant members

- 3.1** (a) Subject to subsection (b) and section 4.1, the following individuals are entitled to have their names entered on the membership list as descendant members:
- (i) an individual whose name was entered on the DIA list, or whose name was entitled to be entered on the DIA list, on or before June 26, 1987 and had, or was entitled to have, status under section 6(1) of the *Indian Act*;
  - (ii) an individual whose name was entered on the former membership register on or before [date this Membership Code is approved] and had status under section 6(1) of the *Indian Act*;
  - (iii) an individual whose name was entered on the DIA list, or who was entitled to have their name entered on the DIA list, on or before April 16, 1987 and was involuntarily transferred out of the Pauquachin First Nation when that individual married a member of an Indian band other than the Pauquachin First Nation;
  - (iv) a biological child of an individual entitled to membership under paragraph (iii) who is also a member of an Indian band other than the Pauquachin First Nation;
  - (v) an individual with two biological parents who are, or if no longer living would be if alive,
    - (A) both entered on, or entitled to be entered on, the membership list as descendant members, or
    - (B) entered on, or entitled to be entered on, the membership list, one as a descendant member and the other as a lineal member; and



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- (vi) an individual with
    - (A) one biological parent who is, or if no longer living would be if alive, entered on or entitled to be entered on the membership list as a descendent member, and
    - (B) the other biological parent who is, or if no longer living would be if alive, an Indian whose name is entered on the Indian register.
  - (b) An individual is not entitled to have their name entered on the membership list as a descendant member under subsection (a) if their entitlement was acquired as a consequence of marriage or adoption.

### Lineal Members

- 3.2** (a) Subject to subsection (b) and section 4.1, the following individuals are entitled to have their names entered on the membership list as lineal members:
- (i) an individual whose name was entered on the former membership register on or before [date this Membership Code is approved] and had status under section 6(2) of the *Indian Act*;
  - (ii) an individual with
    - (A) one biological parent who is, or if no longer living would be if alive, entered on, or entitled to be entered on, the membership list as a descendant member, or
    - (B) two biological parents who are, or if no longer living would be if alive, entered on, or entitled to be entered on, the membership list as lineal members;
  - (iii) an individual with one biological parent who is, or if no longer living would be, if alive, entered on or entitled to be entered on the membership list as a lineal member and that individual's name is entered on the Indian register as a result of the amendments to the *Indian Act* given Royal Assent on January 31, 2011 or as a result of the amendments to the *Indian Act* given Royal Assent on December 12, 2017; and
  - (iv) an individual with
    - (A) one biological parent who is, or if no longer living would be if alive, entered on or entitled to be entered on the membership list as a lineal member, and

- (B) the other biological parent who is, or if no longer living would be if alive, an Indian whose name is entered on the Indian register.
- (b) An individual is not entitled to have their name entered on the membership list as a lineal member under subsection (a) if their entitlement was acquired as a consequence of marriage or adoption.

### Acquired Members

- 3.3** (a) Subject to section 4.1, an individual is entitled to have their name entered on the membership list as an acquired member if their name was
- (i) entered on the DIA list on or before April 16, 1987 as a consequence of marriage or adoption, or
  - (ii) entered on the former membership register on or before [date this Membership Code is approved] as a consequence of marriage or adoption.
- (b) Subject to section 4.1, the following individuals may apply to the Membership Committee to have their names entered on the membership list as acquired members:
- (i) an Indian child under the age of 18 years who has been legally adopted by parents, both of whom are, or if no longer living, were either a descendant member or a lineal member,
  - (ii) [an individual who is the biological parent of a descendant member or a lineal member and
    - (A) is a member of an Indian band other than the Pauquachin First Nation, or
    - (B) whose name is entered on the Indian Register,] and
  - (iii) an individual who is married to a descendant member or a lineal member and
    - (A) is a member of an Indian band other than the Pauquachin First Nation, or
    - (B) whose name is entered on the Indian Register,
- except if the individual acquired status as a consequence of marriage or adoption.
- (c) A non-Indian child who is adopted by a member is not eligible for membership in the Pauquachin First Nation.

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### **Restriction on membership**

- 3.4** Notwithstanding any other provision of this Membership Code, a member of a First Nation other than the Pauquachin First Nation may not become a member of the Pauquachin First Nation unless they give up membership in the other First Nation.

### **Application for membership**

- 3.5** (a) Subject to subsection (b) and section 3.6, every individual entitled to have his or her name entered on the membership list under section 3.1, 3.2 or 3.3 must apply to the Membership Committee in a manner and in the form set out in the policies.
- (b) An application to the Membership Committee under section (a) is not required for an individual who is entitled to have their name entered on the membership list under section 3.1(a)(v), 3.1(a)(vi), 3.2(a)(ii) or 3.2(a)(iv) if notice of the birth of that individual is given to the registrar in a manner and in the form set out in the policies.

### **Transition**

- 3.6** Within 180 days of this Membership Code being ratified by eligible voters in accordance with section 9.1, the registrar must
- (a) determine an individual's designation as a descendant member, a lineal member or an acquired member if that individual's name is entered on the former membership register as of [date this Membership Code is approved] and enter, and record the applicable designation beside, that individual's name on the membership list, and
- (b) provide written notice to each member of their designation determined by the registrar under subsection (a) and their right to appeal that determination in accordance with section 3.7.

### **Right of appeal**

- 3.7** A determination made by the registrar under section 3.6 may be appealed in accordance with section 8.1.

## **PART 4 - CEASING TO BE A MEMBER**

### **Grounds for removal**

- 4.1** Despite sections 3.1, 3.2 or 3.3, an individual will have their name removed from the membership list by the Membership Committee if that individual

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- (a) voluntarily, or as a consequence of any action of a parent or legal guardian, is or becomes a member of a First Nation other than the Pauquachin First Nation,
  - (b) is at least 18 years old and provides a statutory declaration to the registrar requesting that their name be removed from the membership list,
  - (c) had their name entered on the membership list as an acquired member as a consequence of marriage and that marriage has since come to an end,
  - (d) acquired status and had their name entered on the DIA list as a consequence of marriage on or before June 26, 1987 and that marriage came to an end after that date, or
  - (e) had their name entered on the DIA list, former membership register or membership list on the basis of a material error in the facts on which their entitlement to membership was based.

### **Right of appeal**

- 4.2** A decision of the Membership Committee under section 4.1 may be appealed in accordance with section 8.1.

## **PART 5 - ADMINISTRATION**

### **Membership administration policies**

- 5.1** Council may establish policies with respect to the administration of this Membership Code, including membership criteria guidelines for acquired members, consistent with this Membership Code.

### **Office of registrar**

- 5.2**
- (a) The office of registrar is established.
  - (b) Council must, by motion, appoint an individual to hold the office of registrar.
  - (c) The registrar reports to the Pauquachin administrator.

### **Duties of the registrar**

- 5.3** The registrar must
- (a) produce and provide reports when requested by Council,
  - (b) comply with the policies,

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- (c) maintain a permanent record of all births, deaths, marriages, divorces, adoptions, changes of name, transfers of membership, surrenders of membership, minutes of all meetings of the Membership Committee and Appeals Committee, and other information pertinent to the administration of the Membership Code,
  - (d) provide application forms and appropriate information and assistance to individuals who are applying to the Membership Committee for membership,
  - (e) receive and process completed applications for membership for presentation to the Membership Committee,
  - (f) maintain the membership list in accordance with the policies and
    - (i) add to the membership list the name of an individual whose application has been approved by the Membership Committee under section 6.5,
    - (ii) add to the membership list the name of an individual if the registrar has received notice of their birth under section 3.5(b),
    - (iii) remove from the membership list the name of an individual required to be removed under section 4.1, and
    - (iv) add to or remove from the membership list the name of an individual in accordance with a decision of the Appeals Committee under section 8.3,
  - (g) post a copy of the membership list in accordance with the policies,
  - (h) at the request of an individual applying for membership under section 3.3, provide them with a copy of the current membership criteria guidelines contained in the policies,
  - (i) provide written notice to an individual of
    - (i) their designation determined by the registrar under section 3.6(a),
    - (ii) the removal of their name from the membership list by the Membership Committee under of section 4.1, and
    - (iii) a decision of the Membership Committee under section 6.5(b),along with that individual's right to appeal that designation, removal or decision in accordance with section 8.1.
  - (j) receive and process appeals to be heard by the Appeals Committee,
  - (k) provide a copy of a decision of the Appeals Committee under section 8.3 to

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- (i) an individual who appealed their designation determined by the registrar under section 3.6(a),
  - (ii) an individual whose name was removed from the membership list by the registrar under section 4.1, or
  - (iii) an individual who appealed a decision of the Membership Committee under section 6.5(b),
- (l) if another member appealed the removal of an individual's name from the membership list by the registrar under section 4.1 or a decision of the Membership Committee under section 6.5, provide a copy of the decision of the Appeals Committee under section 8.3 to that member, and
- (m) as soon as reasonably practicable, post a decision of the
- (i) Membership Committee made under section 6.5(b) for a period of 60 days, and
  - (ii) Appeals Committee made under section 8.3 for a period of 30 days, at the Pauquachin administration offices.

## **PART 6 - MEMBERSHIP COMMITTEE**

### **Membership Committee established**

**6.1** The Membership Committee is established as an independent institution of the Pauquachin First Nation with authority over, and responsibility for, considering applications for membership in the Pauquachin First Nation.

### **Committee composition**

**6.2** (a) The Membership Committee is composed of

- (i) two elders,
- (ii) three additional members, none of whom may be a member of Council, and
- (iii) the registrar.

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- (b) The registrar is the chairperson of the Membership Committee and must not vote on a decision to be made by the Membership Committee except to break a tie vote.
  - (c) Council must, by motion and in accordance with subsection (a), appoint from time to time the applicable individuals, other than the registrar, to the Membership Committee.

### **Term of office**

- 6.3** (a) An individual appointed to the Membership Committee, other than the registrar, holds office for a term of [four years].
- (b) If an individual appointed to the Membership Committee resigns, or is otherwise unable to complete the term of their appointment, Council must appoint a replacement for the balance of that term as soon as is reasonably practicable, provided there is at least six months remaining in that term.

### **Conflict of interest**

- 6.4** No individual serving on the Membership Committee may participate in any proceeding where that individual's participation would constitute a conflict of interest.

### **Duties of committee**

- 6.5** The Membership Committee must
  - (a) review applications for membership in the Pauquachin First Nation,
  - (b) consider the applicable membership criteria guidelines set out in the policies when making a decision on an application made by an individual to become an acquired member under section 3.3,
  - (c) provide written reasons for its decisions, and
  - (d) produce and provide reports to Council when requested by Council.

### **Decisions of committee**

- 6.6** Decisions of the Membership Committee are to be made by majority vote.

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## PART 7 - APPEALS COMMITTEE

### Appeals Committee established

**7.1** The Appeals Committee is established as an independent institution of the Pauquachin First Nation with authority over, and responsibility for, considering appeals of a decision made by the registrar under section 3.6(a) or by the Membership Committee under section 4.1 or 6.5.

### Committee composition

- 7.2** (a) The Appeals Committee is composed of
- (i) one elder, and
  - (ii) two additional members,
- none of whom may be a member of the Membership Committee or Council.
- (b) The members of the Appeals Committee must choose from amongst themselves a chairperson.
- (c) Every member on the Appeals Committee, including its chairperson, may vote on decisions to be made by the Appeals Committee.
- (d) Council must, by motion and in accordance with subsection (a), appoint from time to time the applicable individuals to the Appeals Committee.

### Term of office

- 7.3** (a) An individual appointed to the Appeals Committee holds office for a term of [four years].
- (b) If an individual appointed to the Appeals Committee resigns, or is otherwise unable to complete their appointment, Council must appoint in accordance with section 7.2 a replacement for the balance of that term as soon as is reasonably practicable, provided there is at least six months remaining in that term.

### Conflict of interest

- 7.4** (a) No individual appointed to the Appeals Committee may participate in any proceeding where that individual's participation would constitute a conflict of interest.
- (a) If an individual appointed to the Appeals Committee is in a conflict of interest on an appeal, Council must appoint in accordance with section 7.2 a substitute for



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that individual who is not in a conflict of interest to hear that appeal as soon as is reasonably practicable.

## PART 8 - APPEALS

### Right of appeal

- 8.1** (a) A designation made by the registrar under section 3.6(a) or the removal of an individual's name from the membership list by the Membership Committee under section 4.1 may be appealed to the Appeals Committee by the applicable member within 60 days of receiving notice of that decision.
- (b) A decision of the Membership Committee under section 6.5(b) may be appealed to the Appeals Committee by
- (i) that individual applying for membership within 60 days of receiving notice of that decision, or
  - (ii) any member within 60 days of that decision being posted in accordance with section 5.3(m)(i).

### Consideration of appeals

- 8.2** In hearing appeals, the Appeals Committee may consider
- (a) all the evidence considered by the registrar or the Membership Committee at the time the appealed decision was made,
  - (b) any additional materials provided by the individual appealing the decision or by the registrar, and
  - (c) any other information the Appeals Committee considers appropriate in the circumstances.

### Appeal decision

- 8.3** (a) After hearing an appeal, the Appeals Committee may
- (i) uphold the decision of the registrar or Membership Committee,
  - (ii) order the registrar to change a designation for a members under section 3.6(a)
  - (iii) order the registrar to add or remove a name from the membership list, or

- (iv) make any other order that it considers appropriate.
- (b) The Appeals Committee must supply written reasons of its decision.

### **Further appeal**

- 8.4**
- (a) Subject to subsection 8.3(b), a decision of a majority of the members of the Appeals Committee is final.
  - (b) An appeal of a decision made by the Appeals Committee under section 8.3 may only be made on a question of law or jurisdiction.

## **PART 9 - RATIFICATION AND AMENDMENTS**

### **Ratification**

- 9.1** [This Membership Code must be approved by a majority of eligible voters who vote in a referendum held for that purpose, provided 50 per cent of all eligible voters vote in that referendum.]

### **Amendments**

- 9.2** Any amendment to this Membership Code must be approved by 60 per cent of eligible voters who vote in a referendum held for that purpose.