

# TOQUAHT NATION

## CONSTITUTION

May 14, 2007

**Toquaht Nation**  
**Constitution**

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## **PREAMBLE**

### **A. Declaration of Toquaht Identity and Territorial Existence**

We, the people of the Toquaht Nation, by this Constitution, declare our unique identity as a nation and claim our rightful place in Canadian society.

We have existed from time immemorial and have occupied and used the lands, waters and resources of our traditional territory, as set out in Appendix A to this Constitution, throughout history.

We draw our identity from our relationship to our land and from our rich heritage, culture, language and our stories, myths and oral traditions.

We honour our ancestors and our elders and commit ourselves to the values that they preserved for us, values that provide us dignity and enhance our humanity.

As self-determining peoples, we accept the responsibilities inherent in governing ourselves and seek, with the assistance of Naas, (the Creator), to govern with wisdom and respect for all people.

Through the act of governing, we assume the power to preserve our natural world and enhance our identity.

### **B. Declaration of Toquaht Nation Rights and Values**

From this historic foundation we, the Toquaht people, have adopted and shaped fundamental values that unite us, define us and upon which this Constitution is based.

These values include:

- (a) a belief in, and reverence for, the Creator,
- (b) honouring our ancestors,
- (c) respecting our elders,
- (d) abiding by an internal order based on our Ha'wiih and our Hahoulthee,
- (e) respecting our family and kinship systems,
- (f) our unique language, and
- (g) a respect for the land, air, water and environment which encompasses the Hahoulthee of our Ha'wiih.

As a distinct people, we possess certain fundamental and inalienable human rights, rights which have never been extinguished, ceded or surrendered. These include, without limitation:

- (a) the right to our traditional territory, including rights to water and beds of water,
- (b) the right to resources within our traditional territory,
- (c) the right to govern within our traditional territory,

- (d) the right to utilize and protect our language,
- (e) the right to practice, protect and enhance our culture,
- (f) the right to the wealth of our traditional territory and a sound economic foundation,
- (g) the right to protect our sacred and spiritual sites,
- (h) the right to protect our family and kinship systems, and
- (i) the right to define ourselves and the criteria for the identification of our citizens.

## **CHAPTER 1: INDIVIDUAL RIGHTS AND FREEDOMS OF TOQUAHT CITIZENS**

- 1.1 An individual is entitled to be a Toquaht citizen if that individual:
- (a) is enrolled under the Maa-nulth Treaty; or
  - (b) was registered on the Toquaht Indian Band List as of the day immediately preceding the Effective Date of the Maa-nulth Treaty; or
  - (c) has been adopted as a child by a Toquaht citizen under Canadian law, the Maa-nulth Treaty or in accordance with Nuu-chah-nulth custom; or
  - (d) is a descendent of a Toquaht citizen; or
  - (e) meets the criteria of Toquaht citizenship laws.
- 1.2 Every Toquaht citizen enjoys all of the individual rights and freedoms guaranteed under the Constitution of Canada and by the various instruments of human rights established in international law.
- 1.3 All Toquaht citizens are equal under this Constitution and, based on this equality and in accordance with Toquaht customary law, possess:
- (a) the right to participate in Toquaht political activities and elections, and to run for and hold elected office as provided for in Toquaht law;
  - (b) the right to be informed about Toquaht affairs;
  - (c) the right to be consulted regarding Toquaht affairs;
  - (d) the right to express opinions and views on Toquaht affairs;
  - (e) the right to equal employment opportunities within the Toquaht Nation;
  - (f) the right to equal access to public services provided by the Toquaht Nation;
  - (g) the right to a healthy life, environment and equal access to health care;
  - (h) the right to utilize the Nuu-chah-nulth language;
  - (i) the right to participate in Toquaht culture and traditions consistent with the established practices and customs;
  - (j) the right to enter upon, remain on and leave Toquaht lands in accordance with this Constitution and Toquaht laws;
  - (k) the opportunity to pursue a livelihood within Toquaht lands;

- (l) the opportunity to contribute to the progress and development of the Toquaht Nation; and
- (m) the opportunity to achieve their fullest potential as individuals.

## **CHAPTER 2: GOVERNMENT STRUCTURE OF THE TOQUAHT NATION**

- 2.1 The Toquaht Nation Government shall consist of a legislative branch, an executive branch and a people's assembly.
- 2.2 The Toquaht Nation may, in accordance with the amending provisions of this Constitution, establish a judicial branch of the Toquaht Nation Government.

### *The Legislative Branch*

- 2.3 All legislative powers assumed through this Constitution shall be vested in the Toquaht Council.
- 2.4 The Toquaht Council shall be composed of five members consisting of
  - (a) three elected Councillors,
  - (b) the Toquaht Tyee Ha'wilt (First Chief), and
  - (c) the Chaa-maa-taa (Second Chief).
- 2.5 The elected Toquaht Councilors shall hold office for a term of four years.
- 2.6 The elected members of the Toquaht Council shall be Toquaht citizens who are enrolled under the Maa-nulth Treaty and at least 18 years of age.
- 2.7 The times, places and manner of holding elections shall be prescribed by the Toquaht Council in accordance with the Toquaht election law.
- 2.8 Upon an elected Council position becoming vacant, a by-election will be held within 30 days of the date the vacancy occurred.
- 2.9 The Toquaht Council shall, at the beginning of each term of office, select from amongst themselves a Chairperson to be responsible for chairing meetings of the Toquaht Council and of the People's Assembly and for ensuring that the decisions of the Toquaht Council are implemented.
- 2.10 The Chairperson may vote in Toquaht Council decisions, however, if such a vote results in a tie, the motion or resolution shall fail.
- 2.11 No Toquaht law will have force and effect until that law has been passed by a majority of a quorum of the Toquaht Council and is certified by the Tyee Ha'wilt.
- 2.12 Except for Toquaht customary laws, all Toquaht laws will be published and made available to Toquaht citizens within ten days of the law coming into effect.

### *The Executive Branch*

- 2.13 The executive powers of the Toquaht Nation Government shall be vested in the Chairperson of the Toquaht Council and any individual member of the Toquaht Council designated by a majority of the Toquaht Council to hold specific portfolios.
- 2.14 The Toquaht Council may establish or dissolve executive portfolios at any time.
- 2.15 Each member of the Toquaht executive is directly accountable to the Toquaht Council and shall report to the Toquaht Council on a regular basis or as requested by the Toquaht Council.
- 2.16 The Toquaht executive shall have the authority and responsibility for the enforcement of Toquaht laws, the management of Toquaht affairs, Toquaht financial administration and the operations of the Toquaht Nation Government in accordance with the laws and procedures established by the Toquaht Council.
- 2.17 Subject to instructions given by the Toquaht Council, the Toquaht executive, within the areas of their respective portfolios, shall be responsible for representing the Toquaht Nation in intergovernmental relations, including relations with other First Nations.
- 2.18 The Chairperson of the Toquaht Council, as chief executive of the Toquaht Nation Government, shall have authority and responsibility, subject to direction from the Toquaht Council, for:
  - (a) representing the Toquaht Nation Government in relations with local, provincial and federal governments, other First Nations and indigenous organizations nationally and internationally;
  - (b) ensuring that the Toquaht citizens are fully informed on social, legal and political issues that affect the Toquaht Nation;
  - (c) developing and maintaining effective systems of communication with Toquaht citizens, third parties and other governments;
  - (d) protecting and enhancing Toquaht aboriginal and treaty rights;
  - (e) ensuring that the Toquaht Constitution and Toquaht laws and procedures are adhered to and enforced;
  - (f) developing and maintaining a sound Toquaht economy;
  - (g) promoting and protecting Toquaht values, culture, traditions and language;
  - (h) the proper management and administration of the Toquaht Nation Government; and



- (i) those additional roles and responsibilities contemplated in this Constitution.
- 2.19 The Toquaht Council may designate a member of the Toquaht Council to assume the duties and responsibilities of the Chairperson of the Toquaht Council on an interim basis in the event that the Chairperson of the Toquaht Council is, for whatever reason, unable to carry out the duties and responsibilities of that office.
- 2.20 The Toquaht Council may establish any public institution or body that it deems necessary to meet the duties and obligations of the Toquaht Nation Government or to protect or advance the interests of the Toquaht Nation.

### People's Assembly

- 2.21 The People's Assembly shall be convened at a minimum of four times annually, one of which such meetings shall be deemed to be the Toquaht annual general assembly.
- 2.22 The People's Assembly that is deemed to be the Toquaht annual general assembly shall include in its agenda the Toquaht Nation annual financial report, including remuneration paid to the Toquaht Council.
- 2.23 The Chairperson of the Toquaht Council, in consultation with the Toquaht Council, may at any time call a special People's Assembly to address important Toquaht Nation issues.
- 2.24 The Chairperson of the Toquaht Council shall convene the People's Assembly in accordance with procedures established by the Toquaht Council as of the Effective Date of the Maa-nulth Treaty and as amended from time to time.
- 2.25 Every Toquaht citizen has the right to attend and participate in the People's Assembly.
- 2.26 Every Toquaht citizen that has attained the age of 18 has the right to vote on any resolution presented at the People's Assembly.
- 2.27 The People's Assembly may, by way of a resolution passed in accordance with referendum regulations established by the Toquaht Council require the Toquaht Council to hold a referendum on a specific issue.
- 2.28 The Toquaht Council shall establish referendum regulations, which regulations shall have force and effect as of the Effective Date of the Maa-Nulth Treaty.
- 2.29 All recommendations passed by the People's Assembly must be considered and voted on by the Toquaht Council.

### Committees

- 2.30 The Toquaht Council may establish standing or special committees to assist in the discharge of its authority and responsibilities.
- 2.31 All committee memberships may include any Toquaht citizen over the age of 18 and shall include at least one member of the Toquaht Council.
- 2.32 All committee members who are members of the Toquaht Council shall be ex officio and shall not vote in committee decisions.
- 2.33 The Toquaht Council shall establish the terms of reference for each committee and shall appoint all committee members pursuant to the respective terms of reference.
- 2.34 In appointing committee members, the Toquaht Council shall attempt to ensure committee representation by Toquaht citizens residing on and off of Toquaht lands,
- 2.35 Committee membership and the procedures for selecting committee members shall be made public.
- 2.36 The standing committees shall include, but not be limited to:
  - (a) the standing committee on finance;
  - (b) the standing committee on treaty implementation;
  - (c) the standing committee on economic development; and
  - (d) the standing committee on citizenship.

### **CHAPTER 3: LEGISLATIVE AUTHORITY OF THE TOQUAHT NATION GOVERNMENT**

- 3.1 The Toquaht Nation Government shall have the right to assume and exercise all law-making authority set out in the Maa-nulth Treaty and any law-making authority set out in non-Treaty agreements with Canada or British Columbia.
- 3.2 As of the Effective Date of the Maa-nulth Treaty and in accordance with the respective provisions of the Maa-nulth Treaty, the Toquaht Council shall have the authority to make laws pertaining to:
- (a) Toquaht Nation citizenship;
  - (b) Toquaht Nation Government structures and procedures;
  - (c) Toquaht lands and land management;
  - (d) Toquaht resources on Toquaht lands;
  - (e) Toquaht public institutions and Toquaht corporations;
  - (f) Toquaht Nation assets;
  - (g) Adoption;
  - (h) Child protection services;
  - (i) Child care services;
  - (j) Education in respect of kindergarten to grade 12;
  - (k) Post-secondary education;
  - (l) Education in respect of language and culture;
  - (m) Solemnization of marriages;
  - (n) Social development;
  - (o) Health services;
  - (p) Culture and heritage;
  - (q) Management and distribution of fish and aquatic plants for domestic purposes;
  - (r) Management and distribution of wildlife and migratory birds for domestic purposes;

- (s) Renewable resource harvesting within federal and provincial parks and protected areas;
- (t) Water;
- (u) Preservation and conservation of the environment;
- (v) Taxation;
- (w) Public works;
- (x) Buildings and structures;
- (y) Regulation, licensing and prohibition of business;
- (z) Traffic, transportation, parking and highways;
- (aa) Public order, peace and safety;
- (bb) Emergency preparedness;
- (cc) Conflict of interest;
- (dd) Conduct of public officials;
- (ee) Access to information;
- (ff) Enforcement of Toquaht Nation laws;
- (gg) Any other law-making authority set out in the Maa-nulth Treaty or in any non-Treaty agreement with Canada or British Columbia.

3.3 On the Effective Date of the Maa-nulth Treaty, the Toquaht Council shall bring into force and effect:

- (a) rules of procedure for the Toquaht Council;
- (b) a Toquaht Nation election law;
- (c) a Toquaht Nation code of conduct and conflict of interest law;
- (d) a Toquaht Nation financial administration law;
- (e) a Toquaht Nation citizenship law;
- (f) a Toquaht Nation land law;
- (g) a Toquaht Nation dispute resolution law;
- (h) Toquaht Nation referendum law; and

- (i) any other law that the Toquaht Council deems necessary for the proper management of Toquaht Nation affairs as of the Effective Date of the Maa-nulth Treaty.
- 3.4 In the event of an inconsistency or conflict between this Constitution and the provisions of any Toquaht law, the Toquaht law, to the extent of the inconsistency or conflict, is of no force or effect.
- 3.5 Prior to the Effective Date of the Maa-Nulth Treaty, the Toquaht Council shall consult with and seek the advice of the People's Assembly in the development of the Toquaht laws set out in paragraph 3.3 above.

#### **CHAPTER 4: THE TOQUAHT NATION LAND SYSTEM**

- 4.1 As of the Effective Date of the Maa-nulth Treaty, the underlying title to all Toquaht lands shall be vested collectively in the Toquaht Nation.
- 4.2 The quantity of Toquaht lands, as set it in the Maa-nulth Treaty, shall not be reduced except as provided for in the Maa-nulth Treaty.
- 4.3 The boundaries of Toquaht lands shall not be altered, other than by the addition of additional land, except as provided for in the Maa-nulth Treaty or if approved by at least 50% of Toquaht eligible voters in a referendum held to approve the boundary alteration.
- 4.4 Prior to the Effective Date of the Maa-nulth Treaty, the Toquaht Council shall develop a Toquaht Nation land law for review by Toquaht citizens.
- 4.5 The Toquaht Nation land law shall address, among other things:
  - (a) the nature and extent of the rights of individual Toquaht citizens in and to Toquaht lands;
  - (b) the powers and authority of the Toquaht Council to administer, regulate, expropriate and grant interests in Toquaht lands;
  - (c) land transactions that will require approval of Toquaht citizens by way of a referendum;
  - (d) procedures for raising title to, and registering interests in, Toquaht lands;
  - (e) procedures for addressing interests of non-Toquaht individuals in Toquaht lands;
  - (f) the regulation of mortgages and other forms of security in relation to Toquaht lands;
  - (g) procedures for zoning and land use planning; and
  - (h) any other matter that the Toquaht Council deems necessary for a comprehensive land law.
- 4.6 Notwithstanding the conveyance or alienation of any estate or interest in Toquaht lands, all lands that are the subject of such estate or interest shall continue to be Toquaht lands and subject to the jurisdiction and authority of the Toquaht Nation Government.

## **CHAPTER 5: FINANCIAL ADMINISTRATION AND ACCOUNTABILITY**

- 5.1 The Toquaht Council, in exercising financial authority, including the authority to raise and expend revenues, shall make laws to establish a system of financial management and administration that is:
- (a) effective and efficient in the use of Toquaht Nation financial resources;
  - (b) open and accountable; and
  - (c) includes standards comparable to those generally accepted for governments in Canada.
- 5.2 The Toquaht Council shall establish a standing committee on finance which committee shall make recommendations to the Toquaht Council on any financial matter and in relation to any law regarding financial matters.
- 5.3 The Toquaht Council shall establish rules and terms of reference for the Standing Committee on Finance, including such matters as:
- (a) rules of procedure;
  - (b) frequency of meetings;
  - (c) time periods for performing duties; and
  - (d) the ability to seek advice from persons with relevant expertise.
- 5.4 The Toquaht Council shall request and consider a report from the standing committee on finance prior to:
- (a) preparing the annual Toquaht financial report;
  - (b) entering into financial agreements or taxation agreements with Canada or British Columbia; or
  - (c) making laws that substantially affect the finances of the Toquaht Nation.
- 5.5 The Toquaht Council shall prepare an annual budget for presentation to the People's Assembly at the next annual general assembly following the fiscal year end.
- 5.6 The Toquaht Council shall prepare the annual audited financial statements for the Toquaht Nation, including the annual audited financial statements for any corporate entity owned, in whole or in part, by the Toquaht Nation, for presentation to the People's Assembly at the next annual general assembly following the fiscal year end.

- 5.7 The Toquaht Council may borrow money or guarantee loans subject to a law made for such purposes, which law shall be reviewed by the People's Assembly prior to being brought into force and effect.



**CHAPTER 6: CODE OF CONDUCT AND CONFLICT OF INTEREST**

- 6.1 The Toquaht Nation Government shall be administered in a manner that:
- (a) adheres to the highest ethical standards;
  - (b) efficiently uses the resources of the Toquaht Nation;
  - (c) provides services on an equitable and impartial basis; and
  - (d) responds to the needs of Toquaht citizens in a timely and accessible manner.
- 6.2 Members of the Toquaht Council will conduct themselves at all times with integrity and respect for their positions and will place the interests of the Toquaht Nation ahead of their own in the discharge of their duties and responsibilities.
- 6.3 As of the Effective Date of the Maa-nulth Treaty, the Toquaht Council shall bring into force and effect a code of conduct and conflict of interest law.

## **CHAPTER 7: DISPUTE RESOLUTION**

- 7.1 On the Effective Date of the Maa-nulth Treaty, the Toquaht Council shall bring into force and effect a Toquaht Nation dispute resolution law which shall provide for, among other things, a public body to address disputes with the Toquaht Nation Government and within the community and a process for challenging the validity of Toquaht laws and a process for appealing or reviewing administrative decisions of the Toquaht Nation Government or Toquaht Nation public institutions.
- 7.2 The body and power to address disputes with the Toquaht Nation Government shall be:
- (a) independent;
  - (b) provided with the authority to conduct hearings, make recommendations and render decisions in relation to administrative decisions;
  - (c) provided with the authority to conduct hearings, make recommendations, render decisions and adjudicate disputes within the community; and
  - (d) provided with the authority to conduct hearings, make recommendations and render decisions in relation to the validity of Toquaht laws.
- 7.3 The body and power to address disputes shall consist of three members with one chosen by the Tyee Ha'wilth and two chosen by the elected members of the Toquaht Council.
- 7.4 The body and power to address disputes shall be provided with sufficient resources to meet its obligations under this Constitution.

**CHAPTER 8: RATIFICATION OF THIS CONSTITUTION**

- 8.1 This Constitution shall be ratified in a referendum in which at least 50% plus one of Toquaht Nation eligible voters as defined by the Maa-nulth Treaty who vote, approve the Constitution.
- 8.2 This Constitution shall be ratified prior to the vote held to ratify the Maa-nulth Treaty.
- 8.3 This Constitution, if ratified, shall come into force and effect on the Effective Date of the Maa-nulth Treaty.

## **CHAPTER 9: CONSTITUTIONAL AMENDMENTS**

- 9.1 An amendment to this Constitution may be initiated by:
- (a) a resolution passed by a majority of a quorum of the Toquaht Council; or
  - (b) the presentation of a petition to the Toquaht Council signed by at least 40 Toquaht citizens 18 years of age or older identifying the specific Constitutional amendment proposed.
- 9.2 Upon passage of the resolution or receipt of the petition identified in paragraph 9.1, the Toquaht Council shall develop wording for the proposed Constitutional amendment.
- 9.3 Prior to conducting a referendum on the proposed amendment, the Toquaht Council shall:
- (a) provide full information on the proposed amendment by way of written material and other forms of publication to all Toquaht citizens;
  - (b) provide all Toquaht citizens with at least 30 days notice of a special People's Assembly, including the date, time and location of the special People's Assembly, and a summary of the proposed amendment;
  - (c) conduct the special People's Assembly in order to seek the views of Toquaht citizens; and
  - (d) make any changes to the wording of the proposed amendment that the Toquaht Council deems appropriate in light of the advice received from the People's Assembly.
- 9.4 Within 30 days of the special People's Assembly, the Toquaht Council will conduct a referendum on the proposed Constitutional amendment in accordance with the procedures set out in the Toquaht Nation referendum law.
- 9.5 This Constitution may only be amended with the approval of at least 50% plus one of the Toquaht eligible voters at the time of the referendum described in paragraph 9.4.
- 9.6 This Constitution shall be deemed to be amended as of the date of certification by the Tyee Ha'wiltl of the required level of approval by Toquaht eligible voters.
- 9.7 The Toquaht Council shall publish a notice of the Constitutional amendment.