

Wahta Mohawks Citizenship Code 2019 DRAFT

WHEREAS the Wahta Mohawks have and continue to exercise our inherent right to self-determination, which includes the inherent right to govern ourselves and our own membership without approval of any other government, including the Government of Canada;

AND WHEREAS the Government of Canada recognizes the inherent right of self-government, as recognized and affirmed in section 35 of the *Constitution Act, 1982*, of Canada, and confirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*;

AND WHEREAS pursuant to its inherent jurisdiction over its Citizenship and section 10(1) of the Indian Act, Wahta Mohawks assumed control of its Citizenship in 1987.

AND WHEREAS sections 81(1) (p.1) of the *Indian Act* empowers the Council of a First Nation to make by-laws governing the residence of Citizens of a First Nation and other persons on reserve;

NOW THEREFORE, BE IT HEREBY RESOLVED by the Wahta Mohawks First Nation Council and enacted pursuant to section 10(1) of the *Indian Act* the following Citizenship Code:

This Wahta Mohawks Citizenship Code 2019 replaces all previous iterations of the Citizenship Code of the Wahta Mohawks.

1. Title

This code shall be known as Wahta Mohawks Citizenship Code 2019 and is inclusive of any name changes made from time to time.

2. Definitions

Citizenship Roll – A list of Citizens of the Wahta Mohawks;

Band List – A list of all persons, which is maintained under s. 8 *Indian Act*;

Registrar – A person appointed by Chief and Council to be responsible for maintaining the Citizenship Roll and ensuring the proper administration of the Citizenship Code 2019;

Child - means a person under the age of majority who is born in or out of wedlock, is a legally adopted person, or is a person adopted in accordance with Indian custom;

Chief and Council – the duly elected Chief and Council of the Wahta Mohawks;

Citizen – A person approved by the Registrar to be on the Citizenship List pursuant to the Citizenship Code 2019, or by previous Citizenship Code;

Resident - A person approved by the Council, pursuant to who may reside in the Wahta Mohawks community;

Indian – means a person who pursuant to the *Indian Act* is registered as an Indian or is entitled to be registered as an Indian;

Spouse - means a lawfully married husband or wife of a Wahta Mohawk and does not include a common law spouse.

3. Inherent Right

This Citizenship Code 2019 is enacted pursuant to the inherent right of Wahta Mohawks to determine its own citizenship and pursuant to s.10 *Indian Act*.

4. Purpose

The purpose of this Citizenship Code 2019 is to

- (1) Preserve the cultural and political integrity of Wahta Mohawks;
- (2) Preserve the sovereignty of Wahta Mohawks through the exercise of inherent rights; and
- (3) Provide the basis for the exercise of the rights and obligations of the citizens of Wahta Mohawks and others under its jurisdiction.

5. Enrolment

- (1) A Registrar shall be appointed by the Council of Wahta Mohawks who shall be responsible for maintaining the Wahta Mohawks Citizenship Roll.
- (2) All applications for Citizenship shall be made to the Registrar using such forms and regulations as may be outlined in Regulations enacted under section 10(1); provided that, in the absence of such forms and regulations, all applications shall be made in writing in a manner that clearly sets out the applicant's claim to entitlement and the provision of this Code under which the application is made.
- (3) The duties of the Registrar include
 - (a) Considering applications for enrolment,
 - (b) Adding and deleting names from the Citizenship Roll, noting the date and particulars of each such addition or deletion;
 - (c) Providing public information about the Citizenship Code; and
 - (d) Such other duties as outlined in Regulations enacted under subsection 10(1).
- (4) The Registrar shall make a decision on an application for enrolment within thirty days of receipt.

6. Entitlement

A person is entitled if:

- (1) That person was registered or entitled to be registered as a Citizen of Wahta Mohawks on the date this Citizenship Code came into force;

- (2) That person has at least one biological parent who is registered or is eligible to be registered as a Citizen of Wahta Mohawks, but that parent did not become registered by way of transfer pursuant to subsection 7(1);
- (3) That person has been legally adopted or adopted in accordance with Indian custom and has at least one adoptive parent who is registered or is eligible to be registered as a citizen of Wahta Mohawks, in accordance with subsection (2);

7. Transfers

With the approval of the Registrar, the following Indians may transfer citizenship to Wahta Mohawks from another First Nation:

- (1) Any Indian who becomes the spouse of a Citizen;
- (2) The biological or adopted child of a Citizen, in accordance with subsection 6(2) and 6(3);

8. Persons Not Entitled to Citizenship

The following persons are not entitled to citizenship:

- (1) A spouse or widow who is not of Indian descent, who was enrolled on the Band List by virtue of the *Indian Act* on marriage to a Citizen, and whose name was subsequently omitted or deleted from the Band List pursuant to that *Indian Act* before this or any previous Citizenship Code came into force;
- (2) The child of a person described in subsection (1), whose other parent is not a Citizen nor entitled to be a Citizen;
- (3) Persons who are not Indians who acquired Citizenship through marriage to a Citizen under the provisions of the *Indian Act*, and who have since divorced.

9. Loss of Citizenship

- (1) A person ceases to be a member when that person:
 - (a) Renounces Citizenship in Wahta Mohawks; or
 - (b) Becomes a Citizen or is enrolled on the Band List of another First Nation community;
 - (c) Is determined on an appeal not to be entitled to enrolment as a Citizen; or
 - (d) Obtains Citizenship by providing information that the person knows to be false.
- (2) Without limiting any other type of liability, a person described in subsection 9(1)(d) shall be liable to repay to Wahta Mohawks any financial benefits received by virtue of having falsely acquired citizenship.

10. Procedure

- (1) Council shall prescribe regulations and forms for citizenship purposes.

- (2) The onus is in every case on the applicant to demonstrate entitlement to citizenship in accordance with this Code.
- (3) Wahta Mohawks, Chief and Council and the Registrar, are immune to all civil liability in connection with actions taken or decisions made in good faith on citizenship issues.

11. Appeals

- (1) Appeals from decisions of the Registrar must be made to Council within 60 days following the Registrar's decision, using such forms and regulations as may be outlined in Regulations enacted under the authority of section 10(1), provided that, in the absence of such forms and regulations, all appeals shall be made in writing in a manner that clearly sets out the basis of the appeal.
- (2) In the event of an appeal, the Registrar shall provide the applicant and Council with written reasons for the decision or action taken.
- (3) Council shall thereupon set a date for the appeal and having heard all relevant submissions, will (a) confirm; or (b) overturn the Registrar's decision.
- (4) The decision of Council on a Citizenship appeal is final.

12. Residence

- (1) Only Citizens of Wahta Mohawks have the right, subject to any appropriate by-laws of Council, to reside in the Wahta Mohawks community and may exercise that right together with any dependent children of whom the Citizen has lawful custody and/or care and control.
- (2) Any other person who wishes to reside in the community may apply to Council for permission to do so.
- (3) Council may, in its sole discretion, grant permission to reside and may set terms and conditions for such residence as it deems appropriate in the circumstances having regard to the availability of housing and community services, economic resources of the applicant, the applicant's participation in community life and other facts relating to the general welfare of the community.
- (4) Where a resident, pursuant to 12(3) breaches any of the terms or conditions set by Council, Council may, in its sole discretion at any time after the breach, terminate the residence by giving 30 days' notice to the resident to cease residing in the community. Such notice shall state the reason for termination.
- (5) Any peace officer or bailiff may be called in aid to remove a resident who has been given notice to leave in accordance with this Citizenship Code 2019 and the Wahta Mohawk Trespass By-Law and may use reasonable force to cause the said resident to leave the community, together with any members of his or her family who are not Citizens, together with their personal effects.

(6) Any person residing in the community without permission and any person who fails to leave when lawfully required to do so by Council, is guilty of an offense punishable on summary conviction by a fine not exceeding \$1000.00 nor less than \$250 or to imprisonment for a term not exceeding 30 days, or to both fine and imprisonment as provided herein;

(7) All decisions of Council on questions of residence are final.

13. Amendment

(1) This Citizenship Code may be amended if approved of in accordance with a referendum held pursuant to the *Wahta Mohawks General Referendum Regulations* or as amended.