

ASHCROFT INDIAN BAND

EDUCATION POLICY

1. PURPOSE OF THE POLICY

- 1.1 **Eliminating Discrimination:** The purpose of this Policy is to eliminate discrimination based on Indian status or Band membership in funding the education of the children of Band members.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** For the purposes of this Policy:

- (a) **“Band”** means the Ashcroft Indian Band;
- (b) **“Band member”** means any person whose name appears on the membership list maintained by the Band, or who is entitled to have his or her name appear on that list;
- (c) **“broad consensus”** means a consensus or agreement among the General Band Membership either for or against a matter, determined in accordance with the custom of the Band;
- (d) **“Chief and Council”** means the council established or chosen by the Band from time to time, consisting of a chief and councillors, exercising legal authority as the governing body of the Band;
- (e) **“CIRNA”** means the Department of Crown-Indigenous Relations and Northern Affairs of the federal government, or any successor department or division of that government exercising jurisdiction over indigenous affairs;
- (f) **“Council Resolution”** means a resolution consented to by the Chief and Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Chief and Council;
- (g) **“General Band Membership”** means all persons whose names appear on the membership list maintained by the Band, or who are entitled to have their names appear on that list, and who are 18 years of age or older;
- (h) **“Indian Act (Canada)”** means the *Indian Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time;
- (i) **“ISC”** means the Department of Indigenous Services Canada of the federal government, or any successor department or division of that government exercising jurisdiction over indigenous affairs; and

- (j) **“Membership Coordinator”** means the Band employee, responsible for administering the membership list of the Band, and the membership programs and services of the Band.
- 2.2 **Headings:** Headings inserted in this Policy are for convenience of reference only, and in no way define, limit or enlarge the scope or meaning of this Policy or any provision.
 - 2.3 **Issuing Authority:** This Policy is issued under the authority of the Chief and Council of the Ashcroft Indian Band, following consultation with the General Band Membership.
 - 2.4 **Amendments to Policy:** This Policy may be amended, revoked or replaced, either in whole or in part, by Chief and Council, following consultation with the General Band Membership.
 - 2.5 **Amendment and Replacement of Laws:** Reference to any Band bylaw, policy or procedure includes that item as amended or replaced from time to time.
3. **LEGISLATION REGARDING STATUS**
- 3.1 **Indian Act (Canada):** Section 2(1) of the *Indian Act* (Canada) defines a status “Indian” as either a person who has status as an Indian, as recognized by the Federal Crown, or a person who is entitled to have status. Entitlement to status is the same as having status for the purposes of the *Indian Act* (Canada).
 - 3.2 **Historical Discrimination:** The *Indian Act* (Canada) historically preferred males and discriminated against females in relation to status. The result is that male children of a person having status could often acquire status themselves, while the female children could not.
 - 3.3 **Result:** The result of the historical discrimination is that among a group of cousins who have the same status grandparents, some cousins would have status, and some would not. Status among the cousins could be granted or denied, based on whether their blood connection to their status grandparents was through their father or their mother, respectively.
 - 3.4 **Eliminating Discrimination:** The *Indian Act* (Canada) has been amended in 1985, 2010 and 2017 in several attempts by the Federal Crown to eliminate the discrimination against females in the entitlement to status.
 - 3.5 **Backlog in Status Applications:** The result of the amendments to the *Indian Act* (Canada) is that thousands of persons are newly entitled to Indian status. CIRNA is overwhelmed with status applications, resulting in a huge backlog. Processing times can exceed two years.
4. **MEMBERSHIP**
- 4.1 **Basic Rule:** The basic rule for Band membership is set out in section 3.10 of the draft *Membership Code* of the Band. To be entitled to Band membership a person must be a status Indian who has at least one biological parent who is both:
 - (a) a status Indian; and
 - (b) a Band member.

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4.2 **Status Applications:** The status applications of the children of many Band members are held up in the two year processing backlog at CIRNA. These children must have status before they can apply for Band membership.

5. ISC EDUCATION POLICY

5.1 **Education Benefits:** ISC education policy currently states that children of Band members are only eligible to receive education benefits when they have received Indian status from the Federal Crown. The result is that those who are entitled to status, have applied for status, but have not yet received status because of the CIRNA processing backlog, are not currently eligible for education benefits.

5.2 **ISC Policy is Contrary to the *Indian Act (Canada)*:** Entitlement to Indian status is the same as having status, according to section 2(1) of the *Indian Act (Canada)*. See section 3.1 above of this Policy. ISC policy is to deny education benefits to those who are entitled to status, have applied for status, but because of the CIRNA processing backlog have not yet received status. This ISC policy appears to be contrary to the *Indian Act (Canada)*.

5.3 **ISC Policy is Discriminatory:** Cousins who are grandchildren of the same status grandparents may or may not have received status depending on:

- (a) whether the connection to their status grandparents was through their father or their mother; or
- (b) where their status application is in the CIRNA processing backlog.

ISC policy may deprive native persons who have a status parent, and whose connection to their status grandparents is through their mother, rather than their father, of education benefits. The result of ISC education policy is discrimination based on race, being native, and sex, having a status parent who is female rather than male.

5.4 ***Canadian Charter of Rights and Freedoms*:** Section 15(1) of the *Canadian Charter of Rights and Freedoms* prevents discrimination, and in particular, discrimination based on race or sex. The ISC education policy which discriminates based on both race and sex appears to be in breach of the *Charter*.

5.5 **Amending ISC Education Policy:** The Band requests that the ISC education policy be amended so that the following persons are eligible for education benefits, in addition to Band members:

- (a) Children of Band members, which children are entitled to status, have applied to CIRNA for status, but have not yet received status, because of the CIRNA processing backlog.

5.6 **Verification:** The Band Membership Coordinator will assist ISC in verifying the status applications by children of Band members, as follows:

- (a) the Band Membership Coordinator will confirm to ISC in writing that:

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- (i) the status application has been reviewed by the Coordinator prior to being submitted to CIRNA; and
 - (ii) the status application is complete and accurate, with all necessary documentary evidence attached; and
- (b) by obtaining the consent of the applicant, for the status application to be made available for review by ISC in the Band office, for the purpose only of verification that the application exists and is in good standing with CIRNA.

6. APPROVAL BY GENERAL BAND MEMBERSHIP

6.1 **Difficulties:** The Band acknowledges that many of the Band members live off reserve, and a considerable distance from the reserve lands of the Band, making:

- (a) assembly of the General Band Membership in person on the reserve for an in person vote; or
- (b) a mail in referendum vote for the whole of the General Band Membership;

time consuming and difficult, and beyond the financial and administrative resources of the Band, for seeking approvals or consents of the General Band Membership.

6.2 **Custom of the Band:** Any approvals or consents required from the General Band Membership shall be obtained according to the custom of the Band, as set out in this Article 6.

6.3 **Band Newsletter and Website:** The custom of the Band is to keep the General Band Membership informed by way of the Band newsletter and website.

6.4 **Broad Consensus:** The custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:

- (a) posting reasonably detailed information about the matter on the Band website;
- (b) e-mailing all Band members to advise them that an important matter requiring their written response within 14 days of the date of the notice, has been placed on the Band website;
- (c) inviting on the Band website:
 - (i) questions and comments from all the Band members; and
 - (ii) written responses from all Band members within the 14 day period; and

- (d) tallying the responses received from the Band members within the 14 day period to determine the broad consensus in the General Band Membership for or against the matter.

7. COMING INTO EFFECT

7.1 **Approval Process:** Following consultation with the General Band Membership, in accordance with the custom of the Band as described in Article 6, this Policy shall be brought into legal effect by Council Resolution.

Coming Into Effect

The ASHCROFT INDIAN BAND CHIEF AND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Chief and Council duly convened and held on the _____ day of _____, 2019 that:

The General Band Membership having been consulted, in accordance with custom of the Band, this Policy is issued under the authority of the Chief and Council of the Ashcroft Indian Band, to come into immediate effect.

ASHCROFT INDIAN BAND

Per:



 Chief



 Councillor

 Councillor

ASHCROFT INDIAN BAND

EDUCATION POLICY

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File No. 112-070
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