

PROPOSED FEDERAL REDRAFT

CHAPTER E: ELIGIBILITY & ENROLMENT

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DEFINITIONS

In this chapter,

“Dehcho Dene” means: a person who is a descendant of a Dene who resided on, used or occupied land in the Dehcho Asserted Territory (as shown in Appendix A) prior to December 31, 1922, and who identifies as a Dene or as a Métis, or a person who was adopted as a child under laws recognized in Canada or by Dehcho Dene custom by a Dehcho Dene who resided on, used or occupied land in the Dehcho Asserted Territory prior to December 31, 1922, or is a descendant of a person so adopted.

E.1.0 ELIGIBILITY CRITERIA¹

- E.1.1 An individual will be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Canadian Citizen, or permanent resident of Canada who is:
- a) a Dehcho Dene;
 - d) ordinarily resident in the Dehcho Settlement Area, who is accepted as a Dehcho Citizen pursuant to the Community Acceptance process set out in the Dehcho Constitution;

¹ Canada still reviewing the Eligibility Criteria

- e) adopted as a child under laws recognized in Canada or by Dehcho Dene custom by an individual eligible for Enrolment; or
 - f) a direct descendant of an individual eligible for Enrolment.
- E.1.2 An individual will also be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Dehcho Dene who as a result of adoption as a child became a citizen of a country other than Canada.
- E.1.3 An individual is not eligible to be enrolled as a Dehcho Citizen while:
- a) that individual is enrolled in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement, unless he or she opts to be removed from that other agreement; or
 - b) that individual's name is entered on a non-DFN Band Membership List, unless he or she opts to be removed from the other Band Membership List or withdraws an application for Band Membership; or
 - c) that individual's name is entered on a Métis Local Membership List other than the Fort Simpson or Fort Providence Métis Local Membership Lists², unless he or she provides notice of intention to be removed from the other Membership List or withdraws an application for membership.
- E.1.4 A Dehcho Citizen may not enroll in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement or make application to be on a non-DFN Band Membership List or a Métis Local Membership List unless he or she provides notice to withdraw as a beneficiary under the Dehcho Agreement.
- E.1.5 Upon applying to be enrolled as a Dehcho Citizen, an individual must notify the Enrolment Committee if he or she is a beneficiary or has applied for enrolment under another Land Claims Agreement, Lands and Resources or Self Government Agreement or if the individual's name is entered on a non-DFN Band Membership List or a Métis Local Membership List.

² Canada requires more information about these Métis Local Lists and how they will be defined in the agreement.

- E.1.6 Within 120 days of the Effective Date or the date of notification of acceptance of enrolment, an individual referred to in E.1.5 who meets the eligibility criteria set out in E.1.1 and E.1.2, as applicable, and whose application for enrolment has been accepted, must provide written evidence to the Enrolment Committee demonstrating:
- a) that he or she has ceased to be a beneficiary, or has withdrawn his or her application for Enrolment under another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement; or
 - b) has withdrawn his or her application or has been removed from a non-DFN Band Membership List or a Métis Local Membership List, other than the Fort Simpson or Fort Providence Métis Local Membership Lists.
- E.1.7 An individual referred to in E.1.3 and who is accepted to be enrolled as a Dehcho Citizen by the Enrolment Committee will only be added to the Enrolment List and/or the Dehcho Citizenship Register once they are able to provide the required written evidence under E.1.6.
- E.1.8 Until the requirements of E.1.6 have been satisfied, an individual is not entitled to exercise any rights or receive any benefits under the Final Agreement.
- E.1.9 The burden of demonstrating eligibility will be on the applicant.
- E.1.10 Enrolment will not confer or deny any rights of entry into Canada, Canadian citizenship or the right to be registered under the *Indian Act* or any rights or benefits under the *Indian Act* or, except as set out under the Dehcho Agreement, Federal or Territorial law, impose any obligation on Canada or the GNWT to provide rights or benefits.

E.2.0 ENROLMENT COMMITTEE

- E.2.1 The Enrolment Committee will be established no later than 60 days following the signing of this Agreement.
- E.2.2 The Enrolment Committee will be composed of four individuals appointed by the DFN and two individuals appointed by Canada.
- E.2.3 The Enrolment Committee will be responsible for creating and maintaining the Enrolment List and Dehcho Citizenship Register and keeping information about those applications confidential prior to Effective Date

- E.2.4 Subject to decisions rendered by the Appeal Board, the Enrolment Committee will be the decisive body for determining who is eligible to become a Dehcho Citizen and an Eligible Voter for the purpose of the Dehcho Agreement.
- E.2.5 The Enrolment Committee will establish its own procedures and time limits in accordance with the principles of natural justice and this Agreement.
- E.2.6 No action may be commenced against the Enrolment Committee or any member of the Enrolment Committee for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.
- E.3.0 **INITIAL ENROLMENT PERIOD**
- E.3.1 Following its establishment, the Enrolment Committee will commence the Initial Enrolment Period for the purpose of creating the Enrolment List.
- E.3.2 During the eighteen (18) month duration of the Initial Enrolment Period, the Enrolment Committee will:
- a) take reasonable steps to prepare information respecting eligibility to be enrolled as a Dehcho Citizen, including application forms;
 - b) publicize the information, and make the information and forms available to eligible individuals;
 - c) set dates for and receive and review applications for the Enrolment List based on the eligibility criteria set out in E.1.0; and
 - d) update the Enrolment List and, when necessary, remove the names of the following individuals from the Enrolment List:
 - i) an individual who is deceased;
 - ii) an individual who is not eligible to be enrolled pursuant to E.1.3.
 - iii) an individual enrolled by mistake or on the basis of false or misleading documentation; or
 - iv) an individual who applies to be removed from the Enrolment List.

- E.3.3 Where the individual to be enrolled is a Dehcho Citizen is a child or is legally incompetent³, the application to be added or removed from the Enrolment List must be made by that person's parent, guardian or legal representative.
- E.3.4 If the Enrolment Committee rejects an application to be on the Enrolment List, the applicant may request a reconsideration of the application by the Enrolment Committee. An applicant may only submit a rejected application for reconsideration by the Enrolment Committee once and if the application is rejected and on the condition that the applicant is presenting new information to support his/her eligibility to become a Dehcho Citizen.
- E.3.5 Should the Enrolment Committee reject the reconsideration under E.3.4, the applicant will have an opportunity to appeal the decision to the Appeal Board following its establishment in accordance with E.6.1.
- E.3.6 The Enrolment Committee will be responsible for providing the applicant a written reason for rejecting an application upon first rejection and upon rejection of reconsideration, as it may apply.
- E.3.7 At the end of the Initial Enrolment Period, the Enrolment Committee the will cease all activity and will reconvene in accordance with E.4.1.
- E.4.0 PRELIMINARY ENROLMENT PERIOD**
- E.4.1 At least six months prior to the initialling of the Final Agreement, the Enrolment Committee will reconvene and will publish the Enrolment List created under E.3.0.
- E.4.2 For a period of six (6) months after the list is published, the Enrolment Committee will commence the Preliminary Enrolment Period during which time it will receive and review applications by individuals to be on the Enrolment List based on the eligibility criteria set out in E.1.0 and managed pursuant to the same criteria and procedures it established and published under E.3.0.

³ Canada currently reviewing alternative language

E.4.3 An individual whose name already appears on the Enrolment List need not apply except to have his or her name removed from the Enrolment List.⁴

E.4.4 The process for reconsideration and appeals during the Preliminary Enrolment Period will be consistent the process established during the Initial Enrolment as per E.3.3, E.3.4 and E.3.5.

E.4.5 At the end of the Preliminary Enrolment Period⁵, the Enrolment Committee shall provide the Enrolment List to the Ratification Committee.

E.5.0 DEHCHO CITIZENHIP REGISTER

E.5.1 Following Dehcho Ratification of the Dehcho Agreement, the Enrolment Committee will create the Dehcho Citizenship Register in which all names on the Enrolment List provided to the Ratification Committee under E.4.4 will be enrolled.

E.5.2 Until the Registrar is established under section E.8.1, the Enrolment Committee may continue to receive applications by individuals for the purpose of being added or removed from the Dehcho Citizenship Registrar, based on the eligibility criteria set out in E.1.0 and managed pursuant to the criteria and procedures it established under E.3.0.

E.5.3 Prior to the Effective Date, the Enrolment Committee will publish the Dehcho Citizenship Register and, as soon as practicable, provide copies of the Dehcho Citizenship Register to the Dehcho First Nations, GNWT and the Government of Canada.

E.6.0 APPEAL BOARD

E.6.1 Any final decision of the Enrolment Committee may be appealed to an Appeal Board to be established by the Parties six months prior to the initialing of the Final Agreement.

⁴ Canada currently developing additional language to further clarify that the burden of removing one's name from the list is on the individual

⁵ Canada questioning if appeals need to be completed prior to the Enrolment List being transferred to the Ratification Committee

- E.6.2 The Appeal Board will be composed of three individuals, one appointed by the DFN, one appointed by the Government of Canada and one jointly appointed by the DFN and the Government of Canada.
- E.6.3 The Appeal Board will:
- a) establish its own procedures applying the principles of natural justice;
 - b) set time limits for appeals⁶;
 - c) hear and determine any appeal brought forward including:
 - i. determining whether the appellant, or the individual on behalf of whom the appellant appealed, will be enrolled;
 - ii. re-hearing any matters arising from E.6.5 or E.6.6; and
 - iii. maintaining a record of those decisions;
 - d) provide written reasons for each decision to each appellant and to the Enrolment Committee; and
 - e) maintain a record of decisions and provide those decisions to the Enrolment Committee as required.
- E.6.4 An applicant or a Party may apply to the Supreme Court of the NWT to review a decision of the Appeal Board on the grounds that the Appeal Board:
- a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - b) failed to observe procedural fairness;
 - c) erred in law; or
 - d) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- E.6.5 On an application for judicial review under E.6.4, the court may dismiss the application, set aside the decision, or refer the matter back to the Appeal Board for determination in accordance with any directions that the court considers appropriate.

⁶ Canada still reviewing whether the agreement should set out the time limits for appeals

E.6.6 If the Appeal Board fails to hear or decide an appeal within a reasonable time, an applicant or Party may apply to the Supreme Court of the NWT for an order directing the enrolment appeal board to hear or decide the appeal, in accordance with any directions that the court considers appropriate.

E.6.7 An applicant or Party may apply for judicial review within 60 days of receiving notification of the decision of the enrolment Appeal Board or a longer time as determined by the court.

E.6.8 No action may be commenced against the Appeal Board, or any member of the Appeal Board, for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this chapter

E.7.0 ENROLMENT RESPONSIBILITIES AFTER EFFECTIVE DATE

E.7.1 The Enrolment Committee and the Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals commenced prior to Effective Date and will provide those results to the Registrar upon its establishment in accordance with E.8.1.

E.7.2 After Effective Date, the Dehcho Government will be responsible for Enrolment procedures, including appeal procedures, and will maintain an enrolment register and ensure that the Registrar provides a copy of the Dehcho Citizenship Register to the Government of Canada and the GNWT annually or at another time agreed by the Parties.

E.8.0 REGISTRAR

E.8.1 Prior to the Effective Date, the Dehcho First Nations will designate an individual or group of individuals as the Registrar. The Registrar will be established as soon as practicable after the Effective Date.

E.8.2 Following its establishment, the Registrar will prepare information respecting the Dehcho Citizenship Register and the eligibility criteria required to be enrolled as a Dehcho Citizen and make that information available to individuals eligible to be enrolled as Dehcho Citizens.

E.8.3 The Registrar will establish its own procedures and time limits for applications in accordance with the principles of natural justice.

E.8.4 The Registrar will:

- (a) continue to receive and review applications from individuals to be Dehcho Citizens and will add those accepted applications to the Dehcho Citizenship Register based on the eligibility criteria set out in E.1.0.
- (b) remove the names of the following individuals from the Dehcho Citizenship Register:
 - i) an individual who is deceased;
 - ii) an individual who is not eligible to be enrolled pursuant to E.1.3.
 - iii) an individual enrolled by mistake or on the basis of false or misleading documentation; or
 - iv) an individual who applies to be removed from the Dehcho Citizenship Register.

- E.8.5 Where the individual to be enrolled is a Dehcho Citizen is a child or is legally incompetent⁷, the application to be added or removed from the Dehcho Citizenship Register must be made by that person's parent, guardian or legal representative.
- E.8.6 The Registrar will make corrections to the name of an individual on the Dehcho Citizenship Register upon application and where appropriate.
- E.8.7 An individual whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed may, within 60 days of receipt of notice of such decision, appeal in writing to the Registrar⁸. The notice of decision will be in writing, will contain reasons and will inform the individual of the right to appeal.
- E.8.8 The Registrar will maintain a record of every person whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed from the Dehcho Citizenship Register.
- E.8.9 The Registrar will provide each Dehcho Citizen with proof of enrolment on the Dehcho Citizenship Register.
- E.8.10 The Registrar will publish the Dehcho Citizenship Register at least once a year.

⁷ Same issue in E.3.3

⁸ Dehcho will need to decide which body (Dehcho Government?) will be determining appeals.

E.8.11 The Registrar will send to the Dehcho Government, GNWT and the Government of Canada, a copy of each annual publication of the Dehcho Citizenship Register as well as notice of any additions to or subtractions from the Dehcho Citizenship Register.

E.8.12 The Registrar will provide to every person reasonable access to examine the Dehcho Citizenship Register and upon request provide a copy or excerpt. A fee for copies that are requested may be imposed⁹.

E.8.13 No action may be commenced against the Registrar or any member of the Registrar for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

E.9.0 COSTS

E.9.1 The Government of Canada will pay the reasonable and necessary costs of enrolment before the Effective Date, and any resulting appeals in accordance with an approved budget.

E.9.2 The Dehcho Government will be responsible for ongoing enrolment costs after the Effective Date, including the costs of its enrolment appeal process.

⁹ Canada questioning if there are any privacy issues with making the Dehcho Citizenship Register public