

Frequently Asked Membership and Status Questions

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1. What is the STAUTW First Nation Membership Law?

This Membership Law will determine whether a person is entitled or eligible for membership in the STAUTW First Nation.

2. How were these amendments reached?

The proposed STAUTW First Nation Membership Law (the "Proposed Law") have been developed through meetings and consultation with the membership, Chief and Council, a Membership Committee, the Lands Management Committee and Elders Council.

The Proposed Law takes into account all community input and any requirements under the *Indian Act*, recent case law and legal principles of natural and administrative justice. The proposed Law also incorporates the Sencoten language.

3. What are the main changes in the Proposed Law?

The original Tsawout Membership Code came into force on June 26, 1987. At that time, many First Nations chose to adopt their own membership laws. Since then, it has become clear that the Membership Code no longer fits with the intent and desire of the community with respect to membership in the STAUTW First Nation.

- The Proposed Law strives to make the application process clear and transparent while maintaining the spirit and overall intent of the old rules: that all STAUTW First Nation descendants be entitled, or eligible, for Membership in the Nation.
- The Proposed Law modifies the process that the Law can be amended.
- The Proposed Law allows for automatic entitlement to STAUTW Membership when the parent is or was a STAUTW Member by birth (ie. not a Member by transfer or by marriage).
- The Proposed Law allows persons who have a grand-parent or great grandparent who would be a STAUTW Member by birth to make an application for membership, and this application will be decided by Council, after consideration of certain factors.
- The Proposed Law removes the requirement to have an Adoption Ceremony, however, there will be yearly welcoming ceremonies for the community to welcome new members.
- The Proposed Law removes the requirement that an applicant needs a sponsor and that the sponsor must be able to allocate land to the new member.

4. Who can be a Member of the STAUTW First Nation?

If the Proposed Law is enacted, from that time forward, in order to be a Member of STAUTW First Nation, a person must be:

- a person who is a descendent (child/grand-child or great-grandchild, whether adopted or biological) of a **STAUTW Born Member** (defined on next page); or
- Be **QELWILNEW** (for the purposes of this Law means persons of an Aboriginal nation that is indigenous to what is currently known as Canada and the United States of America and accepted by STAUTW First Nation as being of Aboriginal Descent by showing proof of Aboriginal Descent) and transfer into STAUTW First Nation.

In the Proposed Law, **STAUTW Born Member** means:

“STAUTW Born Member” means a Member, or person entitled to be a Member:

- who has never been a member of another First Nation, and
- who is, or was, the parent, grandparent or great-grandparent of the applicant either biologically or as a result of any Adoption,
 - and the parent, grandparent or great-grandparent did not acquire his or her Membership, or entitlement to Membership, solely as a result of marrying a Member, transferring into STAUTW First Nation, by being Adopted by a STAUTW Born Member or pursuant to discretionary Membership under Section 5.1(c) of the Law.

5. Who is entitled to be a Member?

A person is entitled to be a Member if he or she can provide satisfactory proof that at least one (1) of his or her parents is or was a STAUTW Born Member. Applications for persons who fit this criteria are made under Section 4 of the Proposed Law.

Persons approved for membership under this Section will be considered STAUTW Born Members.

Section 4 is primarily directed at newborn babies and provides for automatic Membership, if the child (or person who is not already registered) has at least one (1) parent that is STAUTW Born Member.

6. Who is eligible to be a Member?

More distant STAUTW relations (grandparent/great grandparent)

Persons who do not have a STAUTW Born Member as a parent, but who do have STAUTW Born Member who is a grandparent or great grandparent can apply for membership under Section 5.

Sections 5.1(a) and (b) provide Tsawout the discretion to grant Membership to those applicants who have a grandparent or great grandparent that was a Tsawout Born Member. If at least one of the applicant's grandparents or great-grandparents is a Tsawout Born Member, then Council has the discretion to grant Membership to the applicant.

No STAUTW relations but a Member parent

In some cases, a parent will be a Member, but not a STAUTW Born Member. for example:

A Haida woman with Indian status married a Tsawout Member prior to this Law and became a STAUTW Member. She is a STAUTW Member, but not by birth/blood. She later becomes divorced or widowed, but she maintains her Membership with Tsawout. She STAUTW has a child with another non- STAUTW man, and wants to register her child with Tsawout.

- Council will have the discretion to grant or deny Membership to her child.

In these cases, applicants can apply for membership under Section 5(1)(c).

Transfers

Members of other First Nations can apply for Membership with STAUTW under this Section, and if applicable, can include their Children and/or Dependents in their application. Section 6 provides STAUTW the discretion to grant Membership to those applicants who want to transfer to STAUTW. Under this Section Council have the opportunity to consider various factors, such as the applicant's familial and communal ties to STAUTW, traditional knowledge and potential contribution to STAUTW, the land or housing capacity of STAUTW at the time, and any criminal or antisocial behaviour that warrants denial of Membership

7. Is there anyone who can't be a Member of the STAUTW First Nation?

Yes. After this Law come into force, only persons who are of STAUTW First Nation Descent or Aboriginal Descent can be Members. Persons cannot maintain membership in two First Nations at the same time. Section 7 of the Law explicitly lists those persons who cannot be Members.

8. I'm a Member, will my child be a Member?

This question requires that you know whether you are a STAUTW Born Member, or not.

If you are a STAUTW Born Member, then YES, your child will be entitled to membership.

If you are not a STAUTW Born Member but you are a member, then the application will be discretionary, based on the factors set out in Section 6.3.

9. Who will decide whether a person can be a Member?

Because the criteria for Membership in Section 4 is very straight forward, decisions under this Section will be made by the Membership Administrator upon receipt of all documentation from the applicant and the Government of Canada (if required). Decisions made by the Membership Administrator can be appealed under the Law, and the appeal will be heard by the Membership Committee who will make a recommendation to Council. Council decisions can also be appealed under the Law, and appeals will be heard by an Arbitrator, who's decisions will be final.

All other applications (for persons who don't have a parent who is a STAUTW Born Member and Transfer applications) will be decided by Council, who will receive a recommendation from the Membership Committee. Decisions made by Council can be appeals under the Law, and appeals will be heard by an Arbitrator, who's decision will be final.

10. What will happen to the people who are on the membership list now?

Everyone on the current Membership List will continue to be Members after these Proposed Amendments come into force unless someone becomes disentitled under Section 9 (discussed in Question 13 of this FAQ).

11. How do I submit an application for Membership?

There are prescribed forms that must be used when applying for Membership for yourself or your child. All required information will be requested on the forms. This is to ensure that all applicants submit the same information and all applications can be processed in the same manner.

All forms can be found at the back of the Proposed Membership Law.

12. What if I don't agree with a Membership decision that was made?

All decisions on Membership made by the Membership Administrator or Council can be appealed or protested by the applicant, or a Member (see Sections 13-15 of the Proposed Law). All appeals and protests will be decided by an Arbitrator, who's decision is final and binding.

13. Can I lose my Membership?

It is possible to give up your Membership or to have it revoked for certain actions.

Membership can be revoked if a final determination is made that:

- A person is maintaining two memberships in two First Nations,

- the person became a Member as a result of an error, or
- the Member is someone who is not of Aboriginal Descent and gained membership solely through marriage prior to 1985 and has since divorced or separated from the Member husband.

If revoking Membership is proposed, the affected Member will be given 30 days to meet with Council to present information as to why their name should not be removed from the Membership List. Council will consider evidence and submissions from the affected Member before they make a decision.

All decisions made by Council to revoke a person's membership can be appealed.

14. What if someone making a Membership decision is in a conflict of interest?

The Proposed Law prohibits decisions being made by people who are in a conflict of interest, specifically, the application or decision being considered cannot be a member of the decision maker's immediate family.

Immediate Family is defined in the Proposed Law as **meaning "the spouse, common-law, sons, daughters, step-sons, step-daughters, brothers, sisters, parents, father-in-law, mother-in-law and grandparents. This may also include other relatives permanently living in the employee's household or with whom the employee permanently resided at one time for a period of more than one (1) year."**

In the event that the Membership Administrator is processing an application submitted by his or her Immediate Family, the application and decision will be reviewed by the Director of Operations before the application can be approved and the applicant's name added to the Membership List.

In the event that a member of the Membership Committee or Council is processing an application submitted by his or her Immediate Family, he or she shall declare the relationship and be excused from the recommendation on that particular application.

15. What's the difference between Indian status and Membership?

Prior to 1985, entitlement to band membership usually accompanied entitlement to Indian status. The 1985 *Indian Act* amendments recognized the rights of First Nations to determine their own membership. **As a result, since 1985, persons may have Indian status, but not be members of a band, or persons could be a member of a band, but not have status under the *Indian Act*.**

Although STAUTW First Nation has authority to determine membership in the Nation, the Minister (Canada) still has the authority to determine who is eligible to be registered as an "Indian" and have "*status*", under Section 6 of the *Indian Act*.

The Proposed Law makes it possible for a person to be a Member even if they don't have Indian status under the *Indian Act*, and STAUTW First Nation has no authority to grant or revoke registered Indian *status* from any person.

STAUTW First Nation will be working towards issuing STAUTW First Nation Membership Cards for members to carry on them.

16. What's the difference between Section 6(1) and Section 6(2) Indian status?

The 1985 Indian Act amendments essentially created different levels of status, depending on whether a person has one or two registered parents under the *Indian Act*.

This means that, if you have:

- two parents who are entitled to be registered under Section 6(1), you will also be entitled to be registered under Section 6(1);
- one parent entitled under Section 6(1) and your other parent is not entitled, you will be entitled to be registered under Section 6(2); and if you have
- one parent entitled under Section 6(2) and the other parent is not entitled, you will not be entitled to be registered as a status Indian under the *Indian Act*.

In April 2009 the Court of Appeal for British Columbia ruled in the case of *Mclvor v. Canada* that the *Indian Act* continues to discriminate between men and women with respect to registration as an Indian. In its ruling, the Court gave Parliament one year, until April 6, 2010, to amend the provisions of the *Indian Act* that were found to be unconstitutional. In order to comply with the Court of Appeal's decision, in March 2010 the Government of Canada introduced legislative amendments to certain registration provisions of the *Indian Act*.

The Mclvor amendments deal with one issue only: **the eligibility of grand-children of women who lost status as a result of marrying non-Indian men.**

This means that for the first time ever, the grand-children of women who regained Indian status and membership in 1985 will be entitled to registration as a status Indian under the *Indian Act*.

Note: these grand-children would likely be entitled to STAUTW First Nation membership under the Proposed Law, if their parent or grandparent was or is an STAUTW Born Member - see Sections 4 and 5 of the Proposed Law.

17. What if I want to make a suggestion or have comments on the Proposed Law?

If, after reviewing the Proposed Law, you would like to make a comment or suggestion, or have any questions regarding the Proposed Law, please forward any comments or questions to Gwen Underwood, Lands Manager, by:

email:shaysema@tsawout.ca or
by calling 250-652-9101.

18. Can we amend the Proposed Law once they come into force?

Amendments to the Proposed Law require 10% of Electors to consent to any amendments.

19. What happens now?

Before these Proposed Law can come into force a majority of the majority of electors of the STAUTW First Nation have to vote to adopt the Proposed Law.

Vote Date: February 21 & 22, 2013