

# TOQUAHT NATION CONSTITUTION



This Constitution approved by Toquaht eligible voters on May 14, 2007 with amendments approved by Toquaht eligible voters on January 27, 2014

*Anne Mack*

Signed \_\_\_\_\_  
Anne Mack, ḥaʔwił of the Toquaht Nation



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## PREAMBLE

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

We, the people of the Toquaht, 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 Schedule 1 to this Constitution, throughout history.

We draw our identity from our relationship to our lands 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 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 *ḥaʔwiiḥ* and our *ḥaḥuʔi*,
- (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 *ḥaḥuʔi* of our *ḥaʔwiiḥ*.

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.

**C. This Constitution**

This Constitution and all powers and jurisdictions established in it, are made in accordance with and subject to the Maa-nulth Treaty.

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**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;
  - (b) was registered on the Toquaht Indian Band List as of the day immediately preceding the Effective Date of the Maa-nulth Treaty;
  - (c) has been adopted as a child by an individual of Toquaht descent under Canadian law, the Maa-nulth Treaty or in accordance with Nuu-chah-nulth custom;
  - (d) is of Toquaht descent; or
  - (e) meets any additional criteria established under Toquaht citizenship laws.
- 1.1.1 For certainty, Toquaht citizenship does not, in itself, confer any treaty rights or benefits on an individual.
- 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 Subject to paragraph 1.2 and to such reasonable limits established by law as can be demonstrably justified in a free and democratic society, 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 in accordance with 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;
  - (f) the right to equal access to public services provided by the Toquaht;
  - (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 freedom to pursue a livelihood within Toquaht lands;
- (l) the freedom to contribute to the progress and development of the Toquaht;  
and
- (m) the freedom to achieve their fullest potential as individuals.

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## CHAPTER 2 - TOQUAHT GOVERNMENT STRUCTURE

- 2.1 The Toquaht government consists of a legislative branch, an executive branch and a People's Assembly.
- 2.2 Toquaht may, in accordance with the Maa-nulth Treaty and the amending provisions of this Constitution, establish a judicial branch of the Toquaht government.
- A. The Legislative Branch**
- 2.3 All legislative powers assumed through this Constitution are vested in the Council.
- 2.4 The Council is composed of five members consisting of
- (a) three elected members of Council,
  - (b) the ḥa?wił (First Chief), and
  - (c) the Chaa-maa-taa (Second Chief).
- 2.5 The elected members of Council hold office for a term of four years.
- 2.6 The elected members of Council must be Toquaht citizens who are at least 18 years of age.
- 2.7 The times, places and manner of holding elections must be established by the Council in the Toquaht election law.
- 2.8 Upon an elected Council position becoming vacant, a by-election must be held within 30 days of the date the vacancy occurred.
- 2.9 The Council must, at the beginning of each term of office, select from amongst themselves a chairperson to be responsible for chairing meetings of the Council and of the People's Assembly and for ensuring that the decisions of the Council are implemented.
- 2.10 The chairperson of Council may vote in Council decisions, however, if such a vote results in a tie, the motion fails.
- 2.11 No Toquaht law has force and effect until that law has been passed by a majority of a quorum of the Council and is certified by the ḥa?wił.
- 2.12 Except for Toquaht customary laws, all Toquaht laws must be published and made available to Toquaht citizens within ten days of the law coming into effect.

**B. The Executive Branch**

- 2.13 The executive powers of the Toquaht government are vested in the chairperson of Council and any individual member of Council designated by a majority of the Council to hold a specific portfolio.
- 2.14 The Council may establish or dissolve executive portfolios at any time.
- 2.15 Each member of the Executive is directly accountable to the Council and must report to the Council on a regular basis or as requested by the Council.
- 2.16 Members of the Executive have the power and duty to oversee the enforcement of Toquaht laws, the management of Toquaht affairs, Toquaht financial administration and the operations of the Toquaht government within the areas of their respective portfolios and in accordance with Toquaht laws.
- 2.17 Upon and subject to the direction of the chairperson of Council, members of the Executive, within the areas of their respective portfolios, are responsible for representing the Toquaht in intergovernmental relations, including relations with other First Nations.
- 2.18 The ha?wıl of Toquaht, as primary spokesperson of the Toquaht government, has authority and responsibility, subject to direction from Council, for
- (a) representing the Toquaht 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 Toquaht,
  - (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, and
  - (e) promoting and protecting Toquaht values, culture, traditions and language.
- 2.18.1 The chairperson of Council, as chief executive of the Toquaht government, has authority and responsibility, subject to direction from Council, for
- (a) ensuring that the Toquaht Constitution and Toquaht laws and procedures are adhered to and enforced,
  - (b) developing and maintaining a sound Toquaht economy,
  - (c) the proper management and administration of the Toquaht government, and

- (d) those additional roles and responsibilities contemplated in this Constitution.
- 2.19 Council may designate a member of Council to assume the powers and duties of the chairperson of Council on an interim basis in the event that the chairperson of Council is, for whatever reason, unable to exercise the powers and perform the duties of that office.
- 2.20 Council may establish any public institution or body that it deems necessary to meet the duties of the Toquaht government or to protect or advance the interests of the Toquaht.

**C. People's Assembly**

- 2.21 The People's Assembly must be convened at a minimum of four times annually, one of which such meetings must 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 must include in its agenda the annual Toquaht financial report, including remuneration paid to Council.
- 2.23 The chairperson of Council, in consultation with Council, may at any time call a special People's Assembly to address important Toquaht issues.
- 2.24 The chairperson of Council must convene the People's Assembly in accordance with procedures established by Council and as amended from time to time.
- 2.25 Subject to paragraph 2.26, 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 a referendum law established by Council, recommend that Council hold a referendum on a specific issue.
- 2.28 [Repealed]
- 2.29 All resolutions passed by the People's Assembly must be considered and voted on by Council.

**D. Committees**

- 2.30 Council may establish standing or special committees to assist in the discharge of its powers and duties.
- 2.31 All committees may include any Toquaht citizen over the age of 18 and must include at least one member of Council.
- 2.32 All committee members, including committee members who are members of Council, have the right to vote in committee decisions.
- 2.33 Council must establish the terms of reference for each committee and must appoint all committee members in accordance with the respective terms of reference.
- 2.34 In appointing committee members, Council must 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 must be made public.
- 2.36 The standing committees must 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.

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**CHAPTER 3 - LEGISLATIVE AUTHORITY OF TOQUAHT GOVERNMENT**

- 3.1 The Toquaht government has the right to assume and exercise all law-making authorities set out in the Maa-nulth Treaty and any law-making authorities set out in non-Treaty agreements with Canada or British Columbia.
- 3.2 In accordance with the respective provisions of the Maa-nulth Treaty, Council has the authority to make laws pertaining to:
- (a) Toquaht citizenship;
  - (b) Toquaht 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 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) Conflicts of interest;
- (dd) Conduct of public officials;
- (ee) Access to information;
- (ff) Enforcement of Toquaht 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 Council must bring into force and maintain in effect:

- (a) rules of procedure for Council;
- (b) a Toquaht election law;
- (c) a Toquaht code of conduct and conflict of interest law;
- (d) a Toquaht financial administration law;
- (e) a Toquaht citizenship law;
- (f) a Toquaht land law;
- (g) a Toquaht dispute resolution law;
- (h) a Toquaht referendum law; and
- (i) any other law that the Council deems necessary for the proper management of Toquaht affairs.

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- 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 (a) Subject to paragraph 3.5 and to Chapter 9, Council may, in an Interpretation Act, define words and phrases and establish principles of interpretation used in this Constitution.
- (b) For certainty, this Constitution may only be amended in accordance with Chapter 9, and any provision of an Interpretation Act purporting to or having the effect of amending this Constitution is of no force or effect.
- 3.6 Council may, by law, delegate
- (a) its law-making authority to
- (i) the Executive,
  - (ii) a Toquaht public institution established by law; or
  - (iii) a public institution established by one or more First Nation Governments in British Columbia
- (b) its authority to make orders to
- (i) the Executive, or
  - (ii) one or more directors or senior managers.



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## CHAPTER 4 - TOQUAHT LAND SYSTEM

- 4.1 The underlying title to all Toquaht lands vests collectively in Toquaht.
- 4.2 The quantity of Toquaht lands, as set it out in the Maa-nulth Treaty, must not be reduced except as provided for in the Maa-nulth Treaty.
- 4.3 Council may, at any time and in accordance with the Maa-nulth Treaty, increase the quantity Toquaht lands through purchase or other acquisition.
- 4.4 Other than in accordance with paragraph 4.3 or the Maa-nulth Treaty, the boundaries of Toquaht lands must not be altered, unless approved by at least 50% of Toquaht eligible voters in a referendum held to approve the boundary alteration.
- 4.5 Council must develop and maintain a Toquaht land law that addresses, among other things:
  - (a) the nature and extent of the rights of individual Toquaht citizens in and to Toquaht lands;
  - (b) the powers of the Toquaht government to administer, regulate, expropriate and grant interests in Toquaht lands;
  - (c) land transactions that 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 Council deems necessary for a comprehensive land law.
- 4.6 Despite the conveyance or alienation of any estate or interest in Toquaht lands, all lands that are the subject of such estate or interest continue to be Toquaht lands and subject to the jurisdiction of the Toquaht government.



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**CHAPTER 5 - FINANCIAL ADMINISTRATION AND ACCOUNTABILITY**

- 5.1 Council, in exercising financial authority, including the authority to raise and expend revenues, must make laws to establish a system of financial management and administration that is:
- (a) effective and efficient in the use of Toquaht financial resources;
  - (b) open and accountable; and
  - (c) includes standards comparable to those generally accepted for governments in Canada.
- 5.2 Council must establish a standing committee on finance which committee must make recommendations to Council on any financial matter and in relation to any law regarding financial matters.
- 5.3 Council must 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 Council must 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.
- 5.5 Each year, Council must prepare a draft annual budget for presentation to the People's Assembly prior to the commencement of the fiscal year the annual budget applies to.
- 5.6 Each year, Council must prepare annual audited financial statements for Toquaht, for presentation to the People's Assembly at the next annual general assembly following the fiscal year end.

- 5.7 Council may borrow money or guarantee loans subject to a law made for such purposes, which law must 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 government must be administered in a manner that:
- (a) adheres to the highest ethical standards;
  - (b) efficiently uses Toquaht resources;
  - (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 Council must conduct themselves at all times with integrity and respect for their positions and must place Toquaht interests ahead of their own in the exercise of their powers and performance of their duties.
- 6.3 Council must bring into force and maintain in effect a code of conduct and conflict of interest law.



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**CHAPTER 7 - DISPUTE RESOLUTION**

- 7.1 Council must bring into force and maintain in effect a Toquaht dispute resolution law that provides for, among other things, a public body to address disputes with the Toquaht government and a process for challenging the validity of Toquaht laws and a process for appealing or reviewing administrative decisions of the Toquaht government or Toquaht public institutions.
- 7.2 The body and power to address disputes with the Toquaht government must 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; 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 must consist of three members with one chosen by the ḥa?wił and two chosen by the elected members of Council.
- 7.4 The body and power to address disputes must be provided with sufficient resources to meet its obligations under this Constitution.



**CHAPTER 8 - [REPEALED]**



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## 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 Council; or
  - (b) the presentation of a petition to 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 a resolution or receipt of a petition identified in paragraph 9.1, Council must develop wording for the proposed Constitutional amendment.
- 9.3 Prior to conducting a referendum on the proposed amendment, Council must:
- (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 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, Council must conduct a referendum on the proposed Constitutional amendment in accordance with the procedures set out in the Toquaht referendum law.
- 9.5 This Constitution may only be amended with the approval of at least 50% plus one of Toquaht eligible voters at the time of the referendum described in paragraph 9.4.
- 9.6 This Constitution is be deemed to be amended as of the date of certification by the *ha?wił* of the required level of approval by Toquaht eligible voters.
- 9.7 Council must post in accordance with Toquaht law notice of all Constitutional amendments.



SCHEDULE 1 - TOQUAHT TRADITIONAL TERRITORY

