



TSAWWASSEN FIRST NATION  
s̓c̓awaθən məsteyəx<sup>w</sup>

2009

## MEMBERSHIP ACT

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# TSAWWASSEN FIRST NATION

2009

## MEMBERSHIP ACT

### *Contents*

1	Citation
2	Definitions
<b>PART 1-TSAWWASSEN ENROLMENT REGISTER</b>	
3	Register
4	Eligibility criteria
5	Determination of ancestry
6	Adoption
7	Evidence of good character
8	No automatic disqualification
9	Factors to be considered
10	Definitions on effective date
11	No entitlement to membership
12	Non-aboriginal child
<b>PART 2 – REGISTRAR</b>	
13	Enrolment registrar
<b>PART 3 – ENROLMENT OR RE-ENROLMENT</b>	
14	Application for enrolment
15	Enrolment processes
16	Decision on application
17	Refusal notice
18	After notice
<b>PART 4 – REMOVAL, REVOCATION AND RE-ENROLMENT</b>	
19	No removal
20	Request for removal
21	Non-aboriginal individual
22	Upon death
23	Revocation of enrolment
24	Notice
25	Order
26	Order takes effect
27	Delivery
28	New information
29	Withdrawal and reinstatement
30	Reinstatement takes effect
31	Any order may be made
32	Decision is final
33	Re-enrolment
<b>PART 5 – OTHER AGREEMENTS</b>	
34	No entitlement

35 Satisfactory evidence

**PART 6 – COMMITTEES**

36 Enrolment committee continues  
37 Dissolution  
38 Tsawwassen enrolment committee  
39 Executive Council jurisdiction  
40 Committee responsibilities  
41 Composition of committee  
42 Committee member eligibility  
43 Holding position  
44 Proceedings  
45 Quorum  
46 Chair  
47 Decision making

**PART 7 – APPEAL BOARDS**

**Division 1 – Enrolment Appeal Board**

48 Establishment of enrolment appeal board  
49 Appointment of members  
50 Dissolution  
51 No member to be the same  
52 Duties  
53 Appeal  
54 Action upon appeal  
55 Enforcement  
56 Representation  
57 Decision final pending review

**Division 2 – Tsawwassen Enrolment Appeal Board**

58 Establishment of Tsawwassen enrolment appeal board  
59 Appointment of members  
60 No member to be the same  
61 Duties  
62 Appeal  
63 Representation  
64 Decision final pending review

**PART 8 – ANCILLARY MATTERS**

65 General  
66 Good faith performance  
67 Offence

**PART 9 – PROCESS FOR AMENDMENT**

68 Amendment

**PART 10 – RETROACTIVITY AND VALIDITY**

69 Approval by Tsawwassen legislature  
70 Validity  
71 Regulations  
72 *Interpretation Act* (British Columbia)  
73 Repeal  
74 Commencement

Tsawwassen Legislature enacts as follows:

#### Citation

1 This Act may be cited as the *Membership Act*.

#### Definitions

2 In this Act:

“**adopted**” or “**adoption**” means adoption under a law recognized in Canada, under a Tsawwassen law or under this Act;

“**committee**” means the enrolment committee or the Tsawwassen enrolment committee, as applicable;

“**effective date**” means the date on which the final agreement comes into force;

“**electors**” means Tsawwassen Members who are 18 years of age or older and are eligible to vote in Tsawwassen elections;

“**enrolment appeal board**” means the enrolment appeal board established under Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“**enrolment committee**” means the committee established under the membership code and which continues under this Act, as provided for in Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“**enrolment register**” means the enrolment register established before the effective date under Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“**enrolment registrar**” means the registrar appointed by Executive Council to maintain the Tsawwassen enrolment register;

“**Executive Council**” means the Executive Council established under the *Government Organization Act*;

“**final agreement**” means the Tsawwassen First Nation Final Agreement among Tsawwassen First Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, and includes amendments to that agreement made in accordance with it;

“**membership code**” means the Tsawwassen First Nation membership code and procedures voted and approved on July 7, 2007, as amended on July 19, 2008;

“**parties**” means the following parties to the final agreement

- (a) Tsawwassen First Nation;
- (b) British Columbia;
- (c) Canada;

“**referendum process**” means the referendum process established under the *Constitution Act*;

“**Tsawwassen enrolment appeal board**” means the Tsawwassen enrolment appeal board established under section 58;

“**Tsawwassen enrolment committee**” means the committee established under section 38;

“**Tsawwassen enrolment register**” means the list of Tsawwassen Members established under section 3 after the effective date and maintained by the enrolment registrar;

“**Tsawwassen Individual**” means an individual who is eligible to be enrolled as a member of the Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“**Tsawwassen Member**” means a Tsawwassen Individual who is enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“**Tsawwassen Legislature**” means the Tsawwassen Legislature established under the *Government Organization Act*.

## **PART 1 - TSAWWASSEN ENROLMENT REGISTER**

### **Register**

- 3** (1) After the effective date, Executive Council must establish the Tsawwassen enrolment register to replace the enrolment register.
- (2) The Tsawwassen enrolment register must be maintained by the enrolment registrar in accordance with this Act.
- (3) An individual whose name was entered on the enrolment register is entitled to be enrolled under the final agreement is a Tsawwassen Member and must have his or her name entered on the Tsawwassen enrolment register.
- (4) The Tsawwassen enrolment register may only be amended by adding or removing the names of Tsawwassen Members or individuals, as applicable, as provided by this Act.

### **Eligibility criteria**

- 4** An individual is entitled to be enrolled as a Tsawwassen Member, subject to section 12, if that individual
- (a) was a Tsawwassen Member or was entitled to be a Tsawwassen Member on or after the effective date,
  - (b) is of Tsawwassen First Nation ancestry, in accordance with section 5,
  - (c) was adopted by an individual eligible to be a Tsawwassen Member in accordance with sections 6, 7 and 9,
  - (d) is a descendant of an individual eligible to be a Tsawwassen Member under paragraphs (a) to (c) and (e), in accordance with section 9, or
  - (e) is an aboriginal individual who is a spouse of an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member, and
    - (i) whom the committee has determined to be of good character, and
    - (ii) who, if applicable, has resigned his or her membership in another Indian Band or First Nation.

### **Determination of ancestry**

- 5** For the purposes of section 4 (b), whether an applicant seeking to be a Tsawwassen Member is of Tsawwassen First Nation ancestry must be determined by the committee taking into account various factors including, but not limited to, evidence satisfactory to the committee of the applicant’s direct matrilineal or patrilineal descent from an

individual eligible to be a Tsawwassen Member under section 4, including evidence from a birth certificate or a statutory declaration.

#### **Adoption**

- 6** For the purpose of section 4 (c), whether an applicant seeking to be a Tsawwassen Member was adopted by an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member must be determined by the committee taking into account evidence satisfactory to the committee of the applicant's
- (a) adoption as a child before the age of majority by an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member,
  - (b) adoption as an aboriginal child before the age of majority by an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member, and who, if applicable, has resigned his or her membership in another Indian Band or First Nation,
  - (c) adoption as an aboriginal individual who is the spouse of an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member, and
    - (i) whom the committee has determined to be of good character, and
    - (ii) who, if applicable, has resigned his or her membership in another Indian Band or First Nation,
  - (d) adoption as a child before the age of majority by an aboriginal spouse of an individual with Tsawwassen ancestry eligible to be a Tsawwassen Member and who, if applicable, has resigned his or her membership in another Indian Band or First Nation, or
  - (e) adoption by an individual eligible to be a Tsawwassen Member,
    - (i) if the electors hold community consultations to determine the requirements for adoption,
    - (ii) upon the majority of the electors under subparagraph (i) approving the requirements for adoption, and
    - (iii) after the committee has determined that the individual to be adopted is of good character,
- before that adoption may be approved under the referendum process.

#### **Evidence of good character**

- 7** For the purposes of section 6 (c) and (e), in determining whether an applicant is of good character the committee may require that the applicant provide satisfactory evidence, including
- (a) two or more letters of reference demonstrating the applicant's good character, and
  - (b) a satisfactory criminal record check of the applicant.

#### **No automatic disqualification**

- 8** For the purposes of section 7 (b), the committee may
- (a) determine that a criminal record does not automatically disqualify an applicant from Tsawwassen membership, and
  - (b) permit an applicant with a criminal record to provide evidence of his or her good character.

**Factors to be considered**

- 9 For the purposes of section 4 (d), the committee may determine whether an applicant seeking to be a Tsawwassen Member is a descendant by taking into account various factors, including, but not limited to,
- (a) evidence of direct biological descent from an individual eligible to be a Tsawwassen Member, and
  - (b) evidence from a birth certificate or statutory declaration.

**Definitions on effective date**

- 10 On the effective date, “enrolment” and “membership”, as they are used in this Act, both have the same meaning.

**No entitlement to membership**

- 11 An individual is not entitled to be entered on the Tsawwassen enrolment register as a Tsawwassen Member except as provided for in this Act.

**Non-aboriginal child**

- 12 If a non-aboriginal individual has become a Tsawwassen Member before April 17, 1985 because of marriage to a Tsawwassen Member and that individual subsequently has a child with another individual who is not entitled to be a Tsawwassen Member, that child is not entitled to be a Tsawwassen Member under section 4 (d).

**PART 2 – REGISTRAR**

**Enrolment registrar**

- 13 Executive Council must appoint an enrolment registrar whose responsibilities include
- (a) entering and removing the names of individuals on the Tsawwassen enrolment register at the direction of the committee, and
  - (b) establishing required forms and notices.

**PART 3 – ENROLMENT OR RE-ENROLMENT**

**Application for enrolment**

- 14 An individual may apply to the committee for enrolment or re-enrolment under the final agreement by submitting an application in the form required by the enrolment registrar, including any prescribed information and records.

**Enrolment processes**

- 15 An applicant, on his or her own behalf, or on behalf of a child or an adult whose affairs the applicant has the legal authority to manage, may
- (a) apply to the committee to be enrolled or re-enrolled,
  - (b) appeal a decision of the enrolment committee to the enrolment appeal board or of the Tsawwassen enrolment committee to the Tsawwassen enrolment appeal board, or
  - (c) seek judicial review of a decision of the enrolment appeal board or Tsawwassen enrolment appeal board.

### **Decision on application**

- 16** The committee must instruct the enrolment registrar to enter the name of the applicant on the Tsawwassen enrolment register if the committee determines that the applicant has provided it with satisfactory evidence that the applicant meets the eligibility criteria under section 4.

### **Refusal notice**

- 17** (1) If the committee refuses to enroll or re-enroll an applicant on the Tsawwassen enrolment register, the committee must
- (a) deliver to the applicant a written notice of its decision including reasons for the refusal, and
  - (b) act in accordance with section 18 (2) on any new information submitted under section 18 (1).
- (2) Written notice of a decision under this section is sufficiently delivered to the applicant if it is
- (a) personally given to the applicant, or
  - (b) sent by registered mail to the applicant's address shown in the application for enrolment or re-enrolment

### **After notice**

- 18** (1) An applicant whose application for enrolment or re-enrolment has been refused under section 17 may submit new information to the committee for its consideration at any time within the prescribed time limits before the applicant requests an appeals under section 53 or 62, or requests a review of the decision under section 57 or 64.
- (2) If, based on the new information submitted under subsection (1), the committee determines that its decision to refuse to enroll or re-enroll the applicant was made in error it may direct the enrolment registrar to enroll or re-enroll that applicant.

## **PART 4 – REMOVAL, REVOCATION AND RE-ENROLMENT**

### **No removal**

- 19** An individual or the name of an individual may not be removed from the Tsawwassen enrolment register as a Tsawwassen Member except in accordance with this Act.

### **Request for removal**

- 20** On receipt of a notice in the form required requesting removal from the Tsawwassen enrolment register, from an individual
- (a) who is a Tsawwassen Member, or
  - (b) on behalf of a Tsawwassen Member for whom that individual has legal authority to manage the Tsawwassen Member's affairs,
- the committee must instruct the enrolment registrar to remove the name of that Tsawwassen Member from the Tsawwassen enrolment register.



### **Non-aboriginal individual**

- 21** A non-aboriginal individual who has by marriage become a Tsawwassen Member before April 17, 1985, may have their Tsawwassen Membership reviewed by the committee, and may no longer be entitled to Tsawwassen Membership if one or more of the following occurs:
- (a) divorce from the Tsawwassen Member;
  - (b) legal separation from the Tsawwassen Member;
  - (c) as a result of marriage breakdown, not living or cohabiting with the Tsawwassen Member as husband and wife for a period of at least 3 years.

### **Upon death**

- 22** The enrolment registrar must remove the name of a Tsawwassen Member from the Tsawwassen enrolment register on receiving satisfactory evidence that the Tsawwassen Member has died.

### **Revocation of enrolment**

- 23** Enrolment may be revoked on order of the committee, if the committee has reason to believe that an individual
- (a) has become enrolled on the basis of false representation, fraud or by knowingly concealing material facts or circumstances, or
  - (b) who is enrolled is not entitled to be enrolled,
- and the committee must send a written notice to that individual advising that it intends to make an order removing the name of the individual from the Tsawwassen enrolment register.

### **Notice**

- 24** A notice under section 23 must set out
- (a) the reasons for the intended order, and
  - (b) that the individual is entitled to make representations as to why the order of removal should not be made by filing an answer with the committee within 30 days of the date the individual receives the notice.

### **Order**

- 25** After considering any response received from an individual described under section 24 (b) and on being satisfied that the circumstances described in section 23 exist, the committee
- (a) may, by order, instruct the enrolment registrar to remove the individual's name from the Tsawwassen enrolment register, and
  - (b) must, if it makes an order under paragraph (a), deliver a copy of that order to Executive Council.

### **Order takes effect**

- 26** An order under section 25 takes effect 30 days after it is delivered to Executive Council unless within that 30 day period Executive Council disallows the order.

**Delivery**

- 27 A copy of an effective order made under section 25 must be delivered to the individual whose name has been removed from the Tsawwassen enrolment register in the same manner as provided in section 17 (2).

**New information**

- 28 An individual whose name has been removed from the Tsawwassen enrolment register under section 25 may submit new information to the committee for its consideration at any time before the individual requests an appeal under section 53 or 62 or review of the decision under section 57 or 64.

**Withdrawal and reinstatement**

- 29 If, based on the new information submitted under section 28, the committee determines that its decision to remove the individual's name from the Tsawwassen enrolment register was made in error, it must
- (a) withdraw its removal order, and
  - (b) reinstate that individual's enrolment on the Tsawwassen enrolment register.

**Reinstatement takes effect**

- 30 A reinstatement under section 29 is effective on the date the removal order is withdrawn.

**Any order may be made**

- 31 On the application of an individual whose enrolment on the Tsawwassen enrolment register has been reinstated under section 29, Executive Council may make any order it considers necessary and advisable to address any hardship considerations demonstrated by the individual as a result of the removal order made under section 25.

**Decision is final**

- 32 If an individual referred to in section 28 fails to
- (a) submit new information, or
  - (b) commence an appeal,
- within the prescribed time limits, the removal of his or her name from the Tsawwassen enrolment register is final.

**Re-enrolment**

- 33 After the effective date, an applicant may request to have his or her name, or the name of an individual in relation to whom the applicant submitted the application for enrolment, removed from the Tsawwassen enrolment register, and if that application is made, the applicant has only one opportunity to re-enroll.

## **PART 5 – OTHER AGREEMENTS**

**No entitlement**

- 34 Despite any other provision in this Act, an applicant is not entitled to have his or her name entered on the Tsawwassen enrolment register and does not meet the eligibility criteria of section 4 if the applicant is also

- (a) a member of an aboriginal group that is a signatory to a treaty,
- (b) enrolled under another land claims agreement in Canada, or
- (c) on an *Indian Act* band list,

and the applicant must inform the committee if that is the case.

#### **Satisfactory evidence**

- 35** If an applicant referred to in section 34 provides evidence satisfactory to the committee that he or she is entitled to have his or her name entered on the Tsawwassen enrolment register and meets the eligibility criteria of section 4 and if the committee determines that all other requirements are met, the committee must instruct the enrolment registrar to enter the name of the applicant on the Tsawwassen enrolment register.

## **PART 6 – COMMITTEES**

#### **Enrolment committee continues**

- 36** If there are any unresolved matters in relation to any application made before the effective date, the enrolment committee must continue to consider those matters after the effective date, until they are resolved.

#### **Dissolution**

- 37** The enrolment committee is dissolved after it has rendered its final decision in respect of those applications commenced before the effective date.

#### **Tsawwassen enrolment committee**

- 38** Despite section 36, Executive Council must establish a Tsawwassen enrolment committee to hear enrolment applications commenced after the effective date.

#### **Executive Council jurisdiction**

- 39** The committee is under the exclusive jurisdiction of Executive Council.

#### **Committee responsibilities**

- 40** The committee is responsible for
- (a) discharging its obligations under this Act, or any regulations made under this Act, under the final agreement and under any procedures that the committee may establish,
  - (b) establishing the Tsawwassen enrolment register and any schedules or appendices to it,
  - (c) publishing the eligibility criteria and the procedures to apply for enrolment or re-enrolment,
  - (d) keeping confidential all required information provided by and about applicants for enrolment or re-enrolment, in accordance with the regulations under this Act, or under any other Tsawwassen enactment,
  - (e) co-ordinating the referendum process,

- (f) determining whether an applicant is eligible to have his or her name enrolled on the Tsawwassen enrolment register, and
- (g) directing the enrolment registrar to enter names on, or remove names from, the Tsawwassen enrolment register.

**Composition of committee**

**41** The committee consists of a minimum of 3 members appointed by Executive Council.

**Committee member eligibility**

**42** To be eligible to be appointed as a member of the committee an individual must

- (a) be a Tsawwassen Member, and
- (b) understand Tsawwassen culture, ancestry, tribes and institutions.

**Holding position**

**43** A member of the committee appointed under section 41 holds his or her position until the member

- (a) resigns,
- (b) dies, or
- (c) is removed from office by Executive Council.

**Proceedings**

**44** Subject to this Act and the regulations, the committee may determine its own schedule, place, procedures and the method of conducting its meetings.

**Quorum**

**45** The quorum for the committee is a majority of its members.

**Chair**

**46** The members of the committee must appoint a chair from among themselves who is responsible for

- (a) chairing all meetings,
- (b) giving directions to the personnel assisting the committee to perform its responsibilities, and
- (c) signing all decisions and orders of the committee.

**Decision making**

**47** The committee must attempt to reach its decisions by consensus, but if consensus is not possible, a decision must be made by a motion passed by a majority of its members.

## **PART 7 – APPEAL BOARDS**

### **Division 1 – Enrolment Appeal Board**

#### **Establishment of enrolment appeal board**

- 48** Tsawwassen First Nation and Canada must establish, at a date agreed upon by the parties, an enrolment appeal board to hear appeals of decisions made by the enrolment committee in respect of enrolment or re-enrolment applications commenced before the effective date under the final agreement.

#### **Appointment of members**

- 49** (1) For the purposes of the establishment of the enrolment appeal board referred to in Chapter 21 [*Eligibility and Enrolment*] of the final agreement, Tsawwassen First Nation and Canada must
- (a) each appoint one member to the enrolment appeal board, and
  - (b) jointly appoint a third member.
- (2) The members appointed under subsection (1) must select a chair from among themselves.
- (3) Executive Council must make Tsawwassen First Nation appointments under subsection (1).

#### **Dissolution**

- 50** The enrolment appeal board is dissolved after it has rendered its final decisions in respect of those applications or appeals commenced before the effective date.

#### **No member to be the same**

- 51** A member of the enrolment committee may not also be a member of the enrolment appeal board.

#### **Duties**

- 52** The enrolment appeal board must
- (a) establish its procedures and set its time limits,
  - (b) publish its procedures and time limits,
  - (c) hear and determine appeals of decisions made by the enrolment committee in accordance with this Act, including decisions refusing applications for enrolment,
  - (d) conduct hearings in public, unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing,
  - (e) provide written reasons for each decision to each appellant and, if applicable, to the parties,
  - (f) maintain a record of decisions and provide those decisions to the enrolment committee as required, and
  - (g) if applicable and requested, provide a report to the parties about the appeal process.

## **Appeal**

- 53** If new information becomes available, or the enrolment committee fails to make a decision within the time established under section 52 (a), an applicant or a party, by written notice to the enrolment appeal board, may appeal any decision on eligibility criteria made by the enrolment committee.

## **Action upon appeal**

- 54** The enrolment appeal board may
- (a) require by summons, any individual to appear before the enrolment appeal board as a witness and to produce any relevant document in their possession,
  - (b) direct a witness to answer, on oath or by solemn affirmation, any relevant question posed to the witness, and
  - (c) rehear an appeal that was completed before the effective date.

## **Enforcement**

- 55** A judge of the Provincial Court of British Columbia, on application by the enrolment appeal board, may enforce a summons or direction under section 54.

## **Representation**

- 56** An appellant or party, or a witness appearing before the enrolment appeal board, may be represented by legal counsel or by an agent.

## **Decision final pending review**

- 57** All decisions of the enrolment appeal board are final and binding subject to an applicant applying to the Supreme Court of British Columbia to review a decision of the enrolment appeal board on the grounds that the enrolment appeal board
- (a) acted without jurisdiction, acted beyond 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 evidentiary material before it.

## **Division 2 – Tsawwassen Enrolment Appeal Board**

### **Establishment of Tsawwassen enrolment appeal board**

- 58** Executive Council must establish a Tsawwassen enrolment appeal board to hear appeals of decisions made by the Tsawwassen enrolment committee in respect of enrolment or re-enrolment applications made after the effective date.

### **Appointment of members**

- 59** The Tsawwassen enrolment appeal board consists of 3 members appointed by Executive Council and those members must select a chair from among themselves.

**No member to be the same**

- 60** A member of the Tsawwassen enrolment committee may not also be a member of the Tsawwassen enrolment appeal board.

**Duties**

- 61** The Tsawwassen enrolment appeal board must
- (a) establish its procedures and set its time limits,
  - (b) publish its procedures and time limits,
  - (c) hear and determine appeals of decisions made by the Tsawwassen enrolment committee in accordance with this Act, including decisions refusing applications for enrolment,
  - (d) conduct hearings in public, unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing,
  - (e) provide written reasons for each decision to each appellant,
  - (f) maintain a record of decisions and provide those decisions to the Tsawwassen enrolment committee as required, and
  - (g) provide to Executive Council a report on the appeal process, if requested, and that report may be provided to the Tsawwassen Legislature.

**Appeal**

- 62** An applicant, by written notice within the prescribed time limits, may appeal any decision made by the Tsawwassen enrolment committee to the Tsawwassen enrolment appeal board.

**Representation**

- 63** An applicant, or a witness appearing before the Tsawwassen enrolment appeal board, may be represented by legal counsel or by an agent.

**Decision final pending review**

- 64** All decisions of the Tsawwassen enrolment appeal board are final and binding subject to an applicant applying to the Supreme Court of British Columbia to review a decision of the Tsawwassen enrolment appeal board on the grounds that the Tsawwassen enrolment appeal board
- (a) acted without or beyond 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 evidentiary material before it.

## PART 8 – ANCILLARY MATTERS

### General

- 65** In addition to those matters set out in Part 6, the committee may also provide for any other matters it considers necessary and advisable for purposes of this Act, including, but not limited to
- (a) the making of any application under this Act, including, but not limited to
    - (i) information to be included in applications, and
    - (ii) records that must be submitted with applications,
  - (b) the maintenance of the Tsawwassen enrolment register,
  - (c) the administration of any oath, solemn affirmation or declaration,
  - (d) forms and notices,
  - (e) fees,
  - (f) documentation or other evidence respecting eligibility criteria,
  - (g) the procedures of the committee, and
  - (h) transitional matters.

### Good faith performance

- 66** No action lies against the enrolment registrar, the committee, the enrolment appeal board or any of its members, or the Tsawwassen enrolment appeal board or any of its members, for anything done or omitted to be done in good faith in the performance or intended performance of a duty under this Act.

### Offence

- 67** (1) An individual commits an offence under this Act if that individual, by false representation, fraud, or knowingly concealing material facts or circumstances
- (a) becomes a Tsawwassen Member,
  - (b) attempts to become a Tsawwassen Member, or
  - (c) assists another individual in becoming or attempting to become a Tsawwassen Member.
- (2) An individual who commits an offence under subsection (1) is liable on conviction to a fine of up to \$10 000 or to imprisonment for up to 6 months.

## PART 9 – PROCESS FOR AMENDMENT

### Amendment

- 68** This Act may be amended in accordance with Part 3 of the *Government Organization Act*.



## **PART 10 – RETROACTIVITY AND VALIDITY**

### **Approval by Tsawwassen legislature**

- 69** Tsawwassen legislature in enacting this Act approves and has approved the constitution of the enrolment committee and the enrolment appeal board and their decisions.

### **Validity**

- 70** For greater certainty, Tsawwassen legislature adopts and approves the validity of the enrolment register.

### **Regulations**

- 71** Executive Council may make any regulations required for the operation of this Act, including, but not limited to
- (a) the removal of members of the committee,
  - (b) appointments that may be made under this Act,
  - (c) the provision of a list of Tsawwassen Individuals, and
  - (d) any other matters that may be required.

### ***Interpretation Act (British Columbia)***

- 72** Unless the context otherwise requires, the *Interpretation Act* (British Columbia) applies to this Act.

### **Repeal**

- 73** The membership code and procedures approved on July 7, 2007, as amended on July 19, 2008, enacted by the Tsawwassen legislature, and read as amended, are repealed.

### **Commencement**

- 75** This Act comes into effect on the date of its enactment by Tsawwassen Legislature.