



Crown-Indigenous Relations
and Northern Affairs Canada

Relations Couronne-Autochtones
et Affaires du Nord Canada

Federal Interests: Eligibility & Enrolment

BCTC Virtual Forum

August 28, 2023

WITHOUT PREJUDICE

DRAFT FOR DISCUSSION PURPOSES ONLY



Canada



What is Eligibility and Enrolment (E & E)?

PURPOSE OF E&E CHAPTER

- Determine who is eligible to be enrolled in the Treaty
- Define who may participate in the ratification vote

- **ELIGIBILITY:** who may enroll
- **ENROLMENT:** administrative process of registering eligible individuals
- **ENROLLEE/BENEFICIARY:** individual who is enrolled under the Treaty/agreement





Canada's E & E Interests and Objectives

- **Supporting Indigenous Self-Determination:** acknowledge how Indigenous peoples define and govern themselves as nations and implement these definitions in cooperative agreements;
- **Predictability:** individuals who have a reasonable claim to belong to a rights-holding collective exercise the rights held by the collective through a cooperative agreement (such as a Treaty);
- **Durability:** ability of an agreement to withstand legal and other challenges;
- **Opportunity:** ensure that all eligible individuals whose legal rights would be impacted by the Treaty can enroll and vote in the ratification process;
- **Fairness:** have criteria and enrolment process that is administered in a fair, transparent, impartial manner with right of appeal (and judicial review);
- **Clarity:** have clear eligibility criteria and clearly documented enrolment process; and,
- **Affordability:** ensure the enrolment process is cost-effective.





Other E & E Considerations

- No person may be enrolled or a beneficiary in more than one Treaty or land claims agreement or be a member of another Band at one time
- In Treaties with multiple First Nations, an individual can only be an enrollee of one of the Treaty Nations at a time
 - Example: Maa-nulth 26.1.2
- Individuals may become eligible for a Treaty if they withdraw from another
 - Example: Maa-nulth Final Agreement, allows for those that meet eligibility criteria to, if application succeeds, withdraw from enrolment under another Treaty or lands claim agreement and is no longer entitled to receive benefits under that Treaty or land claims agreement





Typical eligibility criteria supported by Canada includes:

- **Ancestry** demonstrable link to Indigenous collective holding s.35 Aboriginal Rights
- **Descendant** of an individual eligible for enrolment
- **Band List** *Indian Act* Band members or those eligible/entitled to be registered as Band members
- **Adoptees** Canadian law or custom adoption
- **Non-Aboriginal Wives** (pre-1985)
- **Previously disenfranchised Aboriginal Women** (post-1985 – Bill C-31)

Additional criteria proposed by an Indigenous collective may be considered by Canada on a case-by-case basis. (e.g. demonstrated attachment)





Self-Determination in E&E Chapter

- First Nations co-develop eligibility criteria with Canada and lead on enrolment process
- Enrolment committee representatives typically appointed by the First Nation
- Enrolment committee determines whether an applicant meets the eligibility criteria
- Enrolment Appeal Board typically includes representatives appointed by the First Nation and Canada
- After the effective date, the First Nation sets-up its own process for making decisions on enrolment applications

NEW

- Canada and First Nations can negotiate Treaty provisions that enable Treaty nations to amend eligibility criteria after the effective date
- Parties may co-develop an amendment process to include within E&E chapter (Template for amendment process is available if requested)





Eligibility & Enrolment Funding

- Supports the eligibility and enrolment process to allow for members to vote on the establishment of a constitution.
- The same voters would be updated and used to support the ratification of the final agreement.





Eligibility & Enrolment Process

- Canada and BC cost-share the eligibility and enrolment offers for modern treaty agreements under the BC Treaty Process.
- Canada and BC develop offers for eligibility and enrolment and present it jointly to the First Nation.
- Any payments of funds are subject to appropriation by the Parliament of Canada and the Legislature of British Columbia





Eligibility and Enrolment Funding

- Eligibility and enrolment funding is intended to support:
 - Enrolment Committee
 - Enrolment Appeal Board
 - Honoraria for committee members
 - Travel for enrolment committee and staff
 - Temporary staffing
 - Administrative expense
 - Communications costs
 - Office costs
- EE funding is contribution funding and requires a work plan





Timing

- Timing is a table decision, with a view to having E&E in place in time for ratification votes.
- EE funding typically involves the following steps:
 - 1. Offer and acceptance
 - 2. Funding committed
 - 3. Funding flows according to standard ISC funding approaches
- Funded at or near the conclusion of negotiations and covers the Enrolment Committee and Enrolment Appeal Board until Effective Date, at which point governance funding takes over.

