

Kitselas First Nation Constitution

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Preamble

This Constitution affirms and continues the Inherent Right of the Kitselas Peoples to govern themselves as recorded in Kitselas history as follows:

Laws they had; but these were few; laws framed by Wise Men who watched the face of nature; who pondered long on the workings of Gyamk, the Sun God who lived in the Sky City of Lahah; laws that were made as they watched cause and effect work out their ends in the lives of men.

Some happening came to the people. The result was good and fortunate. "This is right," said the Wise Men. "This shall be embodied in a new law so that good fortune may be still more assured to our People." And when misfortune came these Wise Men delved deeply to find its cause.

At last, satisfied they had learned that which they had sought for, they said, "The action that lies at the root of this difficulty is wrong. Our People must be protected in the future that the same error may not be committed again. We make a new law forbidding that action."

So grew the Code. So were the children instructed in the ways of Right and Wrong. So generation followed generation, each one more vigorous; more prosperous.

Purpose

- 1) The Kitselas Constitution establishes a democratic form of government for Kitselas.
- 2) The Kitselas Constitution sets out the relationship between Kitselas Citizens and the Kitselas Government.
- 3) The Kitselas Constitution is the supreme law of Kitselas subject only to the Kitselas Treaty, and any Kitselas Law that is inconsistent with the provisions of the Kitselas Constitution is, to the extent of the inconsistency, of no force or effect.

Citizenship Criteria

- 4) An individual is a Kitselas Citizen if that individual is enrolled under the Kitselas Treaty; and for greater certainty all individuals registered on the Kitselas First Nation Membership List on the day immediately prior to the Effective Date of the Kitselas Treaty are eligible for enrolment under the Kitselas Treaty.
- 5) The enrollment criteria set out in the Kitselas Treaty may be amended by referendum in which at least:
 - a) fifty percent (50%) plus one (1) of all Eligible Voters on the Official Voters List must vote; and
 - b) fifty percent (50%) plus one (1) of those who vote must vote in favour of the proposed changes
- 6) All citizens of Kitselas are enrolled in the Kitselas Treaty
- 7) In no case will any Kitselas Citizens lose Citizenship as a result of any changes to the Criteria.

Rights and Freedoms

- 8) Every Kitselas citizen enjoys all of the individual rights and freedoms guaranteed under the Constitution of Canada.
- 9) Every Kitselas citizen may exercise Kitselas Section 35 Rights as set out in the Treaty, subject to laws necessary for conservation, public health or public safety.
- 10) All Kitselas citizens are equal under this Constitution, and have the right to:
 - a) participate in Kitselas political elections in the manner set out in Kitselas Law;
 - b) be informed regarding Kitselas public affairs;
 - c) express, in a civil manner, opinions and views on Kitselas affairs;
 - d) hold the Kitselas Government accountable to this Constitution, in accordance with Kitselas Law;
 - e) fair and equitable employment opportunities within the Kitselas Government, Kitselas Corporations and Kitselas Public Institutions;
 - f) fair and equitable provision of public services by the Kitselas Government; and
 - g) participate in Kitselas cultures, languages and traditions.

Entry rights

- 11) Every Kitselas citizen has the right to enter, remain in and leave Kitselas Lands in accordance with Kitselas law.

Political rights

- 12) Every Kitselas citizen has the right to make political choices, to participate in political activities, and to express a view on any public issue.

Election rights

- 13) Subject to residency and other requirements set out in Kitselas law, every Kitselas citizen who is at least 18 years of age is eligible to vote in Kitselas elections and to hold office in Kitselas Government.
- 14) The Legislature of Kitselas must make laws in respect of Kitselas elections and referendums, including the establishment of:
 - a) qualifications of voters;
 - b) qualifications of candidates for election to office;
 - c) the independent office of Chief Electoral Officer to administer elections and referenda;
 - d) procedures for the conduct of elections and referendums; and
 - e) areas or locations within which elections or referendums will be held.

Review and appeal of administrative decisions

- 15) Kitselas Government must provide appropriate procedures for the appeal or review of administrative decisions of Kitselas Public Institutions.

Note - The Kitselas Treaty Provisions respecting non-member representation are complex and will need to mirror whatever language is settled on in the treaty

Access to information

- 16) Kitselas Government must make laws in respect of access to information held by Kitselas Institutions.

Reasonable limits

- 17) The rights set out in this chapter are subject only to reasonable limits prescribed by Kitselas law that can be demonstrably justified in a free and democratic Kitselas society.

Non-Member Representation

- 18) The Kitselas Government will provide that Non-Member Residents are consulted about Kitselas First Nation Institutions decisions which directly and significantly affect them.
- 19) Kitselas First Nation Public Institutions will seek the views of Non-Member Residents in decisions of Kitselas First Nation Public Institutions that directly and significantly affect those Non-Members.

Government Structure

- 20) Kitselas has the inherent right to self-government including the authority to make laws for any matter as set out in the Kitselas Treaty.
- 21) The Kitselas Government consists of three branches;
 - a) the legislative;
 - b) the executive; and
 - c) the judicial.

Kitselas Legislature

- 22) The law-making authority of Kitselas is vested in the Kitselas Legislature.
- 23) The Kitselas Legislature shall be comprised of:
 - a) one (1) Chief elected by Eligible Voters in a Kitselas Election;
 - b) six (6) Legislators elected by Eligible Voters in a Kitselas Election; and
 - c) one chairperson.
- 24) The size of the Kitselas Legislature may be increased by Kitselas Law, provided that the total number of Legislators, including the Chief, shall not exceed eleven (11).
- 25) The Kitselas Legislature shall designate an elected member of the Legislature as Deputy-Chief who shall assume the duties and responsibilities of the Chief in the event that, in the opinion of the majority of the Legislature, the Chief is unable or unwilling to carry out the duties and responsibilities of that office.
- 26) The Chief:
 - a) May lead any delegation representing the Kitselas First Nation unless the Kitselas Legislature has assigned that responsibility to another person;
 - b) Shall be the spokesperson for the Kitselas Legislature subject to their direction; and
 - c) Shall carry out any duties assigned by the Kitselas Legislature.
- 27) The Chairperson shall
 - a) have the responsibility and authority:
 - i) to preside over sessions of the Kitselas Legislature;
 - ii) to preside over committee meetings required by the legislature;
 - iii) to preserve order and decorum in the legislature; and
 - iv) to decide questions of order and practice of the legislature; and
 - b) not vote on any matter before the legislature.

- 28) On the Effective Date, the Kitselas Legislature shall enact a law setting out the process by which the Kitselas Legislature shall make laws after the Effective Date.
- 29) All laws enacted by the Kitselas Legislature shall be made publicly available and placed in a Kitselas Law registry.
- 30) The Kitselas Legislature shall provide for the establishment of Kitselas Public Institutions.
- 31) The Kitselas Legislature shall establish its own rules and procedures including rules for the establishment of any committees by the legislature.
- 32) The Kitselas Legislature shall approve the budget of the Kitselas government at least annually.

Kitselas Administration

- 33) The Kitselas Legislature shall provide for the appointment of officers and the hiring of other employees to administer the affairs of Kitselas in an effective and fiscally responsible manner in accordance with this Constitution and Kitselas law.
- 34) Officers of Kitselas shall be appointed by resolution of the Legislature for so long as those officers have the confidence of the Legislature.
- 35) The process for appointment and removal of Kitselas officers shall be set out in a Kitselas Law.
- 36) The number, titles and responsibilities of Kitselas officers shall be set out in the organizational chart attached as Appendix “A” to this Constitution, which may be amended from time to time by Kitselas Legislation as administrative requirements evolve.
- 37) The Kitselas Administration shall be responsible for executing and enforcing the laws, regulations and policies of Kitselas, the administration of public affairs and the governance of Kitselas.
- 38) Subject to any Kitselas Law, the Kitselas Administration shall:
 - a) Preserve and promote the peace, unity and wellbeing of the Kitselas Nation;
 - b) act impartially in the best interest of Kitselas and respect this Constitution;
 - c) provide services to Kitselas citizens and others as set out in Kitselas law;
 - d) ensure effective communication and engagement with Kitselas Citizens;
 - e) protect and enhance Kitselas Section 35 rights;
 - f) ensure that the Kitselas Constitution, Kitselas Laws, and Kitselas Policies are adhered to;
 - g) promote and maintain a sound Kitselas economy;
 - h) ensure the sound management and administration of the Kitselas Administration;
 - i) convene the Kitselas People’s Assembly in accordance with section 33, and ensure that at that Assembly Kitselas Citizens are informed of the matters listed in section 23; and
 - j) perform other functions assigned to it under Kitselas Law.

- 39) Subject to any Kitselas Law, the Kitselas Administration may establish committees to assist in fulfilling its responsibilities.
- 40) The Kitselas Administration in exercising its functions may seek the advice of traditional leaders and respected elders.

Kitselas Judiciary

[Note – A BC Enforcement Working Group is examining this issue, which is still being examined and negotiated at the Treaty Table. The critical question here involves jurisdiction to adjudicate Kitselas laws, but there is a broader issue unresolved as to how Kitselas laws are enforced through what court and what police. If the Kitselas Tribunal has more powers assigned to it, legal training of at least some of its members might be appropriate.]

- 41) The Kitselas Legislature may establish adjudicative bodies and processes for the better administration of Kitselas laws.
- 42) Subject to the terms of the Kitselas Treaty, an adjudicative body established under s. 3.20 may be granted jurisdiction to:
 - a) adjudicate offences arising under Kitselas Law;
 - b) adjudicate civil matters as set out in Kitselas Law;
 - c) review administrative decisions of the Kitselas government
 - d) determine the validity of Kitselas laws

Kitselas People's Assembly

- 43) The Kitselas Administration shall convene at least once annually a general assembly of Kitselas Citizens to be known as the Kitselas People's Assembly.
- 44) The Kitselas Administration shall provide to the Kitselas People's Assembly:
 - a) the previous year's audited financial statements of the Kitselas Government, Kitselas Public Institutions and Kitselas Corporations;
 - b) the annual strategic plan of the Kitselas Government;
 - c) the proposed legislative agenda for the year; and
 - d) information concerning other matters of importance to the Kitselas First Nation.
- 45) The Kitselas People's Assembly may recommend constitutional amendments to the Kitselas Legislature by a resolution passed by majority vote of Eligible Voters in attendance
- 46) Every Kitselas Citizen may participate in the Kitselas People's Assembly.
- 47) Non-Citizen residents may be invited to attend but may be excluded where discussions involve matters internal to Kitselas.

- 48) The Kitselas People's Assembly may make recommendations to the Kitselas Administration by a resolution passed by majority vote of Eligible Voters in attendance.
- 49) The rules of order and procedure for the Kitselas People's Assembly shall be established in legislation enacted by the Kitselas Legislature.

Kitselas Elections

- 50) All members of the Kitselas Legislature shall be elected democratically.
- 51) Members of the Kitselas Legislature:
- a) shall be elected for a term of three (3) years; and
 - b) may serve for more than one (1) term.
- 52) On the Effective Date, the Kitselas Legislature shall enact a Kitselas Election Law.
- 53) The elected Kitselas First Nation Chief and Council at the Effective Date shall continue as the Kitselas Legislature until such time as elections can be held under this Constitution and the Kitselas Election Law.
- 54) The first election for the Chief and the Kitselas Legislature shall be held no later than six (6) months of the Effective Date.
- 55) The first election must be completed within one (1) year of the Effective Date.
- 56) Persons shall take office upon being declared elected in the manner set out in the Kitselas election law.

Restriction on Alienation of Kitselas Lands

- 57) The Kitselas Legislature or Administration shall not decrease the area or change the boundaries of Kitselas Lands unless it is first approved by at least 60% of Kitsumkalum Members who vote in a referendum.

OR

- 58) Kitselas Government shall not alienate, sell, surrender, mortgage or otherwise use their underlying interest in Kitselas Treaty Settlement Lands as security for a loan except in accordance with a Kitselas Law.

Financial Administration

- 59) The Kitselas Government, Kitselas Corporations and Kitselas Public Institutions shall manage their finances, on behalf of Kitselas Citizens, in a manner that conforms to principles of sound financial management.
- 60) On the Effective Date, the Kitselas Legislature shall enact a Kitselas Financial Administration Law that is modeled on accounting standards comparable to those generally accepted for governments of similar size and circumstance in Canada through which Kitselas Government, Kitselas Corporations and Kitselas Public Institutions will be financially accountable to Kitselas Citizens.

61) The Kitselas Financial Administration Law shall establish a Finance Committee to provide advice and recommendations to the Kitselas Legislature and Administration.

Treaty Settlement Fund

62) The Kitselas Government shall establish one (1) or more settlement trusts to preserve and protect

- a) the Kitselas capital transfer amounts received under the Kitselas Treaty, and
- b) the income derived from the investment of those funds.

63) The trust document establishing these trust funds shall set out the framework for the prudent management, investment and disbursement of the funds that are invested in the trust and the income derived therefrom.

Governance

64) On the Effective Date, the Kitselas Legislature shall enact a Conflict of Interest Law that is modeled on conflict of interest standards comparable to those generally accepted for governments of similar size and circumstance in Canada.

65) The Kitselas Public Institutions and their officials shall:

- a) be accountable to the Kitselas First Nation;
- b) adhere to this Constitution;
- c) promote the unity and well-being of the Kitselas First Nation;
- d) provide good, effective and accountable government; and
- e) develop and maintain open and transparent communications with the community.

66) Kitselas Corporations shall be required to have in place conflict of interest guidelines comparable to those set out in Kitselas Law.

Ratification

67) Ratification of this Constitution requires that at least:

- a) fifty percent (50%) plus one (1) of Eligible Voters on the Official Voters List vote; and
- b) fifty percent (50%) plus one (1) of those who vote are in favour of ratification.

68) A vote to ratify this Constitution shall be held prior to the vote held to ratify the Kitselas Treaty.

69) This Constitution, if ratified, shall come into force and effect on the Effective Date of the Kitselas Treaty.

Amendment

- 70) Amendments to this constitution may be initiated by a resolution of the Kitselas Legislature, acting either on its own motion or on the recommendation to the Kitselas Legislature by the Kitselas People's Assembly.
- 71) Subject to section 61, this Constitution may only be amended by way of a referendum in which at least:
- a) fifty percent (50%) plus one (1) of Eligible Voters on the Official Voters List vote; and
 - b) fifty percent (50%) plus one (1) of those who vote are in favour of the proposed amendment.
- 72) The Kitselas Legislature may amend this Constitution by resolution at any time in respect of correction of matters of a mere technical, grammatical, clerical or administrative nature without changing the substantive meaning of this Constitution

Severability

- 73) If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines any provision of this Constitution to be invalid or unenforceable, the provision will be severable from this Constitution, as applicable, to the extent of the invalidity or unenforceability, and the remainder of this Constitution, as applicable, will be construed, to the extent possible, to give effect to the intent of this Constitution.

Coming into Force

- 74) This Constitution comes into force on the Effective Date of the Kitselas Treaty.
- 75) In ratifying this Constitution, we, the people of Kitselas, hereby agree to be governed by the Kitselas Constitution and Kitselas Law.

Definitions

“Kitselas Administration” means the officers and employees of Kitselas.

“Non-Member Resident” means any person who is not registered under the Enrollment and Eligibility provisions of the Kitselas Treaty and resides on Kitselas lands for no less that six months or has an interest in Kitselas Lands, and, for greater certainty:

- a) non-aboriginal persons,
- b) members of other bands, and
- c) members or participants of other Treaty Nations are Non Member Residents