

Membership Code 2011

- A Squamish Response to Bill C-3

Issue Two : October 28, 2011

This bulletin explains the historical and current events that affect our Squamish Nation Membership Code in relation to Bill C-3 (*Gender Equity in Indian Registration Act*).

The Registry Department is organizing community forums to discuss the many issues brought up with Bill C-3.

The forums (with transportation and dinner provided) will be held on:

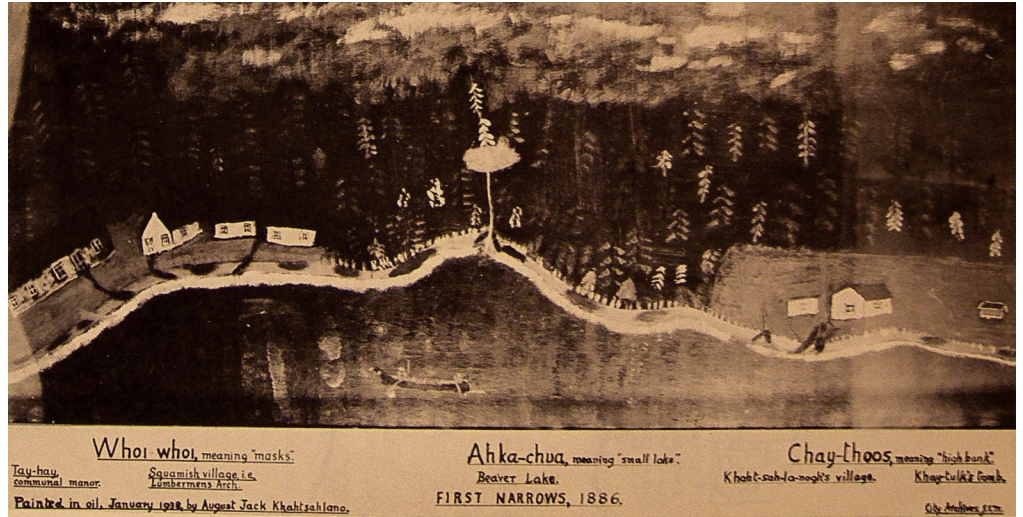
Thursday, November 17, 2011 at 6pm at Totem Hall, Squamish, BC

Monday, November 21, 2011 at 6pm at Chief Joe Mathias Centre, North Vancouver, BC



Squamish Nation Registry (Land and Membership)

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Oil painting by Chief August Jack, 1938 from *Conversations with Khahtsahlano 1932-1954*, J. S. Matthews

Background

Historically, the Squamish peoples determined entitlement to community membership. Culture and traditions as told by our Elders established rules regarding who was considered a member of our communities and who was from outside. Membership was based on blood ties to and residency in our Squamish villages as well as being honoured with ancestral names. Attempts to restrict this inherent right to determine our own membership began when contact with European cultures was made in the late 1700 and 1800s.

In 1867 with the establishment of Canada, constitutional jurisdiction over "Indians" was assigned to the Federal government. When British Columbia joined Canada in 1871, that constitutional jurisdiction was extended to include the Squamish peoples, along with all other Aboriginal peoples in the province. Under that jurisdiction, the Federal government "organized" the Squamish peoples into several different "Indian Bands".

The composition of each band was thought by the Federal government to be based on our Squamish villages then in existence, however, the Federal government did not understand our traditional practices and culture and this "organization" caused many difficulties, hardships and tensions for our people. In 1923, at the request of the various Squamish bands themselves, our people were amalgamated into a single Squamish Indian Band, which we now call the Squamish Nation.

The Federal government's first attempt to control membership in an Aboriginal community was to define what an "Indian" was. In 1868, "Indian" was defined as those "...of Indian blood, reputed to belong to the particular tribe...".¹ So if a person was generally believed to be or widely known as Indian, then they were an Indian.

1. *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian Ordnance Lands, S.C. 1868, c.42 (31 Vict.)*

Starting in 1951, having the status of an “Indian” was determined by whether or not an individual was entitled to be registered under the Indian Act.

Detailed rules based on parentage and marital status contained in the Indian Act determined entitlement to be an Indian, not the Aboriginal community itself or it’s Band Council.

<p>1871</p> <p>Federal government “organizes” the Squamish people into several Bands.</p> <p>pre-contact</p> <p>Membership based on blood ties to and residency on our lands.</p>	<p>1923</p> <p>We amalgamate into Squamish Indian Band, now Squamish Nation.</p>
<p>1951</p> <p>Up to 1951, many lose Status through enfranchisement. In 1951, Indian Act revised with new rules that limit Indian Status.</p>	

If an individual was generally regarded as an Indian by those around him or her, then he or she legally was an Indian, subject to certain restrictions which were applied to female Indians who married non-Indians.

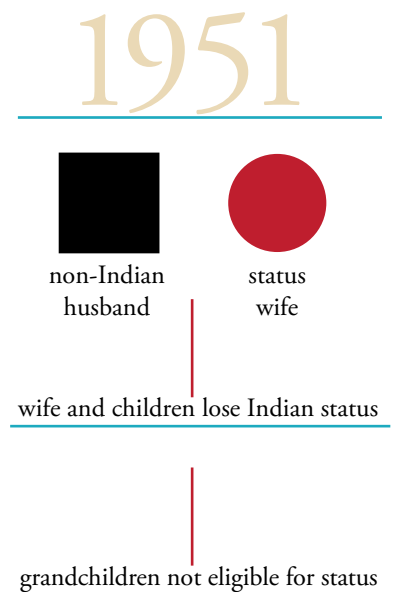
This definition left some of the power for determining who was a member of a band in the hands of the Band Council as they could request, by resolution, that an individual they considered to be part of their community be added to their band list.

A Band Council could also protest, in certain circumstances, the adding of an individual to their band list. This power was severely restricted in 1951 when the Federal government enacted substantial revisions to the *Indian Act*.² Being “Indian” was no longer a question of whether an individual was generally regarded to be Indian.

Starting in 1951, having the status of an “Indian” was determined by whether or not an individual was entitled to be registered under the *Indian Act*. Detailed rules based on parentage and marital status contained in the *Indian Act* determined entitlement to be an Indian, not the Aboriginal community itself or it’s Band Council.

This complete control by the Federal government remained until 1985 when the Federal government enacted “*An Act to Amend the Indian Act*”, S.C. 1985, c.27 (“Bill C-31”).

2. *The Indian Act*, S.C. 1951, c.29 (15 George VI).



1985

Through Bill C-31, “married-out” Aboriginal women and their children regain their right to Indian Status.

1985

Indian Bands are now able to determine rules for Band Membership and are given 2 years to develop Membership Codes.

1987

Squamish Nation proclaims it’s first Membership Code.

Persons on the band list as of June 7, 1987 now possess 100% Squamish blood.

Concerns arise about the definition of “natural born,” as it applies to the band list.

One of the major changes in the revised *Indian Act*³ when Bill C-31 became law, was Aboriginal women no longer lost their status as an Indian when they married a non-Indian.

Further, Aboriginal women who previously lost their status (“Bill C-31 women” or a “Bill C-31 woman”) and their children were entitled to regain status by applying to have their name entered on the Indian register.

If the application for status of a Bill C-31 woman was successful, her name was entered on the band list of the band she was affiliated with and she was immediately a member of that band, however, her child’s name was not entered on that band list for two years.

Another significant change made by Bill C-31 was bands were provided with the opportunity to take control of their own band list and to determine membership in their band by their own rules.

A two year period was allowed for bands to exercise this opportunity before the children of Bill C-31 women (along with other limited classes of persons⁴) were added to their band list.

On June 8, 1987 (20 days before the expiry of the two-year period), the Squamish Nation proclaimed its first membership code (the “1987 Membership Code”).

1985



non-Indian grandfather



status grandmother

children eligible for status through Bill C-31

grandchildren not eligible for status if they have a Bill C-31 mother and a non-Native father

3. R.S.C. 1985, c.I-5 (the “1985 Indian Act”).

4. The other classes of persons were Indians who were born after April 17, 1985 and had only one parent who was a band member and Indians who had voluntarily given up their status (prior to 1985) or were deemed not to be an Indian because they had lived outside Canada for 5 years (prior to 1927) or had become a lawyer or entered a religious order (prior to 1920).



Squamish women and children wait on a wharf near Vancouver, BC. This site was known as S7aks. Photographed by W. H. Notman, 1903

Squamish Nation Membership Codes

1987 Membership Code

The *1987 Membership Code* provided entitlement to membership in the Squamish Nation to those individuals on, or entitled to be on, the band list as of June 7, 1987, including Bill C-31 women, as well as "... any person with at least 50 per cent Squamish blood and one of whose natural parents is... a natural born member of the Squamish Nation."⁵

- Individuals whose names were on the band list as of June 7, 1987 were deemed to possess 100% Squamish blood⁶ and individuals whose names were then entered on the band list were deemed to be "natural born".⁷
- A child of a Squamish member and a member of another Indian band was deemed to possess 100% Squamish blood.⁸
- Squamish women who, prior to 1985, were involuntarily transferred to another Indian band when they married a member of that band were only allowed to regain membership in the Squamish Nation if they were divorced or widowed.⁹

As the *1987 Membership Code* was implemented, concerns arose regarding the use and interpretation of the phrase "natural born". In 1989, the Membership Committee adopted administration policies to give guidance to the Membership Registrar for the administration of the *1987 Membership Code*. Despite this, circumstances continued to arise which caused concern amongst members with the interpretation

of the code as well as concerns regarding the inability of Squamish women to return unless they were divorced or widowed.

These concerns resulted in 1992 with the initiation of a community consultation process to review the *1987 Membership Code* and to determine what changes were needed to address these and other concerns raised by membership.

This community consultation involved community forums and family meetings which were conducted between 1992 and 1996 and a referendum held in 1997 (the "1997 Referendum"). The 1997 Referendum provided the mandate for changes to the membership code which were approved by the members of the Squamish Nation on July 14, 2000 when a new membership code was adopted (the "*2000 Membership Code*").

1989

Membership Committee adopts administration policies to guide the decisions of the Registrar.

Despite this action, concerns about how to apply the Membership Code continue to come up.

1992

A community consultation process is set up to review the *1987 Membership Code* and make changes that address Membership concerns.

The forums and meetings are conducted from 1992 - 1996.

SKWXWU7MESH NATION Membership Code Amendments



Fall '96 Newsletter

BLOOD QUANTUM OR LINEAGE

Section 2(c), 4 & 5 of the Squamish Nation Membership Code utilize "Blood Quantum" as a qualifying measure for membership.

Section 2(c) - any person with at least 50% Squamish blood.
Section 4 - all natural born members identified on the Band List on the day this Code comes into effect shall be deemed to possess 100 percent Squamish Blood.
Section 5 - Squamish Nation Membership Code - "... any child born to one natural born Member of the Squamish Nation and a natural born member of another Indian Band shall be deemed to possess 100 percent Squamish Blood."

For over one hundred years it has been the Indian Act that determined who is, and who is not a Squamish Indian. Ancestry and family ties which forms the basis of Squamish Culture has never been considered in the determination of Squamish citizenship.

The Squamish Nation Membership Codes were developed with a view to take into consideration that the basis of membership is "Squamish Ancestry and family ties". However, since the Codes have been in place and the sections put into practice, it has raised some concerns with membership that because of this SECTION 5 conflicts with the intent that the Codes would be based on ancestry and family ties.

If we adopted a stricter requirement of Squamish blood will the Squamish Nation face a rapid population decline? Further, would it be difficult to change blood quantum system to a lineage system?

The majority of the COMMUNITY FORUM RECOMMENDATIONS suggest that the words "Blood

Quantum" be deleted from the Codes and insert "Lineage". In order to have a better understanding of the issue of "Blood Quantum" the Squamish Nation is considering doing an Impact Study to take into account Squamish Nation Membership's specific trends on our marriage and child birth rates. This Impact Study would provide a forecast on the impact of putting into place a system of lineage and/or blood quantum systems in the Codes.

DECENT OR LINEAGE SYSTEM traces membership through the parents; therefore a person's membership depends on the membership of his/her parents. This system can provide for a cut-off rule at any stage of the family tree, ie after two (2) or three (3) generations of mixed marriages or it could be only the children of two (2) members, or it could be children of at least one (1) member (no limit on generations of mixed marriages).

BLOOD QUANTUM SYSTEM focuses on the percentage of "Indian Blood" a person has or how much "Squamish blood" that a person may have; could use a minimum degree of blood to preserve ancestral integrity; the higher the blood quantum required, the fewer future members a band will have. Blood quantum is the amount of blood a person can trace from ancestors originating in the band; it is usually expressed as a fraction or percentage. Quarter-blood or 25% or half-blood or 50%; usually a particular date is set from all descendants to determine their blood line i.e. Squamish Nation Codes-SECTION 4 "... all natural born members identified on the Band List on the day this Code comes into effect shall be deemed to possess 100 percent Squamish Blood." (See Scenario 2)

5. Section 2(c) of the *1987 Membership Code*.

6. Section 4 of the *1987 Membership Code*.

7. Section 3(b) of the *1987 Membership Code*.

8. Section 5 of the *1987 Membership Code*.

9. Section 6(c) of the *1987 Membership Code*.

1997

The **1997 Referendum** set the mandate for changes to the Membership Code. Membership Entitlement and Approval are both addressed in the new code approved by Nation members on July 14, 2000.

2000

The **2000 Membership Code**, similar to Indian Status under the **1985 Indian Act**, is based on descent and lineage, not blood quantum.

2000

Decisions regarding Membership approval are no longer made by the Membership Registrar. Membership Committee now determines if an applicant is entitled to become a Nation Member.

2000

An Appeals Committee is established to hear challenges to the decisions of the Membership Committee.

2000 Membership Code

Table 1

Descendant Members

- 5(a) Pre-1987 members including Bill C-31 women
- 5(b) 1987 – 2000 members deemed 100% Squamish
- 5(c) Involuntarily transferred women
- 5(d) Children of involuntarily transferred women
- 5(e)(i) Person with both parents Descendant
- 5(e)(ii) Person with parents both Descendant & Lineal

Lineal Members

- 7(a) 1987 – 2000 members deemed 50% Squamish
- 7(b)(i) Person with one parent Descendant
- 7(b)(ii) Person with both parents Lineal

Acquired Members

- 8(a) 1987 – 2000 Spouse or adoptee of member
- 8(b) 1987 – 2000 Status through marriage/adoption
- 9(a) Status adoptee
- 9(b) Status spouse

The *2000 Membership Code* sets out rules concerning entitlement to membership in the Squamish Nation today. (Table 1 summarizes this entitlement.)

Entitlement under the *2000 Membership Code* is based on a descent and lineage system, rather than on blood quantum as provided for in the *1987 Membership Code*. This descent and lineage system of entitlement is similar to entitlement to status under the *1985 Indian Act*.

It has always been understood that, because of funding concerns for the Squamish Nation's programs and services, individuals entitled to be members of the Squamish Nation, and therefore entitled to access those programs and services, must also be entitled to status under the *1985 Indian Act*.

A question on this point was one of five considered in the 1997 Referendum and 57% of those who responded to the question felt individuals without status, even though they could show Squamish descent, should not be entitled to membership. Although the requirement for status is not specifically stated in the *2000 Membership Code*, the practical application of the descent and lineage entitlement system makes this a reality.

Another change made in the *2000 Membership Code* is that decisions

concerning membership in the Squamish Nation are no longer made by the Membership Registrar. It is the Membership Committee which determines whether or not an applicant is entitled to be a member.

Challenges to a decision of the Membership Committee are heard by the Appeals Committee. Although the Membership Registrar is a member of the Membership Committee, the primary tasks of the Membership Registrar are to assist the Membership Committee in doing its work and maintaining the membership list.

In the 11 years since the *2000 Membership Code* came into effect, decisions of the Membership Committee have only once ever been successfully appealed to the Appeals Committee and, on the one occasion a decision of the Membership Committee was challenged in Court, the decision of the Membership Committee was upheld by the Court.¹⁰

Despite the success of the *2000 Membership Code*, matters outside the control of the Squamish Nation have raised once again the question of whether or not it is time to consider amendments to the *2000 Membership Code*.

10. Grismer v. Squamish First Nation, 2006 FC 1088

Possible Amendments

2011

On January 31, 2011 the Gender Equity in Indian Registration Act (**Bill C-3**) comes into force to remove discrimination, based on sex, from the **1985 Indian Act** for the grandchildren of **Bill C-31** women. As a result, these grandchildren can now apply for Status.

Bill C-3 and McIvor

On July 18, 1989, Sharon McIvor, a member of the Lower Nicola Indian Band, launched a court action against the Registrar of Indian and Northern Affairs Canada on her own behalf and on behalf of her son claiming that section 6 of the *1985 Indian Act* violates the equality provisions of section 15(1) of the *Canadian Charter of Rights and Freedoms* (the “Charter”) because it discriminates based on sex.

The basis for that claim is the fact that Bill C-31 women (the first generation), who regain status under section 6(1)(c) of the *1985 Indian Act*, can only pass on entitlement to one generation (the second generation) when the other parent is non-status.

The children of Bill C-31 women born prior to April 17, 1985 only have entitlement to status under section 6(2) of the *1985 Indian Act* and, unless they have a child with another individual who has status, have no ability to pass on entitlement to their children (the third generation).

This is not the case for men in the same circumstances as Sharon McIvor (other than being not being a woman). Both a male Indian (the first generation) and his children born prior to April 17, 1985 (the second generation) would, as of April 17, 1985, be entitled to status under section 6(1)(a) of the *1985 Indian Act*. As such, a child (the third generation) of that second generation individual would still be entitled to status under section 6(2) of the *1985 Indian Act* when the other parent is non-status.

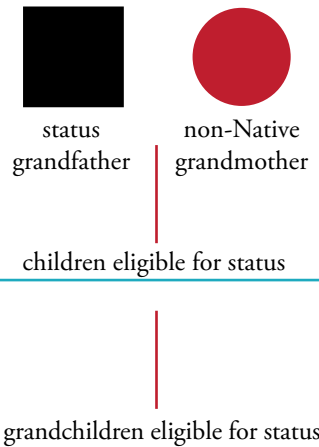
For the male line then, entitlement reaches to the third generation but, for the female line, only the second generation is entitled to status. (Table 2 graphically represents this different treatment under the *1985 Indian Act*.) Sharon McIvor claimed this was discrimination based on sex and the Court agreed.

The Trial Court¹¹ found that section 6 of the *1985 Indian Act* violated the equality provisions of section 15(1) of the Charter and the appropriate remedy was to immediately grant status to individuals in the same circumstance as Sharon McIvor’s grandchildren.

The Federal government appealed the Trial Court’s decision. Although the Appeal Court¹² found that section 6 of the *1985 Indian Act* did indeed violate the equality provisions of section 15(1) of the Charter, it held that the appropriate remedy was to allow Parliament time to rectify the discrimination in the manner Parliament felt was appropriate, rather than Court imposing its view. The Appeal Court gave Parliament one year to amend the *1985 Indian Act* and on January 31, 2011, the *Gender Equity in Indian Registration Act*¹³ (“Bill C-3”) came into force.

Bill C-3 provides that an individual is entitled to status under section 6(1)(c.1) of the *1985 Indian Act* if that individual (the second generation) was (1) born before April 17, 1985, (2) has a mother who is a Bill C-31 woman (the first generation), (3) has a father who is non-status and (4) has a child born after September 4, 1951 (the third generation) whose other parent is non-status.

2011



11. McIvor v. Canada (Registrar, Indian and Northern Affairs) 2007 BCSC 827.

12. McIvor v. Canada (Registrar of Indian and Northern Affairs) 2009 BCCA 153.

13. S.C. 2010, c.18

2011



non-Indian
grandfather



status
grandmother

children eligible for status through Bill C-31

grandchildren eligible for status through Bill C-3

In these circumstances, the third generation (such as Sharon McIvor's grandchildren) will be entitled to be registered under section 6(2) of the 1985 Indian Act because their parent is entitled to status under section 6(1) (c.1) of that Act. Bill C-3 has removed the discrimination based on sex from the 1985 Indian Act for the grandchildren of Bill C-31 women. The same cannot be said for the 2000 Membership Code.

Inadvertent Discrimination in the 2000 Membership Code

Table 2 graphically represents the discrimination under the 1985 Indian Act found in the McIvor case. Also included are references to the entitlement provisions of the 2000 Membership Code that would be applicable if those individuals were affiliated with the Squamish Nation.

Upon review one can readily see that the discrimination found in the 1985 Indian Act prior to Bill C-3 coming into force also exists today in the 2000 Membership Code. This should not be surprising, considering that the descent and lineage system of the 2000 Membership Code is quite similar to the 1985 Indian Act entitlement system and the desire of membership stated in the 1997 Referendum that all members of the Squamish Nation have status.

This discrimination, however, was not intended. The question for the Squamish Nation today is whether or not to take the initiative and amend the 2000 Membership Code to remove that discrimination or wait until required to do so after a Court orders the amendment to be made.

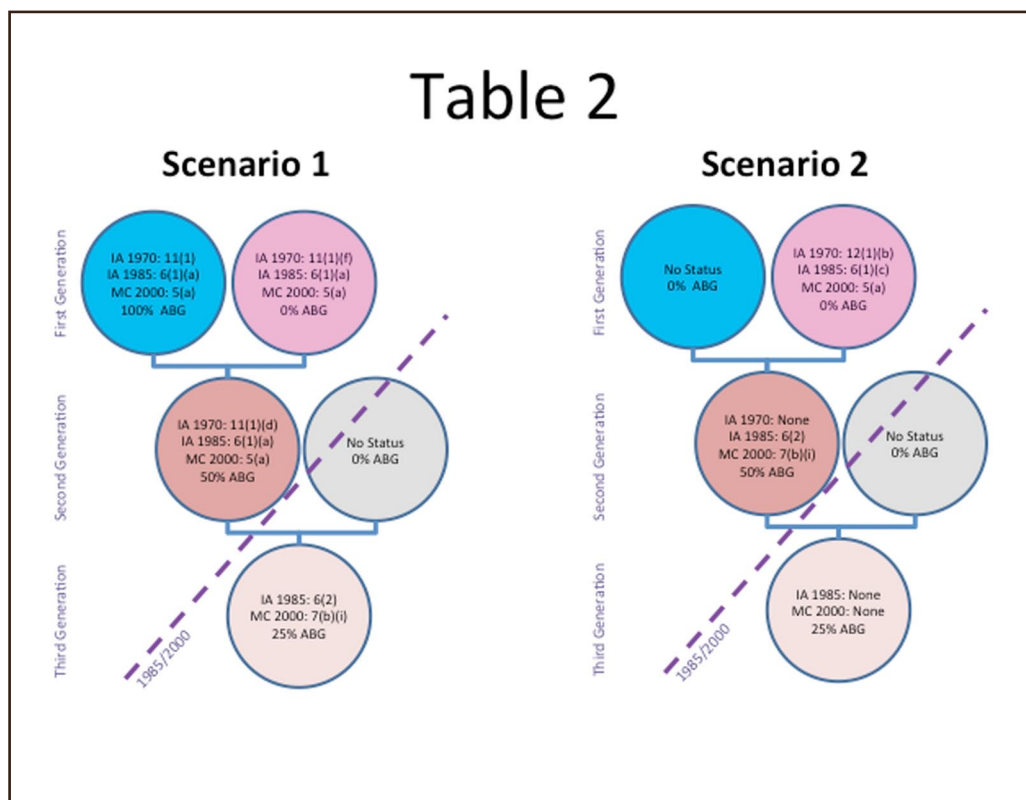
Chiefs and Council and the Membership Committee are initiating community consultation in order to ascertain membership's wishes concerning this question.

Table 2 Abbreviations:

IA - Indian Act

MC - Membership Code

ABG - Aboriginal



Intended Different Treatment in the 2000 Membership Code

The discrimination in the *2000 Membership Code* identified through the McIvor case was inadvertent. The same cannot necessarily be said for section 9(b) of the *2000 Membership Code*. This section provides that a female Indian who is not a member of the Squamish Nation may become an acquired member if they are married to a descendant member.

The same opportunity is not provided to a male Indian. Prior to European contact and for, at least, the first 50 to 75 years thereafter, we are told by our elders (and by anthropologists who have studied into the matter) that it was the general practice of the Squamish peoples to welcome women into their villages who were either Squamish from other villages or other First Nations women who married Squamish men.¹⁴

This has been described as a “preference for patrilineal residence (the bride and groom living in his village).”¹⁵ We could argue that the different treatment of men and women in section 9(b) of the *2000 Membership Code* is not discriminatory because it is reflective of the Squamish Nation’s traditions and culture.

A counter argument might be that section 9(b) of the *2000 Membership Code* clearly discriminates on the basis of sex and such discrimination is not justifiable in a free and democratic society, notwithstanding the fact it may have been a traditional and cultural practice. There are other traditional practices that would not be tolerated today, such as slavery.

The question for the Squamish Nation today is whether or not to take the initiative and amend the *2000 Membership Code* to remove that different treatment of men and women or wait until required to do so after a Court orders that this different treatment is discrimination and amendments be made, if one ever does.

Requirement for Status

Earlier we noted that the 1997 Referendum indicated membership’s desire that all members of the Squamish Nation have status. We also pointed out that, although this is not a written requirement of the *2000 Membership Code*, the practical application of the descent and lineage entitlement system in the *2000 Membership Code* makes this a reality.

Two questions arise from this reality.

(1) Is obtaining status a reasonable or even desirable requirement to place on individuals with Squamish ancestry who wish to be a member of the Squamish Nation? (2) If the requirement for status is still the wish of membership, should this not be stated as a clear requirement in the 2000 Membership Code? The pros and cons to these questions will likely be the subject of much discussion.

Other Amendments

Since Chiefs and Council and the Membership Committee are initiating community consultation in response to Bill C-3 which may result in amendments being made to the *2000 Membership Code*, this may also be an opportune time to consider whether or not membership considers that other changes may be necessary or desirable. The question for the Squamish Nation today is whether or not other amendments not discussed above may be necessary or desirable and, if so, what those proposed amendments might be?

2011

Upon review, it is easy to see that gender discrimination exists in the **2000 Membership Code**.

Not only for grandchildren of **Bill C-31** women, but also for men who are married to Squamish women.

Bill C-3 affects how we deal with Membership.



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The Membership Committee is hosting community forums on November 17, 2011 and November 21, 2011.

Current, and potential members, can obtain further information and share their thoughts on this and other questions or matters raised in this bulletin.

14. See generally *Cultural Rules Governing Aboriginal Squamish Membership* prepared by Dorothy Kennedy dated October 13, 2004.

15. *Ibid* at page 11.

