

Kitsumkalum Constitution

Ratification Version

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Preamble

WHEREAS we are the people of Kitsumkalum who are the rightful heirs of the People of the Robin;

WHEREAS we are the people who own the laxyuup, which is held by Wuwaap, and we enjoy territorial and resource privileges in accordance with Tsimshian Ayawx and Adawx throughout the Kitsumkalum territory;

WHEREAS we embrace those who have joined us in the past and who will join us in the future in accordance with Kitsumkalum Law;

WHEREAS the Treaty, and the relationship it represents, are the basis for a strengthened partnership between us, the people of Kitsumkalum, and the larger Canadian society;

WHEREAS we desire to maintain and strengthen our institutions, cultures and traditions, and to promote our development in accordance with our aspirations and needs;

We lay down the fundamental law of Kitsumkalum.

The Constitution of the Kitsumkalum People

1. This Constitution is the supreme law of the Kitsumkalum People, subject only to:
 - (a) the Constitution of Canada; and
 - (b) the Kitsumkalum Treaty.
2. The *Canadian Charter of Rights and Freedoms*, including the limitations contained in section 25 of the *Charter*, apply to the Legislative Council and Government in respect of all matters within its authority.
3. Any Kitsumkalum Law that is inconsistent with the provisions of this Constitution is, to the extent of the inconsistency, of no force or effect.
4. Nothing in this Constitution alters the Kitsumkalum Ayawx or the process for appointment of Hereditary Leadership.

Membership

5. Subject to section 6, an individual is eligible for enrolment if that individual is:
 - (a) of Kitsumkalum ancestry by matrilineal or patrilineal descent;
 - (b) a member or entitled to be a member of the Kitsumkalum Band;
 - (c) adopted as a Child under laws recognized in Canada, or by a Kitsumkalum custom, by an individual eligible for enrolment under sections 5(a) or 5(b);
 - (d) a descendant or an adopted Child of an individual eligible for enrolment under sections 5(a), 5(b), or 5(c); or
 - (e) a spouse, including a common law spouse, of an individual eligible for enrolment under sections 5(a), 5(b) or 5(c) who is, after the Effective Date, accepted under a community acceptance process set out in Kitsumkalum Law.

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6. Except where an individual is eligible for enrolment under section 5(b), to be eligible for enrolment under section 5 individuals must have a Demonstrated Attachment to Kitsumkalum.
7. Sections 5 and 6 come into force on the day after the Effective Date.
8. Kitsumkalum may, after the Effective Date, amend the Eligibility Criteria by amending the Kitsumkalum Constitution.
9. Amendments to the Eligibility Criteria must, in addition to any other steps required to amend this Constitution, be authorized by a referendum of Kitsumkalum Members who are at least 18 years of age on the last scheduled day of voting in the referendum, in which at least 50 percent plus one of these Kitsumkalum Members vote, and at least 50 percent plus one of those who vote, vote in favour of the amendments to the Eligibility Criteria.
10. Individuals who are enrolled on the date immediately prior to the date that the amendments to the Eligibility Criteria come into effect will continue to be enrolled.
11. Individuals who have applied for enrolment under this Agreement by the date immediately prior to the date that the amendments to the Eligibility Criteria come into effect will have their application determined in accordance with the Eligibility Criteria that would have applied prior to the date that the amendments to the Eligibility Criteria come into effect.
12. Individuals with Kitsumkalum ancestry by matrilineal or patrilineal descent and a Demonstrated Attachment to Kitsumkalum will always be eligible for enrolment.
13. Kitsumkalum may make laws in relation to factors, consistent with the definition of Demonstrated Attachment, according to which an individual's Demonstrated Attachment to Kitsumkalum is to be assessed.
14. Sections 8, 9, 10, 11 and 12 are unalterable and may not be amended.

15. Any enrolled person is a member of Kitsumkalum.

Rights and Freedoms

16. Every Kitsumkalum Member enjoys all of the individual rights and freedoms guaranteed under the Constitution of Canada.
17. The Legislative Council and Administration shall make no law inconsistent with the Charter of Rights and Freedoms.
18. Every Kitsumkalum Member may exercise Kitsumkalum Section 35 Rights as set out in the Treaty, subject to laws necessary for conservation, public health or public safety.
19. Kitsumkalum shall make no law infringing the right of members to exercise Section 35 rights, as set out in the Treaty, except as required for conservation, public health and public safety.
20. All Kitsumkalum Members are equal under this Constitution.

Political rights

21. Every Kitsumkalum Member has the right to make political choices, to participate in political activities, and to express a view on any public issue, and in particular, all Kitsumkalum Members have the right to:
 - (a) be informed regarding Kitsumkalum public affairs;
 - (b) hold the Kitsumkalum Government accountable to this Constitution, in accordance with Kitsumkalum Law;
 - (c) fair and equitable access to employment opportunities within the Kitsumkalum Government, Kitsumkalum Corporations and Kitsumkalum Public Institutions;

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- (d) fair and equitable access to public services provided by the Kitsumkalum Government; and
- (e) participate in Kitsumkalum culture, language and traditions.

Mobility rights

22. Every Kitsumkalum member has the right to enter, remain in and leave Kitsumkalum Lands in the same manner as members of Canada enjoy mobility rights within Canada under the *Canadian Charter of Rights and Freedoms*.

Election rights

23. Subject to section 25, every Kitsumkalum Member who is at least 18 years of age is eligible to vote in Kitsumkalum elections and to hold office in the Kitsumkalum Government.
24. No individual shall run for or hold more than one office.
25. The Legislative Council must make laws consistent with this Constitution in respect of Kitsumkalum elections and referendums, including the establishment of:
- (a) qualifications of voters;
 - (b) qualifications of candidates for election to office;
 - (c) removal from office;
 - (d) the independent office of Chief Electoral Officer to administer elections and referenda;
 - (e) procedures for the conduct of elections and referendums; and
 - (f) areas or locations within which elections or referendums will be held.

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26. Without restricting the ability of the Legislative Council to establish additional qualifications of candidates for office no person shall be entitled to be a candidate for office or to remain in office if that person:
- (a) is the subject of an undischarged application for bankruptcy; or
 - (b) has been convicted of a criminal offence for which no pardon has been obtained.

Review and appeal of administrative decisions

27. The Kitsumkalum Government will establish processes for appeal or review of administrative decisions made by Kitsumkalum Institutions.

Access to information

28. The Legislative Council will make laws that provide for reasonable access to information in the custody or control of a Kitsumkalum Institution by:
- (a) Kitsumkalum Members;
 - (b) Non-Member Residents; and
 - (c) persons who receive services and programs from a Kitsumkalum Institution.

Reasonable limits

29. The Kitsumkalum Constitution guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Remedy

30. An individual whose rights or freedoms, guaranteed by this Constitution, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Non-Member Residents

31. Kitsumkalum Institutions will engage with Non-Member residents in decisions of Kitsumkalum Institutions that directly and significantly affect those Non-Member Residents.
32. The Kitsumkalum Government will provide Non-Member Residents with access to the appeal and review procedures that may be established in respect of administrative decisions that directly and significantly affect Non-Member Residents.

Kitsumkalum Government

33. Kitsumkalum has the inherent right to self-government and self-determination including the authority to make laws for any matter as set out in the Kitsumkalum Treaty.
34. The Kitsumkalum Government consists of three branches:
 - (a) the legislative;
 - (b) the executive or administrative; and
 - (c) the judicial.
35. All members of the Legislative Council and Administration must abide by the Kitsumkalum Constitution and Kitsumkalum laws.

Legislative Council

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36. The law-making authority of Kitsumkalum is vested in the Legislative Council.
37. The Legislative Council shall be comprised of one (1) Chief and ten (10) Legislators elected by Eligible Voters in a Kitsumkalum Election; and
38. The size of the Legislative Council may be increased by Kitsumkalum Law.
39. A quorum of the Legislative Council is 51% of its members.
40. No Legislative Council shall continue for longer than four years from the date upon which the members of the Legislative Council were elected.
41. There shall be a sitting of the Legislative Council at least once annually.
42. At each sitting, the Legislative Council shall receive reports from the Administration and ensure the Administration acts in conformity with legislative direction, laws and policy.
43. The Chief:
 - (a) may lead any delegation representing Kitsumkalum unless the Legislative Council has assigned that responsibility to another member of the Legislative Council;
 - (b) shall be the spokesperson for the Legislative Council subject to their direction; and
 - (c) shall carry out any duties assigned by the Legislative Council.
44. The Legislative Council shall designate an elected member of the Legislative Council to serve as Chairperson;
45. The Chairperson shall serve for so long as he or she has the support of the Legislative Council.

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46. The Chairperson shall:
- (a) have the responsibility and authority:
 - i) to preside over sessions of the Legislative Council;
 - ii) to preside over committee meetings;
 - iii) to preserve order and decorum in the Legislative Council; and
 - iv) to decide questions of order and practice of the Legislative Council;
 - (b) not vote on any matter before the Legislative Council except in the event of a tie; and
 - (c) in the event of a tie, cast a no vote.

Responsibility of Legislators

47. The role of Members of the Legislative Council is to:
- (a) represent the Kitsumkalum Members by whom the Member of the Legislative Council is elected;
 - (b) participate in the legislative functions of the Legislative Council, including through participation in legislative committees;
 - (c) review, consider and vote on proposed legislation;
 - (d) review, consider and vote on budgetary appropriations, financial projections and spending by the Administration;
 - (e) act in the best interests of Kitsumkalum; and
 - (f) protect the legitimacy of the Kitsumkalum Government.

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48. The Legislative Council may, by law, assign additional functions to members of the Legislative Council.
49. The Legislative Council shall provide for the establishment of Kitsumkalum Public Institutions.
50. The Legislative Council shall establish its own rules and procedures including rules for the establishment of any committees by the Legislative Council.
51. The Legislative Council shall approve the budget of the Kitsumkalum Government at least annually.
52. On the Effective Date, the Legislative Council shall enact a law setting out the process by which the Legislative Council shall make laws after the Effective Date.
53. All laws enacted by the Legislative Council shall be made publicly available and placed in a Kitsumkalum Law registry.
54. Kitsumkalum will consult with Kitsumkalum Members concerning the development of a law which would incorporate traditional representation into the Kitsumkalum Legislative Council.

Kitsumkalum Administration

55. The Legislative Council shall provide for the appointment of officers and the hiring of other employees to administer the affairs of Kitsumkalum in an effective and fiscally responsible manner in accordance with this Constitution and Kitsumkalum Law.
56. Officers of Kitsumkalum shall be appointed by resolution of the Legislative Council for so long as those officers have the confidence of the Legislative Council and serve at the pleasure of the Legislative Council.

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57. The process for appointment and removal of Kitsumkalum officers shall be set out in a Kitsumkalum Law.
58. The Kitsumkalum Administration shall be responsible for executing and enforcing the laws, regulations and policies of Kitsumkalum, and the administration of public affairs of Kitsumkalum.
59. Subject to any Kitsumkalum Law, the Kitsumkalum Administration shall:
 - (a) preserve and promote the peace, unity and wellbeing of the Kitsumkalum Nation;
 - (b) act impartially in the best interest of Kitsumkalum and respect this Constitution;
 - (c) provide services to Kitsumkalum Members and others as set out in Kitsumkalum Law;
 - (d) ensure effective communication and engagement with Kitsumkalum Members;
 - (e) protect and enhance Kitsumkalum Section 35 rights;
 - (f) ensure that the Kitsumkalum Constitution, Kitsumkalum Laws, and Kitsumkalum Policies are adhered to;
 - (g) promote and maintain a sound Kitsumkalum economy;
 - (h) ensure the sound management of Kitsumkalum Administration;
 - (i) convene the Kitsumkalum People's Assembly in accordance with section 67 and ensure that at that Assembly Kitsumkalum Members are informed of the matters listed in section 68; and

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- (j) perform other functions assigned to it under Kitsumkalum Law.
- 60. Subject to any Kitsumkalum Law, the Kitsumkalum Administration may establish committees to assist in fulfilling its responsibilities.
- 61. The Kitsumkalum Administration in exercising its functions may seek the advice of traditional leaders and respected elders.

Kitsumkalum Judiciary

- 62. The Legislative Council may establish adjudicative bodies and processes, including a Kitsumkalum Court and other adjudicators, for the better administration of Kitsumkalum laws in a manner consistent with the principle of judicial independence, having regard to the size and circumstances of Kitsumkalum.
- 63. Individuals appointed as judges to a Kitsumkalum Court shall serve during good behaviour.
- 64. Subject to the terms of the Kitsumkalum Treaty, the Kitsumkalum Legislative Council may grant jurisdiction to an adjudicative body established under section 62 to:
 - (a) adjudicate offences arising under Kitsumkalum Law;
 - (b) adjudicate civil matters as set out in Kitsumkalum Law;
 - (c) hear appeals from or conduct reviews of administrative decisions of Kitsumkalum Institutions; or
 - (d) determine the validity of Kitsumkalum laws.

Kitsumkalum Leadership Council

65. The Kitsumkalum Leadership Council shall consist of 1 representative appointed by the Laxgiibu Clan, 1 representative appointed by the Gisputwada Clan, 1 representative appointed by the Ganhada Clan, 1 representative appointed by the Laxsgiik Clan and the Chief of the Legislative Council.
66. The Kitsumkalum Leadership Council may advise the Kitsumkalum Administration and the Legislative Council.

Kitsumkalum People's Assembly

67. The Kitsumkalum Administration shall convene at least once annually on sufficient notice a general assembly of Kitsumkalum Members to be known as the Kitsumkalum People's Assembly.
68. The Kitsumkalum Administration shall provide to the Kitsumkalum People's Assembly:
 - (a) the previous year's audited financial statements of the Kitsumkalum Government, Kitsumkalum Public Institutions and Kitsumkalum Corporations;
 - (b) the annual strategic plan of the Kitsumkalum Government;
 - (c) the proposed legislative agenda for the year; and
 - (d) information concerning other matters of importance to the Kitsumkalum First Nation.
69. The Kitsumkalum People's Assembly may recommend constitutional amendments to the Legislative Council by a resolution passed by majority vote of Eligible Voters in attendance.

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70. Every Kitsumkalum Member may participate in the Kitsumkalum People's Assembly.
71. Non-Member residents may be invited to attend but may be excluded where discussions involve matters internal to Kitsumkalum.
72. The Kitsumkalum People's Assembly may make recommendations to the Legislative Council or Kitsumkalum Administration by a resolution passed by majority vote of Eligible Voters in attendance.
73. The Kitsumkalum Legislative Council shall enact a law:
 - (a) providing for the taking of minutes of Kitsumkalum People's Assembly; and
 - (b) mandating a response to resolutions of the Kitsumkalum People's Assembly by the Legislative Council or administration as appropriate.
74. The rules of order and procedure for the Kitsumkalum People's Assembly shall be established in legislation enacted by the Legislative Council.

Restriction on Alienation of Kitsumkalum Lands

75. The Legislative Council or Administration shall not decrease the area or change the boundaries of Kitsumkalum Lands unless it is first approved by a referendum in which fifty percent (50%) plus one (1) of Eligible Voters vote and at least sixty percent (60%) of Kitsumkalum Members who vote are in favour of the decrease or change.
76. Kitsumkalum Coastal Site Lands are owned by Kitsumkalum and shall not be alienated.
77. The Legislative Council shall enact a law providing for the protection of and access to Kitsumkalum Adawx relating to the Coastal Site Lands and generally.

Financial Administration

78. The Kitsumkalum Government, Kitsumkalum Corporations and Kitsumkalum Public Institutions shall manage their finances, on behalf of Kitsumkalum Members, in a manner that conforms to principles of sound financial management.
79. On the Effective Date, the Legislative Council shall enact a Kitsumkalum 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 Kitsumkalum Government, Kitsumkalum Corporations and Kitsumkalum Public Institutions will be financially accountable to Kitsumkalum Members.
80. The Kitsumkalum Financial Administration Law may establish a Finance Committee to provide advice and recommendations to the Legislative Council and Administration.

Treaty Settlement Fund

81. The Kitsumkalum Government shall establish one (1) or more settlement trusts to preserve and protect:
 - (a) the Kitsumkalum capital transfer amounts received under the Kitsumkalum Treaty, and
 - (b) the income derived from the investment of those funds.
82. 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.

Public Administration

83. The Kitsumkalum Government shall administer public services to Kitsumkalum Members in accordance with the following values and principles:
- (a) a high standard of ethics;
 - (b) efficient and effective use of resources;
 - (c) impartial and equitable provision of services;
 - (d) responsiveness to public needs; and
 - (e) provision of timely, accessible, and accurate information.

Conflict of Interest

84. The Kitsumkalum Government, Kitsumkalum Public Institutions and their officers and employees shall:
- (a) be accountable to Kitsumkalum Members;
 - (b) adhere to this Constitution;
 - (c) promote the unity and well-being of Kitsumkalum;
 - (d) provide good, effective and accountable government; and
 - (e) develop and maintain communications with the community.
85. On the Effective Date, the Legislative Council shall enact a conflict-of-interest law that enacts conflict of interest rules comparable to those generally accepted for governments of similar size and circumstance in Canada.

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86. Subject to any requirements for corporations established under federal or provincial law, the Kitsumkalum Government shall as shareholder ensure that Kitsumkalum Corporations put in place conflict of interest guidelines similar to the conflict-of-interest law established under section 85.

Ratification

87. Ratification of the Kitsumkalum Constitution by Kitsumkalum requires:
- (a) that individuals who may be eligible to vote have a reasonable opportunity to review the Kitsumkalum Constitution;
 - (b) a vote, by way of a secret ballot; and
 - (c) at least fifty percent (50%) plus one (1) of the Eligible Voters on the final Eligible Voters List cast their vote; and
 - (d) at least fifty percent (50%) plus one (1) of those voters who cast their vote, must vote in favour of the Kitsumkalum Constitution.
88. This Constitution, if ratified, shall come into force and effect on the Effective Date of the Kitsumkalum Treaty.

Amendments

89. Amendments to this Constitution may be initiated by a resolution of the Legislative Council, acting either on its own motion or on the recommendation to the Legislative Council by the Kitsumkalum People's Assembly.
90. 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 must vote; and

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- (b) fifty percent (50%) plus one (1) of those who vote must vote in favour of the proposed amendment.
91. Notwithstanding section 90, the Legislative Council may amend this Constitution by resolution at any time in respect of correction of matters of a technical, grammatical, clerical or administrative nature without changing the substantive meaning of this Constitution.

Severability

92. 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.

Definitions

93. Words and phrases used in this Constitution have the same meaning as those words and phrases have in the Kitsumkalum Treaty.

Coming into Force

94. This Constitution comes into force on the Effective Date of the Kitsumkalum Treaty.
95. In ratifying this Constitution, we, the people of Kitsumkalum, hereby agree to be governed by the Kitsumkalum Constitution and Kitsumkalum Law.