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Seabird Island Band Report on the Results of the Membership Code Questionnaire SUMMARY REPORT

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To: Seabird Island Band Members

From: Peter Nyhuus, DGW Law

Introduction to Summary Report

This is the **Summary Report** on the responses DGW Law received from Seabird Members ("Members") who participated in the Membership Code Questionnaire conducted over the summer of 2022 ("Questionnaire").

DGW Law has also provided to Seabird a "Full Report" that provides detailed responses and analysis on the Questionnaire responses. Many components of the Full Report have been left out of this version, so if you would like to review in more detail the results of the Questionnaire and our analysis, please read the Full Report.

This Summary Report (1) provides an analysis of the responses; and (2) identifies focus areas for further discussion.

Background

Seabird has hired DGW Law to help review and update Seabird's Membership Code. The Membership Code is the legal document that determines who can and cannot become a Seabird Member.

The Questionnaire is one way in which Members are being asked to participate in the project. The Questionnaire was intended to give DGW and Seabird an understanding of Members' opinions at the start of this engagement effort and to identify areas of consensus and disagreement.

The Report is based on responses from 106 Members (representing approximately 10% of Seabird's total population).

Contact

If any Member has questions about the Questionnaire, the Full Report, the Summary Report, or the community engagement process, please do not hesitate to reach out to DGW Law by contacting Lyn Berglund, Peter Nyhuus' assistant. If you would like to speak with Peter, Lyn can book you an appointment. Lyn can be reached at lyn@dgwlaw.ca or by calling 250.361.9469.

ANALYSIS OF RESULTS

In this part of the Summary Report, we analyze the results of the Questionnaire to identify areas of agreement and disagreement among Questionnaire participants. This analysis is organized by the following subjects:

1. Who should be a Member?
2. “Membership” or “Citizenship”?
3. Rights and Responsibilities
4. Application Process and Administration
5. Removals from Membership
6. Amendment Process
7. Appeals and Protests

Within each subject, we identify “Focus Areas” that should become the subject of further community engagement discussions. We summarize the Focus Areas in the next section.

1. Who should be a Member?

We asked participants to determine which categories of persons should be able to become a Member. We gave Members three options for each category of person:

- (1) Automatic Member (the person would have a right to become a Member and would simply register);
- (2) Member by Application (the person would have the opportunity to be considered for Membership by way of an application process); or
- (3) not a Member (the person would not be able to become a Member).

Areas of Agreement

First, we review areas of agreement. In our view, the responses support the following conclusions:

- **Births**
 - A child with Indian Status born to one Seabird member has the right to be a Seabird member. To become a member, the parent would register the child and provide proper evidence of parenthood (i.e., a birth certificate).

- **Adoptions**

- A child who is adopted by a Seabird member (and has Indian Status either by birth or by adoption) has the right to be a Seabird member. To become a member, the adoptive parent would register the child and provide proper evidence of adoption.
- An adult with Indian Status who is adopted by a Seabird Member as an adult may apply for Membership (but does not have the right to be a Seabird member).

- **Reinstatements**

- A person who would have been a Seabird member by birth but who was adopted out of Seabird as a child and now wishes to return to Seabird as an adult should have the right to be registered as a Member.
- A person who voluntarily gave up their Membership and now wishes to return may apply for membership.

- **Spouses of Members**

- A spouse of a Seabird Member may apply for Membership if that spouse has Indian Status.

- **Transfers**

- A person with Indian Status who has a Seabird ancestor may apply for Membership.
- A person with Indian Status who does not have a Seabird ancestor or family member may apply for Membership.

- **Involvement in community**

- A person who does not have Indian Status but is involved in the community and wishes to become a Member is not eligible to be a Member.

Given the responses we have received so far, and subject to further direction we receive in further community engagement, the above statements could be drafted into laws within Seabird's updated Code.

FOCUS AREA #1 – Indian Status

The major issue that Seabird must decide is whether to allow individuals who do not have Indian Status to join Membership in certain cases. The Questionnaire asked many questions about this topic—respondents were divided on the issue.

This issue is coming up primarily because, in some cases, the children and grandchildren of current Seabird Members are not eligible for Status and therefore not eligible for Membership. Currently, Indian Status is a requirement for Membership in Seabird. This is frustrating for many Members who cannot pass Status along to their children or grandchildren (and therefore cannot pass Membership). One respondent wrote:

You have no idea how frustrating it is as a band member that both of my children do not have status.

However, other respondents are concerned about the impacts allowing Non-Status individuals could have on Seabird's ability to provide services to Membership and on Seabird's land and other resources.

It was clear that some respondents felt they needed more information to develop their opinion on this matter. One respondent wrote:

"[...] it would be helpful to know what membership entails prior to asking people to fill out these questionnaires. I did answer but it was hard to decide given I have not been given a proper explanation of what member entails. [...]"

We think it would be helpful for Seabird Members to hear from Seabird's administration about the types of benefits provided to Members and how allowing Non-Status family members may impact those benefits.

Further, the outcome of this discussion will have an impact on Seabird land: by expanding the persons who qualify as "Members" there would be more people who are eligible to hold allotments in Seabird land, under the Seabird *Land Code*. But by the same token, the Non-Status children of Members would be able to inherit their parent's Seabird property.

The connection between Indian Status and Membership remains a difficult issue in which a solution has not yet been found. This extra education could lead to Members developing more informed opinions on this matter. Further sessions focussed on the issue of Status are required.

FOCUS AREA #2 – Second Tier of Membership

The Questionnaire raised the idea of a “second tier” of Membership that could be available for non-Status persons who would otherwise be eligible for Membership if they had Status (see Questions #21 to #23). This question sparked another area of clear division. Half of the respondents were interested in this idea; half disliked it.

It is possible that a more popular solution can be found to address the issue of Status in the Membership Code. Further discussion about a “second tier” of Membership is required and should happen alongside the conversations about Indian Status and Membership.

2. “Membership” or “Citizenship”?

Most respondents prefer the word “Member” to “Citizen”. This is clear direction from respondents that they are not interested in reconceptualizing membership as citizenship.

Respondents also showed willingness to use a Halq’eméylem word to describe Membership. It is possible for the Membership Code to refer to both the terminology of “membership” and Halq’eméylem words to describe the Seabird people. We will continue to explore the inclusion of Halq’eméylem words in the Membership Code.

3. Rights and Responsibilities

Respondents provided clear support for the creation of a document setting out the rights and responsibilities of Members and to include it as part of the Membership Code.

Respondents also indicated that they dislike the idea of allowing the Rights and Responsibilities document to provide justification for the removal of Members if a Member were to disobey it. It is likely that this document will be closer to an aspirational document that sets out high level values and expectations of Seabird, rather than a strict code of conduct. However, it is possible that the Rights and Responsibilities document could be used to help judge applications for Membership.

FOCUS AREA #3 – Determining Seabird Rights and Responsibilities

The challenge is now to determine what those rights, responsibilities, and values will be. The Questionnaire did not suggest rights and responsibilities but rather asked Members

to offer their own ideas. Many ideas were put forward by Respondents which we will work to collect and summarize before the next discussion is scheduled on this topic.

Some respondents said they would like to hear more about traditional laws and protocols and old teachings to see if they could be incorporated into this document and the Membership Code at large. We may be able to facilitate a conversation with Dr. Keith Carlson, an ethnohistorian that Seabird has hired, on Membership related matters.

4. Application Process and Administration

The Questionnaire asked participants to think about how applications should be processed. Most respondents agreed that a Membership Committee should be established to make decisions on Membership applications. However, about half of the respondents also thought that the community should vote on Applications. (There was very little support for leaving application decisions in the hands of an Enrolment Officer or Membership Clerk. Those roles should be essentially administrative.)

These responses lead to two related issues to be determined:

FOCUS AREA #4 – Establishing a Membership Committee

Seabird needs to determine how the Membership Committee would be created and function: who can be appointed to it, how does the Committee make decisions, and what decisions it is responsible for.

FOCUS AREA #5 – Identifying decisionmakers for the Application Process

Since half of respondents thought that the community should have voting power in the application process, we should explore further what this might look like. Seabird needs to determine: (1) what type of applications can be decided by the Membership Committee alone; and (2) what type of applications, if any, need community consultation or a community vote.

5. Removals from Membership

Most respondents thought that the Membership Code should have ways to remove a person from Membership in certain situations.

FOCUS AREA #6: Confirm circumstances a Member can be removed from Membership

The first issue to address: under what circumstances can a Member lose their status?

Respondents agreed with two circumstances in which a Member should be able to be removed from Membership:

- When a Member lied or gave false information in their application to Seabird.
- When a Member causes harm to the community or Members.

Respondents were divided on whether the following circumstances should lead to removal:

- When a Member commits a serious criminal offence.
- When a Member becomes a member of another First Nation.
- When a Member gained membership through marriage, but that marriage ends (through divorce or separation).

Respondents generally disliked the following options:

- When a Member gained membership through marriage, but the spouse has died.
- When a Member disobeys the new document setting out the rights and responsibilities of Seabird Members.

We think these responses lead to the following related questions that Seabird must address:

- (1) Should Members be removed for causing harm to the community or Members or for committing serious criminal offences?
 - a. If yes, then what type of harm or criminal activity would justify a removal proceeding?
 - b. If yes, then who would decide whether to remove the Member and by what process?
 - c. If yes, is there risk of liability or legal action for the Band (perhaps an infringement of the *Charter of Rights and Freedoms*)?
 - d. If yes, could this be penalizing the removed Member's family members and descendants if they lose entitlement to Membership?

- (2) Should Seabird allow for dual membership with other Indian Bands?
 - a. And does it matter if the other band or tribe is in the United States?
 - b. This issue is discussed in **Focus Area #8** below.
- (3) Should Members who gained entry to Seabird through marriage or common law relationship lose their Membership if that relationship ends (other than by death)?
 - a. If yes, would it be automatic or subject to someone's decision?
 - b. What if the Member holds a Certificate of Possession and/or is raising children who are Seabird Members?
 - c. Does it make a difference if spouses must apply for Membership, rather than obtain Membership by right of marriage?

There are two other related issues to resolve respecting removals:

FOCUS AREA #7: Identifying decisionmakers for removing a Member

In addition to determining when a Member can lose their Membership, Seabird must address (1) who has the power to remove a Member against their will; and (2) how would this decision-making person or group go about doing this? Will it be the Membership Committee or a separate entity?

FOCUS AREA #8: Membership in multiple Bands

Another issue to address is that of dual- or multi-membership in other Indian Bands, First Nations, or American Tribes. We did not ask this directly in the Questionnaire, but it was mentioned by respondents in the comments and about half of respondents thought that joining another Band should be grounds for removal from Membership. Members should consider the pros and cons of allowing Membership in more than one band.

6. Amendment Process

The Code must contain a procedure for changing it in the future. In the Questionnaire, most respondents thought that the best way to amend the Code would be to have a Referendum with a polling station and mail-in ballots.

FOCUS AREA #9 – Developing the Amendment Process

The procedure for the amendment process vote needs to be further discussed and decided. For instance, should there be a minimum threshold of participation in an amendment vote for a vote to be successful?

DGW can suggest some model amendment procedures for Membership to discuss and consider. If Members have ideas for an amendment procedure, we are keen to hear from you.

7. Appeals and Protests

The Questionnaire did not ask participants any questions about appeals or protests, however, we flag this as another issue that we will need to discuss with Membership.

FOCUS AREA #10 – Appeals and Protests

The Code will need to include a mechanism for people to appeal the decisions of the Membership Committee. Any person whose registration or application is denied, or who is removed from Membership should be provided the opportunity to appeal the decision. Related questions include: who will hear and decide on Appeals; what is the procedure for appeals?

Seabird could also decide to include “**protest**” provisions, in which a Member other than the applicant disputes another person being added to, or removed from, the Membership List.

SUMMARY OF “FOCUS AREAS” FOR FURTHER DISCUSSION

We have identified ten “Focus Areas” that need to be explored and discussed further through community engagement. We provide a brief description of each Focus Area in the list below.

Who should be a Member?

- **FOCUS AREA #1 – Indian Status:** Seabird must decide whether to allow individuals who do not have Indian Status to join Membership.
- **FOCUS AREA #2 – Second Tier of Membership:** Seabird must decide whether the concept of a “second tier” of membership for non-Indian Status persons is an appropriate way to include folks who would otherwise be a Member if they did have Status. If not, are there other solutions that would allow Seabird to include certain Non-Status persons?

Rights and Responsibilities

- **FOCUS AREA #3 – Determining Seabird Rights and Responsibilities:** What rights, responsibilities, and values does Seabird want to include in the Membership Code?

Application Process and Administration

- **FOCUS AREA #4 – Establishing a Membership Committee:** Seabird needs to determine how the Membership Committee would be created, who can be appointed to it, how it functions, and what decisions it is responsible for.
- **FOCUS AREA #5 – Identifying decisionmakers for the Application Process:** Related to Focus Area #4, Seabird needs to decide if there will be a role for the community in deciding on Membership Applications or if decisions will be left to the Membership Committee. Seabird should also determine the relevant factors the Committee is allowed to consider in making decisions about Membership (i.e., Guidelines for the Membership Committee).

Removals from Membership

- **FOCUS AREA #6 – Confirming circumstances a Member can be removed:** If Seabird decides to allow Members to be removed for harmful behaviour, Seabird needs to decide what qualifies as harmful behaviour. Further, does Seabird want to allow for the removal of Members who married into Seabird upon divorce; and would this apply in all circumstances?

- **FOCUS AREA #7 – Identifying decisionmakers for removing a Member:** If Seabird decides to allow for the removal of Members, who will be charged with making this decision and by what process?
- **FOCUS AREA #8 – Dual-membership:** Does Seabird want to allow Members to be members of multiple Indian Bands? Does it make a difference if the tribe is in the United States?

Amendment Process

- **FOCUS AREA #9 – Developing the Amendment Process:** Seabird needs to confirm the voting process for amending the Code in the future – particularly the minimum threshold of participation for a successful vote (i.e., does a certain percentage of the electorate need to participate for a vote to count)?

Appeals and Protests

- **FOCUS AREA #10 – Appeals and Protests:** Seabird needs to decide who will decide appeals of Membership decisions (applications and removals) and by what process. Further, Seabird needs to decide whether to include a “protest” provision in which Members can dispute another person being added to, or removed from, the Membership List.

Once we have answers to the above questions and issues, Seabird will have most, if not all, of the provisions required to draft a Membership Code for the community's consideration.

To make community engagement manageable moving forward, it is likely that future community meetings and discussions will be focused on one or two of the above Focus Areas.