



2015-2016 Kwanlin Dün First Nation
Constitutional Review Process:
a summary and points for discussion...

Update December 2015



2015-2016 Kwanlin Dün First Nation Constitutional Review Process: a summary and points for discussion...

Prepared by the Kwanlin Dün First Nation Constitutional Review Committee

This document is a summary of the process that has been put in place for the review of the Kwanlin Dün First Nation (KDFN) Constitution and some of the basic things you should know about constitutions, and about your Constitution. This booklet includes a section called “Points for Discussion” beginning on page 8 that may help you in thinking about how to make your Constitution better.

The full text of the Constitution can be found on the KDFN website:
<http://www.kwanlindun.com/uploads/Constitution.pdf> .

To obtain a print copy of the Kwanlin Dün First Nation Constitution, or if you wish to provide comments, please contact:

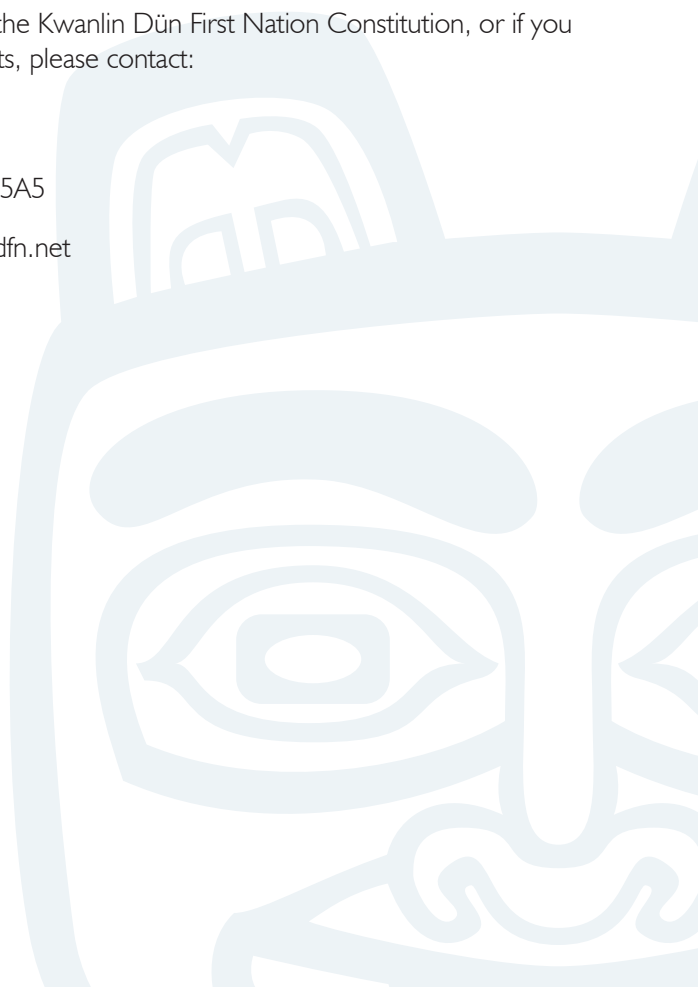
Kwanlin Dün First Nation
35 McIntyre Drive
Whitehorse, Yukon Y1A 5A5

ConstitutionalReview@kdfn.net

Phone: 867.633.7800

Fax: 867.668.5057

Update December 2015



Introduction

In 2005 the KDFN Final and Self-Government agreements recognized our right to govern ourselves. These agreements have confirmed that KDFN has the authority to manage and support things that are important to us, including our land, our resources, and our people.

Our Constitution sets out our rights as KDFN citizens. It defines the branches of our Government (our governing bodies), and their composition, roles, responsibilities and powers. It also speaks to the responsibilities of citizens who play a vital role in preserving and strengthening our culture, languages, traditions and laws. Our Constitution says that we are all responsible for protecting our lands and all living things in our Traditional Territory. It says we must respect our Elders, nurture our youth and children who are our future, as well as support family. Respect is at the heart of our First Nation as we work to build warm and healthy community.

In 2010 a Resolution was passed at the General Assembly calling for the review of the Constitution. In 2015 Council reappointed the Constitutional Review Committee, and asked it to take on this important task, with particular attention to listening to citizens in coming up with its recommendations to Council.

In 2016 Council will receive the Committee's recommendations, and will then put a "package" of changes to all citizens through a referendum.

All citizens are encouraged to think carefully about your community and government, and take an active role in this work.

What's this about

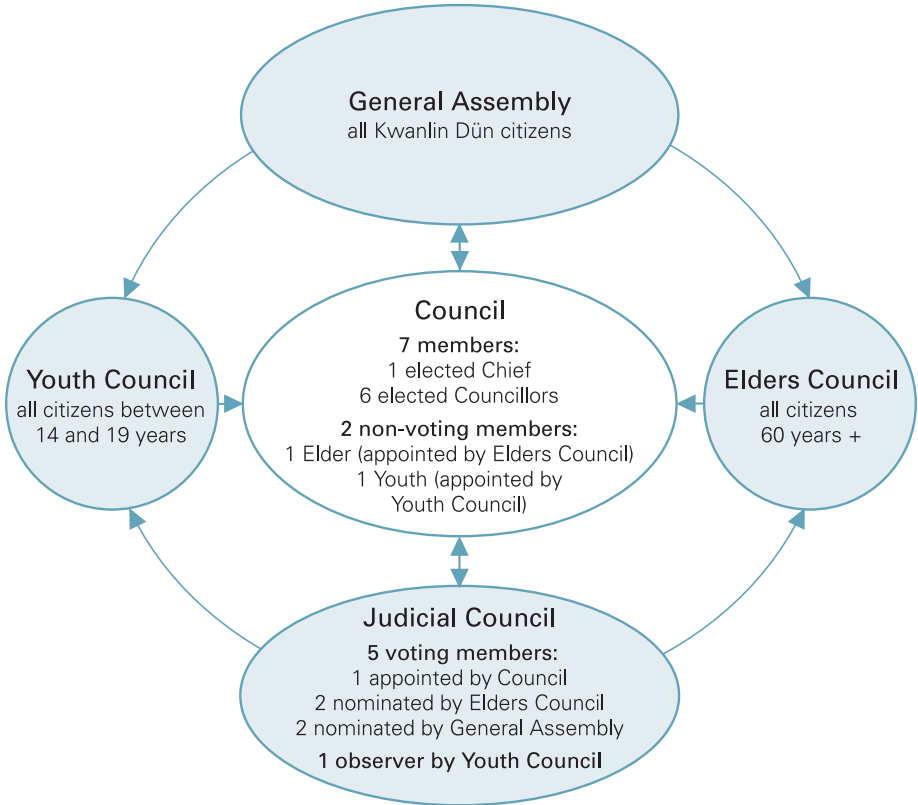
Kwanlin Dün First Nation adopted its Constitution as part of ratification of the Final Agreement and Self-Government Agreement in 2005.

Your Council, earlier this year, appointed the Constitutional Review Committee to work closely with citizens to put forward recommendations for changes to Council relating to our supreme law, our Constitution, guided by four key objectives.

Key Objectives:

1. Ensure coherence among all sections;
2. Pursue simplicity in drafting;
3. Create an enabling Constitution; and
4. Eliminate conflicts in the Constitution.

In addition to working closely with you, the Constitutional Review Committee is called upon to consult with all branches of KDFN as well as the Citizenship Committee and all government departments in preparing its recommendations.



There are a number of key steps to making changes to the Constitution.

The creation of the Constitutional Review Committee is a first step, and one that is important to making sure that citizens are fully involved in what we want in this supreme law.

Ultimately a referendum is required for changes to be made to the Constitution. This involves you, all citizens of KDFN who are eligible to vote, as it is only through referendum that the Constitution can be amended.

Council would like this process to be completed before the Council election process starts in November 2016 with the appointment of the Elections Committee.

The following steps must be completed by the dates shown here:

- Citizen engagement from November 2015 through February 2016;
- Deadline for citizen input is February 12, 2016;
- The Constitutional Review Committee and Council will meet in early April to discuss citizen input;
- The Constitutional Review Committee final report with recommendations to Council will be completed by May 20, 2016;
- This final report will be shared with citizens by the end of May to complete the circle of engagement;
- Council will then consider the final report, have the Constitution rewritten, and a referendum question prepared;
- The referendum process will start in June 2016, and conclude in early November 2016 so that there is no overlap with the election process (this process starts November 15, 2016 with the appointment of the Elections Committee).

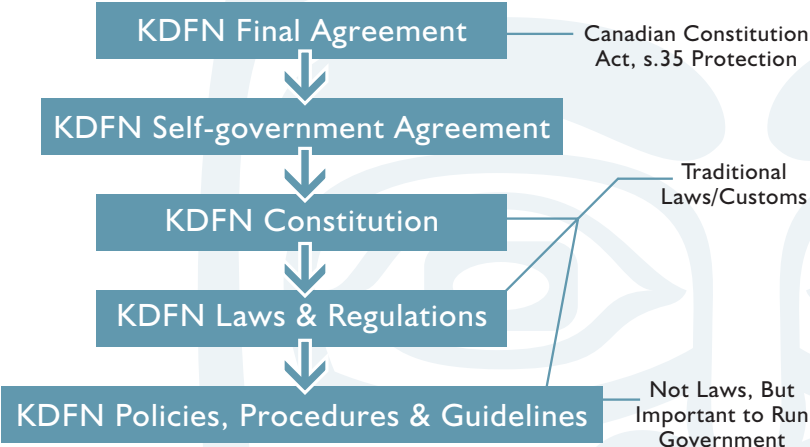
What is a Constitution, and why is it important?

Constitutions are very important. They are the supreme law that guides the composition of all other laws made by your government. The Constitution is closely linked to your Land Claim and Self-Government agreements.

There is a hierarchy involved where the items at the top are superior to the next level. In many areas your traditional law and custom can be integrated.

This diagram shows this hierarchy and the relationships of each level.

HIERARCHY OF LAWS:
where your Constitution fits...



The Constitution provides basic terms, definitions, and guidance that all KDFN's other laws are developed from. It recognizes who we are as citizens and as Beneficiaries. It gives life to and describes the Council, Elders' Council, the Judicial Council, Youth Council, and the General Assembly. It tells us what powers and responsibilities each of these bodies has. It says that the Council is responsible for passing the laws. It also says that changes to this supreme law, the Constitution, can only be made by referendum where we all have an opportunity to vote.

Finally, the Constitution sets out what rights we have relating to our government and its branches, and our responsibilities as proud and active citizens of the First Nation.

Three important things to know...

1. The Constitution is working. This Constitutional review is not about fixing it, but about finding ways to make it better and an expression of what you as citizens want.
2. The Constitution is owned by the citizens, and therefore it is ultimately the people who will decide on changes to it through a referendum. Our Constitution recognizes that Kwanlin Dün is no longer an Indian Act Band under the authority of the Minister of Indian Affairs; it is now a First Nation with self-governing powers.
3. There are elements of our culture deeply rooted in today's Constitution. An example is the General Assembly. There are no other governments other than aboriginal governments that identify all citizens as an institution of government.

What's in the KDFN Constitution

Preamble. This part of the Constitution talks to the KDFN values that are fundamentally important to how people should read this document, including recognition of the Creator, and our relationship to land, water and resources. It speaks to our inherent right to govern ourselves.

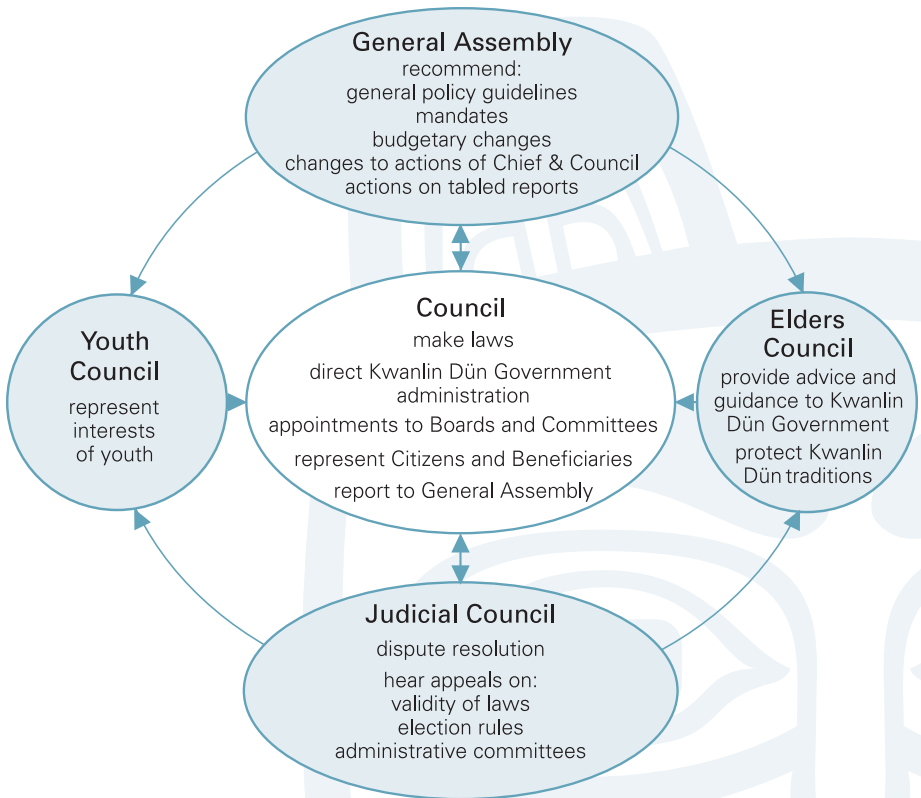
Chapter One: Fundamental Principles. The KDFN and its citizens are recognized there. The Constitution is described as our supreme law. Language and culture are described as well as our governing principles and goals as a First Nation. Finally it talks to the responsibilities that we share as citizens.

Chapter Two: Citizenship. Who we are as citizens is critical to the First Nation. Who is entitled to be a citizen is outlined in the Constitution, how to apply, when

you can lose citizenship or transfer to another First Nation are all provided here. There is a requirement for the KDFN Government to maintain legislation to address details surrounding citizenship.

Chapter Three: Rights of Beneficiaries. The Beneficiaries of KDFN are those citizens who are enrolled under the Kwanlin Dūn Final Agreement. They are responsible for approving some fundamental policies that apply to the First Nation: investment of Settlement funds; Settlement Land; consultation requirements where amendments to the Final Agreement are being considered; and other policies that help strengthen the Final Agreement. There is the requirement for all ordinary law and other policies of the Government to be consistent with these fundamental policies approved by Beneficiaries.

Chapter Four: Rights and Freedoms of Citizens. This chapter captures the broad rights and freedoms of all our citizens. All citizens are considered equal under KDFN law. Political rights are captured here. Finally citizens have access to the Judicial Council if they believe a right has been infringed or denied.



Chapter Five: Kwanlin Dün Government Structure. The branches of the Government are identified here along with their roles in governing the First Nation: the General Assembly; the Council; the Elders Council; the Youth Council; and the Judicial Council. Together these bodies are your Government. The elections are covered here as well as conditions that relate to taking office, including conduct while in office. Other matters like the length of a term in office, resignation from office or termination from a seat are also defined here.

Chapter Six: The General Assembly, Elders Council and Youth Council. Each of these three branches is described in detail in this chapter. Of particular importance are the provisions that describe who can be in these offices and the powers of these bodies.

Chapter Seven: The Council. The makeup of the Council is described with its powers and responsibilities outlined. The Office of Chief is given full treatment including how she/he is to be elected and the conditions in that Office. How the Council is to do its business is described. Also, because Council is the body responsible for the laws of the First Nation, the process for developing, approving and registering laws is also laid out.

Chapter Eight: Judicial Council. A citizen, to be treated fairly, must be heard if she or he does not agree to decisions made by the Government. These powers are described, and procedures of the Council are outlined. The makeup of the Judicial Council and who can be qualified for appointment are given here.

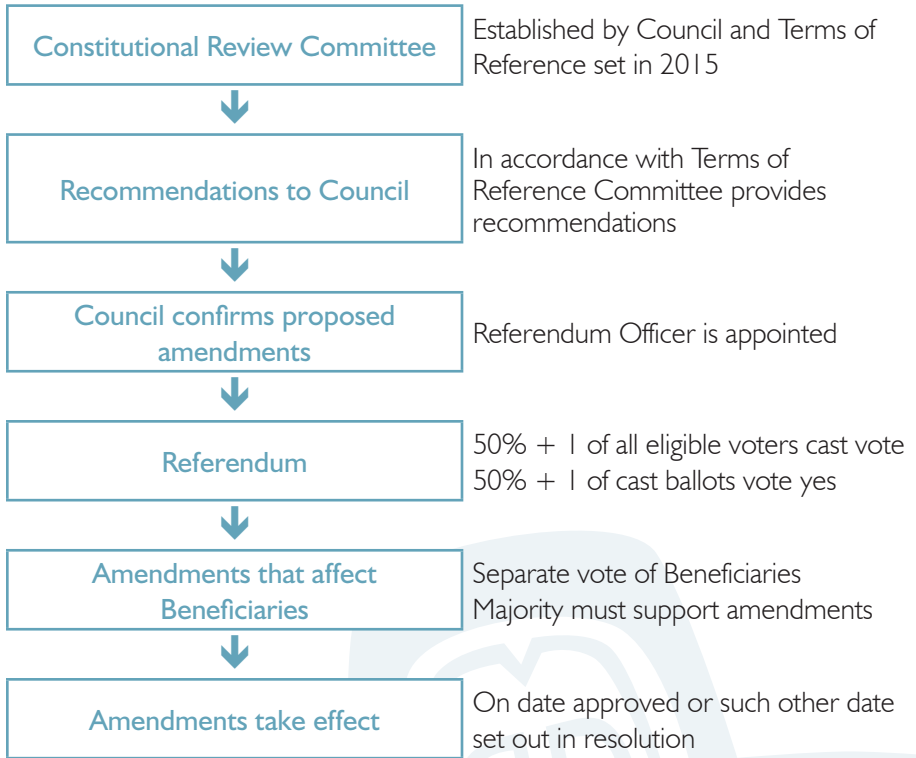
Chapter Nine: Finance and Administration. The principles applying to managing the finances are outlined including prudence, openness and accountability. The fiscal year is provided. The budgeting process and authority to spend are given, as is the requirement for audits.

Chapter Ten: Amendments and Referendums. Our sovereignty as a self-governing First Nation gives us the ability to amend our Constitution as we deem necessary. The key element is that all citizens are part of the process of approving changes through a Referendum process identified in this chapter.

Chapter Eleven: General Provisions. A series of other provisions relate to the management of the Constitution. Its ratification and transition provisions are given here, as are definitions relating to certain terms in this supreme law. Finally a section gives some guidance on how the Constitution should be interpreted.

Schedules of the Constitution. There are four detailed schedules that relate to specific topics in the Constitution: Oaths of Office; Citizenship Code; Election and Referendum Code; and Code of Conduct. Today, Council is considering a number of draft laws that will result in moving the details of some of these Schedules out of the Constitution, and into ordinary legislation.

Constitutional Amendment Process Moving Forward...



Points for Discussion

As noted earlier, the mandate of the Constitutional Review Committee embraces four key objectives.

These are to:

- a. ensure coherence (make sure all parts are consistent);
- b. pursue simplicity (write it and organize it so that it is easy to understand);
- c. create an “enabling” Constitution (one that does not drill down too much into specifics); and
- d. eliminate conflicts within the Constitution.

To help start our conversation, the following questions are provided (we've heard these from you recently):

On culture and values:

- Are there Aboriginal words and phrases that can be used in the Constitution to describe our Government?

On roles and responsibilities of government branches:

- What do you think the responsibilities of Council should be?
- What do you think the responsibilities of the General Assembly should be?
- What should the role of the Elders' Council be?



On clarity and purpose:

- Do you think the Constitution should give reasons for there being a Youth Council?
- Do you think the Constitution should give reasons for there being an Elders Council?

On ways to appoint:

- Should the method of appointment of Elders' Council be changed? To what?

On terms of Office:

- Do you think the term of office for Council should be changed (now 3 years)? To what?

On definition of "Youth":

- What do you think the age should be defining our "Youth" (now it covers citizens between 14 and 19 years of age)?

Other ways we plan to improve the Constitution include:

- Taking details out of the Constitution, putting them into what is known as "ordinary" legislation; for instance details relating to Citizenship can go into a Citizenship Act (other laws that will be affected in a similar way are the Elections Act, Governance Act and Judicial Council Act).
- There are sections of the Constitution that are defined as "ordinary law". This was needed early on to help with transition to self-government. These will be removed so that the entire Constitution is one supreme law with superior status.
- In addition, this is our opportunity for "clean up" of the Constitution (non-substantive and technical amendments)
 - where provisions are pulled out and put into "ordinary legislation", the Constitution will be amended and will look quite different.
 - terms used will be made consistent, such as using only one for:
 - "law",
 - "Kwanlin Dun First Nation legislation",
 - "Kwanlin Dun First Nation law", and
 - "Act".
 - Another example is moving the "Definitions" section which is in Chapter Eleven at the back of the Constitution, to the front. Definitions are almost always at the front of a Constitution or law for easy reference.



These kinds of amendments do not change the meaning of the Constitution, but do help to make it an easy document to read and to understand.

Finally, it is important to note that any changes considered in this process must be consistent with the KDFN Final and Self-Government agreements.

The Constitutional Review Committee looks forward to serving you in bringing your thoughts and ideas forward for consideration by your government, ultimately to you as the General Assembly.



Kwanlin Dün First Nation
35 McIntyre Drive
Whitehorse, Yukon Y1A 5A5

Telephone: 867-633-7800
Fax: 867-668-5057
Website: www.kwanlindun.com
ConstitutionalReview@kdfn.net



This publication is produced by the Kwanlin Dün First Nation for the purpose of updating citizens on community, business, initiatives and affairs. No part of this publication may be reproduced in whole or in part without the written consent of the Kwanlin Dün First Nation.