

# ESK'ETEMC DISTRIBUTION POLICY

Adopted: May 23, 2025

Whereas:

- A.** After extensive consultation with the Esk'etemc membership concerning the monies received by Esk'etemc arising from the settlement of its Wycott's Flat I.R. 6 (Tsqewt) Specific Claim, the Esk'etemc Council has decided that there may be distributions to Esk'etemc Members.
- B.** As a result, the Council of Esk'etemc are of the opinion that, in the interests of fairness and transparency, a distribution policy is required to be put into place prior to any distributions being made.
- C.** This Distribution Policy shall apply to all Distributions to be made to Members.

Now therefore, the Council of Esk'etemc hereby enacts the Distribution Policy as follows:

## **1. Definitions**

1.1 The following definitions are applicable in this Distribution Policy:

- (a) "Absentee Member" means an Eligible Member to which all of the following apply:
  - (i) their contact Information is not current;
  - (ii) reasonable efforts to contact the Member have been attempted; and,
  - (iii) the Eligible Member has not received or endorsed a Distribution Payment for a period of 18 months;
- (b) "Applicant" means an Eligible Member who has filled out an Application Form;
- (c) "Application Form" means the form completed by an Eligible Member to become Entitled Member;
- (d) "Child in Care" has the meaning given to that term in the Child, Family and Community Service Act, R.S.B.C. 1996, c. 46;
- (e) "Contact Information" means a mailing address, both physical and email, designated by the Member at which the Member will receive Correspondence sent by Esk'etemc;
- (f) "Correspondence" means letters, handouts, emails and texts and, other electronic transmissions;
- (g) "Council" means the elected Kukpi7 and Council of Esk'etemc;
- (h) "Council Resolution" means a resolution passed by a Quorum of the Esk'etemc Council at a duly convened meeting;
- (i) "Custody" includes physical care, control and guardianship of a Minor;
- (j) "Debt" means any amount owing by a Member to Esk'etemc, including but not limited to, debts arising in respect of unpaid rent, or any other accounts receivable amounts owing to Esk'etemc;

- (k) "Disentitlement Date" means the date an Entitled Member is no longer entitled to receive a Distribution Share due to their being deceased, or otherwise having been removed from the Membership List;
- (l) "Distribution" means a sum of money that Council has determined, by way of a Council Resolution, will be distributed to Members;
- (m) "Distribution Date" means any date or dates upon which, as approved from time to time by Council Resolution, Distribution Shares become due and payable to Members;
- (n) "Distribution Payment" means an electronic transfer made to a Member representing payment of the amount of a Distribution Share owing to the Member on a Distribution Date or by such other means as approved by way of a Council Resolution;
- (o) "Distribution Program" means the program that operates under the direction and control of the Council designed to evaluate and control Distributions to Entitled Members;
- (p) "Distribution Share" means the pro rata interest of a Member in a Distribution payable on a Distribution Date and the sum of any such payments held in trust;
- (q) "Eligible Member" means Members who hold a valid certificate of Indian Status and are on the Membership List and will thus be eligible to apply for enrollment in the Distribution Program.
- (r) "Entitled Member" means an Eligible Member, or in case of a Minor or a person under a disability their guardian, trustee or administrator, that has a completed an Application Form seeking to enroll in the Distribution Program.
- (s) "Entitlement Date" means, with respect to a Member, the date his or her Application Form is completed to the satisfaction of the Council, or in the case of a Minor or person under a disability their guardian, trustee or administrator;
- (t) "Esk'etemc" is a First Nation consisting of its Members and governed by its Kukpi7 and Council;
- (u) "Governmental Agency" means any agency of government including, for certainty, Esk'etemc, federal, provincial or regional government or governmental or regulatory authority, and includes any department, commission, First Nation or Band, administrative agency or regulatory body of any of the foregoing;
- (v) "ISC" means Indigenous Services Canada;
- (w) "Member" means an Esk'etemc member registered on the Esk'etemc Membership List maintained by the Indian Registrar, other than those persons who were Members but are now deceased, but includes, for purposes of this Distribution Policy, Minors whose parents or guardians have applied to ISC for that Minor to be placed on the Membership List on or before the Distribution Date but due to administrative delays have not been placed on the Membership List but are later included on the Membership List. If the Minor is determined not to be eligible to be placed on the Membership List by ISC or the Indian Registrar they will not be entitled to a Distribution Share;

- (x) "Membership List" means the membership list of Esk'etemc maintained by the Indian Registrar pursuant to section 11 of the Indian Act;
- (y) "Minor" means a person under 18 years of age;
- (z) "Patient" means a Member who is a "patient" as defined in the Patients Property Act, R.S.B.C 1996, c. 349;
- (aa) "Quorum" means 50% plus one of the Council who are in attendance in person or by electronic means or conference calls.

## **2. Distributions**

- 2.1 A Distribution declared by way of a Band Council Resolution will be administered through the Distribution Program as directed by Council. All Members on the Membership List who are alive at the date of a Distribution will be entitled to an equal Distribution Share. For clarity, no Member shall receive a greater Distribution Share than another Member.

## **3. Form of payment**

- 3.1 A Distribution Share may only be paid by way of a Distribution Payment, unless otherwise directed by Council Resolution.

## **4. Payment to Applicant**

- 4.1 A Distribution Share will only be paid in the name of the original Applicant.

## **5. Obtaining payment**

- 5.1 A Distribution Payment may only be paid to a Member:
  - (a) by electronic bank transfer into a bank account in the name of the Member; or,
  - (b) such other means as Council directs by way of a Council Resolution.

## **6. No Advance**

- 6.1 No Member will, under any circumstances, receive a Distribution Payment in advance of the Distribution Date.

## **7. Unclaimed and Retained Distribution Shares**

- 7.1 Esk'etemc will not be responsible to ascertain why a Member has not received his or her Distribution Payment after each Distribution Date
- 7.2 Esk'etemc will not be liable for unclaimed Distribution Payments. Any unclaimed Distribution Payment will be held valid for six months following the Distribution Date, following which Esk'etemc may, in its sole and absolute discretion, cancel said payment and return the funds to its operating account.
- 7.3 If a Member has not received a Distribution Payment they may apply to Council to have the Distribution Payment made to them. Council may, in its sole and absolute discretion, decide whether or not to make the Distribution Payment.

## **8. Interest and Income**

- 8.1 Unless otherwise provided for by way of a Council Resolution, a Member is not entitled to any income or interest on a Distribution Share.

## **9. Entitlement to a Distribution Share**

- 9.1 Subject to this Policy, an Esk'etemc Eligible Member is entitled to receive a Distribution Share on a Distribution Date that occurs on or after his or her Entitlement Date as long as he or she is a Entitled Member.
- 9.2 A Member, or an individual that ceases to be a Member, is not entitled to a Distribution Share on a Distribution Date that is
- (a) before that Member's Entitlement Date; or,
  - (b) on or after that Member's Disentitlement Date.
- 9.3 For certainty but subject to section 9.2, a Member who is deceased, or otherwise removed from the Membership List ceases to be entitled to receive any Distribution Shares, as of the applicable Disentitlement Date.
- 9.4 By and upon receiving a Distribution Payment, a Member or other individual represents and warrants to Esk'etemc that they are entitled to receive that Distribution Payment, and in the event that individual or other Member is not entitled to receive that Distribution Payment, that individual or Member agrees to pay a sum equal to the total of all the Distribution Payments they have received that he or she is not entitled to and until that total amount is repaid in full, the portion of the amount that remains unpaid constitutes a debt owing to Esk'etemc that is immediately due and payable.
- 9.5 Upon receiving a Distribution Payment, a Member or individual referred to in section 9.4 agrees to indemnify and save harmless Esk'etemc against all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities costs (including legal costs on a solicitor and own client basis), liabilities, losses paid, howsoever arising and relating to the Distribution Payment.
- 9.6 By accepting a Distribution Payment, each Member that receives a Distribution Payment agrees to the terms of this Policy as if this Policy were a contract between the Member and Esk'etemc.

## **10. Payment of Debt to Esk'etemc**

- 10.1 Unless directed otherwise by Council Resolution, Esk'etemc will withhold the Distribution Shares of a Member with an unpaid Debt owed to Esk'etemc and will apply toward the Member's Debt the Distribution Shares of the Member until that Debt is paid in full. If the Member disputes that they owe a Debt to Esk'etemc the onus is on the Member to prove that he or she is not indebted to Esk'etemc. If the Member provides information but there is still a dispute the matter may be referred to an agreed upon neutral party for resolution.

## **11. Payment under Court order**

- 11.1 Despite any other provision of this Policy, Esk'etemc must pay a Member's Distribution

Share on a Distribution Date as directed in a court order made, among other things, under the Family Maintenance Enforcement Act, R.S.B.C. 1996. c. 127.

**12. Member who is an Absentee Member**

- 12.1 An Absentee Member is not eligible, and will not receive, a Distribution Share or Distribution Payment unless they have filled out and signed an Application Form in a form acceptable to Council and have provided up to date Contact Information.
- 12.2 Esk'etemc may make reasonable efforts to locate an Absentee Member, and obtain current Contact Information for an Absentee Member.
- 12.3 Any costs and expenses incurred by Esk'etemc resulting from Esk'etemc making efforts to locate an Absentee Member may be charged against future Distribution Payments payable to that Member if the Absentee Member becomes an Entitled Member.

**13. Member who is a Patient**

- 13.1 A Distribution Share for a Member who is a Patient must be paid in the name of the Patient and delivered to the person who, in accordance with the Patients Property Act, R.S.B.C. 1996, c. 349 has, on the Distribution Date, the legal right to administer the estate of the Patient.

**14. Member who is a Minor**

- 14.1 Subject to section 14.2 and 14.4, the Distribution Share of a Minor must be held by Esk'etemc in trust for that Minor until the Minor turns 18 years of age.
- 14.2 If a Minor dies before becoming 18 years of age, a Distribution Payment or Payments held by Esk'etemc under section 14.1 must be paid to the Minor's estate as proven by a valid Will or letters of administration, or as directed by a Court Order, provided that the beneficiary or beneficiaries so entitled are 18 years of age or older. If they are not, the Distribution Share of that beneficiary or beneficiaries shall be held in trust until they turn 18.
- 14.3 If a Minor transfers to another First Nation or band, their entitlement to a Distribution Share will immediately cease.
- 14.4 If a Minor is a child in care or is taken into protective care by any Governmental Agency, Esk'etemc must hold that Minor's Distribution Share in trust for that Minor on the terms set out in section 21 and must not make any payment from that Distribution Share to any person as long as that Minor is a child in care or is in the protective care of any Governmental Agency.
- 14.5 If a Member has recently had a newborn child, the child is not automatically eligible for Distribution Share. The parent, guardian or trustee of that child must apply for that child to be enrolled and listed as an Entitled Member. No funds will be disbursed if the date of the Minor's eligibility is after the disbursement date. Once the newborn Minor is an Entitled Member, Distribution Share payable to that Minor be held in trust by Esk'etemc.

**15. Member who is Incompetent**

- 15.1 If a family member of a Member is of the opinion that a Member who is entitled to a Distribution Share is incompetent they must obtain a court Order evidencing this which appoints an Administrator who is authorized to receive a Distribution Share.
- 15.2 If a Member has been declared to be incompetent by a court their Distribution Share may be paid to the appointed Administrator of their estate.

**16. Deceased Members**

- 16.1 A Member who has died on or before a Distribution Date will not be entitled to a Distribution Share in that Distribution even if they would have otherwise been entitled prior to their death. No Distribution Payments shall be made to the estates of deceased Members.

**17. Standard of care for Esk'etemc Members**

- 17.1 If Esk'etemc holds a Distribution Share for a Member pursuant to sections 12, 13, and 14 Esk'etemc must perform the duties and may exercise the powers of a trustee regarding that Distribution Share and, in holding that Distribution Share, Esk'etemc must act honestly, in good faith and in the best interests of the Member for whom the Distribution Share is held and must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Distribution Shares held for a Minor Member will earn interest income at the deposit savings account interest rate of Canadian chartered bank, trust company or credit union, in which the funds are held.

**18. Segregated account**

- 18.1 If Esk'etemc holds a Distribution Share for a Member under this Part, that Distribution Share must be held in a bank account segregated from all other Esk'etemc bank accounts.

**19. Records**

- 19.1 For each Member with a Distribution Share held under this Part, Esk'etemc must keep or cause to be kept accurate and detailed records of all investments, receipts, income, expenses, disbursements and other transactions for that Member and must make those records available for inspection or audit by the Council, the parents or guardian, or a person or person authorized by Council of the Minor or the administrator of the Patient at all reasonable times.

**20. Posting of a bond**

- 20.1 Unless otherwise required by law, Esk'etemc is not required to post a bond, surety or security for the performance of Esk'etemc's duties under this Part.

**21. Payments to a Minor on their 18<sup>th</sup> birthday**

- 21.1 If Esk'etemc holds a Distribution Share for a Minor, when that Minor turns 18 years of age, Esk'etemc must pay the Distribution Share with accrued interest income up to that date, to that Member within 90 days of that Member having become 18, but only after receiving a signed receipt and release in forms approved by Council for that payment from that Member.

- 21.2 A Receipt and Release given by a Member for payment of any income and capital of a Distribution Share held under this Part to which the Member is entitled constitutes a full and sufficient discharge of Esk'etmc for that income or capital of that Distribution Share and Esk'etmc is not required to enquire as to the future use of those monies.

**22. Professional Advice**

- 22.1 Esk'etmc may retain the legal counsel, chartered accountants, investment managers, investment consultants, agents or other advisors qualified in the field that Esk'etmc decides is necessary or advisable for the purpose of discharging Esk'etmc's duties under this Policy, and to pay the advisor's reasonable expenses and compensation out of funds held by Esk'etmc that do not form part of the Distribution Share.

*(Signature page to follow)*



This Policy has been approved and adopted by the Council of Esk'etemc this 23<sup>rd</sup> day of May, 2025.



Chief Fred Robbins



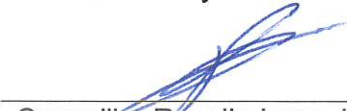
Councillor Kevin Chelsea



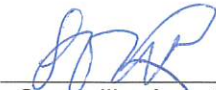
Councillor Kerry Chelsea-Bouchard



Councillor Cary Johnson



Councillor Rosalie Irene Johnson



Councillor Loretta Weingart



Councillor Edna Robbins



Councillor Neil Paul