

QALIPU MI'KMAQ FIRST NATION BAND GOVERNANCE

Governance of the Qalipu Mi'kmaq First Nation is based on the following:

- The Agreement for the Recognition of the Qalipu Mi'kmaq Band, including the Custom Election Code attached as Annex 'C' to that Agreement
- The *Indian Act*
- By-laws passed by the Band Council pursuant to authority granted by the *Indian Act*

Agreement for the Recognition of the Qalipu Mi'kmaq Band

The Qalipu Mi'kmaq First Nation is an *Indian Act* band established pursuant to the provisions of the Agreement for the Recognition of the Qalipu Mi'kmaq Band. That Agreement was negotiated between the Federation of Newfoundland Indians and the Government of Canada to establish the framework by which the federal Cabinet would establish the band.

The Qalipu Mi'kmaq First Nation therefore was not formed by members in the same way that a corporation or association would be formed. It was established by a federal Cabinet Order recognizing the specific people named in the Order as the body of Indians that would form the Band membership. Since the Band was formed by a declaration of the federal cabinet and not by its members, there was no constitution or by-laws that had to be approved by members dictating how the band was to be governed. Instead section 6.2 of the Agreement for the Recognition of the Qalipu Mi'kmaq Band specified that the Qalipu Mi'kmaq First Nation was to be governed through a Band Council selected in accordance with the Qalipu Mi'kmaq First Nation Band Custom Election Rules.

Through the Custom Election Rules, members eligible to vote determine their representatives on the Band Council. Through a referendum, members also can approve or reject changes to the Custom Election Rules pursuant to section 34.1 of those Rules. Once elected, the Band Council assumes responsibility for band governance pursuant to the authority granted to it under the *Indian Act*.

Indian Act

The Qalipu Mi'kmaq First Nation Band Council is a council chosen in accordance with the custom of the band and therefore falls within the section (b) definition of 'council of the band' under the *Indian Act*.

Since the Band Council has been recognized by the Government of Canada to have the authority to govern the Band's affairs, it has responsibility for the process by which employees are hired, program and service delivery, financial management, policy development, and developing planning and control systems. This includes the responsibility to manage the band's assets, appoint auditors and approve financial statements. Subject

to limited exceptions addressed in the next section, its powers include the sole authority to pass By-Laws authorized by the *Indian Act*.

The Band Council therefore operates as the authorized First Nation Government, operating as an allowed government under powers and duties prescribed by the *Indian Act*. Its power to act is sometimes compared to that of a municipality; i.e. based on powers given by legislation to a town or city council.

By-Laws

A Band Council's authority to pass By-Laws is contained in sections 81 through to 86 of the *Indian Act*. Since the Qalipu Mi'kmaq First Nation is an *Indian Act* band without a reserve, only certain portions of these sections apply. Those that do apply are contained in Annex E of the Agreement for the Recognition of the Qalipu Mi'kmaq Band.

Of those sections that apply to the Qalipu Mi'kmaq First Nation, The *Indian Act* only requires membership approval for By-Laws passed under section 81(1)(p.4) of the *Indian Act* relating to the assumption of control over band membership or payments to persons who ceased to be band members. The *Indian Act* also requires membership approval for By-laws addressing the importation, distribution and the sale of alcohol on reserves but for an obvious reason, this exception does not apply to the Qalipu Mi'kmaq First Nation. Otherwise sole authority to pass By-laws authorized by the *Indian Act* rests with the Band Council.

Roles and Responsibilities

Based on the foregoing, the governance roles and responsibilities within the Qalipu Mi'kmaq First Nation can be synopsized as follows:

Members

- Members on official voting list decide by election the Chief and Council of the Band
- Members approve changes to the Custom Election Rules through a referendum
- Member approval of By-Laws and Council decisions are limited to those relating to the assumption of control over band membership or payments to persons who ceased to be band members.

Band Council

- Directs the business of the Qalipu Mi'kmaq First Nation
- Its obligations are to:
 - set direction for the Band
 - ensure its financial viability
 - enhance and protect the Band assets
 - ensure the business of the Band is conducted responsibly
- Consider the Band's interests and needs in setting priorities
- Pass By-Laws where authorized by the *Indian Act* to give effect to its decisions