

Directive to the Enrolment Committee and the Appeal Master(s)
with respect to the application of paragraph 4.1(d)(ii) of the Agreement for the
Recognition of the Qalipu Mi'kmaq Band
relating to acceptance as a Member of the Mi'kmaq Group of Indians of
Newfoundland

Purpose

To provide directions on the application of paragraph 4.1(d)(ii) of the Agreement for the Recognition of the Qalipu Mi'kmaq Band (the Agreement).

Effective Date

This Directive takes effect on the date the Supplemental Agreement takes effect.

Application

This Directive applies to the members of the Enrolment Committee, including the Chair of the Committee, and to the Appeal Master(s).

Context

The Preamble to the Agreement for the Recognition of the Qalipu Mi'kmaq Band expressed the intent to establish a landless band for the Mi'kmaq Group of Indians of Newfoundland. The "Mi'kmaq Group of Indians of Newfoundland" referred collectively to the Mi'kmaq Groups situate at the various locations on the island of Newfoundland as determined under the Agreement. Members of the Mi'kmaq Group of Indians of Newfoundland were defined under section 1.13 of the Agreement to be those persons having a "current and substantial connection" with the Group. Founding membership in the Qalipu Mi'kmaq First Nation was intended to be granted primarily to persons living in or around these locations who met the other criteria in the Agreement. However, provision was made in the Agreement to permit persons who lived outside these locations to become band members if they self-identified as members of the Mi'kmaq Group of Indians of Newfoundland and were accepted by the Group. Persons who did not reside in or around these locations had to have a substantial connection to the Mi'kmaq Group on the island of Newfoundland to be eligible to become Founding Members.

The words "current and substantial" must be given their due importance in the context of the Agreement. The core of community acceptance is past and ongoing participation in

a shared culture, in the customs and traditions that constitute a community's identity and distinguish it from other groups. The connection that an applicant must show with a Newfoundland community of the Mi'kmaq Group has to be significant in quality and quantity; it must be true, profound and not of recent vintage. An applicant must demonstrate strong ties with the Mi'kmaq Group of Indians of Newfoundland that pre-date or were contemporaneous with the signing of the Agreement and continued up to the date of the Recognition Order.

The frequent references to the Mi'kmaq Group of Indians of Newfoundland in the Agreement show an intention by the Parties to the Agreement that acceptance by the Group must mean more than keeping a connection with one's own family members. Section 25 of the Guidelines mandates that there be evidence of activities that are directly related to the traditions and culture of the Mi'kmaq Group of Indians of Newfoundland with an emphasis on belonging to a Mi'kmaq community represented by a band or organization in Newfoundland, or in the alternative, a wider participation with the Mi'kmaq Group of Indians of Newfoundland in its activities and ceremonies so as to infer acceptance by the Group.

Directive

1. The Enrolment Committee is directed to determine whether an applicant is accepted as a member of the Mi'kmaq Group of Indians of Newfoundland by virtue of having established a current and substantial connection with that Group based on the application of the Enrolment Committee Guidelines (Annex A to the Agreement), particularly sections 25, 28, 29 and 30.
2. For the purposes of determining residency on the date of the Recognition Order, the Enrolment Committee will presume that the address provided by the applicant on the application form has not changed, unless there is information on the Applicant Record establishing that the applicant had a different address on the date of the Recognition Order.

Subsection 25(a) RESIDENTS

3. As provided for in subsection 25(a), residency in or around one of the locations of the Mi'kmaq Group of Indians of Newfoundland on the date of the Recognition Order (22 September 2011) is sufficient to establish a current and substantial connection with the group.
4. Residents in or around locations of the Mi'kmaq Group of Indians of Newfoundland are deemed to be accepted by their community since it would be presumed that they would have significant interaction with the members of their community. Such interaction may be assumed for individuals living in reasonable proximity to the location. Based on this, residing 'in or around' a location of the Mi'kmaq Group of Indians of Newfoundland shall be interpreted to mean:
 - For municipalities with official boundaries: within 20 kilometers outside the boundaries; or
 - For a location without official municipal boundaries: within a radius of 20 kilometers from its center.

Subsection 25(b) NON-RESIDENTS

5. In accordance with subsection 25(b), applicants who, on the date of the Recognition Order, were not residing in one of the locations of the Mi'kmaq Group of Indians of Newfoundland must demonstrate that, on a regular basis over a reasonably extended period of time, they frequently visited and/or communicated with Members of the Mi'kmaq Group of Indians of Newfoundland and participated in religious, ceremonial, traditional or cultural activities of the Mi'kmaq Group of Indians of Newfoundland.

6. Frequent visits and communications, and the maintenance of the Mi'kmaq culture and way of life will be assessed by the Enrolment Committee in accordance with the point system attached to this Directive to determine whether a current and substantial connection has been maintained.
7. The evidentiary burden to infer acceptance by the Mi'kmaq Group of Indians of Newfoundland through a current and substantial connection will be a high one for applicants not residing in or around one of the locations of the Mi'kmaq Group of Indians of Newfoundland. Evidence provided must show that the applicant has a strong cultural connection with one of the communities forming the Mi'kmaq Group of Indians of Newfoundland. This is a high threshold, because for a non resident to have maintained a strong cultural connection with a Newfoundland Mi'kmaq community requires a sustained and active involvement in the community despite the absence from the location. The threshold will likely be particularly difficult to meet for individuals who have been residing for a long time outside the location to which the current and substantial connection has been alleged.
8. The connection must go beyond close contacts with family members and include participation in the cultural and social life of the Newfoundland communities forming the Mi'kmaq Group of Indians of Newfoundland.
9. Applicants must provide objective documentary evidence that pre-dates or is contemporaneous to the signing of the Agreement (23 June 2008). The connection must also have continued and be in existence on the date of the Recognition Order (22 September 2011). For the purposes of the assessment of the current and substantial connection, primary regard will be given to the five year period immediately preceding the date of application. However, evidence relating to facts post-dating the date of the Recognition Order is not relevant and must not be considered.
10. Where evidence predating or contemporaneous to the signing of the 2008 Agreement establishes the applicant's current and substantial connection, it will be assumed that the connection continued until the date of the Recognition Order.
11. Further, the documentary evidence submitted in accordance with section 13 and following must be supported by at least two affidavits from residents of the Mi'kmaq Group of Indians of Newfoundland on the island of Newfoundland which

describe in detail the nature and purpose of the visits or communications, and the religious, ceremonial, traditional or cultural activities practiced by the applicant in one of the locations of the Mi'kmaq Group of Indians of Newfoundland, to permit a reasonable inference that the Mi'kmaq Group of Indians in one of the locations would view the person as a Member of the Group. Affiants must identify themselves as residents of the Mi'kmaq Group of Indians of Newfoundland on the island of Newfoundland (from one of the locations of the Mi'kmaq Group of Indians of Newfoundland), and state their relationship to the applicant. They should have personal and specific knowledge of the information contained in their affidavits. Affidavits must provide sufficient detail factual information. Mere statements in an affidavit that an applicant recycles, composts, hunts, fishes or berry picks are not sufficient to establish that the applicant has knowledge of Mi'kmaq customs, traditions or beliefs or pursues traditional activities of the Newfoundland Mi'kmaq. The affidavits must include details on the manner and frequency of the exercise of these activities in one of the locations of the Mi'kmaq Group of Indians of Newfoundland.

12. Moreover, applicants providing new evidence must submit a sworn declaration attesting to the authenticity of the evidence provided and how it relates to their participation in or integration into the ceremonial, traditional, or cultural activities of the Mi'kmaq Group of Indians of Newfoundland.

Paragraph 25(b)(i) – Non residents' frequent visits and communications

13. In order to be considered frequent, for the purposes of paragraph 25(b)(i) visits and communications should occur on a regular basis over an extended period of time prior to or contemporaneous to the signing of the Agreement (23 June 2008).
14. Visits and communications must not be limited to family members; the evidence must demonstrate contacts with other Members of the Mi'kmaq Group of Indians of Newfoundland and involvement in the cultural and social life of the Mi'kmaq community in one of the locations of the Mi'kmaq Group of Indians of Newfoundland.
15. Examples of documentary evidence pre-dating or contemporaneous to the signing of the Agreement (23 June 2008) which may be submitted to establish that the applicant meets the requirements of paragraph 25(b)(i) includes:
 - air plane tickets;
 - travel itineraries issued by a major carrier or recognized travel agency;

- credit card bills;
- phone bills;
- original dated letters, e-mails or other written communications;

Paragraph 25(b)(ii) - Non residents' maintenance of the Mi'kmaq culture and way of life

16. Maintenance of the Mi'kmaq culture and way of life can be inferred from membership in the Federation of Newfoundland Indians, Ktaqamkuk Mi'kmaq Alliance, Benoit First Nation, Kitpu band or Sip'kop Mi'kmaq band prior to 23 June 2008.
17. Maintenance of the Mi'kmaq culture or way of life can be inferred from evidence that pre-dates or is contemporaneous to the signing of the 23 June 2008 Agreement for the Recognition of the Qalipu Band, supported by the affidavits and the sworn declaration referenced in sections 11 and 12, showing that the applicant has attended, participated in or supported religious, ceremonial, traditional or cultural, activities of the Mi'kmaq Group of Indians of Newfoundland or has demonstrated initiatives taken to gain knowledge of the Mi'kmaq way of life and to interact with the Mi'kmaq Group of Indians of Newfoundland.
18. Examples of religious, ceremonial, traditional and cultural activities of the Mi'kmaq Group of Indians of Newfoundland include:

Religious/Ceremonial/Cultural

- Mi'kmaq language training
- St. Anne's Day celebrations
- Flat Bay Pow Wow or other Pow Wows
- St. George's Mi'kmaq Dancers
- The Sipu'ji'j Drummers and Se't A'newey Kina'matino'kuom Choir
- National Aboriginal Day
- Sweat lodge, sunrise ceremony
- Elders Feast

Traditional Activities

- Production of Mi'kmaq crafts
- Trapping, hunting or fishing in areas where historical texts identified the applicant's direct ancestor(s) having been engaged in such activities
- Gathering berries as a food supplement for Members of the Mi'kmaq Group of Indians of Newfoundland

- Gathering of bark, plants, and roots for making traditional medicines or cosmetics
Actions to Gain or Advance Knowledge of the Mi'kmaq Way of Life

- Registration in a course on Mi'kmaq culture and traditions
- Communications with members of the Mi'kmaq Group of Indians of Newfoundland addressing Mi'kmaq culture and traditions
- Communications supporting recognition of the Mi'kmaq Group of Indians of Newfoundland under the *Indian Act*
- Attendance at meetings of the member bands of the Federation of Newfoundland Indians or the Federation of Newfoundland Indians, Ktaqamkuk Mi'kmaq Alliance, Benoit First Nation, Kitpu Band or Sip'kop Mi'kmaq Band
- Subscription to Publications issued by the member bands of the Federation of Newfoundland Indians or the Federation of Newfoundland Indians, Ktaqamkuk Mi'kmaq Alliance, Benoit First Nation, Kitpu Band or Sip'kop Mi'kmaq Band
- Subscription to a community newspaper circulated in a location of the Mi'kmaq Group of Indians of Newfoundland
- Maintaining a residence in a location of the Mi'kmaq Group of Indians of Newfoundland reflecting an intent to remain and participate as a member of that community
- Community events such as talking circles

19. Examples of the type of evidence that can be submitted include:

- newspaper or magazine article, texts, or other publications describing the applicant's involvement in the activities mentioned in s. 18
- Original of a photograph showing the applicant's participation in the activities mentioned in s. 18
- Original family or personal documents (e.g. e-mails, correspondence, other written documents) demonstrating the applicant's interaction with the Mi'kmaq Group of Indians of Newfoundland
- School transcripts or documents showing the Applicant's registration in a course to gain knowledge on Mi'kmaq history, culture or traditions
- Papers, essays or correspondence reflecting the pursuit of knowledge of the Mi'kmaq way of life or supporting recognition of the Mi'kmaq Group of Indians under the *Indian Act*
- Minutes from a meeting of an Aboriginal organization showing the applicant's attendance
- Receipts showing the applicant's subscription to a community newspaper circulated in a location of the Mi'kmaq Group of Indians of Newfoundland

- Provincial trapping, hunting or fishing permit or license for an area that historical documents show was used by the applicant's ancestors for these purposes
- Deed, Notice of Assessment for municipal tax purposes, affidavit from a Municipal Official or utility bill showing address in a location of the Mi'kmaq Group of Indians of Newfoundland.

20. An Applicant under the age of 18 years as of the date of the application made on his or her behalf shall be considered to have maintained the Mi'kmaq culture and way of life if at least one of his or her parents has been determined by the Enrolment Committee to conform with the requirements of paragraph 25(b)(ii).

An Applicant under the age of 18 years on the date of the Recognition Order but who has made an application after attaining the age of 18 years shall be considered to have maintained the Mi'kmaq culture and way of life if at least one of his or her parents has been determined by the Enrolment Committee to conform with the requirements of paragraph 25(b)(ii).

For the application of this section, where a parent is deceased, the Enrolment Committee shall determine, based on documentation presented in support of the application, whether the parent would have conformed with the requirements of paragraph 25(b)(ii) if that parent had applied.

Point System for the assessment of the substantial connection of applicants who were not residing in a location of the Mi'kmaq Group of Indians of Newfoundland on the date of the Recognition Order

(Subsection 25(b) of Enrolment Committee Guidelines)

A minimum of 13 points is required. Primary regard will be given to the five year period immediately preceding the date of application. However, evidence relating to facts post-dating the date of the Recognition Order is not relevant and must not be considered.

<p>Frequent visits to members of a location of the Mi'kmaq Group of Indians of Newfoundland. (See sections 13 to 15.)</p>	<p>Up to 4 points depending on strength of evidence and the frequency of the visits.</p>
<p>Frequent communications with members of location of the Mi'kmaq Group of Indians of Newfoundland. (See sections 13 to 15.)</p>	<p>Up to 2 points depending on strength of evidence and the frequency of the communications.</p>

Note: At least 1 point must be earned under visits and/or communications.

<p>Residency on the Island of Newfoundland. (See sections 2 to 4.)</p>	<p>3 points.</p>
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Note: Only Ordinary residence is accepted; an applicant may have only one place of ordinary residence.

<p>Membership in a Mi'kmaq organization: FNI, KMA, Benoit First Nation, Kitpu Band, Sip'kop Mi'kmaq Band. (See section 16.)</p>	<p>9 points.</p>
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<p>Maintenance of Mi'kmaq culture and way of life through knowledge of Mi'kmaq culture and participation in cultural, religious, ceremonial and traditional activities of the Mi'kmaq Group of Indians of Newfoundland. (See sections 17 to 19.)</p>	<p>Up to 9 points, depending on the strength of the evidence (relevancy and probative value). The greater number of activities and the nature and degree of involvement will be considerations in awarding a higher number of points. Factors to consider include: frequency of the participation, long established history of participation, level of involvement (i.e. was the applicant an organizer, participant or spectator), relation of the activity to the advancement of the culture of the Mi'kmaq Group of Indians of Newfoundland.</p>
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