

# **Penwa' Mawi-Amskwesewey L'nue'kati**

## **Benoit First Nation Inc.**

### **Mi'kmaq Band Council Constitution/By-Laws**

**August 15, 2005**

**Ratified on December 18, 2006 at the Annual Assembly**

## **ARTICLES OF ASSOCIATION**

BENOIT FIRST NATION INC.

A NON- PROFIT CORPORATION

PURSUANT TO THE COMPANIES ACT R.S.N. 1970 C.54. S.253

The following shall be the Articles of Association of the Benoit First Nation Inc.:

### **Article I - Definitions**

- Indian People - those Mi'kmaq (Micmac) people who have applied and have been accepted for membership in our band, for the purposes of achieving its objectives.
- The Chief - the President and CEO.
- The Vice-Chief - the Vice President.
- Band Council - The Board of Directors.
- The Band - the Benoit First Nation Mi'kmaq Band.
- Elder - Director on Council representing the Elders.
- Women Director - Director on Council representing the women.

- Youth Director - Director on Council representing the Youth.
- Band Council - shall include the Chief, Vice-Chief, Secretary, Treasurer, and shall total not less than three (3) directors and not more than seven (7) directors.
- Observer (s) - a general band member (s) who attends a band council meeting.
- The fiscal year of the Corporation shall be from September 1 to August 31 each year.

## **Article II - Membership**

### **Section I**

#### **Sub-section (a)**

All people who are of Mi'kmaq ancestry identify as being Mi'kmaw, and who reside in the electoral district of Port au Port in the Province of Newfoundland and Labrador as well as those who are no longer residents of the area but who still maintain contact with the community.

The Band shall determine its membership using the following criteria:

1. A voluntary request for membership in our Band.
2. Must self-identify as a Mi'kmaw person, and having maintained a connection to our first nation community.
3. Mi'kmaq descent through census, Provincial or colonial documentation, Church records, and/or affidavit from a person of at least 1/4 Mi'kmaq descent resident in Newfoundland between 1750 and 1949. the Member lives within the boundaries of the Band to which membership is sought, or
4. Is the father, mother, son, daughter, brother, sister, uncle or aunt of a Member of our band,
5. In the sole discretion of the Band Council, has a connection to the Band to justify the transfer.
6. Demonstrated connection with a Mi'kmaq community that existed prior to 1949; and
7. A person who has been legally adopted while at or below the age of nine years by a person of Mi'kmaq ancestry and who has been accepted by Mi'kmaq custom to be a Band Member is eligible to become a Member, subject to the following: **(a)** the presentation of proof of adoption meeting the criteria of this Clause and a resolution from the Band Council to which the person which to join approving the Band's acceptance of the new member. **(b)** The descendants of the person becoming a member pursuant to this Clause shall not be entitled to membership unless one parent of that descendant is a person of Mi'kmaq ancestry.
8. Approval by majority of the band council at a band council meeting.

Or

#### **Sub-section (b)**

Descent from any person that meets all of the criteria contained in Section I, Sub-section (a); or

A person, reputed to be of Indian descent, accepted by those meeting the criteria contained in Section I, Sub-section (a) in accordance with reasonable rules of community acceptance;

Or

#### **Sub-section (c)**

A person who, upon application to a Band, meets such criteria for membership as may from time to time be established by the Band as provided for under Section 10 of the Indian Act as amended.

Applications fees may be set to issue a membership card and letter of acceptance. Annual dues may be set by the band council if required.

### **Section II**

Membership in the band shall cease in the event of;

1. The death of a member.
2. The delivery to the band council by the member of a written resignation.
3. A member joins another first nation band.
4. If through the determination of the Band Council, the member ceases to qualify for membership in accordance with these By-Laws.

### **Section III**

A person holding a position on the band council shall cease to hold such position in the event of;

1. The death of a band council member.
2. The delivery to the band council by the member of a written resignation.
3. The expulsion of the band council member by a unanimous vote of the remaining band council upon the band council member failing to comply with the objects and/or the By-Laws of the band council, including, without limiting the generality of the foregoing;
4. If the band council member partakes in activities that jeopardize the programs and aims of the band council.

### **Section IV**

A Band council member who has been removed from the band council, upon giving notice to the band council, within 10 days of receiving written notice of termination by registered mail, may appeal the decision.

### **Section V**

Each Voting Member has the following rights at the Annual Assembly;

1. To vote in any election for the office of Chief and Vice-Chief of the band council.
2. To have access to all information respecting programs and the administration and management of the band council.
3. To vote on By-Laws of the band and to vote on any proposed changes to those By-Laws.
4. To review all internal rules and regulations and to propose amendments for consideration
5. To vote by secret ballot or a show of hands.

### **Article III - Standards of Evidence**

Standards of Evidence shall include documentation confirming first nation (Indian) Ancestry, including long form birth registration, baptismal certificates, marriage certificates, etc.

Affidavits must be approved by the band council.

### **Article IV - Representation**

The Chief shall hold a position as leader, chairperson, figurehead, spokesperson, and/or Chief Executive Officer of the Band - as required. When possible, the Chief shall preside at all meetings of the band and of the board of directors.

### **Article V - Roles and Responsibilities of the Chief, Vice- Chief, Secretary, Treasurer**

#### **Section I**

The Chief and Band Council shall be subject to election by members every three (3) years.

#### **Section II**

The Vice Chief shall in the absence or demise of the Chief, perform the duties of the Chief, and when so acting shall have all the powers and be subject to all the responsibilities hereby given or imposed on the Chief.

### **Section III**

The Secretary shall be responsible for the recording, maintenance and safekeeping of the Tribal Register and the assignment of membership registration numbers. These documents shall be kept at the band office.

The Secretary shall record and maintain minutes of all meetings conducted by the Band. These documents shall be kept at the band office. In the absence of the Secretary, someone else on the band council can be appointed by the Chief to record the minutes.

The Secretary, when requested by the Chief or majority of Council, shall be responsible for arranging band council meetings, drafting the agenda, and posting notification of meeting time and place.

### **Section IV**

The Treasurer shall be responsible for the maintenance and management of any and all bank accounts of the Band. These documents are to be kept at the band office.

The Treasurer shall have joint signing authority with not less than one other council member, and shall ensure that all monies from all sources shall be deposited in the bank account of the band without delay.

The Treasurer shall provide a financial report at each Annual Assembly and shall report on financial matters at each meeting of the Band.

## **Article V - Roles and Responsibilities of the Band Council**

### **Section I**

The band council may appoint committees whose members will hold their offices at the will of the band council. At least one band council director must sit on any such committee. The directors shall determine the duties of such committees and may fix any remuneration to be paid.

### **Section II**

The Chief shall have the general and active management of the affairs of the band. He shall see that all orders and resolutions of the band council are carried into effect.

### **Section III**

The Chief and members of the Band Council, if they so wish, may sit on hiring committees for the hiring of employees.

The Chief and Band Council are authorized to seek funding, conduct fund-raising and revenue generating activities, create employment positions, hire employees as required, set wages, and make employment contracts as required in the day-to-day operations of the band.

### **Section IV**

Any Executive Officer or Director of the Band who is deemed to be in a position of possible conflict of interest shall not participate in any business related to any such possible conflict of interest.

## **Article VI - Duties of the Chief and Officers**

The Chief shall preside as Chairperson at all meetings of the Band; The Vice-Chief shall preside in the absence of the Chief.

## Article VII - Responsibility and Indemnity

### Section I

The Chief, Vice-Chief, Secretary, Treasurer and Directors of the Band shall be indemnified by the Band against, and it shall be the duty of the Treasurer out of the funds of the Band to pay all costs, charges, losses and expenses which any of the Band Council may incur or become liable to by reason of any contract entered into, or act or deed done in the discharge of their duties.

### Section II

No Director or officer of the Band shall be liable for the acts, receipts, neglects or defaults of any other Director or Officer, or for the investments, or for any loss or damage arising out of bankruptcy, insolvency or for any loss by error of judgment or oversight, damage or misfortune which shall happen in the execution of the duties of office **unless it was done through dishonesty.**

### Section III

The directors shall serve as such without remuneration and no director shall directly or indirectly receive any profit from his position as such; provided that a director may be paid reasonable expenses incurred by him in the performance of his duties. **Nothing herein contained shall be construed to preclude any director from serving the band as an officer or in any other capacity and receiving compensation therefore..**

### Section IV

The band council may appoint such agents and engage such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the band council at the time of such appointment.

## Article VIII - Meetings and Elections

### Section I

A quorum for a Band Council meeting shall be set at fifty (50 %) percent plus one (50 % + 1) .

Band Council Meetings shall take place not less than four (4) times per year including an annual assembly.

Meetings of the Band Council may be held at any time and place to be determined by the directors. Each director is authorized to exercise one (1) vote.

If the majority of directors consent, a director may participate in a meeting of the council or of a committee of council by means of such conference telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means is deemed to be present at the meeting.

### Section II

Executive Band Council Meetings are open to all members who will attend as observers only. Interference or disruptions of the meeting by any observer will not be tolerated and any such observer will be asked to leave the said meeting. Observers wishing to have an item discussed at a band council meeting must submit the request in writing prior to the agenda being written or at least one week before the meeting takes place. Special meetings deemed to be closed meetings will not be opened to observers. **The minutes of closed meetings, upon request, are to be made available to all members of the band within 60 days after the meeting.**

### Section III

Election rules:

See [Appendix A](#)

**THE COMPANIES ACT**  
**REVISED STATUTES OF NEWFOUNDLAND - 1970**  
**CHAPTER 54, SECTION 253**  
**MEMORANDUM OF ASSOCIATION**  
**OF**

1. The name of the Association is the Benoit First Nation Inc.
2. The registered head Office of the Association will situated at De Grau, in the Federal Riding of Random-Burin-St. Georges, in the Province of Newfoundland and Labrador, and such Head Office may be changed by the board of Directors.
3. The objects for which the Association is established are:
  1. To organize and unite the Mi'kmaq people throughout our band territory.
  2. To negotiate on behalf of the band with any level of government in order to pursue the recognition of the rights of Mi'kmaq within the band.
  3. To define and regulate the use of our Mi'kmaq territory in Newfoundland.
  4. To pursue registration for the Mi'kmaq people within the Band for the purpose of coming under benefits derived from the Department of Indian Affairs
  5. To ensue Land Claim settlements are beneficial to all Mi'kmaq within the band
  6. To pursue registration of Mi'kmaq within the band as Status Indians for those purposes
  7. To develop and promotion Mi'kmaq culture and language programs for the band.
  8. To pursue economic development programs and other activities that will create employment and build infrastructure for our band.
  9. To pursue and develop Mi'kmaq educational programs for the band.
4. The income and property of the Band, whensoever derived, shall be applied solely towards the promotion of the objectives of the Band as set forth in this Memorandum of Association; and no portion thereof shall be paid or transferred directly or indirectly, by way of dividends, bonus, or otherwise by way of profit, to any member of the Band.
5. The Liability of the members is Limited.
6. True Account shall be kept of the sums of money received and expended by the Association and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Band, and, subject to any reasonable restrictions as to the time and manner of inspecting the same, that maybe imposed in accordance with the regulations of the Band for the time being, shall be examined and the correction of the balance sheet ascertained by one or more properly qualified auditor or auditors.

## **Constitution**

### **Objectives**

To construct, erect, purchase, maintain, rent, hire, lease, or otherwise acquire, improve, maintain, work, manage, carry out and control machinery, equipment, facilities, works, buildings and property of any kind both real and personal which may be necessary and convenient and calculated directly or indirectly to advance and obtain the general objectives of the Band.

### **Membership**

The Band shall maintain a Tribal Register listing the name, Social Insurance Number, Date of birth, address and Band registration number of every member. Children under the age of eighteen years shall be registered **under the name of a documented parent until such time as the minor attains the age of eighteen years** and at such date shall apply for membership as a registered member of the Band in his/her own name.

### **Board of Directors**

In the event of the death or resignation of a director or executive officer of the Band including the Vice Chief, Secretary, and Treasurer, a bi-election shall be held at the next regular meeting to choose his/her successor. Any vacancies on the Band Council shall be appointed in the same manner. The term elected shall equal the time remaining until the next General election.

A retiring director shall remain in office until the dissolution or adjournment of the meeting at which his retirement is accepted and his successor is selected.

The majority of the Band Council at a regular Band Council meeting may grant directors a leave of absence as required.

### **Amendments**

Amendments to the By-Laws of the Band may be made at any Annual Assembly provided the following conditions apply:

1. Written notice of the intent to amend the By-Law (s) shall be presented at a regular Band Meeting and on the Band's web site at least 30 days prior to the Assembly. A copy of any proposed amendment (s) shall be made available to any member of the Band who requests to obtain one.
2. A two-thirds (2/3) majority vote of those voting members present at the Assembly will be required to amend the By-Laws.

**As a result of a referendum held at the Annual Assembly on Sunday, November 22, 2015, the following resolutions were passed and become amendments and/or additions to the 2005 Constitution:**

(they become effective as of Nov 22, 2015 and going forward)

- Resolution #1 Be it resolved that all employment and other opportunities will be offered to Benoit 1st Nation Band members only, with the exception of circumstances where the expertise sought is not available in the membership.
- Resolution # 2 Be it resolved that a special membership class be created for non natives that will allow them to join the band as associate members, when they live in the native community and support the goals and aims of the band.
- Resolution # 3 Be it resolved that members who do not support the goals and aims of the band, or have disrespected the band members, who have shown no support or interest in the Benoit 1st Nation Mi'kmaq Community, may be removed from the band lists by special resolution an an Annual Assembly by majority vote.

- Resolution # 4 Be it resolved that all members will pay a minimum of \$20 annually or volunteer in some or any capacity in support of the band.
- Resolution # 5 Be it resolved that on-line voting be incorporated into band council elections so that registered band members can vote regardless of location.
- Resolution # 6 Be it resolved that Telephone meetings, video conferences, and teleconferences be added as alternative meeting methods of Council.

### [Symbolism of the Benoit clan flag](#)

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