

Penwaaq L'nu'k

Benoit First Nation Inc.

Lnu'k/Mi'kmaq Band Council Constitution/By-Laws

September 15, 2005

Originally created on August 15, 2005, last ratified on October 9, 2020 by our online-refendum and accepted at the Annual Assembly October 14, 2020 of the Benoit First Nation

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

- Indigenous People - those Lnu'k/Mi'kmaq (Micmac) people who have applied and have been accepted for membership in our band, for the purposes of achieving its objectives.
- The Vice-Chief - the President and CEO
- Women's Representative - Director on Council representing the Women.
- Treasurer - Director on Council representing the Financial Committee.
- Elder - Director on Council representing the Elders.
- Heritage Park Representative - Director on Council representing the Heritage Park & Farm.

- Youth Director - Director on Council representing the Youth.
- Band Council - shall include the Vice-Chief, Secretary, Treasurer, and shall total not less than four (4) directors and not more than seven (7) directors.
- The Chief - the Figurehead, Spokesperson and advisor.
- Band Council - The Board of Directors.
- The Band - the Benoit First Nation or Penwaaq L'nu'k.
- 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 Lnu'k - Mi'kmaw, and who reside in the electoral district of Port au Port, west of Abraham's Cove 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. Self-identifies as a non-status Lnu'k - Mi'kmaw person, and having maintained a connection to our first nation community.
3. Or is s already a status member of an existing Indian Act Band; and
4. Mi'kmaq descent through census, Provincial or colonial documentation, Church records, and/or affidavit from a person of at least 1/4 Lnu'k - Mi'kmaq descent resident in Newfoundland between 1400 and 1949.
5. the Member lives within the boundaries of the Band to which membership is sought, or
6. Is the father, mother, son, daughter, brother, sister, of a Member of our band,
7. In the sole discretion of the Band Council, has a connection to the Band to justify the transfer.
8. Demonstrated connection with a Lnu'k - Mi'kmaq community that existed prior to 1949; and
9. Demonstrated ancestry in a Lnu'k - Mi'kmaq family spanning within (4) four generations; and
10. will support our Lnu'k - Mi'kmaq cultural programming by contributing an annual donation of not less than \$20.00 dollars or equal or more value in kind; and
11. A person who has been legally adopted while at or below the age of fourteen years by a person of Lnu'k - Mi'kmaq ancestry and who has been accepted by Lnu'k - 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 Lnu'k - Mi'kmaq ancestry.
12. 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 Indigenous 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.

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.
5. If the member partakes in activities that jeopardize the programs and aims of the band.

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 the 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 or otherwise;

1. To vote in any election for the office of CEO/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, including electronic or on-line voting.

Article III - Standards of Evidence

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

Affidavits must be approved by the band council.

Article IV - Representation

Section I

The Elders Advisory Council is independent of the band and shall advise on all band council matters and will act with impunity, wisdom and clarity for the well being of the band membership.

The Elders of the Independent Elders Advisory Council operates under the following suggested protocols:

- Elders must be made up of Mi'kmaq,
- Elders must reside in the band territory,
- Elders Band Councillor must on Elders Advisory Council
- Elders must be at least fifty-five years of age,
- Elders agree to sit on the Elders Advisory Council,
- Elders agree to participating in providing wisdom, guidance and knowledge to the band council and community at large,
- Elders operates under similar decision making and rules similar as the band council procedures included herein this document.

Section II

The Traditional Chief, is independent of the band and appointed by the Elders Advisory Council for an term determined by the Elders Council, shall hold a position as Sagmaw, traditional leader, figurehead for the region, spokesperson and cultural adviser- as required by the Elders.

Section III

In instances where the Elders Advisory Council is unanimously of the opinion and/or believe that the Band Council is not acting in the best interests of the band, the Elders Advisory Council may object any such decisions, motions, commitments, resolutions, activities and actions. In this case the Elders Advisory Council will advise the Band council and seek consensus to resolve the issue or issues in contention.

Article V - Roles and Responsibilities of the Vice- Chief/Chief Executive Officer, Secretary, Treasurer

Section I

The Band Council shall be subject to election by members every **four years** .

Section II

The Chief Executive Officer (CEO)/Vice-Chief shall perform the duties under his/her leadership, and when so acting shall have all the powers and be subject to all the responsibilities hereby given or imposed by the band council.

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 to record the minutes.

The Secretary, when requested by the CEO/Vice-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, and/or Secretary, CEO-Vice Chief and/or Chief shall have signing authority, and shall ensure that all monies from all sources shall be deposited in the credit Union

and/or bank account of the band without delay.

The Treasurer, as head of the Finance Committee, shall provide a financial report at each Annual Assembly and shall report on financial matters at each meeting of the Band and at any other time requested.

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, if deemed necessary.

Section II

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

Section III

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

The CEO/Vice-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, CEO-Vice-Chief 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 CEO/Vice-Chief and Officers

The CEO/Vice-Chief shall preside as Chairperson at all meetings of the Band; a band council member shall preside in the absence of the CEO/Vice-Chief.

Article VII - Responsibility and Indemnity

Section I

The CEO/Vice-Chief, Secretary, Treasurer, Directors of the Band council, and Committee/Council members 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 or committee member 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 councillors shall serve as such without remuneration and no councillor shall directly or indirectly receive any profit from his position as such; provided that a councillor may

be paid reasonable expenses incurred by him in the performance of his duties. **Nothing herein contained shall be construed to preclude any councillor 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 such as Band Manager and/or Coordinators 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 five (5) 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 CEO-Vice Chief and directors. Each director is authorized to exercise one (1) vote.

A Councillor may participate in a meeting of the council or of a committee of council by means of such conference telephone, video conference or other communications facilities as permit all persons participating in the meeting to hear each other, and a councillor 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 or in-camera 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 30 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 811 Oceanview Drive, 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 (Band Council).

3. The objects for which the Association is established are:

1. To organize and unite the Lnu'k/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 Lnu'k/Mi'kmaq within the band.
 3. To define and regulate the use of our Lnu'k/Mi'kmaq territory in Newfoundland.
 4. To pursue registration for the non-status Lnu'k/Mi'kmaq 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 Lnu'k/Mi'kmaq within the band
 6. To develop and promotion Lnu'k/Mi'kmaq culture and language programs for the band.
 7. To pursue economic development programs and other activities that will create employment and build infrastructure for our band.
 8. To pursue and develop Lnu'k/Mi'kmaq educational programs for the band.
 9. To pursue and develop Food security programs and services and other supports where possible and wehereas funding can be found to pursue.
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 council.
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.

All employment and other opportunities will be offered to Benoit 1st Nation Band members first, with the exception of circumstances where the expertise sought is not available in the membership.

Membership

The Band shall maintain a Tribal Register listing the name, Date of birth, address and Band registration number of every member regardless of age.

Band Council

In the event of the death or resignation of a Councillor or executive officer of the Band including the CEO/Vice-Chief, Secretary, and Treasurer, a bi-election shall be held 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 Councilor 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 Councilor a leave of absence as required.

Resignation of CEO-Vice-Chief and Band Council:

In the event the CEO-Vice Chief and Band Council all resign their positions and leaving no one on Council;

The Independent Elders Advisory Council is empowered to:

- oversee the day to day operation of the band,
- call an election for CEO-Vice-Chief and Band Councillors.
- protect the interests of the Band until the new CEO-Vice-Chief and Council are elected.
- advise the elected CEO-Vice-Chief and Band Council on all matters pertaining to culture, language, history, traditions and related developments.

Replacement of the Independent Traditional Chief:

In the event the Independent Traditional Chief is unable to fulfill his/her duties or requests to be relieved of duty:

It is suggested that the Independent Elders Advisory Council will appoint a replacement and will;

1. Search for a suitable replacement
2. Interview a suitable replacement
3. The candidate will meet all obligations, including:
 - a) candidate must be bondable
 - b) candidate must have police and vulnerable sector clearances
 - c) not have a criminal record unless pardoned
 - d) be a member of Benoit First Nation for a minimum of ten years
 - e) be in good standing
4. the candidate will be appointed, and sworn in as per Elders Advisory Council ceremony
5. position is independent, advisory and ceremonial only, with emphasis on culture, language and traditions.

Amendments

Amendments to the By-Laws of the Band may be made by on-line referendum or a referendum at any Annual Assembly or 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 or date of on-line referendum. 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 or with on-line referendum will be required to amend the By-Laws.

[Lnu'k/Mi'kmaq rules of Ethics & Principles](https://www.benoitfirstnation.ca/bfn_constitution.html)

[Lnu'k/Mi'kmaq rules of Protocol](#)

[Symbolism of the Benoit clan flag](#)

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