

Native American Recognition In Newfoundland: Part 1

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On Jan. 31, 2017, over 100,000 letters will be mailed to those who have applied for membership to the Qalipu Mi'kmaq First Nation Band, an Indian tribe that was recognized by the Canadian government for the first time in 2011. [1][2] These letters, which will also be sent to current members, will inform recipients whether they have been deemed eligible or ineligible for membership in the Qalipu Mi'kmaq First Nation Band.



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All applicants who resided outside of certain Newfoundland communities at the time of applying are subject to a point system that is used to determine eligibility. The stated purpose of the point system is to determine whether applicants residing outside of these communities established a “current and substantial connection with the [Qalipu].” [3] All applicants who resided in one these communities at the time of applying are assumed to meet the “substantial connection” requirements without the need to be assessed under the point system. Applicants who are subject to the point system are reviewed by a nine-person enrollment committee comprised of four Mi'kmaq representatives, four representatives from the Canadian government, and one independent chair. [4] Having an equal number of seats for Qalipu members and members of the Canadian government gives the Canadian government an unusual degree of influence over an essential aspect of the tribal enrollment process that is usually controlled solely by the tribe. Of the 101,000 people who will receive letters, approximately 75,000 of them are applicants and the remaining approximately 25,000 are current members who may or may not lose their status.[5]

Many Qalipu tribal members and applicants are concerned over what they believe has been an unjust enrollment process. Tens of thousands of applicants expect to be denied tribal membership on the grounds that they do not meet the now stringent membership criteria that determines eligibility. Certain applicants and tribal members are trying to give voice to their concerns through protests. On Jan. 3, 2017, about 25 protesters gathered in the small city of Corner Brook, Newfoundland.[6] The protestors are primarily concerned about new and heightened enrollment criteria set forth in an amended version of the original agreement with the Canadian government that recognized the Qalipu.[7] This amended version of the original agreement is known as the supplemental agreement. Many of the applicants, members, and protestors, along with the Mi'kmaq First Nations Assembly of Newfoundland (a government watchdog group), feel the supplemental agreement unjustly restricts membership in the tribe.[8]

The protestors' frustrations and concerns bring attention to a number of highly complex and important issues that will directly affect the lives of more than 100,000 people and that will shape the future of the Canadian government's treatment of Indians more broadly. Applicants are hoping for the best but some are anticipating litigation.

There are two primary hurdles to acceptance into the Qalipu: self-identification and acceptance by the Mi'kmaq Group of Indians of Newfoundland.

Self-identification requirement: Prior to the supplemental agreement, submitting a signed application to the Qalipu was sufficient to satisfy the self-identification requirement. This standard still applies to those who applied prior to Sept. 23, 2011. However, as a result of the supplemental agreement, those who applied after that date must provide significant additional evidence in order to meet the self-identification requirement. This in essence creates a double standard as it relates to when one applied to the Qalipu.[9]

Acceptance by the Mi'kmaq Group of Indians of Newfoundland requirement: Despite the use of the word "acceptance", this requirement, as it relates to enrollment in the Qalipu, is primarily associated with residency and geographic location. Under both the original agreement and the supplemental agreement residency in or around certain communities is sufficient to meet this requirement. However, the supplemental agreement heightened the standards nonresidents have to meet in order to satisfy this requirement. It did so by implementing a threshold point system with strict criteria that only applies to nonresidents. Given the importance of, and demanding standard created by, this points system, it has received substantial attention and been the source of significant debate.[10]

The heightened and at times double standards created by the supplemental agreement are not the only concerns. The composition of the enrollment committee, the point system it uses to determine membership in the Qalipu, and other issues are also areas of concern for many applicants and current members. This article will address these central issues with the hope of providing a clear understanding of what has transpired during the Qalipu enrollment process.

The issues at the heart of the Qalipu enrollment process are best explained in the context of what brought about the Qalipu's recognition in the first place.

There have always been Indians on the island of Newfoundland. The original inhabitants were the Maritime Archaic several thousand years ago.[11] The Maritime Archaic were followed by the Beothuk who are believed by many to be the first North American native group to interact with Europeans (when Leif Erikson and other Viking sailors first set foot on the continent).[12] The Beothuk were then followed by the Mi'kmaq who traveled from mainland Canada to Newfoundland a few centuries ago.[13] Newfoundland became a part of Canada in 1949, through a process known as "confederation." Despite the presence of Indians in Newfoundland for thousands of years, the Canadian government refused to legally recognize the Indians in Newfoundland under the Indian Act.[14] In 1949, as it does to this today, recognition under the Indian Act afforded recognized Indians (also known as status Indians) certain government privileges and benefits. Today these include noninsured health benefits, education funding and training, and other related benefits.[15]

In the 1970s, six affiliated Indian bands in Newfoundland joined to create the Federation of Newfoundland Indians.[14] The primary goal of the FNI was to gain recognition under the Indian Act from the Canadian Government. In 2011, after decades of negotiations with the Canadian government, the FNI eventually achieved its goal when the Canadian Government formally recognized the Qalipu. As

a result of this recognition, some 23,877 initial members were found eligible based on the original Agreement. The intent of the agreement was to “establish a landless band for the Mi’kmaq Group of Indians of Newfoundland and set in motion an enrolment process” that would provide eligible members of the Mi’kmaq of Newfoundland and Labrador status under the Indian Act.[17] The agreement determined, among other things, the requirements for enrollment in the tribe.

The eligibility requirements under the agreement were fairly simple. For an individual to be eligible to be enrolled as a member of the Qalipu, the enrollment committee had to find that the applicant met the qualifications listed below.

The individual:

(a) is of Canadian ancestry, whether by birth or adoption; and

(b)(i) on or before March 31, 1949 was a member of a Newfoundland Pre-Confederation Mi’kmaq Community; or

(ii) is a descendant, whether by birth or adoption, of a person referred to in subparagraph 4.1(b)(i); and

(c) is not registered on the Indian Register on the date of Recognition Order; and

(d) on the date of the Recognition Order

(i) self-identifies as a member of the Mi’kmaq Group of Indians of Newfoundland; and

(ii) is accepted by the Mi’kmaq Group of Indians of Newfoundland as a member of the Mi’kmaq Group of Indians of Newfoundland.[18]

The eligibility requirements established in the agreement were carefully crafted by the Canadian government and the FNI and were the product of decades of negotiations. Some argue that the requirements were left inherently broad to accommodate the unique history of Indians in Newfoundland. The position taken by the Canadian government that there were no Indians in Newfoundland as of 1949 coupled with significant historical discrimination by both the federal government and some inhabitants of Newfoundland led many to hide their heritage.[19] As one Newfoundlander reflected regarding the years following 1950, “if you said, ‘I am an Indian,’ well then, you were considered the dirty Indian. I [saw] guys get in fights and get beat up, just because they acknowledged the fact that they were native.”[20] As another Mi’kmaq recounts of a conversation he had with his mother after learning he was Mi’kmaq from a relative at the age of 44, “she said that they were told as youngsters if it ever passed your lips, ‘We’ll smack the face right off you — don’t let anybody know.’”[21] Stories like these are common throughout Newfoundland and Labrador. As such, some argue that the broad eligibility requirements in the original agreement were intentionally designed to accommodate this difficult history which in some cases made providing certain evidence of heritage particularly challenging.

Though the original agreement was in many respects preferable to the supplemental agreement that would come later, it was not without its failings. The original agreement, similarly though to a lesser degree than the supplemental agreement, placed a substantial focus on applicants’ direct ties to narrow geographic locations. The original agreement required applicants to prove that they or their ancestor was a member of one of a specific list of Mi’kmaq communities that existed in Newfoundland on or

before March 31, 1949. Membership in such a pre-confederation community was largely determined by proving residency in that community, though other factors could be considered. The initial list of accepted pre-confederation Mi'kmaq communities, which was included in the agreement, has changed considerably over the course of the enrollment process, though surprisingly little attention has been paid to these changes.[22] This focus on residency is somewhat concerning given that many Newfoundland historical records are not always reliable or easy to come by. Moreover, through a process called resettlement, the Canadian government forced tens of thousands of Newfoundlanders to move during the 25 year period from 1950 to 1975. During that time, the Canadian government, either explicitly or through strong incentives, pressured Newfoundlanders living in semi-isolated shoreline settlements to move to larger industrialized inland centers.[23] As a result of resettlement, some "307 communities were abandoned between 1946 and 1975, and over 28,000 people relocated." [24] In light of this history, it is unclear why precise physical location has been given so much weight throughout the Qalipu enrollment process.

Part II of this article, which will tell the rest of this important story, will be published tomorrow.

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[1] The topics discussed in this article are highly complex and the relevant information has changed often and will continue to change as the process unfolds. More detailed and comprehensive information on these topics is publically available online.

[2] Information on Enrollment, The Qalipu Mi'kmaq First Nation Band, <http://qalipu.ca/> ; Enrolment, The Qalipu Mi'kmaq First Nation Band, <http://qalipu.ca/enrolment/>.

[3] Directive to the Enrollment Committee, S.C., 2013 (Can.).

[4] Government of Canada and Federation of Newfoundland Indians bolster Qalipu Mi'kmaq First Nation Enrolment Process, Aboriginal Affairs and Northern Development Canada, <http://qalipu.ca/government-of-canada-and-federation-of-newfoundland-indians-fni-bolster-qalipu-mikmaq-first-nation-enrolment-process-released-april-2-2015/>.

[5] Enrolment, The Qalipu Mi'kmaq First Nation Band, <http://qalipu.ca/enrolment/>.

[6] Garret Barry, Corner Brook protest seeks changes to Qalipu enrolment process, CBCNews, (Jan. 03, 2017 6:59 PM NT), <http://www.cbc.ca/news/canada/newfoundland-labrador/qalipu-supplementary-agreement-membership-changes-1.3919808>.

[7] Id.

[8] David Newell, Scrap Qalipu membership requirements, says Mi'kmaq association chair, CBCNews, (Dec. 22, 2016 6:50 PM NT), <http://www.cbc.ca/news/canada/newfoundland-labrador/qalipu-mi-kmaq-dave-wells-discrimination-indigenous-1.3908859>.

[9] Qalipu Mi'kmaq supplemental agreement, S.C., 2013 (Can.).

[10] See supra at 4

[11] Maritime Archaic Tradition, Heritage Newfoundland & Labrador, <http://www.heritage.nf.ca/articles/aboriginal/maritime-archaic.php>; The Curtis site, a Maritime Archaic cemetery, NLArcheology, (Dec. 16, 2016), <https://nlarchaeology.wordpress.com/>.

[12] Patrick Murphy, 'Significant' archeological find along the Exploits River, Advertiser, (Dec. 29, 2016), http://www.gfwadvertiser.ca/news/local/2016/12/29/_significant_-archeological-find-along-the-exploits-river.html; Beothuk Culture, Heritage Newfoundland & Labrador, <http://www.heritage.nf.ca/articles/aboriginal/beothuk-culture.php>; Traci Watson, American Indians Sailed to Europe with Vikings?, National Geographic, (Nov. 26, 2010), <http://news.nationalgeographic.com/news/2010/11/101123-native-american-indian-vikings-iceland-genetic-dna-science-europe/>; Beothuk, Heritage Newfoundland & Labrador, <http://www.heritage.nf.ca/articles/aboriginal/beothuk.php>; Owen Jarus, New North America Viking Voyage Discovered, Live Science, (June 5, 2013 02:19pm ET), <http://www.livescience.com/37189-new-viking-voyage-discovered.html>.

[13] Martijn, Charles A. "Early Mi'kmaq Presence in Southern Newfoundland: An Ethnohistorical Perspective, c.1500-1763." Newfoundland and Labrador Studies 19.1 (2003) 44-102. Print.

[14] Government of Canada and Federation of Newfoundland Indians (FNI) bolster Qalipu Mi'kmaq First Nation Enrolment Process, Aboriginal Affairs and Northern Development Canada, See Supra at 4.

[15] The Qalipu Mi'kmaq First Nation Band, <http://qalipu.ca/>.

[16] See Supra at 5.

[17] History of the Qalipu Mi'kmaq First Nation, Government of Canada - Indigenous and Northern Affairs, (Apr. 13, 2016), <https://www.aadnc-aandc.gc.ca/eng/1372946085822/1372946126667>.

[18] Agreement in Principle, S.C., 2007 (Can.).

[19] 41 Parl. Of Can., House of Commons Debates, 2nd sess. Vol. 147, Iss. 54, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6452055>

[20] The Awakening - The Mi'kmaq of Newfoundland and Labrador move from suppression to celebration, CBCNews, (Mar. 16, 2007), <http://www.cbc.ca/nl/features/theawakening/>.

[21] Craig S. Smith, In Canada, Feeling 'Robbed' of Indian Identity, and Benefits, The New York Times, (Dec. 1, 2016), https://www.nytimes.com/2016/12/01/world/canada/canada-indian-status.html?_r=0.

[22] See Supra 18.

[23] "No Great Future" Government Sponsored Resettlement in Newfoundland and Labrador since Confederation, Canadian Archival Information Network, <https://www.mun.ca/mha/resettlement/>.

[24] Id.

