

NATION MICMAC DE GESPEG CITIZENSHIP CODE

Approved by the majority of Citizens.

Resolution (NUMBER & DATE)

(DOCUMENT FOR DISCUSSION)



**Amendment to the Citizenship Code of
The Nation Micmac de Gespeg
Draft May 2023**

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PREAMBLE

WHEREAS the Nation Micmac de Gespeg has inherent jurisdiction to determine citizenship and other related issues since time immemorial¹; and

WHEREAS the Nation Micmac de Gespeg recognizes jurisdiction over citizenship is an essential function of First Nation governments; and

WHEREAS self-government and self-determination are core jurisdiction of First Nations, which has been maintained through customary and traditional process and is integral to our distinctive culture; and

WHEREAS the United Nations Declaration on the Rights of Indigenous Peoples affirms that Indigenous individuals have a right to belong to their Nation. By virtue of that right, the Nation Micmac de Gespeg may freely determine the requirements of citizenship in their Nation; and

WHEREAS the arbitrary determination of Indian Status and First Nation citizenship under the Indian Act is contrary to the United Nations International Covenant on Civil and Political Rights, to which Canada is a signatory, and that the courts various jurisdictions have deemed it discriminatory; and

WHEREAS the Nation Micmac de Gespeg currently decides on the membership of its citizens according to a Membership Code which has been in force since 1987, and which has never been modified since its adoption over the past 35 years.

WHEREAS the population of the Nation Micmac de Gespeg evolved over the years, as has the applicable legal framework; and

THEREFORE, BE IT RESOLVED THAT the Micmac Nation of Gespeg enact this citizenship law to determine our own citizenship in accordance with historical practice and in accordance with our inherent rights, and the rights guaranteed by the United Nations Declaration on the Rights of indigenous Peoples and the United Nations International Covenant on Civil and Political Rights.

¹ Time immemorial is a phrase meaning time extending beyond the reach of memory, record, or tradition, indefinitely ancient, "ancient beyond memory or record".

Article 1 Short title

This document may be cited under the title of “***GESPEG CITIZENSHIP CODE***”.

Article 2 Object

The Citizenship Code of Gespeg aims to provide fair rules and procedures governing the citizenship process for all citizens of the Micmac Nation of Gespeg. This code must not contain any discriminatory provisions based on sex, creed, or religion.

Article 3 Definitions

For the purposes of this Code, these terms are defined as follows:

“***Registrar’s Office***” means the person responsible for maintaining the citizenship list.

“***Band***” means the Micmac First Nation of Gespeg.

“***Citizen***” designates any person registered on the population list of the Micmac First Nation of Gespeg.

“***Conflict of interest***” a person may not take part in a decision or in a review of a person's application where the applicant or the person in respect of whom the decision is to be made, or by whom an appeal or protest has been made, is the son, daughter, stepchild, sister, brother, father, mother, grandparents, grandchildren, spouse, son-in-law, daughter-in-law, in-laws.

“***Spouse***” includes common-law spouses which means that you live with someone who is not your spouse, but with whom you have had a conjugal relationship for at least twelve (12) continuous months.

“***Council***” designates the Chief and Councillors of the Nation Micmac de Gespeg as duly elected according to the Electoral Code in effect.

“***Acquired right or grandfather clause***” means the right from which a person benefited under the old code adopted in 1987 and whose membership is maintained despite the contrary provisions of the new code.

“***Indian Act***” means Indian Act (R.S.C., 1985, c. I-5)

“***Elector***” has the meaning of the Electoral Code of Gespeg.

“***Child***” includes biological or legally adopted or upon the traditional way of adoption.

“Gespeg” all citizens of the Micmac Nation of Gespeg.

“Status Indian” means a person recognized by the federal government as registered under the Indian Act. The terms “Registered or Status Indian” have the same meaning.

“ Restorative justice ” means a constructive rather than a punitive approach. It enables a victim as well as the offender to participate actively in resolving difficulties resulting from an offence;

“The Nation or the community” means the Nation Micmac de Gespeg or the community of citizens of Gespeg.

“Citizenship list or Band list” means the registry of all citizens duly registered with the Nation Micmac de Gespeg,

“Related person” means any immediate family member of a person, which includes parents, children, stepparents, stepchildren, spouses, siblings, and in-laws.

“First Nation” means the Micmac First Nation of Gespeg.

“Renunciation” means the voluntary abandonment of registration.

“Revocation” means the non-voluntary cancellation of citizenship according to the rules set out below.

“Suspension” Temporary suspension by disciplinary measure.

PART I - ELIGIBILITY AND RIGHTS

Article 4 Eligibility criteria

A person has the right to be a citizen of the Micmac Nation of Gespeg according to the terms described in Article (5) below, provided that such person meets one of the following conditions:

- a) Is lawfully registered as a citizen on the effective date of this Code;
- b) Anyone who obtains Indian status under the Indian Act with the Micmac Nation of Gespeg or is waiting to obtain it;
- c) Is a 1st generation descendant of a relative registered on the list of citizens of Gespeg and having his status with Gespeg or who would be entitled to obtain it if he applied for it under the Indian Act;
- d) Obtained citizenship from the Mi'kmaq Nation of Gespeg by adoption Article (6) or by transfer of citizenship Article (7) in accordance with the terms of this Code;

- e) Non-status members registered on the list of members of Gespeg prior to the approval of these amendments retain their right to appear on this list.

Article 5 Categories of citizens and rights conferred.

All persons, regardless of the date of their entry on the list of citizens (formerly the membership list or band list), have the right to provide the programs and services offered in accordance with the terms and conditions established by regulation of the Council and in accordance with the following categories:

5.1.1 Citizens of origin

According to the provisions of this Code as described in Article 4 (a) and (b).

5.1.2 1st generation citizens of direct descent

According to the provisions of this Code, as described in paragraph 4 (c) above.

5.1.3 Citizens by inter-nation transfer

The persons who have obtained a transfer in accordance with the provisions of Article 4(d).

5.1.4 Citizens by adoption

For the purposes of this section, a child (Indian or non-Indian) adopted legally or according to custom according to Article 7 by a citizen of Gespeg, as referred to in Article 4 (d), has the right to be entered on the list of citizens without distinction, that is, in the same way as biological children.

5.1.5 Conditional Citizens

Individuals who have applied for status under the Indian Act and are waiting to receive it. If this application is refused, the person and his or her dependents will be immediately deregistered from the citizenship register and will no longer be able to benefit from the rights and benefits attached to it.

5.1.6 Associated Persons

The spouse and children (non-citizens of Gespeg) of a citizen of Gespeg will have the rights conferred on them according to the terms and conditions established by regulation of the Council.

- 5.2 Any new citizen shall wait a period of one (1) year before being able to stand as a candidate for elected office.

PART II - GRANT OF CITIZENSHIP

Article 6 Adopted persons

- 6.1 The following documents are required to support an application for an adopted child:
- a) A court order or attestation from the competent indigenous authority in the case of customary adoption;
 - b) The original birth certificate of the adopted person as amended.
- 6.2 Adopted persons shall enjoy the status accorded to them under Article (5).
- 6.3 No person of the Mi'kmaq Nation of Gespeg adopted by a non-citizen loses his or her right of citizenship with the Mi'kmaq Nation of Gespeg as a result of that adoption.
- 6.4 Upon application duly approved by the Board under this Code, the Registration Officer shall register a person who has been adopted by a citizen of Gespeg.

Article 7 Transfer request

- 7.1 An inter-nation transfer is possible for a status person from another First Nation located in Canada, subject to the following provisions:
- a) An affidavit setting out the reasons for the application, such as marriage;
 - b) Documents issued by a competent authority attesting to citizenship in good standing to another First Nation.
- 7.2 The citizenship of a child under the age of 16 (the age at which a person can apply for Indian status under the Indian Act) is not retained on the list of citizens of Gespeg if the custodial parent chooses to transfer to another First Nation.

Article 8 Dual membership

- 8.1 A person may be a citizen of Gespeg even if registered with another First Nation in Canada provided there is no duplication of federal programs and/or services intended for Aboriginal people or provided by the Mi'kmaq Nation of Gespeg.

PART III - APPLICATION PROCESS

Article 9 Application for registration

- 9.1** Any person who is not on the list of citizens of Gespeg on the date of entry into force of this Code must submit a written request in accordance with Article 5.1.1 to 5.1.6 using the form updated from time to time and provided for this purpose in Appendix 1 and provide the required documentation.
- 9.2** Each application for registration must be completed in its entirety and must contain sufficient personal information for the applicant's eligibility to be properly established. Such personal information includes, but is not limited to:
- a) All names used by the applicant or by which the applicant is known;
 - b) The applicant's residential address; their telephone number and email address (if they have one);
 - c) The names and contact details of both parents;
 - d) The signature of the applicant, or his or her legal guardian, in front of a witness; (if under 16 years old)
 - e) The filing date of the application.

Article 10 Examination of the application

- 10.1** The Registrar's Office will review the application to determine if it is complete and if all the conditions for citizenship have been met.
- 10.2** The applicant may request additional information or documentation from the applicant as it deems appropriate.
- 10.3** The applicant will have six (6) months to provide the missing documents, otherwise their application will be refused. A letter will then be sent to him by the

- 10.4** If satisfied that the applicant has met all the requirements for citizenship, the Registrar Officer will then forward the application and recommendations to the Board for decision.
- 10.5** The Commission has thirty (30) calendar days from the filing of the application by the Registrar Officer to ratify or reject the application.
- 10.6** En cas de conflit d'intérêts² avec le bureau du registraire ou tout membre élu du Conseil, le Conseil nommera quelqu'un d'autre pour remplacer cette personne.

PART IV - REGISTRATION SERVICE

Article 11 Registrar's Office

11.1 The latter shall not be a person elected to the Council.

11.2 Its main functions will be to:

- a) Review applications for registration to ensure they are complete;
- b) Present to the Board its final recommendation regarding the application of a candidate for approval;
- c) Process all written and oral communications relating to registration issues;
- d) Accompany people as part of their registration application;
- e) Maintain and maintain all citizenship registrations and records;

- f) Receive and process information provided or related to a request for registration, waiver, suspension, or revocation;

- g) Make additions and deletions to the list of citizens in accordance with this Code when required; including the dates of such amendments;

- h) Provide administrative support to the Council on all matters relating to registration;

- i) Submit all applications relating to registration to the Council for decision every three (3) months, or any other period determined by the Council;

- j) Report to the Council, when required, on the status of any application submitted to it;

² Est en conflit d'intérêts une personne lorsque le demandeur ou la personne à l'égard de laquelle la décision doit être prise, ou par qui un appel ou une contestation a été fait est le fils, la fille, le beau-fils, la sœur, le frère, le père, la mère, les grands-parents, les petits-enfants, le conjoint, le gendre, la belle-fille, la belle-famille.

- k) Inform applicants in writing of the Commission's decision as soon as possible, in the manner prescribed herein;
- l) With the approval of the Board, the Registrar's Office has the authority to create, amend and make available to the public various application forms and other forms online or in hard copy;
- m) It is responsible for maintaining the confidentiality and protecting personal information provided in the course of its duties;
- n) It is subject to this Code and its regulations.

PART V - DECISION-MAKING AUTHORITY

Article 12 Power of the Council

12.1 The Council hereby has the following powers:

- a) Accept or refuse all applications relating to registration under the terms of this Code;
- b) Impose suspension or revocation on grounds of cause in accordance with the provisions of Part VIII of this Code;
- c) Adopt regulations to enforce the application of these rules in a fair and impartial manner, without discrimination on the basis of sex, religion, language, age, or family and in accordance with the best interests of the community.

PART VI – RENUNCIATION, REVOCATION SUSPENSION

Article 13 Renunciation

13.1 A person may, upon written request, renounce citizenship with the Gespeg First Nation.

13.2 The Registrar's Office shall issue a Certificate of Renunciation to the applicant and the applicant shall cease to be a citizen upon issuance of the certificate.

Article 14 Revoke and suspension

14.1 The Council may revoke or suspend (depending on the seriousness of the misconduct) a person's citizenship if there is sufficient evidence that the person has obtained or retained registration as a citizen by: fraud, deception, misrepresentation or knowingly concealing facts or circumstances or for any other reason deemed relevant, such as:

- Unacceptable actions (disgraceful or defamatory remarks in public that undermine the values and image of the Nation; death threats and intimidation against employees, elected officials, or their representatives in the course of their duties;
- Conviction recognized by a court for fraudulent acts, murder, criminal acts of a sexual nature, violence against others, physical and mental abuse, or neglect of others;
- To have provided false or incorrect information about his spouse or dependents with respect to their eligibility as a citizen of Gespeg.

- 14.2** A member who is suspended will only be able to obtain federal program services as a status Indian. He will not be able to attend public meetings and his right to vote in elections will also be suspended until he is formally reinstated. At the end of the suspension, it will be up to him to re-apply in order to re-register his name on Gespeg's citizenship list to recover his rights and other benefits provided by the community
- 14.3** In the event of a revocation, a person will only receive the services of the Federal Government programs to which he was entitled to prior to his or her revocation.
- 14.4** Minor children will not be affected during the suspension or revocation of one of their parents; minor children will retain all their rights and benefits.

PART VII - ADMINISTRATION

Article 15 Registry of citizenship

- 15.1** The Mi'kmaq First Nation of Gespeg shall maintain a list of its citizens. This list shall bear each citizen's name, member category and date on which that person became a citizen of the First Nation of Gespeg. This list shall also clearly record the date of any deregistered citizens.
- 15.2** This list will be updated every three (3) months and posted in a public place accessible to the citizens of Gespeg for information purposes only.

PART VIII - REFUSAL, REVIEW AND REVOCATION PROCEDURES

Article 16 Notice of refusal of registration, suspension, or revocation

- 16.1** In the event of refusal of an application for membership by the Council, revocation or suspension, the Council will ensure that a written notice is sent to the applicant by registered mail, with acknowledgment of receipt, within fifteen (15) business days of the decision informing the applicant that his application for membership has been refused or of the imposition of a suspension or revocation and explaining the reasons.
- 16.2** Each notice must include a standard notice of the rights and procedures for challenging the decision, as well as a standard form for a challenge application approved by the Commission.

Article 17 Citizens' Committee

- 17.1** The Council of the Nation shall establish by resolution a Citizens' Advisory Committee composed of three (3) citizens of the Nation of Gespeg, including one (1) English-speaking representative, who shall serve a term of three (3) years. It will also have the power to renew or dismiss its members for just cause.
- 17.2** This committee will be independent of the Council and will make recommendations when needed to the arbitrator on traditional Micmac practices in traditional restorative justice.
- 17.3** This committee shall be responsible for reviewing any question submitted to it by the arbitrator within the established time limits. Should the committee not reply to his questions in the timeframe outlined, the arbitrator will deem that he has consulted with the committee and move forward with the process.
- 17.4** Should a conflict of interest³ arise with the Registrar's Office or any elected Council members, the Council will appoint someone else to replace that individual.
- 17.5** This committee will make its recommendations in writing.
- 17.6** At the end of a suspension, the committee shall be responsible for verifying whether the conditions for reinstatement have been met before recommending that the Council reinstate a citizen.

Article 18 Dispute

- 18.1** An applicant (a person 16 years of age and older or a legal guardian for a minor) who wishes to appeal a membership decision must first file a Notice of Dispute with the Council. The Notice of Dispute Form must be filed within sixty (60) days of receiving the Notice of the Refusal, Revocation or Suspension and accompanied by a deposit of one hundred dollars (\$100). The Council's decision will be final, without the chance of an appeal should the Notice of Dispute Form and one-hundred-dollar (\$100) deposit is not received within the sixty (60) day deadline. However, the deposit will be refunded to an applicant who successfully wins his appeal through arbitration or if the arbitrator deems his actions to be non-abusive.
- 18.2** The Notice of Dispute Form must state the reasons for the appeal and include evidence to support those reasons.
- 18.3** The Registrar's Office will be responsible for receiving appeal requests for review and he will inform the Council. The Registrar's Office will provide administrative support needed by the arbitrator and the Citizens' Committee.⁴

- 18.4** The Council shall have thirty (30) business days to appoint an arbitrator to whom the matter in dispute shall be assigned. This arbitrator must be impartial, independent, and not be a citizen of Gespeg or related person, he must have legal skills and knowledge of the main Aboriginal issues.
- 18.5** The arbitration shall be conducted under the responsibility of an arbitrator that will be accompanied by a Citizens' Committee established by the Council. The arbitration process shall be conducted in accordance with the rules of law and the provisions of the Code of Civil Procedure of Québec, that is in force, at the time of the dispute.
- 18.6** For the purposes of this article, the arbitrator could:
- a) Request additional information from the applicant;
 - b) Conduct independent research if necessary;
 - c) Check the validity of the applicant's sources;
 - d) Allow the applicant to present his version of the facts regarding his appeal request;
 - e) Make a decision within 30 (working) days with written reasons;
 - f) The arbitrator's decision must be mailed directly by the arbitrator to the applicant by registered mail. A copy of the decision will be sent to the Council and to the Registrar's Office. Upon receiving the arbitrator's decision, the Registrar's Office will update the citizenship list.

Article 19 New applications

- 19.1** Any person whose application for membership is refused shall have the right to submit a new application for membership within two (2) years of the date of refusal. This new application must indicate new facts to support the request.
- 19.2** Any person whose application is rejected shall have the right to apply to the Council for a review of the application in accordance with section 17 of this document.

³ A person is in conflict of interest if the applicant or the person in respect of whom the decision is to be made, or by whom an appeal or protest has been made, is the son, daughter, son-in-law, sister, brother, father, mother, grandparents, grandchildren, spouse, son-in-law, the in-laws.

⁴ What is the theory of reparative justice? Reparative justice measures seek to repair, in some way, the harm done to victims as a result of human rights violations committed against them.

PART IX – AMENDMENTS

Article 20 Procedure

- 20.1** This Code may be amended from time to time or repealed with the consent of a double majority of electors⁵ (50 per cent plus one) by secret ballot, mail, or other reliable means.
- 20.2** The Council shall give forty-five (45) calendar days' written notice to its citizens informing them of the vote. This notice will contain the text of the proposed amendment and an explanation of why the amendment is proposed.

PART X - INTERPRETATION

Article 21 Recourse

- 21.1** Any disagreement or dispute relating to this Citizenship Code or arising from its interpretation or application shall be settled by arbitration and excluding the courts, according to the laws of Quebec. This arbitrator must be impartial, independent, and not be a citizen of Gespeg or related person, with legal skills and knowledge of the main Aboriginal issues.

Article 22 Invalidity of a clause

- 22.1** In the event that a clause is declared invalid, this does not invalidate the rest of the Code.

Article 23 Gender and number

- 23.1** In this document the singular includes the plural, and the plural includes the singular; likewise, the feminine includes the masculine and the masculine the feminine.

Article 24 Factors to consider

- 24.1** This Code shall be interpreted and applied in accordance with the principles of policies developed from time to time by the Council, fairness, rules of natural justice, Micmac customs, values, and traditions.

⁵ <https://decisions.fca-caf.gc.ca/fca-caf/decisions/fr/item/35944/index.do?q=Premi%C3%A8re+Nation+des+Ab%C3%A9nakis+d%27Odanak>

Article 25 Precedence of French

25.1 In the event of any discrepancy between the French and English versions of this Code, the French version shall prevail.

PART XI - EFFECTIVE DATE

Article 26 Application

26.1 This Code shall enter into force 30 calendar days following its approval in accordance with the procedure described in article 20 above.

Article 27 Limitation of liability

27.1 No claim may be filed against the community of citizens of Gespeg, the Council, a citizen or one of their agents for refusal to register or removal of the name of a person from the list of citizens of Gespeg in accordance with this Code.