

**KESPEKEWEY KISUTASIK TA'N WEN KISI-PISKWI-WI'KATEN**

**Kespekewaq Mi'kmaq**

**Approved by the majority of the Kespekwa'jq Mi'kmaw.**

**Resolution (NUMBER)**



**Amendment of the Kespekwa'jq Mi'kmawhip  
Nation Micmac de Gespeg  
Referendum version 2024**

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## **PREAMBLE**

**WHEREAS** the Nation Micmac de Gespeg has inherent jurisdiction to determine citizenship and other related issues since time immemorial<sup>1</sup>; and

*Mita Mi'kmaq Kespek wejkwa'taqnik aqq ne'kaw ala'tu'tij alsusuti kisutmnaw ta'n wenik piskwi-wika'tijik wutanmuaq;*

**WHEREAS** the Nation Micmac de Gespeg recognizes that jurisdiction over citizenship is an essential function of First Nation authorities;

*Mita Mi'kmaq Kespek keknuite'tmi'tij alsusuti wjit ta'n wenik piskwi-wikasijik wutanmuaq wtlukwaqnaw L'nue'kati nikana'tu'tij;*

**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

*Mita teli-alsumsimk aqq teli-nikana'lsimk elqanatekewe'l L'nue'l kijijitaqnn ta'n anko'tasikl aqq wejiaql l'nuijijitaqn-iktuk aqq keknue'kl wjit ta'n telo'lti'tij L'nu'k;*

**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 *Kespekwaq Mi'kmaq* may freely determine the requirements of *Kespekwa'jq Mi'kmawhip* in their Nation; and

*Mita Mawikwajik Te'sunemiksijik Kisutmi'titl L'nue'l Koqqwaja'taqnn aqq ketlewa'tu'tij L'nu'k wesko'tmi'tij koqqwaja'taqn ta'n Teli-l'nuwulti'tij. Ula koqqwaja'taqn teluek L'nu'k ala'tu'tij saqamawuti aqq alsutekemk ta'n wen kis-naswi'katen kisna wiktew L'nue'katik;*

**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

*Mita L'nuey Tplutaqney Kaplno'l ewikasik ta'n wen L'nu aqq Teli-L'nuimk Kaplno'l ketu'-alsutk wen L'nuitew togo mu wije'tinuk ta'n Mawikwajik Te'sunemiksijik Eleke'wa'ki'kewe'l Kisutmi'tipn Mawkwa'timkewe'l aqq Nuji-tplutatimkewe'l koqqwaja'taqnn, togo Kanata kisi-ika'tu'tij wisunmaw, aqq etli-ilsutekemkl tel-suttasik penoqite'tekek;*

<sup>1</sup> Time immemorial means time extending beyond the reach of memory, record, or tradition, indefinitely ancient, "ancient beyond memory or record".

**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.

*Mita Tujiw 1987ek Kespek L'nue'kati ilutk ta'n wen piskwi'kut wutanmuaq wije'wmumkl Kisutasikl ta'n wen Kisi-piskwi-wi'katen, aqq mna'q sa'se'wa'tasinukl piamiw nesiskekipunqekl jel na'nipunqekl tujiw sapa'tumkek;*

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

*Mita pemi-punqekl pemi-pilua'sik ta'n wenimk, aqq elt ta'n wije'wmumkl teplutasikewe'l;*

**THEREFORE, BE IT RESOLVED THAT** the Nation Micmac de Gespeg enact this citizenship law to determine our own *Kespekwa'jq Mi'kmawhip* 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*.

*Ilutmnej Kespekewa'q Mi'kmaq sapa'tunew ula kisi-ilwikasik Kisutasik ta'n wen Kisi-piskwi-wi'katen kulaman me' ne'kaw iluttesnu tplutaqnn wjit ta'n weni'k wije'wmumk telo'ltimk wejkwaja'ta'qnik, aqq ne'kaw wesko'tmumkl koqqwajo'taqnn aqq koqqwaja'taqnn ketlewa'tu'tipn Mawikwajik Te'sunemiksijik Kisutmi'titl L'nue'l Koqqwaja'taqnn aqq Mawikwajik Te'sunemiksijik Eleke'wa'ki'kewe'l Kisutmi'tipn Mawkwa'timkewe'l aqq Nuji-tplutatimkewe'l koqqwaja'taqnn.*

## PART I – OBJECT AND DEFINITIONS

### Article 1 Short title

- 1.1. This document may be cited under the title of « **KESPEKEWEY KISUTASIK TA’N WEN KISI-PISKWI-WI’KATEN** ».

### Article 2 Object

- 2.1. *Kespekewey Kisutasik ta’n wen Kisi-piskwi-wi’katen* aims to provide fair rules and procedures for the *Kespekwa’jq Mi’kmawhip* process for all *Kespekwa’jq Mi’kmaw* of the *Kespekwaq*.
- 2.2. The *Kespekewey Kisutasik Ta’n Wen Kisi-Piskwi-Wi’katen* must not contain any discriminatory provisions based on sex, creed, or religion.

### Article 3 Definitions

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

**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.

**Conflict of interest** : means 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, great-grandparents, grandparents, great-grandchildren, grandchildren, spouse, son-in-law, daughter-in-law, in-laws, uncle and aunt;

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

**Elector** : means a *Kespekewa’j Mi’kmaw* aged 18 or older according to the Electoral Code of the *Kespekewaq Mi’kmaq* in effect.

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

**Kespekewey Kisutasik ta’n wen Kisi-piskwi-wi’katen** : means this Citizenship Code of the Nation Micmac de Gespeg.

**Kespekewa’j Mi’kmaw** : means citizen of Gespeg.

**Kespekwa'jq Mi'kmawhip** : means citizenship.

**Kespekewa'q Mi'kmaq** : means la Nation Micmac de Gespeg.

**Kespekewa'q Mi'kmaq List or Citizen's list of Gespeg** : means the registry of all the *Kespekewa'j Mi'kmaw* duly registered with the Nation Micmac de Gespeg in accordance with this Code.

**Mawkwa'timkewey Mawio'mi** : means the Citizens' Committee under this Code.

**Registration Officer** : means the person responsible for maintaining the list of citizens of *Kespekewa'q Mi'kmaq*;

**Spouse** : includes married persons as well as common-law partners, that is, a person who is not your spouse but with whom you have had a conjugal relationship for at least twelve (12) months without interruption;

**Status Indian or Registered Indian** : means a person recognized by the federal government as registered under the Indian Act.

## **PART II - ELIGIBILITY AND RIGHTS**

### **Article 4 Eligibility criteria**

- 4.1 A person has the right to be a *Kespekwaq Mi'kmaq* provided that such person meets one of the following conditions:
- a) Is legitimately listed as a *Kespekwaq Mi'kmaq* on the effective date of this *Kespekewey Kisutasik ta'n wen Kisi-piskwi-wi'katen* whether or not Status Indian;
  - b) Anyone who obtains Indian status under the Indian Act with the *Kespekwaq Mi'kmak*;
  - c) Is a generation descendant of a *Kespekewa'j Mi'kmaw* having his Indian status with Gespeg under the Indian Act;
  - d) Has obtained his or her citizenship from *Kespekwaq Mi'kmaq* by adoption or transfer in accordance with section 6 or 7 of this Code;

### **Article 5 Rights & Benefits**

- 5.1 Every *Kespekewa'j Mi'kmaw*, regardless of the date of entry on the *Kespekwa'jq Mi'kmaw' list* may exercise the collective rights of *Kespekwaq Mi'kmaq* in accordance with its traditions and customs and benefit from programs and services offered in accordance with rules established by the Council based on the material and financial resources available.
- 5.2 Individuals who have applied to become a *Kespekewa'j Mi'kmaw* and are awaiting a response, as well as the spouse and children (non-citizens of Gespeg) of a *Kespekewa'j Mi'kmaw*, may participate in community activities as determined by the Council.
- 5.3 Any new *Kespekewa'j Mi'kmaw* will have to wait a period of one (1) year from the date of listing as a *Kespekwaq Mi'kmaq* before being able to run for elective office within the *Kespekwaq Mi'kmaq*.



## **PART III - ADOPTION AND TRANSFER 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 Any person legally or customarily adopted by a *Kespekewa'j Mi'kmaw* has the right to be entered on the list of *Kespekewa'jq Mi'kmaw* of Gespeg without distinction, according to the same criteria as biological children; including the generation limit as established in art. 4.1 c) above.
- 6.3 Like biological children, no *Kespekewa'j Mi'kmaw* who has been adopted by a non-citizen loses his or her right to citizenship with *Kespekewaq Mi'kmaq* as a result of that adoption.
- 6.4 Upon application duly approved by the Council under the *Kespekewey Kisutasik Ta'n Wen Kisi-Piskwi-Wi'katen*, the Registration Officer shall register a person who has been adopted by a *Kespekewa'j Mi'kmaw*.

### **Article 7 Transfer request**

- 7.1 An inter-nation transfer is possible for a status Indian 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 attesting the citizenship in good standing to another First Nation.
- 7.2 Persons under the age of 16<sup>2</sup> who are eligible under this Code, whose *Kespekewa'j Mi'kmaw* parents elect to transfer their citizenship to a First Nation other than *Kespekewaq Mi'kmaq*, shall not be retained on the *Kespekewaq Mi'kmaq List*, unless the *Kespekewa'j Mi'kmaw* parent elects dual citizenship for themselves and their children.

<sup>2</sup> The age at which a person can apply for Indian status under the *Indian Act*.

## **Article 8 Dual citizenship**

- 8.1 A person may be a *Kespekewa'j Mi'kmaw* 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 *Kespekwaq Mi'kmak*, as set out in the Council's rules and policies.

## **PART IV - APPLICATION PROCESS**

### **Article 9 Application for citizenship**

- 9.1. Any person who is not on the *Kespekwa'jq Mi'kmawhip* list on the date of coming into force of the *Kespekewey Kisutasik Ta'n Wen Kisi-Piskwi-Wi'katen* must submit a written request using the form provided for this purpose and provide the required documentation.
- 9.2. Each application for citizenship 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 information of both parents;
  - d) The signature of the applicant, or his/her legal guardian (if under 16 year of age), before a witness;
  - e) The filing date of the application.

### **Article 10 Review of the application**

- 10.1. The Registration Officer will review the application to determine if it is complete and if all the conditions for *Kespekwa'jq Mi'kmawhip* have been met.
- 10.2. The Registration Officer 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 Registration Officer informing him of the rejection of his application and of the possibilities to contest the refusal, as set out in accordance with Part VIII of this Code.
- 10.4. If the Registrar Officer is satisfied that the applicant has met all the requirements for *Kespekwa'jq Mi'kmawhip*, the applicant will submit the application to the *Mawkwa'timkewey Mawio'mi*. The latter will review the application on the basis of the information received and provide its recommendation to the Council to accept or reject the application.
- 10.5. The Council has one (1) month following the recommendation of the *Mawkwa'timkewey Mawio'mi* to ratify or reject the application.

- 10.6. In the event of a conflict of interest with an elected member of the Council or a member of the *Mawkwa'timkewey Mawio'mi*, the Council or the Committee will ask the person to recuse herself<sup>3</sup>.

<sup>3</sup> Recusing means withdrawing as a participant in order to avoid a conflict of interest.

## PART V - REGISTRATION SERVICE

### Article 11 Registration Officer

- 11.1. The Registration Officer is an employee of the Council. He must not be a person elected to the Council unless there is no other way to do so.
- 11.2. The Registration Officer is subject to this Code and his/her primary responsibilities are to:
- a) Receive information provided related to an application for registration on the *Kespekewa'q Mi'kmaq list*;
  - b) Review applications for registration to ensure that they are complete and meet the eligibility criteria outlined in this Code, before submitting them to the *Mawkwa'timkewey Mawio'mi* for approval or refusal;
  - c) Process all written and oral communications relating to registration issues except as otherwise specified herein;
  - d) Assist individuals with their application for status or registration;
  - e) Maintain up to date all *Kespekwa'jq Mi'kmawhip* registrations and preserve records;
  - f) Make additions and deletions to the *Kespekwa'jq Mi'kmaw list* (with the agreement of the Council), in accordance with the *Kespekewey Kisutasik Ta'n Wen Kisi-Piskwi-Wi'katen* when required; including the dates of such amendments;
  - g) Report to the *Mawkwa'timkewey Mawio'mi* on the status of any application submitted;
  - h) Provide administrative support to the *Mawkwa'timkewey Mawio'mi*, the arbitrator and the Council, as required;
  - i) Organize, coordinate, and facilitate meetings of the *Mawkwa'timkewey Mawio'mi* as required unless the Committee decides otherwise in its operating rules;
  - j) Submit the *Mawkwa'timkewey Mawio'mi* recommendations to the Council at least once (1) a month or such other deadline as the Council may determine;
  - k) Inform applicants in writing of the Council's decision as soon as possible, in the manner prescribed herein;
  - l) With the approval of the Council, it has the authority to create, amend and make available to the public various application forms for registration or otherwise, online or in hard copy;
  - m) It is responsible for maintaining the confidentiality and protecting personal information provided in the course of its duties;

## Article 12 Citizens' Committee

- 12.1. The Council of the Nation shall establish by resolution an Advisory *Mawkwa'timkewey Mawio'mi* independent of the Council, composed of five (5) *Kespekwa'j Mi'kmaw* including at least one (1) anglophone representative.
- 12.2. The members of the *Mawkwa'timkewey Mawio'mi* will serve a term of five (5) years and the Council will have the power to renew or remove its members for just cause.
- 12.3. The *Mawkwa'timkewey Mawio'mi* will establish its own rules of operation.
- 12.4. The mandate of the *Mawkwa'timkewey Mawio'mi* will be:
  - a) To consider and deal fully and fairly with all membership matters under the Code and to make recommendations to the Council. Cases of "withdrawal" are also referred to the *Mawkwa'timkewey Mawio'mi*, which will make the appropriate recommendations for decision by the Council;
  - b) To provide advice at the request of the Registration Officer or the Council for the purpose of interpreting any of the provisions of this Code.
- 12.5. The *Mawkwa'timkewey Mawio'mi* shall meet at least once (1) every three months or as required.
- 12.6. The *Mawkwa'timkewey Mawio'mi* may recommend the acceptance or rejection of an application for registration or decide to return it to the applicant for more information. The same applies to the removal of a person from the *Kespekewaq Mi'kmaq list* who no longer meet the eligibility criteria of the *Kespekewey Kisutasik ta'n wen Kisi-piskwi-wi'katen*.
- 12.7. The *Mawkwa'timkewey Mawio'mi* will make its recommendations in writing.
- 12.8. In the event of a conflict of interest, the *Kespekewa'j Mi'kmaw* concerned must recuse himself or herself from the file concerned.
- 12.9. Its members will be responsible for maintaining the confidentiality and protecting the personal information provided in the course of their duties.

## **PART VI - DECISION-MAKING AUTHORITY**

### **Article 13 Power of the Council**

13.1 According to the *Kespekewey Kisutasik Ta'n Wen Kisi-Piskwi-Wi'katen* the Council hereby has the following powers :

- a) Accept or refuse all requests relating to registration in accordance with the terms of this Code;
- b) Remove the registration of a citizen who no longer complies with the conditions set out in accordance with this Code;
- c) Adopt bylaws to regulate access to activities and the delivery of services and programs offered to *Kespekwa'jq Mi'kmaw* or any other person in accordance with this Code in accordance with the best interests of the *Kespekewaq Mi'kmaq*.

13.2 A person is added to the *Kespekewaq Mi'kmaq List* when the Council has accepted that person's application for registration in accordance with this Code.

## **PART VII – RENUNCIATION**

### **Article 14 Procedure**

- 14.1. A person may renounce his or her with the *Kespekwa'jq Mi'kmawhip* by giving written notice to the *Kespekewa'q Mi'kmaq*.
- 14.2. Thirty (30) days after receipt of written notice by the Council the Registration Officer shall issue a certificate of renunciation to the Applicant and the Applicant shall cease to be *Kespekewa'j Mi'kmaw* on the date of issuance of such certificate.



## **PART VIII – REFUSAL OR WITHDRAWAL PROCEDURE**

### **Article 15 Notice of refusal or withdrawal**

- 15.1. In the event of a refusal of an application for registration or the removal of a person from the *Kespekewaq Mi'kmaq List*, the Registration Officer shall notify the person concerned or his or her guardian in writing by registered mail, with acknowledgment of receipt, within fifteen (15) days of the Council's decision.
- 15.2. The notice must set out the reasons for the Council's decision, the procedure for challenging the decision, and a request form for a dispute approved by the Council.

### **Article 16 Review of decisions**

- 16.1 Any person who wishes to contest a citizenship decision must file a written objection with the Council on the form provided for that purpose within sixty (60) days of receipt of the notice of refusal. Otherwise, the Council's decision is final and cannot be appealed.
- 16.2 The Dispute Form must state the reasons for the appeal and include evidence to support those reasons.
- 16.3 The person who submits an appeal has the burden of proving that it is well founded.

### **Article 17 Arbitration**

- 17.1 The Council has thirty (30) days to appoint an arbitrator to deal with and decide the dispute.
- 17.2 The arbitrator must be impartial, independent, and not be a *Kespekewa'j Mi'kmaw* or a person related to him. He or she must have legal skills and knowledge of key Aboriginal issues.
- 17.3 The arbitration shall be conducted in accordance with the laws of the Province of Quebec in effect at the time of the dispute.
- 17.4 In the course of his duties, the arbitrator shall :
  - a) Ensure that he or she has the necessary information for the purposes of the dispute;
  - b) Verify the validity of the evidence provided;
  - c) Allow the applicant to present his or her side of the story regarding his or her application to contest;
  - d) Make a decision within sixty (60) days of appointment with written reasons.

- 17.5 All information collected as part of this process will be subject to confidentiality and privacy requirements.
- 17.6 If necessary, the arbitrator will consult with the *Mawkwa'timkewey Mawio'mi* for Mi'gmaq traditional practices or any other matter he or she deems appropriate.
- 17.7 The arbitration decision shall be final, enforceable, and binding on the parties.
- 17.8 The arbitrator shall determine the share of the costs applicable to the arbitrator's fees and all other costs related to the dispute. If the contestation is justified, the Council shall bear the full costs. Otherwise, the appellant may be charged all or part of the costs depending on the nature of the case.

## **PART IX – ADMINISTRATION**

### **Article 18 Registry of Citizenship**

- 18.1 The Registration Officer shall maintain the official *Kespekewa'jq Mi'kmaq list* as a *Kespekwa'jq Mi'kmawhip* registry on which the name and category of any *Kespekewa'j Mi'kmaw* shall be recorded from the date on which that person became a citizen or was deregistered.
- 18.2 The official *Kespekwa'jq Mi'kmaq list* approved by the Council will be updated every six (6) months and posted (names only) in a public place accessible to the *Kespekwa'jq Mi'kmaw* and on the Nation's secure website, for consultation only.

### **Article 19 New application**

- 19.1 Any person whose application for *Kespekwa'jq Mi'kmawhip* is refused shall have the right to submit a new application indicating the new facts which may justify the application. Such a request shall be treated as a new application.
- 19.2 Any person whose application is rejected has the right to apply to the Council for a review of the application in accordance with Article 16 hereof.

## **PART X – AMENDMENT**

### **Article 20 Procedure**

- 20.1 The *Kespekewey Kisutasik ta'n wen Kisi-piskwi-wi'katen* may be amended or repealed as necessary with the consent of a double majority of the electors (i.e., 50% plus 1 of the votes cast in a vote in which at least 50% plus 1 of the electors participate) by secret ballot, by mail or by any other reliable means.
- 20.2 The Council shall notify the *Kespekewa'j Mi'kmaw* in writing of the conduct and manner of the vote at least forty-five (45) days prior to the vote. The notice must set out the text of the proposed amendment and the relevant explanations for such an amendment.

## **PART XI – INTERPRETATION**

### **Article 21 Recourse**

21.1 Any disagreement or dispute relating to *Kespekewey Kisutasik ta'n wen Kisi-piskwi-wi'katen* shall be submitted to arbitration in accordance with this Code.

### **Article 22 Invalidity of a clause**

22.1 In the event that an arbitrator or court finds any provision of *Kespekewey Kisutasik ta'n wen Kisi-piskwi-wi'katen* to be invalid or unenforceable in any way, the validity or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

### **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 document shall be interpreted and applied in accordance with the principles of fairness, the rules of natural justice, the customs, values and traditions of *Kespekewaq Mi'kmaq*. The Council may also develop policies from time to time to enable its implementation.

### **Article 25 Precedence of French**

25.1. In the event of any discrepancy between the French and English versions of the *Kespekewey Kisutasik Ta'n Wen Kisi-Piskwi-Wi'katen*, the French version shall prevail.

## **PARTIE XII – EFFECTIVE DATE**

### **Article 26 Application**

26.1. This Code comes into force thirty (30) days after it is approved by the electors.

### **Article 27 Limitation of liability**

27.1. No monetary remedy, action or claim may be brought against *Kespekewaq Mi'kmaq*, the Council, *Mawkwa'timkewey Mawio'mi* or any of their representatives, members, employees, or agents for a refusal to add or the removal of a person's name from the *Kespekewaq Mi'kmaq list* in accordance with this Code.