

# Pauquachin First Nation

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## Overview of Membership Code Updates April 4, 2018

### *Introduction*

Council has been working with Brent Lehmann from Ratcliff & Company LLP, legal advisors, to review the 1987 Membership Code.

Ratcliff & Company LLP is respected and recognized as one of Canada's first and leading law firms that focuses on working with First Nations. For over 40 years, it has been helping First Nations with a variety of successes, from asserting and establishing their aboriginal rights and land claims, to negotiating and implementing treaties and other landmark agreements, to regaining lost lands, to developing profitable and successful businesses, pursuing land development opportunities and establishing more transparent and accountable governance practices.

Brent's practice areas include providing First Nations with legal advice on assuming control of their membership under section 10 of the Indian Act as well as developing custom membership and election codes. His work with treaty First Nations has involved the development of Constitutions establishing governance structures, the rights of individual members and adherence to the rule of law. Brent has also assisted Treaty First Nations in developing a broad range of governance related laws under the law making authorities recognized in their Treaties, including Citizenship Laws, Council rules of order and procedures, code of conduct and conflict of interest, financial administration and freedom of information and protection of privacy laws. Brent has advised Council that it is in the best interests of Pauquachin First Nation that the 1987 Membership Code be updated.

### *Why are updates necessary?*

- ❖ Many things have changed since the 1987 Membership Code was approved 30 years ago:
  - The Courts have said a Band cannot discriminate against off-reserve voters<sup>1</sup> (the 1987 Membership Code only allows on-reserve voters to vote);
  - The 1987 Membership Code refers to sections of the Indian Act that have since been amended (Bill C-3 ("McIvor amendments") and Bill S-3 ("Descheneaux amendments")); and
  - A New Membership Code will better reflect more modern governance structures for Pauquachin First Nation;
- ❖ The 1987 Membership Code has internal inconsistencies and errors that create legal uncertainty; and
- ❖ A New Membership Code will de-politicize the membership application process by establishing an independent Membership Committee (separate from Council) to consider applications for membership.

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<sup>1</sup> *Corbiere v. Canada* [1999] 2 S.C.R. 203 (S.C.C.)

### *What would a New Membership Code do?*

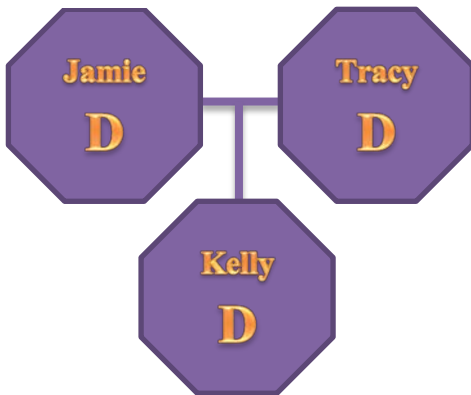
- ❖ Establish non-political bodies to process applications for membership and appeals in a timely and non-discriminatory manner:
  - A **Membership Committee** (two Elders, three other members and the membership registrar, who acts as the non-voting chairperson) that will consider membership applications; and
  - An **Appeals Committee** (one Elder and two other members) that will consider appeals of decisions made by the Membership Committee.
- ❖ Establish clear, consistent and legally enforceable rules for membership (see attached examples):
  - Entitlement to membership for:
    - **Descendant** members (both parents are members (with at least one a Descendant member) or one parent is a Descendant member and the other parent has status); and
    - **Lineal** members (one parent is a Descendant member, both parents are Lineal members or one parent is a Lineal member and the other parent has status); and
  - Discretionary membership for
    - **Acquired** members (a Descendant or Lineal member's spouse or adopted child).
  - If an individual's parent is deceased, entitlement would be assessed as if the deceased parent were alive.
  - If an individual acquired status because of marriage or adoption, they can only become an Acquired member.
- ❖ Establish clear, consistent and legally enforceable rules for administering the Membership List.
- ❖ Establish non-discriminatory amendment approval processes.

### *How would a New Membership Code be approved?*

- ❖ A Referendum will be held on May 16, 2018 of all eligible voters asking the following three questions:
  - Do you approve the draft dated April 4, 2018 as the new Membership Code for the Pauquachin First Nation?
    - Yes, or
    - No;
  - How long should the term of appointment be for members of the Membership Committee and Appeal Committee under the new Membership Code?
    - Three Years; or
    - Four Years; and
  - Should a parent of a Pauquachin member be able to apply to become an Acquired member under the new Membership Code?
    - Yes, or
    - No.

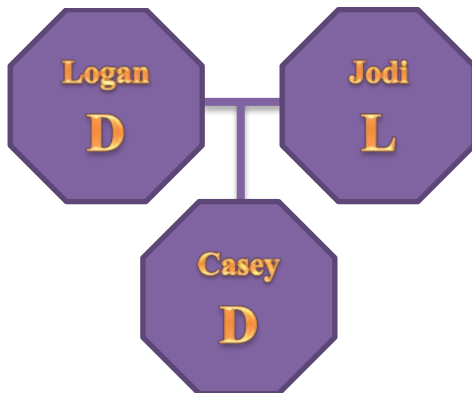
## Membership Entitlement Examples<sup>2</sup>

### EXAMPLE 1



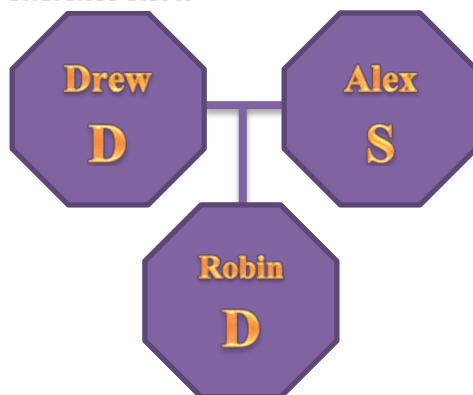
Jamie (from Pauquachin) and Tracy (from Pauquachin), were both on the Pauquachin DIA List since before 1987 and have status under section 6(1) of the Indian Act. Jamie and Tracy have a child Kelly. Both Jamie and Tracy are entitled to be Descendant members, so Kelly will be a Descendant member as well.

### EXAMPLE 2



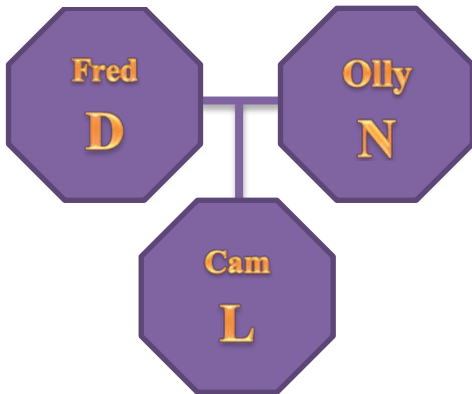
Logan (from Pauquachin) was on the DIA List since before 1987 under section 6(1) of the Indian Act. Jodi (from Pauquachin) was also on the DIA List since before 1987 but under section 6(2) of the Indian Act. Logan and Jodie have a child Casey. Logan is entitled to be a Descendant member and Jodi is entitled to be a Lineal member, so Casey is entitled to be a Descendant member.

### EXAMPLE 3

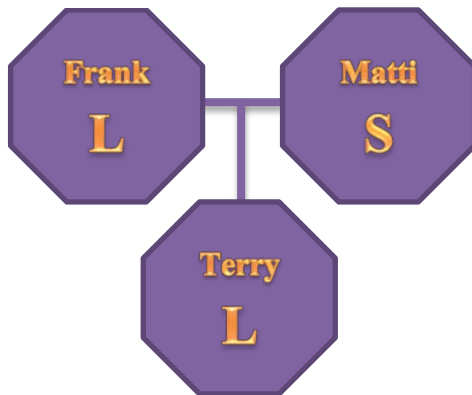


Drew (from Pauquachin) was on the DIA List since before 1987 under section 6(1) of the Indian Act. Alex (from Cowichan) is not a member but has status. Drew and Alex have a child Robin. Drew is entitled to be a Descendant member and Alex, although not a member does have status, so Robin is entitled to be a Descendant member.

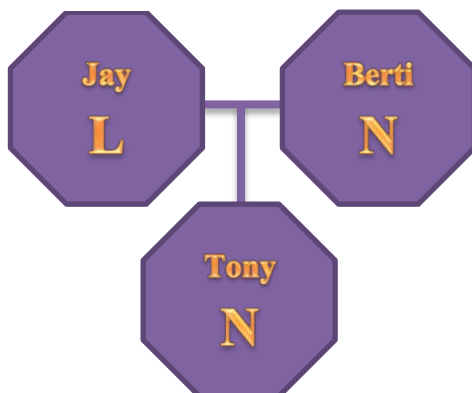
<sup>2</sup> D = Descendant Member; L = Lineal Member; S = Status Indian; and N = Non-Member and Non-Native

**EXAMPLE 4**

Fred (from Pauquachin) came onto the Former Membership List under the 1987 Code and has status under section 6(1) of the Indian Act. Olly is not a member and does not have status. Fred and Olly have a child Cam. Fred is entitled to be a Descendant member and since Olly is not a member and does not have status, Cam is entitled to be a Lineal member.

**EXAMPLE 5**

Frank (from Pauquachin) came onto the Former Membership List under the 1987 Code and has status under section 6(2) of the Indian Act. Matti (from Beecher Bay) is not a member but has status. Frank and Matti have a child Terry. Frank is entitled to be a Lineal member and Shelley, although not a member does have status, so Terry is entitled to be a Lineal member.

**EXAMPLE 6**

Jay (from Pauquachin) came onto the Former Membership List under the 1987 Code and has status under section 6(2) of the Indian Act. Berti is not a member and does not have status. Jay and Berti have a child Tony. Jay is entitled to be a Lineal member and since Berti is not a member and does not have status, Tony is not entitled to be a member.

## Membership Entitlement Details

The following is a detailed list of who would be entitled to membership in the Pauquachin First Nation if the draft dated April 4, 2018 is approved on May 16, 2018 as the new Membership Code for the Pauquachin First Nation.

- ❖ The following individuals would (or could) become **Descendant** members:
  - All current members who have status under s. 6(1) of the Indian Act;
  - Those entitled under s. 6(1) of the Indian Act on June 26, 1987 (Bill C-31);
  - Returning women involuntarily transferred to another band before April 16, 1987;
  - Children with status of returning women;
  - An individual with both parents who are members and
    - Both are Descendant members, or
    - One is a Descendant member and the other a Lineal member, and
  - An individual with one parent who is a Descendant member and the other who has status.
- ❖ The following individuals would (or could) become **Lineal** members:
  - All current members who have status under s. 6(2) of the Indian Act;
  - An individual with
    - one parent who is a Descendant member, or
    - both parents who are Lineal members;
  - An individual with one parent who is a Lineal member and who acquired status because of the McIvor amendments or the Descheneaux amendments; and
  - An individual with one parent who is a Lineal member and the other who has status.
- ❖ The following individuals would (or could) become **Acquired** members:
  - The spouse of a member who became a member because of that marriage; and
  - The adopted child of a member who became a member because of that adoption.