Nova Scotia Chiefs Raise Concerns over Qalipu Mi’kmaq Band

By: Jaime Battiste, Citizenship Coordinator, KMKNO

Under the direction of the Assembly of Nova Scotia Mi’kmaq Chiefs, the team at Kwilmu’kw Maw-Klusuaqn Negotiations Office (KMKNO) is in the early stages of creating a criteria/definition for “who is a Mi’kmaw”. There is no question that the need of clearly defining who is Mi’kmaw, and who is entitled to be a beneficiary to our Treaties, continues to be a growing concern.

At the 2013 Nationhood Conference, held October 2nd and 3rd, the questions continued to arise from Councillors, Grand Council members, Elders and Youth on the current status of Qalipu Band and what this could mean for our Treaties, our Rights and our future as the Mi’kmaq of Nova Scotia.

Although it is important that we keep a watchful eye on other processes that define status eligibility, it is most critical that we develop our own process.

WHAT HAS BEEN DONE TO DATE?

During an Assembly meeting in the spring of 2013, the Nova Scotia Chiefs voiced concern over the potential 100,000 new applicants, that were being considered, as part of the Qalipu Mi’kmaq Band of Newfoundland. This influx in population was puzzling and alarming not only for the Chiefs, but for many of our community members, wondering what it may mean to their own communities.

In May of 2013, a letter was sent by Chief Terrance Paul and Chief Gerard Julian, Co-Chairs of the Assembly, to the Minister of Aboriginal Affairs and Northern Development Canada (AANDC). The letter outlined many of the concerns regarding the Qalipu band and asked for further clarification and explanation by the federal government. The letter disputed the authority of AANDC to determine who is and is not a Mi’kmaq. It stated that while AANDC may have jurisdiction over who is an Indian, they do not have the constitutional right to determine who is a Mi’kmaq.

The letter stated that, “the Mi’kmaq Nation has always determined who was and was not a Mi’kmaw. Through our oral history, language, and family kinship, our identity is based in our collective understanding passed down through our Elders and family members. We have never relinquished this inalienable inherent right to self-identification in any Treaty with the Crown or with Canada.”
AANDC was also reminded of Articles 19 and 33 which state that consultation with Indigenous people is required when decisions are being made before implementing legislation that may affect them, and that Indigenous people have the right to determine their own identity or membership.

It was also important that the government understood that the Chiefs and communities were concerned about the potential impacts of an increase of thousands of new Indians within the Atlantic, without any mention of additional resources that were necessary in order to prevent “overwhelming hardships in an already fragile state of survival for many Mi’kmaq families.”

Finally, the Chiefs reminded the federal government that within our own communities, AANDC continues to use discriminatory policies to refuse children the ability to be registered status Indians, yet they are potentially recognizing thousands of new applicants in Newfoundland.

After months of waiting, AANDC responded to some of the concerns of the Mi’kmaq leadership in a letter dated Oct 24, 2013. In this letter, Minister Bernard Valcourt states that the current process for membership in Qalipu Mi’kmaq First Nation “is to recognize Mi’kmaq who lived primarily on the island of Newfoundland and who were not recognized under the Indian Act when Newfoundland joined confederation”. According to a 2008 agreement between the Federation of Newfoundland Indians and AANDC, there has been 23,877 people registered as founding members of Qalipu, and they received more than 101,000 applications before the November 2012 deadline.

The AANDC letter concluded with a link to the supplemental agreement for further information, and did not address any of the concerns of the Chiefs in terms of additional funding for the Qalipu band, where AANDC gets jurisdiction to determine that a band is a Mi’kmaq Band, or the continued denial of Indian status of our own community members.

To summarize briefly how the application system for Qalipu works, the criteria appears to be based on the Supreme Court of Canada test developed in the Powley case for identifying Métis. In 2003 an “Aboriginal identity criteria analysis” was used that was based on three factors: self-identification, ancestral connection and community acceptance.

The consistent use of the Powley criteria in case law for determination of Métis identity has now become the approach used for the determination of the Qalipu Indians as well. Under the current supplementary agreement for Qalipu eligibility and recognition, an individual only need be a descendant of a Newfoundland Mi’kmaq, self-identify as a Mi’kmaq and be accepted as a member of the Mi’kmaq group of Indians of Newfoundland.

One of the puzzling aspects of this Qalipu approach was stated by the Mi’kmaq Grand Council in its statements to Dr. James Anaya Special Rapporteur to the United Nations,
Canada asserts it can create thousands of new Mi’kmaq while continuing to deny members in our own community the same recognition based on their discriminatory Indian Act. We are puzzled that the discriminatory policies depriving our grandchildren in our communities Indian status based on blood quantum, does not apply equally to the new Qalipu band members.

There are still many unanswered questions surrounding the Qalipu Mi’kmaq band process which have not been addressed by AANDC. Whatever way you look at it, it seems to be discrimination and we need to work together, as the Mi’kmaq Nation of Nova Scotia to establish how we will move forward on this, and many other important discussions.

As time passes it is becoming increasingly evident that there is a need for urgency in the definition of who is Mi’kmaq. As Chief Deborah Robinson, Assembly Lead Chief of the Governance Portfolio has stated, “We need to determine our own criteria – that is developed for the Mi’kmaq, by the Mi’kmaq.”