



## Acadia First Nation

### Community Notice Regarding AFN's Governance and Election Laws

#### History of Acadia's governance and election laws

The Acadia First Nation is a custom band governed by its own election laws. The band has always controlled its governance under custom since the time it was officially recognized as an *Indian Act* band in 1971.

Initially, Acadia operated under an oral custom where the Chief was elected for life. Chief Charlie Paul was the first Chief of Acadia, elected in 1971. He was expected to hold office for life, with his eldest son succeeding him, but, instead, he resigned from office in 1978 and an election was held. The votes for that election were tied and the winner, Charles Labrador, won by a coin toss. Chief Labrador held office until 1987 when Chief Robinson was elected.<sup>1</sup>

The Band went from oral custom to written governance and election laws during the term of Chief Labrador in the 1980s when a version of the Band By-Laws, and Election and Procedure Regulations, were first passed. Under Chief Robinson's tenure, these governance and elections laws have been amended twice, once in 1990, and again in 2004.

#### Acadia's governance and election laws are valid and enforceable

Recently, a few people have questioned whether Acadia's governance and election laws are valid. This seems to be based on the fact that the Department of Aboriginal Affairs and Northern Development Canada ("AANDC") never approved Acadia's governance and election laws. We have sought a legal opinion from the Band's legal counsel, who are completely satisfied that the law is clear that Acadia's governance and election laws are valid and enforceable.

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<sup>1</sup> See <http://www.cbu.ca/mrc/ethnographies>.

From its creation as a Band, Acadia has never been subject to the *Indian Act* election laws, and therefore never required the Minister's permission to "opt out" of them. Furthermore, legal counsel advises there is no requirement in law for bands with custom governance election laws to have their laws approved by AANDC. The courts have ruled on this, such as in the case of *Jock v. Canada* (1991), 41 F.T.R. 189, where the Federal Court said, at para. 40:

"I am satisfied, the *Indian Act* and Regulations do not require a ministerial order for election procedures to be brought under the *Indian Act* or to revert to band custom."

Although AANDC has a policy that says what Bands, who are under *Indian Act* election rules, must do in order to "opt out" of them (that includes obtaining AANDC's permission); the courts are clear that such a policy is not enforceable law.

What the courts have said is required in order for a Band to take control over its governance and election laws is "broad consensus" by Band members in support of such laws. The courts have said the concept of "broad consensus" is flexible and informed by the specific circumstances of the First Nation in question. There can, for example, be a "broad consensus" with less than 50% participation of members.

The courts have also said that the custom laws of a Band are not frozen in time and can change and be amended to respond to changing circumstances. For the purposes of approving new or amended governance and election laws, broad consensus can be achieved through a variety of processes.

For the 2004 amendments to Acadia's governance and election laws, the By-Laws, Election Regulations and Procedure Regulations were approved by in excess of 25% of the electors of the Band through holding a series of special meetings at various locations over a defined period of time. Notice of the meetings and their purpose was sent to members well in advance of those meetings.

Based on the legal principles set out by the courts, our legal counsel is satisfied that this process resulted in obtaining broad consensus of the membership of the Acadia First Nation, making them valid and enforceable governance and election laws.