

MLIB Membership Code and Governance Manual



Frequently Asked Questions

FREQUENTLY ASKED QUESTIONS

1. What role does Chief and Council play in making Membership decisions?

Chief and Council (“**Council**”) plays a limited role in Membership decisions. Council does not make decisions directly relating to Membership applications, unless a denied applicant is appealed, in which case Council still cannot overturn the Membership Committee’s original decision. In drafting the Code and Manual, we tried to minimize Council’s role as much as possible, only including their input as necessary based on practical considerations and legal advice.

Under the Membership Code (“**Code**”) and Governance Manual (“**Manual**”), Council has the following responsibilities:

- Appointing the first Membership Committee. If the Code is ratified at the upcoming Annual General Assembly (“**AGA**”), Council will then appoint 5 to 7 MLIB members to sit on the Membership Committee. Future Membership Committee members will be elected at AGAs, without involvement of Council.
- Removing and replacing Membership Committee Members if a Committee Member fails to comply with the Code and/or Manual. Under section 4.6 of the Manual, Council may remove a Committee Member if that Committee Member:
 - (a) misses three or more consecutive meetings;
 - (b) has violated a Band law or Canadian law which jeopardizes the Committee Member’s ability to act fairly, in accordance with the Code and Manual; or
 - (c) has failed to comply with the Code or Manual and has not rectified the failure after being given the opportunity to do so.

Council cannot remove a Committee Member unless one of these three things has happened.

If a Committee Member has been removed or resigns from the Membership Committee, Council is also responsible for appointing a suitable replacement.

- Hearing appeals. If a Membership application is denied, the applicant can file an appeal. Appeals are heard by Council, but Council cannot make a binding decision to admit the person as a Member. Instead, under section 12.2.4 of the Code, Council can choose to:
 - (a) send the decision back to the Membership Committee for reconsideration;
 - (b) uphold the decision of the Membership Committee to deny the application; or
 - (c) defer making its decision until the next Council meeting.
- Amending the Manual by BCR. The Manual controls the administrative aspects of carrying out the Code. For greater flexibility, and to ensure that the Code is administered effectively, Council can amend the Code by way of a Band Council Resolution, instead of requiring a vote of the voting Members at an AGA. This prevents the possible situation of being stuck with ineffective administrative rules that can only be changed by a vote at an AGA.

2. What was the process to arrive at the present Code and Manual?

The present Code and Manual are the result of years of work by the current Membership committee and various other MLIB Members. MLIB tried to amend the 2004 Membership Code in both 2013 and 2015. Neither amendment succeeded but the lessons learned from each of those processes have been applied to the 2019 Code.

The current Membership committee was formed sometime around early 2018. Since that time, the Membership committee has hosted approximately 20 community meetings in order to consult with as many Members as possible and seek input from the community. The Membership committee also conducted two separate surveys to more fully understand how Membership wanted the Code to be structured and the processes and rules Members wanted to be included.

Throughout the Spring and early summer of 2019, the Membership committee worked with legal counsel to draft the versions of the Code and Manual that we are now voting on. The Membership committee and legal counsel had 10+ conference calls and drafted 10+ versions of the Code and Manual in order to produce documents that struck the best balance between Membership's wishes, legal obligations, and MLIB's need to maintain a strong Membership base for generations to come through processes outside the Indian Act.

3. Why was the Manual created and why is this the first we have seen it?

The original draft of the Code provided in the Spring included both the substantive elements of Membership decisions (ie. who is eligible for Membership, the rights of Members, etc.) as well as the administrative elements (ie. how the Membership Administrator is hired, how the Membership Committee is formed, etc).

We were advised by legal counsel that it would be more effective to create two separate documents in order to afford more flexibility regarding procedural aspects of the Code while keeping the most important decisions in a document that is more difficult to amend. This is accomplished by creating different amendment procedures for each document – amendments to the Code must be done by a vote of Members, while amendments to the Manual can be done by BCR.

We created the Manual based on feedback from Membership after the original draft Code. This feedback indicated that the original draft was confusing. We tried to create clear procedural guidelines while maintaining the same spirit and intent of the original draft and staying true to the feedback of Members.

We provided the Manual as soon as it was finalized, and as far in advance of the AGA as we were able.

4. Why do some provisions say that something *may* happen while other provisions state that something *must* happen? For instance, in section 6.1.1(a), the Membership Committee *must* consider applications from persons with a Hereditary Connection who are transferring membership, then in section 6.1.2(a), it says that applicants *may* not be eligible for Membership if they have committed certain criminal offences.

The use of *must* or *may* in different provisions is intentional. Where *must* or other similar absolute language is used, this means that there is no discretion for the relevant decision-maker(s) under the Code to choose not to follow that provision. However, where *may* is used, then the decision-maker(s) have discretion to make a certain decision in the particular circumstance.

For instance, in section 6.1.2(a), rather than automatically excluding a person who has committed a particular criminal offence from being eligible for Membership, the Membership Committee can make decisions on a case-by-case basis. This better protects a person's rights under the Canadian *Charter of Rights and Freedoms*. Where a person has committed a serious crime decades ago, but has been an upstanding citizen and has contributed to the MLIB community ever since, the Membership Committee has the ability to allow that person to be enrolled on the Membership List, if it so decides.

5. Is a Probationary Member automatically enrolled as a Band Member after five years? If the Probationary Member does not become a Band Member after five years, will they lose their status as a Probationary Member?

After a person has been a Probationary Member for five years, that person can apply to become a Band Member. That person is not automatically granted Band Membership, but must demonstrate to the Membership Committee that they meet the qualifications to become a Band Member in accordance with section 7.1 of the Code.

If the Probationary Member does not apply to become a Band Member after five years, or if their application for Band Membership has been denied, that person will remain on the Membership List indefinitely – they will not be removed from the Membership List unless they request to be removed in accordance with section 10.1 of the Code.

6. Why should I vote for or against the Code?

The definition of "Ratification" in the Code requires a "Double Majority" in order for the Code to pass. This means two requirements must be met: (1) 50% of current Members who are eligible to vote *must* vote and (2) 50% + 1 of those Members must vote in favour of the Code.

For example, let's assume MLIB has 200 eligible voters. A "Double Majority" requires that at least 100 of those eligible voters actually vote. If only 99 Members vote, the Code cannot be ratified, whether or not more than 50% of those voters are in favour of the Code.

As such, it is important that you vote on this Code, whether for or against, if you are eligible to do so.

From the perspective of the Membership committee working group, this is why we think you should vote:

- 1) Vote to help us achieve a Double Majority. Withholding your vote does not help anyone – we will not know whether or not the Band is generally supportive of the Code if we do not get over 50% voter turnout.
- 2) Vote to show how you want MLIB to move forward on Membership issues. Even if the Band votes no, at least we will know that more work needs to be done.
- 3) Voting shows that the Code and Manual have been put in place and approved by you as a Member, not by Council or administration.
- 4) Voting shows you care about your heritage, as well as future generations of MLIB Members.
- 5) The 2004 Membership Code is unworkable – there are various loopholes for persons applying for Membership for the wrong reasons, and it allows one person to process and decide all applications. The 2019 Code closes those loopholes, seeks to create clearer and fairer processes, and creates a Membership Committee in order to provide more balanced decision-making. Vote to be a part of the solution!

If you have further questions about the Code and/or Manual, please try to attend an upcoming community engagement meeting to raise your questions or voice your concerns. If you are unable to attend one of these meetings, please contact Kandy Stout at kstout@milib.ca or Jenine Solonas at jsolonas@milib.ca with your questions or concerns.