



Nisichawayasihk Cree Nation

CONSTITUTION UPDATE

May 2015

Moving to the Next Phase of the Review Process

PREPARED FOR NCN CITIZENS

NCN Chief and Council are pleased to move to the next stage of the formal review process for a draft constitution for NCN. This stage consists of the final consultation meeting with NCN Citizens prior to a vote to adopt our Constitution. We have had three previous rounds of consultation on the current draft. We have also provided our Citizens with the opportunity to provide feedback through a special website link. Please continue to provide us with feedback on the wording of this important document.

GOOD GOVERNANCE IS ESSENTIAL FOR MAINTAINING A STRONG NATION. OUR OWN CONSTITUTION WILL HELP US ASSERT OUR OWN SOVEREIGNTY.

To develop the Constitution, NCN Chief and Council established a Governance Committee which undertook historical research and discussed and considered various concepts. Preservation of our language and our culture were important priorities in the process. From these discussions, several law-making models were considered. The Original Codified Law model discussed with NCN Citizens was primarily focused on law-making processes, which represented a first step in developing a draft Constitution.

Because NCN Citizens have continually requested the development of roles and responsibilities for Chief and Council as well as a Code of Conduct for our leaders, Council examined other constitutional models including a number of Constitutions from other First Nations tribes in the United States, along with constitutions from different countries, including Canada and the United States.

CHIEF AND COUNCIL CHOSE A UNIQUE CONSTITUTIONAL MODEL THAT INCORPORATES NCN CUSTOMARY LAW PRINCIPLES, BUT TOOK INTO CONSIDERATION THE EXPERIENCE OF OTHER FIRST NATIONS INCLUDING THE CONSTITUTION OF THE WESTBANK FIRST NATION OF KELOWNA, BRITISH COLUMBIA, WHICH IS QUITE DETAILED COMPARED TO OTHER CONSTITUTIONS REVIEWED.

Since we do not believe we gave up our rights to govern ourselves, Council was interested in the Westbank model, as Westbank is one of very few First Nations that have concluded a self-government agreement with the Government of Canada. NCN's goal is to become fully self-governing in the future as we incrementally reassert our jurisdiction.

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Like many other projects we have undertaken, the NCN draft Constitution being presented for discussion and input is uniquely NCN's.

DRAFT CONSTITUTION READY TO BE VOTED ON

Council would like your input so we can make this historic document one we can be proud of. We recognize that any legal process is complex and often hard to follow. This newsletter is designed as a companion piece to the draft Constitution by providing a summary of each of the Chapters contained in the Constitution. It should be read alongside the actual legal text in the draft Constitution. We have incorporated changes based on input at previous meetings and through the website link. We welcome your questions and input and look forward to constructive, positive dialogue regarding this important issue.

DEVELOPING NCN'S CONSTITUTION

To assist NCN Citizens in understanding why our own Constitution is an important tool to help us maintain a stable, effective, fair system of government, we have set out a series of questions and answers to help facilitate positive dialogue.

WHAT IS A CONSTITUTION?

A Constitution provides a framework for governance. It sets out the relationship between citizens and their governing authority, in this case, between NCN Citizens and Chief and Council.

WHY IS A CONSTITUTION NECESSARY?

Governance involves making decisions in relation to complicated issues and balancing competing demands to enhance the well-being of a Nation's citizens. Constitutions legitimize governmental authority and provide a framework for economic development. Modern constitutional development allows a Nation to consider what parts of colonialism will be maintained as part of the history of the Nation and what parts should be rejected to create a contemporary government. A Constitution is a tool we can use to reassert our sovereignty and jurisdiction over our lands and peoples.

DO ALL NATIONS HAVE CONSTITUTIONS?

No. Great Britain and the Navajo Nation are examples of nations that do not have written constitutions. They rely on the common law or customary law.

ARE THERE DIFFERENT TYPES OF CONSTITUTIONS?

Yes there are, including political constitutions, corporate constitutions and organizational constitutions. Indigenous governments in North America generally use a political constitutional framework that defines their relationships with their citizens as opposed to a corporate organizational constitution that defines the relationship between a board of directors and its members.

WHAT IS INCLUDED IN A CONSTITUTION?

Constitutions generally include the following topics:

- Purpose and the community's beliefs
- Description of who is governed (description of citizens)
- Outline of rights and freedoms of citizens
- What is governed (jurisdiction over lands, resources, people)
- Structures of government
- Roles and limits on authority of various governmental bodies
- How leaders and officials will be selected (election/appointment)
- Relationships between governmental bodies, different levels of government and citizens
- Law making processes
- Dispute Resolution processes
- Mechanisms for citizen input
- Amendment procedures

OVERVIEW OF NCN'S DRAFT CONSTITUTION

KAKISTUSTEHK NISICHAWAYASI NEHETHOWUK OTHASOWEWIN

PREAMBLE

The preamble describes who we are as a people and an overview of our principles and beliefs. It states that we continue to exercise our inherent rights to govern ourselves.

CHAPTER 1 PURPOSE OF THE CONSTITUTION AND PRINCIPLES OF INTERPRETATION

This Chapter outlines the purpose of our Constitution and includes our customary law principles that our Elders committed to writing. It recognizes that we are not simply Cree people but that we are the Nehetho and our Nation is the Nisichawayasi Nehetho Nation.

Words are important and we have included as many Nehetho words as possible. We have tried to use our Elders' words but recognize that because preserving our language has been difficult in the face of colonization, our Citizens sometimes have differing views about which words to use and how

they should be spelled. To preserve our language for the next seven generations, the Constitution indicates that all our laws will be printed and published in English and Nehethowewin.

Definitions and Rules of Interpretation applicable to the Constitution are set out in this Chapter also.

CHAPTER 2 FUNDAMENTAL RIGHTS AND FREEDOMS

This Chapter describes the rights and freedoms we have, as NCN Citizens, within our Nation, within Canada and within international law. It also describes the responsibility all of us have to act respectfully in exercising our rights.

CHAPTER 3 CANADIAN LAWS

This Chapter confirms that the laws of Canada and Manitoba will continue to apply to NCN Citizens unless they are replaced by a Nisichawayasi Nehetho Nation law. If a conflict exists between our laws and those

of other governments, our laws will prevail unless we negotiate something different in a Nation-to-Nation agreement.

Developing our Constitution is the first step in the process since it provides the foundation for other laws to be developed. Negotiations with other levels of government will also have to take place since there are jurisdictional and financial issues to resolve. As a community, we will need to prioritize which laws we need to develop and the order they should be developed, since realistically all of this takes time and can't happen at once. The goal at the moment is to develop the following laws this year:

- Amendments to the Election Law to address the Charter challenges raised in the last Council elections as the mandatory injunction will expire shortly;
- Finance Law
- Education Law
- Citizenship Law



- Public Safety Laws
- Marital Property Laws
- Land Laws

Other laws will be developed over time.

CHAPTER 4 JURISDICTION

Our Constitution has been drafted so that NCN's Government has authority over all persons taking actions on our lands and in relation to our resources. It is not just limited to authority over NCN Citizens.

CHAPTER 5 GOVERNING STRUCTURES

This Chapter says there will be three parts to NCN's Government: – the General Assembly, the Governing Council (replaces the Indian Act term 'Chief and Council') and the Nisichawayasi Court. Some of the provisions may not take effect until we have negotiated arrangements with other levels of government. The Nisichawayasihk Court is one of those provisions.

CHAPTER 6 GENERAL ASSEMBLY

This Chapter confirms that all NCN Citizens have the right to attend General Assemblies and to participate in civil dialogue. It is proposed that General Assemblies be held at least twice every year.

There will be rules of procedure developed so that respectful

interactions take place. We want to ensure that bullying behaviour is eliminated, so we, the NCN adults, act as role models to reinforce messages given to our youth about how they are to behave.

CHAPTER 7 CHIEF AND COUNCIL

This Chapter sets out the number of positions on the Chief and Council: one (1) Chief and six (6) Councillors. In earlier drafts, the term "Governing Council" was used but based on feedback we have gone back to using "Chief and Council."

This Chapter says Chief and Council must make decisions that are in the best interests of NCN and sets out rules for good governance to eliminate nepotism and Council interference in day-to-day operations of the Nation. Council will delegate authority to staff where it is responsible to do so, but will retain overall authority and leadership for the governance of the Nation. There are misunderstandings about what constitutes proper oversight by leaders and what is considered micro-management.

This Chapter also sets out a list of potential laws the Governing Council may enact. The list is broadly drafted but there will be concurrent jurisdictional issues with other levels of government that will need to be negotiated. Certain other laws enacted by

other levels of government, such as the Criminal Code, will remain in effect.

CHAPTER 8 CHIEF AND COUNCIL ROLES AND RESPONSIBILITIES

This Chapter sets out key functions of the Chief and the other members of Council. The Chief's primary role is to lead the Council and ensure they work together as a unified team. The Deputy Chief will perform these functions when the Chief is unable to do so.

The Chief and Council has responsibility for effectively managing the Nation's lands, resources, finances and all operations and must comply with the laws and policies of the Nation.

CHAPTER 9 CHIEF AND COUNCIL CODE OF CONDUCT

This Chapter spells out the rules Chief and Council must follow in carrying out their responsibilities as elected leaders. They must:

- Uphold Nisichawayasi laws and policies;
- Discharge their fiduciary and other duties with integrity, honesty and ethical behaviour;
- Maintain decorum in Council meetings and not engage in disruptive behaviour that impedes the business of the Council;

- Make decisions that promote the collective interests of the Nisichawayasi Nehetho Nation, not the member individually;
- Not engage in dishonourable or illegal conduct including theft, improper use of public property, fraud, bribery, influence peddling or other corrupt practices;
- Not use confidential information obtained while holding public office for their own personal benefit, including disclosing how other members of the Governing Council voted on sensitive issues;
- Not discriminate against any person on the basis of the person's race, religion, sex, sexual orientation, family status, disability or any other matter prohibited by law;
- Not exceed or abuse their authority;
- Not retaliate against any person who has complained that the member has violated this Constitution;
- Uphold all decisions made by Council even if the member personally opposes the decision made by the majority;
- Not take any actions that will undermine the decisions made by Council or any Nisichawayasi corporation, trust or other entity;
- Be a positive role model by carrying out the member's duties in a respectful manner;
- Respond to negative, hurtful or

damaging comments or actions in the most appropriate manner required to defend themselves, their reputations and their families;

- At no time use facilities, equipment, supplies or services of the Nation for any personal election campaign or campaign related activities; and
- Act in a respectful manner towards all Citizens, employees and service providers of the Nation and at no time request them to take actions that are contrary to the decisions of the Council.

This Chapter also establishes rules for the receipt of gifts by Chief and Council or the public service to avoid gift giving being able to unduly influence decisions but recognizing that gift giving is also a long standing Nehtho cultural practice.

CHAPTER 10 GOVERNING COUNCIL MEETINGS

This Chapter sets out the rules that apply to Chief and Council Meetings, including:

- Notice requirements
- Quorum
- Attendance at meetings by members of Chief and Council and NCN Citizens
- Development of meeting Agendas
- Procedures for addressing complaints from NCN Citizens

- How decisions will be made and recorded
- When Chief and Council can deal with matters in-camera and how decisions made in-camera will be recorded.

CHAPTER 11 NCN GOVERNMENT STRUCTURE

This Chapter sets out the organizational structure for NCN's Government and the relationship between its various parts including other entities established by the NCN Government. The responsibilities of Chief and Council and any board of directors and the reporting obligations of each entity to Chief and Council will be clearly spelled out in governing documents.

This Chapter confirms the use of a portfolio system for members of Council and sets out the obligations of portfolio holders to Council and NCN Citizens.

CHAPTER 12 FINANCE AND PUBLIC ADMINISTRATION

This Chapter provides the basis for establishing a Treasury Board to manage the financial affairs of the Nation and for establishing other committees for specific purposes, such as planning and priorities. It confirms that all expenditures must be made in accordance with an annual budget that will be developed and approved.

Certain functions can be delegated from Chief and Council to others



only by approval of Chief and Council and any person or entity to whom such functions are delegated must act within the scope of the authority given to them.

This Chapter also establishes financial responsibility and control over staffing and hiring for all NCN Government departments, agencies, and corporate entities. All entities established will be required to comply with NCN personnel, financial, procurement and other policies and procedures.

NCN employees are to take direction from Chief and Council as a whole, not from individual members of Chief and Council, unless there has been an express delegation of authority to a single member of Chief and Council or there is an emergency that must be dealt with quickly.

CHAPTER 13 N'TUSKENAN (OUR LANDS)

This Chapter recognizes the importance of governance over our lands, including reserve lands, fee simple lands and other lands within our traditional territory. Land Laws will be developed and implemented and will conform with the principles set out in this Chapter:

- All natural resources, including rights to water on NCN Lands, shall belong to NCN unless expressly excluded in the instrument granting the interest in land;

- All contracts, instruments or agreements dealing with lands must comply with the Constitution and NCN Laws;
- Interests in NCN Lands must be created by written instrument and can include Allocations, Leaseholds, Easements, Permits, Licences and Mortgages;
- Only NCN Citizens shall be entitled to individual Allotments of Land;
- Interests in Land will not be created simply by occupation of the land;
- An NCN Citizen who receives an interest in NCN Lands following the passing of another NCN Citizen will be entitled to have the interest registered in an NCN Land Register.

CHAPTER 14 LAW MAKING PROCEDURES

This Chapter sets out the process for how NCN will make its own laws. A law can be initiated by a Resolution of Chief and Council or a Proposal signed by at least 100 NCN Citizens that is presented to the Governing Council. The next step will be for Chief and Council to direct legal advisors or the public service to prepare a draft law for consideration at a regular Council meeting within 6 months, unless extenuating circumstances prevent this.

After the Chief and Council considers the draft law, it will do

one of the following:

- Refer the law to the General Assembly to obtain input from NCN Citizens within 60 days, unless workshops are to be held;
- Reject the draft law; or
- Request further work be done on the law so Chief and Council can reconsider it within 6 months.

Within 14 days of the meeting where the law is rejected, an NCN Citizen can request a written explanation of why Chief and Council rejected the draft law.

Chief and Council may decide to hold workshops about a proposed law before referring the matter to the General Assembly in which case the General Assembly must meet within 120 days of the date Chief and Council considered the law. A report about the discussions at any workshops must be presented to Chief and Council.

After these steps have been taken, the law shall again be considered at a Chief and Council meeting where Chief and Council shall decide to accept it, modify it based on the feedback received, reject it or refer the law to a special committee of NCN Citizens for further consideration.

If the law is referred to a special committee of NCN Citizens, the committee must report back to Chief and Council within 30

days with recommendations to accept the law, with or without amendments, or reject it.

Chief and Council shall then make a final decision about the law, and if it is approved, it will come into effect within 30 days unless a different effective date is set out in the law.

Chief and Council will sign all approved laws and the laws will then be filed with NCN's Chief Administrative Officer to be posted on NCN's website and in the First Nations Gazette.

Any law approved by Chief and Council may be amended in accordance with the procedures in Chapter 17 of the Constitution.

CHAPTER 15 NUSKOMOWIN

Chief and Council may decide that NCN Citizens should decide a particular matter by a special vote held for this purpose, or Chief and Council may want to obtain feedback from NCN Citizens before making a final decision on a matter. In either circumstance, Chief and Council shall direct the NCN Electoral Officer to hold a vote using the procedures in the NCN Election Code.

CHAPTER 16 NISICHAWAYASI COURT

Eventually, NCN would have its own court that would make decisions about NCN laws and disputes involving NCN Citizens, Chief and Council or other matters that may be referred to it. NCN would appoint judges with legal training and an understanding of NCN culture and traditions to this Court. Special arrangements based on an Elder approved clan system may be used to decide matters involving youth misconduct. Chief and Council will approve an annual budget for the Nisichawayasi Court.

CHAPTER 17 RATIFICATION OF THE CONSTITUTION

The Constitution would be approved by a secret ballot vote conducted by NCN's Electoral Officer. A majority of those participating in the vote would decide whether or not to approve the proposed Constitution.

CHAPTER 18 AMENDING PROCEDURE

It is proposed that the Constitution can be amended in the future by 75% of those voting, where at least 100 NCN Citizens participate in the vote to amend the Constitution.

CHAPTER 19 TRANSITIONAL PROVISIONS

This Chapter outlines technical provisions that indicate the current Chief and Council will be considered elected for purposes of the Constitution until the next election is held in August 2018. Existing bylaws will remain in effect until replaced by a new NCN Law passed in accordance with the Constitution.

CHAPTER 20 FORCE AND EFFECT

The Constitution would take effect on a date determined by a resolution of the Governing Council. This will help to ensure a smooth transition from the existing model of governance to the provisions under the Constitution.



CONSTITUTION

Next Steps

- Obtain feedback during this final Round of Consultation
 - Revise the Constitution as necessary based on the Feedback
 - Provide copies of the final draft Constitution to NCN Citizens with an explanation of any changes
 - Arrange for a vote to be held to approve the Constitution
 - Begin developing NCN Laws
 - Conduct an environmental scan of NCN Government operations so changes can be made to improve governance in accordance with the Constitution and feedback from NCN Citizens
 - Discuss and Implement the recommendations from the environmental scan
 - Initiate self-government negotiations with other levels of government
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*Nisichawayasihk Cree
Nation "Where Three
Rivers Meet"*