



OTHASOWEWIN (Constitution)

Q&A

Nisichawayasihk Cree Nation

NOTE:

This document is a compilation of the questions and comments from the various meetings held about the Constitution between 2014 and 2017. The feedback received in 2014 and 2015 was reviewed by Chief and Council and certain changes were made based on the feedback. For example, earlier drafts of the Constitution used the term “Governing Council” but the recommendation was to change this to “Chief and Council”. There were several changes suggested in the recent meetings held in 2017 and the following technical edits will be made as they do not substantively change the document approved by Chief and Council to be remitted to NCN Citizens for a vote:

- Removal of Katistustehk Nisichawayasi Nehethowuk (Supreme Law of NCN) on the title page;
- Addition of a reference to the seven natural laws in paragraph E of the Preamble.

Compiled and Consolidated: November 2017

Questions, Answers and Comments

From Meet and Greets, Small Group Meetings, Community Consultants Interactions with NCN Citizens and on-line feedback

DEFINITIONS

Q – Questions from NCN Citizens during Meet and Greets, Home Visits or Small Group Meetings

A – Answers to questions

C – Comments from NCN Citizens during Meet and Greets, Home Visits or Small Group Meetings

Disclaimer: This document has been prepared as information only, and has no legal force and effect. It aims to provide concise responses to questions about the OTHASOWEWIN's (Constitution) often complex and technical issues. If there are any discrepancies between this document and the Constitution, the Constitution prevails. Also, this document contains questions about things that are not in the Constitution at all. For the benefit of NCN Citizens, these questions are also answered.

2017

Q. What is the difference between these rules and Canadian rules?

A. *Othasowewin* includes our customary laws and outlines the rights and responsibilities of NCN Citizens and our governance structure. However, as NCN Citizens are also Canadian citizens there are also rights and responsibilities we have under the Canadian Constitution Acts of 1867 and 1982. As First Nations people we also have rights established through international law such as the UN Declaration on the Rights of Indigenous People which says we have the right to self-determination and to take steps to preserve our culture and language. *Othasowewin* recognizes these rights.

Q. Who abides by these rules? Does this include non-Citizens?

A. The laws will apply not only to NCN Citizens but to non-Citizens on our reserve lands. There will need to be negotiations to determine if there will be certain areas where there will be concurrent or shared jurisdiction which would mean having laws of NCN and other levels of government applying.

Q. Would that not conflict with provincial rights?

A. There may be areas where there would be conflicts that need to be sorted out so it is clear which levels of government have jurisdiction over which matters. There may be exclusive jurisdiction or shared jurisdiction. For example, NCN might have exclusive jurisdiction over education or family matters but the federal government would have exclusive jurisdiction over criminal law. Inter-provincial or international trade may be shared jurisdiction among all three governments. There may be

other areas, for example mining, that might be a shared NCN-provincial jurisdiction.

Q. Will there be a tax structure so people off-reserve do not have to pay taxes?

A. The Constitution does not specifically address whether NCN Citizens living off-reserve have to pay taxes. Issues related to taxation could be addressed in future self-government negotiations.

Q. Will there be a receiving home in Winnipeg? What about Thompson?

A. Chief and Council approved the purchase of land on William Avenue near the Health Sciences Centre and a receiving home is being constructed and will be ready by spring of 2018. A similar facility in Thompson will be considered as part of the 2018/19 NCN budget process.

Q. Will there be jobs as health care aides and as drivers for transportation?

A. There will be jobs in both of these areas. It is currently unclear how many positions will be needed.

Q. Will there be space for students and others?

A. There will not be space for students and others in this facility but Chief and Council will examine a similar facility for students in the 2018/19 budget process.

Q. Does the Constitution only apply on reserve lands or off-reserve also?

A. The Constitution is intended to apply to both but there will be areas that will require negotiation with Manitoba and Canada to sort out what will be concurrent jurisdiction and what will be the exclusive jurisdiction of NCN

and what will be the exclusive jurisdiction of the federal and provincial governments. For example, criminal law would likely remain exclusive federal jurisdiction.

Q. Is the Constitution binding on Chief and Council regardless of where they are carrying out their duties?

A. Yes.

Q. Does Constitution prohibit or facilitate Nation to Nation trade within Canada and internationally?

A. The Constitution should facilitate trade but some of the rules will need to be sorted out in a self-government agreement or other type of agreement given certain existing trade agreements, such as NAFTA are managed primarily by the federal government.

Q. Will the Constitution be used to govern NCN?

A. Yes. It sets out the structure of the NCN government as well as the roles and responsibilities of Chief and Council. It establishes the law-making processes that are to be followed by Chief and Council to obtain community input before enacting laws.

Q. Once we establish our own Constitution which laws will supercede?

A. It will depend on the type of law. Certain laws NCN will have exclusive jurisdiction. For other laws, such as the Criminal Code, Canada may continue to have exclusive jurisdiction. For other areas, there may be concurrent or shared jurisdiction. Initially, NCN will be able to pass some laws but others may require further discussions as part of self-government negotiations.

Q. Does it say anything under treaty 5 about how much land we get?

A. Yes, there is a formula in Treaty 5 for the amount of land NCN is entitled to. There is also a potential argument about there being a shortfall based on consistency with other similar treaties and oral promises made at the time of treaty.

Q. Do the Metis have to follow our laws?

A. Everyone will have to follow our laws on our lands. There will need to be negotiations about our traditional lands. There may need to be discussions with the Metis also.

Q. As the Constitution will allow us to develop our own laws, are we breaking away from the federal government?

A. Our goal is to have a respectful Nation to Nation relationship with the federal government that recognizes we are not subordinate to them.

Q. Are we still going to get funding for education and welfare?

A. Yes. Treaty rights are involved and one of Chief and Council's responsibilities under the Constitution is to ensure our treaty, aboriginal and inherent rights are protected.

Q. Is there real democracy as the federal government always wants to get rid of us?

A. We exercise democracy in our Nation. We have survived many negative things as a Nation and as a people no matter who wanted to get rid of us. Having our own Constitution helps to strengthen our governance institutions and processes which also helps to strengthen democracy.

Q. How do we protect our rights since the majority of our Citizens now live off-reserve?

A. The Constitution helps to protect our rights. We need support from all our Citizens, on and off-reserve to approve the Constitution.

Q. Do we provide assistance to our off-reserve members?

A. Yes. We provide assistance through our off-reserve emergency assistance program, the bereavement program and through a number of other programs.

Q. Why did these meetings not take place before we voted this summer?

A. The vote this summer was about the *Aski Pumenikewin* (land code) not the Constitution. There were a number of meetings about the *Aski Pumenikewin* (land code) before the vote in August.

Q. Why are we voting and what are we voting for? We need to be informed before the vote as there was not enough information this summer about the vote.

A. We are voting to approve our own Constitution. The Constitution provides the structure for our government. It outlines the roles and responsibilities of Chief and Council as well as a Code of Conduct for Chief and Council. It establishes the same law making process approved in the Land Code for a broader range of laws than are in the Land Code. There have been more small group meetings and Meet and Greets held about the Constitution than there were about the Land Code although they have taken place over a longer period of time. It was decided to proceed with the Land Code vote first as there were time restrictions, then to hold the vote on the Constitution.

Q. Is the post about PO's for income assistance correct?

A. Chief and Council has approved a PO system to take effect on January 1, 2018 only for those persons who are currently not administering funds properly. Steps must be taken to try to ensure kids in our community have enough to eat and the moneys are not going to drug dealers and bootleggers. Only a small group of people will be affected and they can earn back their right to receive money instead of a PO by acting responsibly. As Chief and Council explained at the June General Assembly, we need to take action to address the violence in our community. This is one action we discussed in June and it is being implemented. It will be carefully analyzed and reviewed with the community.

Q. Why are we approving our Constitution before negotiating an agreement with Canada?

A. Chief and Council believe that it is inconsistent with *Tipoethemisowin* (our sovereignty) to seek the approval of Canada for our Constitution. Therefore, the Constitution was developed by NCN and is being submitted to NCN Citizens for approval. If the Constitution is approved then Chief and Council will give Canada and Manitoba notice that NCN wants to enter into self-government negotiations. It is anticipated this would take 3 to 5 years to negotiate and to be ratified by NCN Citizens.

Q. How many sections of the Indian Act will we get out of with our own Constitution and which sections?

A. See chart entitled Excerpts of Affected Indian Act Sections

Q. Does the Supreme Law mean that Chief and Council will have all the power and authority?

A. No. Their checks and balances on abuses of power by Chief and Council. In earlier drafts, the Constitution was called “*Kichi-Othasowewin*” (Supreme Law) but concerns were raised that this did not reflect NCN’s teachings that the Creator’s laws are supreme. The name was changed to *Othasowewin* to more accurately try to reflect that *Kiche Manitou* gave us the authority to develop our *Othasowewin*.

Q. Why is it so rushed as the youth from 18 to 25 were not adults when this process all started?

A. The process has been ongoing for over ten years. We have tried to involve youth in the meetings and to provide information for everyone to be engaged.

Q. Are we ready for self-government?

A. We have been engaging in at least a limited form of self-government in a number of areas such as economic development. Chief and Council believe that we are ready to enter into self-government negotiations which will take some time. Once the negotiations are complete NCN Citizens will be able to vote to accept or reject the agreement. Ongoing input and discussion about the issues and our readiness to be self-governing in particular areas will be addressed further throughout the process.

Q. How is the Constitution going to benefit NCN?

A. The Constitution creates a framework for stable, transparent, accountable governance. Protects our assets

Q. Whose laws will prevail in our traditional territory, for example conservation officers, limits on resource harvesting?

A. Certain NCN laws will prevail and jurisdiction over others will need to be negotiated to determine if NCN will have exclusive jurisdiction or shared jurisdiction.

Q. Who will own the subsurface rights for purposes of mining?

A. NCN owns the subsurface rights on reserve lands created through the 1996 Implementation Agreement and the TLE Agreement. Historical research is to be completed shortly about IR 170, 170A, B and C. Subsurface rights are excluded from the Mystery Lake reserve. NCN will continue to try to obtain all surface and subsurface rights for any additional reserve lands NCN obtains.

Q. Can there be joint partnerships for mining development?

A. Yes. Stable, effective government is the most critical factor for ensuring sustainable economic development. We have partnerships in other areas and can look at partnerships for mining exploration and development.

Q. Will international law recognize NCN’s Constitution?

A. The UN Declaration on the Rights of Indigenous Peoples confirms NCN has the right to self-determination. The Constitution is an exercise of NCN’s right to self-determination so would be recognized in international law.

Q. Will there be compensation for individual trapline holders if an affluent company wants to establish a mine?

A. This would be subject to negotiations.

Q. As the population grows is there the ability to expand the boundaries of our existing reserve lands?

A. The TLE selections made need to be reviewed and decisions made about whether the lands previously chosen should proceed or whether we should examine expanding the boundaries of IR 170. We have other lands close by but the issue is the cost of infrastructure development.

Q. Is there a statute of limitations on the TLE land selections?

A. The lands were to be chosen by now for the principles in the TLE Agreement to apply. The federal government has been extremely slow in accepting the lands from the province. Claims to enforce NCN's rights may need to be filed.

Q. Does Constitution only apply to reserve lands?

A. The intention is that it will have broader application. The *Aski Pumenikewin* only applies to reserve lands.

Q. How can we make the government understand our oral laws, our indigenous perspective?

A. By continually make this point in all interactions with and submissions to government by referring to the customary laws and how they would be applied in the

Q. How do we establish proper structures to manage ourselves?

A. The Constitution is a good start. Establishing strong institutions and administrative processes using the Constitution will create strong governance for our Nation. Research has established this is critical.

Q. Isn't the law-making process backward as only Chief and Council can propose laws instead of the people?

A. Laws can be proposed by a member of Chief and Council, by NCN employees and by a group of at least 5% of NCN Citizens who are at least 18 years of age.

Q. Can the Constitution be changed in the future so that our children can live how they want to?

A. Yes, it can be amended by at least 25% of NCN Citizens who are at least 18 years of age voting in favour of the change.

Q. Will the Constitution make it easier for us to pass our own laws?

A. Yes, as the process is outlined and the approval of the Minister of Indian Affairs will no longer be required.

Q. How can we create our own laws given the Indian Act?

A. The Indian Act allows First Nations to pass a very limited number of laws. The Minister of Indian Affairs has final say over most of them. *Othasowewin* will allow us to pass our own laws using our own processes on a wide range of matters.

Q. Who is the legislative body as it seems that Chief and Council have a dual function as the executive and legislative bodies?

A. Chief and Council do have a dual function under the Constitution. Some constitutions have two bodies, others have three and some have four. In the future, NCN may wish to separate the legislative and executive functions once there is some experience working with *Othasowewin* and developing our own laws.

Q. What does section 9.1 (g) in the Code of Conduct mean?

A. It means that if members of Chief and Council are attacked they have the right to defend themselves using reasonable methods. For example, if someone acts inappropriately it is possible Chief and Council will send them a cease and desist order, but members of Council must act reasonably and respectfully.

Q. How will the Constitution affect the Board bylaws, for example, the Education bylaw?

A. There will be no immediate effect. Over time there will be new laws passed. For example, we have discussed creating our own education law that would establish the rights of parents and students and the roles and responsibilities of Chief and Council and the trustees for our educational system. We are currently using federal or provincial corporate laws which is not always a good fit. The provincial education system is governed by provincial education laws. The goal is to have our own laws.

Q. Will there be consistency in changing bylaws?

A. Yes, Chief and Council, administration and advisors will need to examine the laws NCN passes to ensure that there is consistency when any new laws are passed. This may require amendments to existing laws from time to time to ensure there is consistency.

Q. How does the Constitution protect the Metis people who regained status under Bill C-31?

A. The definition of NCN Citizen in *Othasowewin* would include Metis people who regained status under Bill C-31.

Q. How does the Constitution protect the spiritual people who follow our traditional ways as well as our ceremonies, medicine bundles and pipes?

A. Chapter 1 includes our customary law principles which are to be used in interpreting our *Othasowewin*. Chapter 2 of the Constitution says that *Nisichawayasi Nehethowuk* have a number of rights and freedoms in relation to our Nation including “participation in traditional harvesting, gathering and other cultural practices ...”.

Q. Why is *Othasowewin* called the Supreme Law?

A. We changed this from the *Kehichi-Othasowewin* (Supreme Law) which is the Great law of Creator although this remains on the title page. We are acknowledging that the Creator gave us the ability to create laws including *Othasowewin* which would be our highest written law so this was changed to *Othasowewin*.

Q. How much power will there really be under the Constitution given all the different funder requirements?

A. There are different parts in the Constitution. The provisions which establish the structure for NCN's government (*Nisichawayasi Okemawin*), the rights and responsibilities of NCN Citizens and Chief and Council, and the law-making processes provide NCN with significant power. As has been indicated in the documentation and at the workshops and community meetings, there will need to be negotiations with the other levels of government to sort out areas of shared jurisdiction and others that are exclusive to NCN and the other levels of government.

Q. What assurance do we have the Wellness Centre will exist after this Constitution is passed?

A. There is no assurance in the Constitution or now as all governments must be able to make changes based on the needs of its citizens. There is currently no intention to change the Wellness Centre.

Q. Why is Chief and Council determining the staff complement for the corporate bodies?

A. Chief and Council has the discretion to determine staff complements if it concludes that such action is necessary for the overall financial health of the Nation. It is not anticipated this authority will always need to be exercised but it is an oversight provision which provides a check and balance on the authority of a corporate entity established by NCN.

Q. What is the role of portfolio holders?

A. The roles of portfolio holders will be defined more specifically in NCN Laws but under the Constitution they must provide regular reports to Chief and Council.

Q. How do we protect ourselves from ourselves? What are the checks and balances on power?

A. Disputes arising from the Constitution can be addressed by the Nisichawaysi court or other courts. This helps to ensure that there is compliance with the Constitution.

Q. Is the intention to replace section 88 of the Indian Act?

A. The goal is to have our own laws in a number of critical areas so those laws would replace “laws of general application in a province” which is what section 88 of the Indian Act says applies to us. As noted in some of the other responses, there will need to be negotiations about some of these issues. However, with the

Constitution approved by NCN Citizens, Chief and Council can begin to assert our law-making authority in a number of areas.

Q. Is there a way to change the ratification threshold from 25% to a higher number?

A. It is possible to amend this to make it higher. However, NCN’s changing demographics and difficulty in locating all people on the voter’s list would mean that the actual threshold would effectively be much higher as there is no contact information for almost 20% of voters .

Q. Will section 13.2 of the Land Code be repealed by the Constitution?

A. No. Chief and Council must have the ability to adjust budgets during the year to avoid financial difficulties for each entity or program as well as the Nation as a whole.

Q. Why as First Nations people do we live on reserves?

A. When NCN signed the Adhesion to Treaty 5 in 1908 vast territories were

Q. Are women allowed to be Chief?

A. Yes.

Q. Why is there no mention of youth in the Constitution?

A. Youth are NCN Citizens and so have the rights and responsibilities of all NCN Citizens under the Constitution.

Q. Why was the youth centre funding cut?

A. The building was not safe. The Duncan Wood Memorial Hall is being refurbished to be used as a high school gym/youth centre until the Norman Linklater Multi-Plex is ready next summer.

Q. Why were these workshops not organized earlier?

A. There were a number of workshops prior to 2013 on the First Written Law and also the Constitution as part of the PDA 2 meetings. In 2014 and 2015 there were workshops focussed on the Constitution alone and the questions and comments from those rounds are included in this document also. In addition, the Constitution was raised during the Land Code discussions last spring and summer. There was another round of consultation on the Constitution this fall.

Q. Will we lose any rights if the Constitution passes?

A. No. We will still have our treaty and aboriginal rights protected by the Canadian Constitution.

Q. If the Constitution passes will we still have treaties?

A. Yes, our treaty and aboriginal rights will continue to exist and *Othasowewin* says in Article 8.4 (a) that one of Chief and Council's primary responsibilities is to ensure that treaty and aboriginal rights as well as our language, our culture and our traditions are protected in a manner that is consistent with the oral understandings of our ancestors.

Q. Will we lose federal money, such as our family allowance if the Constitution passes?

A. No.

Q. Why does the Constitution not mention our seven natural laws?

A. Some were included in the draft and the rest will be added to the Preamble.

Q. Can we look at preserving our language, culture and relationship with the land by having more programs for our youth to learn from Elders and resource harvesters?

A. Yes.

Q. Can we use the Constitution to assert our sovereignty?

A. Yes. NCN Citizens approving our own *Othasowewin* is an assertion of our sovereignty and once approved we can use it to further assert our sovereignty.

Q. Are we looking at the impact of climate change within our territory?

A. This was raised during the CRD licence discussions and there needs to be formal studies developed to examine this issue further.

Q. How does the Constitution address the duty to consult?

A. The duty to consult arises out of the Canadian Constitution. Chapter 2, Article 2.2 of NCN's proposed Constitution confirms *Nisichawayasi Nehethowuk* have the rights and freedoms in the Canadian Constitution, which includes the duty to consult as determined by court decisions.

Q. Can we establish our own hunting law so we can deal with hunting with drones and night hunting?

A. Yes. There may be issues related to exclusive and shared jurisdiction that will need to be dealt with through negotiations with the Province.

Q. What about trade and selling our fish internationally?

A. Yes. There may be issues related to exclusive and shared jurisdiction that will need to be dealt with through negotiations with the other levels of government.

Q. Can we establish our own quotas for fish on our lakes?

A. Yes. There may be issues related to exclusive and shared jurisdiction that will need to be dealt with through negotiations with the Province.

Q. What about the loss of use of the land and water and the impacts given that the compensation and TLE lands have not been transferred in a timely way as required by the Agreements?

A. Chief and Council is considering filing arbitration claims under the 1996 NFA Implementation Agreement and the TLE Agreement to address this issue either in advance of or as part of self-government negotiations.

Q. What will we do about our rights to water? Will we get them back?

A. NCN has always taken the position that NCN has rights to water. In the PDA negotiations we were able to negotiate the first water rental rebate and we would like to expand this further.

Q. Why are we fast-tracking the Constitution?

A. We are not. The process has been ongoing for about 10 years. There have been various phases, starting with the Governance Committee and the First Written Law. It then evolved into *Kakistustehk Nisichawayasi Nehethowuk* (Supreme Law of NCN) given by the Creator and now into *Othasowewin*.

Q. Who drafts the laws and who will make the final decisions about the laws?

A. The laws can be proposed by a member of Chief and Council, an NCN employee, or a group of at least 5% of NCN voters. Chief and Council will decide whether the law should be drafted by legal counsel and NCN staff. The law will be considered by Chief and Council and then

in community workshops or General Assemblies. The feedback will be considered by Chief and Council and the draft law can be amended to reflect the feedback. Once that is done then there can be further input or Chief and Council will approve the law or the amendments to the law. If Chief and Council decide not to proceed with a law requested by a group of NCN voters, within 14 days, they can request that Chief and Council provide a written explanation for rejecting the law.

Q. Where did the 25% threshold come from?

A. This was the percentage used for the Land Code vote last summer. However, as with the Land Code vote, the goal is to have a much higher percentage of our Citizens vote.

Q. Why did Chief and Council reduce the percentage in half?

A. There is no fixed percentage that is required. The double majority system originated from negotiations during the 1996 Agreement and was based on federal policies at the time. NCN used that same threshold in other votes after that. However, at the time almost 90% of our Citizens lived on reserve. Now less than half do and further we do not even have contact information for about 20% of the people who are on our membership list. Therefore, if we continued to use the 50% plus one rule for turnout as well as for approval, it would mean that a much higher number than 50% would need to vote just to meet the threshold. This is not fair to those people who do participate and it also means that change would be very difficult. The 25% threshold has been accepted by other levels of government and is a more reasonable threshold given we do not know how to contact 20% of the people even though our Electoral Officer and the community consultants have tried to locate as many people as possible. Regardless, the goal is to have as many people as possible participate in the vote.

Q. Can we pass laws to discipline and manage our kids better as we used to have traditional ways to make sure that our kids were honest and respected people and property as without laws kids will become prostitutes or go to jail as they need rules to live by?

A. NCN will have the ability to pass laws but there will need to be consistency with the Criminal Code.

Q. If the Constitution goes through what do the youth court provisions mean?

A. Chapter 16 of the Constitution deals with the Nisichawayasihk Court. To be appointed to the Nisichawayasihk Court a person must have legal training and an understanding of NCN culture. However, the youth court could be based on the traditional clan system and would not require legally trained persons to make decisions.

Q. Can we change our laws so that we ensure that the majority of our Chief and Council live at Nelson House and to have an Elder's rep, a youth rep and an off-reserve rep.

A. Yes, it is possible to look at how to restructure the Chief and Council and changes can be made to our Election Law. The law-making processes in the Constitution are

more effective and less costly than the current provisions we must follow to amend our Election Law. The current amending provisions in our Election Law were required by the federal government's policies in 1998 when we took steps to remove ourselves from the election provisions of the Indian Act.

Q. If we take the Canadian government to court over our Constitution which laws will supercede?

A. The Constitution has been drafted to try to avoid litigation. It is difficult to give a specific answer to this question as all litigation depends on the facts and legal issues involved in the case. However, if a challenge arises Chief and Council will take steps to protect NCN's rights and jurisdiction. The court would need to decide which laws prevail. But, doing nothing and continuing to exist using the Indian Act is not in NCN's best interests now or in the future. Therefore, approving the Constitution and taking steps to actively implement it and assert our jurisdiction will help to ensure our laws will ultimately prevail and be responsive to the needs of NCN Citizens.

Q. Will NCN be able to get insurance on our houses if there is a Constitution?

A. The Constitution is a framework for governance. It does not address specific programs such as insurance.

2015

Q. The spelling is incorrect. Shouldn't it be "Kakistustehk"?

A. Yes, the change will be made.

Q. Is NCN going to change its name? The Constitution and the Election Law terms should be consistent. Is NCN going to become a corporate body?

A. A definition will be added to the Constitution as follows: "Nisichawayasihk Cree Nation" or "NCN" means Nisichawayasi Nehethowuk, the people who live near where the Three Rivers meet and whose ancestors were Asiniskow Ethiniwuk. The definitions of NCN in the Election Law will be made consistent with the definition used in the Constitution as part of the transitional amendments. It is proposed that we keep the name Nisichawayasi Cree Nation or NCN as many people and organizations know us by this name. We will also add our Nehetho name in the Constitution

Q. What does spiritual signs mean? Is this provision correct?

A. Article 1.2 (k) will be revised as follows: "Asehewewin (responsibility) – a person is responsible for their thoughts, words and actions as their thoughts, words or actions could affect their whole being or that of another person".

Q. Many NCN Citizens, especially our youth do not speak or understand Nehetho so should this provision be changed?

A. The Constitution is intended to help preserve our language but it is recognized that not all NCN Citizens speak or understand

Nehetho. Therefore, to address the concern, Article 1.3 will be revised as follows: "As preservation of our culture and our language is of paramount importance, this Constitution shall be printed and published in English and Nehethowewin and both versions shall be treated equally."

Q. The Constitution should protect the right of individual NCN Citizens to own land and make a living from the land they own. Is this the first step in becoming a municipality?

A. The collective ownership of the land is critical to protect it from seizure by the banks or land speculators. This principle must be balanced with providing our Citizens with a sense of security that comes from owning one's home. Therefore, it is proposed that to balance both of these important interests a Chapter on Land Issues will be added to the Constitution.

Adopting a Constitution is the first step toward full self-governance. NCN will not become a municipality or a corporate body.

Q. How will NCN be able to establish its own laws given the Canadian Constitution? The BCSC decision in Campbell et al v. AGBC et al [2000] was raised as a concern.

A. The BCSC upheld the Nisga'a treaty on the basis of its wording. The court did not decide whether there was an inherent right to self-government and how that would be reconciled with defacto Crown sovereignty. A recent BCCA decision came to a similar conclusion about the

Nisga'a Treaty. NCN's approach to the development of the Constitution has been to proceed on the basis that NCN never relinquished its right to governance when Treaty 5 was signed. The draft Constitution recognizes that there will need to be negotiations related to jurisdictional issues and there may ultimately be litigation needed to establish critical principles of reconciliation in relation to competing views of sovereignty. Therefore, while the draft Constitution could be revised to be more consistent with the Nisga'a language, Council proposes that no changes be made to this clause and if NCN is unable to reach negotiated agreements on areas of jurisdiction and law making, NCN will litigate the issue as the principles are too important to leave out of our Constitution.

Q. Can you Remove the phrase “subject to contrary paramouncy rules established by agreement”. This Article is related to Article 3.1.

A. NCN wants to be able to succeed in any court challenge if that should occur in the future. This clause will help to support the validity of NCN's Constitution as it recognizes that it may be necessary to establish different paramouncy rules by agreement with other levels of government or in pursuit of economic development initiatives such as the Mystery Lake Conversion. Therefore, it is proposed that this clause not be changed.

Q. This Article should be changed to make sure NCN has jurisdiction on all lands occupied or not. NCN has “occupied” our traditional territory for thousands of years as evidenced by the trails and camps throughout our land.

A. If NCN tries to assert its jurisdiction on all lands through the Constitution rather than by negotiations, it is more likely that a challenge to the validity of the Constitution would succeed. However, as there are differences between NCN's views of “occupation” and non-Aboriginals views

of “occupation”, this Article will be revised to read: “.... and activities occurring on lands used by the NCN”.

Q. NCN Citizens should be able to raise concerns about various issues at General Assemblies. The proposed wording does not allow for this to happen.

A. The intention is for NCN Citizens to be able to raise issues of concern at General Assemblies and also at regular Council meetings. Therefore, Article 6.2 will be revised as follows: “The General Assembly shall meet at least twice annually so Chief and Council can provide information to NCN Citizens and seek their advice and direction and so NCN Citizens can raise issues of concern to them.

Q. Concerns were raised about the rules of procedure that have been adopted for General Assemblies as it was felt that 2 to 5 minutes is not enough time.

A. NCN Employees are unclear whether they are entitled to speak out publically given that they have a right to freedom of expression but also have a duty of loyalty to their employer.

No change in the wording of the Constitution is required as the rules of procedure for General Assemblies can be changed overtime to meet the needs. The current rules of procedure have been reviewed and changes made based on the feedback received.

Freedom of expression is not unlimited. Adjudicators have concluded that regardless of the political fractionalization that exists in some First Nation communities, an employee owes a duty of loyalty to the entire Council as the employer not just to individual members of Council. Adjudicators have recognized that while employees are entitled to hold political views, there are limitations on this right and employees expressing their rights can not act in a subversive manner that undermines the governance of the First Nation.

These issues should be dealt with in personnel policies to ensure there is stability in government and the policies are culturally appropriate.

Q. Should the name of the Chief and Council be changed? The number of Council members should be increased so that there will be 3 youth, 3 women and 3 men. There should be a woman Chief.

A. There are various names that can be used. To address the issues raised it is proposed that the term “Chief and Council” will be used instead of “Governing Council”. Mandating age and gender parity on Council was rejected previously during the Election Code discussions. It is proposed that mandatory age and gender parity not be added to the Constitution so that anyone can be elected as part of the democratic system as long as they meet the basic threshold of being 18 years of age.

Q. Should Article 7.1 be amended to increase or decrease the number of council members?

A. The size of Council was decreased from nine to seven. It was felt that this is an appropriate size for our community. The Constitution can be amended in the future to have a larger Council if needed as NCN grows in population. Therefore, it is proposed that no change be made to the current number of positions.

Q. The Chief should have power to be able to lead, including a veto. Either the US system with Presidential veto power or the Canadian system of a political party picking its leaders should be adopted. Should the Chief be the person who decides if members of the Governing Council have breached the Code of Conduct? Why is a Chief necessary if he has no power?

A. The position of Chief is a position of leader. Historically, under all systems of governance NCN has utilized the Chief has not had a veto

power, nor has the Chief been elected by the rest of the Council. The Chief’s position is the primary leadership position on the Council. The Chief is to lead by example and to develop a unified team. No changes will be made to the Chief’s duties or functions in the Constitution.

Q. There is not a clear separation of the legislative and public administration functions. The choice of words such as “effectively manage” and “managing” suggests the Council is involved in public administration not legislative functions.

A. The Governing Council has the overall fiduciary obligations for the financial and socio-economic affairs of the Nation. These are responsibilities of elected officials. The structure chosen for this Constitution has three parts: General Assembly which has a role in the legislative process, the Chief and Council which also has a role in the legislative process but also has Executive functions and the Judicial functions which rest with the Nisichawayasi Court or existing courts). Basically, the buck stops with the Chief and Council, not the CEO or the other non-elected managers although they may also have fiduciary obligations for particular issues. Chief and Council are also responsible for giving direction to NCN’s public service which is part of its role of effectively managing the public service. Chief and Council is also responsible for “effectively managing the financial affairs of NCN” and for managing NCN’s relationships with other governments and entities. This is part of Chief and Council’s Executive function and is a proper function for Chief and Council not public administration although they have a significant role to play in these matters. Therefore, it is proposed that the wording not be changed.

Q. 8.4 (f) is too vague in terms of when information is to be provided. There should be a set number of days instead of “in a timely manner”.

A. This phrase was used instead of a set number of days as the facts in each situation

differs. It may be reasonable to provide information within a week in some cases but in others a longer time period may be reasonable. Therefore, it is proposed that this clause be amended by adding the words “having regard to the issues” be added at the end of the sentence.

C. *There were no comments received about Article 9.1. However, in reviewing it again the Technical Team found some changes were needed to make the wording flow better.*

C. *Non-substantive changes made to make the Article flow better. It is proposed that the phrase “influence peddling” be deleted in clause 9.1 (e) as it is hard to apply in the NCN context.*

C. *It was suggested that there be a Women’s Council or a Grandmother’s Council added to the Constitution and their role could be to make decisions related to Council conduct. Others suggested including this role to recognize the historical role women played but no suggestions were made about the role of this Council. Other commentators indicated that they were concerned about entrenching the former roles of women in the Constitution as women did not have a role in making major decisions and NCN’s Constitution should reflect the modern role of women.*

Q. **Does the Chief decide if a member of Council should be removed? Won’t the Council be in a conflict if they have to decide whether or not a member of the Governing Council should be suspended or removed?**

A. The Chief would not have the power to remove someone from Council. A quorum of Council would have the authority to suspend or remove a member of Council. The inclusion of a four council system in the First Written Law was not supported as it establishes competing power structures between appointed bodies and elected bodies and between groups. There is nothing in the Constitution that prevents any NCN group from being established. Council can seek advice from these groups at any time

without constitutional entrenchment. While these issues have been considered, the risks to stable governance outweigh the benefits of entrenching various advisory groups in the Constitution. Therefore, instead of including a multi-Council system that could lead to factions and instability at the leadership level, it is proposed that Article 7.3 be amended to allow NCN to make laws about Advisory Councils in the future. Eventually, NCN could establish its own legislature, which other tribes such as the Potawatami have done recently through a constitutional amendment process. The Legislature could have equal participation by the clans or the different groups – women, Elders and youth in addition to the elected Chief and Council. This concept was included in an earlier draft and was removed.

Q. **Will there be disclosure if the members of Council are charged or a complaint is filed?**

A. Charges are public although not always known about. Complaints such as human rights matters are generally private and confidential unless the matter goes to a hearing. Canadian laws will continue to apply until replaced with NCN laws. Therefore, NCN needs to decide if any complaint that is filed must be brought to the attention of Council and/or Council and NCN Citizens. If there is to be disclosure, what safeguards are necessary to protect the reputation of the individual member of Council who is to be presumed innocent until proven guilty?

C. *There are some technical changes that need to be made to the draft as a sentence from Article 10.11 was copied in error at the end of Article 10.10. The changes will be made to correct the draft.*

C. *It was indicated that the Constitution does not include anything about land and protection of land. Article 1.1 indicates that one of the purposes of the Constitution is to “protect our people, our lands and our natural resources now and in the future”. The Customary Law principles in Article 1.2 refer to our lands. Article 7.3 indicates that we can make laws about “lands, resources and their use”. Article 8.4 indicates that one of Council’s primary responsibilities is “overseeing the lands and resources of NCN”. It is proposed that Article 11.1 (b) & (d) (Organizational Structure) be amended to include a Lands Manager position in addition to the Chief Administrative Officer and Chief Financial Officer and that a Chapter on Land Management be added to the Constitution.*

C. *Some people think that Article 11.2 provision gives too much authority to the Governing Council and that before any decisions are made there must be consultation. Others have suggested that this provision should not be allowed in relation to any development within our traditional territory unless there is consultation. Another person questioned the impact on existing funding agreements or on organizations such as CFS. This provision codifies NCN’s long standing practice. For example, NCN has established the NCN Trust Office, the Housing Authority, the Public Works department and the Wuskwatim Implementation Office without holding consultation meetings. These are administrative matters that are generally part of the decisions Council makes. However, to make it clear that these decisions cannot be made by an individual member of Council, the wording will be clarified to read “...and a quorum of Chief and Council may ...” The draft Constitution indicates that existing laws will continue to apply unless NCN passes its own laws. There are jurisdictional issues that will need to be negotiated with other governments before changes can be made. This includes in relation to the funding agreements and other organizations such as CFS.*

C. *Another technical issue that arose following review of Article 11.3 is how the Governing*

Council will assign portfolios if consensus cannot be reached. After the next election the Council should present the progress in each area regularly.

What are the portfolio responsibilities and who decides what they are?

A. *The draft Constitution will be revised to clarify that if consensus cannot be reached then the portfolio assignments will be made by the Chief by majority vote in accordance with Article 10.8. The Constitution will also be revised to add a requirement that Council members post reports to the website quarterly and provide written reports at the General Assemblies.*

The portfolio responsibilities will be tied in with the strategic planning provisions. Individual laws will be passed over time and the laws will outline the portfolio responsibilities in more detail.

C. *Article 12.6 provision ties into the comments received about Article 9.3 and the advisory councils. The draft Constitution will be revised so Chief and Council can “establish other committees, task forces, and advisory councils to advise on matters related to the planning and management ...” It has been suggested that this provision would allow a single member of Council to approve the CRD Licence or to dismantle or amend our Trusts. This provision in the Constitution cannot be used to give one person on Council the ability to approve permits or licences under provincial legislation. NCN has existing Trust Indentures and must follow the provisions in those documents. Neither Nisichawayasihk Trust or Taskinigahp Trust can be dismantled without votes of NCN Citizens and approval by the court in accordance with the Trust Indentures. The Canadian Constitution requires consultation under section 35 and this law will continue to apply under the terms of the NCN Constitution.*

To address the concern, Article 12.6 will be amended to make it clear that a single member of Council cannot sign agreements or approve permits in a manner that is contrary to the

Constitution, which means that if there are resource allocations involved, there must be consultation under s. 35 of the Canadian Constitution.

C. *It was suggested that additional provisions be added about land. Article 12.10 will be amended by adding a Lands Manager to oversee NCN Lands.*

C. *Another technical issue that arose following review is that the NCN public service does not necessarily have the legal training that is necessary to prepare legislation or the reports on the legislation. To resolve this issue, the words “or its advisors” will be added after the phrase “public service” in the second line of these two Articles.*

Q. **Should the consultation process be spelled out in the Constitution.**

A. Any proposals that may affect our lands or treaty rights should be subject to consultation. Article 7.3 provides authority for the Governing Council to make laws regarding Nuskomowin in accordance with the procedures in Article 13 so no change to this Article are required. However, there needs to be a technical change to Article 14.1 to connect these two Articles by adding at the end of the sentence: “... and in accordance with any Nuskomowin law in effect at the time the vote is held”. Article 14.1 will be amended to require Nuskomowin before any major development of NCN’s lands or that has the potential to affect treaty rights.

Q. **What does judicial independence mean in this Article?**

A. In simple terms, judicial independence means that judges are able to make decisions based on the facts and by applying the law without being concerned whether they will have a job in the future. To ensure judicial independence, judges usually have tenure (they can’t be fired or easily removed), their salaries are high enough so that they do not have to work at another job and they are free to make the best

decision possible based on the information presented to them.

C. *The amending formula should be difficult so that the Constitution once adopted cannot be changed too easily but it should not be so difficult that it can never be changed if based on experience a change is needed. The difficulties with the Canadian Constitution’s amending formula were discussed along with various options. There should be at least 400 required to vote instead of 100. There are a number of options that can be considered, such as:*

1. Leave the formula as currently written.

2. Amend the formula so that a higher threshold is required: (i) at least 30% of all NCN Citizens eligible to vote, vote and a majority of those whom vote in favour; (ii) a double majority; (iii) at least 30% of all NCN Citizens eligible to vote, vote and of those voting at least 2/3 vote in favour or pick a specific number. The voter turnout is being analysed and will be used to develop a formula for consideration in the next draft.

Q. **Does this mean that the current Council will stay in office forever and there will be no more elections?**

A. There needs to be consistency with the Election Law definitions. Article 18.1 means that whoever the Chief and Council is at the time the Constitution is approved will remain the Chief and Council till the end of their term at which point an election will be held in accordance with NCN’s Election Law. The definition of “NCN” in the Election Law will be amended to be consistent with the definition in the Constitution.

C. *Another technical issue is that the Election Law amendments should follow the amendment process in the Constitution if it is ratified, not the amendment process in the current Election Law. Article 18.3 will be amended by adding the following at the end of the sentence: “... with the exception of the amending procedures,*

which shall be replaced by the procedures in Chapter 13 of this Constitution”.

Q. What are the definitions and rules of interpretation?

A. The only defined term is “Nisichawayasihk Cree Nation”. The principles of interpretation include gender, singular, plural and similar items and have been included in the draft Constitution.

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Q. There are two sources of citizenship. Which one will NCN have?

A. The question was unclear but it is thought that the two sources were meant to be birth and naturalization. The intention is for NCN to pass its own laws including its own citizenship laws. NCN’s citizenship law will determine who has the right to become an NCN citizen by birth, adoption or any other process. It will also set out how citizenship can be taken away if a person is unwilling to abide by NCN laws. Traditionally, banishment was used in such circumstances. This has evolved into being “BCR’d off the Reserve”. The continuation of such laws would be addressed as part of Citizenship Laws. NCN’s laws will need to be reconciled with the Canadian Constitution as NCN continues to exist within the Canadian Constitutional framework.

C. *I support what Council is trying to do. I liked the newsletter. It was straightforward and understandable. The information in Winnipeg could be sent out by mail to try to reach more people, as it was hard to reach everyone over the holidays.*

C. *I am in favour of an NCN Constitution. I am impressed with the Cree words in the Constitution. The newsletter shows that there was a lot of research that has been done. I believe in a grassroots approach rather than from the top down. I was a curious little boy so I watched the line-ups at the old log Band Office as people waited to bring their problems to Council. To me, they were making decisions; they were governing.*

The views of the resource harvesters should be recognized in the Constitution, as their views are important. They should be recorded and included.

C. *The Elders should have more input into developing the Constitution. Someone should assist the Elders by interpreting and putting their comments on paper. This is only a draft but I hope that this is followed through. The governments take forever developing their laws so hopefully we can do a little better. Our territory is very large. We have the right to hunt, trap, fish, to make a little money. We need to develop our laws so we don’t lose our land and resources because under the government’s laws they say if we do not use our land, we lose it. The government will not like all our laws but hopefully we can start right away to protect our lands and resources. There was nothing here 50 years ago. We needed roads, stores, houses and jobs. We started and have done a little bit at a time. We need to keep going forward. We want you to let us know how far you get. We thank our leaders for the progress you have made.*

C. *The Constitution talks about belief systems. I read the bible every day. It is the foundation. It is about Our Lord, Our Father. He builds the foundation. The things we teach our kids now are not the truth. Jesus Christ is the only one who can give us everlasting life and that should be recognized.*

Q. What is NCN's status now?

A. NCN's view is that we have an aboriginal right to govern ourselves and we have done so for hundreds of years using our own customary laws as well as a combination of Indian Act rules and customary laws. In 1998, we decided to enact our own written customary election laws and no longer continued to use the Indian Act election rules. There is legislation before Parliament that is of concern to NCN as the federal government wants to try to give the Minister of Aboriginal Affairs the right to take over our NCN government if they decide they need to if there is a dispute even though we have our own custom election laws that say how disputes should be resolved. If that should happen and NCN has its own Constitution in place it is likely that there would be a legal challenge launched to the validity of the federal legislation as it interferes with our right to govern ourselves.

Q. There are different types of interpretation – federal interpretation, provincial interpretation and Indian interpretation. What will we have?

A. Canadian courts are only slowly recognizing that there are customary laws that they have not been giving effect to. In other countries such as the United States, the tribal courts have evolved and developed their own body of law. If the NCN Constitution is approved, over time there will be negotiations with the other levels of government as NCN's long term goal is to establish the Nisichawayasi Court which would interpret our own laws as well as the laws of other governments as they apply to our Citizens.

This would result in customary laws being given effect over time in the regular courts and in our court. NCN started the recognition process by including its customary laws in the Wuskwatim Project Development Agreement. They were also used to monitor the impacts of the Wuskwatim Project. The difficulty is that they are unfamiliar, not only to non-Aboriginal people, but also to

our own children because of our history of colonization, the residential school experience and the loss of our culture and language. The Wuskwatim Project has allowed us to take incremental steps to repair the damage caused by this negative history. Taking these steps helps us establish customary laws on an equal footing with the interpretations of the federal and provincial governments.

Q. Chief and Council are defined as a federal board under the Indian Act, 1951. They are basically public servants. How is this reconciled with the Constitution?

A. NCN enacted its own written custom election law in 1998. The Election Law was amended in 2002, 2010 and 2013. Chapter 18 of the Constitution establishes transitional provisions so that, if the Constitution is approved, the NCN Election Law will continue in effect. The Constitution will change the name of Chief and Council to the Governing Council and the elections for the new Council will proceed in August 2014.

It is unclear from the question whether the concern relates to the definition of federal board in the Federal Court Act and the Federal Court's jurisdiction to hear a matter instead of the Nisichawayasi Court. As indicated during the meetings and in these responses, there will need to be further negotiations to sort out some of these issues. NCN Citizens can still approve the Constitution as drafted and then those Chapters would not have to come into effect until the Governing Council has concluded any required negotiations for funding or about jurisdictional issues with other levels of government.

Q. The federal government is allowed to pass many laws about Indians under section 91 (24). How will the Constitution impact that?

A. The ability to pass laws under the Canadian Constitution and the NCN Constitution will need to be reconciled. Section 35 of the

Constitution Act, 1982 (Canada) indicates: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”. NCN’s view is that one of our existing aboriginal rights is the right to govern ourselves. The federal government has certain jurisdiction to pass laws over Indians and lands reserved for Indians. If an agreement cannot be reached about which laws prevail, then there will be a dispute that will need to be resolved. Chapter 3 addresses the issues of conflicts between laws and reconciling those conflicts. Chapter 7.3 indicates that the Governing Council will be able to pass laws related to a number of different issues. The law-making processes are outlined in Chapter 13.

Q. How does the proposed Constitution affect our rights under the Saskatchewan TLE Framework Agreement?

A. It does not as NCN’s treaty and entitlement is addressed in the 1998 Agreement NCN signed with Canada, the Province and the Manitoba Treaty Land Entitlement Committee. The Saskatchewan TLE Agreement does not apply to NCN.

Q. Is the Constitution going to infringe section 52 of the Canadian Constitution?

A. Chapter 3 of the draft NCN Constitution indicates that laws of Canada and Manitoba shall continue to apply to NCN unless NCN laws replace them. Section 52 of the Constitution Act, 1982 (Canada) allows a court to strike down or decide a law is invalid if it is inconsistent with the Canadian constitution. In this case, the court would need to decide if an NCN law passed in accordance with the NCN Constitution is valid as NCN has an existing aboriginal right to govern ourselves. We also have rights according to the draft Constitution under the Charter of Rights and Freedoms in the Canadian Constitution for example. Therefore, it will depend on the facts involved. The NCN laws and the Canadian laws will need to be reconciled. The NCN Constitution

provides the framework for NCN to pass its own laws.

Q. What should we do with this process? Should we move forward? I hope we can use our tribal laws again and not just be public servants.

A. Council reviewed the process after Round 1 and found that there was positive feedback so has decided to continue moving forward.

Q. Why is the Bill of Rights not included in the draft Constitution?

A. The Canadian Bill of Rights was found to be non-binding on governments. It eventually led to discussions about the Canadian Charter of Rights and Freedoms, which is binding on governments unless they opt out using the process in the Canadian Constitution. As the Charter and the Universal Declaration contain stronger language in support of self-determination/governance, those documents are referenced in Chapter 2.2.

C. *The inclusion of the customary laws is very important. We saw this during the development of Wuskwatim. We need the people to give feedback on this Constitution and they must do it in a way that is in harmony with the customary laws.*

Q. There should be a proper process for this. Things are always rushed, always being shoved down our throats. There are a lot of high words in this document. People will not understand high words. Simplify the document. The Community will approve the Constitution but what about the federal government; will they acknowledge or accept this document? This should have been combined with the Election Code People gave ideas and recommendations and they were not included in the Election Code. Is the same thing going to happen with the Constitution?

A. There are several different approaches that can be taken. Other First Nations sought the approval of the federal government concurrently with their self-government negotiations. NCN did not adopt that approach, as it was not viewed as being consistent with NCN's view of self-government.

Last year, NCN developed amendments to the Election Code to include referendum rules so it would be clear that our own laws would apply instead of the Indian Act regulations. NCN needs to amend the Taskingahp Trust Indenture to complete our investment in Wuskwatim. Last year, Council was not sure whether NCN Citizens still wanted to pursue investing the Nisichawaysihk Trust assets in Wuskwatim as the hydro bonds came due in June 2013.

Throughout the Election Code discussions, it became clear that NCN Citizens wanted Council to find alternative options for investing in Wuskwatim. Our Citizens also want to ensure there will be benefits from development in our territory. NCN Citizens asked Council to remove the referendum procedures from the Election Code. We were asked to develop roles and responsibilities and a Code of Conduct for Council and to combine these and the law making procedures into one document. Council removed the referendum rules from the Election Code and included Nuskumowin in the Constitution instead. Council reviewed the ideas the people provided and included many of them in this draft of the Constitution.

The Constitution includes provisions so that it can be amended in the future. In the meantime, it is very important for NCN Citizens to know the procedures, the rules and that the guidelines that are in place and will be followed as we grow and evolve into a bigger and more complex organization. Since we signed the NFA Implementation Agreement in 1996, we have purchased a number of businesses and implemented a number of new programs and services. We have grown and many new jobs have been created. We need consistent rules to

follow. Participating in Wuskwatim on the GP Board, the ATEC Board, WKTC, and through the various other committees such as CAC, MAC and ACE has taught us many things that needed to be adjusted in our operations and the Constitution has been developed based on that experience also.

Q. The Constitution is very vague and it should be clear and concise. The terms for Chief and Council are too broad. There needs to be checks and balances for Chief and Council. They should abide by the NCN personnel policies. Council should not be considered above the law. NCN Citizens should have the right of free speech and be able to criticize the Governing Council on social media.

A. The Governing Council is elected to represent the people, so there needs to be different policies developed for elected officials compared to employees. The use of social media is an evolving issue and free speech is not unlimited. However, Chapter 2.2 of the draft Constitution does ensure that NCN Citizens have the same rights of freedom of expression that are protected under the Canadian Constitution.

Q. Would the Constitution be replacing the Indian Act?

A. The Constitution would give NCN the authority to pass laws using its own processes instead of the bylaw processes in sections 81 and 83 of the Indian Act. NCN already has its own Election Law and that would continue. Other laws such as citizenship laws would be enacted instead of using the membership rules in the Indian Act. Nuskumowin would give the NCN Electoral Officer the authority to conduct our own votes on various matters and would replace the referendum regulations in the Indian Act.

Q. Council would have a lot of jurisdiction under the proposed Constitution, including control over land. There should be provision for individual NCN Citizens to own property and earn a living from that property.

A. There are competing philosophies at play here that will need to be considered so that the banks or others do not lend money and then take away our land if we cannot repay those loans. There is protection for all of us through collective ownership of our lands. We also need to look at how to encourage our Citizens to develop their own houses and be responsible for looking after their houses.

Q. The Constitution refers to a “person”. Is this an artificial person or a natural person? The Interpretation Act and the Corporation Act (both 1990 versions were referenced) reference artificial persons so NCN cannot be sovereign. Can a signatory Indian have a legal identity and be a person? This Constitution infringes on tribal custom and usage and so it should not be ratified.

A. The use of the word “person” in the draft Constitution refers to both a natural person and an artificial person such as a corporation. NCN owns an interest in various corporate entities such as the Mystery Lake Hotel, NCN Construction LP, NCN Catering LP, AOL, Taskinigahp Power Inc. (TPC). These would all be considered artificial persons.

Q. We have governed ourselves for many years now. The Constitution is to provide a framework for how we govern ourselves.

A. The Constitution provides a framework for developing laws about many matters. It establishes the framework for the relationship between NCN Government and NCN Citizens, NCN Government and other Governments. It sets out the framework for how disputes will be resolved, and how NCN will make decisions

about important issues, including economic development.

Q. When NCN is renegotiating agreements, it should consider a guarantee for post-secondary education for its members. How does Constitutional Development apply to off-reserve members? How do they benefit?

A. The Constitution establishes the framework for the NCN government and how decisions will be made about a number of issues. It sets out the rights of all NCN Citizens whether they live on or off reserve, the role of Council, a Code of Conduct for Council, law-making processes, the structure of the NCN government, rules the NCN Government must follow, how decisions are to be made, and how disputes will be resolved.

Q. Could NCN consider developing Leaf Rapids as a reserve under NCN’s Constitution?

A. This is an interesting idea and can be discussed further.

Q. Is it the federal government’s intention to eliminate status Indians? Does the Constitution have a dual process to recognize status for Bill C-31?

A. These are citizenship issues. The draft Constitution would allow NCN to develop its own citizenship laws.

Q. How are the rights of the children of Bill C-31 going to be protected?

A. Again, these are citizenship issues. The Indian Act establishes what is sometimes called “blood quantum” rules. If you do not have a certain percentage of First Nations’ blood then you are not recognized as being First Nations.

Q. There is a major influx of southern people in the Suwannee Lake area in the fall. No one is monitoring the impact this is having on the fish and moose populations. Can we pass laws to help us with these issues?

A. These are important issues and yes, if the Constitution is approved, NCN could prioritize conservation or environmental laws to try to address the concerns that have been raised. We also learned from Wuskwatim that education is a critical part of the issue and is needed for our own people also.

Q. What is the status of the displaced residents claim?

A. A number of claimants have resolved their claims. Some remain outstanding. NCN is not directly involved in these claims. The individual claimants have their own legal counsel representing them in their discussions with Manitoba Hydro. For the question just below that one change the response to: There has been a cleanup process underway for some time. It is currently not clear how the mine itself will be affected.

Q. There is an interim licence for cleaning up the mine. How is the mine going to be impacted?

A. We will check.

Q. People are putting fish nets in the Newanitan River during spawning season. Pretty soon there will be no fish left in this river or the adjoining lake. This area should be monitored. Who is checking people from the south using our resource area?

A. This is an important issue that will be examined further. Management of resources has to be balanced with our right to hunt, trap, fish and gather. Council will raise this matter with Conservation also.

Q. The name “Nisichawayasi” is not consistent with “Nisichawaysihk” in the Election Law. Why are we not being consistent when we pass new laws?

A. This is a valid point. We need to decide if we are Nisichawayasi Asiniskaw Nehethowuk, Nisichawayasi Nehethowuk, or the Nisichawaysihk Cree Nation. Since 1990 we have been known as the Nelson House Band 313, Nelson House First Nation, and the Nisichawaysihk Cree Nation.

Q. The word “member” means I belong somewhere but in the Constitution, member only refers to a member of the Governing Council. Why are we no longer called “members”?

A. As we discussed during the Election Law changes, the word “member” is an Indian Act term. A Nation has citizens, not members. We are a Nation. We changed the words in the Election Law to eliminate as many Indian Act words as possible. Words are very important. Citizens of our Nation should feel included.

Q. Asehewewin – I don’t understand the “spiritual signs” so this needs to be defined.

A. This is part of traditional teachings.

Q. Are we changing our name to Nisichawayasi Asiniskaw Nehethowuk?

A. This is a decision that needs to be made, as NCN is now known internationally.

Q. The conflict between the two language versions needs to be considered as the draft Constitution indicates that Nehethowewin shall prevail. We need to consider the generations coming behind us who do not speak our first language.

A. This provision is intended to help preserve the language, but it could be redrafted to

give both language versions equal weight.

Q. The structure of the NCN Government in Article 11.2 gives the Governing Council a lot of authority. Why?

A. The concept is to allow for change to take place over time as needed to meet the needs of NCN Citizens. The Governing Council will be elected by the people to make decisions and should be able to reorganize and make change to the government structure. Generally governments have this type of authority.

Q. Will this Constitution supersede the Canadian Constitution?

A. The NCN Constitution is intended to be reconciled with the Canadian Constitution. This means that Chapter 2.2 for example confirms that NCN Citizens have rights under the Canadian Constitution and through international law. The NCN Constitution recognizes those rights. Also, Chapter 3.1 of the NCN Constitution says that the laws of Canada and Manitoba will continue to apply unless NCN passes its own law. For example, the federal government is currently considering an Education law. Manitoba has its own education laws. NCN may want to establish its own education laws or it may want the federal or provincial laws to continue to apply. Those will be choices that NCN can make if the Constitution is approved.

Q. Are we staying with treaty 5 or becoming treaty 10?

A. We are currently signatories to treaty 5.

Q. This is a good process. We are working together. Resolution of conflicts in Article 3.2, does this mean that if I have a conflict with Council and the grievance goes to the CEO and then Council, there will be a perceived conflict?

A. No. There would not be a perceived conflict. There are various issues that need to be sorted out. The Constitution indicates that the

role of agencies and corporations and their relationship with the Governing Council will be established. Issues related to employee rights of appeal need to be dealt with through appropriate dispute resolution mechanisms. For example, NCN's personnel policy Manuel has indicated there will be a personnel committee established to hear appeals but in over twenty years it has never been established.

Q. Chapter 4.1 refers to land. We have a lot of land that is not referred to in the treaties.

A. This is true as we have compensation lands and TLE lands as well as lands we have purchased or have the right to acquire through various agreements we have entered into. But in this draft of the Constitution, jurisdiction is based on more than land. It applies to persons, property, water, resources and activities occurring on the lands.

Q. Article 10.7 indicates that Citizen Concerns can be addressed at Governing Council Meetings. Did we ask the people collectively to apply these procedures?

A. This Article was added so that the people would have the ability to bring matters to Governing Council meetings and have them placed on the agenda so they do not have to wait for a General Assembly to be able to raise issues. These procedures are intended to assist the Governing Council hold effective meetings so that the business of the Nation can be conducted.

Q. There is too much power given to the Governing Council to make changes to the NCN Government without the input of the people through Article 11.2.

A. This concern is being considered to determine whether it can be addressed and if so, how.

Q. Article 12. 6 allow for delegation of authority from the Governing Council. This should be from the people, not the

Governing Council as it is given the supreme authority under the Constitution.

A. The people elect the Governing Council every four years. This allows the Governing Council to authorize employees to do certain things and if they are authorized to do certain things by the Governing Council, it makes it clear that they must only do what they have been given authority to do.

Q. **Article 15.1 indicates that the Governing Council will make the judicial appointments. They should be elected instead of being appointed.**

A. This is an issue that can be considered further. In the United States, some judges are elected. They are appointed in Canada. We will obtain more information about tribal courts and provide the information during Round 2.

Q. **Article 3.2 refers to conflict between laws, Nisichawayasi laws and agreements. What agreements?**

A. NCN will need to negotiate agreements with other levels of government. In those agreements, NCN might agree that certain laws of the other government will prevail. For example, the Criminal Code of Canada. NCN also has other agreements it has already entered into that will need to be considered such as the 1996 Agreement, the TLE Agreement, and the PDA.

C. *I am impressed with the document, it is well written but it is hard to understand parts of it. It will be hard for uneducated people to understand especially the Elders and the youth.*

Q. **The youth will not understand the Cree terms in the Constitution. I am thankful for opportunities like this as it gives us the choice to move forward. What are we going to teach our children, the colonial language or our first language? There is something missing here. I do not see us training our youth; the youth should be serving the Elders. We must pass our**

traditions on to our youth. I was robbed of my language. I went to residential school. I teach my great-grandchildren to speak Cree. We are the teachers of our own. This is our identity and we need to be proud of it. Article 1.1 (a) is important and we need to protect our people, our lands, and our natural resources now and in the future. We must protect our treaty rights. How was the formula of 100 people in Article 13.1 arrived at? What is the rationale? How many people know the laws and our culture and traditions as required by Article 15.1?

A. This formula is consistent with the formula that NCN Citizens approved in the 1996 Agreement so was carried over to the Constitution. The appointment criteria will be considered to determine if it will be possible to find people who can fulfil the duties.

Q. **Is this Constitution only going to benefit Chief and Council?**

A. No. This Constitution is for all NCN Citizens. It is intended to provide a governance framework so that it will be easier to make decisions and so that Chief and Council (renamed the Governing Council) will be accountable to the people and have transparent, open operations recognizing that confidentiality agreements may be necessary for business arrangements such as Wuskwatim.

Q. **Can there be changes to the draft Constitution?**

A. Yes. Council and the technical team are meeting with NCN Citizens to obtain their input. From these discussions, decisions will be made about what changes should be made to the draft Constitution.

Q. **Is our Constitution protected by international law? If not, then how are we protected?**

A. We believe the Canadian Constitution and the United Nations Declaration on the Rights

of Indigenous Peoples would protect it.

Q. If INAC has been sponsoring us for school and NCN is broke, who will sponsor us?

A. These are issues that will need to be negotiated. Approving the Constitution will establish the framework but will not result in everything changing immediately.

Q. If this passes, will NCN become a municipality?

A. No.

Q. If we change Chief and Council to Governing Council are we going to have a Mayor and Council?

A. No.

Q. Why make our people pay taxes when it is our right not to pay such taxes?

A. NCN has to make decisions as a community about the programs and services it wants to provide. All services and programs cost money. If we want more programs, then we have to figure out where such services will come from. For example, each year the cost of maintaining houses is rising primarily due to the cost of fixing doors, windows and other repairs that could be easily avoided. How is NCN to continue paying for these items?

Q. Are we going to make our people pay property taxes?

A. There are currently no plans to make NCN Citizens pay property taxes but as indicated in the last question, we must decide how to pay for growing needs, particularly where the increasing costs are avoidable.

Q. Since we are talking about jurisdiction, does this mean all off-reserve members will be left out?

A. No, NCN Citizens, on and off reserve are being consulted.

Q. What about developing urban reserves?

A. It is a very long process as we have learned from the conversion of the Mystery Lake hotel.

Chapter 1 – Will there be full disclosure of all parties involved under oath and under unlimited liability?

A. The purpose of the Constitution is as set out in this Chapter. As has been previously disclosed, NCN needs to complete the arrangements for its Wuskwatim investment. This will include amendments to the Taskinigahp Trust Indenture. This Constitution provides the framework for the vote to take place to amend the Trust. There are no plans to amend Nisichawayasihk Trust Indenture.

Q. Should “Kakitustehk” on the first page not be “kakistustehk”?

A. Yes. This will be changed.





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