



# Nisichawayasihk Cree Nation *Constitution* NEWSLETTER

December 2013

## NCN Begins Citizen Review of Draft NCN Constitution on 250th Anniversary of Royal Proclamation

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 a series of the consultation meetings with NCN Citizens in January and February. This review is an important milestone in a long but well-considered process leading to ratification of an NCN Constitution.

### GOVERNANCE PROJECT INITIATED TO DEVELOP A CONSTITUTION

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 focussed 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 decided to examine other constitutional models so law-making processes and these other critically important issues to NCN

## UPDATE TO NCN CITIZENS

Citizens could be combined into one document. In developing our constitution, Chief and Council examined 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 CHOOSE UNIQUE MODEL FOR CONSTITUTIONAL APPROACH

Ultimately, Chief and Council determined that a model more unique to NCN should be developed, but took into consideration the experience of other First Nations. For example, the Constitution of the Westbank First Nation of Kelowna, British Columbia 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.

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# 250<sup>th</sup>

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

## DRAFT CONSTITUTION READY FOR REVIEW

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 20 Chapters contained in the Constitution. It should be read alongside your reading of the actual legal text in the draft Constitution. We welcome your questions and input and look forward to constructive, positive dialogue regarding this important issue.

## DEVELOPING CONSTITUTION DURING 250TH ANNIVERSARY YEAR OF ROYAL PROCLAMATION IS SYMBOLIC AND SIGNIFICANT

Developing our own Constitution helps ensure our rights will not be eroded. Developing our own Constitution during the 250th anniversary of the signing of the Royal Proclamation is significant as it helps to demonstrate that we have not forgotten our history or our rights and that will we take positive steps to preserve these for the benefit of our children, our grandchildren and great grandchildren.

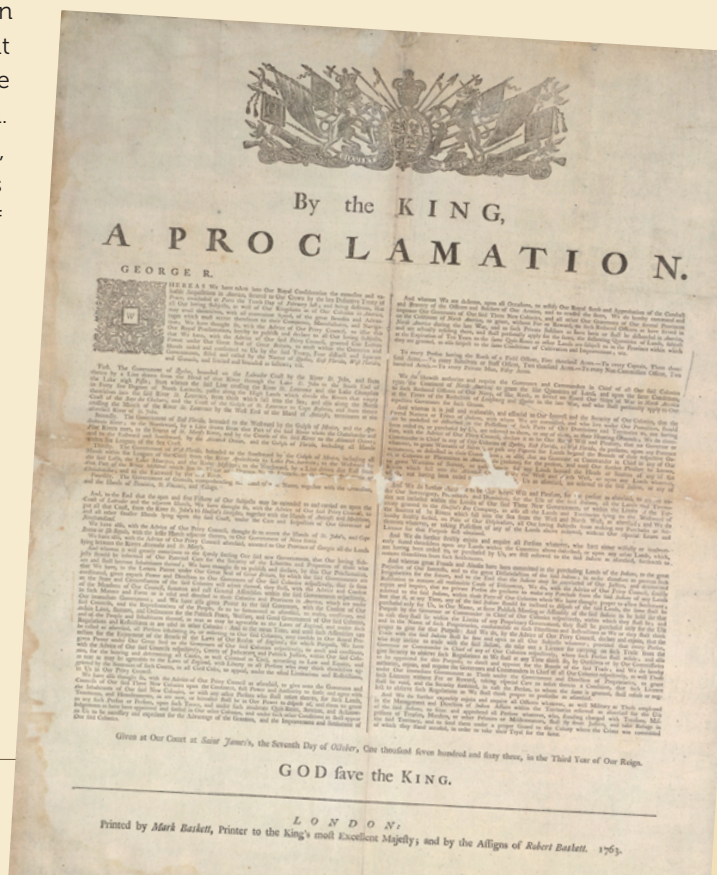
## 250TH ANNIVERSARY OF THE ROYAL PROCLAMATION OF 1763

The Royal Proclamation of 1763 is often called the forgotten treaty. Yet, it is the foundation upon which all Crown/First Nation relationships in Canada were built. France and England were at war with each other through much of the seventeenth and eighteenth centuries. Their wars carried over to North America. The Treaty of Paris was signed in 1763 to end the wars and during this process France gave up most of its claims to North America.

King George III of Great Britain issued the Royal Proclamation on October 7, 1763 to establish a new (English) administrative structure for what became known for a period of time as "British North America". The Royal Proclamation also established protocols for relations with First Nations peoples.

The Proclamation was important as it clearly indicated that land west of the established colonies in Quebec and Ontario was established as "Indian Territories" and First Nations people should not be "molested or disturbed by the settlers". The Royal Proclamation also established protocols to ensure First Nations retained control over First Nations lands and to prevent "Frauds and Abuses" committed in the purchasing of lands from First Nations.

The Royal Proclamation continues to be important today as it is part of the Canadian Constitution. All First Nation Citizens, including NCN Citizens have all the rights of Canadian citizenship but we also enjoy certain other rights, including the right of self-government.





## NCN Councillor D'Arcy Linklater Visits England To Celebrate The Historical Significance Of The Royal Proclamation

NCN Councillor D'Arcy Linklater was part of an eight-person Manitoba Keewatinowi Okimakanak (MKO) delegation that travelled to England along with a Federation of Saskatchewan Indians Nations' delegation to mark the 250th anniversary of the 1763 Royal Proclamation on Oct. 7, 2013. MKO's delegation represented 30 northern Manitoba First Nations.

D'Arcy was accompanied by MKO Grand Chief David Harper, War Lake First Nation Chief Betsy Kennedy, three traditional dancers and two support staff.

The Royal Proclamation of 1763 is sometimes referred to as "the Indians' Magna Carta." The Magna Carta formed the foundation of constitutional government and law in Britain that barons made King John sign in 1215. Many experts regard the Royal Proclamation's policy for new territories the United Kingdom acquired through the Seven Years' War as the guarantor of Aboriginal title law in Canada today, an important first step in recognizing existing Aboriginal rights and title to land, including the right to self-determination. The basis for Treaty-making between First Nations and the Crown is believed to be rooted in the 1763 Royal Proclamation.

"Undertaking the process to create our own constitution for NCN in this anniversary year is particularly fitting, and I was honoured to represent NCN and other Manitoba northern First Nations in attending this historic anniversary," D'Arcy said.

Highlights of the trip were an Oct. 7 pipe ceremony and jingle dance at Green Park attended by Canada's Deputy High Commissioner, and a private tour of the British House of Lords at the invitation of Lord James Sassoon (Kt). On Oct. 8, delegates attended a private meeting with Canada's High Commissioner to the United Kingdom, Gordon Campbell, who also co-hosted a reception along with Assembly of First Nations National Chief Shawn In-a-chut Atleo at Canada's High Commission in McDonald House.



Members of the MKO delegation: (l-r) War Lake First Nation Chief Betsy Kennedy, traditional dancers Candace Linklater and Jackson Beardy III, MKO Grand Chief David Harper and NCN Councillor D'Arcy Linklater near Buckingham Palace.

"Undertaking the process to create our own constitution for NCN in this anniversary year is particularly fitting, and I was honoured to represent NCN and other Manitoba northern first nations in attending this historic anniversary," D'Arcy said.



Councillor  
D'Arcy Linklater



## 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.

### 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, 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

## 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. We request that NCN Citizens provide us with feedback so we can obtain guidance from our Elders, whom we are losing so quickly. 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.

## 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. For example, our schools are funded below the provincial public school system and we will need to consider the impact of Canada's proposed First Nations Education Act on our education operations. As NCN Citizens have told us before that education is critical, we may decide to prioritize education and develop these laws first as soon as our Constitution is approved.

## 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.

## 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 – GOVERNING COUNCIL

This Chapter sets out the number of positions on the Governing Council: one (1) Chief and six (6) Councillors. It says that the Governing 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.

This Chapter also sets out a list of potential laws the Governing Council may enact. The list is broadly drafted but feedback on the list is important.

#### **CHAPTER 8 – GOVERNING COUNCIL ROLES AND RESPONSIBILITIES**

This Chapter sets out key functions of the Chief and the other members of the Governing Council. The Chief's primary role is to lead the Governing 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 Governing Council has responsibility for effectively managing the Nation's lands, resources, finances and all operations. The Governing Council must comply with the laws and policies of the Nation.

#### **CHAPTER 9 – GOVERNING COUNCIL CODE OF CONDUCT**

This Chapter spells out the rules the Governing 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 Governing Council meetings and not engage in disruptive behaviour that impedes the business of the Governing 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 the Governing Council even if the member personally opposes the decision made by the majority;
- Not take any actions that will undermine the decisions made by the Governing 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 Governing Council.

#### **CHAPTER 10 – GOVERNING COUNCIL MEETINGS**

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

- Notice requirements
- Quorum
- Attendance at meetings by members of the Governing Council and NCN Citizens
- Development of meeting Agendas
- Procedures for addressing complaints from NCN Citizens
- How decisions will be made and recorded
- When the Governing 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 the Governing Council and any board of directors and the reporting obligations of each entity to the Governing 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 the Governing 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 the Governing Council to others only by approval of the Governing 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 the Governing Council as a whole, not from individual members of the Governing Council, unless there has been an express delegation of authority to a single member of the Governing Council or there is an emergency that must be dealt with quickly.

## CHAPTER 13 – 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 the Governing Council or a Proposal signed by at least 100 NCN Citizens that is presented to the Governing Council. The next step will be for the Governing Council to direct the public service to prepare a draft law for consideration at a regular Governing Council meeting within 6 months, unless extenuating circumstances prevent this.

After the Governing 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 the Governing 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 the Governing Council rejected the draft law.

The Governing 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 the Governing Council considered the law. A report about the discussions at any workshops must be presented to the Governing Council.

After these steps have been taken, the law shall again be considered at a Governing Council meetings where the Governing 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 the Governing Council within 30 days with recommendations to accept the law, with or without amendments, or reject it.

The Governing 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.

The Governing 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 the Governing Council may be amended in accordance with the procedures in Chapter 17 of the Constitution.

## CHAPTER 14 – NUSKOMOWIN

The Governing Council may decide that NCN Citizens should decide a particular matter by a special vote held for this purpose, or the Governing Council may want to obtain



feedback from NCN Citizens before making a final decision on a matter. In either circumstance, the Governing Council shall direct the NCN Electoral Officer to hold a vote using the procedures in the NCN Election Code.

#### CHAPTER 15 – NISICHAWAYASI COURT

Eventually, NCN would have its own court that would make decisions about NCN laws and disputes involving NCN Citizens, the Governing 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. The Governing Council will approve an annual budget for the Nisichawayasi Court.

#### CHAPTER 16 – 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 17 – 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 18 – TRANSITIONAL PROVISIONS

This Chapter outlines technical provisions that indicate the current Chief and Council would be considered the Governing Council for purposes of the Constitution until the next election is held in August 2014. The NCN Election Law would be amended to change the name of Chief and Council to the Governing Council. All other laws would remain in effect until new laws are approved in accordance with Chapter 13 of the proposed Constitution.

#### CHAPTER 19 – 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.

#### CHAPTER 20 – DEFINITIONS AND RULES OF INTERPRETATION

The definitions and rules of interpretation will be added once the concepts have been discussed with NCN Citizens.

#### WE WANT YOUR FEEDBACK

Use the enclosed form to let us know what you think about the draft constitution and submit it to the NCN Government office. You can also respond on-line at [www.ncncree.com](http://www.ncncree.com) (follow the link on the home page).

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Nisichawayasihk Cree Nation  
"Where Three Rivers Meet"

