

**NCN DRAFT CONSTITUTION,
WUSKWATIM ONE-YEAR AGREEMENT,
CRD LICENCE
COMMUNITYCONSULTATIONS**

**QUESTIONS, ANSWERS AND COMMENTS FROM THE
ROUND 1 JANUARY 2014 MEET AND GREETINGS, HOME VISITS,
SMALL GROUP MEETINGS AND WEBSITE**

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

Winnipeg – January 9, 2014

Q. I understand that funds from Wuskwatim are now starting to come in. Can we as NCN Members buy shares?

A. No, individual members cannot purchase shares. The Manitoba Hydro Act strictly prohibits the sale of assets, including Wuskwatim assets. Individuals cannot own shares in Hydro projects, which, with the exception of Wuskwatim, are owned by the people of Manitoba. NCN Citizens should also remember that Manitoba Hydro made arrangements to loan NCN most of the funds for NCN's units in the Wuskwatim Power Limited Partnership through our company Taskiniga Power Company. Those arrangements are documented in the TPC Financing Agreement which is part of the PDA.

Q. I can purchase shares in Manitoba Hydro on the stock market so I should be able to purchase shares as an individual. This should be allowed. Council should renegotiate the Agreement to allow members to own shares.

A. Manitoba Hydro is not a publicly traded company and so shares are not for sale on the stock market.

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.

Nelson House – January 10, 2014

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. 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.

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.

Leaf Rapids – January 11, 2014

Q. It is encouraging for a First Nation to take this step. This document is not just words; there is spirit in this Constitution. If this is followed, only good can come out of it. But very concerned about the CRD Final Licence. The CRD as it was in 1978 is over. Hydro is applying for a totally different regime. Section 35 was not mentioned but CRD and Augmented Flow are two different things. NCN is neighbouring partners with other First Nations who have arguments with Hydro.

A. Council has not made any final decisions about the CRD Licence but we do have existing water regime arrangements in the 1996 Agreement and the PDA that include the original CRD Licence and the Augmented Flow Program which has been in place since 1986. We were able to negotiate a long-term debris-management agreement that is managed by AOL with workers supplied by AOL and the resource harvesters. We have identified other issues that are of concern to NCN and our resource harvesters. Also, our NFA Implementation Agreement restricts how Manitoba Hydro can operate the CRD or they have to pay us additional compensation. We have lower limits also, which the current licence does not have.

Q. I agree with the Augmented Flow Program. I have recently switched my membership back to NCN. Will I be eligible for compensation from NCN as a trapper and fisherman?

A. The program criteria apply to all NCN Citizens. The Claims Officer makes a decision once a claim is filed at the Trust Office and all NCN Citizens are entitled to programs offered in the trapping and fishing programs. Compensation for impacts prior to the time a person was an NCN Citizen may not be covered by our Agreements but this would be considered once a claim is filed.

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. We will check.

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

A.

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.

Thompson – January 12, 2014

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.

Q. 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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