MIAWPUKEK BAND

SELF-GOVERNMENT FRAMEWORK

Prepared by:
Shayne McDonald

Prepared on:
March 20, 1998

Submitted to:
Department of Indian and Northern Affairs Canada
FRAMEWORK AGREEMENT DISCUSSION PACKAGE

TABLE OF CONTENTS

1. Evidence of Community Support
3. Workplan and Time Frame
4. Project Budget
5. Appendix 1 request for Self-Government process as per Miawpukek Land Claims Submission 1996
6. Appendix 3 resolutions evidencing community support
7. Appendix 4 indication of provincial participation
MIAWPUKEK INDIAN BAND - EVIDENCE OF COMMUNITY SUPPORT

The Miawpukek Band, within DIAND's and Health and Welfare Canada's devolution policy, is highly independent and self-government. We are now prepared to enter the next phase, that being framework negotiations on the inherent right to self-government. The Miawpukek Band Council has undertaken a number of steps to ensure band members are informed of the move towards greater self-government. Through our yearly annual assembly, which has been taken place regularly since 1973, the Miawpukek Band in assembly has signaled its support to the Miawpukek Band Council as it relates to the goal of First Nations Self-government. The Appendices attached present the 1986 and 1997 annual assembly resolutions which continue to reaffirm the band's support of self-government.

During the summer of 1992, the band council released a short paper entitled "Understanding the Concept of Self-government". The paper explained the issue of self-government as being presented in the media (Charlottetown accord) versus the negotiated legislated form of self-government. The paper further elaborated on the Miawpukek Band's degree of self-government at present (i.e., multi-year funding agreement, Indian Act) and future expectations.

The media coverage of the constitutional talks, especially the issue of inherent right of self-government during the summer of 1992, served to further inform band members on the issue of self-government.

After the release of the short paper, four community meetings were called to address the issue of self-government. The discussion centered around the constitutional talks and self-government as provided for in the Charlottetown Accord, i.e., recognition of the inherent right to self-government. Members present were surprised to learn of the restrictions placed on our own self-government and indicated strong support for greater self-government. Furthermore, preference for recognition of the inherent right of self-government verses the delegated/legislative form of self-government was expressed as the preferred form of recognition.

After the community meeting, a questionnaire was circulated to every household. Out of the 130 households completing the questionnaire, 35% signaled its support for greater self-government. The questionnaire was designed to gauge band members understanding of the concept plus to gauge members acceptance of greater self-government of the Miawpukek Band.

A presentation was also made at the band school to inform teachers and students on the issue. Furthermore, one on one discussions with band members are ongoing. The Miawpukek Band Council will provide another presentation on our self-government initiative at the upcoming assembly in 1998. The assembly will further enable band members to raise any questions or concerns they may have.
The membership of the Miawpukek Band has always been supportive of community self-government. Upon official recognition, the government of Conne River has taken upon itself the task of independent delivery of programs and services utilizing our own human resources. This, coupled with historical independence, has instilled a strong sense of autonomy and self-determination in band members. Often band members are of the view that the community is self-governing, notwithstanding Indian Act restrictions, which are often not experienced on a day-to-day basis.
MIAWPUKEK BAND SELF-GOVERNMENT

FRAMEWORK DISCUSSION
**TABLE OF CONTENTS**

PURPOSE

BACKGROUND
   COMMUNITY PROFILE
   GENERAL DESCRIPTION

PROPOSED MATTER FOR NEGOTIATION
   LEGAL STATUS AND CAPACITY
   STRUCTURES OF GOVERNMENT
      INSTITUTION OF GOVERNMENT
      PROCEDURES FOR ELECTION

MEMBERSHIP

MANAGEMENT OF LANDS AND RESOURCES
   LAND TITLE AND MANAGEMENT
   NON-RENEWABLE RESOURCES
   RENEWABLE RESOURCES

FINANCIAL ARRANGEMENTS

IMPLEMENTATION

APPLICATION OF THE INDIAN ACT

EDUCATION

BUSINESS

ENVIRONMENT

HEALTH

CHILD WELFARE AND FAMILY SERVICES

BAND POLICING

JUSTICE SYSTEM
FRAMEWORK DISCUSSION-MIAWPUEK BAND

A. Purpose

This discussion paper presents the major elements that the Miawpukek Band council wish to negotiate in relation to its self-government goals and objectives. These elements and the position relating to each element are the result of ongoing discussions by chief and council and consultation with the band membership. The elements delineated in this paper represent some of the elements the Miawpukek Band wish to include in a comprehensive self-government agreement.

B. BACKGROUND

1.0 COMMUNITY PROFILE

The Miawpukek Band is situated on the South East Coast of Newfoundland. The Miawpukek Band, also known as the Conne River Band, was declared to be a Band for the purposes of the Indian Act on June 28th, 1984 by P.C. 1984 2273. The Samiajj Miawpukek reserve was declared to be a reserve for the purposes of the Indian Act in 1987. The present membership of the Miawpukek Band totals 1800 members with approximately 700 residing on the reserve.

In 1985 the band entered the multi-year funding arrangement which enables the band to deliver a broad range of programs and services to meet the needs and priorities of the community. Accountability under the agreement is primary to the band membership. This multi-year agreement was renewed in 1992 and in 1997. The Miawpukek Band has also entered into a five year Health Transfer arrangement whereby the band obtains funds to deliver a wide range of community health services. The health services are delivered through Conne River Health and Social Services. This department is directly accountable to chief and council. The Miawpukek Band Council, through its two major funding agreements, is responsible for the delivery of a wide range of programs and services. The band has developed a highly efficient management structure and system. The Miawpukek Band is considered to be one of the most “self-governing” bands in Atlantic Canada. The present degree of self-government is administratively within DIAND’s devolution policy and sectorial as per various bilateral arrangements. The Miawpukek Band is also pursuing a number of economic development opportunities with the underlying goal of self sufficiency and autonomy being paramount.

2.0 ELEMENTS FOR NEGOTIATIONS

The Miawpukek Band has prepared a draft constitution which encompasses many of the elements presented in this paper (see appendix 2 Miawpukek Band Constitution).
The elements presented in the constitution and this paper are continually being developed and are subject to change as the process unfolds.

A constitution is a fundamental instrument for every nation's functioning. It contains provisions of basic values, the operational structure of the government, political responsibility, powers, the method of electing leaders, the decision making process, the citizens' rights and freedoms, citizenship criteria and rules, appeal mechanisms for members, the means of resolving conflicts and the means by which it can be amended. The following are matters proposed for negotiation. These matters are to be incorporated into the bands constitution which will provide the parameters of the Miawpukek Band's self-government.

C. PROPOSED MATTERS FOR NEGOTATION

1.0 STATUS AND CAPACITY

The Miawpukek Band proposes to negotiate the legal capacity of a natural person including the ability to:
- enter into contracts or agreements
- acquire and hold property or any interest therein;
- sell or otherwise dispose of property or any interest therein;
- borrow money, lend money and guarantee loans;
- sue or be sued;
- form corporations;
- do such other things that are conducive to the nature of it's rights.

2.0 STRUCTURE OF GOVERNMENT

2.1 INSTITUTIONS OF GOVERNMENT

The Miawpukek Band proposes a representative form of government. The executive, judicial and legislative powers of the government will be defined in the constitution and/or enabling legislation which will allow for collective and individual rights and to be consistent with the Charter of Rights and Freedoms. The constitution will set out the powers of each branch of government and the areas of jurisdiction of each government institution. The constitution which will be in writing may:
- to establish the composition of the governing bodies, the terms of office and tenure, election procedures, appointment and dismissal of members to/from governing bodies;
- establish the procedures and processes to be followed by the governing body in exercising its powers and duties;
- define the broad parameters of legislative powers;
• provide a system of financial accountability by the Miawpukek Band
• include the membership code; and
• set out the amending powers of the constitution.

The Miawpukek Band will confer, on the elected chief and council, the power to make by-laws for the effective and efficient governance of the community. Band by-laws will be drafted establishing administrative bodies necessary for carrying out the responsibilities and requirements of the band government. Individual recourse to band government decisions would be to an appropriate appeal mechanism. The second level of appeal would be either an elder’s council or community council to establish for that purpose. This council would consider the merits of each case and make representation to the elected band council.

2.2 PROCEDURES FOR ELECTIONS

Proposal:

The band proposes to be governed by a duly elected chief and council. The chief will be elected by a majority of the electorate for a two-year term or more as stated in election regulations and procedures which will be set out in the band constitution. The band constitution will also provide for the recognition of the office of traditional Newfoundland chief which will work in conjunction with the elected chief and council of the community to obtain the goals and objectives of the Miawpukek Band as it relates to community programs and services and cultural, spiritual and aboriginal rights/title issues.

3.0 MEMBERSHIP

Proposal:

The band proposes to determine its own membership which will be outlined in a membership code section of the band constitution. Membership will be based on kinship and relationship ties to the Miawpukek Band.

4.0 MANAGEMENT OF LANDS AND RESOURCES

4.1 LAND TITLE AND MANAGEMENT

Proposal:

The Miawpukek Band proposes that title to the reserve lands remain with the Crown. The band wishes the federal government to retain a role in land management,
however the legislative powers of the band council will include the power to enact laws regarding the use, management and administration of lands and resources. The band shall maintain a land registry.

4.2 NON-RENEWABLE RESOURCES.

Proposal:

The Miawpukek Band proposes to delegate to the band council the power to make laws regarding the disposition and control of all natural resources including the granting of permits and removal of minerals from band lands.

4.3 RENEWABLE RESOURCES

Proposal:

The Miawpukek Band proposes to assume control over all renewable resources on it's lands. This will include the right to enact and enforce band by-laws respecting fishing and authority over the beds of streams, rivers/lakes, fronting on band lands. It will also include control over hunting on reserve lands. Moreover, the Miawpukek Band proposes to adopt hunting and land use by-laws which will be applicable to band members and the activity on lands in which the Miawpukek Mi’kmaq are found to have existing aboriginal rights.

5.0 FINANCIAL AGREEMENTS

Proposal:

It is proposed that the Miawpukek Band, through its band council, will be solely responsible for the collection, control and management of both band revenue and capital monies. Financial accountability to the Government of Canada will continue. However, primary accountability will be to band membership as it relates to community programs and services. The band proposes that the transfer of funds be governed through Parliament’s right to give public funds with limited accountability, reserving only the right to specify how such transfers are to be made. No detailed agreement, reporting or audit would be required, only assurance that the grant will go to whom it was intended.
6.0 IMPLEMENTATION

An implementation plan will have to form part of the self-government arrangements. This will be discussed during negotiations.

7.0 APPLICATION OF THE INDIAN ACT

Proposal:

Further application of the Indian Act will be determined during the negotiations process. Pursuant to these negotiations, certain sections of the Indian Act will be replaced by the Miawpukek Band self-government Legislation/Constitution.

Existing Situation:

Almost all sections of the Indian Act currently apply to the Miawpukek Band.

8.0 EDUCATION

Proposal:

The Miawpukek Band Constitution/Legislation will delineate the authority of the Miawpukek Band to operate and run an all grade school at Miawpukek. Furthermore, the constitution/legislation will provide for culturally sensitive school which provides the same program curriculum as existing schools within the province of Newfoundland.

Existing Situation

Presently a bilateral agreement between the Miawpukek Band and the catholic education authorities enable the Miawpukek band to operate a full grade school at Miawpukek in a culturally sensitive manner.

9.0 BUSINESS

Proposal:

The Miawpukek Indian Band wishes to exercise legislative control of business activities on reserve.
10.0 ENVIRONMENT

Proposal:

The Miawpukek Band proposes to assume authority on-reserve to control environmental protection of land, water and air and to develop an integrated co-management program on adjacent lands. Land use planning and management, environmental assessments, waste management, air and water pollution are some of the topics which the band would like to see addressed.

11.0 HEALTH

The Miawpukek Band will incorporate authority over health within the comprehensive self-government agreement.

Current Situation

In 1991 the Miawpukek Band entered into a health transfer agreement with Health and Welfare Canada. This agreement enables the band to deliver a measure of community health related programs and services. These programs and services will be incorporated within the health authority that is accorded to the Miawpukek Band as part of the negotiations.

12.0 CHILD WELFARE

Proposal:

The Miawpukek Band will assume the authority over child welfare and family matters within its constitutional and legislative framework.

Current Situation

The Miawpukek Band currently delivers child and family services by virtue of two bilateral agreements with the province of Newfoundland. The Miawpukek Band proposes to incorporate into the self-government agreement the programs and provisions in around this bilateral agreement along with amendments to be determined.
12.1 BAND POLICING

The Miawpukek Band will have jurisdiction to implement and put in place a band police force who's authority is derived from the Miawpukek Band through its constitution/legislation. The police force will assume all policing functions on reserve and designated land including but not limited to all summary offense matters and indictable offense matters under the criminal code as well as jurisdiction to enforce relevant Provincial laws.

Current Situation

The Miawpukek Police are yearly appointed under sections 7(1)(D) and 7(1)(C) as Constables under the RCMP Act. The Miawpukek Police presently enforce band by-laws, enforces summary offenses under the Criminal Code and assists local RCMP in criminal matters.

12.2 JUSTICE SYSTEM

Proposal:

The Miawpukek Band Council is proposing to negotiate with the Department of Justice in regard in implementing a community justice program. The program may involve a diversion program which will provide a community based justice system whereby community justices gives sentences to band members charged with certain summary offenses. Another option may be a community magistrate system which will address by-laws and certain summary offenses.

12.3 OTHER ITEMS

Invariably the negotiation process will identify and delineate other items the Miawpukek Band wishes to include in a self-government agreement.
FRAMEWORK DISCUSSION-MIAWPUKEK BAND

A. Purpose

This discussion paper presents the major elements that the Miawpukek Band council wish to negotiate in relation to its self-government goals and objectives. These elements and the position relating to each element are the result of ongoing discussions by chief and council and consultation with the band membership. The elements delineated in this paper represent some of the elements the Miawpukek Band wish to include in a comprehensive self-government agreement.

B. BACKGROUND

1.0 COMMUNITY PROFILE

The Miawpukek Band is situated on the South East Coast of Newfoundland. The Miawpukek Band, also known as the Conne River Band, was declared to be a Band for the purposes of the Indian Act on June 28th, 1984 by P.C. 1984 2273. The Samiajij Miawpukek reserve was declared to be a reserve for the purposes of the Indian Act in 1987. The present membership of the Miawpukek Band totals 1800 members with approximately 700 residing on the reserve.

In 1985 the band entered the multi-year funding arrangement which enables the band to deliver a broad range of programs and services to meet the needs and priorities of the community. Accountability under the agreement is primary to the band membership. This multi-year agreement was renewed in 1992 and in 1997. The Miawpukek Band has also entered into a five year Health Transfer arrangement whereby the band obtains funds to deliver a wide range of community health services. The health services are delivered through Conne River Health and Social Services. This department is directly accountable to chief and council. The Miawpukek Band Council, through its two major funding agreements, is responsible for the delivery of a wide range of programs and services. The band has developed a highly efficient management structure and system. The Miawpukek Band is considered to be one of the most “self-governing” bands in Atlantic Canada. The present degree of self-government is administratively within DIAND’s devolution policy and sectorial as per various bilateral arrangements. The Miawpukek Band is also pursuing a number of economic development opportunities with the underlying goal of self sufficiency and autonomy being paramount.

2.0 ELEMENTS FOR NEGOTIATIONS

The Miawpukek Band has prepared a draft constitution which encompasses many of the elements presented in this paper (see appendix 2 Miawpukek Band Constitution).
AGENDA FOR MONDAY MARCH 23RD, 1998

CHIEF AND COUNCIL MEETING

1. FINANCIAL CONCERNS
2. ACCOUNTABILITY FOR WHAT YOU DO
3. TRAINING
4. POLICIES AND FOLLOWING POLICIES
5. SUPPORT OF DIRECTOR OF FINANCE
6. COMMUNICATION AND STAFF MEETINGS
7. LONG TERM PLANS, GOALS, AND OBJECTIVES
8. DISASTEROUS FINANCIAL PERFORMANCE
9. RESOLUTION TO ADDRESS THE CONCERNS
10. GO AROUND THE TABLE FOR EVERYONE INPUT
11. WHAT THE NEXT GOING TO BE

more Team Work Building
Counts Self Government
Land Farming
Lead moonlighting
Language

Marc Self Supporting

Marc Self Supporting
APPENDIX 1

1996 REQUEST FOR SELF-GOVERNMENT PROCESS
AS PER MIAWPUKEK BAND’S LAND CLAIMS SUBMISSION
3.0. REQUEST FOR SELF-GOVERNMENT PROCESS

3.1. Background

In addition to the submission of a comprehensive land claim, the Miawpukek Mi'kamawey Mawi'omi is requesting a related self-government negotiation process. Under the Federal Self-Government Policy of 1995, the Federal government indicated it "would be prepared, where the other parties agree, to deal with implementation of the inherent right in combination with other processes, particularly the negotiation of comprehensive land claim settlements" (page 24).

In the context of the Miawpukek Mi'kamawey Mawi'omi, we are interested in negotiating a comprehensive self-government agreement which would involve exclusive and shared jurisdiction over a variety of subject areas. We understand the scope of the 1995 Federal Inherent Rights Policy on matters for negotiations for exclusive and shared jurisdiction. We are particularly interested in establishing a formal negotiation table to discuss the following:

- the governing structures, internal constitution, elections, leadership selection processes for Miawpukek Mi'kamawey Mawi'omi
- membership
- marriage
- adoption and child welfare
- Aboriginal language, culture and religion
- education
- health
- social services
- administration/enforcement of Aboriginal laws, including the establishment of Aboriginal courts or tribunals and the creation of offences of the type normally created by local or regional governments for contravention of their laws
• policing
• property rights, including succession and estates
• land management, including: zoning; service fees; land tenure and access; and expropriation of Aboriginal land by Aboriginal governments for their own public purposes
• natural resources management
• agriculture
• hunting, fishing and trapping on Aboriginal lands
• taxation in respect of direct taxes and property taxes of members
• transfer and management of monies and group assets
• management of public works and infrastructure
• housing
• local transportation
• licensing, regulation and operation of businesses located on Aboriginal lands
• divorce
• labour/training
• administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
• penitentiaries and parole
• environmental protection, assessment and pollution prevention
• fisheries co-management
• migratory birds co-management
• gaming
• emergency preparedness

3.2. Community Infrastructure and Readiness

The Miawpukek Mi'kamawey Mawi'omi have been preparing for such a table for many years. We have already entered into a number of important agreements which mark a transition from Indian Act administration to self-administration. These include the following:

3.2.1. Health Transfer Agreement
The Miawpukek Band was one of the first bands in Atlantic Canada to enter a health transfer agreement with Medical Services Branch of Health Canada. The transfer agreement was signed in 1992 and enables the Band to directly administer health programs on reserve. The five year funding agreement provides for the delivery of public health nursing, clinical nursing, NNADP counseling, and dental therapy to the members of the Band. As well, the Miawpukek Band is one of the few bands in Canada that directly administers its own non-insured health benefits through yearly contribution agreements. The Miawpukek Band has been administering this program successfully since 1986.

3.2.2. Aboriginal Policing Agreement

The Miawpukek Band entered a policing agreement with the RCMP in 1986 which has been renewed yearly. The agreement, which is supported by the provincial government, provides for the re-instatement of four band constables as peace officers under Section 7(1)(d) of the R.C.M.P. Act. Band Constables enforce by-laws and summary offenses as provided in the criminal code and in federal and provincial statutes within the Miawpukek Reserve. They are governed by a Miawpukek Police Board.

3.2.3. Education Agreement

The Miawpukek Band and the Catholic Education Council entered an agreement in 1986 under which the Miawpukek Band assumed total responsibility for the operation, including curriculum development, of the grade school located on reserve. Today the school is staffed by fully trained Mi'kmaq teaching staff. The core programs of the
provincial curriculum are followed, however, the Miawpukek Band has developed a unique approach which incorporates Mi'kmaq language and cultural education into curriculum. Education achievement in Miawpukek is impressive with high rates of academic success and post secondary study.

3.2.4. Economic Development Initiative

Since the 1970’s the Miawpukek Band has been proactive in developing economic development projects with a view to self-sufficiency and developing the standards of living for Band members. Some of the successful business ventures of the Band include a community cable T.V. company, Conne River Outfitters for trophy game hunting tours attracting international sports fishermen, and a building supply store. Since 1990 the Band has been involved in the farming of rainbow trout as a business enterprise. Miawpukek Aquaculture, wholly owned by the Miawpukek Band, produces tons of fish every year for export to the United States and Central Canada. The Miawpukek Band is also the majority share holder in S.C.B. Fisheries which is the largest Aquaculture company in Newfoundland. Aquaculture is hailed as one of the best economic prospects in Newfoundland and it is generally recognized that the Miawpukek Band is at the forefront of this industry.

3.2.5 Alternative Funding Arrangement

The Miawpukek Band entered into a unique funding arrangement in 1986 which provided broad flexibility in the delivery of community programs. The agreement is often referred to as “AFA plus” because it is more flexible than some other agreements.
Under the Agreement, the Miawpukek Band Council is more directly accountable to its membership than to the government of Canada.

The Agreement provides for minimum program requirements and enables the band as much discretion in developing and delivering programs for its members. The agreement has enabled the Miawpukek Band to develop innovative approaches to such programs as post secondary support, social services and on reserve housing. The Miawpukek Band has a track record of financial responsibility and has not been in a deficit position at any time during the duration of the agreement. Moreover, the accountability practice and policy of the band has been developed internally and at present exceeds the accountability requirements of the Flexible Transfer Agreements.

3.2.6. Human Resource Development Arrangements

Since 1992 the Miawpukek Band, in partnership with Human Resources Development Canada, through the National Pathways Program, has provided a variety of human resource initiatives to its members. These include group base training and individual training programs. In October 1996, the Miawpukek Band and Human Resources Development Canada is expected to sign a multi-year post Pathways Agreement in accordance with the Assembly of First Nations National Framework Agreement. The agreement will enable the Miawpukek Band to deliver human resource development programs for its members both on and off reserve.

We would be interested in discussing at a properly established negotiating table with Canada and Newfoundland the resolution of a variety of self-government and land
claims connected issues. The expansion of our current land base and the recognition of our traditional territories, is integral to our interest in self-government discussions.

3.3. Provincial Involvement

We fully appreciate that the Province of Newfoundland would be involved in a self-government negotiation process as their jurisdictions would be impacted and shared jurisdictional arrangements would be part of the process. We envision a common table with Canada, the Province and Miawpukek Mi'kamawey Mawi'omi where self-government and land claims could be jointly negotiated.

In terms of the commencement of proceedings, the self-government negotiation process requires that duly mandated representatives of Aboriginal groups initiate discussions. As the duly mandated representatives of the Miawpukek Mi'kamawey Mawi'omi, the Chief and Council are hereby making this submission to commence such negotiations in connection with land claims negotiations.

3.4. Draft Miawpukek Constitution

Over the past number of years, the constitutional development and internal governance of the Miawpukek Mi'kamawey Mawi'omi has been discussed at full meetings of members of the Band. The development of a community consensus on appropriate law-making body, accountability and the range of government powers, have all been discussions of interest to members of our community. Indeed, a very preliminary draft Constitution was developed and circulated at a meeting of full membership of
Miawpukek Mi'kamawey Mawi'omi. A copy of the draft Constitution is appended to this section of our submission for informational purposes only. Please treat this as a draft as it requires considerable additional work and was prepared to initiate discussions. We have included the draft to indicate that we are serious about self-government discussions and we are already working with members of the Band on these vital issues for our future.
APPENDIX 2

MIAWPUEK BAND CONSTITUTION
MIAWPUKEK BAND CONSTITUTION

Narrative Outline

Preamble. 1

Article I. RIGHTS AND RESPONSIBILITIES. 2

Human Rights; rights and responsibilities of individuals, the family and the community; men and women, children and elders.

Article II. MEMBERSHIP AND NATIONALITY. 3

Membership in Miawpukek Band and relationship between the Band and Mikmaw nation; aims of leadership and neighbourliness.

Article III. LEGISLATIVE AUTHORITY. 5

Authority of the Chief in Council; elections and eligibility for offices; procedure for legislation; initiatives of the people.

Article IV. SECRETARIAT, DIRECTORSHIPS AND GOVERNMENT STRUCTURE. 7

Structure and functions of Directorships, their directors, and committees, duties and tenure of employees; controller and Solicitor.

Article V. FINANCIAL MANAGEMENT. 12

Protection of the property of the Band; accounting, reporting and audit requirements; taxes, investments and borrowing.

Article VI. DISPUTE RESOLUTION. 14

Constitutional questions; private disputes; Provincial court jurisdiction and peace officers.

Article VII. ADOPTION AND AMENDMENT. 16

Procedure for adoption and transition of the Constitution; amendment procedure; reserved rights and powers of the people.
MIAWPUKEK BAND CONSTITUTION

Preamble.

We the Mikmaw people of the Miawpukek Band have agreed by way of a majority referendum vote to the following framework of internal administrative organization for our present needs and collective welfare, reserving to ourselves as we did since time immoral the right to determine further our own economic, social and political institutions, and our relationship with other peoples.
Article I - RIGHTS AND RESPONSIBILITIES OF INDIVIDUALS, FAMILIES AND SOCIETY

1. HUMAN RIGHTS

Although made in different forms and given different places to live, all human beings are creatures of the same creator, and have the same fundamental human rights.

As a signatory to the two International Covenants of Human Rights, the Mikmaw nation has a commitment to respect all of the basic human rights which have been now accepted by other nations. All Mikmaw leaders share this commitment and responsibility.

2. MIKMAW SOCIETY

All Mikmaw people are connected with each other by kinship, language, and history. As one people, Mikmaq share responsibility for one another's freedom, safety, and happiness. As Mikmaq, all share certain rights that come from our common history.

Since the beginning, Mikmaw people have lived and worked together as families and communities. We have come together for our protection; to ensure that no one went hungry if anyone had food; or suffered from cold if anyone had fire; to share love, children, happiness, and knowledge; and to build our churches, homes, and schools.

3. FAMILIES

Everyone is born into a family, and families are the sticks which hold up the wigwam of Mikmaq society. If any are weak the wigwam will fall; it is therefore the particular responsibility of all Mikmaq to ensure the continuity, integrity and development of all Mikmaw families.

Every family has the duty to provide for the welfare of its members, and has the right to share fairly in the resources of society and the community for this purpose. Every member of a family has the right to be treated with dignity, fairness and love. Every family shares responsibility for the guidance and the conduct of its members.

4. INDIVIDUAL RIGHTS

Every Mikmaq has the right to dignity and equal respect as a human person and as a creature of the great spirit.
Every Mikmaq has the right to the greatest possible extent, to be free from want, ignorance, fear, or compulsion.

Every Mikmaq has the right to determine his own path in life and to pursue his own happiness according to his abilities; to offer to his family and children; and to participate fully and freely in any decisions or actions of society which may affect him.

Every Mikmaq has the right, if he has harmed another, to be treated with understanding and fairness, and to be forgiven once he has accepted responsibility for his actions.

Every Mikmaq has the right to understand the Creator in his own way.

5. **INDIVIDUAL RESPONSIBILITIES**

   Every Mikmaq has a responsibility to contribute in his own way to the welfare and happiness of others.

   Every Mikmaq has a responsibility not to cause any harm to the dignity or welfare of others, and if he should nevertheless harm another person, to make him whole again to the best of his ability.

   Every Mikmaq has a responsibility to express his opinion and beliefs truthfully, to share in the government of the community and to resist injustice.

6. **MEN AND WOMEN**

   Although men and women may accept different paths in life, their fundamental rights as Mikmaq are the same. Men should pay particular heed to the wisdom of their mother and grandmothers.

7. **YOUTH AND AGE**

   All Mikmaq must share responsibility for the protection and happiness of children, elders, and all who may be vulnerable or helpless. To youth is owed guidance, support and the greatest possible freedom. To age is owed respect, comfort, and enjoyment of the fruits of their long labours on earth.

   Persons deprived by birth or circumstances of the enjoyment of all their human capabilities are nevertheless fully human, and entitled to love and to the enjoyment of all their fundamental rights as Mikmaq, except to the extent that they may need special guidance from their families and society.
ARTICLE II: MEMBERSHIP IN THE MIAWPUEK BAND, LEADERSHIP AND NATIONALITY

1> MEMBERSHIP:

Membership in the Miawpuek Band is a right and privilege of our common ancestry. It can be surrendered, but cannot be taken away except under the most exceptional circumstances.

Every person who was included on the Miawpuek Band list on the date of official recognition of the Band as a Band for the purposes of the "Indian Act" is a member of the Miawpuek Band. Natural children of original members of the Miawpuek Band become members upon birth.

It is recognized that since our "official recognition" there have been many individuals who are second and third generation children of Band members who have left the community some time ago, that have become registered as Miawpuek Band members by the Department of Indian and Northern Affairs. In the future the Miawpuek Band will have a "Membership Code" in which the community through the Chief and Council will set criteria and procedures for review of applications for membership. Section 2 of this article sets forth the general principles to be included in a membership code.

2> APPLICATIONS FOR MEMBERSHIP:

Everyone of Micmac ancestry and ties of residence and kindship with the Miawpuek Reserve has the right to seek membership into the Miawpuek Band.

Criteria and procedures for the review of applications for membership submitted after the adoption of this constitution may be adopted by Chief and Council in accordance with Article III, section 6 of this constitution.

A Criteria restricting the right to membership must be reasonably based upon degree of ancestry and affiliation with other members of the Band, and allegiance to the constitution and laws of the Band.
3> LEADERSHIP:

Leadership is a matter of personal responsibility, and not a matter of right or of privilege. It is the responsibility of leaders to give guidance, to share hardship and grief and to the extent of their resources and abilities, to help all Micmac people achieve all of their fundamental rights without favor or prejudice.

The aim of Micmaq leaders in all things should be to achieve balance and agreement, and to avoid conflict. They should heed the opinions of every Micmaq and take no personal advantage from the decisions that are made.

4> COLLECTIVE DECISION MAKING:

Decisions must be a shared responsibility and should benefit everyone. They should never be imposed by the few upon the many, or be undertaken without full consideration of the possible consequences for everyone.

5> BAND AND NATION:

As Micmaq people, we are part of the Great Micmaq Nation. All Micmaq communities and their leaders are responsible for cooperating for the benefit of the nation and people as a whole. Constitutions and agreements are made for the purpose of dividing this responsibility and for ensuring efficiency in every aspect of Micmaq government.

The Grand Council represents the whole nation, and holds the treaties we have made with other nations for our safety and self-determination. On relations with other nations and peoples, on Micmaq territorial and treaty rights, and on other matters which involve the Micmaq nation as a whole, it is the responsibility of the Grand Council to speak, but no agreement or settlement can come into force without first being ratified by all the people.

6> NEIGHBOURS AND ALLIES:

To other peoples and nations we offer our friendship and knowledge. All Micmaq, as individuals and communities should contribute to the achievement of the fundamental rights of the other peoples.

All Micmaq people must share in keeping all our commitments to our friends and allies, particularly those with whom we have entered into treaties and act with dignity and without fear or anger, in the force of those who oppose us.
7> **LAND AND RESOURCES:**

All things made by the Great Spirit are gifts, and are to be enjoyed with appreciation, and without waste or greed. No one should take more than is needed for himself and for those who depend upon him; or spoil the land or waters, or inflict unnecessary suffering on any creature.

Chief and Council in accordance with Article III, section 6 of this constitution may impose laws and appoint enforcement officers to provide for proper conservation of the land and its resources.

**ARTICLE III - LEGISLATIVE POWER OF MIAWPUKEK BAND ELECTION PROCESS**

1> **CHIEF AND COUNCIL:**

The legislative power of the Micmac people of the Miawpukek Band as a whole is exercised by the Chief in Council. The Chief in Council may deal with any matter affecting the safety, health, education, and welfare of persons living, working or passing through the reserve. The Chief in Council may adopt rules and regulations, establish administrative or mediatory procedures for resolving disputes.

The Chief and all councillors shall be elected directly by Band members residing or reserve.

2> **TERMS OF OFFICE AND CREDENTIALS:**

The term of office of the Chief and councillors of the Miawpukek Band shall be three years.

No one may stand for election or be elected as Chief or councillor unless he or she is a registered elector who is at least 21 years of age.

No one may stand for election or be elected as Chief or councillors who has been convicted of an indictable offence. However, a person being convicted of an indictable offence may seek permission of the community in assembly to run in the next general election. At the assembly the individual shall explain the circumstances surrounding his/her conviction and present reasons why permission should be given for him/her to run in the next general election.
3> NOMINATIONS AND ELECTIONS:

Anyone qualified to stand for election may be nominated by two registered electors at an assembly held one month before the general election. Ideally, the assembly will be the general assembly for that particular year.

An individual candidate for Chief or Councillor who is not nominated at the assembly and who wish to run in the election can be nominated by a written petition signed by two registered electors. The petition must be filed with the election comptroller at least two days before the actual election day.

Notice of the election day and copy of the ballot shall be distributed at least two weeks in advance of the polling day.

All elections shall be conducted by secret ballot, under the supervision of the election's comptroller of the Band, who shall print and distribute blank ballots at the polling place, collect and count marked ballots in the presence of the candidate, and publish the results of the elections.

By-elections may be called in the event of a resignation of a Chief or councillor. Notice of by-election shall be posted two weeks in advance of actual by-election day. Nominations for candidates can be submitted in petition form with signatures of two electors, to the election comptroller at least two days before the day of the by-election.

All elections shall be conducted by secret ballot, under the supervision of elections comptroller of the Band, who shall print and distribute blank ballots at the polling place, collect and count marked ballots in presence of candidates or their representative, and publish the results of all elections.

Every member of the Miawpukek Band who is 18 years of age or older and resides on the Samajej Miawpukek Reserve is entitled to vote in elections. Entitlement to vote must be established to the satisfaction of the comptroller at least one week prior to any election. The Band membership clerk shall publish a list of eligible voters. Proxy ballots shall only be allowed by post-secondary students and peoples away from the reserve for medical reasons. Proxy ballots shall be available to band members one week before the general elections.

4> SELECTION OF THE CHIEF AND COUNCIL:

The candidate for Chief who receives the greatest number of votes shall be elected. Six councillor candidates receiving the most votes shall be elected councillors.
5> RESPONSIBILITIES OF THE CHIEF:

The Chief presides over all meetings and official activities of the Miawpukek Band Council and speaks for the Miawpukek Band Council, on the Council's direction, at all meetings with the heads of other governments.

The daily work of the Band Council will be supervised by the Chief, who may share this responsibility from time to time with the councillors. The Chief is also responsible for co-ordination with the secretariat and must personally approve and sign all contracts, payments, and any other papers of debt or obligation in the name of the Miawpukek Band.

6> MEETINGS OF THE COUNCIL:

The Miawpukek Band Council shall meet at least twice monthly, and by adjournment as often as it considers necessary. Reasonable advance notice of the time and purpose of each meeting must be published and posted at the Miawpukek Band Council Hall. Minutes of the regularly scheduled meetings shall be made available to Band members.

ARTICLE IV. THE SECRETARIATE, DIRECTORSHIP, AND GOVERNMENT STRUCTURE OF THE MIAWPUKEK BAND.

1. SECRETARIAT

All decisions and directions of the Chief and Council will be carried out by the secretariat. This includes responsibilities assumed by the Miawpukek Band under funding agreements and other contractual arrangements with other governments.

The secretariat consist of the Chief, the financial comptroller and the Solicitor General.

The Chief of the Miawpuke Band is the administrative, chair of the secretariat.

2> DIRECTORSHIPS:


Each Director is under the supervision of Chief and Council, however they enjoys independent day to day operations. The Miawpukek Band shall defend and indemnify directorships for actions taken in conformity with this constitution and decisions of the Chief and Council.
Each directorship is administered by a Director, hired by the Band Council and removable only for cause or contract expiration. The directors are responsible for recruitment, promotion, and dismissal of employees in accordance with policies and procedures adopted by the Chief and Council. In cases where a committee is in place, (Health & Education) the policies and procedures of the committee ratified by Council will prevail.

3> COMMITTEES:

In the field of Education and Health & Social Services, the committees shall act in a general advisory capacity. The board shall review day to day operations and make recommendations that have the effect of improving the service to the community. The board shall also establish its own personal policies and other operations policies and procedures.

The committees shall have a maximum of six members with three elected in assembly and three appointed by Chief in Council. The appointees shall consist of individuals whom the Chief and Council feel are committed to improved Health and Education services in the community. Each committee shall form its own internal rules for governing. Honoraria shall be paid for meetings. The terms for each member shall be a period of two years.

4> FINANCIAL COMPTROLLER:

The financial comptroller, more commonly known as the Director of Finance, shall be responsible for supervising the property records, accounts and contracts of the Miawpukek Band Council, and providing annual reports to the Council and people of the Band.

The comptroller shall also be responsible for the effective operation of the Band's payroll office and for assisting Chief and Council, and the directors in efficient budgeting and money management.

Moreover, the comptroller by nature of article IV, section 1, shall carry out administrative decisions of Chief in Council.

The comptroller shall be selected by the Chief in Council in accordance with article III, section 6 of this constitution and be removed by Chief in Council only for cause or contract expiration.
9> **EDUCATION:**

The Director of Education in co-operation with the Education committee shall oversee primary, elementary, and high school education offered at the Sent Anneaway. The Director of Education shall also administer the Miawpuke Band's post secondary funding programs. All residents of the Miawpuke Band are eligible to send their children to the Band operated school. Each child is entitled to a culturally sensitive education.

The Education system of the Sent Anneaway shall be dedicated to excellence. Students shall be encouraged to reach a high academic achievement, at the same time the school setting shall be one of promoting micmac language, culture and history.

10> **FISHERIES AND WILDLIFE:**

The Director of Fisheries and Wildlife shall be responsible for Salmon Enhancement, the Native Food Fisheries, Aquaculture and Aboriginal Hunting Rights as it relates to conservation.

Conservation of our native fish stocks, primarily the Salmon stock, is a major mandate of the Directorship.

Efficient operation and management of the Aquaculture project shall also be a duty of the Director of Fisheries and Wildlife.

In conjunction with the Band secretariat and the keptings of the Grand Council, the Director of Fisheries and Wildlife shall endeavour to encourage, support, and inform band members as it related to aboriginal rights of subsistance (hunting and fishing rights).

11> **HEALTH AND SOCIAL SERVICES:**

The Health and Social Services directorship has its mandate to delivering high quality Health and Social program to the members of the Miawpuke Band residing on reserve.

Conne River Health & Social Services is a directorship established by the Council of the Conne river micmacs to address the health and social needs of the residents of the reserve in a manner that teaches individual self reliance, strengthens families and promotes community values of mutual support, sharing and togetherness.
5. SOLICITOR GENERAL:

The Solicitor General of the Miawpukèk Band shall advise the Chief and Council and directors in legal matters and represent the Miawpukèk Band in legal proceedings at the request of the Chief in Council. The Solicitor General in accordance with article IV, section 1 shall carry out decisions and directions of Chief in Council. The Solicitor General may also act on behalf of Band members in civil or criminal matters as directed by the Chief in Council.

The Solicitor General shall be an attorney in good standing, retained by Chief in Council in accordance with article III, section 6 of this constitution. The contract of retainer shall be renewed every year.

6. ECONOMIC DEVELOPMENT:

The major goal of the Economic Development directorships of the Miawpukèk Band is to (1) establish successful businesses which will become self-sustaining (not dependent on government funding), and (2) help assist private individuals to do the same.

The Director of Economic Development shall oversee the functioning of all the band owned businesses under his/her department. The Director shall work towards efficient cost-effective operation of each business. The Director also will be responsible for identifying and bringing to chief in Council's attention any business opportunities which he/she may feel to be viable, and to follow through any initiative in the business area.

7. PUBLIC WORKS:

The Public Works director shall be responsible for maintenance and the protection of the life of non-housing assets (public buildings, equipment and utilities, roads, bridges, and walkways under the bands jurisdiction. The Public Works director shall also act as a fire chief who will oversee the efficient operation of the band owned fire department.

8. CAPITAL WORKS:

The Director of Capital Works shall oversee all capital (construction) projects sponsored by the Miawpukèk Band Council. The Director shall ensure that construction is at the standard desired by Chief in Council. The Director shall be responsible for material purchase and orders. The Director of Capital Works shall also act as the band's primary liaison with engineering and architectural firms.
- The Director, in co-operation with the Health & Social Services committee, with support from Health & Welfare is accountable to the Conne River Indian Band Council and is responsible for taking steps to implement the annual and quarterly objectives approved by Chief and Council;

- The Director is responsible for managing the day-to-day operation of the Community Health Programs, Social Services Program, and all staff under his/her supervision.

- The Director is accountable for the relative finances of Conne River including developing annual budget, preparing monthly statements of expenditures, managing funds against budget allocations.

- The Director is responsible for working with Chief and Council to develop program proposals and funding submissions to address identified needs as it relates to his/her particular directorship.

- The Director recommends to Chief and council any changes necessary in the annual plans as the year progresses, and points out the human resource and financial implications of any changes.

11. RIGHTS AND PRIVILEGES OF BAND EMPLOYEES

Policies and procedures governing aspects of employment such as dismissal, discipline, sick time, etc shall be governed by the Band personal policy. (attached appendix A) In the case of education and Health and Social Services the personal policies of the respective committee shall prevail (appendix B & C).

In the case of the Miawpuket Band Police Department the rules and procedures as set out in the Miawpuket Band Police Act shall prevail.

12. GRAND COUNCIL

As a member of the Great Mikmaq Nation and as the District of Tagamkuk the Miawpuket Band pledges its continued support and allegiance to the grand council.

The Miawpuket Band's allegiance to the Grand Council continues in the form of the office of the Keptins. The members of the Miawpuket Band who are keptins of the Grand Council shall receive support and encouragement from Chief and Council in their continued activities.
The Grand council holds and protects our treaties with the non-native governments. The treaties protect our right to self-government and our right to hunt and fish for food. In relation to the treaties, the Grand Council speaks for all of its members. As such, the kepins of the Miawpuek Band have a mandate to foster and protect the micmac language, culture, spiritualism and traditions. The kepins in co-operation with the Chief in Council and the Solicitor General shall work towards recognition and affirmation of the Miawpuek Band's right to hunt for substance. Co-operation shall also be exercised in the area of conservation.

The Chief in Council shall support and assist the office of the kepins in hosting and preparing activities that have the result of furthering the cause of the Miawpuek Band of micmacs in the areas of language, spiritualism, culture and tradition, and aboriginal rights and land claims.

The office of the kepins shall only speak on the issue of Aboriginal and treaty rights as it relates to (1) Grand Council views as a whole (2) Miawpuek Band views as represented by Chief in Council.

**ARTICLE V FINANCIAL MANAGEMENT, PROPERTY AND ACCOUNTING**

1. **PROPERTY OF THE BAND:**

   This article applies to all property and funds which may be owned, controlled, received or used by the Miawpuek Band, its Chief, Council, Secretariat, or Directorships.

   The handling and management of the property of the Band is a public trust for which the officers and employees of the Band are strictly and personally accountable to Band and to the people. No property of the Band may be expended, used, or disposed of except in accordance with a budget adopted in accordance with section 2 of this Article.

2. **BUDGET CYCLE:**

   Each year, the Directors shall prepare a proposed budget for the Band. Proposed expenditures must be identified by specific function and object, and anticipated revenues by source and conditions. The proposed budget must be published and made available to the members of the Band at least one month after its adoption.
The Chief shall present the proposed budget to the Council for review and adoption at one of its regular monthly meetings. The budget as adopted shall be the basis upon which the Chief and Secretariat propose and negotiate Funding Agreements or any other external financial arrangements.

Once adopted, the budget shall not be amended except as may be deemed necessary, with the approval of the Council to conform to the results of external financial negotiations or other internal factors.

Any funds left remaining at the conclusion of a fiscal year may be carried over to the next budget for like purposes, as the Chief in Council deems appropriate, notwithstanding funding obligations. Chief and Council may form a budget control committee whose function would be to monitor monthly statement to ensure expenditures remain within budget and to recommend actions to address budget concerns.

3. ENTERPRISE INCOME:

The Chief in Council may invest the property of the Band in interest-bearing securities, or to obtain an equity interest in business enterprises, in accordance with an approved budget. The income earned from such investments may be expended as deemed by the Chief in Council.

The Chief in Council may authorize investments in business enterprises controlled by one or more of members of the Band, as a means of stimulating initiative and attracting private funds to the Reserve. Such investments may be made at less than current commercial rates of return on lending, provided that they afford a reasonable promise of repayment, and are made available equally to all qualified and capable members of the Band.

Where the Miawpukek Band obtains a controlling interest in a business enterprise, regardless of its character or location, the management and voting of the Band's shares shall be entrusted to the Director of Economic Development who shall vote in a manner representing Council's direction.

4. BORROWING:

The Chief in Council may authorize the borrowing of money at competitive rates of interest, to finance the acquisition of real property of equipment needed for community purposes in accordance with an approved budget.
Only the property to be acquired with borrowed funds may be offered as collateral of security for repayment. In no case may the Band agree to limit, suspend or mortgage any of its authority rights or responsibilities as conditions of borrowing.

5. **AUDITS AND REPORTS:**

The finance comptroller of the Miawpukem Band shall make an annual report to the Chief in Council and the people, of all budget receipts and expenditures for the previous fiscal year, together with a statement and evaluation of the property of the Band.

Any member of the Miawpukem Band may demand an audit of any function or activity of the Band, which shall be conducted at his own expenses under the direction of the comptroller. Upon written petition of 50 per cent of the eligible voters of the Band, the comptroller shall conduct an audit at the expense of the Band.

**Article VI. RESOLUTION OF DISPUTES, PUBLIC AND PRIVATE**

1. **PURPOSE**

The purpose of this article is to ensure as far as possible that the provisions of this Constitution are respected, and that no injustice done by the officers, employees, or members of the Miawpukem Band, or to any of them, remains unredressed.

2. **ADMINISTRATIVE APPEALS**

Any decision or action taken by the Secretariat, or by any director, may be appealed to the Chief in Council, which shall provide both the applicant and the appropriate director or other representative of the secretariat sufficient opportunity to be heard and to place their views and relevant evidence on record.

The Chief in Council will provide for the establishment of a Grievance Committee for the review of appeals before they are submitted to the Chief in Council. The court shall consist of at least three persons who are band members.

Decisions on administrative appeals shall be made in writing by the Chief after consultation with the Council and Grievance committee, and are final, except to the extent that section 3 of this Article may apply.

3. **CONSTITUTIONAL QUESTIONS**

In the event of a dispute concerning the compatibility with this constitution of decisions or actions of the Chief, Council, Secretariat, or any officers or employees of the Miawpukem Band, the questions of constitutionality may be referred by any member of
OPTION A

the Band to the Sante' Mawwi'omi (Grand Council), which shall return its opinion to the Chief of the Miawpukek Band at a public assembly of the members of the Band convened for this purpose. The Chief shall ensure that prompt measures are taken to conform to the opinion of the Grand Council.

The recommendations of the Grievance Committee shall be given serious consideration.

The Grievance Committee shall act in an ombudsman like fashion. It shall evaluate the positions of the appealer, the secretariat, or directorship and make findings or recommendations. The findings and recommendations shall weigh heavily in Councils final decision.

OPTION B

The courts of the Province of Newfoundland and Labrador, in accordance with section 5 of this Article. The final decision of the Provincial courts, after any judicial appeals, will be final and binding upon the officers and employees of the Band.

4. PRIVATE DISPUTES

Private disputes among the members of the Miawpukek Band, or between members of the Band and other persons, may be brought to the Chief in Council for mediation and settlement; or may, if all parties agree, be taken instead to the courts of the Province of Newfoundland and Labrador for final adjudication.

The Chief in Council may provide rules and regulations for the settlement of private disputes by the Justice of the Peace of the Band, or by traditional mediators agreed upon by the parties.

5. JURISDICTION OF FOREIGN COURTS

The Chief in council of the Miawpukek Band may enforce the laws and decision of the Band by applications to the courts of the Province of Newfoundland and Labrador.

The consent given by this Constitution to the jurisdiction of the courts of the Province of Newfoundland and Labrador over the Band itself, or its officers or employees in their official capacities are parties, shall extend only to declaratory and equitable actions for the performance of their duties under this Constitution and the laws, decisions and contracts of the Band.
No judgement of a court of Canada, or any of the Provinces of Canada may deprive the Miawpukek Band of any property which it holds for the use and benefit of the members of the Band.

6. PEACE OFFICERS AND BAND POLICE DEPARTMENT

The Chief in Council shall employ capable persons of high moral standing to serve as peace officers to maintain public safety and good order on the Samaijij Miawpukek Reserve, and to enforce the laws and decisions of the Chief in Council relating to public safety and order.

The Chief in Council may adopt rules for the use of force by peace officers, and temporary restraint or detention of persons engaged in violence, in accordance with Article III, section 6 of this constitution.

7. POLICE COMMISSION

A Police Commission shall be formed to govern the conduct of the Miawpukek Police Department. The Police Commission shall adopt its own police act which will include a code of conduct and rules and regulations governing misconduct and disciplinary measures. The commission shall be comprised of five members, with three band members and two non-band members versed in the operation of the Police Commission.

ARTICLE VII ADOPTION AND AMENDMENT OF THE CONSTITUTION, GENERAL PROVISIONS

1. ADOPTION

This Constitution shall be adopted and enter into force once it has been affirmed by 50 percent of the electors of the Miawpukek Band, voting in a referendum on the issue.

2. PROPOSED AMENDMENTS

Amendments to this Constitution may be proposed at any time by written petition of 50% of the eligible voters of the Miawpukek Band.

Upon receipt of a petition for amendment, the election comptroller of the Band shall publish, distribute and post it for at least one month, after which the Chief shall convene a special assembly of the members of the Band to consider housing a referendum to address the petition.

An amendment to this constitution shall be adopted and enter into force after it has either been approved by consensus majority of the eligible voters of the Band in referendum.
3. **SUSPENSION**

The will of the people is the supreme authority of the Band, and the people retain the right to determine the institution of Band self-government and administration.

As an extraordinary measure the members of the Band may, at a public assembly or by way of referendum specially convened for this purpose, demand the suspension of this constitution by a recorded vote of a majority of the eligible voters of the Band.

4. **FORM OF OFFICIAL ACTS**

The nation language of the Miawpukek Band is Mikmaq and it is the right of every Mikmaq to use his mother tongue in official transactions and business. The working language for all official acts and records is English, and the English version of documents shall be authoritative.

5. **SCOPE AND APPLICATION**

Unless otherwise expressly provided, acts and decision of the Chief in council of the Miawpukek Band shall apply to every member of the Band, every other person while they are present or doing business in the Samajij Miawpuke Reserve, all property of the Band, and all property located within the reserve or which is under the control of members of the Band.

6. **OTHER LAWS APPLICABLE**

The laws of Canada and of the Province of Newfoundland and Labrador are applicable to the Miawpukek Band and Reserve only to the extent that they are consistent with the aboriginal and treaty rights of the Mikmaq people, and with any legislation of Canada which may be enacted at the request of the Miawpukek Band for the governance of the reserve or the settlement of claims.

Under no circumstances whatsoever may the Chief in Council agree to any greater application of the laws of Canada, or of the Province, or to any limitation of the inherent rights of the Band or Mikmaq people. This shall not prevent them from entering into contracts with other governments for the co-operative management of human services or resources, provided that such contracts are for a term of five years or less, or expressly terminable at the pleasure of the Band.
7. **RESERVATIONS**

Nothing in this Constitution may be interpreted as limiting in any way the aboriginal rights of the Miawpukek Band or of the Mikmaw people as a whole, or as relinquishing any of their rights under the terms of any treaty with other nations.
APPENDIX 4

INDICATION OF PROVINCIAL PARTICIPATION
8 January 1993

Chief Geraldine Kelly
Council of the Conne River Micmacs
Conne River, Micmac Territory, Newfoundland
A0H 1J0

Dear Chief Kelly:

Thank you for your recent letter. (Although it was dated 9 December, I didn't receive it until the 22nd). I've read it carefully.

It would be useful, I suggest, to respond to one or two of your statements before I provide you with the outline of our "official position" in regard to Aboriginal Policing which you seek. I say that because there appears to be some misunderstanding. I must first of all take issue with the assertion that my colleagues and I, in the Government of Newfoundland and Labrador, subscribe to "the notion that aboriginal people are ordinary citizens and possess no different or special rights." (The words are yours, of course). Our position is directly contrary to this. We acknowledge readily that the aboriginal peoples of Canada have different or special rights. But - and it is a very important qualification, in this context - we also believe that the Constitution obliges the Parliament of Canada to make such legislative provision and to provide such financial assistance as may be necessary to enable the aboriginal peoples of our country to exercise those rights. To put the matter another way, the Government of Newfoundland and Labrador believe that we are obliged to provide an aboriginal person with the same level and quality of service as we provide to any other resident of the province in like circumstances, and that it is the responsibility of the Government of Canada to provide any enhancement of those services.

That said, I must also take issue with your statement that the Government of Newfoundland and Labrador agreed to provide financial assistance to help to defray the cost of self-government, as part of the
Charlottetown Accord. This statement is incorrect. The Government of Newfoundland and Labrador specifically dissented on this point. Our dissent was founded on the principle I have just enunciated. I trust that you'll acknowledge, then, that your assertion that we are being "highly hypocritical" is unfounded and unwarranted.

Let me now turn to the more positive side of the matter. My colleagues and I support the concept of self-government, and we are prepared to work with you and the Council of Conne River to achieve this goal. We've already taken part with you in an initiative to improve the police services available to the people who live in Conne River through the RCMP. We are prepared to consider further initiatives, provided only that funds for these initiatives are made available through the Government of Canada.

I hope that this statement will meet you needs, but I'd be happy to hear from you if you need anything further of me, whether in connection with this or with any other matter. Please do not hesitate to get in touch with me again. I'd be happy to hear from you at any time.

With every best wish,

Sincerely yours,

[Signature]
APPENDIX 3

RESOLUTIONS EVIDENCING COMMUNITY SUPPORT
SPECIAL COUNCIL RESOLUTION

WHEREAS the Miawpukek Band at Assembly in 1986 signaled its strong support in agreement with the Miawpukek Band Council pursuing formal self-government.

AND WHEREAS subsequent assemblies on a yearly basis continue to reaffirm this continue for self-government process for the Miawpukek Band.

THEREFORE, be it resolved that Miawpukek Band Council support the advancement of self-government under the current inherent right to self-government policy of the Federal Government.

Be it further resolved that the Miawpukek Band Council enter a tripartite negotiations with both Federal and Provincial Governments to further advance its self-government goals and aspirations.

Signed this 12th day of June, 1997.

Voting in Favour:

Rembert Jeddore, Acting Chief
Mardina Joe, Councilor
Shayne McDonald, Councilor
Brian Kelly, Councilor
Gerard Joe, Councilor
Mary Stride, Councilor
LARRY DREW MOVED THAT:

WHEREAS the MicMac people of Conne River have reviewed and discussed the Self-Government negotiations proposal at the Annual Meeting of the Band, November 28, 1986.

BE IT HEREBY RESOLVED that the Self-Government negotiations proposal be accepted as part of the Governing statutes, policies, and procedures of the Government of the MicMac people of Conne River.

ANTHONY JEDDORE SECONDED.

ALL IN FAVOUR.

MOTION CARRIED.
ANNUAL ASSEMBLY OF
THE MIAWPUKEK BAND
AUGUST 11/12/13, 1997

SUPPORT AND DIRECTION TO MIAWPUKEK GOVERNMENT
TO CONTINUE THE PRESENT WORK ON
LAND RIGHTS & SELF-GOVERNMENT

WHEREAS:

Our government continues to assert our Land Rights and our Right to Self Determination (i.e. Self Government)

WHEREAS:

Our government in assembly, signal our continued support of our Land Rights assertion and our Self Determination.

BE IT RESOLVED:

That our Nation in assembly, fully support and endorse the efforts of our Government in advancing our Land Rights and Self Determination, through negotiations with the two levels of government and through the courts.

All in favour
0 Against
0 Abstentions

This is to certify that the above resolution was duly passed at an Annual Assembly of the Miawpukek Band held August 11, 12 & 13, 1997.

[Signature]
Alma Benoit
Council Assistant
Honourable Ronald A. Irwin
Minister of Indian Affairs
And Northern Development
Ottawa, Ontario
KIA OH4

Re: Miawpukek Mi'kamawey Mawio'mi Land Claim

Dear Mr. Minister,

I am writing to express the support of the Sante Mawio'mi (Mi'kmaq Grand Council) for the Miawpukek land claim and self government submission.

The Miawpukek Mi'kmaq are our relatives of the far shore (Ktaqamakuk) and their land has been part of Mi'kmaq territory for as long as memory. Their land claim like the claim of the Nova Scotia Mi'kmaq is long over due.

The Miawpukek Mi'kmaq have our support and I encourage you to accept their new document and receive their claim in friendship and good faith.

Sincerely,

Grand Chief Ben Sylliboy