Miawpukek First Nation

Governance Structure
Self-Governance Workshop

May 14, 2002

Purpose of Workshop
The purpose of this workshop is to facilitate your input into the design of the Miawpukek governance structure by:
- Reviewing the basic components of a governance model
- Examining existing First Nation and Aboriginal governance models
- Facilitating your input and designing options for the Miawpukek governance model

Workshop Agenda

Background

- In 2000, Miawpukek First Nation entered a unique, community-based, exploratory process to determine and assess the implications and challenges of exercising its Inherent Right to Self-Governance
- Chief and Council directed that this exploration be community-based and community-driven.

Background

- Through the work of the Governance facilitator and a series of community workshops, Miawpukek First Nation has explored the basic tenants of self-governance
- During the governance workshops participants created options for administrative organization but did not focus on the governing structure itself
Background

Self-Governance Perspectives

What is Governance?

"The exercise of political, economic, & administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes & institutions through which citizens and groups articulate their interests, mediate their differences & exercise their legal rights and obligations."

United Nations

Inherent Right

- The inherent right of self-government is based on the fact that Aboriginal peoples governed themselves before European contact and never gave up the right to do so.
- The word "inherent" means that Aboriginal peoples have always had this right.
- It is regarded as a pre-existing right, not a right granted by other governments.

Core Governance Model

Self-Governance Negotiations

- In negotiating self-governance, the following issues will be addressed:
  - Governance structures & processes
  - First Nation constitutions
  - Inter-governmental relations
  - Public administration
  - Membership
  - Protection of Aboriginal & Treaty Rights
  - Fiscal administration
  - Harmonization (ensuring laws of First Nations, Canada, and Newfoundland work together effectively)
Self-Governance

- Self-governance means moving out from under the jurisdiction of the Indian Act and the Band Council provisions which now dictate how Mi'wpukek First Nation is governed.
- Self-governance means that Mi'wpukek First Nation will be primarily subject to Mi'wpukek laws – not federal or provincial laws.

Self-Governance

- Determining the governing structure which will draft, approve, administer and enforce Mi'wpukek laws is a key objective of this workshop.
- In designing this structure, consideration will have to be given to:
  - Who should be involved?
  - How will they be organized?
  - What will their roles and responsibilities be?
  - How will they be accountable to the people?

Branches of Government

- Generally speaking, governments tend to be made up of the following branches of government:
  - Legislative branch - makes the laws
  - Judicial branch - the courts which judge or interpret the laws in cases of disagreement
  - Executive branch - enforces or executes the laws

Checks & Balances

- A system of limits imposed on all branches of a government by vesting in each branch the right to amend or void those acts of another that fall within its purview.
- Designed to avoid giving any one person or group absolute control in government.
- Enables establishment of a strong central government, while insuring a balance of power.

Principles of Governance

- Constitutions
- Accountability
  - Aboriginal governments & institutions should be fully accountable to their members or clients for all decisions made and actions taken in the exercise of their jurisdiction authority (Canada's Federal Policy Guide).
- Transparency
  - Clear and open processes for law-making and for decision-making in the governance and administration of Mi'wpukek First Nation

Principles of Governance

- Redress
  - The formal opportunity to challenge decisions of government and to seek amends.
- Leadership Selection
- Application of Charter of Rights & Freedoms
### What is a Constitution?
- A constitution captures the basic principles and laws of a nation, state, or social group.
- It is usually a written document, but it can also be oral.

### Why a Constitution?
- Writing a constitution will help clarify your government's fundamental purposes.
- Outlines the basic government structures and powers.
- Allows citizens and non-citizens to have a better understanding of what your government is all about and how it functions.
- Enables members to understand their rights.
- Provides a structure to ensure there is consistency from one elected term to another.

### Elements of a Constitution
- Each constitution is unique but, there are some common elements:
  - Definitions
  - Principles
  - Responsibilities of Governing Bodies
  - Redress
  - Fundamental Rights
  - Citizenship
  - Ratification
  - Amendment

### Governing Bodies
- Responsibilities of Governing Bodies are outlined in a Constitution including:
  - The different government bodies of the nation
  - Defining their authorities and responsibilities
  - Describing how they interrelate
  - Providing accountability provisions
  - Describing assemblies – frequency, process
  - Outlining decision making
  - Law making and enforcement responsibilities
  - Qualifications for holding office.

### Existing Aboriginal Government Models

### Self-Government Agreements
- A number of First Nations have already negotiated self-government agreements with Canada.
- A summary of some of those agreements:
  - May help you in understanding what others have already accomplished.
  - May also help you to think about what you would like in a Miawpukek government structure.
Sechelt Self-Government

- The Sechelt Band is in British Columbia and concluded a self-government agreement in 1986
- There are three parts to the Sechelt government:
  - Sechelt Indian Band Council
  - Sechelt Indian Government District
  - Sechelt Constitution
- The Government District has jurisdiction over all Sechelt lands including areas occupied by non-Natives.

Sechelt Self-Government

- The District Council functions with similar powers to conventional local government in the province
- The powers of the District Council are delegated from the Band Council and the province.
- A provincially mandated advisory body is in place to ensure all interests (including non-Native) are represented in the District.

Teslin Tlingit First Nation

- The Teslin Tlingit First Nation located in the Yukon, first completed its self-government agreement in 1993
- There are four branches of government that exercise the powers and responsibilities outlined in their Constitution

Teslin Tlingit First Nation

- General Council
  - Exclusive power to enact laws
- Executive Council
  - Administration of Band affairs, including finances
- Elders Council
  - Safeguarding and encouraging cultural, language and other traditions in all decisions
- Judicial Council
  - Administration and development of tribal justice system
- Decisions are made by consensus
- The Councils reflect tradition and culture of clan system
Teslin Tlingit First Nation

Nisga’a Self-Government
- The Nisga’a Nation is located in British Columbia and signed its agreement with Canada in 1999.
- There is a central government of the Nation and four village governments.
- Nisga’a Elders have a distinct role in providing guidance and interpreting traditions and culture to the Nisga’a Government.
- All governments must be elected.
- There must be representation from members living outside the Nisga’a settlement area.

Nisga’a Self-Government

CONFEDERATED TRIBES OF THE GRAND RONDE
- The Tribal Government organization shall consist of:
  - General Council
  - Tribal Council
  - All subordinate boards, committees, officials, employees and organizations chartered or appointed by the Council or any designee thereof.

CONFEDERATED TRIBES OF THE GRAND RONDE
- The Tribal Council is responsible for all legislative, and Executive functions, and those Judicial functions permitted under the Tribal Constitution.
- The Tribal Council shall appoint and employ such subordinate employees, committees and boards as are reasonable and necessary to assist in carrying out its responsibility.

CONFEDERATED TRIBES OF THE GRAND RONDE
- Public Policy and Legislation:
  - The Tribal Council is responsible for carrying out all legislative authority not reserved to the General Council.
  - The Tribal Council shall retain all legislative authority to give voice to public policy and enact laws to carry out the duties of Tribal Government and regulate the affairs of the membership, where appropriate, and any other authority not specifically delegated by Tribal law.
  - The Tribal Council has enacted and shall regularly review and revise as needed, an ordinance to guide the conduct of business and that of its members.
CONFEDERATED TRIBES OF THE GRAND RONDE

Executive:
- The Council shall establish the position of Executive Officer (EO) to carry out the Executive functions of Tribal Government, and shall delegate by ordinance to this position the responsibility to assist the Council in its work as needed, to implement Tribal laws and carry out administrative functions of Tribal Government.
- The EO shall report to and serve at the pleasure of the Tribal Council.

CONFEDERATED TRIBES OF THE GRAND RONDE

Judicial
- Pursuant to the provisions of the Tribal Constitution, the Council has enacted an ordinance to establish a Tribal Court, a position of Chief Judge and such associates and assistants as deemed appropriate.
- The Judge has promulgated rules of pleading and practices and procedures of the Court as provided by such Ordinance.
- The Judge shall regularly review and amend these rules as needed.

CONFEDERATED TRIBES OF THE GRAND RONDE

Policy Advisory
- To allow maximum participation and input from Tribal members in Tribal government, provide for increased Tribal member knowledge of Tribal business and ensure ongoing knowledge of Tribal needs and opportunities, the Council shall appoint such advisory committees for any area of concern where there shall be either temporary or ongoing need of advice to the Council.

CONFEDERATED TRIBES OF THE GRAND RONDE

Policy Advisory
- The Council shall enact a General Committee Ordinance that provides for the chartering and operation of committees.
- Advisory committees shall serve at the pleasure of, and report to, the Council in accordance with their charter.

CONFEDERATED TRIBES OF THE GRAND RONDE

Economic Enterprise
- When deemed appropriate, for the purpose of meeting important Tribal Goals, the Council shall charter, by ordinance, subordinate organization and boards for the purpose of carrying out business development and management activities outside the Tribal Government structure.
- Such boards shall be appointed by, and report to, the Council as provided by their charter.

CONFEDERATED TRIBES OF THE GRAND RONDE

Other Important Purposes
- Other subordinate organizations may be chartered to carry out any functions necessary to accomplish Tribal goals, whenever it is deemed by the Tribal Council the activity to be carried on by an organization is of sufficient importance to require separation from the day-to-day affairs of Tribal Government.
- Subordinate organizations shall be chartered by ordinance and shall report to the Council.
Miawpukek Government

Managerial Approach
- Reorganization and rationalization of government structures and processes
- Decentralization toward greater flexibility in such areas as hiring, rewards and financial control
- An emphasis on output rather than process control
- Separating core functions from executive functions

Managerial Approach
- Managerial approach
  - Focusing on efficiency, effectiveness and economy
- Political approach
  - Focusing on responsiveness, accountability and participation of the public

Political Approach
- The executive branch structure should reflect the values, conflicts, and competing forces to be found in Miawpukek society
- It is an organizational reality that politics is necessarily an element in designing government structure

Organizational Laws
- Law of diminishing control
  - The larger an organization becomes the weaker is the control over its action by those at the top
- Law of counter-control
  - The greater the effort made by a top-level official to control the behavior of subordinate officials, the greater the effort made by these subordinates to evade or counteract such control
- Law of decreasing coordination
  - The larger an organization becomes, the poorer is the coordination among its actions

Current Government
- What features of the current Miawpukek Government Structure are working well?
  - Keep the focus of your discussion on structure and systems not personalities
- Which of these features would you like to see carried forward in a new government structure?
Current Government

- Which features of the current Miawpukek Government Structure could be improved?

- How can these challenges be addressed structurally in a revised government structure?

Representation

- Which segments of Miawpukek society should have formal representation in a new government structure?
  - Clans?
  - Elders?
  - Wards?
  - Etc.

Structure

- Design a governmental organizational structure and be prepared to answer the following about your proposed structure:
  - How have you incorporated the interests of all Miawpukek members?
  - Who makes the laws?
  - What is your system of checks and balances?
  - What, if any, are the traditional components of your model?

Checklist

- Now that you have your model....
  - Does it conclude the basic components of a governance model?
    - Legislative
    - Executive
    - Judicial
  - Does it take into account the concerns and challenges raised by community members as important?

Checklist

- Does model accommodate and reflect community priorities?
- How will laws be created in your model?
- How will laws be enforced?
- How have you built in accountability?
- Is there a fair and reasonable division of powers?
- Are their checks and balances?