Workshop Presentation Slides
Miwapukek First Nation

Community Self-Government Workshop

Public Works
Lands & Environment
Fiscal

Conne River November 21, 23, 2000

Miwapukek First Nation

Purpose of Workshop

- To provide the historical and contemporary information required to assess this initiative in context
- The opportunity to explore the implications of self-governance from political, program and financial perspectives
- The opportunity of providing input and direction to the self-governance process and negotiations

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Agenda

- Sectoral Analysis
  - Public Works
  - Lands & Resources
- Governance Impacts
  - Fiscal
  - Treaty
  - Fiduciary
- Self-Government Process
  - Self-Government Negotiations
  - Miwapukek First Nation Exploratory Self-Government Activities
  - Current Issues in Negotiations

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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

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Jurisdiction

JURISDICTION

Means

"Law Making Authority"
Health & Social Services Challenges
- Continued funding to provide existing services
- Need for more funding for a variety of programs
- Perceptions in the community re: how policies are enforced
- Lack of aboriginal input on policy decisions
- Lack of community knowledge about programs available
- Role of traditional culture in programming is unknown
- Legal issues (liability, insurance, grievance, standards)
- Programs currently under provincial jurisdiction
- Lack of professionals (difficult to attract to the community)
- Role of traditional medicines

Education Governance
- We'll have legislation to make decisions and enforce them
- Reconsider education facilities and infrastructure
- Increased accountability at the band level
- Renegotiate the funding agreement
- Responsibility for the nominal roll will rest with the Band
- Negotiate for new capital and operational resources
- Develop own Education Act
- Develop curriculum including Mi'kmaq culture and language
- How would off-reserve members be included?
- Reassess education needs and work to meet them

Health & Social Services Governance
- Option to opt out of restrictive regulations
- Make guidelines and set standards to meet our needs
- Administer programs at the band level (e.g., NIHB)
- Build community awareness
- Recruit professionals on our own terms
- Option to renegotiate funding agreement
- Opportunities to raise money, share resources, etc.
- Operate some work arrangements through job sharing
- Develop own legislation re. child welfare, NIHB, etc.

Indian Act vs. Inherent Right
- Indian Act Bands operate under authority delegated by the Federal Government
- Creates fiduciary relationship (parent-child) - not a government-to-government relationship
- Canada defines structure, powers, and role of Indian government
- Canada decides who can be an Indian, who can have a Band

Education Challenges
- Lack of space in which to deliver programs
- Lack of qualified personnel
- Few linkages between Band departments
- Need more community and parental involvement
- Few people speaking Mi'kmaq language
- Not enough funding to meet needs
- Unable to meet needs of special needs students.
- Teachers lack cultural and community awareness
- Our children need to know more about Mi'kmaq culture
- Need to incorporate tradition and language into curriculum

Indian Act vs. Inherent Right
- Inherent right to self-government & self-determination never given up by Indian people
- Has never been defined where the inherent right exists only that it exists
- No permission is required to exercise an inherent right
- Negotiations based on inherent right relate to funding required for governance and delivery of programs & services, and harmonization of laws with other governments
**Delegated Jurisdiction**

- Law Making powers delegated from federal or provincial governments by legislation
- Mi'kmaq Kina'matnwey Education Agreement is an example of a delegated jurisdiction agreement

What are the risks of a delegated jurisdiction model? Can you think of some potential advantages?

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**Federal/Provincial Jurisdiction**

- Sections 91 and 92 of the Constitution Act, 1867, set out the parameters of jurisdiction between the federal and provincial governments.
- Section 38 of the Indian Act outlines where provincial authority exists on-reserve.

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**Federal Jurisdiction**

*Constitution Act, 1867*

Sect. 91: Legislative Authority of Parliament of Canada.

91.24. Indians and Lands reserved for Indians

This is an area of exclusive federal authority which cannot be overruled by provincial legislation. The scope of federal authority is very wide and includes matters which would otherwise be in the legislative authority of the provinces. All aboriginal rights are under exclusive federal authority and only the federal government could attempt to extinguish those rights.

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**Self-Government Jurisdiction**

Self-Government must be negotiated on a tripartite basis between the First Nation, federal and provincial governments.

This will facilitate the Inherent Right of First Nations to be acted upon through the recognition of their jurisdiction in areas which are currently under the jurisdiction of either provincial and federal governments.

Precedence of conflicting First Nation, provincial and federal laws will be negotiated during SG deliberations.
Miwakepuke FN

Teslin Tlingit - Council Responsibilities

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.

Nisga'a

Nisga'a central government

Nisga'a Village Government

Nisga'a Village Government

Nisga'a Village Government

Nisga'a Elders

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Teslin Tlingit First Nation

General Council (5 representatives, appointed from each clan)

Executive Council (5 members from the Council)

Elder's Council (members are all people 65 years and older)

Judicial Council (members are the 2 clan leaders)

Royal Commission Models

Three models for Self-Government were put forward by RCAP:

1) the Nation Model (most relevant for Miwakepuke FN)

2) the Public Government Model (e.g., Nunavut)

3) the Community of Interest Model (primarily for Aboriginal people without a land base — e.g., urban Natives, Métis)

Miwakepuke FN

Nisga'a

Under the Nisga'a Constitution, a central government of the Nation and four village governments are established.

The Constitution also includes a role for the Nisga'a elders in providing guidance and interpretation of traditions and culture to the Nisga'a Government.

All governments must be elected, and include representation from those community members living outside the Nisga’a settlement area.

RCAP - Nation Model Characteristics

- The exercise of government powers and authority in a comprehensive range of jurisdictions and units of government

- Internal structure of the Nation government can take on a range of levels, including community, regional or tribal

- An identifiable land base consisting of the nation's own lands and resources and parts of its traditional areas which may be shared with non-Aboriginal governments.

- The structure of powers would be provided in the nation's Constitution and laws, and can be based on traditional structures.
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**Public Works**

Based on the Director's Presentation:
- What are the key challenges facing the delivery of Public Works?
- How might Self-Government impact these challenges?
- How should Public Works be governed?

Describe a model.

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**Governance Impacts**

- Self-Government Funding Issues
  - Governance Incremental Costs
  - Program Costs: Need vs. Formula

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**Lands & Resources**

Based on the Director's Presentation:
- What are the key challenges facing the Lands & Resources Program?
- How might Self-Government impact these challenges?
- How should Lands & Resources be governed?

Describe a model.

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**Governance Impacts**

- Treaty Impacts
  - Non-Derogation
  - Domestication
  - OSR- Paying for Treaty Rights

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**Governance Impacts**

- Fiscal Regime: Current Funding Agreement
  - Unique in Canada
  - Characteristics
    - Block Funding Approach
    - Approved in Estimates - Separate Line Item
    - Broad Standards
    - Security & Flexibility

- Fiduciary Relationship
  - Obligations of Canada to Miawpukek
    - Members
    - Community
  - Non-Application of Indian Act
  - New Relationship
Overall Process Steps

- Exploratory Activities
- Preparatory Activities
- Framework Agreement
- Agreement in Principle
- Final Agreement
- Pre-Implementation
- Implementation

Negotiation Format

- Joint Management Committee to Coordinate Negotiations
- Main Table - Conducts Negotiations
- Working Groups - Develop & Explore Options in Specific Areas
- Technical Groups - Research & Advice to Working Groups and Main Table

Community Consent Process

A Community Consent Process must be designed and implemented to provide each Member with the information that they require to make an Informed Decision.

Federal Approval Process

- Federal Negotiation Team
- Governance Directorate & Justice Case Lawyer
- Federal Caucus Working Group
- Federal Caucus (INAC, DOJ, Finance, PCO, TB)
- Interdepartmental Committee on Self-Government (50 Representatives from Across Federal Gov't)
- Minister
- Cabinet
- Parliament

Scope of Negotiations

- Governance Structures & Processes
- First Nation Constitutions
- Inter-Governmental Relations
- Public Administration
- Membership
- Protection of Aboriginal & Treaty Rights
- Fiscal Administration
- Harmonization - Ensuring Miawpukek Laws work effectively with laws of Canada & Newfoundland

Self-Government Negotiations in Canada

- Comprehensive Claims
  - Self-Government negotiated as part of settlement in territories not subject to Treaty
  - Examples
    - BC Treaty Process
    - Innu Comprehensive Claim
    - Inuit Comprehensive Claim
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Self-Government Negotiations in Canada

- Inherent Right
  - Negotiations pursuant to the exercise of the Inherent Right
  - Sectoral Negotiations - by Jurisdictional areas e.g. Education, Justice, Health
  - Comprehensive - negotiate all jurisdictional areas in one agreement

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Examples of Self-Government Negotiations

- Akwesasne
  - Round Table Approach
  - Early Stages of Negotiations
  - May Involve Canada, United States, Ontario and Quebec

- United Indian Council (Peterborough Area)
  - Originally were part of Community Based Self-Government process which preceded recognition of Inherent Right
  - Have been negotiating almost ten years
  - Moving toward Final Agreement

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Self-Government Negotiations in Canada

- Very few concluded Agreements
- Serious problems in BC Treaty Process
- Manitoba dismantling a Failure
- Some progress in Inuit and Innu
- Comprehensive Claims
- Canada claims that approximately half of all First Nations are in self-government negotiations

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Core Governance Model

- Structures
  - Decisional Power
  - Delegation
  - Single First Nation Issues
  - Aggregation

- Intergovernmental Relations
  - Fiscal Arrangement
  - Disproportion
  - Implementation
  - Programs

Principles / Interests

- Principles
  - Indigenous Self-Government
  - Control of Interest
  - Leadership Selection
  - Charter

- Functions
  - Executive/Professional
  - Program governance
  - Fiscal management
  - Judicial service

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Examples of Self-Government Negotiations

- Nishnawbe Aski Nation
  - Governance & Education Sectorals
  - Frameworks Signed - Preparatory Activities Underway

- Union of Ontario Indians
  - Education & Governance Sectorals
  - AIP Negotiations held for past two years
  - Major issues blocking AIP finalization

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Principles of Governance

- Constitutions
- Accountability
- Transparency
- Redress
- Leadership Selection
- Application of Charter of Rights & Freedoms
Principles of Governance

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

Redress

What mechanisms should members of Miawpukek First Nation have to seek redress with respect to the laws governing, and the decisions made by Lands & Resources?

Main Stumbling Blocks

- Why haven’t negotiations progressed more rapidly?
- Why are so many negotiations stalled?
- What are the main issues holding up negotiations in other areas?

Inherent Right

- Refusal to recognize specific inherent right to self-government by aboriginal party to negotiations
- Refusal to quantify impact on “fiduciary duty” of Crown
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Political Will

- Justice and Central Agencies not supportive of self-government
- Minister and Prime Minister have to reinforce Canada's commitment
- Officials must be directed to facilitate reaching agreements

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Workplans

- Workplans must conform to tasks and activities with which the federal government agrees or no funding
- "Joint" activities allow feds to intervene in internal processes and consultation

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Provincial Veto

- Any agreement will require provincial consent
- Lack of real federal pressure on provinces
- Unwillingness to use fiscal stick

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Federal Approval Process

- Agreements reached at table taken back to Ottawa for review and then inevitable changes
- First Nations required to agree to many changes after initial agreement at table

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Lack of Preparation on Federal Side

- Changing Policy on the Fly
- New bottom lines as process ongoing - e.g. term "Inherent Right"
- No Self-Government Funding Formula - no government to government funding regime
  - "this is about jurisdiction not funding" vs.
  - "this is about exercising our Inherent Right"

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Negotiations Funding

- Not calculated based on need
- Sometimes used as "stick" to ensure federal positions-agree or we'll cut off your funding
Summary

- Many First Nations are involved in Self-Government Negotiations across Canada.
- All are experiencing the same problems in negotiating with Canada.
- Success will only come if community is well prepared, determined, and willing to "stick in" for the long road.

Implications

What are the implications for Miawpukek First Nation of the problems being faced by other negotiating First Nation organizations?
- Lessons to be learned......
- Steps to be taken......

Summary

- Conclusions Drawn
- Next Steps
- Workshops Evaluation
- Closing Prayer