

A walk through the

■ **MLFN Governance Agreement**

Rolling Draft # 16



Presented to

Meadow Lake First Nations

Without Prejudice

- Rolling Draft #16 of the Governance Agreement is undergoing continuing review within the internal processes of each of the Parties and Saskatchewan. This draft **does not represent formal or final positions.**

Background

- **Late 1980's:**
 - Following the failure of the Constitutional discussions, MLFNs/MLTC began preparing for negotiations with Canada & Sask to restore and achieve recognition of MLFN Governments
- **April 1991:**
 - MLFNs/MLTC & Canada signed a Framework Agreement to undertake negotiations respecting MLFN government arrangements
- **October 1996:**
 - MLFNs/MLTC & Sask signed a MOU for Sask to formally join the negotiations

Background

■ **January 2001:**

- Comprehensive Agreement-in-Principle (CAIP) & Tripartite Agreement-in-Principle (TAIP) were signed by Canada, 7 MLFNs, MLTC & Sask to negotiate a Final Agreement on MLFN Government

■ **March 2005:**

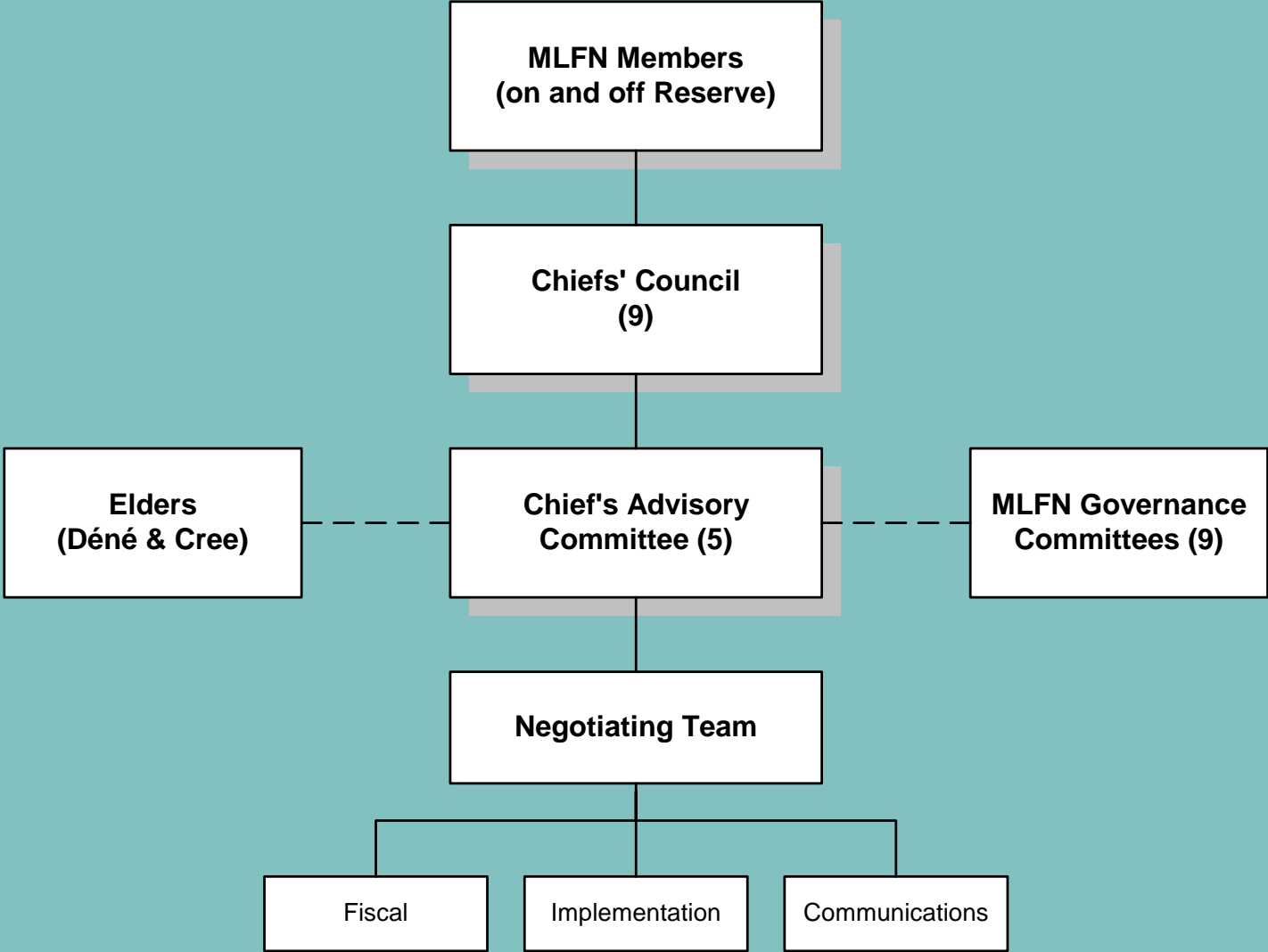
- Canoe Lake Cree First Nation signed a BCR to become a full participant in the MLFN Government negotiations

■ **May 2005:**

- Waterhen Lake First Nation signed a conditional BCR to support the negotiation & independent representation of the interests of Waterhen Lake First Nation

Management Protocol

- 8 MLFNs are participating in the MLFN Governance negotiations (Buffalo River Dene Nation opted out Feb/06)
- Both the Chiefs' Advisory Committee & the Elders oversee the negotiations & provide guidance to the MLFN Negotiating Team
- MLFN Negotiating Team receives direction on all major decision items from the MLFN Chiefs



Governance Agreement

- The “Final” Agreement was re-named “Governance” Agreement (GA) due to the following reasons:
 - It is an agreement about Governance by MLFNs, their law-making powers & authorities
 - “Final” Agreement implies “Full, Final and Forever”; this is misleading
 - GA will evolve over time like a “living tree” (i.e. there are provisions for amendments, future agreements)

■ Who is a party to & signs the GA?

- To respect & protect the Treaty & special trust relationship between the MLFNs & Canada, the GA is a bilateral agreement between each of the MLFNs who ratify the GA & Canada
- MLTC is no longer a party or signatory to the GA

What is the Governance Agreement?

- GA is a government-to-government “jurisdictional” arrangement that has been negotiated with Canada
- Canada & Sask will recognize MLFNs law-making powers & authorities necessary to govern themselves within MLFN lands
- GA enables MLFNs to step out from under the *Indian Act* by passing their own laws over governance, citizenship, lands, resources, etc.
- GA is not a “rights-based” agreement. It does not create any treaty or aboriginal rights (2.1)
- A related Tripartite GA secures Sask’s recognition, agreement & commitment to give effect to GA (Preamble G)
- The GA will not affect the legal rights members have as individuals

Creating a New Government-to-Government Relationship

■ *Indian Act:*

- No negotiated government-to-government relationship between MLFNs & Canada
- Controls the lives of Indian people, reserve lands, monies & assets
- Governs all internal affairs on reserves

■ **GA:**

- Starting point, GA is between governments of the Treaty partners (Preamble D)
- GA is a government-to-government relationship
- Sets out understandings on how federal, Sask & MLFN governments will work together in the future
- Canada & Sask will pass legislation that recognizes MLFNs with full government status

What does the GA say about Treaties?

- Recognizes & acknowledges MLFNs as signatories to Treaties 6, 8 & 10
- Treaty relationship is between Canada & MLFNs (nation-to-nation)
- However, GA is not about reopening or renegotiation of Treaties 6, 8 & 10 (2.3(2))
- Treaty & Aboriginal rights would be respected, protected & not affected directly or indirectly by the GA (2.3)

Does Canada's fiduciary relationship continue under GA?

- Canada's fiduciary relationship with the MLFNs shall continue (2.6(1))
- Statutory obligations may change as a result of (2.6(2)):
 - MLFNs exercising law-making powers formerly held by Canada
 - Evolution of MLFN Government over responsibilities held by INAC (i.e. lands, resources)

Recognition of MLFN Governments' Legal Capacity

■ *Indian Act:*

- MLFNs not recognized as legal entities like other governments
- Bands must have INAC approval to enter into certain agreements or contracts (i.e. lands, assets or monies)

■ **GA:**

- MLFN Governments will have legal capacity similar to other governments such as (3.1):
 - Make MLFN laws
 - Undertake & exercise other related authorities

Recognition of MLFN Governments' Legal Capacity

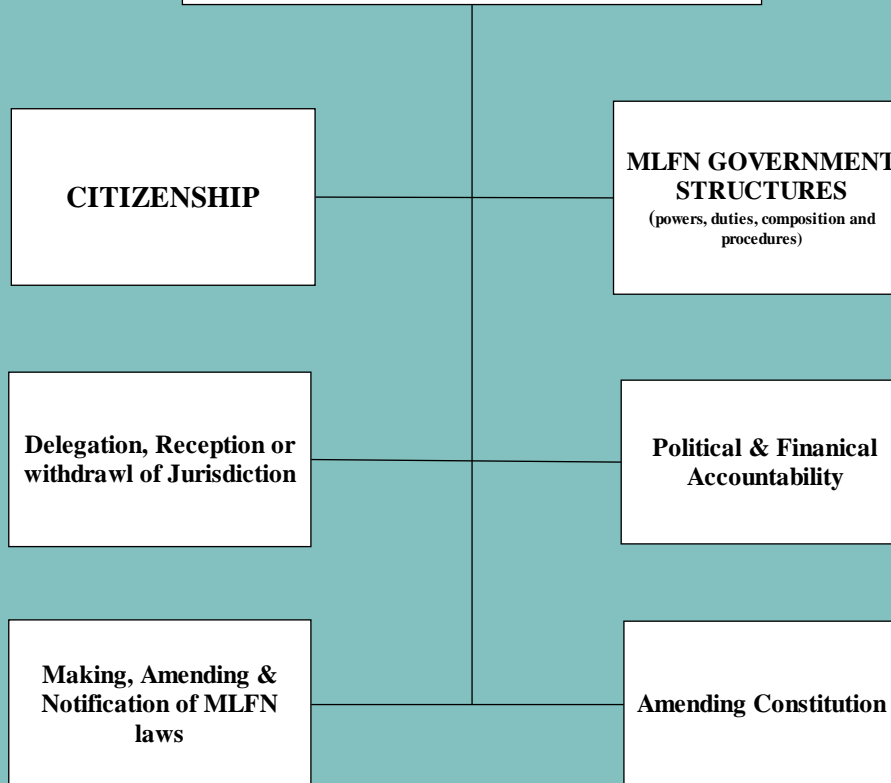
- *Indian Act:*

- **GA:**

- Acquire, hold & dispose of property on & off-reserve (subject to their own laws being in place as approved by citizens)
- Greater fiscal autonomy & responsibility (i.e. hold, borrow, lend, invest & give guarantees for loans)

MLFN CONSTITUTIONS

(S.3.2)



- **GA gives legal recognition & authority to MLFN Constitutions**
- **Each MLFN is responsible to develop & Approve its own Consitution based on their principles, values & tradition**
- **Describes how each MLFN Government will be structured & exercise its law-making power & authority at the MLFN level**
- **Each MLFN ratifies their Constitutions same time as the GA & TGA**

MLFN Law-Making Powers

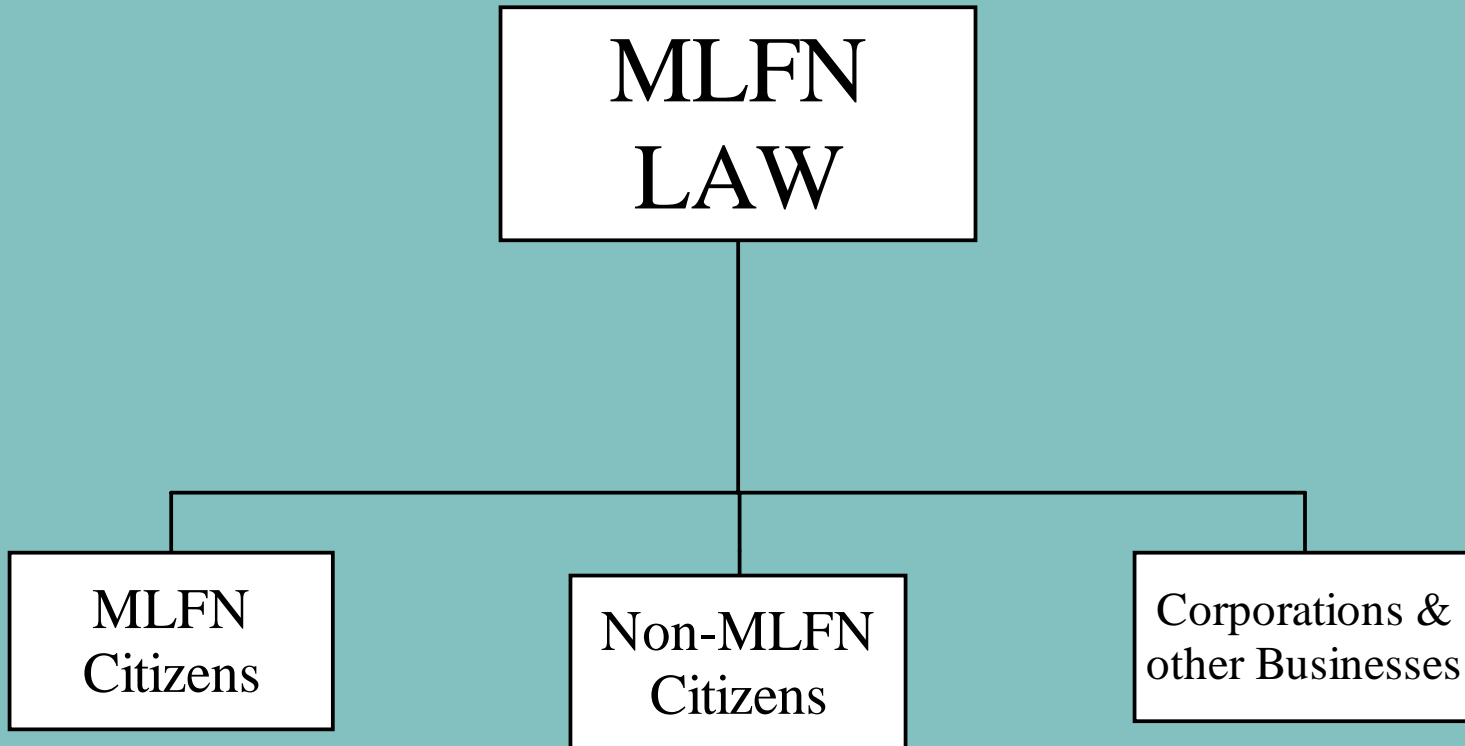
■ *Indian Act:*

- Bands can only pass by-laws under the *Indian Act* on limited subject matters
- All by-laws must be reviewed & approved by INAC Minister
- Any MLFN by-laws can be disapproved by the Minister

■ GA:

- Enables MLFNs to pass laws without approval from the Minister in a manner set out in their Constitutions
- MLFN law-making powers & authorities belong to each MLFN. These may be delegated to other bodies (3.5)
- MLFN laws apply only on MLFN reserve lands & to residents or users of those lands (4.1(1)(2))

MLFN LAWS APPLY TO ALL PEOPLE ON MLFN LANDS



■ Law-Making Powers

■ *Indian Act:*

■ GA:

- Federal & provincial laws would continue to apply until MLFNs pass their own laws
- If MLFNs pass laws & there's a conflict between federal, provincial & MLFN laws, MLFN laws will prevail in most cases

What happens to the *Indian Act*?

- GA is evolutionary & transitional on each MLFN's timeframe & priorities. As MLFNs capacity grows, MLFN law-making power & authority will be enacted.
- Most of *Indian Act* will continue to apply until the MLFNs are ready to pass laws that will replace certain parts of the *Indian Act* with their own laws (4.3(2)(3))
- Some sections of *Indian Act* will no longer apply on Day One (i.e. membership provisions) (4.4(2)(3))
- Bylaws made under the *Indian Act* will continue to apply until new laws are enacted under the GA.

■ Law-Making Powers

- **MLFNs may, when ready, pass laws in the following areas:**
 - Structure & Operation of Government
 - Citizenship
 - Lands, Resources & Environment
 - Cultural (Language, Arts & Crafts)
 - Health & Social (Education, Child & Family)
 - Economic & Business Development
 - Physical (Public & Private Works, Infrastructure)
 - Justice
 - Taxation

Law-Making Powers

Subjects

- Citizenship
- Cultural Matters
- Education
- Health
- Marriage
- Child & Family Care

- Family Support & Property
- Conciliation/Mediation
- Social Devel. & Serv.
- Recreation & Sport
- Business
- Human Res. & Empl. sup.

- Revenue Generation
- MLFN Assests
- Admin of Estates
- Local Transportation
- Works & Infrastructure
- Public Safety & Order

Lands, Resources & Environment

- Governance of MLFN Lands
- Agriculture

- Mines & Minerals
- Oil & Gas

- Water
- Fish
- Forest Resources
- Wildlife
- Environmental Protection

Justice

- Policing & Law Enforcement
- Prosecutions
- Civil & Admin penalties
- Courts

- ADR & Arbitration
- Corrections
- Other

■ MLFN Limits on Law making

- MLFNs cannot make laws about criminal law, banking, labour law, commercial law, matters relating to national economy & security, aviation, etc. (i.e. matters within exclusive jurisdiction of superior court)
- Although the MLFNs can make laws about citizenship, they cannot make laws about Indian Status. This matter is dealt with in another forum.
- MLFN laws cannot affect Canada's international legal obligations.

Citizenship

■ *Indian Act:*

- Will continue to define who is an “Indian” & who is entitled to benefits under the *Indian Act & Treaty*

■ **GA:**

- MLFNs may make laws about their own MLFN citizenship (5.1)
- MLFN citizens includes both on & off-reserve members
- Jurisdiction over designation of Indian status for MLFN citizens is not part of GA. It is to be addressed at a separate negotiating table. (2.7(b))

Reserve Lands & Resources

■ *Indian Act:*

- INAC Minister, with consent of Chief & Council, has authority & control over land use, disposition & management

■ **GA:**

- MLFN lands will continue to be “lands reserved for Indians” under s.91(24) of the *Constitution* (6.1(a))
- MLFNs can assert jurisdiction to govern, manage & control reserve lands (6.2(2))
- Though all aspects of land management transfer to the MLFN title to MLFN lands remains with Canada and lands will continue to have reserve status

Reserve Lands & Resources

- **GA:**
 - MLFN lands can be exchanged for other new reserve lands but not sold for money
 - Prior to MLFN assuming management & control of its lands, an environmental site assessment will be completed & if required, remedial action will be undertaken (6.19)

Justice

- **MLFNs may make laws about the following:**
 - Offences & penalties on MLFN lands (7.2)
 - MLFN laws may impose penalties, including fines of up to \$10,000 (\$300,000 for environmental offences) and imprisonment.
 - Police (7.3)
 - MLFNs can enter into agreements with Canada or SK regarding policing.
 - Prosecutions (7.5)
 - MLFNs can create their own prosecution services or enter into agreements with Canada or SK regarding this area.
 - Establishing MLFN Courts & other decision-making bodies to enforce MLFN laws & other civil proceedings (7.10 & 7.11)
 - MLFN courts can also enforce federal and provincial laws if agreements are entered into with Canada and SK.
 - Establishing corrections and rehabilitation (7.14)

Financial Arrangement Agreement (FAA)

■ *Indian Act:*

- INAC can unilaterally change its financial support to Band governments, with no process in place for consultation, involvement, appeal or to resolve disputes

■ **GA:**

- Canada & MLFNs would negotiate new long-term block funding transfers through a Financial Arrangements Agreement (FAA) (8.2)
- FAA includes funding for capacity building & governance development (8.7(1))
- FAA includes management & accountability arrangements

Financial Arrangement Agreement (FAA)

- Under the current *Indian Act*, INAC can change its financial support to bands at any time.
- Under the FAA, funding is negotiated.
- Ability and skills to exercise powers and MLFNs' own source of revenue are considered.
- Funding provided on a 5-year basis (annual transfer payments)
- Allows MLFNs to spend money where it is most needed.

Financial Arrangement Agreement (FAA)

- FAA will include money for capacity building, which will help the MLFNs develop the skills and ability to run their governments.
- FAA will include more money for housing.
- The FAA will not prevent any MLFN from entering into other fiscal agreements or accessing programs or benefits.
- Some funding will go directly to the MLTC for some services such as child and family services.
- MLFNs will have to meet accountability requirements.

MLFN Taxation Powers

- MLFNs will have the power to impose taxes on their citizens and lands.
- *Imposing taxes is **OPTIONAL**. The door is open if MLFNs decide to do so.
- If MLFNs pass laws to impose taxes on MLFN citizens residing on MLFN lands, *Indian Act* tax exemptions will no longer apply.
- Citizens will continue to be subject to provincial and federal taxes off-reserve.

■ MLFN Taxation Powers Cont...

- Non-status persons on-reserve will continue to pay taxes like before, unless MLFNs enter into tax-sharing agreements with SK and Canada, then these new terms will apply.
- MLFNs may also enter into tax-sharing agreements to collect Federal/Provincial income taxes and GST currently being paid to the provincial and federal governments.
- MLFNs may enter into tax administration agreements for provincial and federal governments to charge and collect taxes imposed by MLFNs.

■ Implementation

- Implementation Plan sets out commitments made in GA to be undertaken by Canada, Sask & MLFNs (10.1(2))
- Joint Implementation Committee will be established to oversee the Implementation Plan (10.3)

Dispute Resolution

■ *Indian Act:*

- Courts are only forum available for MLFNs to challenge federal decisions which may affect them in a negative way
- Courts are slow & costly

■ **GA:**

- GA includes a 4-step dispute resolution process to resolve conflicts between Canada, Sask & MLFNs arising from the GA (11.5)
- Courts remain a last resort to enforce the GA (11.5(3))

Approval

- GA & TGA cannot come into effect until they have been ratified by the voters in a referendum held by each MLFN, Canada & adopted in legislation by Sask (13.1 & 13.2)
- Respective MLFN Constitutions must be drafted & approved by referendum by each of the MLFNs as a prerequisite to GA taking effect for that MLFN (13.1 (1))
- MLFN Constitutions do not have to be approved by Canada or Sask

Amendments

- **Proposed amendments may include, but is not limited to the following (13.6):**
 - Law-making powers over designation of Indian status for MLFN citizens;
 - Law-making powers over MLFN Non-Resident Citizens;
 - Law-making powers in relation to justice;
 - Public health, order, peace or safety of persons on MLFN lands; and
 - Areas integral to culture, identity, tradition, language or institutions of a MLFN

■ Leaving the Door Open

- MLFNs, Canada & Sask may negotiate future agreements, including, but not limited to (s.2.7):
 - Aboriginal & Treaty Rights;
 - Inherent right of self-government;
 - Indian status for MLFN citizens; and
 - Traditional Territories

■ What's left to negotiate?

- Internal directions & instructions are required from the MLFN Chiefs on the following:
 - Terms & conditions of the FAA including amount, terms & own source revenue?