



FIRST NATIONS EDUCATION LAW
MAKING PROTOCOL

ONTARIO NATIVE EDUCATION COUNSELLING ASSOCIATION



First Nations Education Law Making Protocol

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September 30, 2013

With deep gratitude to the Akwesasne Mohawk Nation in Ontario and the First Nations Education Steering Committee of British Columbia for sharing their law making protocols.

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The Exercise of Sovereignty

The First Nation Government possesses inherent rights and Treaty rights for self-determination and self-government and chooses to exercise these rights by enacting jurisdiction over education for the members of the First Nation called rights holders.

First Nations in Canada have never relinquished claims to sovereignty or sovereign lands and have a continuing inherent right to autonomy in internal affairs, a right of self-determination and a right to self-government. The Aboriginal right to self-government is the same as the legislative power to make laws. Education is a pillar of sovereignty and self-determination.

Jurisdiction over education arises from the right to education and the right to make decisions on education matters for the First Nation. This leads to a right to have a political structure for making those decisions.

We take this action according to the sacred laws of the Creator, our enduring relationship to the Crown and the obligation of the government of Canada to fund education for our members.

In this exercise, the First Nation Government is supported in its actions by specific International mechanisms, covenants and declarations as instruments having the force of international law, pre-Confederation Proclamations and Treaties, the numbered Treaties 1-7, as well as the Constitution Act, 1982, s.35, of Canada

First Nations Constitution

The Aboriginal right to self-government is the same as the legislative power to make laws.

The First Nation Government exercises its inherent and Treaty right to sovereignty and self-determination by developing its **Constitution** that further asserts and states its,

“sovereignty, jurisdiction, territory, cultural worldview, language, history and the context for the exercise of jurisdiction over education, its authorized programs, services, and facilities, including legislative, executive and administrative functions.”

Members of the First Nation will pass the **Constitution** of the First Nation Government through referendum.

First Nations Education Law Making Protocol

The First Nation Government will adopt, by resolution, the **First Nations Education Law Making Protocol** to describe the process for enacting its laws and amending its laws in education.

The Protocol provides for the following matters:

- Drafting of First Nations education law
- Procedures for passing, amending, appealing or repeal of First Nations Education Law
- Conflict of interest rules
- Making Regulations
- Amendment of the First Nations Education Law Making Protocol

The Protocol enables the First Nation Government to begin drafting the Education Law and presenting it to community members in a manner that allows for the reading of the Education Law, production of a Discussion Guide to summarize the main points of the Education Law, a Summary of the Education Law that is readable and understandable to the public, open meetings with the community to discuss the Education Law and opportunities to suggest amendments to the Education Law before the vote by the First Nation Government or a community referendum.

The Education Law Making Protocol ensures:

- An open and accountable law making procedure for all members of the First Nation
- A process that engages the members of the First Nation in law making
- A Law is produced for membership that respects the values, customs and aspirations of the First Nation
- A law making process that is in keeping with the principles of natural law and justice
- A standardized procedural process for the development, enactment, appeal, amendment and repeal of Laws

Drafting the First Nations Education Law

A Technical Working Group designated by the First Nation Government will be assigned the duty of preparing the drafts of the First Nations Education Law for the community and ensuring all final amendments are in place during the length of the process.

The First Nation Government will set the timetable for the drafting process and the date for submission to the First Nation Government for review prior to public release. The Technical Working Group will be engaged until the time of the passing of the Education Law by final vote of the First Nation Government or by referendum of community members.

The final step by the First Nation Government is the vote and resolution for passing the First Nations Education Law held at a duly constituted meeting of the First Nations Government.

The following table of contents suggests some of the items that might be included in the Education Law and can be adjusted according to the needs of the First Nation Government.

First Nations Education Law

Suggestions for a Table of Contents

Preamble

Authorities for First Nations Laws

- Constitution of the First Nation Government
- First Nations Education Law

Guiding Principles

- International Authorities
- Respecting First Nations and Representative Organizations with Agreements in Force or Under Negotiation
- Purpose of Education
- Education Principles
- Regulations and Amendments for the First Nations Education Law

Definitions

Duty to Consult and Accommodate

This Act Prevails

Administration

- Role of the First Nation Government
- Role of the First Nations School Authority
- Reports of the First Nations School Authority
- Reporting Schedule to the First Nation Government
- Education Plan
- Members on the First Nations School Authority
- Minutes
- Meetings
- Disqualification of Members
- Resignation from the First Nations School Authority
- Remuneration

School Administration

- Registration
- Calendar Year
- Language Usage
- Home Education
- Special Needs Students
- Counselling Services

- Role of the Students
- Code of Conduct
- Suspension, Expulsion from School
- Evaluation of Progress
- Maintenance of School Buildings and Property
- Reciprocal Tuition Agreements
- Appeal of Administrative Decisions
- Transportation

Curriculum

Education Standards

Professional Staff

Funding: Harmonizing Payments

- Finance
- Comprehensive Transfer Payments
- Cost Model
- Budget Preparation
- Lands, Buildings, Property, Capital
- Data Collection and Privacy

First Nations Community Education Council

- School and Parent Participation

First Level Services

- First Nations School Authority

Second Level Services

- Regional First Nations Education Authority

Third Level Services

- National First Nations Education Commission

Definitions for this Protocol

1. "Jurisdiction" means the Constitution of the First Nation Government that establishes the field occupied by the First Nation Government
2. "Chief and Council" means the First Nation Government
3. "Member" of the First Nation is a rights holder and whose name appears on the membership list of the First Nation and is registered according to the Membership Law

4. "Law" means the community law enacted by the First Nation Government
5. "Education Law" means an Law passed by a First Nation Government to exercise its inherent right and treaty right for sovereignty, self determination, self government, and jurisdiction over education
6. "Education" means accredited education programs and services for lifelong learning
7. "First Nation School Authority" is the body established by the First Nation Government in the First Nation Education Law to be responsible for education matters
8. "Resolution" means a First Nation Government resolution formally adopted by the First Nation Government
9. "Territory" means the geographic area over which the First Nation Government has jurisdiction
10. "Technical Working Group" means a group of technicians and experts assigned by the First Nation Government to develop legislation as deemed necessary by the First Nation Government.

Its role will be to research, draft and redraft and amend all Laws, regulations or policies of the First Nation Government as directed

11. "Notice of Meetings" is defined as notice of focus group meetings, information sessions, general meetings, special meetings, or referendum and announced by publication in the local newspaper, radio station, cable station, web site of the First Nation Government, a notice mailed or delivered to members or a notice posted in public areas of designated buildings.

Translations into the language of the First Nation will be provided in all notices.

Process for Passing Education Laws

The First Nation Government will introduce and pass an Education Law in accordance with the following process:

1. The First Nation Government represented by the Chief and Council Members may introduce a Resolution to initiate the drafting of a proposed law on education matters.
2. The First Nation Government may assign a Technical Working Group to the project of drafting a Law on education for the First Nation to be presented initially to the First Nation Government.
3. The First Nation Government may introduce a draft of a proposed Education Law at a First Nation Government meeting.
4. The first legal review of the Education Law will occur of the draft prepared for the First Nation Government.
5. A Special Meeting of the First Nation Government will occur to determine if further revisions are needed or if the draft is ready for community consultations.
6. By resolution, the First Nation Government will accept in principle the draft Education Law and begin the community consultation phase and public information sessions.
7. The First Nation Government will send Notice to members seeking their input and announcing the period for commentary.
8. The First Nation Government will post notices in public areas of the community where members may see the draft and be notified of the intention of the First Nation Government to pass an Education Law.
9. The First Nation Government will advise members where they can obtain a full copy of the draft Education Law.
10. The First Nation Government will give 30 days notice of a meeting to discuss the proposed Education Law.
11. At least one General Meeting of the community will be held to discuss the draft Education Law.
12. Other Public Information Sessions can be scheduled as the First Nation Government sees the need.
13. The First Nation Government will make copies available to the members, including a “Summary” in plain English along with a “Discussion Guide” for understanding the draft Education Law. The Guide and the Summary may also be printed in the language (s) of the First Nation.

14. Members are invited to offer comments on the draft Education Law in writing or orally by deposition to a designated Officer of the First Nation Government.
15. Following the community meeting, the members will be given another 30 days to provide their comments.
16. At the close of the second 30-day period, the First Nation Government will review the comments and decide on amendments to the draft Education Law.
17. A second legal review of the draft Education Law will be sought and suggested amendments and recommendations incorporated into the final draft of the Education Law.
18. If the First Nation Government sees that there is no further need for amendments, it will vote on the Education Law at a Special Meeting of the Government.
19. If the First Nation Government decides to amend the Education Law, the First Nation Government will re-introduce the proposed Education Law as amended and follow the same procedures as posting public notices, providing copies of the amended Education Law, give 30 days notice of a community meeting to discuss the amendments, hold the community meeting, provide a Summary of the amendments and Law in English and in the language of the community, provide a Discussion Guide to the proposed Education Law and the amendments, invite comments from members in a community meeting and include another 30 day period to provide comments to the First Nation Government.
20. At least 30 days after the First Nation Government has completed the steps in the second round of open community meetings and opportunities to participate in changing the First Nation Education Law, the First Nation Government will take all comments received and determine if a second round of amendments is needed.
21. A legal review will follow to align all elements of the Education Law.
22. The First Nation Government may vote on the Education Law, whether or not they decide to amend it further, at the next duly convened meeting.
23. The vote must be 75% of the First Nation Government comprised of Chief and Council Members to pass the Education Law.
24. Or the First Nation Government may decide to have a community referendum or additional community meetings or information sessions. The First Nation Government will decide on the number for the threshold of voters required to pass the Education Law by referendum.
25. The First Nation Government may also call for Focus Group sessions following the acceptance of the Education Law to enable members of the community to ask questions and seek clarification on elements of the Education Law.
26. The Education Law comes into force on the day of its passing by Resolution.

Sample Resolution of the First Nation Government

Whereas, The First Nation of _____ have the existing and inherent right of self-determination, which includes the inherent jurisdiction over lands, peoples and territory;

And Whereas, _____ have Aboriginal and Treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over lands, peoples and territory;

And Whereas, _____ is the First Nation Government with the territory of _____ has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of _____;

And Whereas, _____ intends to preserve the cultural, political and economic integrity of the territory for _____ and the First Nation of _____;

And whereas, the Education Law Making Protocol was adopted by resolution _____ on the date of _____;

And Whereas, the First Nation Government of _____ is satisfied that the protocol was followed with community consultation, amendments, and recommended legal changes;

And Whereas, the First Nation Government of _____ proposes that the First Nations Education Law titled _____ be accepted as the Law governing all aspects of education for the First Nation of _____.

Making Regulations

The First Nation Government places a provision in the Education Law allowing the First Nation School Authority to make Regulations.

The Education Law must:

- Authorize the First Nation School Authority to make Regulations and specify its powers to do so in the Education Law
- Specify the scope of the Regulations
- Stipulate that the Regulations align with the jurisdiction principles of the First Nations Government expressed in the Constitution and in the Education Law
- All Education Laws and Regulations are registered at the Administration Office of the First Nation Government including proposed amendments
- Copies of the Law are free to the members of the First Nation
- All Regulations have the force of law

Appealing the Education Law and Regulations

Appeal to the First Nation Government

- A member of the First Nation may challenge the validity of the Education Law or the Regulations by filing a written petition or providing an oral deposition to the First Nation Government expressing their concerns with the Education Law or Regulations
- The signatures of at least _____ members should accompany the appeal
- The First Nation Government will respond in writing to the petition within 30 days of receipt
- The First Nation Government may set out the reasons for the lack of basis for the challenge
- Or the First Nation Government may confirm that they will amend the Education Law or repeal the Education Law or Regulations that are of concern
- An Arbitrator may be asked to hear the appeal if the decision by the First Nation Government is not acceptable to the member of the First Nation who petitioned the First Nation Government
- The decision of the Arbitrator is final

Conflict of Interest Rules

- The First Nation Government must establish a conflict of interest policy with consequences for any member of the First Nation Government or the First Nation School Authority
- Any member of the First Nation Government or the First Nation School Authority who has any interest, financial or otherwise in matters of education should disclose fully to the First Nation Government or the First Nation School Authority
- This member must remove himself/herself from discussions pertaining to the issue under discussion and refrain from influencing any decisions made on the issue

Enactment of the Education Law by Secret Ballot Vote at a Special Meeting of the First Nation Government

The First Nation Government will determine that the Education Law is ready for a vote.

A notice that a Special Meeting of the First Nation Government will be called for this purpose will be given 45 days before the date.

The First Nation Government will then notify the members by radio, newspaper and cable station, mail delivery notice, published notice in public buildings or on the web site of the First Nation.

A full text of the Education Law will be published on the First Nation web site and available to members at the offices of the First Nation Government.

At the Special Meeting, a summary of the Education Law will be read aloud to the members present.

There must be 75% of the First Nation Government present for the vote.

There will be a secret ballot.

The Electoral Officer will oversee the ballot.

The Education Law will be enacted if 75% of the members of the First Nation Government approve it.

The decision at the Special Meeting will be recorded in the minutes and will be accompanied by a Resolution of the First Nation Government.

Enactment by Referendum

The First Nation Government will by Resolution set a referendum date 45 days following the secret ballot vote of the First Nation Government.

Notice shall be given to all members of the First Nation as in due process.

The First Nation Government will identify by Resolution the numbers of members required to vote in the referendum and the threshold number of votes required to approve the Education Law at least 45 days before the referendum date.

The final version of the Education Law shall be deemed enacted if the threshold number of votes approving the Education Law is cast by referendum and has approved the Education Law.

Rejection of the Education Law

When the electorate rejects the Education Law by referendum, or the Education Law is rejected by secret ballot at the Special Meeting of the First Nation Government or rejection is confirmed at a second referendum, no further development of an Education Law shall be undertaken for 180 days after the date of the rejection of the Education Law.

Following Enactment or Rejection of the Education Law

When the Education Law is approved or rejected, the First Nation Government will pass a resolution confirming the results within 30 days.

All members of the First Nation Government will sign the Resolution.

The Education Law comes into effect on the day of its passing by vote or referendum.

Public notice of the passing or rejection of the Education Law will be posted within 7 days.

Amendments to the Education Law

Repeal means the repeal of the entire Education Law.

The process to amend or appeal the Education Law is initiated by a Resolution from the First Nation Government setting out the proposed amendments.

Amendments may also be initiated by petition from the First Nation members.

The First Nation Government will determine the number of members required to sign the petition. The petition will be presented at a meeting of the First Nation Government stating the request for an amendment to the Education Law.

The First Nation Government will then establish a Technical Working Group to work on amending or repealing the Education Law.

The First Nation Government will direct the Technical Working Group to prepare the draft amendments or prepare the Resolution to repeal the Law.

The draft amendments or the Resolution will be sent to the legal advisor for review prior to presentation to the meeting of the First Nation Government.

The proposed amendments or the proposed Resolution to repeal the Education Law will be presented by the Technical Working Group to a meeting of the First Nation Government.

The First Nation Government will decide by a majority vote of its members to accept in principle the proposed amendments or the proposed Resolution to repeal the Education Law.

The First Nation Government may also decide to send the amendments or Resolution to a community referendum or back to the Technical Working Group for further work.

When the amendments are ready or the Resolution to repeal the Education Law, and the First Nation Government has accepted them in principle, a notice of a meeting will be posted at least 45 days before the meeting date.

The amendment will be published in the newspaper in a format that shows the original Law and the suggested changes. Or the reasons for repeal of the Education Law will also be published.

At the community meeting, the summary of the amendments or the reasons for repeal of the Education Law will be read aloud to the members present.

After discussion at the community meeting, the First Nation Government will schedule Focus Group sessions for deeper discussions by the community members not lasting longer than 90 days.

At the conclusion of community discussions, the First Nation Government may, by Resolution, decide to hold a secret ballot vote at a special meeting OR reject the amendment or repeal OR request a referendum on the amendment or repeal of the Education Law.

The First Nation Government will pass a Resolution confirming the results of the vote or referendum.

The decision will be published in the local newspaper, posted in public buildings and presented on the First Nation Government web site.

Amendment to the Protocol for Education Law Making

The First Nation Government will let its members know that the Protocol can be amended:

- The steps of the amendment process,
- The form and content of the amendment,
- And notify members of a vote held by secret ballot of the First Nation Government at a specific date
- Where at least 75% of the First Nation Government who cast a ballot have voted in favour of adopting the amendment to the Protocol
- A Resolution will be passed by the First Nation Government to confirm the amendment to the Protocol for Education Law Making

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