

Frequently Asked Questions & Answers – Anishinabek Nation Governance Agreement

This is a Questions and Answers document based on Questions and Answers from the Governance Open Houses, BCR Meetings, Website (Governance), and the Rolling Qs & As Document

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WHAT IS GOVERNANCE/SELF-GOVERNMENT

1. *What is governance and self-government?*

In this case, governance is about the rules and actions of a governing body, such as a First Nation Council, and how they are regulated and held accountable. Good governance promotes relationships between government, citizens and communities. It aims to address the concerns and interests of members of the community in order to get the best options that respond to their needs.

Self-government is about exercising law-making authority, making decisions and being responsible for those decisions.

2. *Why do we need a self-government agreement?*

We need a self-government agreement in order to remove Indian Act control over our communities and to become responsible for our own governance.

With a self-government agreement, Canada recognizes Anishinabek First Nation law-making authority. The self-government agreement also provides for a new government-to-government relationship. The Anishinabek Nation Governance Agreement will recognize the Anishinabek Nation Government and Anishinabek First Nations as governments, with the same legal status and capacities of other Governments. Under the Indian Act, there is no mention of legal status of First Nations (Indian Bands) and the capacity to enter into contracts and hold land in their own names.

The self-government agreement is the recognition of our inherent right to self-determination. However, the self-government agreement does not define the inherent right to self-government nor does it change the Anishinabek's constitutionally protected Aboriginal and Treaty Rights.

3. *Is it an Agreement or law?*

The Anishinabek Nation Governance Agreement will have enabling legislation which will be a law; in the law, it will state that the agreement will supersede the legislation, meaning that agreement cannot be changed or amended unless agreed to by the Parties.

WHAT WILL IT LOOK LIKE

4. *What will the new government structure look like?*

The Anishinabek Nation Government will be made up of the First Nations who ratify the Governance Agreement. They will decide what laws to pass at the Anishinabek Nation Government. First Nation laws will take precedence over laws passed by the Anishinabek Nation Government. The priorities of the member First Nations who make up the Anishinabek Nation Government will determine its direction.

5. Will the Union of Ontario Indians be the Anishinabek Nation Government?

The Union of Ontario Indians will not be the Anishinabek Nation Government. The Union of Ontario Indians will remain the corporate secretariat that represents the 39 First Nations and Grand Council.

The Union of Ontario Indians facilitated the negotiations on the Anishinabek Nation Governance Agreement but will hold no role beyond that.

6. How will my community benefit from the Anishinabek Nation Governance Agreement?

First Nations will benefit from the Anishinabek Nation Governance Agreement in a number of ways.

- a. First Nations will be able to set their own priorities and will no longer be dependent on another government's (Canada) laws;
- b. The new First Nation governing responsibilities will create jobs and a diversity of professions (i.e. communications, policy, financial) for the people in our communities, helping to address the high rates of unemployment on First Nations;
- c. Clear rules for governing First Nations: separating management functions from Chief and Council duties increases the chances of a business on reserve;
- d. A constitution by which laws are enacted creates more stability in government decision making and an appeals and redress mechanism creates more fairness for the people and businesses affected by those decisions. Having stable and fair governance procedures encourages investment by lessening risks for investors; and,
- e. Standing up as the Anishinabek Nation with all the rights and powers of Indigenous People protects all Anishinabek Nation citizens and their territories. There is a concerted, shared effort, saving time and money, to develop policies, standards and laws for the protection of Anishinabek, their worldview, and their territories.

7. What is the difference between the Anishinabek Nation and the Union of Ontario Indians?

The Anishinabek Nation is the Anishinaabe People represented by today's Grand Council. The Anishinabek Grand Council is the Chiefs of 39 First Nations identifying collectively as the Anishinabek Nation. The original Anishinabek Grand Council predates Canada.

The Union of Ontario Indians is a corporation that the Grand Council formed to acquire legal status under Canadian law, for the purposes of conducting business. The Union of Ontario Indians is the secretariat of the Anishinabek Grand Council and is directed by the Chiefs who make up the Anishinabek Grand Council.

PROCESS AND OUTCOMES

8. How is the Governance Agreement going to impact existing programs?

The Governance Agreement only touches on program funding related to Band Support Funding (BSF) & Band Employee Benefits (BEB). These will be amalgamated into the Anishinabek Nation Fiscal Agreement. The Governance Agreement will not impact any other funding programs that First Nations and citizens access.

9. *When will we focus on issues (i.e. poverty, infrastructure) that really matter?*

While these are important issues, there is a direct link to the well-being of Anishinabek First Nation citizens and governance. Sound governance will create stability and consistency in governance processes, free up resources to include citizens in setting priorities, and enable long-term strategic planning.

Taking control of citizenship and language and culture will strengthen unity and identity as Anishinaabe people.

Taking control over leadership selection and the operation of management of government will allow citizens to determine how their chief and council governs and provide transparency and accountability of the First Nation government to its citizens.

This self-government agreement will better position us to address these important matters.

10. *What will be the next jurisdiction, how will it work in the future?*

The next jurisdiction will be determined by the First Nations that are a party to the Governance Agreement and their priorities.

The Governance Agreement provides the foundation to negotiate future jurisdictions, thereby shortening how long it would take to negotiate them. For example, we are already in advanced negotiations on Child and Family Well-Being.

11. *Why [the Governance Agreement] now?*

The Anishinabek Nation has been building capacity and negotiating self-government in education and governance matters since 1995. Citizens have long been asking for change within their communities and as an Indigenous Nation of People have always asserted the inherent right of self-government. That is the opportunity.

For the past 20+ years, we have been negotiating this agreement. We agreed to conclude the Anishinabek Nation Education Agreement first to ensure our children and future were taken care of. Now that we have that agreement successfully in place, we can focus on the Governance Agreement and taking control over our internal administration.

With the Governance Agreement in place, citizens will be more involved in the law-making processes of both their First Nation and Nation Government, as both constitutions dictate. There will be citizen designed laws and processes for transparency in financial administration and the conduct of First Nation business. There will be Anishinabek Nation appeals and redress mechanisms to hear grievances.

12. *My First Nation is under the First Nation Lands Management Act, how will the Governance Agreement impact this?*

The Governance Agreement will not impact First Nations under the First Nation Lands Management Act (FNLMA) as it does not cover lands. If a First Nation is under the FNLMA, they will continue to be under the FNLMA until that First Nation decides to move out of it. In the future, should the First

Nations or the Anishinabek Nation seek to negotiate a self-government agreement over lands, all of the parties will be consulted.

13. Will the Governance Agreement impact my First Nation's land claim(s) or litigation?

The Governance Agreement will have no impact on any of the Anishinabek First Nations' claims or litigation. The Governance Agreement is about Anishinabek internal governance and markers set out for future negotiations. That said, any claims and/or litigation can continue within their existing processes.

14. What is the difference between the First Nation and Anishinabek Nation Government election?

The First Nations who ratify the Governance Agreement will make up the Anishinabek Nation Government and decide what it will look like. The First Nations will run their own leadership selection processes (elections is one method) for its own citizens based on their own leadership selection law.

The Anishinabek Nation Government leadership selection process will run under the Anishinabek Nation Government law that is developed by the First Nation representatives who make up the Anishinabek Nation Government.

FINANCE/FISCAL

15. Where does this extra money come from? Where is the money coming from that the government is offering?

The Governance Agreement benefits from Canada's new Collaborative Fiscal Policy for Self-Governing Indigenous Governments. This policy is the cornerstone of the proposed funding agreement and we were involved in the development of that policy to ensure that it meets our needs and goals. The goal of this new fiscal approach is to strengthen the government-to-government partnership. Doing so requires sufficient, predictable and sustained funding so that Indigenous governments are able to govern effectively.

16. How long is the funding for?

The initial term of the Anishinabek Nation Fiscal Agreement is 5 years. Within those 5 years, the agreement will be revisited to negotiate a subsequent Fiscal Agreement.

Fiscal arrangements are intended to be renewed on a periodic basis to ensure they are current and reflect our evolving needs and interests.

17. Will we have sufficient funding for governance?

The Governance Agreement benefits from Canada's latest fiscal policies, which we co-developed, along with other Indigenous governments, to ensure that they reflect our expenditure needs. It is

tailored to address the specific circumstances of our nations (such as responsibilities, population, location) and the nature of our responsibilities under the Governance Agreement.

18. *Why can't the First Nations get the money without ratifying the Agreement?*

A First Nation that doesn't ratify the Governance Agreement will continue to receive its existing governance program funding. The increased funding available under the Governance Agreement is intended to support ratified First Nations in undertaking their new law-making responsibilities. As such, non-ratified First Nations are not eligible for these funds since they will not have those law-making responsibilities.

19. *What are the responsibilities attached to these new monies?*

These monies are a recognition of our increased responsibilities as a government. First Nations will have full discretion as to how to use them towards community-identified priorities.

20. *Who administers / distributes the money?*

Canada will make transfer payments to the Anishinabek Nation Government. It is the responsibility of the Anishinabek Nation Government to distribute the agreed-upon fiscal transfer amounts to each First Nation that ratified the Governance Agreement. The amount of the transfers have been presented to each First Nation.

21. *What is Own Source Revenue (OSR) and does it apply to the Governance Agreement?*

OSR is the revenue that an Indigenous government raises from First Nation businesses, partnerships and other income. Under self-government agreements, Indigenous governments may use some of this revenue to contribute to the costs of their own operations, such as providing programs and services to their citizens. The intention of the OSR policy is to take into account the ability of self-governing Indigenous governments to contribute their own revenues to the costs of their own government activities when determining the level of fiscal transfers.

That being said, OSR offsets will **not** be applicable to Anishinabek Nation Fiscal Agreement until a new approach is agreed to by the parties.

22. *What happens if more First Nations join after Effective Date?*

When additional First Nations join the Governance Agreement, Canada will provide additional funding to recognize and support their new law-making responsibilities.

23. *My First Nation just entered into a 10-year grant with Indigenous Services Canada, how will this work with the Governance Agreement?*

The 10-year grant will remain in effect. The Governance Agreement only touches on program funding related to Band Support Funding (BSF) & Band Employee Benefits (BEB). These will be amalgamated into the Anishinabek Nation Fiscal Agreement.

24. Will Canada's fiduciary responsibility to First Nations stop?

No, Canada will always have a fiduciary responsibility to all First Nations people in Canada. The Governance Agreement would put in place a new government-to-government partnership and funding relationship between Canada and Anishinabek First Nations.

CONSTITUTIONS

25. Is a Constitution a pre-requisite for the Governance Agreement?

Yes, however every First Nation should have a Constitution regardless of this agreement.

We already have an Anishinabek Nation Constitution: the Anishinaabe Chi-Naaknigewin (Anishinabek Nation Constitution) was ratified on June 6, 2012 by the Anishinabek Grand Council of Chiefs.

26. Can a First Nation ratify their Constitution the same time they run their vote on the Governance Agreement?

Yes, that is possible but it is not recommended. A "best practice" taken from the ratification process on the Anishinabek Nation Education Agreement suggests that it is easier and less confusing to have only one question on the ballot. As such, it is ideal that First Nations ratify their Constitution prior to their vote on the Governance Agreement.

RATIFICATION

27. What is the method of voting?

There are three methods of voting:

- a. In-person
- b. Mail-in Ballot
- c. Electronic Voting

28. How does the ratification threshold work?

The ratification procedure for the Governance Agreement is similar to the one used for the ratification of the Anishinabek Nation Education Agreement.

Ratification requires that a minimum of 25% plus 1 of a First Nation's Eligible Voters vote "yes" and there needs to be more "yes" votes than "no" votes.

If a First Nation did not meet the 25% plus 1 threshold, but the "yes" votes outnumbered the "no" votes, they may run a second vote using a "simple majority" threshold. If the majority of those who voted, voted "yes" in the second vote, the agreement will be considered ratified.

EFFECT OF THE GOVERNANCE AGREEMENT ON OFF-RESERVE CITIZENS

29. How will the Governance Agreement affect off-Reserve members?

Generally, the Governance Agreement will pertain to all Anishinabek Nation citizens, regardless of where they live. All citizens would have the opportunity to participate in the development and approval of Anishinabek Nation laws. It is the duty of the Anishinabek Nation and First Nation governments to make their laws public to its citizens. It is the responsibility of all citizens to be active and contribute to the future of their First Nation.

ENGAGEMENT

30. Whose responsibility is it to communicate?

It is the responsibility of leadership to communicate information to their citizens.

However, we all have a responsibility to inform ourselves, communicate information and help inform our families and friends when important issues arise and when important decisions have to be made.

31. How come I wasn't given this information before?

A lot of information about the Governance Agreement has been created and made available to the Anishinabek Nation leadership and Anishinabek First Nations citizens through many communications vehicles, including: the Anishinabek News, newsletters, media releases, website postings, social media, Grand Council Assemblies, Elders, Youth and Women nation building councils, Chiefs Committee on Governance, governance working groups, community information and engagement sessions, and so on.

But there is always room to do better. We welcome your thoughts on how best to keep you informed going forward.

32. How were the youth, elders, women and men involved in the process?

Early on in the community consultation process there were events targeted at Elders and Youth, for example. The Anishinabek Grand Council had endorsed Nation Building Councils of Elders, Women and Youth in 1997 and these councils have been very involved in these self-government and nation building initiatives. For example, the Preamble of the Anishinaabe Chi-Naaknigewin, "Ngo Dwe Waangizid Anishinaabe", was developed by Elders. The Elders, Women and Youth participated in the Community Engagement Strategy and the Grand Council Assemblies.

But there is always room to do better. We welcome your thoughts on how best to improve going forward.

PERMANENCE OF AGREEMENT

33. Can Canada leave the Governance Agreement?

The Governance Agreement is an arrangement with the force of law between the Anishinabek First Nations and Canada; not just the current federal government. If any of the parties seek to leave the Agreement, the Agreement provides that the parties would all need to consent to it, by following the amendment procedures outlined in the Agreement.

To date, there is no precedent for Canada attempting to leave a self-government agreement since it started negotiating them in about 1970.

34. Is there a way for my First Nation to exit from the Governance Agreement?

There are no specific exit provisions in the Agreement. However, if a First Nation chooses to exit the Governance Agreement, it will require the consent of the Parties by following the amendment procedures outlined in the Agreement.

OTHER RELATED ISSUES

35. How does the Governance Agreement benefit our comprehensive plan (i.e. vision and goals)?

There will be less interference by the federal government and more freedom to set priorities and goals. This will surely assist with those individual First Nation plans.

This agreement will also equip us with the tools to measure unemployment rates; health conditions; water & sewage treatment facilities; education success rates; housing; economic development; and all indicators of social well-being for base line data. Having this data will allow us to measure the quality of life of for all citizens of the Anishinabek Nation and ensure that we have targeted plans going forward on how to improve them.

36. How will the Governance Agreement work with the Child Well-Being Law?

The Governance Agreement does not directly address the Anishinabek Child Well-Being Law. However, many of the parts of the Governance Agreement will complement the Anishinabek Child Well-Being Law. For example, First Nation citizenship laws will help to identify who is an Anishinabek child.

37. Whose court will we use under the Governance Agreement?

The Anishinabek Nation Government and First Nation government laws under the Governance Agreement may use Ontario Provincial courts for enforcement. The Governance Agreement also recognizes that the First Nations may use traditional Anishinaabe processes to enforce their laws.

38. What implications do court cases concerning Indian status such as Descheneaux or Gehl have for the Governance Agreement?

These cases have no implication. The Governance Agreement recognizes the First Nations ability to develop citizenship laws. These citizenship laws will not decide who has or does not have Indian

Status. The court and human rights cases such as Descheneaux or Gehl help us to understand the court's interpretation of Indian Status issues but will not directly impact our citizenship laws.

39. *Where will our Anishinabek Nation Government offices be physically situated?*

Decisions about where the Anishinabek Nation Government offices will be physically located will be made by the member First Nations who sign onto the Governance Agreement.

40. *How will the Governance Agreement make our Leadership more accountable to the Anishinabek Nation citizens?*

Citizens will be more involved in the law-making processes of both their First Nation and the Anishinabek Nation Government, as set out in their constitutions. There will be citizen designed laws and processes for transparency in financial administration and the conduct of First Nation business. There will be Anishinabek Nation appeals and redress mechanisms to hear grievances. There will be an enforcement and adjudication mechanism to address breaches of First Nation and Anishinabek Nation Government laws.