

MIAWPUKEK FIRST NATION SELF-GOVERNMENT AGREEMENT-IN-PRINCIPLE



**Cover photograph of Conne River,
Newfoundland and Labrador
by Rene Jaddore from Miawpukek First Nation**

**MIAWPUKEK FIRST NATION
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SELF-GOVERNMENT AGREEMENT-IN-PRINCIPLE

BETWEEN

Miawpukek First Nation as represented by the Chief and Council

AND

Her Majesty the Queen in Right of Canada as represented by the Minister of
Aboriginal Affairs and Northern Development

AND

Her Majesty the Queen in Right of Newfoundland and Labrador as represented by
the Minister Responsible for Labrador and Aboriginal Affairs, and the Minister of
Municipal and Intergovernmental Affairs

WHEREAS:

- Miawpukek First Nation has formally requested a self-government process with Canada and the Province;
- Miawpukek First Nation, Canada and the Province are working cooperatively toward the development of a new governance relationship amongst them; and
- Miawpukek First Nation, Canada and the Province wish to negotiate an agreement which will allow for the exercise of Jurisdiction by Miawpukek First Nation within the framework of the Constitution of Canada, and which will provide for harmonious relations among Miawpukek First Nation, Canada and the Province;
- Miawpukek First Nation will exercise Jurisdictions set out in the Final Agreement in accordance with the terms and conditions of the Final Agreement and, to the degree possible, consistent with Miawpukek First Nation culture and traditions.

Now therefore the Parties agree:

CHAPTER 1: DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise specified in the Final Agreement:

“Agreement-in-Principle” means this agreement between the Parties;

“Canada” means Her Majesty the Queen in Right of Canada;

“Community Purpose” means a purpose which is intended to provide a facility, benefit or support for the Members or individuals residing on Miawpukek First Nation Lands;

“Conflict” means:¹

(a) where compliance with one law would involve a breach of another law;
or

(b) where the operation of one law frustrates the legislative purpose of another law;

as determined by the principles set out in the case law respecting conflicts between Federal Law and Provincial Law with any necessary modifications;

“Effective Date” means the date on which the Final Agreement comes into force pursuant to Legislation;

“Federal Law” includes federal statutes, regulations, ordinances, Orders-in-Council and the common law;

“Final Agreement” means the final agreement based upon the Agreement-in-Principle and to be concluded amongst the Parties;

“Fiscal Financing Arrangement” means an arrangement in accordance with chapter 23.

“Fish” means fish as defined in the *Fisheries Act* (Canada).

“Fish Habitat” means fish habitat as defined in the *Fisheries Act* (Canada).

“Intellectual Property” means any intangible property right resulting from intellectual activity in the industrial, scientific, literary, or artistic fields, including any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders’ rights;

¹ To be addressed between AiP and FA.

“Interest in Miawpukek First Nation Lands” means any estate, right or interest of any nature in Miawpukek First Nation Lands, but does not include title to, or for greater certainty licenses to, Miawpukek First Nation Lands;

“Jurisdiction” means the power to enact laws;

“Legislation” means the Federal Law and Provincial Law that implement the Final Agreement;

“Member” means any individual who is a member of Miawpukek First Nation as defined in the membership law made pursuant to chapter 5;

“Miawpukek Band” means the body of Indians declared to be a Band for the purposes of the *Indian Act* by Order in Council 1984-2273 and 1984-2274, referred to as the Miawpukek First Nation in the Province of Newfoundland and Labrador;

“Miawpukek Child” means an individual under the age of 19 years, unmarried, residing on Miawpukek First Nation Lands and born to, legally adopted by or adopted in accordance with Miawpukek First Nation custom by at least one parent who is a Member;

“Miawpukek First Nation” means the body of people formerly known as the Miawpukek Mi’kamawey Mawi’omi or, in its abbreviated form, the Miawpukek Band under the *Indian Act*;

“Miawpukek First Nation Constitution” means the Miawpukek First Nation constitution established in accordance with the Final Agreement and as adopted by the Members;

“Miawpukek First Nation Government” means the government established by the Miawpukek First Nation Constitution and in accordance with the Final Agreement;

“Miawpukek First Nation Land” means:

- (a) The existing Indian Reserve set out in Schedule XX², and
- (b) any lands set apart for Miawpukek First Nation by Canada in the future as a reserve within the meaning of the *Indian Act* and within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

² Canada to find and include official documentation for existing reserve creation.

“Miawpukek Law” means the Miawpukek First Nation Constitution, and laws of Miawpukek First Nation Government made pursuant to the Jurisdictions as set out in the Final Agreement;

“Migratory Bird” means migratory bird as defined in the *Migratory Birds Convention Act, 1994* (Canada);

“Party” means Canada, the Province or Miawpukek First Nation;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or subdivision, and their heirs, executors, administrators and other legal representatives;

“Province” means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

“Provincial Law” includes provincial statutes, regulations, ordinances, Orders-in-Council, by-laws, the common law and equity; and

“Species at Risk” means species at risk as defined under federal statutes and regulations.

Interpretation

- 1.2 References to the *Constitution Act, 1867* and *Constitution Act, 1982* include amendments.
- 1.3 All headings are for reference only and form no part of the Final Agreement.
- 1.4 The Final Agreement shall be construed according to the *Interpretation Act* (Newfoundland and Labrador) with any modifications that the circumstances require.
- 1.5 Except where the full citation of Federal Law or Provincial Law is provided, a reference in the Final Agreement to Federal Law or Provincial Law refers to those laws as amended from time to time and includes replacement or successor Federal Law or Provincial Law.
- 1.6 Where a word is defined in the Final Agreement, other parts of speech and tenses of the same word have a corresponding meaning.
- 1.7 Unless it is otherwise clear from the context, in the Final Agreement the word “including” means “including but not limited to” and the word “includes” means “includes but is not limited to”.

- 1.8 In the Final Agreement, unless otherwise expressly provided or unless otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.
- 1.9 Where the Final Agreement refers to a Federal Law or Provincial Law, or a provision thereof, that is repealed after the Effective Date for which there is no successor legislation, the Final Agreement shall be read without reference to that Federal Law or Provincial Law or provision thereof.
- 1.10 There shall not be any presumption that doubtful expressions, terms or provisions in the Final Agreement shall be resolved in the favour of any party.

Approval of the Agreement-in-Principle

- 1.11 This Agreement-in-Principle shall be submitted to the Parties for approval after initialling by the negotiators for the Parties.
- 1.12 The Miawpukek First Nation Government shall approve this Agreement-in-Principle in a manner as authorized by the Miawpukek First Nation Council through a band council resolution.
- 1.13 Canada shall approve this Agreement-in-Principle when it is signed by the Minister of Indian Affairs as authorized by Cabinet.
- 1.14 Newfoundland and Labrador shall approve this Agreement-in-Principle when it is signed by Order of the Lieutenant-Governor in Council.

CHAPTER 2: GENERAL PROVISIONS

Status of the Agreement-in-Principle

- 2.1 The Agreement-in-Principle shall form the basis for negotiating the Final Agreement.
- 2.2 The Agreement-in-Principle is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not create, recognize or affirm any right under s.35 of the *Constitution Act, 1982*.
- 2.3 Nothing in the Agreement-in-Principle shall be construed to affect any rights under s.35 of the *Constitution Act, 1982*, for any Aboriginal Peoples of Canada.
- 2.4 The Agreement-in-Principle is not a contract and does not create legal obligations binding on the Parties.

Status of Final Agreement

- 2.5 The Final Agreement will not be a treaty or a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and will not create, recognize or affirm any right under s.35 of the *Constitution Act, 1982*.
- 2.6 Nothing in the Final Agreement shall be construed to affect any rights under s.35 of the *Constitution Act, 1982* for any Aboriginal Peoples of Canada.
- 2.7 The Final Agreement will reflect a government-to-government relationship among the Parties within the framework of the Constitution of Canada.
- 2.8 There shall be Mi'kmaq, English and French versions of the Final Agreement. The English and French versions shall be authoritative.

Constitution of Canada

- 2.9 The Final Agreement will not affect the constitutional division of powers between Canada and the Province.

Right to Benefit from Programs and Services

- 2.10 Members who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of Canadian citizens or permanent residents of Canada applicable to them.

2.11 Nothing in the Final Agreement affects the ability of:

- (a) Miawpukek First Nation or its Members to participate in or benefit from:
 - (i) Provincial or federal programs of general application, or
 - (ii) Provincial, if any, or federal programs for Aboriginal people; and
- (b) Miawpukek First Nation Government, entities or businesses to participate in or benefit from:
 - (i) Provincial or federal programs of general application, or
 - (ii) Provincial, if any, or federal, programs for Aboriginal entities;

except as otherwise specifically agreed to by the Miawpukek First Nation Government under a Fiscal Financing Arrangement. Participation in or benefits from those programs shall be determined by general criteria for those programs established from time to time.

Status and Title of First Nation Lands

2.12 Miawpukek First Nation Land is land reserved for the Indians within the meaning of subsection 91(24) of the *Constitution Act, 1867* and is a reserve set apart by Canada for the use and benefit of Miawpukek First Nation.

Liability

2.13 Miawpukek First Nation Government is not liable in respect of anything done or omitted to be done by Canada or the Province or any Person authorized by Canada or the Province in the exercise of any federal or provincial rights, powers, or responsibilities arising from applicable Federal Law or Provincial Law which:

- a) are in relation to the same subject matters set out in the Final Agreement and for which there has been no corresponding exercise of Jurisdiction by Miawpukek First Nation Government at the time of the act or omission; or
- b) occurred prior to the Effective Date.

2.14 Canada or the Province is not liable in respect of anything done or omitted to be done by Miawpukek First Nation Government or any Person authorized by Miawpukek First Nation:

- a) in relation to Miawpukek First Nation Lands that occurred after the Effective Date; or

- b) in the exercise of any rights, powers or responsibilities arising from a Miawpukek Law.
- 2.15 Miawpukek First Nation will indemnify and forever hold harmless the Province or Canada, as the case may be, against any and all claims, demands, actions, damages, liabilities or costs to which the Province or Canada may become subject, as a result of anything done or omitted to be done by Miawpukek First Nation Government or any Person authorized by Miawpukek First Nation:
- a) in relation to Miawpukek First Nation Lands that occurred after the Effective Date; or
 - b) in the exercise of any rights, powers or responsibilities arising from a Miawpukek Law.

Amendments to the Final Agreement

- 2.16 An amendment to the Final Agreement shall require the consent of the Parties.
- 2.17 Miawpukek First Nation Government shall approve any amendments to the Final Agreement in accordance with the process to be set out in the Final Agreement.
- 2.18 The consent of Canada to any amendments to the Final Agreement shall be by an order of the Governor in Council.
- 2.19 The consent of the Province to any amendments to the Final Agreement shall be by an act of the Provincial legislature.

Legal Status and Capacity

- 2.20 The Miawpukek First Nation Government is a legal entity with the capacity, rights, powers, privileges and obligations of a natural person.

Agent

- 2.21 For the purpose of the Final Agreement, Miawpukek First Nation shall not be an agent or mandatary of the Province or Canada unless expressly stated in the Final Agreement.

FINAL AGREEMENT

- 2.22 The Final Agreement will be the entire agreement and there will be no representation, warranty, collateral agreement or condition affecting the Final Agreement unless otherwise provided in the Final Agreement.

CHAPTER 3: RELATIONSHIP OF LAWS

- 3.1 Except as otherwise expressly stated in the Final Agreement, Federal Law and Provincial Law shall continue to apply to Miawpukek First Nation, Miawpukek First Nation Government, Miawpukek First Nation Lands and Members. In the event of a Conflict between a Miawpukek Law and a Federal Law or Provincial Law, priority shall be determined in accordance with the Final Agreement.
- 3.2 The Final Agreement will provide for the consistency of Miawpukek Laws and Miawpukek Government exercises of power with Canada's international legal obligations³.
- 3.3 The *Statutory Instruments Act* (Canada) does not apply to Miawpukek Law.
- 3.4 Notwithstanding any other rule of priority in the Final Agreement, Federal Law, in relation to peace, order and good government, criminal law, human rights, the protection of health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a Conflict with Miawpukek Law.
- 3.5 Notwithstanding any other provision of the Final Agreement, in the event of a Conflict between a Federal Law or Provincial Law and a Miawpukek Law which is in relation to two (2) or more matters, and
- a) one of the matters is not a matter in respect of which Miawpukek First Nation Government has Jurisdiction under the Final Agreement, or
 - b) one of the matters is a matter in respect of which the Final Agreement does not provide for priority for the Miawpukek Law,
- the Miawpukek Law is not invalid by reason of (a) or (b), but the Federal Law or Provincial Law shall prevail to the extent of the Conflict.
- 3.6 Notwithstanding any other provision of the Final Agreement, in the event of a Conflict between a Federal Law or Provincial Law and a Miawpukek Law which has an incidental impact on a matter:
- a) in respect of which the Miawpukek First Nation Government does not have Jurisdiction under the Final Agreement, or
 - b) in respect of which the Miawpukek Law does not have priority over the Federal Law or Provincial Law, the Miawpukek Law is not invalid by reason of (a) or (b), but the Federal Law or Provincial Law shall prevail to the extent of the Conflict.

³ NL also wants to ensure consistency with their international engagements.

- 3.7 Miawpukek First Nation Government is bound by the provisions of the *Canadian Charter of Rights and Freedoms* and the rights and freedoms guaranteed by the *Charter* are enforceable in respect of Miawpukek First Nation Government.
- 3.8 In the event of a Conflict between the Final Agreement or the Legislation, and other Federal Law or Provincial Law, the Final Agreement or the Legislation shall prevail to the extent of the Conflict.
- 3.9 The operation of the Final Agreement shall not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence, security and public safety.
- 3.10 In the event of a Conflict between a Federal Law relating to Species at Risk, Migratory Birds, Fish and Fish Habitat, with Miawpukek Law, the Federal Law shall prevail to the extent of the Conflict.
- 3.11 In the event of a Conflict between Federal Law setting out obligations with respect to the collection of statistics and reporting on natural resources in Canada and Miawpukek Law, the Federal Law or Provincial Law shall prevail to the extent of the Conflict.
- 3.12 For greater certainty, the Jurisdictions to be exercised by Miawpukek First Nation Government set out in the Final Agreement do not extend to matters not specifically addressed in the Final Agreement including⁴:
- a) criminal law, including the procedure in criminal matters;
 - b) protection of the health and safety of all Canadians;
 - c) Intellectual Property; and
 - d) labour relations and working conditions.

Application and Relationship of Federal Law, Provincial Law and Miawpukek Law

- 3.13 Except as otherwise provided in the Final Agreement, Miawpukek Law does not apply to Canada or the Province.
- 3.14 In the event of a Conflict between a provision of this chapter and any other provision in the Final Agreement, the provision of this chapter shall prevail to the extent of the Conflict.

⁴ CAN considering whether to have an overarching clause up-front regarding federal jurisdiction vis-à-vis specific areas of transportation.

3.15 Nothing in the Final Agreement will interfere with the common law public right of navigation.

Canadian Human Rights Act

3.16 Nothing in the Final Agreement restricts the operation of the *Canadian Human Rights Act* or the provincial *Human Rights Act*.

CHAPTER 4: STRUCTURES AND PROCEDURES OF MIAWPUKEK FIRST NATION GOVERNMENT

Miawpukek First Nation Constitution

- 4.1 Miawpukek First Nation shall develop and approve the Miawpukek First Nation Constitution which shall provide for the following⁵:
- a) the responsibilities duties, composition, membership and procedures of the Miawpukek First Nation Government and the method of democratic selection of its representatives;
 - b) democratic, open and transparent decision-making processes for the Miawpukek First Nation Government;
 - c) a system of reporting, which includes independent and external audits, through which Miawpukek First Nation Government will be financially accountable to its Members for all monies received by the Miawpukek First Nation Government;
 - d) conflict of interest rules for elected officials and employees of Miawpukek First Nation Government that are comparable to those generally accepted for governments in Canada;
 - e) procedures for the democratic amendment of the Miawpukek First Nation Constitution by Members;
 - f) procedures for the passage and amendment of Miawpukek Law;
 - g) procedures for the public notification of Miawpukek Law; and
 - h) rights of appeal and redress.
- 4.2 The Miawpukek First Nation Constitution shall be consistent with the provisions of the Final Agreement.
- 4.3 The Miawpukek First Nation Constitution must be ratified in the same manner as the Final Agreement by Miawpukek First Nation.
- 4.4 The provisions of the Miawpukek First Nation Constitution referred to in 4.1 shall be ratified by Miawpukek First Nation at the same time and in the same manner as ratification of the Final Agreement.

⁵ MFN to send a note certifying that this is a finite list.

- 4.5 The Miawpukek First Nation Constitution, ratified in accordance with the Final Agreement, shall come into force on the Effective Date.
- 4.6 Except as otherwise set out in the Final Agreement, in the event of a Conflict between a provision of the Miawpukek First Nation Constitution and a Federal Law, the Miawpukek First Nation Constitution shall prevail to the extent of the conflict.

Miawpukek First Nation Public Register

- 4.7 Miawpukek Law shall be available in English, and may also be available in Mi'kmaq. The English version shall be authoritative.
- 4.8 Miawpukek First Nation Government will maintain a public register containing public records and Miawpukek Laws, to be deposited upon enactment.
- 4.9 The Miawpukek First Nation Government shall provide Canada and the Province, for information purposes only, copies of the Miawpukek First Nation Constitution, Miawpukek Law and any amendments to any of them as soon as practical after they come into effect.

Delegation

- 4.10 The Miawpukek First Nation Government may delegate the exercise of any of its Jurisdictions, capacities, rights, and privileges to:
- a) an agency, official, school board, legal entity or institution of the Miawpukek First Nation Government;
 - b) Canada or the Province;
 - c) a municipality, school board, or other legal entity established by Canada or the Province; or
 - d) another aboriginal government in the Province.
- 4.11 Any delegation by the Miawpukek First Nation Government under 4.10 shall be effective only upon the written agreement of the delegate and may be terminated on written notice.
- 4.12 The Miawpukek First Nation Government has the Authority to receive powers delegated to it by any entity referred to in 4.10 (b), (c), and (d).

- 4.13 Any delegation of powers to the Miawpukek First Nation Government under section 4.12 shall be effective only upon the written agreement of the Miawpukek First Nation Government.

Non-Member Representation

- 4.14 The Miawpukek First Nation Government shall enact a Miawpukek Law which shall provide non-Members living on Miawpukek First Nation Lands, or having an interest in Miawpukek First Nation Lands, with a mechanism through which non-Members may have input into proposed Miawpukek Laws, including amendments, that directly and significantly affect non-Members.
- 4.15 The Miawpukek Law referred to in 4.14 shall be enacted prior to any Miawpukek Law enacted by the Miawpukek First Nation Government after the Effective Date, or within thirty (30) days of the Effective Date, whichever is sooner.
- 4.16 The Miawpukek First Nation Government shall consult non-Members living on Miawpukek First Nation Lands, or having an interest in Miawpukek First Nation Lands, in the development of the Miawpukek Law referred to in 4.14.
- 4.17 The Miawpukek Law enacted to meet the obligation referred to in 4. 14 shall only be amended or replaced with the consent of the non-Members living on Miawpukek First Nation Lands, or having an interest in Miawpukek First Nation Lands.
- 4.18 The Miawpukek Law enacted to meet the obligations under 4. 14 shall provide for the process by which the consent of the non-Members shall be obtained for the purposes of 4.17.

CHAPTER 5: MEMBERSHIP

Jurisdiction

- 5.1 The Miawpukek First Nation Government has Jurisdiction in relation to membership in Miawpukek First Nation.
- 5.2 Membership in Miawpukek First Nation does not confer or deny rights of entry into Canada or grant Canadian citizenship.
- 5.3 Miawpukek Law in relation to membership shall not deprive any individual who had the right to have his or her name entered in the Band List, as defined in the *Indian Act*, for Miawpukek First Nation immediately prior to the Effective Date, of the right to be a Member by reason only of a situation that existed or an action that was taken before the Effective Date.
- 5.4 All Members entitled to be registered as Indians under the *Indian Act* shall continue to be entitled to be registered as Indians under the *Indian Act*.
- 5.5 An individual who is a member of another band or First Nation in Canada may not at the same time be a Member.
- 5.6 Miawpukek Law in relation to membership shall include a procedure for reviewing decisions made pursuant to Miawpukek First Nation law established under 5.1.

Conflict

- 5.7 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and a Federal Law or Provincial Law, Miawpukek Law shall prevail to the extent of the Conflict.

CHAPTER 6: CULTURE AND LANGUAGE

Definitions

“Mi’kmaq Ethnographic Object” means any object created by, traded to, commissioned by or given as a gift to a Miawpukek First Nation member or the Miawpukek First Nation and that has past and ongoing importance to Miawpukek First Nation culture or spiritual practices but does not include an Archaeological Object or any object created for personal use, traded to, commissioned by, or given as a gift to another Aboriginal group.

Jurisdiction

- 6.1 The Miawpukek First Nation has Jurisdiction in relation to:
- a) the preservation, promotion and development of Mi’kmaq culture and language on Miawpukek First Nation Lands, except archaeology, which is addressed in chapter 6A;
 - b) the certification and accreditation of Miawpukek culture and language practitioners; and
 - c) the conservation and management of Mi’kmaq Ethnographic Objects owned by Miawpukek First Nation.
- 6.2 The Jurisdiction of the Miawpukek First Nation Government under section 6.1 does not include the Jurisdiction in relation to the official languages of Canada. Nothing in Miawpukek First Nation Law shall limit the operation of federal legislation in relation to the official language of Canada.
- 6.3 In the event of a conflict between Miawpukek Law made pursuant to this chapter and a Federal Law or a Provincial Law, Miawpukek Law shall prevail to the extent of the conflict.
- 6.4 If, after the Effective Date, a Mi’kmaq Ethnographic Object originating from Miawpukek First Nation Lands comes into the permanent possession of Canada, Canada may, subject to applicable federal policy, lend, or transfer its legal interests in that Mi’kmaq Ethnographic Object to Miawpukek First Nation.
- 6.5 The Miawpukek First Nation Government will be treated as a public authority designated pursuant to section 32 of the *Cultural Property Export and Import Act*, and any non-profit organization established by the Miawpukek First Nation Government to receive, store and display cultural artifacts shall be treated as an institution designated under that section of

that Act, if the Miawpukek First Nation Government or the non-profit organization, as the case may be:

- a) has a facility that meets the environmental requirements of the Minister of Canadian Heritage in respect of long-term storage and display of cultural artifacts; or
- b) has the use, by virtue of an agreement with a public authority or an institution that are designated under subsection 32(2) of the *Cultural Property Export and Import Act*, of a facility that meets the environmental requirements of the Minister of Canadian Heritage, until such time as the Miawpukek First Nation Government or the non-profit organization established by the Miawpukek First Nation Government has a facility that meets those requirements; or
- c) uses either facility to store or display cultural artifacts, including any that are donated to it and that are included in "total cultural gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act* for purposes of computing the income tax liability of the donor.⁶

⁶ Legal consideration

CHAPTER 6A: ARCHAEOLOGY

Definitions

“Archaeological Activity” means archaeological excavations, surveys, historic resource impact assessment or inventories conducted where tangible or potential tangible evidence of past human activities is located. Archaeological Activity also includes the collection and study of Archaeological Objects and any intrusive and non-intrusive work conducted at an Archaeological Site, feature or structure.

“Archaeological Human Remains” means human remains of Aboriginal ancestry that are not the subject of a police or coroner investigation.

“Archaeological Object” means an artifact, a sample or any material that is found on or below [in] the ground or lands underwater and is of archaeological interest or importance for the information that it may provide regarding past human activity or an archaeological site, including Archaeological Human Remains and Associated Burial Objects.

“Archaeological Site” means a place or area where tangible evidence of past human activity of historical, cultural or scientific interest is or was located *in situ* on, below or above the ground or lands underwater, including burial sites.

“Associated Burial Object” means an object that, by its attributes or location, can be demonstrated to have been placed in direct association with a deceased individual as part of a burial practice or rite.

“Burial Site” means a site where a deceased individual was intentionally placed in a natural or prepared physical location into or onto which human remains were deposited.

“Custodian” means the responsible authority that has charge and control.

“Miawpukek Mi’kmaq Archaeological Site” means a place or area where tangible evidence of past Mi’kmaq human activity of historical, cultural or scientific interest is or was located *in situ* on, below or above the ground or lands underwater, including Burial Sites.

“Miawpukek Mi’kmaq Burial Site” means a site where a deceased Mi’kmaq or Miawpukek Mi’kmaq individual was intentionally placed in a natural or prepared physical location into or onto which human remains were deposited.

“Miawpukek Mi’kmaq Archaeological Object” means an Archaeological Object that is solely related to Miawpukek First Nation.⁷

“Permitting Authority” means the Province of Newfoundland and Labrador.

6A.1 Miawpukek Mi’kmaq Archaeological Objects, Miawpukek Mi’kmaq Archaeological Sites and Mi’kmaq Cultural Materials⁸ provide a record of Mi’kmaq prehistory, history and use and occupancy of the Miawpukek lands over time and are of ethnological, spiritual, cultural, historic, religious and educational importance to the Miawpukek First Nation. The Parties therefore recognize that Miawpukek First Nation have an interest in and role to play in their management, as set out in this chapter.

6A.2 The Miawpukek First Nation Government will be the Custodian of Miawpukek Mi’kmaq Archaeological Sites and Miawpukek Mi’kmaq Archaeological Objects on Miawpukek First Nation Lands and has Jurisdiction on Miawpukek First Nation Lands in relation to the following aspects of archaeology:

- a) the management and protection of Miawpukek Mi’kmaq Archaeological Sites;
- b) access to Archaeological Sites located on Miawpukek First Nation Lands;
- c) the conservation and management of Mi’Kmaq and Miawpukek Mi’kmaq Archaeological Objects found on Miawpukek First Nation Lands, except those Archaeological Objects on loan to Miawpukek First Nation; and
- d) the management of Miawpukek Mi’kmaq First Nation human remains and Associated Burial Objects placed in direct association with a deceased Miawpukek First Nation individual discovered after the Effective Date on Miawpukek First Nation Lands.

6A.3 The Miawpukek First Nation Government shall notify Canada and Newfoundland and Labrador when an Archaeological Site, an Archaeological Object, a Miawpukek Mi’kmaq Archeological Site or Miawpukek Mi’kmaq Archaeological Object is discovered on Miawpukek First Nation Lands.

⁷ Province would like to know who determines whether an Archaeological Object is solely related to MFN. We could jointly agree on a specialist who could make the determination. If not Dispute Resolution?

⁸ Should Cultural Materials be “Miawpukek Mi’kmaq Ethnographic Objects” or should it be under case?

6A.4 Miawpukek Law made pursuant to 6A.2 shall include processes and standards regarding archaeology and the care of objects that are at least equivalent to federal and provincial processes and standards.

6A.5 Notwithstanding 6A.2, Newfoundland and Labrador and Miawpukek First Nation will develop the following⁹:

- a) protocol to follow when burial sites, human remains and Associated Burial Objects are discovered on Miawpukek First Nation Lands;
- b) guidelines for the management and protection of Mi'kmaq and Miawpukek Mi'kmaq Burial Sites, Archaeological Human Remains and Associated Burial Objects.

6A.6 Archaeological Permitting

6A.6.1 No Person may carry out an Archaeological Activity unless that Person is a permit holder.

6A.6.2 A permit holder may carry out a permitted Archaeological Activity subject to the terms and conditions of the permit and applicable Laws.

6A.6.3 An application for a permit authorizing an Archaeological Activity may be denied where the Permitting Authority reasonably believes the applicant has contravened or failed to comply with a Law governing archaeology or any term or condition of a permit in relation to archaeology in Canada or elsewhere.

6A.6.4 A Miawpukek Law will not unreasonably deny public access to Archaeological Sites and [Miawpukek Mi'kmaq] Archaeological Objects on Miawpukek First Nation Lands.

6A.6.5 A Miawpukek Law will not unreasonably deny an archaeological permit on Miawpukek First Nation Lands.

6A.6.6 The Permitting Authority may:

- a) amend a permit;
- b) add terms or conditions to a permit; and
- c) cancel a permit if the permit holder contravenes a term or condition of the permit or any applicable Law.

⁹ Canada to consider this following conclusion of LTA discussions.

6A.6.7 The Permitting Authority shall require that a permit holder:

- a) protect and conserve Archaeological Objects and Archaeological Sites and Burial Sites;
- b) provide to the Permitting Authority a full and detailed record and report including a non-technical report, of all Archaeological Activities carried out and all Archaeological Sites found or studied;
- c) deliver to the Permitting Authority possession of all Archaeological Objects discovered or recovered, except where the Permitting Authority requires that any Archaeological Objects be left in its original or natural position within an Archaeological Site, and all associated records;
- d) encourage Miawpukek First Nation participation in the Archaeological Activity;
- e) restore any place disturbed during an Archaeological Activity to the condition that existed before the commencement of the Archaeological Activity to the extent that it is reasonably possible to do so;
- f) prior to conducting the Archaeological Activity, attend at a location specified by the Miawpukek First Nation, to explain and discuss the activities to be carried out;
- g) upon completion of the Archaeological Activity, attend at a location specified by the Miawpukek First Nation, to explain and discuss the activities completed and to provide an opportunity for residents of the area to examine any Archaeological Objects that have been removed;
- h) avoid any disturbance of a site known to contain human remains unless explicitly authorized to do so;
- i) stop excavation immediately and advise the Permitting Authority if human remains are discovered during the Archaeological Activity and the permit holder is not explicitly authorized to disturb human remains; and
- j) fulfil the terms and conditions of the permit within a time or times stipulated in it.

6A.6.8 The permit holder may not enter land to conduct an Archaeological Activity without the permission of the owner or occupant of the land unless expressly authorized to do so by the Permitting Authority under section 6.6.9.

6A.6.9 The Permitting Authority may authorize a permit holder to enter land to conduct an Archaeological Activity without the permission of the owner or occupant of the land if the owner or occupant cannot be located after the permit holder has made reasonable efforts to do so or if the owner or occupant refuses entry and:

- a) the Permitting Authority reasonably believes a Person, other than a permit holder, may be undertaking activity that may result in the disturbance of an Archaeological Site or Archaeological Objects;
- b) the Permitting Authority believes on reasonable grounds that an emergency exists.

6A.6.10 For purposes of section 6.6.9, an emergency shall exist if:

- a) a Person is wilfully ignoring a Law or the terms of a permit in respect of an Archaeological Activity, any Archaeological Object or an Archaeological Site;
- b) any Archaeological Object Material, Archaeological Site or a Miawpukek Mi'kmaq Archaeological Site is in immediate danger of being destroyed or being disturbed contrary to a Law or the terms of a permit; or
- c) the time required to obtain the permission of the owner or occupant of the land would increase the danger of any Archaeological Object, Archaeological Site or Miawpukek Mi'kmaq Archaeological Site being destroyed or disturbed to a Law or the terms of a permit.

6A.7 Human Remains

6A.7.1 The Permitting Authority shall treat human remains that are removed from a Burial Site or a Miawpukek Mi'kmaq Burial Site in accordance with this chapter.

6A.7.2 If the Permitting Authority determines that human remains may be removed from an Archaeological Site, the Permitting Authority shall determine whether the cultural affiliation of the human remains:

- a) is Mi'kmaq;

- b) is not Mi'kmaq; or
- c) cannot be determined

and shall notify Miawpukek First Nation and Canada, in writing, of the results of its determination.

6A.7.3 If the Permitting Authority acting under section 6.7.2 determines that human remains removed from a Burial Site are not Mi'kmaq or Miawpukek Mi'kmaq or if it cannot determine the cultural affiliation of the human remains and they are not returned to the Archaeological Site from which they came, the Province shall determine how to deal with human remains that were removed from the Archaeological Site in the Miawpukek First Nation lands.

6A.8 Title to Archaeological Objects

6A.8.1 In this part, "Archaeological Objects" and "Miawpukek Mi'kmaq Archaeological Objects" does not include human remains.

6A.8.2 The title to all Mi'kmaq and Miawpukek First Nation Archaeological Objects found in Miawpukek First Nation Lands after the Effective Date is vested in the Miawpukek First Nation.

6A.9 Standards

6A.9.1 The Miawpukek First Nation and the Province, shall negotiate for the purpose of concluding an agreement on standards for the safekeeping of Archaeological Objects¹⁰.

6A.9.2 The standards may be reviewed from time to time and amended by written agreement of the Parties.

6A.10 Transfers, Management and Loans of Mi'kmaq and Miawpukek Mi'kmaq Archaeological Materials

6A.10.1 Notwithstanding 6.2, where a Person or another Aboriginal group requests a transfer of its legal interests in an Archaeological Object, Archaeological Human Remains or an Associated Burial Object discovered on Miawpukek First Nation Lands after the Effective Date, Newfoundland and Labrador will determine whether the transfer of its legal interests will proceed

¹⁰ Canada considering the inclusion of "Canada" in these clauses (6.9.1, 6.10.1 and 6.10.2) depending on whether Canada holds any archeological object that could be transferred to MFN.

6A.10.2 If the Miawpukek First Nation Government proposes to transfer, alienate or otherwise dispose of a Miawpukek Mi'kmaq Archaeological Object, that Archaeological Site or Miawpukek Mi'kmaq Archaeological Object shall immediately revert to the administration and control of Newfoundland and Labrador.

6A.10.3 Subject to the standards Miawpukek First Nation may request loans from The Rooms Provincial Museum for Miawpukek Mi'kmaq Archaeological Objects connected to Miawpukek First Nation.

6A.10.4 If, after the Effective Date, a Miawpukek Mi'kmaq Archaeological Object originating from Miawpukek First Nation Lands comes into the permanent possession of Canada, Canada may, subject to applicable federal policy, lend, or transfer its legal interests in that Miawpukek Mi'kmaq Archaeological Object.

6A.11 Archaeological Records

6A.11.1 A permit holder carrying out an Archaeological Activity in Miawpukek First Nation Lands shall provide duplicate originals of required reports, forms and records to each of the Miawpukek First Nation government and the Province.

6A.11.2 The Permitting Authority shall provide Miawpukek First Nation:

- a) Copies of all archaeological site records pertaining to Miawpukek First Nation Land; and
- b) The reports, forms and records referred to in section 6.11.1 and subsections 6.6.7 (b) and 6.6.7 (c)

CHAPTER 7: EDUCATION

Jurisdiction

- 7.1 Miawpukek First Nation Government has Jurisdiction with respect to education of Members on Miawpukek First Nation Lands in relation to the following matters:
- a) early childhood development and education;
 - b) primary, elementary and secondary education;
 - c) adult basic education;
 - d) vocational and post-secondary education, and training ;
 - e) the requirement for Miawpukek First Nation Government certification in addition to those required under any Federal Law or Provincial Law for those who provide educational services on Miawpukek First Nation Lands;
 - f) premises, centres, facilities and buildings used for educational programs and services; and
 - g) boards, authorities or other entities to establish, manage and operate educational programs, services and related facilities.
- 7.2 Subject to sections 6.1b) and 8.7, Federal Law and Provincial Law apply in respect of the accreditation and certification of professions and trades, including education professionals.
- 7.3 Miawpukek Law under 7.1 must require that:
- a) instructors and workers who provide early childhood education and related services have appropriate training, education and certification as required by any Federal Law or Provincial Law; and
 - b) teachers hired by Miawpukek First Nation Government must have a valid Provincial certificate.
- 7.4 Miawpukek Law under 7.1 must establish standards intended to:
- a) ensure that curriculum, examination and other standards set by the Miawpukek First Nation Government allow for: i) the transfer of students between the Provincial school systems; and ii) admission to post-secondary institutions; and

- b) protect and promote the health, well-being and development of children participating in Miawpukek First Nation early childhood development and education programs.

Conflict

- 7.5 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and a Federal Law or Provincial Law, the Miawpukek Law prevails to the extent of the Conflict.
- 7.6 In the event of a conflict between Federal Law or Provincial Law in relation to accreditation, certification or professional conduct of professions and trades and Miawpukek First Nation Law made pursuant to any of the provisions of the Final Agreement, the Federal Law or Provincial Law shall prevail to the extent of the conflict.

CHAPTER 8: HEALTH

Jurisdiction

- 8.1 Miawpukek First Nation Government has Jurisdiction in respect of health services, including public health, health promotion, health protection, continuing care, mental health and addictions provided by a Miawpukek institution on Miawpukek First Nation Lands.
- 8.2 Miawpukek Laws made pursuant to 8.1 will address the protection, improvement and promotion of public and individual health and safety in accordance with provincial standards of practice and guidelines.
- 8.3 In the event of a Conflict between a Miawpukek Law made pursuant to 8.1 and Federal Law or Provincial Law, the Federal Law or Provincial Law shall prevail to the extent of the Conflict.
- 8.4 Notwithstanding 8.3, in event of a Conflict between a Miawpukek Law made pursuant to 8.1 in respect of the organization and structure of Miawpukek institutions used to deliver health services on Miawpukek First Nation Lands and a Federal Law or Provincial Law, Miawpukek Law shall prevail to the extent of a Conflict.
- 8.5 Miawpukek Law under 8.1 must require:
 - a) that health care professionals are licensed in accordance with Federal Law and Provincial Law;
 - b) reporting of communicable diseases and health care utilization statistics in accordance with Federal Law and Provincial Law; and
 - c) immunization in accordance with Provincial standards.
- 8.6 Miawpukek Law under 8.1 must establish standards intended to:
 - a) promote overall goals and objectives with respect to public health and safety; and
 - b) ensure that health delivery facilities, including community health clinics, nursing stations, birthing centres, nursing homes, detoxification centres and hospitals, conform substantially to design and program standards applicable to health care facilities in communities of similar size and circumstance elsewhere in the Province.

Aboriginal Healers

- 8.7 The Miawpukek First Nation Government has Jurisdiction in respect of the authorization of individuals, qualifications of practitioners of traditional healing and medicine and community healing, to practise as aboriginal healers on Miawpukek Lands.
- 8.8 The Miawpukek First Nation Government authority to make laws under 8.7 does not include the authority to regulate:
- a) medical or health practices that, or practitioners who, require licensing or certification under Federal Law or Provincial Law; or
 - b) products or substances that are regulated under Federal Law or Provincial Law.
- 8.9 Miawpukek Laws made pursuant to 8.7 will establish standards:
- a) in respect of competence, ethics and quality of practice that are reasonably required to protect the public; and
 - b) that are reasonably required to safeguard personal client information.
- 8.10 In the event of a Conflict between a Miawpukek Law made pursuant to 8.7 and a Federal Law or Provincial Law, the Miawpukek Law shall prevail to the extent of the Conflict.

CHAPTER 9: CHILD AND FAMILY SERVICES

- 9.1 The Miawpukek First Nation Government has Jurisdiction with respect to social, family, youth and children's programs, services and facilities for Members on Miawpukek First Nation Lands in relation to the following matters:
- a) programs and services for the protection, assistance, well being and development of children, youth and families, including programs and services that focus on prevention and early intervention as they relate to children, youth and families;
 - b) the approval, support and monitoring of residential services for children and youth;
 - c) the placement of children in approved residential services;
 - d) child care services, including the licensing and monitoring of child care facilities and Persons providing child care in private residences;
 - e) residential facilities, including emergency shelters, safe houses, transition houses and group homes for individuals suffering from neglect, abuse or harm or who are otherwise in need of rehabilitation, care, support, help or protection;
 - f) programs, services and residential facilities for the assistance and development of individuals with special needs, in need of rehabilitation, care, support or help or who are unable to care fully for themselves;
 - g) programs and services to prevent neglect, abuse of or harm to individuals, particularly disadvantaged adults and the elderly;
 - h) programs and services to promote development of employment skills, traditional life skills, and land-based skills; and
 - i) education, training, certification and licensing, in addition to licensing requirements under Federal Law and Provincial Law, of Persons who provide social programs, services, and facilities to or for Members on Miawpukek First Nation Lands.
- 9.2 Miawpukek Law under 9.1 must require that social work professionals, and other professionals, be licensed in accordance with applicable Federal Law and Provincial Law.

- 9.3 Miawpukek Law under 9.1 must establish standards intended to:
- a) ensure that facility based services substantially conform to design and program standards of facilities providing similar programs or services in communities of similar size and circumstances elsewhere in the Province;
 - b) ensure that programs and services are provided by or under the supervision of workers who have received appropriate training; and
 - c) promote equality of access and opportunities for adult Members who are unable to care for themselves and the removal of barriers to their integration in the life as Members of Miawpukek First Nation.
- 9.4 Miawpukek First Nation Government has Jurisdiction on Miawpukek First Nation Lands in relation to:
- a) Members in need of protective intervention;
 - b) the removal of a Member in need of protective intervention from his or her home or the home of another individual or from the custody or care of a parent, guardian or other individual;
 - c) the appropriate dispositions of Members determined to be in need of protective intervention and related court procedures;
 - d) the duty to report situations where a Member may be in need of protective intervention; and
 - e) the appointment of one or more individuals to protect and promote the rights of a Member, to ensure their proper care and treatment and to respond to those in need of protective intervention.
- 9.5 For purposes of 9.4, a Member is in need of protective intervention where the Member:
- a) is, or is at risk of being, physically harmed, sexually abused or exploited, or emotionally harmed by the action or lack of appropriate action by the Member's parent, guardian or other caregiver;
 - b) is, or is at risk of being, physically harmed, sexually abused or exploited, or emotionally harmed by any individual and the Member's parent, guardian or other caregiver does not protect the Member;

- c) is in the custody of a parent, guardian or other caregiver who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the Member when recommended by a qualified health practitioner;
 - d) is abandoned;
 - e) has no living parent, guardian or other caregiver, or a parent, guardian or other caregiver is unavailable to care for the Member and has not made adequate provision for the Member's care;
 - f) has inadequate supervision;
 - g) is living in a situation where there is violence;
 - h) is an adult Member who lacks capacity and who is incapable of caring for himself or herself, or who refuses, delays or is unable to make provision for adequate care and attention for himself or herself; or
 - i) is abused or neglected.
- 9.6 If, on Miawpukek First Nation Lands, an individual who is not a Member is in need of protective intervention as set out in 9.5, the Miawpukek First Nation Government may exercise the powers conferred by a Miawpukek Law under 9.1(g) or 9.4 to protect the individual as if that individual was a Member, notwithstanding any other provisions of the Final Agreement.
- 9.7 The Miawpukek First Nation Government shall, as soon as practicable, notify the Province of any action taken under section 9.6 and transfer the matter to the Province, at which time the responsibility of the Miawpukek First Nation Government shall cease with respect to the individual.
- 9.8 If the Miawpukek First Nation Government has notice that a Member on Miawpukek First Nation Lands is in need of protective intervention as set out in 9.5 and the Miawpukek First Nation Government fails to protect the Member, the Province may exercise powers under Provincial Law to protect the Member, notwithstanding that a Miawpukek Law under 9.1(g) or 9.4 may apply to the Member.
- 9.9 The Province shall, as soon as practicable, notify the Miawpukek First Nation Government of any action taken under 9.8 and transfer the matter to the Miawpukek First Nation Government, at which time the responsibility of the Province shall cease with respect to the Member.

9.10 No one acting pursuant to:

- a) a Miawpukek Law under 9.1(g), or 9.4; or
- b) 9.6 or 9.8;

is liable for any act done or omitted to be done in good faith in the reasonable belief that the act was necessary for the protection of the individual.

9.11 In addition to 9.10, anyone acting pursuant to 9.8 has all immunities from liability accorded to that individual under Provincial Law.

Conflict

9.12 In the event of a Conflict between a Miawpukek Law made pursuant to 9.1 or 9.4 e) and a Federal Law or Provincial Law, the Miawpukek Law prevails to the extent of the Conflict.

9.13 In the event of a Conflict between a Miawpukek Law made pursuant to 9.4(a), (b), (c) or (d) and a Federal Law or Provincial Law, the Federal Law or Provincial Law prevails to the extent of the Conflict.

CHAPTER 10: ADOPTION

- 10.1 Subject to 10.2, the Miawpukek First Nation Government has Jurisdiction applying on Miawpukek First Nation Lands in relation to the adoption of a Miawpukek Child.
- 10.2 Where one of the parents, guardians or other individual having care of a Miawpukek Child is not a Member, Miawpukek Laws under 10.1 may only apply to such a child where the non-Member parent, guardian, or other individual having care of a Miawpukek Child consents to the application of Miawpukek Laws under 10.1.
- 10.3 A Miawpukek Law under section 10.1 shall:
- a) provide that the best interests of the Miawpukek Child are the paramount consideration in determining whether an adoption will take place; and
 - b) stipulate that the Miawpukek First Nation Government provide the Province's Vital Statistics division or its successor with records of all adoptions occurring under Miawpukek Laws.
- 10.4 For the purposes of 10.3(a) the best interests of the Miawpukek Child shall consider all the relevant needs and circumstances of the Miawpukek Child including:
- a) the Miawpukek Child's safety;
 - b) the Miawpukek Child's developmental needs;
 - c) the importance of stability and continuity in the Miawpukek Child's care;
 - d) the importance to the Miawpukek Child's development of having a positive relationship with a parent and a secure place as a member of a family;
 - e) the quality of the relationship the Miawpukek Child has with a birth parent or other individual and the effect of maintaining that relationship;
 - f) the Miawpukek Child's cultural heritage;
 - g) the Miawpukek Child's view and wishes, where possible; and

- h) the effect on the Miawpukek Child if there is delay in the making of a decision with respect to the Miawpukek Child.
- 10.5 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and a Provincial Law or a Federal Law, the Provincial Law or Federal Law shall prevail to the extent of the Conflict.

CHAPTER 11: PERFORMANCE OF MARRIAGE

Definitions

“Performance of Marriage” means the “solemnization of marriage” under 92(12) of the *Constitution Act, 1867*.

Jurisdiction

- 11.1 The Miawpukek First Nation Government has Jurisdiction in relation to the Performance of Marriages, on Miawpukek First Nation Lands between Members, and between Members and individuals who are not Members.
- 11.2 Individuals appointed by the Miawpukek First Nation Government pursuant to Miawpukek Law under 11.1 to Perform Marriages shall;
- a) be recognized by the Province as having authority to Perform Marriages under Provincial Law subject to 11.1; and
 - b) have all the rights, duties and responsibilities associated with that authority under Provincial Law.
- 11.3 The Miawpukek First Nation Government shall notify the Province of individuals appointed to Perform Marriages and individuals who cease to be appointed to Perform Marriages.
- 11.4 Marriages Performed in accordance with Miawpukek Law under 11.1 shall be recognized by Canada and the Province in accordance with generally-accepted principles respecting the recognition of marriage.
- 11.5 Miawpukek Law under 11.1 shall stipulate that the Miawpukek First Nation Government provide the Province with records of all Marriages Performed under Miawpukek Laws.
- 11.6 Marriages Performed in accordance with Provincial Law shall be recognized by the Miawpukek First Nation Government in accordance with generally accepted principles respecting the recognition of marriage.
- 11.7 Marriages Performed in accordance with Miawpukek Law can be dissolved only by a decree of divorce issued under the *Divorce Act* (Canada) or by an adjudication of nullity by a court of competent jurisdiction.¹¹

¹¹ NL will review whether this clause is necessary.

11.8 In the event of a Conflict between a Miawpukek Law pursuant to 11.1 and a Provincial Law, the Provincial Law prevails to the extent of the Conflict.¹²

¹² Parties to consider whether a conflict provision is required for this chapter. MFN reviewing.

CHAPTER 12: INCOME SUPPORT

Jurisdiction

- 12.1 The Miawpukek First Nation Government has Jurisdiction in relation to income support programs and services provided by the Miawpukek First Nation Government for Members.
- 12.2 Rules and criteria governing eligibility for Provincial income support and related programs and services under Provincial Law apply to Members who apply for Provincial income support and related programs and services while receiving Miawpukek First Nation Government income support and related programs and services.

Conflict

- 12.3 In the event of a Conflict between a Miawpukek Law made pursuant to 12.1 and a Federal Law or Provincial Law, the Federal Law or Provincial Law prevails to the extent of the Conflict.

CHAPTER 13: WILLS AND ESTATES

Jurisdiction¹³

- 13.1 The Miawpukek First Nation Government has Jurisdiction in relation to the transfer either by will or intestacy of Interests in Miawpukek First Nation Lands and personal property of Members situated on Miawpukek First Nation Lands.
- 13.2 Nothing in section 13.1 shall be construed as providing the Miawpukek First Nation Government with Jurisdiction in relation to the probate of wills or the administration of estates.
- 13.3 Until such time as the coming into force of the first Miawpukek Law made pursuant to the Jurisdiction described in this chapter, the definition of "estate" referred to in section 2 of the *Indian Act* and sections 43-48 and subsections 50(1) to 50(3) of the *Indian Act* continue to apply.
- 13.4 Until such time as the coming into force of the first Miawpukek Law made pursuant to the Jurisdiction described in this chapter, section 42 of the *Indian Act* and regulations thereunder shall continue to apply to the extent of any Conflict with Miawpukek Law passed under other Jurisdictions set out in the Final Agreement.
- 13.5 Notwithstanding 13.1, 13.3 and 13.4, wills and estates under administration prior to the exercise of Jurisdiction by the Miawpukek First Nation Government under this chapter shall continue to be administered under the provisions of the *Indian Act*.
- 13.6 In the event of a conflict between Miawpukek Law made pursuant to this chapter and Federal Law, Miawpukek Law shall prevail to the extent of the conflict.

¹³ The parties will address the estates of minors and mentally incompetent individuals between AIP and Final Agreement.

CHAPTER 14: MIAWPUKEK FIRST NATION LANDS AND LAND MANAGEMENT

Title and Interests in Miawpukek First Nation Lands

- 14.1 Title to all Miawpukek First Nation Lands shall continue to be held in the name of Canada for the use and benefit of Miawpukek First Nation.
- 14.2 Subject to 14.4 and 14.5, licenses and interests in Miawpukek First Nation Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the Effective Date shall continue to have effect in accordance with their terms and conditions.
- 14.3 Subject to the Final Agreement, Miawpukek First Nation Government shall have the rights, powers, responsibilities and privileges of an owner in relation to Miawpukek First Nation Lands and may grant Licenses to and interests in Miawpukek First Nation Lands.
- 14.4 As of the Effective Date, the rights and obligations of Canada as grantor in respect of licences to and interests in Miawpukek First Nation Lands are transferred to Miawpukek First Nation.
- 14.5 Interests in Miawpukek First Nation Lands held on the Effective Date by Members pursuant to allotments under subsection 20(1) of the *Indian Act* are subject to the provisions of Miawpukek Law governing interests in Miawpukek First Nation Lands and sharing in natural resource revenues.

Exchange of Lands¹⁴

- 14.6 Subject to 14.34 to 14.40, Miawpukek First Nation Lands shall not be alienated except for exchange of land in circumstances where:
 - a) Miawpukek First Nation shall receive lands of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;
 - b) Canada is willing to set apart the lands received in exchange as a reserve defined under the *Indian Act* and as subsection 91(24) lands as set out in the *Constitution Act, 1867*.
 - c) Miawpukek First Nation Government has made full disclosure to its Members of all the circumstances surrounding the exchange. At least three (3) community meetings shall be held where the proposed transactions are disclosed; and

¹⁴ Canada and NL will seek to reach agreement between AIP and Final Agreement to facilitate the alienation of MFN land whether by exchange or expropriation to the extent required.

- d) the Members have approved the exchange in accordance with an approval process to be established in the Miawpukek First Nation Constitution for this purpose.
- 14.7 Where the criteria in 14.6 have been satisfied, Miawpukek First Nation Government can execute an authorization and direction to Canada to exchange title to the land.
- 14.8 Upon Canada receiving authorization and direction to exchange Miawpukek First Nation Lands, Canada shall take the necessary steps to transfer and acquire the relevant titles to the lands or transfer the administration and control of the land in the case of an exchange with the Province in accordance with:
- a) the authorization;
 - b) the terms and conditions of the exchange; and
 - c) procedural requirements applicable to acquisitions and dispositions of federal Crown lands.
- 14.9 Miawpukek First Nation Government shall be responsible for determining whether the criteria referred to in 14.6 have been fulfilled. Miawpukek First Nation Government determination shall be definitive and can be relied upon as such by Canada and Canada shall not be liable in respect of any aspect of Miawpukek First Nation's determination.
- 14.10 The land alienated in accordance with 14.6 and 14.8 shall no longer be "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*.

Registry

- 14.11 Miawpukek First Nation Government has Jurisdiction to establish a lands registry for Miawpukek First Nation Lands. Any registry for Miawpukek First Nation Lands established by Miawpukek First Nation Government shall be at least equivalent to the registry referred to in 14.12 a) existing prior to the exercise of this Jurisdiction
- 14.12 Until such time as Miawpukek First Nation Government exercises its Jurisdiction to establish a lands registry, interests in Miawpukek First Nation lands are to be registered in:
- a) a registry to be known as the Self-Governing First Nations Land Registry established by Canada for the registration of interests in

Miawpukek First Nation Lands to be administered in the same manner as the Reserve Land Register established under the *Indian Act*; or

- b) in an alternative registry system established for the registration of interest in Miawpukek First Nation Lands pursuant to an agreement between Miawpukek First Nation Government and Canada.

14.13 In the event that an alternative registry system has been established pursuant to 14.12 b), the Self-Governing First Nations Land Registry referred to in 14.12 a) shall no longer register interests in Miawpukek First Nation Lands.

14.14 Either lands registry referred to in 14.12 shall accommodate the registration of interests not accommodated specifically in the *Indian Act* in accordance with criteria or procedures to be agreed upon by the Parties.

14.15 Interests in Miawpukek First Nation Lands existing as of the Effective Date shall be recognized and recorded in the Self-Governing First Nations Land Registry or a registry referred to under 14.12 b) or established pursuant to the Jurisdiction in 14.11.

14.16 Upon the coming into force of a Miawpukek Law made pursuant to 14.11, interests in Miawpukek First Nation Lands existing and recorded in the Self-Governing First Nations Land Registry or the alternative registry referred to in 14.12 b) will be recognized and recorded in a Miawpukek Land Registry.

Additional Reserve Lands

14.17 Subject to Canada's policy for additions to reserve, as amended from time to time, lands acquired by Miawpukek First Nation Government may be transferred to Canada for the purpose of being set apart as Miawpukek First Nation Lands.

Governance of Miawpukek First Nation Lands

14.18 The Miawpukek First Nation Government has Jurisdiction in relation to the management, administration, control, regulation, use and protection of Miawpukek First Nation Lands.

14.19 Jurisdiction under 14.18 includes:

- a) the creation of interests in Miawpukek First Nation Lands;
- b) procedures for the transfer, acquisition or disposition of interests in Miawpukek First Nation Lands;

- c) procedures in accordance with the Miawpukek First Nation Constitution for encumbering interests in Miawpukek First Nation Lands, including rules affecting the exemption referred to in section 89 of the *Indian Act*;
- d) expropriation of interests in Miawpukek First Nation Lands for Community Purposes in accordance with 14.21-14.23;
- e) treatment of interests in Miawpukek First Nation Lands on marriage breakdown in accordance with 14.28 and 14.29;
- f) zoning and land use planning;
- g) [use, construction, maintenance, repair and demolition of buildings and other structures;]¹⁵
- h) access to Miawpukek First Nation Lands subject to 14.24-14.27;
- i) trespass on Miawpukek First Nation Lands; and
- j) residency on Miawpukek First Nation Lands.

14.20 The Miawpukek First Nation Government may cause surveys to be made of Miawpukek First Nation Lands in accordance with the *Canada Land Surveys Act* and the *Canada Lands Surveyors Act*.

Expropriation for Community Purposes

14.21 Subject to 14.22 and 14.23, Miawpukek First Nation Government has Jurisdiction in relation to expropriation of interests in Miawpukek First Nation lands for a Community Purpose.

14.22 Miawpukek First Nation Government shall provide fair compensation to the interest holder and develop a mechanism to resolve disputes in relation to compensation it pays.

14.23 The following interests in Miawpukek First Nation Lands are not subject to Miawpukek expropriations:

- a) interests obtained pursuant to section 35 of the *Indian Act*; and
- b) interests in Miawpukek First Nation Lands held by Canada.

¹⁵ CAN is considering adding transportation matters in 3.12 or to add words in 14.19 g) that would exclude undertakings relating to the national transportation system.

Access

- 14.24 The exercise of Jurisdiction by Miawpukek First Nation in relation to access to Miawpukek First Nation Lands shall not prevent those Persons with rights or interests in Miawpukek First Nation lands from being able to access those lands associated with those rights or interests.
- 14.25 The exercise of Jurisdiction by Miawpukek First Nation in relation to access to Miawpukek First Nation Lands shall not prevent those Persons who hold fee simple land ¹⁶ that abuts Miawpukek First Nation Lands from being able to access those fee simple lands across Miawpukek First Nation Lands.
- 14.26 Persons acting in an official capacity pursuant to Federal or Provincial Law shall have access to Miawpukek First Nation Lands. Such access shall be without charge except as provided for under the Federal or Provincial Law. Such Persons shall comply with Miawpukek Law made pursuant to 14.19 (h) where such compliance does not unduly interfere with the carrying out of their duties. Subject to 14.27, Canada shall give prior notice of the exercise of such access to the Miawpukek First Nation Government when it is reasonable to do so.
- 14.27 Peace officers, federal investigators and law enforcement officers carrying out duties under law are not required to provide notice as referred to in 14.26.

Treatment of Interests in Miawpukek First Nation Lands on Marriage Breakdown

- 14.28 Miawpukek First Nation Government has Jurisdiction in relation to treatment of interests in Miawpukek First Nation Lands on marriage breakdown involving at least one Member and shall enact a law within twelve (12) months of the Effective Date setting out rules and procedures applicable on the breakdown of a marriage to use, occupancy and possession of Miawpukek First Nation Lands and the division of interests in these lands.
- 14.29 Laws made pursuant to 14.28 shall not discriminate on the basis of sex but may distinguish as between Members and non-Members for the purpose of determining what type of interest in Miawpukek First Nation Lands may be held by an individual.

¹⁶ Parties to consider naming the particular lots.

Procedures to Transfer by Testamentary Disposition or Succession

14.30 Miawpukek Law made pursuant to 14.18 shall include procedures that apply to the transfer, by testamentary disposition or succession, of any interest in Miawpukek First Nation Lands.

14.31 Procedures in the Miawpukek Law referred to in 14.30 shall not be considered an exercise of Jurisdiction under chapter 13.

Conflict

14.32 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and Federal Law, Miawpukek Law shall prevail to the extent of the Conflict.

Federal Expropriation

14.33 Canada and the Miawpukek First Nation declare that it is of fundamental importance to maintain the amount and integrity of Miawpukek First Nation Lands, and they therefore agree, as a general principle, that Miawpukek First Nation Lands will not be expropriated.

14.34 Notwithstanding 14.33, interests in Miawpukek First Nation Lands may be expropriated in accordance with Federal Law:

- a) only with the consent of the Governor-in-Council; and
- b) only for the use of a federal department, agency or other entity as described in the Federal Law.¹⁷

14.35 The Governor-in-Council shall only consent to an expropriation of interests in Miawpukek First Nation Lands if the expropriation is justifiable in accordance with 14.38 and necessary for a federal public purpose.

14.36 The Governor-in-Council shall not consent to an expropriation unless satisfied that:

- a) alternatives to expropriation have been considered and such alternatives are not reasonably feasible;
- b) no non-Miawpukek First Nation Lands are reasonably available;
- c) reasonable efforts have been made to acquire the interest in land through agreement with Miawpukek First Nation;

¹⁷ Canada to consider if Section 35(1) of the *Indian Act* could be preserved to address provincial requests for expropriation.

- d) the interest being taken is the smallest reasonably necessary and the term for which it is taken is the shortest reasonably required; and
- e) Miawpukek First Nation Government has been provided with information relevant to the expropriation.

14.37 Where Federal Law deems an expropriation to be for a public purpose, the expropriation shall be deemed to be necessary for a public purpose under 14.35.

14.38 Prior to seeking Governor-in-Council consent to the expropriation of Miawpukek First Nation Lands, Canada shall make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this expropriation procedure and shall provide a copy of the report to Miawpukek First Nation Government.

14.39 Where the Miawpukek First Nation Government objects to a proposed expropriation, it may refer the issue to a mediator under chapter 25 within sixty (60) days of receiving a copy of the report referred to in 14.38.

14.40 An order of the Governor-in-Council consenting to the expropriation shall not be sought earlier than:

- a) the end of the sixty (60) day period referred to in 14.39; and
- b) the day the opinion or recommendation of the mediator is released, where Miawpukek First Nation Government referred the proposed expropriation to a mediator under 14.39.

Compensation by Canada

14.41 Where an interest in Miawpukek First Nation Lands has been expropriated under sections 14.34 to 14.40, compensation shall be provided to Miawpukek First Nation Government consisting of:

- a) federal land; and
- b) any additional compensation required to achieve the total compensation determined under 14.43.

14.42 Land provided to Miawpukek First Nation Government as compensation may be of an area that is less than the area of the land in which an interest has been expropriated only if the total area of the land comprised in Miawpukek First Nation Lands is not less following the expropriation than at the Effective Date.

- 14.43 The total compensation shall be determined taking into account the following factors:
- a) the market value of the expropriated interest or the land in which an interest has been expropriated;
 - b) the replacement value of any improvement to the land;
 - c) any expenses or losses resulting from a disturbance attributable to the expropriation;
 - d) any reduction in the value of any interest in Miawpukek First Nation Lands that is not expropriated;
 - e) any adverse effect on any cultural or other special value of the land to Miawpukek First Nation; and
 - f) the value of any special economic advantage arising out of or incidental to the occupation or use of the land to the extent that value is not otherwise compensated.

14.44 If the compensation cannot be agreed upon by Canada or the entity described in 14.34(b) and the Miawpukek First Nation Government, either the Miawpukek First Nation Government or Canada may refer a dispute on compensation to binding arbitration under chapter 25, other than for expropriation under the *National Energy Board Act*.

14.45 For expropriation under the *National Energy Board Act*:

- a) disputes over compensation shall be referred to a board, committee, panel or other body authorized by the *National Energy Board Act* to settle disputes in respect of expropriation;
 - b) the board, committee, panel or other body referred to under subsection 14.45 (a) shall include at least one nominee of the Miawpukek First Nation Government; and
 - c) the board, committee, panel or other body referred to under subsection 14.45 (a) shall be comprised of individuals who have knowledge of, and experience related to the criteria set out in section 14.43.
- 14.46 Any claim or encumbrance in respect of the interest expropriated may only be claimed against the amount of compensation that is otherwise payable to the Person or entity whose interest is being expropriated.

14.47 Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the Supreme Court of Newfoundland and Labrador.

Status of Miawpukek First Nation Lands

14.48 Where less than the full interest of the Miawpukek First Nation Government in Miawpukek First Nation Lands is expropriated:

- a) the land retains its status as Miawpukek First Nation Lands;
- b) the land remains subject to Miawpukek Law that is otherwise applicable, except to the extent that such Miawpukek Law is inconsistent with the use or purpose for which the land was expropriated; and
- c) the Miawpukek First Nation Government may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the use or purpose for which the land was expropriated.

14.49 Alternate lands accepted by the Miawpukek First Nation Government from Canada as part of the compensation shall become Miawpukek First Nation Lands and shall be set apart by Canada as a reserve within the meaning of that term defined in the *Indian Act*, and as subsection 91(24) lands as set out in the *Constitution Act, 1867*.

Reversion of Interest in Miawpukek First Nation Lands

14.50 Where an expropriated interest in Miawpukek First Nation Lands, which is less than the full interest of the Miawpukek First Nation Government in Miawpukek First Nation Lands, is no longer required by Canada or the entity described in 14.34 (b) for the purpose for which it was expropriated, the interest in land shall revert to the Miawpukek First Nation Government.

14.51 Canada or the entity referred to in 14.34 b) may, without the consent of the Governor-in-Council, decide that the interest in land is no longer required and determine the disposition of any improvements.

Return of Full Interest in Miawpukek First Nation Lands

14.52 Where a full interest in Miawpukek First Nation lands was expropriated but is no longer required by Canada or the entity referred to in 14.34 b) for the purpose for which it was expropriated, the land shall be returned to the Miawpukek First Nation Government on terms negotiated by the Miawpukek

First Nation Government and Canada, and where appropriate, the entity referred to in 14.34 b).

- 14.53 Where the terms and conditions of the return cannot be agreed upon by the Miawpukek First Nation Government and Canada and, where appropriate, the entity described in the Federal Law, either the Miawpukek First Nation Government or Canada may refer the dispute to arbitration under chapter 25.

Application of Expropriation Act

- 14.54 Any provisions of the *Expropriation Act* (Canada) that are applicable to an expropriation of Miawpukek First Nation Lands by Canada continue to apply unless inconsistent with the Final Agreement.

CHAPTER 15: RESOURCE MANAGEMENT

Renewable Resources

15.1 The Miawpukek First Nation Government has Jurisdiction in relation to renewable resources situated on or under Miawpukek First Nation Lands including protection, conservation, management, development and disposition or renewable resources, this Jurisdiction includes:

- a) preservation and management of wildlife, including game, birds, fur bearing animals, and their natural habitat;
- b) hunting and trapping of wildlife;
- c) preservation and management of the forest resources, including forest enhancement and pest control; and

but does not include Fish, Fish Habitat and water other than water on parcel 3.

15.2 Where there are conservation concerns of Miawpukek First Nation and Canada relating to Species at Risk or Migratory Birds on Miawpukek First Nation Lands, the Miawpukek First Nation Government and Canada shall cooperate to establish appropriate cooperative arrangements where necessary to address conservation concerns.

15.3 Where there are conservation concerns of Miawpukek First Nation and the Province relating to wild life, as defined by the *Wild Life Act* (Newfoundland and Labrador) and the habitat on which it resides, the Miawpukek First Nation Government and the Province shall cooperate to establish appropriate cooperative arrangements where necessary to address the conservation concerns.

Priority of Law in Relation to Resource Management

15.4 In the event of a conflict between Miawpukek Law made pursuant to this chapter and Federal Law, Miawpukek Law shall prevail to the extent of the conflict.

CHAPTER 16: ENVIRONMENTAL PROTECTION AND ENVIRONMENTAL ASSESSMENT

Definitions

In this chapter:

“Authority” means a federal or provincial authority, or both, as the case may be, including a Minister, responsible for taking an action or making a decision pursuant to the *Canadian Environmental Assessment Act* or the Newfoundland and Labrador *Environmental Protection Act*;

“Consult” means to provide:

- a) to the Person being consulted, notice of a matter to be decided in sufficient form and detail to allow that Person to prepare its views on the matter;
- b) a reasonable period of time in which the Person being consulted may prepare its views on the matter, and an opportunity to present its views to the Person obliged to consult; and
- c) full and fair consideration by the Person obliged to consult of any views presented;

“Environment” means:

- a) in Part 1, “environment” as defined in the *Canadian Environmental Protection Act*; and
- b) in Part 2, “environment” as defined in the *Canadian Environmental Assessment Act*;

“Environmental Assessment” means an assessment of the Environmental Effects of a Project that is conducted in accordance with applicable laws;

“Environmental Effect” means “environmental effect” as defined in the *Canadian Environmental Assessment Act*;

“Environmental Emergency” means an uncontrolled, unplanned, accidental or unlawful release of substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

- a) has or may have an immediate or long term harmful effect on the Environment;
- b) constitutes or may constitute a danger to the Environment on which human life depends; or

- c) constitutes or may constitute a danger in Canada to human life or health;

“Follow-up Program” means a program for:

- a) verifying the accuracy of the Environmental Assessment of a Project; and
- b) determining the effectiveness of any measures taken to mitigate the adverse Environmental Effects of the Project, and may include compliance monitoring;

“Pollution Prevention” means “pollution prevention” as defined in the *Canadian Environmental Protection Act*; and

“Project” means:

- a) an undertaking, physical work or physical activity defined as a “project” in the *Canadian Environmental Assessment Act*,
- b) an undertaking, as defined under the Newfoundland and Labrador *Environmental Protection Act*, or
- c) an undertaking, physical work or physical activity defined as a “project” under a Miawpukek Law.

PART I ENVIRONMENTAL PROTECTION

16.1 The Miawpukek First Nation Government has Jurisdiction on Miawpukek First Nation Lands with respect to the protection of the Environment that has the equivalent effect of, or exceeds, any comparable protections under applicable Federal Laws or Provincial Laws.

16.2 Miawpukek Laws made under 16.1 may include:

- a) Pollution Prevention;
- b) waste management;
- c) air quality;
- d) water quality; and
- e) Environmental Emergencies.

- 16.3 In the event of a Conflict between a Miawpukek Law made under 16.1 and Federal Law or Provincial Law, the Federal Law or Provincial Law will prevail to the extent of the Conflict.
- 16.4 Any Party may respond to an Environmental Emergency on Miawpukek First Nation Lands or on federal or provincial Crown lands adjacent to those lands until a lead agency is designated, or where, in the opinion of the Party responding, the lead agency has not responded, or has been unable to respond in a timely manner. The Party responding to the Environmental Emergency will notify the other Parties to the Final Agreement as soon as practicable, of the measures taken to respond to the emergency.
- 16.5 The Parties may enter into intergovernmental agreements, to which adjacent municipalities may also be parties, relating to the:
- a) co-operative and co-ordinated protection of the Environment; or
 - b) prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on or off Miawpukek First Nation Lands.

PART II ENVIRONMENTAL ASSESSMENT

- 16.6 The Miawpukek First Nation Government has Jurisdiction with respect to Environmental Assessment of Projects on Miawpukek First Nation Lands.
- 16.7 Where the Miawpukek First Nation Government exercises its Jurisdiction under 16.6 Miawpukek Law shall have the equivalent effect of, or exceed, the requirements of the *Canadian Environmental Assessment Act* and the Newfoundland and Labrador *Environmental Protection Act*.
- 16.8 Miawpukek Law in relation to Environmental Assessment shall provide for a determination of Projects on Miawpukek First Nation Land that are subject to an Environmental Assessment, provided that such a determination does not lead to the exclusion of Projects that would otherwise be subject to an Environmental Assessment under
- a) the *Canadian Environmental Assessment Act*; or
 - b) the Newfoundland and Labrador *Environmental Protection Act*.
- 16.9 In the event of a Conflict between a Miawpukek Law made pursuant to 16.6 and a Federal Law or Provincial Law, the Federal Law or Provincial Law will prevail to the extent of the Conflict.

16.10 Any Environmental Assessment process undertaken pursuant to Miawpukek Law will provide that Projects subject to an Environmental Assessment cannot be authorized until such an Environmental Assessment is completed.

16.11 The Miawpukek First Nation Government will enact a Miawpukek Law on Environmental Assessment pursuant to the Final Agreement within one (1) year, or such further time as the Parties may agree to, of the Effective Date.

16.12 Miawpukek Law made pursuant to 16.8 will provide at a minimum:

- a) that an Environmental Assessment is conducted as early in the planning stages of the Project as possible, before any irrevocable decisions are made; and
- b) that the following factors are taken into consideration in the Environmental Assessment:
 - i) the Environmental Effects of the Project, including the Environmental Effects of malfunctions or accidents that may occur in connection with the Project and any cumulative Environmental Effects that are likely to result from the Project in combination with other Projects or activities that have been or will be carried out;
 - ii) the significance of the Environmental Effects;
 - iii) comments through public consultations; and
 - iv) measures that are technically and economically feasible and that would mitigate any significant adverse Environmental Effects of the Project.
- c) where a project [is likely to have]¹⁸ significant adverse Environmental Effects, provide for the consideration of the following additional factors:
 - i) the purpose of the Project;
 - ii) alternative means of carrying out the Project that are technically feasible and the Environmental Effects of any such alternative means;

¹⁸ Wording is inconsistent throughout the chapter (see 16.12-16.27 – “may reasonably be; is likely to have; may be expected to have; may reasonably be expected to); Q of whether it ought to be replaced by “may be reasonably expected to” throughout the chapter. To be addressed during final agreement negotiations.

- iii) the need for, and the requirements of, any follow-up program in respect of the Project; and
 - iv) the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.
- d) an opportunity for public participation and public access to the Environmental Assessment information throughout the Environmental Assessment of the Project;
 - e) the opportunity for a full public review where (1) it is uncertain whether the Project is likely to cause significant adverse Environmental Effects, (2) the Project is likely to cause significant Environmental Effects that may be justified in the circumstances, or (3) public concerns warrant a full public review; and
 - f) for a requirement that decision makers take the environmental report, and, where applicable the implementation of the mitigation measures, into consideration prior to taking any action or making any decision that would enable the Project to be carried out in whole or in part; and, in the exercise of any decision making authority in relation to the Project to ensure that the mitigation measures are implemented.

16.13 Following the completion of an Environmental Assessment, a Project may not commence until all necessary permits, licences or other authorizations have been issued by the appropriate Authority, or by the Miawpukek First Nation Government under their Laws, or by both, as may be required.

MIAWPUKEK FIRST NATION GOVERNMENT TRANSBOUNDARY NOTIFICATION

16.14 If a Project on Miawpukek First Nation Lands requires a decision, approval, permit, licence or authorization of the Miawpukek First Nation Government under a Miawpukek Law and may reasonably be expected to have environmental effects outside of Miawpukek First Nation Lands, then it may be assessed under the *Canadian Environmental Assessment Act* or the Newfoundland and Labrador *Environmental Protection Act*.

16.15 If a Project on Miawpukek First Nation Lands requires a decision, approval, permit, licence or authorization of the Miawpukek First Nation Government under a Miawpukek Law and may reasonably be expected to have environmental effects outside of Miawpukek First Nation Lands, the Miawpukek First Nation Government shall notify Canada and the Province prior to the commencement of any environmental assessment of the Project.

- 16.16 Upon completion of an Environmental Assessment of a Project in Miawpukek First Nation Lands under Miawpukek Laws and where the Project is also subject to the *Canadian Environmental Assessment Act* or the Newfoundland and Labrador *Environmental Protection Act*, the Miawpukek First Nation Government shall provide the relevant federal and provincial Authority with a report on the Project.
- 16.17 Where the Miawpukek First Nation Government undertakes a panel review pursuant to its Environmental Assessment process for a Project that [is likely to have] significant adverse Environmental Effects on federal Crown land, Canada may make representations to and will be entitled to recommend to the Miawpukek First Nation Government a member on the panel.
- 16.18 Where the Miawpukek First Nation Government undertakes a panel review pursuant to its Environmental Assessment process for a Project that may have significant adverse Environmental Effects on provincial Crown land, the Miawpukek First Nation Government shall notify the Province prior to the commencement of the panel review.

FEDERAL AND PROVINCIAL TRANSBOUNDARY NOTIFICATION

- 16.19 Where an environmental assessment of a Project is conducted pursuant to the *Canadian Environmental Assessment Act* and the Project may be expected to have a significant impact on Miawpukek First Nation Lands or rights under the Final Agreement, the federal Authority will ensure that:
- (a) the Miawpukek First Nation Government receives timely notice that the environmental assessment is being conducted;
 - (b) the review and statement are made available to the Miawpukek First Nation Government;
 - (c) the Miawpukek First Nation Government receives notice of any information meetings conducted relating to the development or of the appointment of individuals to conduct an inquiry or inquiries with respect to the development; and
 - (d) any written submissions made by the Miawpukek First Nation Government are accepted and considered by the Minister responsible.
- 16.20 Where an environmental assessment of a Project is conducted pursuant to the *Environmental Protection Act* and the Project may be expected to have a significant impact on Miawpukek First Nation Lands or rights under the Final Agreement, the Province will notify the Miawpukek First Nation

Government, and the Miawpukek First Nation Government will be entitled to participate in the environmental assessment in accordance with Provincial Law.

CONSULTATION

- 16.21 If, in the opinion of a federal Authority, a Project that is subject to the *Canadian Environmental Assessment Act* may reasonably be expected to have adverse Environmental Effects on Miawpukek First Nation Lands or adverse effects on Miawpukek First Nation rights under the Final Agreement, the Authority shall, in addition to providing the notice and information under 16.19, ensure that the Miawpukek First Nation Government:
- (a) is Consulted about the Environmental Effects of the Project;
 - (b) is Consulted about the best way to achieve meaningful participation of the Miawpukek First Nation Government in the Environmental Assessment; and
 - (c) receives the report generated as a result of the Environmental Assessment, including, where applicable, the rationale, conclusions and recommendations of the official, mediator or review panel that carried out the Environmental Assessment.

PANEL REVIEWS

- 16.22 Where the federal Authority undertakes a panel review pursuant to the *Canadian Environmental Assessment Act* for a Project which may reasonably be expected to have significant adverse Environmental Effects on Miawpukek First Nation Land, the Miawpukek First Nation Government may make representations to and will be entitled to recommend to the Minister a member on the panel.
- 16.23 The federal Authority shall Consult the Miawpukek First Nation Government before taking any action that would allow a Project to proceed or making a decision to issue a permit, licence, funding or other authorization in relation to the Project that may have adverse environmental effects on Miawpukek First Nation Lands on rights under the Final Agreement.
- 16.24 Where the Miawpukek First Nation Government undertakes a public review pursuant to its Environmental Assessment process for a Project that is likely to have significant adverse Environmental Effects on federal Crown land, Canada may make representations to and will be entitled to nominate a member on the panel.
- 16.25 Where the Miawpukek First Nation Government undertakes a public review pursuant to its Environmental Assessment process for a Project that is to

have significant adverse environmental effects on provincial Crown land, the Miawpukek First Nation Government shall notify the Province prior to the commencement of the public review.

HARMONIZATION

- 16.26 Canada and the Miawpukek First Nation Government agree to jointly take appropriate measures to harmonize and avoid unnecessary overlap and duplication in the conduct of Environmental Assessments where Projects may be subject to more than one Environmental Assessment and may be expected to have adverse Environmental Effects in the Miawpukek First Nation Lands or adverse effects on Miawpukek rights under the Final Agreement or have transboundary effects.
- 16.27 The Province and the Miawpukek First Nation Government agree to explore appropriate measures to harmonize and avoid unnecessary overlap and duplication in the conduct of Environmental Assessments where Projects may be subject to more than one Environmental Assessment and may be expected to have adverse environmental effects in the Miawpukek First Nation Lands or adverse effects on Miawpukek rights under the Final Agreement or have transboundary effects
- 16.28 If a Project is subject to both Miawpukek First Nation Law and the *Canadian Environmental Assessment Act*, the relevant Authority and the Miawpukek First Nation Government shall, having regard to any harmonization measures that may have been established pursuant to 16.6, negotiate an agreement or arrangement for the coordination and harmonization of the applicable Environmental Assessment processes so as to avoid unnecessary overlap and duplication while also meeting their respective decision-making needs with regards to the Project.
- 16.29 If a Project is subject to both Miawpukek First Nation Law and the *Environmental Protection Act*, the relevant Authority and the Miawpukek First Nation Government may, having regard to any harmonization measures that may have been established pursuant to 16.6, negotiate an agreement or arrangement for the coordination and harmonization of the applicable Environmental Assessment processes so as to avoid unnecessary overlap and duplication while also meeting their respective decision-making needs with regards to the Project.

TRANSITIONAL PROVISIONS

- 16.30 When the *Indian Act* provisions that are prescribed pursuant to regulations made under the *Canadian Environmental Assessment Act* are no longer applicable to the Miawpukek First Nation Government after the Effective Date and before the exercise of Jurisdiction under 16.12 as a result of the

Final Agreement, the Miawpukek First Nation Government shall, prior to issuing any approvals or authorizations, ensure that Projects on Miawpukek First Nation lands that ceased to be subject to an Environmental Assessment under the *Canadian Environmental Assessment Act* after the Effective Date as a result of the Final Agreement are assessed by Canada pursuant to the *Canadian Environmental Assessment Act*.

16.31 Environmental Assessments required pursuant to 16.12 shall be carried out by Canada following notification by the Miawpukek First Nation Government.

16.32 Canada shall provide all documents and material produced as a result of the Environmental Assessment to the Miawpukek First Nation Government.

CHAPTER 17: LICENSING, REGULATION AND OPERATION OF BUSINESSES

Jurisdiction

- 17.1 The Miawpukek First Nation Government has Jurisdiction on Miawpukek First Nations Lands in relation to:
- a) licensing of business;
 - b) regulation of the operation of businesses;
 - c) prohibition of the operation of businesses; and
 - d) the raising of revenues by non-tax means through licensing and regulation of the operation of businesses.
- 17.2 The Miawpukek First Nation Government shall provide political and financial accountability to Members comparable to those in place for other governments in Canada with similar responsibilities.
- 17.3 The Jurisdiction referred to in 17.1 does not include Jurisdiction in relation to banking, bankruptcy and insolvency, interprovincial and international trade, competition and incorporation.
- 17.4 Until such time as the coming into force of the first Miawpukek Law made pursuant to this chapter, paragraph 73(1)(e), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

Conflict

- 17.5 In the event of a Conflict between Miawpukek Law made pursuant to 17.1 and a Federal Law, Miawpukek Law shall prevail to the extent of the Conflict.
- 17.6 In the event of a Conflict between Miawpukek Law made pursuant to 17.1 and a Provincial Law, Provincial Law shall prevail to the extent of the Conflict.

CHAPTER 18: TRAFFIC AND TRANSPORTATION

Jurisdiction

- 18.1 Miawpukek First Nation Government has Jurisdiction in relation to the regulation and control of local ground traffic and transportation, and the design, construction, management and maintenance of the local ground transportation infrastructure on Miawpukek First Nation Lands.
- 18.2 For greater certainty, the Jurisdiction referred to in 18.1 does not include Jurisdiction in relation to navigation and shipping.¹⁹
- 18.3 Miawpukek Law made pursuant to 18.1 shall include safety standards and technical codes that are at least equivalent to those established by Canada or the Province.
- 18.4 Until such time as the coming into force of the first Miawpukek Law made pursuant to this chapter, paragraph 73(1)(c), and any regulations made there under, of the *Indian Act* shall continue to apply.

Conflict

- 18.5 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and a Federal Law and Provincial Law, the Federal Law or Provincial Law shall prevail to the extent of the Conflict.

¹⁹ CAN considering whether to leave this provision here or to remove and have an overarching clause in 3.12.

CHAPTER 19: PUBLIC WORKS, COMMUNITY INFRASTRUCTURE AND LOCAL SERVICES

Definitions

“Miawpukek Historic Site” means a location officially identified and commemorated by Miawpukek First Nation on the Miawpukek First Nation Lands and associated with Miawpukek cultural or social history.

Jurisdiction

- 19.1 The Miawpukek First Nation Government has Jurisdiction in relation to Miawpukek public works, community infrastructure and local services on Miawpukek First Nation Lands including works and services in relation to:
- a) the collection, conveyance and treatment and disposal of sewage;
 - b) the supply, treatment, conveyance, monitoring, storage and distribution of water;²⁰
 - c) the collection, removal and disposal of waste and noxious, offensive or unwholesome substances;
 - d) the regulation, storage and management of solid waste and recyclable material, including the regulation of facilities and commercial vehicles used in relation to these matters;
 - e) community parks and buildings;
 - f) services for pleasure, recreation and other community use, including art galleries, museums, Miawpukek Historic Sites, arenas, theatres, sports complexes and other public buildings or facilities for exhibition;
 - g) fire prevention and suppression and the provision of assistance in response to other classes of circumstances specified by Miawpukek Law that may cause harm to individuals or property;
 - h) street lighting systems;
 - i) transit, including transit for individual with special needs;
 - j) the inspection, for public health and safety purposes, of private residences and any other buildings or structures on Miawpukek First Nation Lands;

²⁰ To be reviewed in connection with the LTA.

- k) animal control;
 - l) control of pollution, nuisances, pests, noxious weeds, noise and unsightly premises;
 - m) regulation of fire alarm systems and other security alarm systems;
 - n) programs in preparation for emergencies; and
 - o) graveyards, cemeteries and crematoriums.
- 19.2 The Jurisdiction referred to in 19.1 does not include Jurisdiction in relation to postal services and aeronautics.²¹
- 19.3 Miawpukek First Nation Government has Jurisdiction in relation to the levying and collection of development cost charges, user fees and development permit fees to provide for public works, community infrastructure and local services on Miawpukek First Nation Lands.
- 19.4 Miawpukek Law made pursuant to this chapter shall include public health and safety standards and technical codes regarding public works, community infrastructure and local services that are at least equivalent to federal and provincial public health and safety standards and technical codes, the National Building Code and the National Fire Code.
- 19.5 Until such time as the coming into force of the first Miawpukek Law made pursuant to this chapter, paragraphs 73(1)(i) and (l), and any regulations made there under, of the *Indian Act* shall continue to apply.

Conflict

- 19.6 In the event of a conflict between Miawpukek Law made pursuant to this chapter and Federal Law or Provincial Law, the Miawpukek Law shall prevail to the extent of the conflict.

²¹ CAN considering whether to leave the reference to aeronautics here or to remove and have an overarching clause at the front end of the AIP.

CHAPTER 20: ALCOHOLIC BEVERAGES

Jurisdiction

- 20.1 The Miawpukek First Nation Government has Jurisdiction in relation to the control, restriction and prohibition of the possession, retail sale, and consumption of alcoholic beverages on Miawpukek First Nation Lands or in specified areas on Miawpukek First Nation Lands.
- 20.2 Notwithstanding 20.1 and chapter 17, nothing in this chapter gives Jurisdiction to the Miawpukek First Nation Government in relation to the issuance, suspension, cancellation, refusal and renewal of licences on Miawpukek First Nation Lands in relation to the sale of alcoholic beverages.
- 20.3 Notwithstanding 20.1, the Miawpukek First Nation Government may not set a price for alcoholic beverages lower than the minimum price under the *Liquor Control Act*.
- 20.4 The Newfoundland and Labrador Liquor Corporation shall be the sole distributor of alcoholic beverages on Miawpukek First Nation Lands. The Newfoundland and Labrador Liquor Corporation retains its authority to control the delivery of all alcoholic beverages on Miawpukek First Nation Lands.
- 20.5 The Jurisdiction of the Miawpukek First Nation Government under section 20.1 does not include the Jurisdiction in relation to the manufacture, import or export of alcoholic beverages.
- 20.6 In the event of a conflict between Miawpukek Law made pursuant to this chapter and Provincial Law, the Provincial Law prevails to the extent of the conflict.
- 20.7 In the event of a conflict between Miawpukek Law made pursuant to this chapter and Federal Law, the Federal Law prevails to the extent of the conflict except where the Miawpukek Law relates to prohibition, in which case the Miawpukek Law prevails to the extent of the conflict.

CHAPTER 21: ADMINISTRATION OF JUSTICE

Definitions

“**Miawpukek Court**” means the court established pursuant to Miawpukek Law under 21.14.

“**Young Person**” means a young person as defined by the *Youth Criminal Justice Act* (Canada).

General Provisions

21.1 Until the Miawpukek First Nation Government makes a Miawpukek Law for the administration of justice and establishes the necessary enforcement structures and a Miawpukek Court in accordance with this chapter, the Miawpukek First Nation Government may enter into agreements with Canada or the Province, as the case may be, for:

- a) the enforcement of Miawpukek Laws by Federal Law or Provincial Law enforcement agencies;
- b) the prosecution of violations of Miawpukek Law by federal or provincial prosecutorial authorities in the appropriate courts of the Province;
- c) the adjudication by appropriate courts in the Province of disputes and the review, including judicial review, of administrative decisions made under Miawpukek Law; and
- d) the administration by the Province of sanctions imposed under Miawpukek Law.

21.2 The summary conviction procedure of Part XXVII of the *Criminal Code* shall apply to prosecution of offences under Miawpukek First Nation Laws.

Sanctions

21.3 Miawpukek Law may provide for maximum fines or penalties that are no greater than those which may be imposed for comparable regulatory offences punishable on summary conviction under Federal Law or Provincial Law. However, in proceedings in which a non-Member may receive a sentence of imprisonment under a Miawpukek Law, the defendant may elect to be tried in the Provincial Court of Newfoundland and Labrador, and the Miawpukek Court may not impose on a non-Member, without the

non-Member's consent, a sanction or penalty of a kind other than a sanction or penalty that might be imposed under Federal Law or Provincial Law.

- 21.4 Where there is no comparable regulatory offence under Federal Law or Provincial Law, Miawpukek First Nation Law may provide for a maximum fine or penalty that is no more than the greater between the general penalty provision for summary conviction offences under the *Criminal Code of Canada* or the general penalty provision under the *Provincial Offences Act*.
- 21.5 Notwithstanding 21.3 and 21.4, a Miawpukek Law in respect of taxation may provide for a fine or penalty that is greater than the limits referred to in 21.3 and 21.4 where there is an agreement to that effect made in accordance with 22.5.

Miawpukek Law Enforcement

- 21.6 The Miawpukek First Nation Government has Jurisdiction for the enforcement of Miawpukek Laws and is responsible for the enforcement of Miawpukek Laws.
- 21.7 The power of the Miawpukek First Nation Government to make laws pursuant to 21.6 includes the Jurisdiction for:
- a) the appointment of officials to enforce Miawpukek Laws; and
 - b) powers of enforcement, provided such powers shall not exceed those provided by laws of Canada or the Province for enforcing similar laws in Newfoundland and Labrador.
- 21.8 The Miawpukek First Nation Government shall establish training standards similar to those established by Canada or the Province for its enforcement officials enforcing similar laws, including ensuring that any Miawpukek Law enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officials carrying out similar duties in Newfoundland and Labrador.
- 21.9 The Miawpukek First Nation Government shall establish accountability standards similar to those established by Canada or the Province for its enforcement officials enforcing similar laws, including establishing and implementing procedures for responding to complaints against Miawpukek First Nation Government enforcement officials.
- 21.10 The Miawpukek First Nation Government has Jurisdiction for the establishment, organization, maintenance, administration and regulation of a Miawpukek First Nation Law enforcement agency to enforce Miawpukek Laws.

21.11 Subject to a sectoral intergovernmental agreement, as contemplated under 21.12, Miawpukek First Nation Government law-making authority does not include the Jurisdiction to:

- a) establish a police force, to regulate police activities or appoint police officers or peace officers; or
- b) authorize the carriage or use of firearms or restricted weapons by enforcement officials.

21.12 At the request of the Miawpukek First Nation Government, Canada and the Province may enter into negotiations with the Miawpukek First Nation Government for the purpose of reaching:

- a) a sectoral intergovernmental agreement on jurisdiction over policing; and
- b) an agreement to provide for the enforcement of laws of general application, including the criminal law.

Miawpukek Court²²

21.13 The Miawpukek First Nation Government has Jurisdiction in relation to the establishment, constitution, organization and maintenance of a court for the administration of Miawpukek Laws.

21.14 Miawpukek Laws made under 21.13 shall:

- a) comply with and ensure principles of judicial independence, impartiality and fairness;
- b) establish standards of judicial qualification and competence to be agreed upon by the Miawpukek First Nation Government and the Province; and
- c) provide a structure, process and reasons for the removal of judges from office that are reasonably comparable to those prescribed by the *Provincial Court Act, 1991*.

21.15 Subject to 21.2, the Miawpukek First Nation Government has Jurisdiction in relation to rules of procedure and reception of evidence to be applied by a Miawpukek Court in the exercise of its jurisdiction under 21.21.

²² Prior to the Final Agreement the parties will discuss the appropriateness/feasibility of a Miawpukek Court.

- 21.16 The Miawpukek Court established under this chapter may not exercise its jurisdictions, authority, capacities, rights, powers and privileges until the Lieutenant-Governor in Council has approved the Miawpukek Court structures and the procedures and method for the selection of judges of the Miawpukek Court.
- 21.17 No amendment to the structure of a Miawpukek Court or the procedures and method of selection of judges of a Miawpukek Court shall come into effect until approved by the Lieutenant-Governor in Council.
- 21.18 The Miawpukek First Nation Government may appoint judges to the Miawpukek Court.
- 21.19 The Lieutenant-Governor in Council may, upon a request of the Miawpukek First Nation Government, and in accordance with Provincial Law appoint a judge of the Miawpukek Court as a Provincial Court judge or as a justice of the peace.
- 21.20 The Miawpukek First Nation Government may, with the agreement of the Chief Judge of the Provincial Court of Newfoundland and Labrador and in accordance with Miawpukek Law, appoint a Provincial Court judge as a judge of the Miawpukek Court.
- 21.21 The Miawpukek Court has the jurisdiction to adjudicate:
- a) violations of Miawpukek Law; and
 - b) disputes arising under Miawpukek Law which would be within the jurisdiction of the Provincial Court of Newfoundland and Labrador had the dispute arose under Provincial Law;
- 21.22 Notwithstanding 21.21 and 21.23, the Miawpukek Court shall not exercise jurisdiction over any matter that is within the exclusive jurisdiction of a superior court of the Province.
- 21.23 Canada or the Province may, with the consent of the Miawpukek First Nation Government, confer jurisdiction, capacity, powers, rights and privileges on the Miawpukek Court.
- 21.24 In the exercise of its jurisdiction under section 21.21, the Miawpukek Court may:
- a) impose penalties for violations of Miawpukek Law subject to 21.3 and 21.4;

- b) make any order which could be issued by the Provincial Court of Newfoundland and Labrador had the matter arisen under Provincial Law; and
 - c) issue summonses, subpoenas, warrants and other judicial processes in aid of the enforcement of Miawpukek Law, which processes shall have the same force throughout the Province as if issued by the Provincial Court of Newfoundland and Labrador.
- 21.25 An order or judgment of the Miawpukek Court under section 21.21 may be enforced in the same manner as if it were an order or judgement issued by the Provincial Court of Newfoundland and Labrador.
- 21.26 Miawpukek Law may establish administrative boards, tribunals, commissions or other administrative bodies for carrying out functions under Miawpukek Law, including the determination of matters or rights under Miawpukek Law.
- 21.27 The Miawpukek First Nation Government may establish any other processes, as it considers appropriate for the alternative resolution of disputes arising under Miawpukek Law, on condition that the parties to the dispute consent to the application of the process, including the range of remedies available pursuant to the process.
- 21.28 A decision, ruling, order, or judgement of the Miawpukek Court may be appealed to the Supreme Court of Newfoundland and Labrador, Trial Division, as follows:
- a) with respect to a conviction or sentence in relation to a violation of an Miawpukek Law, on the same bases as summary convictions appeals, under the *Criminal Code of Canada*;
 - b) with respect to a decision, ruling, order or judgement in relation to a dispute arising under Miawpukek Law, on the same basis as a similar decision could be appealed from the Provincial Court of Newfoundland and Labrador; and
 - c) with respect to a decision of the Miawpukek Court under 21.24 on the grounds that the Miawpukek Court made an error of jurisdiction or law or a palpable or overriding error of fact.
- 21.29 The Supreme Court of Newfoundland and Labrador, Trial Division, has:
- a) jurisdiction in respect of applications for judicial review of administrative decisions of the Miawpukek First Nation Government;
 - b) has originating jurisdiction to hear matters arising under Miawpukek Law that are not within the jurisdiction of the Miawpukek Court; and

- c) for greater certainty and consistent with section 21.25, jurisdiction over appeals from any decision, ruling, order or judgement of a Miawpukek Court.

21.30 The Miawpukek First Nation Government shall be responsible for the prosecution of all offenses arising out of Miawpukek Law, and the Miawpukek First Nation Government may appoint individuals to conduct their prosecutions in a manner consistent with the principles of prosecutorial independence.

21.31 In any legal proceeding, other than one before the Miawpukek Court, a copy of a Miawpukek Law that is certified as a true copy by a duly authorized officer of the Miawpukek Government is evidence of its enactment on the date specified in the Miawpukek Law without proof of the officer's signature or official status, and no such Miawpukek Law is invalid by reason of any defect in form.

Corrections

21.32 The Miawpukek First Nation Government has Jurisdiction for the establishment, organization, maintenance, administration and regulation of a Miawpukek correctional service on Miawpukek Lands for adult Members who have violated Miawpukek Laws.

21.33 The Miawpukek Correctional Service shall have powers and responsibilities sufficient for the development and delivery of programs and services for adult Members convicted of offenses under Miawpukek Law and may, subject to agreements negotiated by the Miawpukek First Nation Government with Canada or the Province:

- a) deliver community corrections services to adult offenders who commit offenses under Federal Law or Provincial Law, including parole, probation, conditional sentences, temporary absence supervision, diversion and programs and services designed as alternatives to the formal court process; and
- b) administer group homes, healing centres, half-way houses or other facilities on Miawpukek First Nation Lands that provide alternatives to prisons or penitentiaries for offenders who commit offenses under Federal Law or Provincial Law.

21.34 Notwithstanding 21.32 and 21.33, the Miawpukek First Nation Government may not establish penitentiaries, prisons or other places of confinement, including youth secure custody facilities, except for lock-ups operated by the Miawpukek First Nation Government, unless otherwise agreed to by the Parties.

21.35 If the Miawpukek First Nation Government establishes a lockup it shall also establish standards with respect to the administration and operation of such lockups that are intended to achieve compliance with the “United Nations Standard Minimum Rules for the Treatment of Prisoners” as applicable in Newfoundland and Labrador, and that shall be of comparable comfort, quality, size and safety to lock-ups in communities elsewhere in the Province of similar size and circumstance.

21.36 Nothing in 21.34 shall be construed so as to limit the power of the Miawpukek First Nation Government to establish healing centres, group homes, halfway houses or other facilities for Members convicted of offenses under Miawpukek Law.

21.37 Subject to agreements negotiated under 21.33b), facilities referred to in 21.36 may be used for the delivery of services to offenders under Federal Law or Provincial Law.

Victims of Crime

21.38 The Miawpukek First Nation Government has Jurisdiction on Miawpukek First Nation Lands in relation to the development and delivery of programs and services for the protection, assistance and support of Members who are victims of crime.

21.39 Miawpukek Law made pursuant to 21.38 shall:

- a) accord services to Members who are victims of crime that are comparable to those provided to victims of crime by Federal Laws and Provincial Laws; and
- b) promote standards for the delivery of programs and services for Members who are victims of crime that are comparable to those provided by the Province and in communities of comparable size and circumstance in the Province; and
- c) require that programs and services for Members who are victims of crime be provided by or under the supervision of individuals who have received appropriate training.

Other Matters Affecting the Administration of Criminal Justice

21.40 Prior to the Final Agreement or after, the Parties may enter into negotiations with respect to participation by the Miawpukek First Nation Government in the administration of justice not otherwise provided for in this chapter, including:

- a) the establishment of mechanisms to provide alternatives to the formal criminal justice system;
- b) measures to promote restorative criminal justice including the convening of family group conferences, circle healing and other mechanisms to provide community input, including the participation of the victim into sentencing decision;
- c) the detention of intoxicated individuals; and
- d) the collection of fines.

Liability

21.41 The Miawpukek First Nation Government has Jurisdiction to provide for the protection of judges of the Miawpukek Court and other Miawpukek First Nation Government authorities to prevent the bringing of legal proceedings and establish other measure for the protection of judges of the Miawpukek Court and other authorities of the Miawpukek First Nation Government, but the protection to be provided in accordance with Miawpukek Law shall not be more extensive than the protection provided for justices and other public authorities in accordance with the *Justices and Public Authorities Protection Act* (Newfoundland and Labrador).

Young Offenders

- 21.42 Subject to section 21.2, in particular, the Miawpukek First Nation Government has Jurisdiction on Miawpukek Lands in relation to the commission of offenses under Miawpukek Laws by Young Persons who are Members, including:
- (a) procedures for charging, adjudication and disposition of charges;
 - (b) extra-judicial measures similar to the extra-judicial measures program provided for in the *Youth Criminal Justice Act* (Canada);
 - (c) programs for the prevention of offences against Miawpukek Laws by Young Persons who are Members; and
 - (d) the development and delivery of programs and services for Young Persons who are Members and who commit offences against Miawpukek Laws.

21.43 Miawpukek Laws made under section 21.42 shall:

- (a) accord rights and entitlements to Young Persons who are Members that are substantial similar to those provided to Young Persons by the corresponding Federal and Provincial Laws;
- (b) promote standards for the delivery of programs and services for Young Persons who are Members that are comparable to those provided by Canada or the Province; and
- (c) require that programs and services for Young Persons who are Members be provided by or under the supervision of individuals who have received appropriate training.

Conflict

21.44 In the event of a Conflict between a Miawpukek Law made pursuant to this chapter and a Federal Law or Provincial Law, the Federal Law or Provincial Law prevails to the extent of the Conflict.

CHAPTER 22: TAXATION

Definitions

“**Direct**” has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in section 92(2) of the *Constitution Act, 1867*.

“**Miawpukek First Nation Capital**” means all assets transferred to the Miawpukek First Nation Government under the Final Agreement, or recognized as owned by the Miawpukek First Nation Government under the Final Agreement.

Direct Taxation Powers

22.1 The Miawpukek First Nation Government has Jurisdiction in relation to:

- a) Direct taxation of Members, within Miawpukek First Nation Lands, in order to raise revenue for Miawpukek First Nation Government purposes;
- b) the implementation of any taxation agreement entered into between it and Canada or the Province, or both.

22.2 A Miawpukek Law made under 22.1(a) applies despite section 87 of the *Indian Act*.

22.3 The Jurisdiction of the Miawpukek First Nation Government under 22.1 does not limit the taxation powers of Canada or the Province.

22.4 A Miawpukek Law under this chapter, or any exercise of power by the Miawpukek First Nation Government, is subject to Canada’s International Legal Obligations respecting taxation.

Taxation Powers Agreements

22.5 From time to time, at the request of the Miawpukek First Nation Government, Canada and the Province, together or separately, may negotiate an agreement with the Miawpukek First Nation Government respecting:

- a) the extent to which the Direct taxation Jurisdiction of the Miawpukek First Nation Government under 22.1(a) may be extended to apply to Persons other than Members, within Miawpukek First Nation Lands;
- b) the coordination of Miawpukek First Nation Government taxation of any Person with federal or provincial tax systems; and

- c) the manner in which, and extent to which, sections 87 and 89 of the *Indian Act* will, only for the period of time set out in the agreement and subject to being given force of law by federal legislation, cease to apply to the property of a Member, the Miawpukek First Nation Government or an Indian or band for the purposes of the administration, collection and enforcement of a Miawpukek First Nation, federal or provincial tax contemplated by that agreement.
- 22.6 Prior to the Final Agreement, the Miawpukek First Nation and the Province will negotiate and attempt to reach an agreement referred to in 22.5 in respect of property taxation.
- 22.7 A law in relation to Direct taxation enacted by the Miawpukek First Nation Government under an agreement referred to in 22.5 applies despite section 87 of the *Indian Act*.
- 22.8 Notwithstanding the provisions of the Administration of Justice Chapter, an agreement made in accordance with 22.5 may provide for the manner in which the appeal, enforcement or adjudication of matters relating to a Miawpukek Law in relation to taxation will be conducted.
- 22.9 A taxation agreement referred to in 22.5 shall not form part of this Agreement, is not intended to be a treaty or land claims agreement and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Transfer of Miawpukek First Nation Capital

- 22.10 A transfer under the Final Agreement of Miawpukek First Nation Capital is not taxable and a recognition of ownership of Miawpukek First Nation Capital under the Final Agreement is not taxable.
- 22.11 For federal and provincial income tax purposes, Miawpukek First Nation Capital is deemed to have been acquired by the the Miawpukek First Nation Government at a cost equal to its fair market value on the latest of:
- a) the Effective Date; and
 - b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

Tax Treatment Agreement

- 22.12 The Miawpukek First Nation Government and Canada, or the Miawpukek First Nation Government, Canada and the Province, may enter into a tax

- treatment agreement in relation to the tax status of the Miawpukek First Nation Government and its institutions.
- 22.13 An agreement under 22.12 may provide that sections 87 and 89 of the *Indian Act* will not apply, in whole or in part, to the property of the Miawpukek First Nation Government for the period set out in that agreement.
- 22.14 If the Miawpukek First Nation Government and Canada, or the Miawpukek First Nation Government, Canada and the Province enter into a tax treatment agreement under 22.12, Canada will recommend to Parliament, and, if the Province is a party to the agreement, the Province will recommend to the Legislative Assembly of the Province, that the tax treatment agreement be given effect and force of law through legislation.
- 22.15 An agreement under 22.12 shall not form part of this Agreement, is not intended to be a treaty or land claims agreement and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

First Nations Fiscal and Statistical Management Act

- 22.16 Canada will present in the implementing legislation, provisions to enable the Governor-in-Council to make regulations to enable the Miawpukek First Nation Government to benefit from the provisions of the *First Nation Fiscal and Statistical Management Act* or obtain services of any body established under the Act.

CHAPTER 23: FINANCIAL ARRANGEMENTS

Principles of Financing

- 23.1 The Parties acknowledge that they each have a role in supporting Miawpukek First Nation Government, through direct or indirect financial support or through access to public programs and services, as will be set out in the Fiscal Financing Arrangement or provided through other arrangements.²³
- 23.2 The Parties have been advised that Canada is developing a new national fiscal policy including a transparent methodology for determining levels of federal funding that may be provided to self governing Aboriginal groups in Canada to support the delivery of agreed upon programs and services, taking into account the capacity of each self governing Aboriginal group to generate revenues from its own sources.²⁴
- 23.3 In Final Agreement negotiations, the Province may address fiscal matters including provisions to be included in the Final Agreement regarding the ongoing fiscal relationship between the Province and Miawpukek First Nation, including:
- a) matters that shall and matters that may be taken into account in negotiating a Fiscal Financing Arrangement;
 - b) the prevailing and prospective governmental fiscal policies; and
 - c) the components of a Fiscal Financing Arrangement including own source revenue.
- 23.4 In Final Agreement negotiations, Canada will address fiscal matters including:
- a) Final Agreement provisions relating to the process for its ongoing fiscal relationship with the Miawpukek First Nation Government;
 - b) funding arrangements to take effect no later than Effective Date that will set out terms, conditions and funding with respect to the responsibilities assumed by the Miawpukek First Nation Government, taking into account its ability to contribute from its own source revenues.

²³ NL's position is that the respective roles of the Parties will be set out in the Fiscal Financing Arrangement, rather than the AIP or Final Agreement.

²⁴ MFN and NL will assess the new approach when it's available.

- 23.5 Unless otherwise agreed by the Parties in a Fiscal Financing Arrangement, the establishment of the Miawpukek First Nation Government, the provision of Miawpukek First Nation Government legislative authority under the Final Agreement, or the exercise of Miawpukek First Nation Government legislative authority, does not create or imply any financial or service responsibility on the part of any Party.
- 23.6 Any funding required for the purposes of the Fiscal Financing Arrangement or any other agreement that is contemplated by the Final Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
- (a) in the case of Canada, by the Parliament of Canada;
 - (b) in the case of Newfoundland and Labrador, by the Legislature of Newfoundland and Labrador; or
 - (c) in the case of Miawpukek First Nation, by the Miawpukek First Nation Government.

CHAPTER 24: TRANSITION

Application of *Indian Act*, *Indian Oil and Gas Act*, *First Nation Land Management Act*

- 24.1 Except as provided for in the Final Agreement, the *Indian Act* shall no longer apply to Miawpukek First Nation, Miawpukek First Nation Government, Members and Miawpukek First Nation Lands.
- 24.2 The *Indian Oil and Gas Act* and regulations thereunder shall no longer apply to Miawpukek First Nation, Miawpukek First Nation Government, Member and Miawpukek First Nation Lands.
- 24.3 The Framework Agreement on First Nation Land Management, the *First Nations Land Management Act*, shall no longer apply to Miawpukek First Nation, Miawpukek First Nation Government, Members and Miawpukek First Nation Lands.
- 24.4 Miawpukek First Nation bylaws made pursuant to the *Indian Act*, other than bylaws made pursuant to paragraph 83(1)(a) of the *Indian Act*, shall be deemed to be in force as a Miawpukek Law.

General *Indian Act* Provisions

- 24.5 In addition to other provisions of the Final Agreement with respect to the application of the *Indian Act*, the following provisions of the *Indian Act* shall continue to apply:
- a) definition of “band”, for the purpose of application to other sections of the *Indian Act*;
 - b) definition of “reserve”, as set out in paragraph (a) only of the definition for “reserve”;
 - c) section 3, sections 5 to 7 and the definition of “Indian” and “Indian Register”;
 - d) section 29;
 - e) section 70;
 - f) paragraph 73(1)(a) as it pertains to fish and subsections 73(2) and 73(3);
 - g) paragraph 81 (1) (o), subsections 81(2) and 81(3) and section 86.
 - h) subject to chapter 22, section 87;
 - i) paragraphs 90(1)(a) and (b); and

- j) [sections 101 to 108]²⁵;
- 24.6 Unless otherwise provided by the Final Agreement or Miawpukek Law, section 89 of the *Indian Act* shall continue to apply.
- 24.7 Subject to the terms of any treaty and any Act of Parliament, all provincial laws of general application that affect Indians or Indian status are applicable to Members on Miawpukek First Nation Lands.
- 24.8 Where pursuant to the Final Agreement the *Indian Act* continues to apply:
- a) reference to “Band” in the *Indian Act* shall mean Miawpukek First Nation; and
 - b) reference to “council of the band” in the *Indian Act* shall mean the Miawpukek First Nation Government.

Miawpukek Transfer of Rights and Interests

- 24.9 On the Effective Date, all rights, titles, interests, assets, obligations and liabilities of the band known as the Miawpukek Band shall be vested in the Miawpukek First Nation Government.

²⁵ This may change depending on the outcome of discussions in relation to MFN Courts.

CHAPTER 25: DISPUTE RESOLUTION

Definitions

25.1 In this chapter:

“Dispute” means a controversy, question, disagreement or claim:

- (a) respecting the interpretation, implementation or application of the Final Agreement;
- (b) that the Final Agreement stipulates shall be resolved under this chapter;
- (c) that the Final Agreement stipulates may be resolved under this chapter; or
- (d) arising under or with respect to an agreement between two of the Parties or among all Parties that provides that the controversy, question, disagreement or claim may be resolved under this Chapter; and

“Disputant” means a Party to a Dispute.

General

25.2 Except as otherwise provided, the Disputants participating in a Dispute resolution process under this chapter may agree to vary a procedural requirement, including timelines, contained in this chapter.

25.3 Unless otherwise provided in the Final Agreement, Disputants shall make good faith efforts to resolve Disputes promptly through informal discussion or negotiations before seeking recourse to mediation or Arbitration.

25.4 Disputants may at any time, by agreement, resolve their Dispute. Such agreement shall be recorded in writing, be signed by authorized representatives of each Disputant, and delivered to all Disputants as if the Dispute had proceeded to Arbitration. The signed agreement will terminate any Dispute resolution process that is underway.

25.5 All information exchanged by Disputants under a Dispute resolution process provided for in this chapter shall be regarded as without prejudice communications for the purposes of settlement negotiations and shall be treated as confidential by Disputants and their representatives, unless otherwise required by Federal Law, Provincial Law or Miawpukek Law.

25.6 While efforts are being made to attempt to resolve a Dispute by Disputants under a Dispute resolution process provided for in this chapter, limitation periods provided for at Federal Law, Provincial Law or Miawpukek Law are suspended.

Informal Discussion

25.7 Disputants will endeavour to resolve Disputes informally.

Negotiations

25.8 If informal discussion under 25.7 among or between the Disputants does not resolve a Dispute, negotiations may be commenced by one of the Disputants providing a notice of Dispute to the other Parties, unless otherwise stipulated by the Final Agreement.

25.9 The notice of Dispute shall be delivered by one Party to the other Parties in accordance with the notice provisions of the Final Agreement and shall contain:

- (a) the name of the Parties to the Dispute;
- (b) the issue or issues which the Party wishes to resolve;
- (c) a summary of the facts relevant to the issue or issues as asserted by the Party and all additional relevant documentation;
- (d) the Party's requested resolution or remedy to address the Dispute;
- (e) an express intention to commence the negotiations process described in 25.8 to 25.17; and
- (f) the name of the individual representative charged with the authority to negotiate a resolution of the Dispute.

25.10 The Party receiving a Notice of Dispute shall respond by delivering a reply to the other Parties within thirty (30) days of receipt of the Notice of Dispute in accordance with the notice provisions of this Final Agreement. The reply shall include:

- (a) a statement of those assertions of fact in the Notice of Dispute with which the Party receiving the Notice of Dispute agrees;
- (b) a summary of the different or additional facts and all additional documentation relevant to the issue or issues as asserted by the Party receiving the Notice of Dispute;
- (c) a suggested resolution or remedy to address the Dispute;
- (d) an express agreement to engage in the Negotiations process described herein;

- (e) the name of the individual representative charged with the authority to negotiate a resolution of the Dispute.
- 25.11 A Party whose interests are not directly engaged by the Dispute described in the Notice of Dispute may choose to become a Disputant by giving written notice, setting out that Party's issues with respect to the Dispute and delivering a reply, under 25.10, to the other Disputants.
- 25.12 A Party that becomes a Disputant pursuant to 25.11 shall be entitled to participate in negotiations under 25.8 to 25.17.
- 25.13 The individual representatives of the Disputants in the negotiations referred to in 25.9 f) and 25.10(e) shall meet for negotiations within twenty-one (21) days of delivering the reply.
- 25.14 Each Disputant in negotiations shall bear its own costs unless they otherwise agree in writing prior to or after the commencement of negotiations.
- 25.15 Nothing in 25.8 to 25.17 prohibits a Disputant from making, on a without prejudice basis, a written offer of settlement relating to the Dispute prior to or during the course of negotiations.
- 25.16 A Disputant participating in negotiations may withdraw from the negotiations at any time.
- 25.17 Negotiations terminate when any of the following occurs:
- (a) the expiration of thirty (30) days after the first scheduled negotiations meeting;
 - (b) a Disputant participating in the negotiations withdraws from the negotiations under 25.16 and does not waive its right to terminate the negotiations;
 - (c) Disputants to the negotiations agree in writing to terminate the negotiations; or
 - (d) Disputants to the negotiations sign a written agreement resolving the Dispute.

Mediation

- 25.18 Within thirty (30) days from the termination of negotiations under 25.17, except for termination under 25.17(d) or if termination under 25.17(c) includes agreement to not further pursue resolution of the Dispute, the Dispute which was the subject of those terminated negotiations:

- (a) shall be referred by Disputants to mediation in accordance with 25.18 - 25.33 if the Dispute falls under (a) or (b) of the defined term Dispute, unless otherwise stipulated by the Final Agreement; or
 - (b) may be referred with the agreement of Disputants to mediation in accordance with 25.18 to 25.33 if the Dispute falls under (c) or (d) of the defined term Dispute.
- 25.19 Unless the Final Agreement provides otherwise, Disputes which are not subject to negotiations under 25.8 to 25.17²⁶:
- (a) shall be referred by Disputants to mediation in accordance with 25.18 to 25.33 if the Dispute falls under (b) of the defined term Dispute; or
 - (b) may be referred with the agreement of Disputants to mediation in accordance with 25.18 to 25.33 if the Dispute falls under (c) of the defined term Dispute.
- 25.20 All Disputants referring a Dispute to mediation under 25.18 or 25.19 shall mutually agree upon the mediator for the Dispute.
- 25.21 If agreement cannot be reached pursuant to 25.20, then the mediator shall be chosen by the Chief Justice, Supreme Court of Newfoundland and Labrador, Trial Division – General Division, from a list comprised of, at most, two (2) nominees per party to the mediation.
- 25.22 Unless Disputants agree otherwise, the mediation shall be held in Newfoundland and Labrador.
- 25.23 Unless Disputants agree otherwise, the mediation shall be concluded within thirty (30) days of its commencement.
- 25.24 All costs, other than each Disputant's own costs, of mediation shall be shared equally among Disputants.
- 25.25 Any agreement reached through a mediation process under Part 25.5 shall be recorded in writing, signed by authorized representatives of each Disputant, and delivered to all Disputants and any Party who is not a Disputant.
- 25.26 A mediation agreement reached under 25.18 to 25.33 shall be binding only on Disputants to that mediation agreement.

²⁶ The process will be clarified during final agreement negotiations.

- 25.27 If a mediation agreement is reached under 25.18 to 25.33 and accepted by the Disputants, the Disputants shall carry out the terms of the settlement as soon as possible or in accordance with any time frame set out in the mediation agreement.
- 25.28 Upon termination of the mediation, the mediator shall issue a letter to the Disputants stating whether the mediation was settled or not. If it has not been fully settled, the mediator shall also submit a non-binding mediation report:
- (a) setting out any outstanding issues;
 - (b) setting out a summary of the mediation, including the positions put forward and the efforts made by the Disputants to resolve the Dispute; and
 - (c) listing aspects of agreement among the Disputants.
- 25.29 During mediation, Disputants may agree to refer particular issues of disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the disagreement.
- 25.30 Without limiting the generality of 25.18 – 25.33, in any legal proceeding, the Disputants shall not:
- (a) call a mediator or a Person employed or retained by the mediator as a witness; or
 - (b) refer to the mediation report referred to in 25.29.
- 25.31 For the purposes of 25.30, legal proceedings include Arbitration under 25.34 to 25.51.
- 25.32 Unless otherwise provided in the Final Agreement, no Arbitration proceedings shall commence until mediation proceedings have been terminated under 25.18 to 25.33.
- 25.33 Mediators shall not be appointed as arbitrators under Part 25.6.

Arbitration

- 25.34 Disputes which the Final Agreement stipulates shall be resolved by Arbitration, or which Disputants agree shall be resolved by Arbitration, shall be referred to Arbitration under 25.34 to 25.51 in a written document signed by the Disputants:

- (a) if the Dispute has not been resolved informally, through negotiations, or through mediation as provided for in this chapter; or
- (b) where the Final Agreement stipulates that the Dispute shall or may be resolved through Arbitration without first proceeding through negotiations or mediation or both, and the Dispute has not been resolved informally.

25.35 Notwithstanding 25.34, unless the Parties agree otherwise, any Dispute concerning the following will not be submitted to arbitration pursuant to this chapter:

- a) the decision regarding whether or not Canada will expropriate Interests in Miawpukek First Nation Land pursuant to chapter 14;
- b) matters falling under chapters 23 (Financial Arrangements) and 22 (Taxation);
- c) questions of jurisdiction or constitutional interpretation; and
- d) questions regarding the removal of provisions of the *Indian Act*.

25.36 An Arbitration under 25.34 to 25.51 shall be conducted by a single Arbitrator.

25.37 All Disputants shall, by mutual agreement, choose the Arbitrator within thirty (30) days of referring the Dispute to Arbitration.

25.38 If agreement cannot be reached pursuant to 25.37, then an Arbitrator shall be chosen by the Chief Justice, Supreme Court of Newfoundland and Labrador, Trial Division - General Division, from a list comprised of, at most, two (2) nominees per Disputant.

25.39 Once an Arbitrator is chosen:

- (a) the Arbitrator shall give written notice of an Arbitration to any Party that is not a Disputant.
- (b) a Party receiving notice under 25.39(a) may elect within thirty (30) days of receiving that notice to participate in the Arbitration as a Disputant.

25.40 In conducting any Arbitration process, the Arbitrator has the jurisdiction to:

- (a) determine all questions of procedure, subject to agreements Disputants may make regarding procedure;

- (b) receive and take into account such written or oral evidence tendered by Disputants as the Arbitrator determines is relevant, whether or not that evidence is admissible in law;
- (c) determine questions of fact, Federal Law and Provincial Law;
- (d) order a Disputant to furnish further details;
- (e) order the production of documents by Disputants;
- (f) determine any question as to the Arbitrator's jurisdiction under the Final Agreement;
- (g) subpoena witnesses;
- (h) administer oaths or affirmations to witnesses;
- (i) make one or more interim awards including stop orders and orders in the nature of an injunction;
- (j) invite costs submissions and consider any offers of settlement made by a Disputant prior to or during the course of the Arbitration if awarding costs;
- (k) refer any question of Federal Law or Provincial Law to the Supreme Court of Newfoundland and Labrador, Trial Division – General Division;
- (l) award any remedy permissible at Federal Law or Provincial Law, subject to the Final Agreement and the terms of any agreement by Disputants regarding the scope of remedies.

25.41 No Arbitrator may consider or rule on the validity of the Final Agreement or alter, amend, delete, add to or substitute any provision of the Final Agreement in any manner.

25.42 The Arbitrator shall provide an Arbitration Decision in writing to the Disputants, together with a recital of the facts upon which that Decision is based and the supporting reasons, within ninety (90) days of the referral of Dispute to the Arbitrator by the Disputants.

25.43 Subject to 25.44 and 25.45, a decision or order of an Arbitrator shall be final and binding on the Disputants.

- 25.44 Except as explicitly permitted by section 25.45, an Arbitration Decision shall not be questioned, reviewed, prohibited or restrained by any Court on any ground whatsoever.
- 25.45 An Arbitration Decision may be reviewed by the Supreme Court of Newfoundland and Labrador, Trial Division – General Division, on the grounds that the Arbitrator:
- (a) acted without jurisdiction, acted beyond its jurisdiction or failed to act where it has a duty to act;
 - (b) failed to act in a manner consistent with the principles of natural justice or procedural fairness;
 - (c) based an Arbitration Decision on an error in law or on an erroneous finding of fact; or
 - (d) acted in any other way contrary to Federal Law or Provincial Law.
- 25.46 An Arbitration Decision may be registered and enforced in the same manner as a judgment or order of the Supreme Court of Newfoundland and Labrador.
- 25.47 Unless the Arbitrator decides otherwise, Disputants shall each bear their own costs and pay equally all other costs of the Arbitration, except the fees and disbursements of the Arbitrator which shall be paid for by the Province and Canada pursuant to the terms of an agreement implementing the Agreement.
- 25.48 Nothing shall prevent Disputants from making an offer of settlement relating to the Dispute during the course of Arbitration, but the offer shall be excluded from consideration in the Arbitration except for purposes of an award of costs under 25.40 (j).
- 25.49 If an Arbitration involves a Disputant other than a Party, all proceedings shall be in private and Disputants shall ensure that the Arbitration and the terms of the award are, subject to registration of the award in the Supreme Court of Newfoundland and Labrador, kept confidential unless Disputants otherwise agree. The obligation to maintain confidentiality under this section shall not affect judicial review under section 25.45 or prevent any Party from complying with the Final Agreement.
- 25.50 If an Arbitration involves only Parties, the Arbitrator, at the request of all participating Parties, shall:
- (a) hold the Arbitration in private; and

- (b) hold as privileged and confidential any document or record produced in the course of the Arbitration.

25.51 The *Arbitration Act* (Newfoundland and Labrador) applies to any Arbitration conducted under this chapter as modified by the Final Agreement.

Litigation

25.52 A Disputant shall not litigate a Dispute if the Dispute must be or has otherwise been referred to Dispute resolution under this chapter until the dispute resolution process applicable to the Dispute contained in this chapter has been completed.

25.53 No Disputant or Party that is not a Disputant may apply to a court to attempt to delay, enjoin, prohibit or otherwise interfere with informal discussion, negotiations, mediation or Arbitration that has been commenced under this chapter but nothing in this section:

- (a) affects the ability of a Disputant or Party that is not a Disputant to prevent or remedy a breach of 25.41;
- (b) affects the powers of an Arbitrator under 25.40 (k); or
- (c) prevents judicial review of an interim or interlocutory Arbitration Decision under section 25.40 (i).

25.54 Nothing in this chapter prevents a Disputant from commencing arbitral or judicial proceedings at any time:

- (a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
- (b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the Dispute under this chapter.

CHAPTER 26: IMPLEMENTATION

PRINCIPLES OF IMPLEMENTATION

Implementation Plan

- 26.1 Prior to ratification of the Final Agreement, the Parties shall establish a tripartite implementation planning working group which will be responsible for the development of an implementation plan in advance of ratification.
- 26.2 The implementation plan shall take effect on the Effective Date of the Final Agreement and have a term of 10 years, or such other term as the Parties may agree.
- 26.3 The implementation plan shall:
- a) identify obligations set out in the Final Agreement, the activities anticipated to fulfill those obligations, the responsible Party or Parties and the anticipated time lines for completion of those activities;
 - b) specify how the implementation plan will be amended, renewed or extended; and
 - c) include any other matters agreed to by the Parties.
- 26.4 The implementation plan is not intended to be a treaty or land claims agreement and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of section 25 and 35 of the *Constitution Act, 1982*.
- 26.5 The implementation plan shall not create any legal obligations.
- 26.6 The implementation plan shall be appended to, but shall not be part of, the Final Agreement. The implementation plan shall not be used to interpret the Final Agreement.

Implementation Committee

- 26.7 On the Effective Date, or as soon as practicable thereafter, the Parties agree to establish an implementation committee to provide a forum for the Parties to discuss the implementation of the Final Agreement. The implementation committee shall be for the same term as the implementation plan.
- 26.8 The chair of the implementation committee shall rotate among the members in the order and at the frequency decided by the implementation committee.

- 26.9 The implementation committee shall consist of three (3) members: Miawpukek First Nation, the Province and the Government of Canada, as represented by the Minister of Aboriginal Affairs and Northern Development Canada, shall each appoint one member. At the request of a member, other individuals may participate in implementation committee meetings to support or assist a member.
- 26.10 The implementation committee shall have the following duties and responsibilities:
- a) provide direction on implementation of the Final Agreement and the implementation plan;
 - b) monitor implementation of the Final Agreement and compliance with the implementation plan;
 - c) provide an initial forum to discuss the implementation of the Agreement and resolve any implementation issues related to implementation of the Final Agreement without in any way limiting access to the dispute resolution processes set out in chapter 25;
 - d) [conduct periodic reviews and make recommendations to the Parties on the renewal of the implementation plan beyond the initial period;]
 - e) provide an annual report on implementation of the Final Agreement to the Parties;
 - f) establish its own internal procedures; and
 - g) develop a communications strategy in respect of the implementation and content of the Final Agreement.
- 26.11 Each Party is responsible for its own costs of participation on the implementation committee.
- 26.12 Decisions of the implementation committee will be by unanimous agreement.
- 26.13 Canada shall be responsible for the cost of the annual report of the implementation committee.

Signed at _____, Newfoundland and Labrador on the
_____ day of _____, 2013

For Her Majesty the Queen in right of Canada:

Witness

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and
Northern Development

For Her Majesty the Queen in right of Newfoundland and Labrador:

Witness

The Honorable Nick McGrath
Minister Responsible for Labrador and
Aboriginal Affairs

For Miawpukek First Nation:

Witness

Chief Mi'Sel Joe

Newfoundland
Labrador



Canada