

Governance Pilot Project: Madawaska Maliseet First Nation

The Madawaska Maliseet First Nation governance pilot project developed an Appropriate Dispute Resolution Code, described in the Maliseet language as *Walayawagon* (to heal; to make easier) *yut ku-lo-wut* (this is a good place) *pu-tu-su-a-kun* (a law). The code is recognized as an important governance tool that will empower community members by providing disputing parties with the opportunity to define the dispute in their own terms and to fully participate in the process through an exploration of options for resolution.

Madawaska's dispute resolution process involves three consecutive stages of action. In the first stage the parties attempt to resolve a dispute through negotiation. To initiate this stage, the complainant gives written notice of the grievance to the other party. The receiving party then may provide a written response to the complainant before both parties attempt to resolve the dispute in a civil and respectful manner. If negotiations are unsuccessful, mediation is the second step in the process. The mediation stage is also initiated through written notices and requires both parties to submit a written statement setting out what they believe are the main issues in the dispute. From there, both parties are given a chance to add three mediators to a potential mediator list and rank the potential mediators. Both parties agree to choose the mediator receiving the highest combined rankings. If the mediation does not yield a resolution, a five day post-mediation "cooling off" period ensues, in which the parties take no further action unless this is directed towards further negotiations.

Once the post mediation period expires, the parties may file a notice to have the dispute heard and arbitrated by an Appeal Committee. In this final stage, the parties may have an agent assist them in presenting their case, but are responsible for costs associated with the appeal. The Committee reviews all documents, conducts interviews if necessary and gives each party a chance to be heard. Decisions of the Committee are made by quorum and are binding upon band members, Band Council, and employees. In terms of composition, the Appeal Committee is made up of one member from each of the four core community families. An additional member is chosen by the four members from a preapproved list of candidates, developed unanimously by the four core family members of the Appeal Committee. Each core family member is elected by their respective family.

The final section of the Code sets out an amendment procedure. If a Band Council wishes to amend the Code they meet with the Appeal Committee and propose the amendments. Committee members then vote on the proposed amendments which, to become effective, must receive three-quarters of all eligible votes cast by Appeal Committee members. Community members must be notified of any amendments within ten working days.

In addition to creating the dispute resolution procedure, the Madawaska Maliseet First Nation's governance project also developed various forms to support the administrative aspects of the process, as well as guidelines and procedures for electing core family members to the Appeal Committee. Along with the draft code, an educational guide for band members was developed to increase understanding of the process. The guide includes an introduction to appropriate (or alternative) dispute resolution, a synopsis of the benefits of using this type of mechanism, an overview of the issues and techniques commonly used in negotiations, information that helps readers understand what happens if various stages in the process are unsuccessful, and a brief guide to the appeal committee hearing stage.

Prior to ratifying the Appropriate Dispute Resolution Code, Madawaska Maliseet First Nation has indicated its intention to consult with community members more extensively, make amendments to the Code as needed, develop a french language version of the code for the community's French speakers, and develop a voting process for Appeal Committee members. It is also anticipated that prior to implementation, Appeal Committee members and others who will be involved in the process will need to receive appropriate training.

Excerpted from *First Nations Governance Pilot Projects: Challenge and Innovation. A Final Report Prepared for the National Centre for First Nations Governance by Carleton University Centre for Community Innovation. February 2005.*