
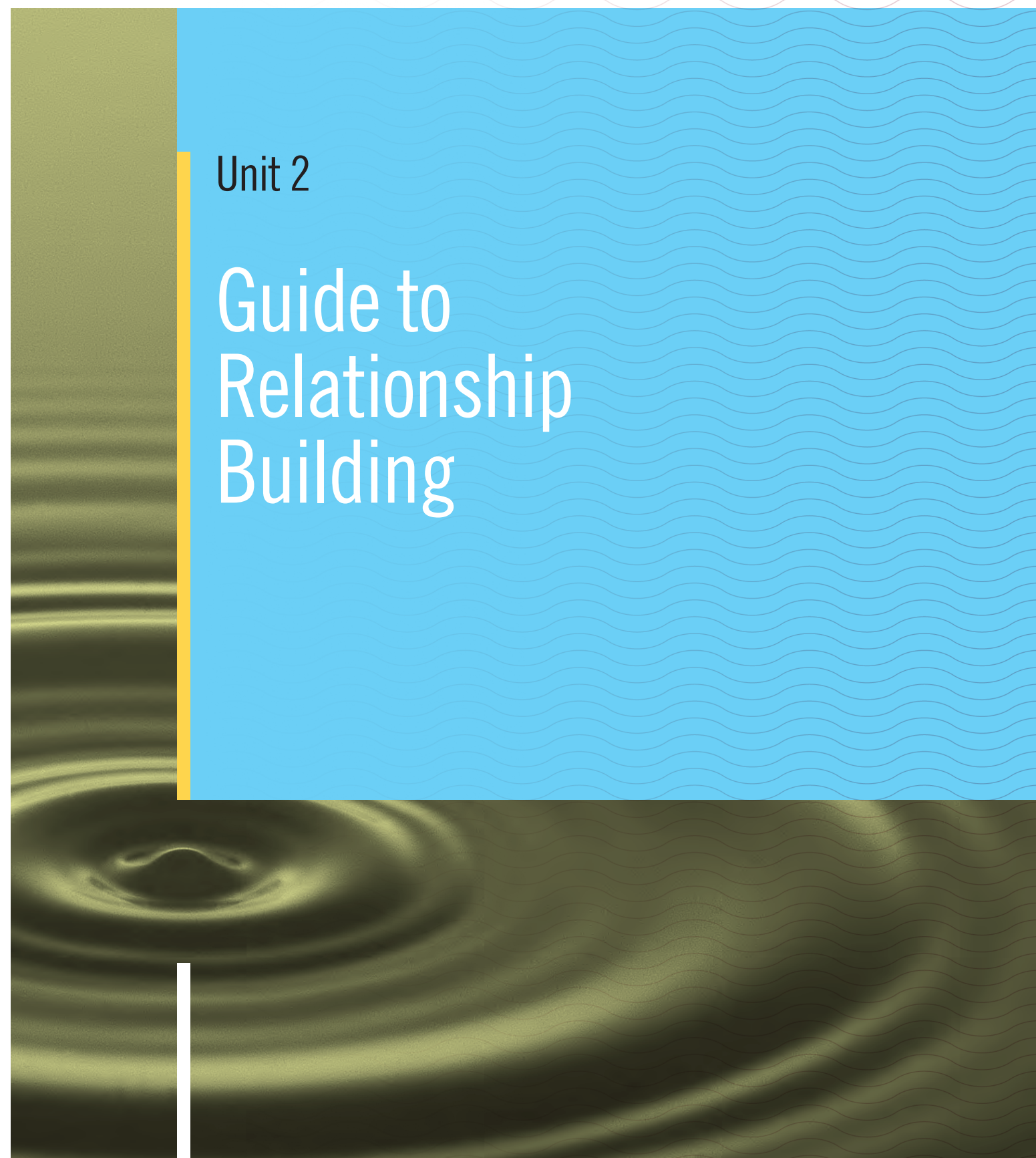




Unit 2



# Guide to Relationship Building



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# 1. A guide to relationship building: Meeting and working with your neighbour

Intergovernmental relationships bind communities together in a positive way and encourage collaboration and development and help ensure potential conflict is resolved more effectively when pursuing a service agreement. Only in recent times has the relationship between First Nations governments and local governments been identified as a significant national opportunity. For much of Canada's history, provinces, territories and local governments were only marginally involved in Aboriginal issues. In the past few decades, a number of modern treaties have resulted in increased interaction between First Nation and local municipal governments. To develop a service agreement, First Nations and local municipal governments will need to continue to interact and ensure that they are doing so in an effective manner.

The next section explores principles behind creating, enhancing and maintaining harmonious and productive relationships between municipal governments and First Nations governments including common myths and tips for working effectively together.

## 1.1 Working with First Nations: A guide for municipalities

It is important to recognize that there is a significant amount of diversity among First Nations governments in terms of their population size, geography, capacity, income, educational attainment and autonomy. There are additional differences across Canada concerning linguistic groupings, culture, history and the extent to which traditional practices have been

maintained through policies and programs of discrimination and assimilation such as residential schools. Attention should be paid to getting to know your adjacent First Nation community individually to get a better understanding of their unique history and political and social relationships. (For more resources including common questions and answers, please see **Unit 2, Chapter 2.4: Governance structure references.**)



**What is the difference between Aboriginal, First Nation, and Indian? Which word should I use?**

*Aboriginal* refers to the original inhabitants of Canada and can be subdivided into three groups: Indians, Inuit and Métis. These groups have distinct heritages, languages and beliefs and are only linked through their indigenous ancestry.

*First Nations* is a term that has come into use in the last few decades to replace the term Indian, which some people find offensive. In its use, First Nations refers to an individual of indigenous ancestry who is neither Inuit nor Métis, and in many cases also replaces the terms band or community.

Although First Nations is considered more polite and respectful, this term is not used commonly in legal documentation. Historically, First Nations people were referred to as Indian, which is a term to describe Aboriginal people who are neither Inuit nor Métis.

In general, what people prefer to be referred to is individual choice. It is important that you ask these questions and get to know your contact's individual perspectives on these issues.

**We hear a lot about Aboriginal rights and title. What does this mean?**

Aboriginal rights refer to the practices that were in use before European contact, including unique cultural practices, traditions and customs. Legally speaking, the rights of Aboriginal peoples are set out separately in the Constitution to recognize that they are the descendants of the original inhabitants of Canada. Although the Canadian Constitution recognizes that Aboriginal rights exist, it does not define specifically what is considered an Aboriginal right.<sup>1</sup> Ongoing court decisions are working through resolutions to these claims.

Aboriginal title refers to the right to the land itself, not just the activities that may occur on the land. In some parts of the country, treaties dating back to the 1700s were signed setting apart lands for Aboriginal peoples; this continued across much of Canada through the 1900s. Some areas of Canada have no treaties and therefore some First Nations assert that because they did not surrender these lands to the Crown, they still have Aboriginal title to these areas. Ongoing court decisions are working through resolutions to these claims.

Both Aboriginal rights and title are considered communal rather than individual. Aboriginal title recognizes a particular community's access to land, rather than individual ownership of that parcel of land.

<sup>1</sup> *The Constitution Act, 1982* s. 35.

**Is it true that First Nations have more privileges than the rest of the population?**

It is a common myth that all First Nations have many additional privileges compared with those of the general Canadian population. Commonly cited privileges include not paying taxes, receiving free services that others must pay for (such as post-secondary education), and having easier lives than those living off-reserve.

In fact, First Nations enjoy the same fundamental benefits of all Canadians such as unemployment insurance and the child tax benefit. The federal government provides First Nations with services that are constitutionally allocated to the provinces.

Life for members of many First Nations is not easier than it is for the average Canadian. Overall there is a lower quality of living for Aboriginals than that of the average Canadian. This includes shorter life expectancy; higher unemployment; higher rates of suicide, alcoholism and drug abuse; higher levels of infant mortality; and proportionally lower educational attainment.<sup>2</sup> In addition, for Aboriginals who live on reserves it is difficult to own the land on which their houses are built to the same extent that other Canadians enjoy. This offers limited stability compared to that of those living off-reserve. The federal government in cooperation with band councils thus provides, for example, additional funding for post-secondary assistance and housing to ensure that First Nations may achieve the same standard of living as other Canadians.

In the case of taxes, Inuit, Métis and non-status Indians are required to pay taxes. First Nations individuals working on-reserve with a company that is also located on-reserve are not required to pay taxes. However, all First Nations working off-reserve are required to pay both federal and provincial taxes with the exception of employees of organizations that are specifically geared toward Aboriginal people.

**Myth: There are no more “real” Aboriginal peoples.**

While Aboriginal people live modern lives, this does not mean they are no longer any “real” Aboriginal peoples. Many are working to preserve and promote their own identity, culture, traditional practices, values and spirituality, which vary greatly from band to band.

Many Aboriginal people still practise traditional activities such as hunting, trapping and fishing, and many have maintained a respect for, and knowledge of, their traditional territories and environments.

<sup>2</sup> For more information, see: “Fact Sheet: Top Misconceptions about Aboriginal People” by the Assembly of First Nations (AFN) in **Unit 2, Chapter 1.8**.



### 1.1.1 Tips for working effectively toward strong relationships

There are some general tips to keep in mind when building a relationship with a First Nations government. The following tips were written by the Committee for the Advancement of Native Employment at Indian and Northern Affairs Canada (INAC) and appeared in their publication, *“Aboriginal Awareness Guide.”*

#### Show respect

- It is important to not just talk to First Nations when you need something — get to know them as individuals.
- Take time to learn about community history, achievements and challenges.
- Refusing food or drink from the hosting First Nation may be considered disrespectful.
- Communicate in person rather than by email or telephone.

#### Communicate effectively

- Let people finish what they are saying and respect silences after someone has finished speaking.
- Be prepared to work in a highly emotional environment when discussing some issues, and be prepared to listen and not take an issue personally.
- Never refer to First Nations as stakeholders nor use the term institutionalize; both have negative associations.
- Some individuals avoid direct eye contact as a sign of respect; do not interpret this as shyness or being untrustworthy.
- Remember, keep things light! Humour is important.

#### Make effective decisions

- Plan a sufficient amount of time for meetings, especially if decisions need to be made.
- Try to avoid situations with authoritative decision making or imposed solutions; look for building consensus in the group, and decisions will be more legitimate.
- Individuals can become uncomfortable if asked to make decisions for the group. Oftentimes, community consultation, collective decision making, and permission to make decisions must occur.



## 1.2 Working with municipal governments: A guide for First Nations

Similar to First Nations communities, there is a significant amount of diversity among municipalities across Canada with regard to their population, size, geography and capacity. Therefore, when considering working with a nearby municipality for the provision of services, it is important to take time to learn the specifics of their unique community, government and needs.

### Why would a municipality and First Nations want to work together?

The incentives for service agreements include economies of scale and other benefits to building partnerships, such as the following:

- Improving relationships (community-to-community, government-to-government)
- Enhancing social standards
- Providing growth and new opportunities to both municipal and First Nations communities
- Building a stronger labour force
- Increasing capacity with both political and technical staff, due to knowledge sharing
- Implementing working partnerships that become business as usual
- Accommodating regulatory changes; working together to meet standards
- Improving levels of service
- Realizing financial savings

Maintaining healthy communities and regions is in everyone's interest. First Nations and municipalities share many of the same responsibilities as their residents. In many cases, community members live on the reserve or in a municipality and have family in both communities. Thus, cooperation is important to ensure good relationships, strong communities, and improved services to community members. Cooperation between municipalities and First Nations is a way to achieve a better level of service on the large issues that require cooperation. Such issues include source water protection, recreation and some infrastructure and services projects.



**Is it true that municipalities have a lot of funding because they receive transfers from provincial and federal governments and through their municipal tax systems?**

Municipalities across Canada have diverse sets of issues and differing levels of capacity to deal with these challenges. Of every tax dollar collected, only eight cents go to municipal governments. With that amount they must deliver an ever-expanding complement of human and physical services. From child care to housing to social assistance, municipal governments are taking over a share of the social-service costs once borne by the federal and provincial governments. Without additional resources, these services are funded primarily through property taxes. Municipalities often face financial constraints due to the large number of services that they are responsible for providing to their residents versus the limited amount of funding that they can derive from property taxes — particularly for municipalities with small populations.

Municipalities must plan carefully to ensure that they can make the most of their limited funds. And they must deal with constraints by making trade-offs with initiatives in their communities to ensure financial well-being.

**Myth: Cooperation with a municipality is not an option because the federal government does not manage it.**

Across Canada, municipalities and First Nations are working together to make stronger communities, improve regional standards of living, and cooperate on services. Despite the differing levels of government, First Nations and municipalities have similar community responsibilities and concerns and are able to work together, government to government.



### 1.3 Tips for working effectively toward strong relationships: A guide for First Nations and municipalities

The following section outlines some quick tips that are commonly overlooked and should be kept in mind by both parties while building relationships and discussing community needs.

#### **Ensure that you are talking to the right person**

Generally speaking, members from both parties should contact their equal in the other government or community. Mayors, as political leaders, should approach the Chief of a First Nation, also a political leader. Band managers should approach Chief Administrative Officers (CAOs) as they are both heads of administration. Public works staff should feel comfortable speaking with public works staff from their neighbouring communities. This may change over time as relationships grow, but it is especially important at the beginning of a relationship to show respect and ensure your concerns are addressed in face-to-face meetings with the right person.

#### **Distinguish the political from the technical**

Conversations about community cooperation and service agreements can generally be grouped into two categories: technical concerns and political concerns. Both categories bring forward valid and varied concerns.

**Political concerns** include the nature of political relationships, historical tensions, governance (relationships between the four levels of government), jurisdiction and policy.

**Technical concerns** include management of joint facilities, service agreement negotiation, engineering standards, community health and safety needs, regulations and requirements.

Although it is extremely difficult to completely separate these items, it is easy to become sidetracked and frustrated when conversations mix political and technical concerns. By clarifying the purpose of each meeting, it makes it easier for both parties to adjust expectations.

#### **Attend as many events as possible**

Make an effort to show respect for your partner community by attending community events (e.g., gatherings, open houses, powwows) and meetings when you are invited. This is a positive way to show interest in improving government-to-government relationships and to demonstrate a willingness to build relationships between communities. If you are unable to attend, try to make an effort to follow up and ensure that you can meet or attend another upcoming event.

#### **Joint Council Meetings**

Joint Council meetings are an effective way to get political representatives together to provide updates on each other's communities, establish relationships, and cooperate on issues of mutual concern. Joint Council meetings may be informal and held over a meal or may be formalized in a communication protocol (see **Unit 2, Chapter 1.7.2: Communications protocol template**).



## 1.4 Community engagement

**As a part of maintaining a long-term partnership, municipalities and First Nations must work together to generate awareness and engage their communities on the benefits of government-to-government relationships.**

Community engagement can involve community gatherings and meetings, door-to-door information sharing, press releases, emails and information flyers. Although community engagement is by no means mandatory, it acts as a powerful mechanism:

- It improves local support of communities working in partnership.
- It addresses concerns and myths from community members.
- It helps bring about behavioural changes from residents of both communities.

These benefits ensure the sustainability of cooperation and service agreements in the long term.

The following section outlines several tips to assist in organizing successful community meetings and writing quality press and media releases to get support for your service agreement. (For more information and additional resources, please see **Unit 2, Chapter 1.8: Relationship building references.**)

## 1.5 Cross-cultural awareness

In the context of First Nation and municipal partnerships, it is important to consider cross-cultural similarities and differences when negotiating service agreements since each group's cultural values will shape their beliefs, perceptions and actions at individual and community levels. Often times for partnerships to be successful and service agreements to be signed, a period of getting to know each other is necessary to create a foundation of trust. This section discusses the benefits of establishing cross-cultural awareness initiatives between municipal and First Nation governments as a stepping stone to service agreements, which includes tips for communicating and topics to consider including in a cross-cultural workshop.

### Is your culture oriented toward individualism or collectivism?

*Individualism* — tend to place high value on equality, freedom, material comfort, task completion and punctuality. Typical behaviours include frustration with lateness and what is perceived as “wasted time” and in “getting right down to business” in meetings and discussions. Non-indigenous mainstream cultures tend to be oriented toward individualism.

*Collectivism* — tend to value consensus, cooperation, harmony and patience. Affiliation with others and human relations are important, and so individuals are more likely to forgive lateness, and to take time to establish a relationship before getting down to business. Traditional indigenous cultures tend to be oriented toward collectivism.

Source: Aboriginal Awareness Workshop: Guide to Understanding Aboriginal Cultures in Canada, Aboriginal Affairs and Northern Development

### 1.5.1 Benefits of cross-cultural awareness

Cross-cultural awareness encourages the recognition of cultural differences while also noting similarities through which communication, understanding and relationships can be forged. The following points reflect the value of gaining a stronger sense of cross-cultural awareness:

#### Reduces misunderstandings and enhances trust

- Understanding and trust can be deepened when each government is more aware of how its and the other government's cultural background influence their perceptions, values and decisions.

#### Aids in planning, setting goals and problem solving

- Each government can plan and problem-solve more effectively as they will be more attentive to what is important to them and the other party.

### 1.5.2 Possible areas for discussion in a cross-cultural workshop

Holding a cross-cultural workshop early in the relationship-building process can provide opportunities to examine cultural views and encourage open, honest communication. This section explores possible topics for discussion at a municipal–First Nation cross-cultural workshop. Some of the following topics were written by SPARC BC and taken from the publication, *Building Bridges Together: A Resource Guide for Intercultural Work Between Aboriginal and Non-Aboriginal Peoples*. (For more resources, please see **Unit 2, Chapter 1.8: Relationship building resources**.)

#### Debunk prejudices and stereotypes

A cross-cultural workshop can improve awareness of previous experience with the other cultural group (e.g., length and type of contact) and break down stereotypes about each culture.

It may be useful to take time to discuss ways to challenge prejudice that exists and recognize how it is holding your relationships back:

- What stereotypes exist in your community?
- How have they been affecting your community?
- What impact do stereotypes have on you? On your partner?
- What is the best way to address these challenges in your communities?

#### Learn about each other's culture

This part of a cross-cultural workshop provides an opportunity for municipal and First Nation participants to learn about each other's cultural traditions, cultural protocols and unwritten social rules, and cultural events. Inviting your partnering community to an event such as a festival or powwow can cultivate greater culture understanding and respect.

#### Identify management style and administrative processes

Sometimes First Nation–municipal relationships can face challenges related to a lack of knowledge of political and administrative structures. Communities must also be aware of challenges that both municipal and First Nation administrations face (i.e., underfunding, lack of capacity, limited resources). Areas to discuss include the following:

- Leadership differences (staff functions/responsibilities, election process, etc.)
- Organizational process and operations (funding, decision making process, etc.) discussing your community's vision and goals

For more information about municipal and First Nations governance structures, please see **Unit 2, Chapter 2.2: Municipal governance structures** and **Unit 2, Chapter 2.3: First Nations governance structures**.



### 1.5.3 Applying this knowledge in your working relationship

By gaining a better understanding of your neighbouring community through some of the strategies outlined in this section, you can apply this new understanding to your working relationship and improve collaboration. There are several concepts to keep in mind:

- Remember that the core of any successful relationship is respect and trust.
- Look for common goals and opportunities to work together while identifying gaps.
- Comply with other party's negotiation protocols in a way that is comfortable for all parties.
- Appreciate that people from diverse cultures attach different meanings or importance to similar situations.
- Develop a clear understanding of how the other party defines the situation and the issues to be discussed.
- Develop a consistent method for communication throughout the negotiation process.

## 1.6 Checklist for positive relationship-building

The following section highlights ways in which both First Nations governments and municipal governments can ensure effective relationships. For practical application of these principles, please see **Unit 3: Guide to Service Agreements**.

### Be respectful

A successful working relationship will be based on a solid foundation of respect. This means taking time to learn about your partner, their values, perspectives and community. Being respectful also means carefully considering the impact of your actions on the other.

### Communicate openly

The best way to get to know your neighbour is to have regular face-to-face meetings where open and respectful communication is encouraged. Service agreements cannot be negotiated by correspondence; the issues are too complex for such an approach. Open, in-person discussions will help avoid misunderstandings.

### Create value for both parties

Creating mutual goals and keeping your eye on the big picture will help relationships move forward and help everyone strive to overcome obstacles.

### Have realistic expectations

Although it may be obvious, it is worth stating that the issues to be addressed in a service agreement cannot be resolved in only one meeting. The goal of the first meeting between the municipality and First Nation should simply be for each party to gain a better understanding of the other party's concerns and what may be needed to address them.

✔ **Use bottom-up approaches**

When working between governments, it is easy to forget that cooperation and solid relationships also need to occur at a community level. By engaging citizens in information sessions, workshops and consultations, the entire community benefits and cooperation agreements will be more widely accepted (please see **Unit 2, Chapter 1.4: Community engagement**).

✔ **Practise integrity**

Practicing integrity means working honestly and openly and following through on promises and obligations. It is closely linked with being trustworthy and being able to trust others, all of which are important to keep in mind while building relationships.

✔ **Use resources and experts**

Don't go it alone! Although the process of relationship building seems overwhelming, there are plenty of resources, contacts, and experts available to help you. They can answer any questions you may have about relationship building, dispute resolution, service agreements and community infrastructure. Refer to our chapter-end references, annotated bibliography and case study section for more information.

✔ **Be flexible**

While working in large groups and dealing with complex issues, it is easy to become frustrated and overwhelmed and to experience delays. By being flexible, you are being responsive to change and reducing stress and disappointment if things do not go exactly as planned.

✔ **Practise equality**

Make sure that everyone in the relationship feels like they are being treated fairly. If equality is not possible, ensure that there is a well-understood reason for any difference in treatment.

✔ **Think long-term**

Plan for the long term and establish where you would like to see your community in 25–50 years. You will then be better able to establish your priorities today and identify possibilities for collaboration in the future.

✔ **Clarify decision-making processes and responsibilities**

To make your partnership most effective, it is important that both parties clarify decision-making processes (i.e., consensus-based, vote-based) and that parties understand their responsibilities to attend meetings, participate in decisions and use dispute resolution techniques when necessary. It is important for everyone to understand exactly what the various actors can offer and what they cannot. By being open, it is easier to establish each actor's role in achieving shared objectives.

✔ **Establish systems for dispute resolution**

In cases where there are disagreements among parties, an established dispute-resolution system can help parties resolve conflict before relationships are negatively affected. For more information about dispute resolution, see **Unit 2, Chapter 3: Collaborative Dispute Resolution**.

## 1.7 Tools: Templates for relationship building

Making contact with your neighbour may seem overwhelming at first. How do you introduce yourself and begin to build a relationship? How can you formalize a relationship and ensure that you and your neighbour are meeting on a regular basis to discuss community development and concerns? The following tools will help you approach your neighbour or, if your communities and governments have already been in contact, help you to ensure that your communities will make time for each other on a regular basis.

### 1.7.1 Letter of intent template

A letter of intent is a brief letter, usually no more than one page, that outlines why and how your community would like to build a relationship with the letter recipient's community. This type of letter can be used to encourage future meetings and informal discussions where individual community visions can be discussed and ways in which joint concerns may be dealt with. A letter of intent is a broad form of communication. It can be used when communicating between high-level elected officials such as the Chief, the Mayor, the band council or the municipal council.

**Note:** The template provided is not a legal document and is intended for guidance purposes only.



## Letter of intent

UNIT 2

[Name of First Nation or Municipality]

[Date]

[Name]

[Position (e.g., Mayor/Chief)]

[Address]

Dear [Name of recipient(s)],

I would like to introduce myself as the [position] of [Name of First Nation or Municipality]. I have been working with [Name of First Nation or Municipality] for [number of years/months].

Lately, my community has been focusing on:

[Discuss current overall objectives in your community, for example, economic development, increasing environmental sustainability, or improving services or infrastructure.]

In the next 30 days, I would like to schedule a casual [get-to-know-you meeting/breakfast/lunch/dinner] where we can learn more about each other and discuss our respective communities and our visions for the future. As we both know, it is important to know your neighbour and work together for better outcomes for both communities and the region. Please let me know if there is a convenient time for you to meet with me.

I look forward to building a relationship with you and your community.

Sincerely,

[Signature]

[Name]



### 1.7.2 Communications protocol template

A communications protocol agreement defines the parameters of a relationship between two or more communities. A communications protocol may also be called a memorandum of understanding, community accord, relationship agreement or communications agreement. Generally, communities that have established a mutual interest and identified common community or regional goals will enter into a communications protocol agreement. This ensures that regular meetings and ongoing information sharing will occur beyond the current terms of elected governments. It is a representation of a long-term commitment. The terms of the protocol may be as specific or vague as the parties prefer, including whether the agreement is intended to be binding or non-binding. Generally, a communications protocol will outline the following basic ideas:

**Date and Parties:** Signatories and when the agreement was created.

**Whereas:** General statements which outline why cooperating or communicating are important, statements recognizing jurisdiction and rights, any other statements which reflect the general feeling of the document.

**Now therefore parties agree to the following:**

- **Purpose and objectives** of the agreement
- **Principles and values:** To guide the relationship (e.g., fairness, transparency, respect, recognition)

**Key interests:** topics of mutual interest/concern (e.g., service agreements, roads, environmental sustainability, youth engagement, planning)

**Process:**

- frequency of policy and administrative-level meetings
- creation of implementation committees or working groups
- engagement between administrative and technical levels
- how to share and safeguard information
- how meetings will be chaired
- how agendas will be produced
- the process for decision making
- time/location of meetings

**Dispute resolution:** What to do with misinterpretation or disagreement (refer to ADR in toolkit)

**Terms:** how document takes effect, how it gets revised or amended, how long it is valid for

**Signatures:** who, when, where

A communications protocol must be tailored to meet the unique needs of both communities; sections may be added to or deleted from the template (below) as necessary.

**Note:** The template provided is not a legal document and is intended for guidance purposes only.



## Communications protocol template

UNIT 2

THIS COMMUNICATIONS PROTOCOL made effective as of [date]

BETWEEN: [Name of First Nation or Municipality]

[Address]

(hereinafter called the “First Nation”/“Municipality”)

AND: [Name of First Nation or Municipality]

[Address]

(hereinafter called the “First Nation”/“Municipality”)

(collectively, the “Parties”)

### WHEREAS:

- A. This Communications Protocol is designed to establish a positive working relationship based on common local interests.
- B. Good communication is essential for maintaining a working relationship and reaching mutual agreement on any subject.
- C. The Parties recognize that working together pursuant to a cooperative government-to-government relationship will facilitate the sharing of information, improve communications, and establish a solid foundation for future planning.
- D. There is value to both Parties in working together on a number of practical items in each community.

### 1.0 GOVERNING PRINCIPLES OF COMMUNICATION

- 1.1 The Communications Protocol represents that the First Nation and the Municipality shall work together with mutual respect and recognition.
- 1.2 The Parties agree to open and frank communications with each other on areas of mutual interest.
- 1.3 There is a commitment by the First Nation and the Municipality to meet [*on an ongoing basis, at least quarterly, or more frequently as desired*] to discuss issues of common concern and interest.

### 2.0 JURISDICTION

- 2.1 The Parties endeavour to understand and respect each Party’s present and future jurisdiction and each other’s unique points of view.



### **3.0 TERM AND TERMINATION**

- 3.1 This Protocol will remain in effect until [Date] or until replaced by the Parties with a successor agreement or is terminated by one of the Parties pursuant to section 3.2;
- 3.2 This Protocol may be terminated by either Party on [Number of months] months prior written notice to the other Party.

### **4.0 MUTUAL CONFIDENTIALITY**

- 4.1 Each Party will take all prudent measures to ensure that any information, including traditional knowledge, documents, reports or other material (hereinafter called “information”) provided by it to the other Party pursuant to or in connection with this Communications Protocol is treated as confidential and is not disclosed to any person except:
  - a. as may be required by law;
  - b. as otherwise consented to in advance by the other Party.
- 4.2 Without limiting the generality of Section 4.1, each party agrees that to ensure the foregoing confidentiality obligation is met, it will, from time to time, either in writing or verbally, expressly identify information as confidential or non-confidential to assist the other Party in fulfilling its confidentiality obligation.

### **5.0 REPRESENTATIVES**

- 5.1 The Parties acknowledge and agree that they shall each, within 30 days of the signing of the Protocol, appoint a principal representative who shall initially be [Position in the band government; e.g., Chief] from the First Nation and [Position in the municipal government; e.g. Mayor] from the municipality as well as an alternative representative to act on behalf of the principal representative in the event the principal representative is unavailable.

### **6.0 COMMUNICATIONS FUNCTIONS**

- 6.1 The Parties will dedicate the resources necessary to engage effectively in the process and will work together to ensure that the parties have a full understanding of each other’s capacities, traditional roles, responsibilities, and current projects.
- 6.2 The Parties will make best efforts to ensure staff resources are available to implement this Communications Protocol.

### **7.0 PUBLICITY**

- 7.1 The Parties acknowledge and agree that all communication regarding this Communications Protocol and the matters set out herein will be jointly agreed upon prior to any public releases, subject to each Party’s respective legal rights.

## 8.0 AMENDMENTS

- 8.1 This Communications Protocol may be amended from time to time by written agreement by both the Municipality and the First Nation to reflect changes in the relationship between the parties.

## 9.0 NOTICE

- 9.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:
- (a) to Municipality:  
[Provide Address including the attention the letter should be directed to and other relevant contact information]
- (b) to First Nation:  
[Provide Address including the attention the letter should be directed to and other relevant contact information]
- 9.2 Any notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. By notice faxed or emailed will be deemed to have been received on the first (1st) business day following the date of transmission. For the purposes of Section 9.2, the term “business day” shall mean Monday to Friday, inclusive of each week, excluding days that are statutory holidays in the Province of [name of province].
- 9.3 The Parties may change their address for delivery of any notice or other written communication in accordance with Section 9.1.

## 10.0 GENERAL TERMS

- 10.1 This Communication Protocol does not affect any Aboriginal right, title or interest of the First Nation.
- 10.2 This Communication Protocol does not prejudice or affect each of the Parties’ respective rights, powers, duties or obligations in the exercise of their respective functions.
- 10.3 This Communication Protocol is in addition to any other agreements that already exist between the Parties and is not intended to replace any such agreement. It is intended to indicate the Parties’ intention to work co-operatively together to resolve issues of mutual concern.
- 10.4 The Parties agree that it is not intended to be a legally binding agreement, except for the obligations in Section 4.1 above.



IN WITNESS HEREOF the Parties have signed the Communications Protocol effective as of the date first written above.

By:

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[Signature]

Print Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

By:

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Print Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

## 1.8 Relationship building references

### **Fact Sheet: Top Misconceptions about Aboriginal People**

*Assembly of First Nations (AFN)*

This document is a concise guide to addressing common myths and stereotypes about Aboriginal people in Canada. It also contains a list of resources for further information.

### **Building Bridges Together: A Resource Guide for Intercultural Work between Aboriginal and Non-Aboriginal Peoples**

*SPARC BC*

This publication offers tips for addressing racism and stereotyping in intercultural relationships. Tools and questions to help better understand how these issues affect relationships are presented throughout the document. A number of case studies regarding overcoming obstacles in relationship-building are showcased.

### **Towards Sound Government to Government Relations with First Nations: A Proposed Analytical Tool**

*Institute On Governance, John Graham and Jake Wilson*

The purpose of this paper is to answer the questions “What constitutes good government-to-government relationships within Canada’s federal system?” and “How does the understanding of such a relationship have to be modified or refined to account for the special place of First Nations in Canada?” By addressing these two questions, the document provides parties with a tool to analyze more effectively the initiatives being proposed by governments. This tool provides a series of criteria and related questions organized around five good governance principles that are based on work done by the United Nations Development Program (Fairness, Direction, Legitimacy and Voice, Accountability, and Performance).

### **Building Trust: Capturing the Promise of Accountability in an Aboriginal Context**

*Institute On Governance*

This paper discusses governmental accountability.

### **Aboriginal Awareness Workshop: Guide to Understanding Aboriginal Cultures in Canada**

*Indian and Northern Affairs Canada (now called Aboriginal Affairs and Northern Development)*

This booklet provides background information about Aboriginal history, culture and communities in Canada. Some information covered in this resource includes Aboriginal perspectives on history, Aboriginal and treaty rights, Aboriginal constitutional matters and guidelines for communicating across cultures. Individual modules of this guide are also available for the following provinces and regions: Alberta, Atlantic Canada, British Columbia, Manitoba, Northwest Territories and Nunavut, Ontario, Saskatchewan, and Quebec.

**Aboriginal Awareness Guide**

*Indian and Northern Affairs Canada, (now called Aboriginal Affairs and Northern Development)  
BC Regional Office*

This document provides basic information about sensitivity and cultural awareness when working with Aboriginal people. Tips on communication, stories and a pronunciation guide for all First Nations in British Columbia are included.

**First Nations Communication Toolkit**

*Indian and Northern Affairs Canada (now called Aboriginal Affairs and Northern Development)*

This toolkit contains tips for creating a communications strategy and developing communications strategy components including media releases, community meetings and engagement, and communications planning.

**Building Relations with First Nations: A Handbook for Local Governments**

*Lower Mainland Treaty Advisory Committee (LMTAC)*

This handbook provides a concise summary of reference papers, reports and examples that explore new and innovative approaches to establish positive intergovernmental relations between neighbouring First Nations and local governments.

**Alberta Native Friendship Centres Association Common Ground Facilitators Toolkit**

*Alberta Native Friendship Centres Association*

The Common Ground Project is a relationship-building effort that is based on traditional Aboriginal perspectives, customs and processes designed by the Alberta Native Friendship Centres Association. Although its focus is on municipalities engaging urban Aboriginal populations, it provides great resources for community engagement, relationship building, and working with a variety of stakeholders in a community environment.

## 2. Municipal and First Nations governance structures

To begin to understand how First Nations and municipalities can work together to provide services, it is necessary to understand:

- The basic structure of the government
- The level of authority within the government
- The functions of the government
- The services that the government can provide
- The revenue sources of both forms of government

This section clarifies roles and responsibilities and provides a comparison between First Nation and municipal governments so that service agreements can be approached more effectively.

### 2.1 Similarities and differences

By examining each system of governance and the services that each government provides to their community members, it is clear that First Nations and municipalities have several key similarities. These similarities make collaboration an effective way to ensure communities are achieving their goals.

Communities across Canada have similar problems with urban–rural divide, and the capacity and funding that is dictated by community size and remoteness. For urban municipalities and First Nations' band councils are increasingly partnering in their urban areas. Band councils often have common interests in issues pertaining to the environment, provision

of services, and land-use planning. Municipalities and First Nations have many parallel government structures and are responsible for providing many of the same services to their residents. This makes collaboration for services a reasonable option for delegating responsibilities and achieving goals.

The following chart provides a quick summary of similarities and differences in governance structures. For more information about specific governance structures, please see **Unit 2, Chapter 2.2: Municipal governance structures**, **Unit 2, Chapter 2.3: First Nations governance structures**, and **Unit 2, Chapter 2.4: Governance structure references**.



**Table 2: First Nations versus municipal government structures and services**

	First Nations	Municipality	Comparison
<b>Legislation</b>	federal <i>Indian Act</i> treaties self-government	provincial municipal acts	Both responsibilities dictated by a higher-level body, whether that be the provincial government and municipal acts, or the federal government, treaties, and the <i>Indian Act</i> .
<b>Local government</b>	band council	municipal council	Band councils and municipal councils play a similar role in terms of their decision-making authority.
<b>Head of local government</b>	Chief	Mayor Reeve Chief Elected Official	Chiefs and Mayors play a similar role in terms of their decision-making authority.
<b>Regional governance</b>	tribal council	regional district commission metropolitan community	Both may partner with other governments to form regional bodies to discuss issues of mutual concern.
<b>Head of administration</b>	Band manager	Chief Administrative Officer (CAO)	First Nations and municipal governments rely heavily on their respective administrations for necessary program delivery and support.
<b>Services provided</b>	animal control band council resolutions business licensing elections establishment of user fees fire protection forest protection housing maintenance hunting and fishing regulation immunization and quarantine land-use planning law and order lease land management management of intoxicants residential regulation road and bridge construction solid waste collection storm water street lamps survey of lands taxation traffic control water and wastewater zoning	animal control bylaws cemeteries community programming emergency planning fire protection land management local roads managing local elections parks and recreation planning policing preparation of budgets public libraries public transit regulation (building permits) sidewalks snow removal solid waste collection storm water street lamps survey of lands taxation water and wastewater zoning	<p>Municipalities and First Nations experience a great deal of autonomy. This in terms of establishing local priorities and making decisions on the best way to provide their communities with necessary services and ensuring residents' well-being. First Nations and municipal governments provide key services such as water and wastewater, solid waste management, fire protection, and land-use planning.</p> <p>A key difference in terms of law enforcement is that municipalities will often create bylaws to tailor laws to local needs and concerns. The decision to pass the bylaw lies strictly with the municipal council. A First Nation will more frequently pass band council resolutions as they may be passed solely with the approval of the band council. However, bylaws must be submitted to Aboriginal Affairs and Northern Development (AANDC) for approval and are thus much more time-consuming and tedious.</p>
<b>Funding</b>	federal (transfers, funding agreements) tribal councils organizations (grants)	taxation provincial transfers organizations (grants) federal grants	First Nations and municipal governments are responsible for ensuring that their initiatives are backed by funds, whether that is through taxation, user fees, or transfer payments from other government bodies. All municipalities receive the most significant source of funding from property taxes and business taxes. However, not all First Nations have chosen to tax their members or charge similar rates of user fees for services.

Source: Community Infrastructure Partnership Program, CIPP, January 2011.



## 2.2 Municipal governance structures

The way municipalities are referred to varies greatly from province to province. They can be defined as any local government below the provincial level with the most significant being a municipality. Some other common examples include cities, towns, regional districts, townships, and metropolitan municipalities. Across the country, close to 3,700 municipal authorities deliver services to local communities.

### 2.2.1 Municipal acts and ministries

Each province is responsible for its municipalities and organizes those municipalities under a provincial Municipal Act, which outlines the roles and responsibilities of municipal governments in relation to the provincial government.

Due to this arrangement, municipal structures differ depending on the province. However, each province has a legislative assembly that is responsible for creating municipalities, altering borders and modifying legislation. Each province has a ministry that is responsible for municipal affairs, which includes enforcing general rules surrounding municipal operations and taxation.

### 2.2.2 Municipal councils

#### Mayor, Reeve or Chief Elected Official

The head of the elected municipal council can be referred to as a Mayor, Reeve, Chief elected official, or head of council depending on the province. In some cases, names differ within the province. In this document, we refer to this position as the Mayor. The Mayor is head of the municipal council, although he or she has little independent control. Mayors chair all meetings, can attend any special committee meetings and may provide recommendations to council. Mayors act as the spokesperson and as the figurehead of the council and municipality. The Mayor is elected by the community at large.

#### Municipal council

The municipal councils are responsible for a variety of services including transportation, road maintenance, parks and recreation facilities, land-use planning, local economic development, wastewater treatment, potable water provision, solid waste and recycling programs, some social services, education and in some cases local health services. They also have the power to subcontract a service. For example, the city could hire a private company to collect waste rather than running its own waste collection program. Every municipal council will have different priorities or focus areas based on local needs, current provincial policies and local traditions.

In many cases, the municipal council will form a series of committees that are responsible for directing municipal public service. The number of committees will be completely dependent on the size of the municipality and the municipality's needs. The councillors on each committee will report back to the municipal council and make recommendations.

Municipal councils include the Mayor and councillors for a municipality.

#### Councillors

Councillors are elected differently in each municipality, but there are two primary ways. In the first system, municipal councillors are elected at large. This means that all voters within a municipal boundary will select a predetermined number of councillors out of all of the candidates in the entire municipality. For example, if there are six councillor positions and ten candidates running in the election, the six candidates with the overall highest number of votes will get the positions.

The second system involves partitioning the municipality into wards or sections. Each ward may have one or in some cases two councillors. Voters in each ward may only vote for the candidates who are running for election in



their ward. The candidate(s) with the highest number of votes in each ward will form the municipal council.

### **Regional district councils**

Regional district councils are made up a series of elected municipal officials from several municipalities who have been appointed to represent their municipality on the regional district council. In some cases, individual municipalities may have a separate election to choose who should represent the municipality at the regional level. Regional district councils have a variety of responsibilities as they relate to the overall well-being of the region. For example, this could include medium- and long-term planning for infrastructure, water management, public safety and regional roads.

### **Special authorities**

Special authorities are more autonomous than a regional district council. Municipalities will voluntarily cooperate on specific issues where common interests are shared and resources can be pooled to make for more effective service delivery. In many cases, authorities will exist for solid waste collection, recycling and hazardous waste programs, and public transit. A board of directors, made up of elected officials from the participating municipalities, controls special authorities.

### **Metropolitan community councils**

Metropolitan community councils consist of several municipalities and are therefore headed by a council, which is made up of elected officials who have been appointed to represent their community. Metropolitan communities are responsible for policies related to regional planning, economic development, solid waste, public transit and equipment and infrastructure for the metropolitan community. Metro Vancouver Regional District and the Quebec Metropolitan Community are examples of metropolitan communities.

## **2.2.3 Municipal administration**

The Mayor and council ensure the creation of policy and steer the direction of the municipality. However, the municipal administration is responsible for ensuring that all the services and activities that the municipality must or decides to undertake are administered. The employees who make up a municipal administration have a wide variety of skill sets. They include accountants, fire fighters, public works personnel, community planners, animal control staff, secretaries, engineers, truck drivers and recreation directors.

### **Chief Administrative Officer (CAO)**

The Chief Administrative Officer is responsible for ensuring that all policies and services are delivered smoothly. Some tasks that a CAO may have are drawing up bylaws, preparing agendas and minutes, publishing official notices and providing information to the public. The CAO acts as the connection between the Mayor, council and the municipal administration. They also may provide advice to the council and represent the council in negotiations with other governments or agencies.

## **2.2.4 Municipal services**

Each province has a municipal act, which defines specifically which services each municipality is responsible for. It is often difficult to completely delineate which responsibilities are held solely by the municipality or what should be taken care of by the provincial or territorial governments or the federal government. The level of service provided by each municipality varies greatly across Canada. It is completely dependent on the size of the municipality and what level of services the municipality may afford. For example, some municipalities can afford a full-time fire department while smaller ones may have a volunteer fire department. A full list of services is provided in **Table 1** in **Unit 2, Chapter 2.3: First Nations governance structures**.

### Shared municipal and provincial services

Some services are split between the province and the municipality, although some provinces stipulate that the municipality or the province alone is responsible for the following services. For the most part, these services are areas of joint responsibility:

- emergency response and ambulance services
- preservation of agricultural lands
- policing services

### 2.2.5 Municipal funding

#### Taxation

Municipalities, unlike the federal and provincial governments cannot charge personal income tax and taxes on corporations; therefore, municipalities tax property within their boundaries as a source of revenue. Local authorities set tax rates based on their average annual expenditures and therefore property tax rates vary greatly across Canada. Municipalities also may charge municipal taxes to cover the cost of services (such as solid waste collection, recycling and snow removal) or on a pay-per-use basis (such as entrance fees to a recreation facility).

#### Transfer payments

Municipalities also receive transfer payments from the provincial government. In some cases the payments can be used as the municipality deems appropriate. In other cases funding may be granted to the municipality with specific programs and goals in mind.

## 2.3 First Nations governance structures

Today, the structure of the Chief and council governance on First Nations reserves reflects the changes enforced by the British and Canadian governments since the 19th century. This structure became formalized in the *Indian Act*. Since the initial formalization, band council structures are increasingly flexible in terms of the extent to which traditional political structures and decision-making processes are observed and the types of issues that band councils deal with.

Due to the relative flexibility that has been realized, First Nations governance structures vary greatly across Canada. While some exist with minimal governance, others are completely self-governing, although most fall somewhere in between.

Today, many First Nation communities manage multimillion-dollar administrative operations that deliver services in the areas of economic development, health, housing, public works, recreation, education and social services.

### 2.3.1 The *Indian Act*

The *Indian Act* outlines the procedure for selecting a Chief and council. The Act does not provide a framework for the separation of political and administrative functions in a band nor the way in which finances will be managed. First Nations must deal with growing responsibilities in band administration, increased pressures of transparency and accountability and increased complexity in governance. This causes a fair amount of diversity in the ways in which bands are run based on band policy and unique administrative organization.



### 2.3.2 Chief and council

Band council regulations are outlined in Section 74 of the *Indian Act*. According to the *Indian Act*, each band will have one Chief who is elected either by majority vote by the community at large or by majority vote of the elected councillors. After a Chief is elected, he or she is still considered a councillor and is able to vote in community affairs. Councillors may be elected by the community at large or by electoral wards or sections. By default, all bands vote at large for their council members, unless a band-wide referendum was held to determine that the reserve should be divided into wards or sections. According to the *Indian Act*, there must be at least one councillor for every 100 band members, although each band council may have a minimum of two councillors and a maximum of 12 councillors.

Chief and council are elected for two-year terms in accordance with the *Indian Act*. According to Aboriginal Affairs and Northern Development Canada (AANDC), there are three ways in which a Chief and council may be selected: using an election process outlined in the *Indian Act* (252 bands); using a custom system that was developed by the community (333 bands); and finally, using a system that was developed under a self-governance agreement (29 bands).

Custom systems may refer to either a system of hereditary leadership in which no elections are held or may refer to election protocols that have been developed and ratified by the community. Custom systems may not be reflective of pre-European contact forms of governance, but often provide local contextualization of the *Indian Act* processes. Some communities may not have formalized protocols; they may simply follow a system that was agreed upon informally and has been in place for many years.

### 2.3.3 Tribal councils

Tribal councils act as an important form of First Nations governance. They consist of a grouping of bands from a region with similar interests that join together on a voluntary basis. Tribal councils can offer services and programs to their member First Nations and may form agreements with other federal departments such as Health Canada and Natural Resources Canada.

Representatives of tribal councils are usually Chiefs or elected band council members and are extremely flexible as to the issues they address. AANDC has devolved many of its advisory functions to tribal councils and they may as a result be responsible for economic development, comprehensive community planning, technical services, and band governance issues. Funding from AANDC is based directly on the services that the tribal council provides. There are approximately 78 tribal councils across Canada serving 475 First Nations.

### 2.3.4 Band administration

The Chief and band council steer the direction of the community and make decisions pertinent to a community's well-being. However, the band administration is responsible for ensuring that all the services and activities that the council must or decides to undertake are administered to the community. Band administration employees have a wide variety of skill sets. They include financial experts, fire fighters, day care workers, public works personnel, community planners, animal control staff, social services directors, secretaries, engineers and truck drivers.

#### Band manager

The band manager is the head of the band administration and is responsible for ensuring that all policies and services are delivered smoothly to the First Nation. Some tasks that a band manager may have are preparing

agendas and minutes, advising the band council, publishing official notices and providing information to the public. The band manager works closely with the Chief, council and band administration staff. He or she may provide advice to the council and represent the council in negotiations with other governments or agencies. Occasionally, the band manager may also be a member of the band council.

### 2.3.5 Social structure

#### Elders

Elders are men or women in the community whose wisdom about culture, spirituality and life is recognized. Community members traditionally value the input of Elders in matters related to the community, whether such matters concern traditional or contemporary issues.

### 2.3.6 Band services

Section 81 of the *Indian Act* outlines the responsibility of the band council to provide services to the band. It also details the scope to which bands have bylaw-making authorities; this section of the *Indian Act* contains the majority of local responsibilities. Section 83, which was later amended with the Kamloops Amendment, expands on the band's ability to tax lands, leased lands and businesses. A full list of services outlined in the *Indian Act* is provided in **Table 2** in **Unit 2, Chapter 2.1**.

### 2.3.7 Band funding

#### Taxation and user fees

Section 83 of the *Indian Act* provides that band councils have the power to establish property tax regimes on reserve. To collect property taxes, the band council is required to create several bylaws that must first be approved by the Minister of AANDC upon the recommendation of the First Nations Taxation Commission. The bylaws that must be passed include the Real Property Tax and Assessment Bylaw and the Annual Rates Bylaw. Because this is an optional source of funding that must

be instigated by the band council of each First Nation, not all bands will have revenue from property taxation. Currently, 120 First Nations charge property taxes across Canada.

Band councils, under Section 81 of the *Indian Act* also have the ability to institute user fees for services such as electricity, water, wastewater and solid waste collection. The extent to which a band council decides to charge user fees varies from band to band.

#### Transfer payments

AANDC provides transfer payments to First Nations governments for the provision of programs and services, which the First Nation is responsible for providing to its residents. Generally, this funding is linked to funding agreements, which stipulate the specific terms and conditions that must be met.

#### Funding agreements

Funding agreements have terms and conditions attached to them that may include stipulations. These could include the provision of records, financial reporting, program reporting and provision of specific project goals and requirements (e.g., policy development and training).

#### Contribution agreement

A contribution agreement is an agreement under which the party that undertakes the work (provides the services, etc.) receives a refund of actual expenditures for a specific project.

#### Flexible transfer agreement

A flexible transfer agreement is an agreement where funding is provided in advance of a project's completion. The band may retain any surplus funding provided that the terms and conditions of the agreement have been fulfilled.

#### Grant

A grant is an unconditional transfer of funds from the federal government to an individual band.



## 2.4 Governance structure references

### **First Nations Governance**

*Aboriginal Affairs and Northern Development*

This website provides more information about First Nations governance structures in Canada and explains which functions of First Nations governments are supported by AANDC. Additional information about tribal councils and other forms of First Nations governance can be explored by following the links provided on the website.

### **Your Guide to Municipal Institutions in Canada**

*Federation of Canadian Municipalities*

This publication provides an overview of the roles of municipal governments across Canada and provides some province-to-province comparisons on the way municipalities are managed. Information about roles, funding and services are discussed.

### **Local Government in British Columbia: A Community Effort**

*Union of British Columbia Municipalities*

This publication provides an overview of the roles of municipal governments in British Columbia. Information about roles, funding and services are discussed.

### **Interactive Map — First Nations Communities in Canada**

*Aboriginal Affairs and Northern Development*

This map includes all First Nations communities in Canada and includes reserve boundaries and, when zoomed in, the names of the communities in the area. You can click a reserve name to view that community's profile, which includes population, Chief, electoral system, address and links to band websites and other websites of interest. You can also click the link, First Nation Profile, to view the telephone and fax numbers.

### **First Nations of Ontario Community Profiles**

*Chiefs of Ontario*

This website provides a variety of facts about most of the First Nations in Ontario. Although most statistics are also available on the AANDC community profiles website, this site provides profiles of service agreements and other areas of cooperation (education, for example) with neighbouring communities.

## 3. Collaborative dispute resolution

Municipalities and First Nations should have a good understanding of the principles of dispute resolution. These principles will help them to work through disagreements in an effective manner without damaging their relationship or reversing any steps accomplished in terms of cooperation and trust.

Dispute and conflict resolution provide excellent opportunities for individuals to work together, brainstorm new ideas and make improvements to existing structures. However, the ability of a group to recover from disagreements is directly linked to their willingness to participate in a variety of methods to achieve a positive outcome.

This chapter provides collaborative dispute-resolution tips and resources for communities no matter which of the following stages of service agreement development they are at: relationship building, negotiating the service agreement terms, implementing the agreement or during the service agreement renegotiation process.

### 3.1 Prevention

Establishing a proactive relationship at the beginning of a relationship by addressing the interests of both communities should be the first priority. This can help communities avoid disputes and strains to their relationship. The most common and effective methods for preventing potential conflicts are as follows:

#### ■ Consensus building

When working with a municipal or First Nation partner, the objective should be that both parties work on consensus-based decisions while relationships and service agreements move forward. By ensuring that all parties are on the same page and by negotiating each issue within the group, resentment that could develop by majority voting processes can be

avoided. Although consensus building is initially more time-consuming, it may save time in the long run.

#### ■ Negotiated rule making

Negotiated rule making means agreeing on procedures for how discussions will take place. Some examples include how often meetings will occur, how the agenda will be set and how decisions will be made (e.g., through consensus or by voting). By negotiating rules, information-based disputes are least likely to occur.

#### ■ Joint problem solving

Joint problem solving involves addressing all issues that arise in an open and timely manner. By bringing concerns to the table, all parties are, at the very least, aware of problems that need to be addressed before they get out of hand.



### ■ Consultation and engagement

The consultation process is often part of a regular decision-making process. It is also a dispute-prevention mechanism as it can ensure that all partners and communities are aware of the decisions being made and that they have a chance to voice their concerns. Consultation is the basis of a variety of procedures referred to as public consultation, public participation and public involvement. Methods of consultation range from formal public hearings to more engaging or interactive techniques such as workshops and advisory committees. The final decision making is up to the parties involved — and if the results from consultation are taken seriously, the negotiation method can prevent communities from feeling alienated from the decision-making process. Consultation processes often lead to high expectations on the part of the parties being consulted. They may also lead to feelings of rejection or abuse if the consulted parties feel that their concerns have not been heard.

### ■ Cross-cultural awareness

Disputes can occur due to cultural misunderstanding or misinformation. By building cross-cultural understanding between communities, these disputes are less likely to occur (please see **Unit 2, Chapter 1.5: Cross-cultural awareness.**)

## 3.2 Alternative dispute resolution

Alternative dispute resolution (ADR) refers to a number of methods that parties can use to assist in the resolution of disputes outside the court system. The processes for each method vary in terms of third-party involvement and consensus building, and in how binding the decision and resolution process is.

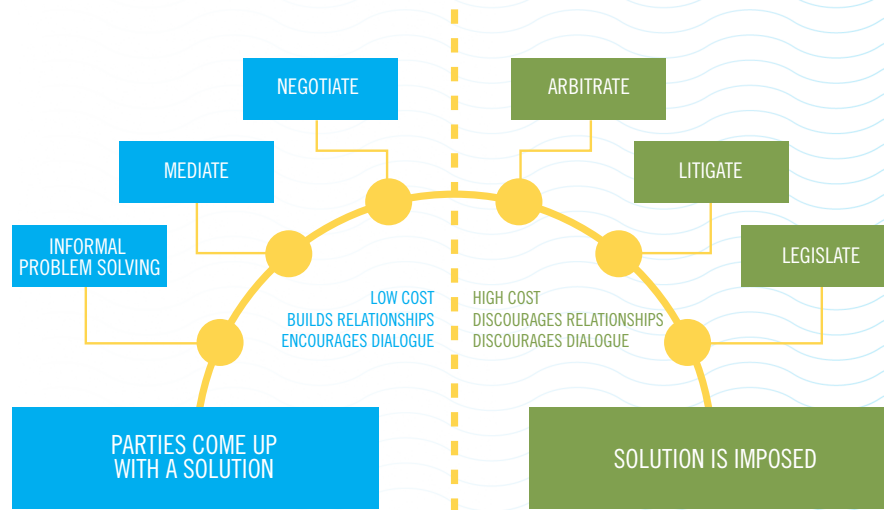
ADR has several advantages over traditional forms of dispute resolution. Its high degree of involvement by the parties in the resolution process creates ownership and mutually acceptable remedies. Thus, it prevents winners and losers, which often result from court solutions. ADR processes are flexible allowing disputing parties a greater ability to work creatively toward solutions in a private setting. An effective use of ADR will make both parties feel as if they are actively participating in the creation and maintenance of positive relationships.

## 3.3 Mechanisms and methods for dispute resolution

Despite best efforts to work preventatively, conflict inevitability arises in some relationships. The dispute resolution process can be plotted on a continuum as shown in **Figure 1**. Ideally, parties should work from the left side of the continuum to the right side when building relationships, setting the terms of service agreements and then renegotiating or resolving disputes resulting from the terms of a service agreement. This means working through party-based decision making to third-party mediation and finally to third-party binding assessment of conflicts. Remember, if an ADR process must be used, the objective should not be to suppress conflict, but to resolve current conflict and prevent future conflict.



Figure 1: Dispute resolution continuum



Source: Adapted from Dispute Resolution Services, Alberta Municipal Affairs.

The following definitions are to help guide you through the ADR process. These descriptions are organized along the lines of the continuum (left to right in the diagram above), and can be subdivided into three overarching approaches:

- Direct discussion and negotiation occurs between the parties with no third-party assistance.
- The parties make third-party-assisted negotiations and decisions.
- Parties provide input and a neutral third party provides a judgment (ruling) or non-binding findings.

By working through the dispute resolution continuum in this manner, costs can be reduced, parties can feel more ownership in decisions and future conflict is less likely to occur.

### ***1. Direct discussion and negotiation occurs between the parties with no third-party assistance***

#### **Bargaining**

Bargaining refers to a process whereby parties reach a mutually acceptable agreement. Bargaining often occurs informally. For example, a decision-making body may choose to change

its position to achieve the support from the other party to create more agreement within the group. Bargaining represents the first step of a resolution process as it can occur informally while providing parties with a sense of ownership and cooperation in the resultant decisions. However, this process is not always effective when dealing with difficult or complex issues where parties have polarized positions.

#### **Negotiation**

Negotiation is an explicit form of bargaining. Negotiations occur when parties enter into a direct exchange, typically involving face-to-face meetings, in an attempt to find some resolution to their differences. Negotiation is based on the idea that all parties agree to seek an outcome acceptable to all involved by altering positions and compromising. Should negotiations fail to result in an agreement, a neutral third party (e.g., a facilitator or mediator) may be used to lead discussions.



## ***2. The parties makes third-party-assisted negotiations and decisions***

### **Facilitation**

Facilitation involves an independent third party to help parties understand each other's concerns in a neutral manner. Facilitation does not necessarily have to be a decision-making process but can assist the parties in identifying the issues, the impact of the options, and the next best alternatives available to them. This process is advantageous because it may offer insights into each viewpoint without pressure to come to a decision.

### **Mediation**

Mediation is similar to negotiation but includes the assistance of a third party or mediator. The mediator must be independent from the parties and have no vested interest in the outcome of the dispute. Parties should select a mutually acceptable mediator. The process of mediation involves three main tasks: first, to establish mediation process expectations; second, to represent and relay the interests, concerns and ideas of one party to the other; and finally, occasionally act as a facilitator in joint discussion sessions. The mediator only provides assistance to the parties as they address disputes and has neither decision-making powers nor enforcement powers.

## ***3. Parties provide input and a neutral third party provides a judgment (ruling) or non-binding findings***

### **Fact-finding**

Fact-finding is a process that enables disputing parties to have their concerns examined by a neutral third party who will then recommend a settlement based on facts. Underlying this process is the assumption that the judgment of an independent person will put pressure on the parties to accept

a compromise. The fact-finding process is usually less formal than arbitration because the conclusions of the fact-finder are not binding on the parties. In some cases, fact-finding may worsen the conflict as it may lead to the introduction of additional issues that were not previously identified as a problem.

### **Conciliation**

Conciliation is a combination of the fact-finding and mediation processes. Typically, a conciliator or conciliation board is selected to assist in the settlement of a dispute and produces a report. This process can attempt to settle disputes without bringing the disputing parties into a joint meeting. Instead, independent meetings can be held and information relayed to deliver positions in a less politically and emotionally charged manner. If the conciliator or board is successful in mediating an agreement between the parties, the conciliator report documents the settlement. If their settlement efforts are not successful, the report will still be the conciliator's recommendations of a settlement and the next steps, which is similar to a fact-finding report.

### **Arbitration**

Arbitration is a formal adjudicated process with an arbitrator, or in some cases a panel of arbitrators, acting as a judge. Disputing parties present their arguments and evidence and then the arbitrator makes a decision on behalf of the parties. This process results in an independent review of the facts of the dispute by an independent third party who makes an informed decision based on the facts, rather than on emotions and politics. Arbitration should be used only as a last resort for complex and ongoing disputes as the arbitration process tends to create winners and losers.

### 3.4 Aboriginal perspectives on ADR

In their document *Dispute Resolution Systems: Lessons from other Jurisdictions*, the Institute on Governance presented an interesting perspective on non-Aboriginal versus Aboriginal approaches to conflict prevention and approaches to systems of justice. Admittedly, it is difficult to generalize about Aboriginal perspectives and approaches because there is great cultural variation across Canada. However, a common thread seems to be the emphasis on proactive measures taken to prevent conflict and to ensure the maintenance of harmonious existence.

While non-Aboriginal systems are designed to address problems as they arise, Aboriginal systems tend to reflect the maintenance of a peaceful society. Rupert Ross, a Crown Attorney reflects that, “Not being aware of the fact that the two spotlights illuminate different aspects of the same overall problem, we of the non-Aboriginal system are puzzled when Aboriginal responses to our justice questions fail to shed light on the kinds of things that we expected to see, but show us very different things instead.” Therefore, acceptable measures for resolving disputes will incorporate both of these perspectives on conflict and the attainment of justice.

### 3.5 ADR references

#### **Alternative Dispute Resolution: Aboriginal Models and Practices**

*Michelle Cameron, Ministry of Children and Family Development*

This document discusses different dispute resolution world views and points out that culture should neither be undervalued nor overvalued. Because diversity makes providing an Aboriginal perspective difficult, the authors provide a number of case studies. These case studies mostly relate to child and family services, regarding the integration of more culturally appropriate models into dispute resolution.

#### **Communities in Cooperation: A Guide to Alternative Dispute Resolution for First Nations and Local Governments in British Columbia**

*First Nations Summit and Union of British Columbia Municipalities*

This guide is intended to assist elected officials, staff or any party working with municipalities, regional districts or First Nations governments in resolving differences without resorting to the courts.

#### **A Review of Dispute Resolution for First Nations and Local Governments in BC**

*Union of British Columbia Municipalities (UBCM)*

This document was produced by the Union of BC Municipalities (UBCM) and the First Nations Summit (FNS) in British Columbia. It was created to help First Nations and local governments avoid conflict when and where it may arise, to have tools available to the parties to efficiently and effectively resolve the issues in a manner that serves the best interests of the government jurisdictions involved.

**Dispute Resolution Systems**

*Institute on Governance (1999)*

This document provides an overview of the major themes found in the literature of direct relevance to their task, balances the lessons drawn from the literature with those learned from case studies of dispute resolution systems and makes recommendations on how the information developed in this study can be put to best use.

**Singing up the Sacred: Aboriginal Communities Train the Trainer in BC**

*Sally Campbell*

This document discusses lessons learned from working with First Nations on dispute resolution processes. In particular, the lessons learned about integrating traditional practices and the different qualities that integrating these approaches brings to a group dynamic.

**Dispute Resolution Systems: Lessons from other Jurisdictions**

*The Institute on Governance*

This paper outlines best practices of dispute resolution by providing a literature review and lessons from across Canada. Challenges with integrating Aboriginal perspectives on ADR into traditional forms of ADR are discussed.

**ADR in an Aboriginal Context**

*Canadian Human Rights Commission*

This document discusses challenges to intercultural ADR including differing world views, different forms of knowledge and historical tensions.

**Mediator Roster — British Columbia**

*British Columbia Mediator Roster Society*

This website provides a list of qualified mediators across the province of BC including contact information and the regions of the province that they are willing to serve.

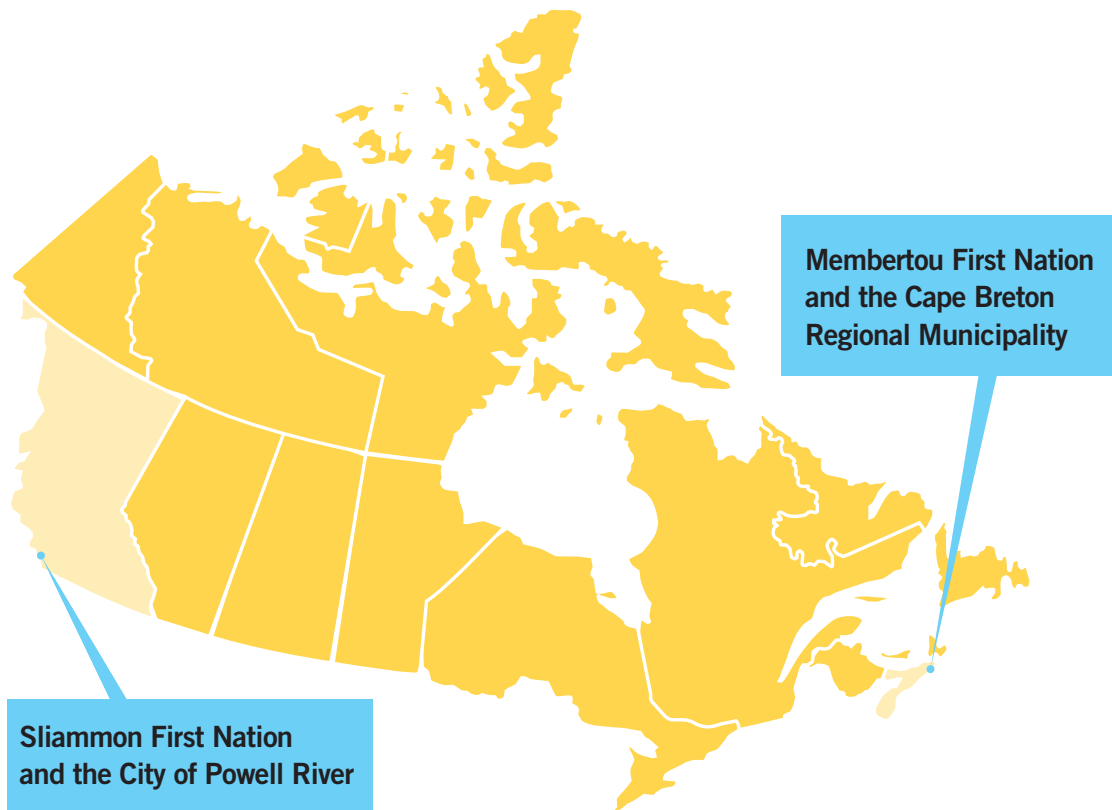
**Intercultural Dispute Resolution in Aboriginal Contexts**

*Catherine Bell and David Kahane, University of British Columbia Press*

*Available through Library and Archives Canada, free of charge*

This book is a collection of essays exploring the opportunities and effectiveness of ADR alongside its challenges and limits. It contains contributions from Aboriginal and non-Aboriginal theorists and practitioners. This book is international in scope, with examples from Inuit and Arctic peoples, Dene, Gitksan and Wet'suwet'en, Tsuu T'ina, Cree, Metis, Navajo, Maori, Aboriginal Australians and Torres Strait Islanders.

# 4. Relationship Building Case Studies



# Case Study



## 4.1 Sliammon First Nation and the City of Powell River (BC)

### Location:

British Columbia's Upper Sunshine Coast, 125 km north of Vancouver

### Population:

Sliammon First Nation: 1,000

City of Powell River: 14,000

### Project costs:

\$ 2 million

### Funding partners:

Government of British Columbia

### Keys to success:

"There will be contentious issues and personality conflicts, which is why it is so important to have trust as the foundation." *Former Sliammon Chief L. Maynard Harry*

"Patience, understanding and respect." *Mayor Alsgard, City of Powell River*

"Relationship building needs to be done on a daily basis." *Stan Westby, CAO, City of Powell River*

### Lessons learned:

"Look at the political chemistry and then determine how you can work together."

*Mayor Alsgard, City of Powell River*

"The biggest risk is the biggest reward." *Stan Westby, CAO, City of Powell River*

"The leadership has to be willing to put in the time. For example, the Mayor makes an effort to attend all meetings. The trust established between the two communities would erode if someone missed too many meetings,"

*Former Sliammon Chief L. Maynard Harry*

### Contacts:

Mayor Stewart Alsgard or Stan Westby, Chief Administrative Officer,

City of Powell River

Tel: 604-485-8601 (City Clerk's office)

Email (via City Clerk): [cgreiner@cdpr.bc.ca](mailto:cgreiner@cdpr.bc.ca)

Chief Williams

Sliammon First Nation

Tel. 604-483-9696, ext. 223(TBC)

[clint.williams@sliammon.bc.ca](mailto:clint.williams@sliammon.bc.ca)

### Background

The Mayor of Powell River and the Chief of Sliammon First Nation met for the first time in 2002. This first encounter took place when the Mayor was visiting the construction site of a new seawalk and was approached by the Chief. The Chief was upset with the construction work because it was disturbing historic areas and damaging cultural items such as petroglyphs. The Mayor and city had been unaware of Sliammon's cultural areas and as a result had not consulted them before the construction of the seawalk began. The Mayor then asked the Chief to coffee to discuss the issue.

The Government of British Columbia had provided financing of \$2 million to the City of Powell River to build the seawalk. Due to the sensitivity surrounding its construction, Mayor Alsgard decided to trust in the intentions of the Chief and instructed CAO Stan Westby to write a cheque for \$2 million to Sliammon First Nation to take over the construction of the seawalk. Having Sliammon First Nation manage the project would ensure that their heritage and culture were incorporated into the seawalk's design and construction, therefore ensuring that the historic area would be respected. Today, the seawalk signs welcome visitors with Sliammon landmark names in the Coast Salish language as well as in Canada's two official languages.

After this first encounter and the realization that the communities needed to begin to communicate more effectively, further meetings took place laying the foundation for their current relationship, which is one of mutual respect and trust.

### Relationship building and the community accord

After their first meeting on the seawalk, the relationship between the two communities quickly grew to encompass larger issues of

joint concern. To formalize their relationship and highlight subjects of mutual concern, the communities drafted a Community Accord (i.e., communications protocol). The accord acknowledges the two communities in their distinct authorities and responsibilities toward their members and residents. It also recognizes that the interests of all persons living in the two communities are best served by working together in the spirit of cooperation.

"We continue to work together in the spirit of the accord," says Mayor Alsgard. "It is a model for community-to-community relationships and we are working from it [the community accord] as a basis for continued growth as partners."

On May 10, 2003, a historic ceremony marked this accord and brought together representatives from the federal government, the provincial government and the two communities. The ceremony took place in the traditional village of Sliammon. The objective of the ceremony was to mark the respect both communities have for each other.

Since the Community Accord ceremony, numerous events have taken place illustrating the strengthening relationship between Sliammon First Nation and the City of Powell River. In 2004, the communities developed an additional protocol agreement on culture, heritage and economic development. They also appointed intergovernmental coordinators and began regular intergovernmental meetings.

When the new council of Powell River was elected in 2006, part of its strategic plan was to strengthen relationships with various levels of government including Sliammon First Nation. The relationship between the Mayor and Chief is such that they can call on each other when needed. In addition, political officials and staff are in regular

communication with each and hold monthly discussions at an official meeting, usually over lunch.

There is a great deal of respect between the two communities. Sliammon First Nation gave the Mayor a traditional name. The greatest honour that can be bestowed upon any resident by Powell River has been given to two individuals, both of whom are members of Sliammon First Nation.

The two communities extend a helping hand to each other whenever possible. In one instance, the Mayor received a call from Sliammon regarding a problem it was experiencing with its water infrastructure. As part of a neighbourly gesture, staff of Powell River were sent to help Sliammon First Nation resolve the issue.

The strong and respectful relationship between the two communities has not gone unnoticed: the BC Treaty Commission wrote a booklet on the relationship between Powell River and Sliammon.

#### **Service agreements and provision of services**

Since November 9, 2009, Sliammon First Nation and the Regional District of Powell River have had a service agreement in place for fire protection and library services.

BC Transit provides bus services in the Powell River region. Until recently, the last stop between Powell River and Sliammon was three to four kilometres from the First Nation's village centre. As of April 2011, the last bus stop will be in Sliammon proper. This service will be of great use to Sliammon, ensuring that the youth and other Sliammon residents are able to arrive at home safely.

The City of Powell River is actively working to solidify additional service agreements with Sliammon First Nation. There are

discussions between the two communities on a variety of issues including waterfront projects, liquid waste, an Official Community Plan, and recreational facilities.

There is great potential in the future to have service agreements in place on water and wastewater given that both communities have reached a point at which they need to invest in water infrastructure. The City of Powell River needs to upgrade its water system and the lake from which Sliammon First Nation draws its water is reaching its limit for providing the community with raw water. The city is investing in a \$9-million upgrade to its water system, and it would be possible to extend the water line to accommodate Sliammon's water needs. AANDC's engineers, on behalf of Sliammon, came to inspect the situation in late 2010. Both Sliammon and the City of Powell River are interested in jointly addressing their water needs.

The communities face the same issue in terms of sewage treatment. Both communities need to upgrade their systems and recognize that working together will be a more efficient and effective way of resolving their wastewater needs.

While many discussions are taking place surrounding joint services, there are a few challenges causing the delay with the future joint water and wastewater projects. The main challenge is the delay in Sliammon's treaty process, which the communities hope will soon be resolved. Another challenge is finding funds to carry out the technical work needed to develop a consolidated project. Finally, communities are struggling to decide how to cost share potential service agreements.



### Challenges

In an interview with CIPP, the CAO of Powell River noted he was pleased with the community-to-community (C2C) forums sponsored by the Union of BC Municipalities (UBCM) and First Nations Summit (FNS) that took place between the two communities, but recognized that more work needs to be done to ensure that the relationship between the City of Powell River and Sliammon First Nation continues.

The biggest challenge to the communities is finding the time and money to dedicate to joint projects and finding the management resources needed for these projects. The communities also note that political turnover is a challenge that can create difficulties in maintaining relationships.

Finally, the municipality does not always have the jurisdiction to do the right thing. For example when a significant amount of archaeological finds were discovered in a personal residence, the City of Powell River could not intervene or they would have faced liability issues.

### Conclusion

The relationship between Sliammon First Nation and Powell River began over a contentious issue but the two communities have managed to turn their initial disagreements into an opportunity to develop a strong, mutually beneficial, trusting relationship. The communities credit their success to the high level of commitment from representatives of both communities. Meeting on a regular basis and regular attendance has been paramount to their achievements.

Over the years, the communities have demonstrated their solidarity and willingness to work together on issues facing their communities regardless of whether those issues are economic development, service delivery or treaty issues.

“It is a tough road to take but, despite it all, there are incredible rewards,” said Mayor Stewart Alsgard.

### Case Study References

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Sliammon Treaty Society website: <http://sliammontreaty.com>

# Case Study



## 4.2 Membertou First Nation and the Cape Breton Regional Municipality (NS)

### Location:

Cape Breton Island, Nova Scotia

### Population:

Membertou: 850 on reserve

Cape Breton Regional Municipality (CBRM): 100,000

### Cost-sharing projects:

\$3.6 million for connector road

### Additional partners:

Governments of Canada and Nova Scotia provided financing for connector road. CBRM provided in-kind services, mainly engineering services

### Keys to success:

“Lots of goodwill and cooperation.”

*Dan Christmas, Senior Advisor, Membertou*

“Keep the channels of communication open. Even if there is dissent, the best approach is to continue the discussion.”

*Doug Foster, Director of Planning and Development, CBRM*

### Lessons learned:

Avoid disagreements by consulting with your neighbouring community on issues that may have an impact on them before decisions are made.

### Contacts:

Doug Foster, Director of Planning and Development,

Cape Breton Regional Municipality, NS

dbfoster@cbrm.ns.ca

Tel: 902-563-5088

Dan Christmas, Senior Advisor,

Membertou, Nova Scotia

danchristmas@membertou.ca

Tel: 902-564-6466

### Background

On August 1, 1995, Cape Breton Regional Municipality (CBRM) was formed through an amalgamation of eight former municipalities, boards, and agencies within the County of Cape Breton.

First inhabited by the Mi'kmaq people, Cape Breton was one of the first areas of North America to be explored by Europeans. The Mi'kmaq people continue to be important members of Cape Breton society; three per cent of the total CBRM population speak Mi'kmaq.

Membertou First Nation is also an urban community and was named after Chief Membertou (1510–1611). It belongs to the greater tribal group of the Mi'kmaw Nation and is situated 3 kilometres from the heart of Sydney, Nova Scotia, in the tribal district of Unamaki (Cape Breton). Membertou was relocated in 1926 from its former location along the Sydney Harbour.

CBRM has sold properties to Membertou and owns land around Membertou. When amalgamation took place in 1995, residents of Membertou were enumerated for the first time. Membertou residents are considered citizens of CBRM and therefore can access all recreational programs and facilities.

### Relationship building

The imprisonment in 1971 of Membertou resident Donald Marshall, Jr. had a major impact on the relationship between Membertou and the CBRM. Doug Foster, Director of Planning and Development at the CBRM, has worked for the municipality for 32 years and recalls being concerned that trust would never exist again between the two communities.

A number of factors led to the re-establishment of trust between Membertou and CBRM including political will on the part of the Mayor and Chief to re-establish a relationship; leadership from the Chief of Police; and the effort to establish relationships in each government administration, particularly the planning and engineering departments.

Over the past 20 years, there has been a tremendous improvement in the relationship. The communication started in a very formal manner. Today, interactions are now mainly informal, occur on a daily basis and are project-oriented. Differences in opinion arise, but the two communities work together to find solutions for daily operational issues on an informal basis.

Everyone from elected officials to staff is in regular communication with one another. There are no regular formal meetings except when service agreements are being renewed.

### Service agreements

CBRM provides the following services to Membertou: sewage treatment, street-lighting, water, policing and fire protection. Membertou collects its own waste; however, it is disposed of at CBRM's landfill. Membertou pays for its own contractors to collect waste and purchased compost bins for all residents in 2011.

There is a municipal services agreement in place between CBRM and the Department of Aboriginal Affairs and Northern Development (AANDC) with Membertou as a third party. Many of the agreements have been in place since the 1960s. However, the number of services covered in the agreement has decreased over the years as Membertou has grown in population and prospered economically. Membertou has opted to be a third party in the agreement so that it can retain more control over rising service-delivery costs.

The last round of negotiations with AANDC and CBRM included discussions about water-related costs. Historically, AANDC paid for the entire cost of water; however, with the arrival of so many economic development projects, Membertou agreed to cover the costs for the commercial uses of water.

CBRM provides policing services. They are outlined in a separate contract with four parties: Membertou, CBRM, the Government of Canada and the Nova Scotia Department of Justice.

#### **Joint projects**

The two communities worked together to complete a new collector road that runs through Membertou and leads to the regional hospital. The project involved various levels of staff from both communities including engineers and planners. There was a lot of goodwill and cooperation between the Membertou Development Corporation and CBRM's Planning and Engineering offices to successfully complete the project in 2010.

The project estimate was \$9 million; however, the final project cost was \$3.6 million because of CBRM's contribution of in-kind services (mainly engineering services). Membertou contributed to the financing of the project and the major funders were the provincial and federal governments.

Another project is the construction of a Hilton hotel on lands adjacent to Membertou. Membertou purchased the 22-acre site from CBRM. There was the option to convert the land to Federal Reserve Land, but the land would have been tax exempt. Membertou opted to not convert the land, thereby ensuring a new source of tax revenue for CBRM.

#### **Economic development**

Before 2000, Membertou had a limited economic base. In the late 1990s, Chief Terrance Paul recruited new staff and together the team approached Membertou's deficit based on a new strategic direction focused on sustainability, innovation, conservation and success. This direction has resulted in a vibrant community that employs over 530 people and has attracted and fostered many businesses. Ninety-five per cent of the clients who frequent its businesses are non-Aboriginal.

In the past decade, Membertou has undergone rapid economic growth and success. The Government of Nova Scotia entered into a gaming agreement with Membertou that allows various forms of gaming and bingo. Gambling revenue has been the cornerstone of Membertou's financial success and provides the revenue for Membertou to invest in other businesses. One such investment was the Membertou Trade and Convention Centre, which opened in 2004. It hosts local and international events and conferences.

CBRM has been experiencing population decline and a waning downtown core, as is the case in other communities in the region. The main economic drivers in the Cape Breton region were steel and mining, both of which have disappeared, leaving behind high unemployment rates across the region. While CBRM's population is in decline, the population of Membertou is increasing.

Although Membertou and CBRM are experiencing different economic issues, their fates are tied. Membertou First Nation is building on its economic hub and needs a labour pool to support this development. CBRM's population is in decline but it has the infrastructure in place to provide services to both communities.

### Challenges

The specific roles of the Government of Nova Scotia and AANDC are not always clear, which can pose certain challenges around accountability. Similar to other communities, Membertou First Nation and the CBRM have found that there are also challenges around consistency given the turnover in staff and political representatives. This makes it difficult to try to establish and maintain relationships.

CBRM and Membertou have found that the best way to get things done is to keep communication open and develop a collaborative solution.

There is the potential to further develop the relationship between the two communities and a nearby First Nation, Eskasoni. Eskasoni has the largest community of Mi'kmaq speakers in the world and has a population four times the size of Membertou. In the past, a resident of Eskasoni was elected to CBRM council.

Half the labour force of Membertou comes from outside the reserve. In the future, Membertou would like to work with Eskasoni to draw from its labour force, which has a high unemployment rate.

### Conclusion

Membertou and CBRM have faced enormous challenges over the years. The leadership demonstrated by staff and elected officials from both communities was the catalyst in repairing damage caused by the Donald Marshall, Jr. case. As the communities face their own unique economic and demographic challenges, their collaboration and support for each other will help ensure each other's viability.

Given the multiple relationships that exist between staff and elected officials in the two communities, CBRM and Membertou have found that their model of daily communication on a project-by-project basis works to maintain open communication and foster trust.

### Case Study References

CBRM website: <http://www.cbrm.ns.ca/>

Membertou Nation website:  
<http://www.membertou.ca/main-page.asp>