

**REVIEW
CHIPPEWAS OF THE THAMES FIRST NATION
DRAFT CONSTITUTION, JUNE 2014**

By

**Professor John Borrows,
B.A., M.A., J.D., LL.M., Ph.D., LL.D., F.R.S.C., I.P.C.
of the Chippewas of the Nawash First Nation
Canada Research Chair in Indigenous Law
University of Victoria Law School**

Thank you for the opportunity to offer a few comments on the COTTFN draft constitution.

Reviewing the draft constitution was a great privilege. It is a very inspiring document. It reinforces a strong sense of Anishinaabe nationhood. It provides a solid foundation on which to build healthy relationships. It effectively communicates a past, present and future vision for the further development of Anishinaabe law and governance. It should protect and enhance Anishinaabe traditions and allow them to grow in beneficial ways. It also provides a solid foundation for economic and social development.¹ This should strengthen your own community and your neighbors more generally as Anishinaabe perspectives more fully inform decisions in ways not possible without such a document. While a few clauses could be further refined, as will be explained, the COTTFN constitution is an exceptionally strong document. It is something in which you can take great pride as Anishinaabe peoples.

I will make some general observations before commenting on the constitution in greater detail.

GENERAL COMMENTS

A constitution is more than a written body of basic principles, privileges, rights, and limitations which bind governments. It is a way of living. A constitution is only a piece of paper if people do not live by its principles. Since Anishinaabe people live in different ways a constitution must protect healthy ways of living together differently. The question for the Chippewas of the Thames First Nation is whether the Draft Constitution will facilitate healthy ways of living.

¹ While Canada is a much different context, evidence compiled by the Harvard Project on American Indian Economic Development shows that the existence tribal constitutions facilitates economic development Stephen Cornell, Joseph Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* at <http://www.tribalreentry.org/sites/tribalreentry.org/files/Strategies%20and%20Institutions%20in%20AI%20Economic%20Development.pdf>

Anishinaabe people sometimes use the word *chi-inaakonige* to describe laws which organize a community's governance relationships. 'Chi' can mean great or large, and 'inaakonige' means to act through making a judgment or deciding to proceed in a certain way. *Chi-inaakonigewin* is a verb, which means that a constitution describes a set of guided actions. Actions are fluid and always in motion. Therefore, Anishinaabe constitutional law cannot be compressed into a single idea, nor can it be summarized in a single sentence, paragraph or document. Thus, a constitution creates a *framework* for agreement *and* disputation. It provides for orderly and organized ways to agree *and* disagree with one another in the future.

In my view the Chippewas of the Thames Draft Constitution foreshadows a healthy way of acting together for years to come. The constitution does not provide specific answers to all future questions; indeed it should not. This is not a constitution's role. It does, however, create an excellent framework for future action. The Draft COTTFN gives the community an excellent vehicle for confronting very challenging governance questions in productive and peaceful ways.

Despite a strong framework, there are two areas of the Draft Constitution that need more attention, in my view. These concerns are related to 'the branches of government' and 'individual rights' provisions. These provisions are on the weak side of the constitutional spectrum. A written constitution not only empowers governments, it limits them.

I believe the constitution effectively *empowers* the Chippewas of the Thames First Nations government. It provides appropriate tools for self-determination. It enables the community to be responsible for itself. It diminishes both Ottawa's and the province's second-guessing of democratic and culturally relevant decision-making at the local level. However, the Draft Constitution *does not sufficiently limit* COTTFN power from an internal perspective. This is because, as currently written, 1) Council's authority is insufficiently checked by other branches of government in the document and 2) the ability of individuals to contest COTTFN rights violations is not sufficiently developed.

If a constitution does not appropriately balance external strength with internal limitations constitutional experience demonstrates that people will suffer. A First Nations' constitution builds the people as a Nation. Nations exercise strong external powers. At the same time they find ways to place bounds, curbs and restraints on internal decision-making authority. This protects individuals from government-overreaching by diffusing and decentralizing authority to encourage democratic participation and cultural revitalization. More attention might be given to these two issues (too much power in council in internal matters, and too little rights protection) as you proceed with your work.

As you read the constitution, and my comments below, it is important to remember that Indigenous constitutions should encourage living Anishinaabe traditions. I think your

constitution generally does this. While constitutions should strengthen traditional roots they must also meet future needs. These needs are not foreseen at the time of their ratification. A constitution should grow with time, even as it creates a fixed and stable framework for dealing with questions through time. For instance, you should see this constitution as guiding governance through many generations. We do not know what our children, grandchildren or great-grandchildren will face in their lives. However, the constitution as drafted, subject to the comments found in this review, is flexible enough to be adaptable to many different circumstances.

As you read the sections below it is important to recognize that they must be harmonized (i.e. read together) except for the Pre-amble which often has less binding force than the numbered clauses (this is a general constitutional rule in Anishinaabe communities and around the world). No one section should be applied in isolation from the other sections. I also encourage you to think about this written constitution being a part of a broader constitutional tradition Anishinaabe people have long possessed. When the sections are read together, and are also seen to incorporate living Anishinaabe laws from times beyond our memory, you will have a strong way of governing yourself now and for generations to come.

CLAUSE BY CLAUSE ANALYSIS

PREAMBLE

Preamble

Whereas, we, the Chippewas of the Thames First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the Chippewas of the Thames First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The Chippewas of the Thames First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

Whereas, we retain our right to establish and control our educational systems and institutions providing education in Anishinaabemwin, in a manner appropriate to our cultural methods of teaching and learning;

Whereas, we honour our Ancestors and those who have gone on before us, as they continue to provide inspiration and guidance through the values that they have instilled in us. The strength of those that have gone before us has brought us to Deshkan Ziibiing territory and will connect us for generations to come;

Whereas, we have shown courage, resolve and integrity in the face of adversity and uncertainty. We will forever learn from our past and present, strive for the success in the present, and plan for our future;

Whereas, we protect and preserve our culture, language, customs, traditions and practices and exercise the inherent rights bestowed upon us by the Creator for the betterment of our people;

Whereas, we will respect and honour our roles and responsibilities within Natural Law to ensure a balanced environment in the present and for the future;

Therefore, we the Anishinabeg of the Chippewas of the Thames First Nation in order to secure an inherent and essential sovereignty, will re-establish our connection to the land and provide a means of restoring our cultural values to promote traditions of liberty, justice and peace to ensure the rights of all citizens of the Chippewas of the Thames First Nation, do hereby adopt and establish this Constitution of the Chippewas of the Thames First Nation.

Seven Grandfather Teachings

Zaagidwin (Love)

Mnaadenmowin (Respect)

Nbwaakaawin (Wisdom)

Aakdehewin (Bravery)

Debwewin (Truth)

Gwekwaadziwin (Honesty)

Dbaadendiziwin (Humility)

This is a wonderful **preamble**. It **successfully communicates** an overall sense of what COTTFN wants to accomplish with the constitution. It effectively locates COTTFN in a territory, with a history, culture and traditions. The preamble also signals your relationship with other three fires members and does an excellent job of communicating Anishinaabe laws and principles. The inclusion of the Seven Grandfather teachings sets an excellent tone for governance. The preamble also sets forth far-sighted goals for the coming years. The preamble provides a strong foundation for the constitution.

As you may know, the provisions of a constitutional **Preamble** are **not often legally enforceable on their own terms**. This is true of most constitutions around the world. A preamble provides a broader context for understanding the remainder of the constitution. It provides a very important statement of a constitution's purposes. It sets out the reasons for adopting a constitution. A preamble also identifies a community's goals and objectives. It outlines a community's relationship with its past and provides a strong statement about its future aspirations. A preamble tells the world about who the community has been, is, and hopes to be in the future. As such, a Preamble helps decision-makers understand how the remainder of the constitution should be interpreted and applied. This is what you have accomplished with the draft constitution.

In particular, in setting forth the constitution's context, the COTTFN preamble appropriately identifies the **source** of Anishinaabe sovereignty. It sets out the **goals** you hope to accomplish. The preamble communicates a strong sense of Anishinaabe **identity**. It also contains a good **historical narrative**.

To further strengthen the preamble’s context regarding sources of sovereignty, goals and identity, I wonder if the preamble could be **translated into Anishinaabemowin**? This would reinforce Article 2 of the Constitution, which makes Anishinaabemowin an official language.

In relation to the constitution’s historical narrative, I wonder if you want to **create a preambular clause which expresses COTTFN’s** need and ability to recognize, overcome and heal past and present **colonial injustice**? The preamble partially does this, it says COTTFN has: “shown courage, resolve and integrity in the face of adversity and uncertainty”. It may be possible to go one step further. Many communities who have suffered through a particular challenge to their past governance (like colonialism) identify the source of that problem. This helps future decision-makers clearly keep their focus on the need to overcome a past challenge.

For instance, the first clause of the preamble is very true but it does not contextual COTTFN’s challenge in maintaining “self-sufficient government with a sustainable economy”, given 150 years or more of colonialism under the *Indian Act* and other government actions. The current clause reads:

Whereas, we, the Chippewas of the Thames First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

If you wanted to add another clause reflecting the community’s desire to overcome colonialism a draft preambular clause might read:

Whereas we recognize the injustices flowing from Canada’s attempts to colonize our lands and people and wish to forge healthy, respectful relationships with other First Nations, Canada, Ontario and local governments;

South Africa chose to recognize its past challenges in the following way in its preamble (underlined emphasis mine):²

We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa

² Constitution of the Republic of South Africa Act, ss. 1 - 3 No. 108 of 1996 ss. 1 – 3.

belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to - Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seen Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika

Regarding clause 4 of the Preamble: I would recommend changing "...the inherent right to..." to "...inherent rights to..." because more than one inherent right is identified in the list which follows these words. The **deletion of the word 'the' and the pluralization of rights** would help ensure that Anishinaabe rights are seen as flowing from many sources and contain many different dimensions.

Regarding the preamble's last clause, which mentions '**Natural Law**', I believe I understand the intent underlying this clause, given my understanding of Anishinaabe law. In fact, I used this word to describe a source of Indigenous constitutional law in my book Canada's Indigenous Constitution. However, the word could be misinterpreted if left as an English term. It could draw the constitution's interpretation into European-style legal debates because 'natural law' has many meanings in Greek, Roman, German, English and Canadian thought. It is not likely that the present community and its leadership would interpret the constitution in light of these European concepts. However, because a constitution could exist for hundreds of years, future generations might misunderstand what you mean by 'natural law'. I wonder if an **Anishinaabe word might be used instead**, such as kinwezhiwewin or mazi-kammikwe-inaakinogewin or Anishinaabe izhitwaawinan or some other such word or phrase which suits how speakers in your community say natural law. I think Betsy or another language speaker in the community might have some good ideas in this regard. This would ensure that 'natural law' is interpreted in accordance with Anishinaabe understandings.

In **Bolivia**, their preamble addresses issues of so-called 'natural law' in a very good way, and in their language. It talks about mother earth and the sacred nature of life in their territory. A translation (from Spanish) reads as follows³:

In immemorial times mountains were raised, rivers moved, lakes were formed. Our Amazon, our flatlands, our highlands and our plains and valleys were covered with flowers and greeneries. We populated this sacred Mother Earth with different faces, since then we understood the existing plurality of all things and our diversity as beings and cultures. So we formed our peoples, and never understood racism until we suffered from the fateful days of the colony.

The Bolivian people, of plural composition, from the depth of the story, inspired by the struggles of the past, in the indigenous anti-colonial uprising, in independence, in the popular struggles of liberation, in indigenous, social and Trade Union marches, and wars of water in October, in the struggles for land and territory, and with the memory of our martyrs, We build a new State.

A State based on respect and egalitarianism between all, with principles of sovereignty, dignity, complementarity, solidarity, harmony and equality in the distribution and redistribution of the social product, where dominate the search for well-living; with respect to the economic, social, legal, political and cultural plurality of the inhabitants of this land; in collective living with access to water, work, education, health and housing for all.

We leave in the past colonial, Republican and neo-liberal State. We assume the historic challenge to collectively build the Social Unitary State of Community Plurinational Law, which integrates and articulates the purposes of moving towards a democratic and productive Bolivia, carrier and inspiring peace, compromised with the integral development and the self-determination of peoples.

Us, women and men, through the Constituent Assembly and with people's original power, express our commitment with the unity and integrity of the country.

Fulfilling the mandate of our peoples, with strength of our Pachamama and thank God we re-found Bolivia.

³ <http://pdba.georgetown.edu/constitutions/bolivia/bolivia09.html>

Honour and glory to the martyrs of the liberating and constituent feat, who have made possible this new history.

Though COTTFN's is less poetic than some other constitutions, it is still very beautiful. I think the preamble compares exceptionally well with other examples of Anishinaabe and Indigenous Constitutional preambles, which are provided below for comparison:

a. White Earth Constitution⁴

The Anishinaabeg of the White Earth Nation are the successors of a great tradition of continental liberty, a native constitution of families, totemic associations. The Anishinaabeg create stories of natural reason, of courage, loyalty, humor, spiritual inspiration, survivance, reciprocal altruism, and native cultural sovereignty.

We the Anishinaabeg of the White Earth Nation in order to secure an inherent and essential sovereignty, to promote traditions of liberty, justice, and peace, and reserve common resources, and to ensure the inalienable rights of native governance for our posterity, do constitute, ordain and establish this Constitution of the White Earth Nation

b. Little Traverse Bay Band of Odawa Indians⁵

IN THE WAYS OF OUR ANCESTORS, to perpetuate our way of life for future generations, we the Little Traverse Bay Bands of Odawa Indians, called in our own language the WAGANAKISING ODAWAK, a sovereign, self-governing people who follow the Anishinaabe Traditions, Heritage, and Cultural Values, set forth within this Constitution the foundation of our governance. This Constitution is solemnly pledged to respect the individuality of all our members and their spiritual beliefs and practices, while recognizing the importance of preserving a strong, unified Tribal identity in accordance with our Anishinaabe Heritage. We will work together in a constructive, cooperative spirit to preserve and protect our lands, resources and Treaty Rights, and the right to an education and a decent standard of living for all our people. In keeping faith with our Ancestors, we shall preserve our Heritage while adapting to the present world around us.

c. Nbisiing Gichi-Naaknigewin⁶:

⁴ http://www.whiteearth.com/data/upfiles/files/Proposed_White_Earth_constitution_2.pdf (proposed and ratified November 19, not yet in force.

⁵ <http://www.narf.org/nill/Codes/ltraverse/t1.pdf>

⁶ <http://www.bobgoulais.com/index.php/tag/nipissing-first-nation/#sthash.eGpr2YJm.dpuf>

We, the people of the Nipissing First Nation, known as the Nipissings, ordain and establish this Gichi-Naaknigewin as our supreme law in accordance with the values and principles upon which our heritage has existed.

By this Gichi-Naaknigewin, we declare and acknowledge the Creator for the gifts of Mother Earth, sovereign rights to govern ourselves and for our cultural heritage.

The history of the Nipissings confirms the people as a peaceful, productive and thriving people who have relied on the abundance of natural resources. The history of the Nipissings is well documented, expressing the strong inherent values and principles cherished by its Debendaagziwaad. This Gichi-Naaknigewin reflects those strong inherent values and principles.

Prior to the signing of the Robinson Huron Treaty of 1850, the Nipissings had occupied and enjoyed the lands surrounding the Lake Nipissing watershed for their sustenance and survival through harvesting and other means.

At the signing of the Robinson Huron Treaty of 1850, Chief Shabogesic agreed to set aside lands on the north shore of Lake Nipissing for his people's exclusive use and protection. We the Nipissing First Nation people affirm that we have absolute ownership of our traditional territory based on the belief that participation in the Robinson – Huron Treaty of 1850, did not extinguish ownership. We assert that our ancestors simply selected and reserved designated lands and resources for their people.

This Gichi-Naaknigewin confirms the rights, responsibilities and freedoms of First Nation's Debendaagziwaad, its government and its governing institutions in relation to the jurisdictions set out in this Gichi-Naaknigewin as confirmed by the ratification by its Debendaagziwaad;

d. Navajo Fundamental Law (a statute which functions much like a constitution)⁷

Chapter 1. The Foundation of the Diné, Diné Law and Diné Government

§ 1. Diné Bi Beehaz'áanii Bitse Siléí--Declaration of the Foundation of Diné Law (1 N.N.C. § 201)

We, the Diné, the people of the Great Covenant, are the image of our ancestors and we are created in connection with all creation.

- Diné Bi Beehaz'áanii Bitsi Siléí

⁷ Diné Bi Beenahaz'áanii (1 N.N.C. §§ 201-206) at <http://www.navajocourts.org/dine.htm>.

- Diyin Dine'é
- Sin dóó sodizin
- Bee
- Nahasdzáán dóó yádithit nitsáhákees yił hadeidiilaa,
- Tó dóó dził diyinii nahat'á yił hadediilaa,
- Niłch'i dóó nanse' altaas'éí iiná yił hadediilaa,
- Ko', adinídíín dóó nt'iz náadahaniihjį' sihasin yił hadeidiilaa.
- Díí ts'ídá aláají nihi beehaz'áanii bitse siléí nihá' ályaa.
- Nitsáhákees éí nahat'á bitsé silá.
- Iiná éí sihasin bitsé silá.
- Hanihi' diilyaadi díí nihiihdaahya' dóó bee hadíníit'é.
- Binahji' nihéého'díłzingíí éíí:
- Nihízhí',
- Ádóone'e niidlíinii,
- Nihinéí',
- Nihee ó'ool íł,
- Nihi chaha'oh,
- Nihi kék'ehashchíín.
- Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.
- Kodóó dah'adiníísá dóó dah'adiidéél.
- Áko dííshjįgi nitsáhákees, nahat'á, iiná, saad, oodłą',
- Dóó beehaz'áanii ał'ąą ádaat'éego nihitah nihwiileeh,
- Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'áá t'ahdii doo łahgo ánééhda.
- Éí biniinaa t'áá nanihi'deelyáhaąą doo níłch'i divin hinááh nihiihdaahya'ąą ge'át éigo,
- T'áá Diné niidlįjgo náásgóó ahoól'á.

The Holy People ordained,
Through songs and prayers,
That

- Earth and universe embody thinking,
- Water and the sacred mountains embody planning,
- Air and variegated vegetation embody life,
- Fire, light, and offering sites of variegated sacred stones embody wisdom.

These are the fundamental tenets established.

- Thinking is the foundation of planning.
- Life is the foundation of wisdom.
- Upon our creation, these were instituted within us and we embody them.

Accordingly, we are identified by:

- Our Diné name,
- Our clan,
- Our language,
- Our life way,

- Our shadow,
- Our footprints.

Therefore, we were called the Holy Earth-Surface-People.

From here growth began and the journey proceeds.

Different thinking, planning, life ways, languages, beliefs, and laws appear among us,

But the fundamental laws placed by the Holy People remain unchanged.

Hence, as we were created with living soul, we remain Diné forever.

Article 1 – Supreme Law

ARTICLE 1 – SUPREME LAW

- 1.1 This Constitution is the supreme law of the Chippewas of the Thames First Nation.
- 1.2 In the event of a conflict or inconsistency between this Constitution and any law, by-law, policy, regulation or code enacted by the Chippewas of the Thames First Nation, this Constitution shall prevail.
- 1.3 All other Chippewas of the Thames First Nation laws, by-laws, policies, regulations or codes are subject to this Constitution.

Article 1 proclaims that “This Constitution is the **supreme law** of the Chippewas of the Thames First Nation.” It is a **strong clause**. It could stand on its own without further amendment. It provides a solid base for the rest of the document. **However, I will raise one issue** in this review to ensure you fully consider the legal theory on which you want the constitution to rest.

A **supremacy clause** is important because constitutions create a hierarchy of laws. It solves questions about the proper relationship of the constitution to other laws. The constitution is **placed at the pinnacle of a community’s legal pyramid**. All other laws are subordinate to the constitution. Therefore, any law which does not conform to the constitution will be invalid, or of no force or effect. You have effectively communicated this in Article 1. This is what it means to say that laws which do not conform to the COTTFN constitution will be unconstitutional.⁸

Despite Article 1’s effectiveness, I have one observation.

In simple terms, the COTTFN **supremacy clause does not explicitly incorporate older Anishinaabe constitutional traditions as part of your community’s highest law**. Despite the preamble’s references to long-standing Anishinaabe constitutional traditions, the **body of the COTTFN constitution (Articles 1-12) does not generally reference older Anishinaabe constitutional traditions**, with a few notable exceptions. While long-standing Anishinaabe constitutional traditions (as found in doodems, customs, practices, traditions, treaties, etc.) may be part of the constitution (if the preamble is given great weight) neither the supremacy

⁸ As Article 1.2 says: “In the event of a conflict or inconsistency between this Constitution and any law, by-law, policy, regulation or code enacted by the Chippewas of the Thames First Nation, this Constitution shall prevail.”

clause nor the general body of the constitution (again with a few exceptions) references these traditions as part of the supreme law of the COTTFN. **Without making Anishinaabe constitutional tradition an express part of the supremacy clause you run the risk of inadvertently diminishing older Anishinaabe constitutional traditions which pre-date the future constitution's ratification.**

The previous point may already be overly complex. It's hard to write in more simple terms. What I am trying to say is: make sure older Anishinaabe legal traditions remain part of your constitutional law. I will explain what I mean in more technical terms because I believe detail is needed to explain what I mean. I am asking you to consider the legal theory underlying your constitution. It is important to consider your constitution's legal theory because all other governance actions will flow from that theory.

There are two ways of constructing a supremacy clause:

- One way of constructing a supremacy clause is to make the written document the sole source of the supreme law. This is how the United States views its constitution. I will call this the **US approach**. It is similar to the COTTFN approach. The US written constitution does not generally incorporate unwritten traditions from before the written constitution was formed. The draft COTTFN constitution largely follows a similar path (with a few prominent exceptions). In particular, and most importantly, the COTTFN supremacy clause does not reference unwritten Anishinaabe constitutional traditions as being part of the constitution.
- An alternative way of constructing supremacy provisions is to incorporate a longer unwritten constitutional tradition into a supremacy clause. This approach regards the unwritten tradition as being part of the supreme law. This is the **Canadian approach** (and by extension is the British approach).⁹ Canadian and British constitutional law reference and include a thousand-year-old British oral tradition as part of Canada's supreme law.¹⁰ These century old traditions are the "fundamental and organizing principles"¹¹, which "are the vital unstated assumptions upon which the text is based".¹² Thus, in Canada and the UK, constitutional supremacy is not limited to the written documents. The highest law also includes longstanding customs, conventions and

⁹ In 1867 Canada incorporated older laws in its constitutional supremacy by declaring that the "British North America is similar in principle to Great Britain."

¹⁰ The Supreme Court of Canada said that Canada's constitution goes behind, "behind the written word", to "an historical lineage stretching back through the ages, which aids in the consideration of the underlying constitutional principles". *Reference Re Secession of Quebec* at 247.

¹¹ *Ibid.* at 240.

¹² *Ibid.* at 247.

practices which flow from an eight-hundred year constitutional history.¹³ The COTTFN does not seem to explicitly incorporate unwritten Anishinaabe constitutional traditions in the supremacy clause provisions.

As noted, it appears that the draft **COTTFN follows the US approach** to constitutional supremacy. I think this may be a problem but others may see it a different way. The COTTFN document makes the text supreme. The COTTFN supremacy clause contains no specific words referencing older Anishinaabe constitutional laws as part of the constitution's supremacy. It does not leave room for oral constitutional traditions as occurs in the Canadian and British context.

What is the significance of the two approaches to constitutional supremacy?

In terms of its **advantages**, the US supremacy clause is potentially clearer. It is easier to administer. If the current draft remains after ratification, COTTFN laws only have to comply with the written version of the constitution. Future COTTFN laws will not have to be measured against past unwritten traditions. This approach likely creates clearer rules about the constitution's scope and boundaries. The **disadvantage** of this approach is that Anishinaabe people might more strongly feel that unwritten constitutional traditions form part of their supreme law. This might be particularly true for Anishinaabe people who regard their longer history as a source of their constitutional obligations. They may see oral legal traditions as being just as important as the written text for determining any law's constitutionality.

There is the 'British/Canadian' alternative. **If** the community wants to make unwritten Anishinaabe constitutional traditions (best expressed using an Anishinaabe term) as part of the COTTFN's supreme law, it could follow the Canadian and British model. Section 1 of the COTTFN supremacy clause section could state that:

The supreme law of the COTTFN includes Anishinaabe mazi-kammikwe-inaakinogewin miiniwaa gete-Anishinaabe izhitwaawinan.¹⁴

¹³ An example of how Canadian constitutional law incorporates older, oral constitutional traditions is found when questions arose about whether Quebec could separate from Canada following a referendum. The Supreme Court of Canada said that the rules regarding secession were not found in the written documents of the constitution. To provide a framework for answering this question the Court said oral constitutional traditions were also necessary to consider questions of separation. Some of the unwritten principles of Canada's constitution include the respect for the rule of law, protection of minorities, and democracy. These constitutional rules flow from the nations broader historical/legal traditions, and are not explicitly referenced in the text of Canada's constitution.

¹⁴ In 1982 Canada also incorporated older laws in section 52 (the Supremacy Clause: Section 52 (2) of the Constitution Act 1982 states that the Constitution of Canada **includes** written documents.¹⁴ The word 'includes' means that that the text of the constitution does not contain the entire constitution (i.e., other provisions are present in Canada's constitution even if they are not texts). The Canadian courts have interpreted this and other

Again, the Anishinaabe words used to express your longer traditions should be ones used by speakers at COTTFN. The **advantage** of this British/Canadian approach to constitutional interpretation is that it incorporates longer-term Anishinaabe oral and customary constitutional traditions and practices. This view also seems more consistent with the preamble, which references these traditions.¹⁵ I also think it is the traditional way Anishinaabe people have practiced law and related to their traditions. Writing should not always be the last word, though we want the constitution to be largely directed by what we write.

In my view, constitutionalism is healthiest when it builds upon the real-life practices and beliefs of the people. A constitution which just exists as a piece of paper will not reflect the community's will; it will not be as broadly democratic. The **disadvantage** of British/Canadian/traditional Anishinaabe approach is that unwritten constitutionalism introduces greater ambiguity into constitutional practice. People will more readily argue that COTTFN laws, regulations or codes will violate unwritten Anishinaabe constitutional principles based on unwritten principles.¹⁶ Such arguments will initially make COTTFN council's job more difficult in the first years of creating laws. Council will have to ensure that laws will stand on a broader base of Anishinaabe tradition than is reflected in the written words of the constitution. Of course, as council gets experience and successfully creates laws which comply with both written and unwritten versions of the constitution, their laws will be even more solidly rooted. Thus, the disadvantage of making unwritten laws explicitly a part of COTTFN's could eventually disappear, and become a great strength for the community.

Article 2 – Language and Culture

ARTICLE 2 – LANGUAGE AND CULTURE

- 2.1 The official languages of the Chippewas of the Thames First Nation are *Anishinaabemwin* and English
- 2.2 The Chippewas of the Thames First Nation shall promote, advance and strengthen the philosophy of *mino-bimaadiziwin*, to live a good life; teach and encourage the use of *Anishinaabemwin* and the practice of *Anishinaabe aadzowin*.

Article 2 may provide partial answers for not explicitly including unwritten constitutional Anishinaabe practices as part of the Article 1 supremacy clause, as described above.

supremacy sections to mean that while written constitutional documents get priority in determining constitutional supremacy, unwritten traditions are also part of the constitution's supreme law.

¹⁵ It must be remembered that preambles are not usually on the same level as supremacy clauses, and thus have lesser weight. The fact that preambles 'count less' when interpreting a constitution is a reason to ensure that tradition is mentioned in the supremacy clause.

¹⁶ Of course, people will argue this anyway. If Anishinaabe *mazi-kammikwe-inaakinogewin miiniwaa gete-Anishinaabe izhitwaawinan* are made an explicit part of the constitution (in the supremacy clause) COTTFN citizens will have a broader range of arguments available to them when making and challenging laws. If these broader arguments are not available some people might feel that the constitution does not reflect their views. This is because they might say that they do not have any constitutional grounds to raise their concerns

Article 2.1 is clear that **Anishinaabemowin has official linguistic status** in COTTFN laws. In many important comparative constitutional contexts linguistic inclusion has strengthened the development of languages which have been threatened by broader societal forces. This should be the result that COTTFN will enjoy.

Article 2.2 is an appropriately soft clause. It **does not require that the community achieve mino-bimaadiziwin, or fluency in Anishinaabemowin or Anishinaabe aadzowin**. However Article 2.2 does make Anishinaabe tradition an integral part of the constitution. Article 2.2 states that the COTTFN has an affirmative duty to ‘promote, advance and strengthen, teach and encourage’ unwritten Anishinaabe traditions. The word ‘shall’ in this section makes COTTFN’s *duty to promote*, advance, strengthen, teach and encourage mandatory. **However**, there is *no affirmative duty to ensure* that everyone has to live this way. I think this is a good thing. This gives COTTFN citizens the freedom to do what they want in relation to Anishinaabe tradition, even if the council must encourage its development. Some people might want to see an even stronger commitment to mino-bimaadiziwin and Anishinaabe aadzowin by making their realization mandatory. However their placement in this section can be regarded as a very strong second-best protection. It advances Anishinaabe culture while leaving the individual free to live the life they choose. I think freedom, dibenindizowin, is a key constitutional value, and the Draft Constitution protects that value.

There are advantages to ensuring that COTTFN must take these steps to encourage mino-bimaadiziwin, while not holding the council accountable for failures to see progress on this front. It may make it initially easier for the council to pursue these goals in flexible ways. If the council had to show that its laws resulted in mino-bimaadiziwin and Anishinaabe aadzowin then many laws would likely be unconstitutional when they failed to meet these high standards.

Article 3 – Jurisdiction and Authority

ARTICLE 3 – JURISDICTION AND AUTHORITY

3.1 Chippewas of the Thames First Nation has the inherent right of self-governance and may pass laws in respect to the following areas:

- governance structures and the delegation of jurisdiction and authority;
- the preservation and maintenance of our land, water, air and other natural resources;
- wildlife management;
- preservation and conservation of environment;
- language, culture, traditions, customs and heritage;
- education;
- housing;
- economic development;
- financial administration and management;
- elections;
- membership and Community residents;
- administration of justice and dispute resolution;
- social services;

- child welfare;
- health;
- labour relations;
- employment and training;
- marriage and divorce, matrimonial real property;
- traffic, transportation, parking and highways;
- public works and infrastructure;
- public and capital assets;
- regulation, licensing and prohibition of business;
- corporations;
- wills and estates;
- public order, peace, safety and emergency preparedness;
- animal control;
- taxation;
- services to non-members on Chippewas of the Thames First Nation lands;
- environment protection and assessment; and
- other areas approved by the Chippewas of the Thames First Nation members.

Law-Making Process

- 3.2 All Chippewas of the Thames First Nation laws must be officially ratified by the Chief and Council, except for those laws that require ratification by the Electors of Chippewas of the Thames First Nation.
- 3.11¹⁷ The Chippewas of the Thames First Nation Council will establish rules to allow citizenship/membership participation and consultation in its law-making process.
- 3.12 The Chippewas of the Thames First Nation Council shall establish rules regarding the process and timelines for the enactment, coming into force, and publication of Chippewas of the Thames First Nation laws.
- 3.13 Any law, by-law, code or policy of Chippewas of the Thames First Nation in force at the time this Constitution comes into effect will be reviewed by the Council to determine whether such law, by-law, code or policy is in accordance with this Constitution. (For Law making procedures see Appendix...)

Article 3.1 contains a **list of COTTFN governmental powers** which has **similarities to the heads of powers found in the Royal Commission on Aboriginal Peoples (RCAP)**.¹⁸ RCAP said these powers are examples of core and peripheral jurisdiction in Aboriginal governance. This is a strong list. It contains many of the most important powers a government can exercise, particularly at a reserve level.¹⁹

¹⁷ Note the numbering is confusing here, in the draft COTTFN constitution.

¹⁸ Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, Volume 2, Restructuring the Relationship* (Ottawa: Supply and Services, 1996) at page 322.

¹⁹ I note that the administration of justice and dispute resolution is on this list. RCAP also spoke in terms of criminal law and procedure. This area of jurisdiction has proven almost impossible to exercise for Aboriginal peoples because of federal and provincial resistance. Negotiation over criminal law and procedure, through the past twenty years, has been a largely futile exercise for First Nations people. While it is strongly arguable that this area of jurisdiction remains within pre-existing First Nations power, it is understandable why COTTFN did not include this power in its list. If COTTFN stands any change of having this constitution recognized beyond its own members, the decision not to include this power will make such recognition much easier. At the same time, the inclusion of the administration of justice and dispute resolution will likely be more palatable to external governments because these terms are much more flexible and subtle in their development.

Article 3.1 also contains some powers currently exercised by COTTFN under the *Indian Act*.²⁰

Note that COTTFN's fields **of jurisdiction can be expanded** to include "other areas approved by the Chippewas of the Thames First Nation members". This is a very important provision. It allows other authority to be exercised by COTTFN in the future, if the members approve. It is important that the list of possible governmental powers not be limited or closed to what is provided in a list. New areas of jurisdiction develop or are needed from time to time and Article 3.1 contains sufficient flexibility to allow this to occur.

The Law-Making Process provisions of Article 3.2 contain guarantees of what have been called **administrative law protections** in other settings. Article 3.2 says that council will make laws for members of the COTTFN to participate in law-making exercises. Note that the council will create a set of the precise rules for enacting, ratifying and publicizing laws and ensuring that citizens can participate and be consulted in this process. Precise rules are not created by the constitution for how such consultation and participation will occur. Thus, the council will have the discretion to change its laws from time to time concerning ratification, participation, consultation, etc. of its laws. Furthermore, there is no broader standard by which the fairness of these processes will be judged, at least in this section. The duty on council is only to ensure that such processes exist. While these processes must be consistent with other parts of the constitution, they **do not go as far as most constitutional systems to suggest that due process or fundamental justice must be followed in creating and communicating laws**. In the US constitutional context, these stronger ways of guaranteeing participation have been called procedural due process rights. In the Canadian constitutional context stronger rights to participation are guaranteed by section 7 of the Charter of Rights and Freedoms, among other sections.

Article 4 – Rights and Freedoms

ARTICLE 4 – RIGHTS AND FREEDOMS

- 4.1 The Chippewas of the Thames First Nation respects the dignity and supports the independence of each individual living in a community of shared resources and responsibility.
- 4.2 Every member/citizen of the Chippewas of the Thames First Nation has the right to exercise the following freedoms:
- (a) to practice his/her indigenous and treaty rights including the right to harvest the gifts of Creator in a sustainable manner;
 - (b) to practice his/her beliefs, spirituality and/or religion;

²⁰ Note that Indian bands have power under section 81 of the *Indian Act* to make bylaws for 'law and order' but this phrasing is not used in this list. Of course, the band would still have this power as long as the current version of section 81 *Indian Act* remains in effect. Not placing this power in the constitution does not remove powers it might have the more general right to exercise through federal recognition. Having said this, the federal government has not been inclined to recognize any significant scope for the law and order provisions of the *Indian Act*.

- (c) to learn to speak Anishinaabemwin;
- (d) to live in a manner that is in keeping with his /her indigenous traditions;
- (e) to participate in the selection of the Chippewas of the Thames First Nation leadership;
- (f) to participate in the public decision-making processes set in the Chippewas of The Thames First Nation Constitution and Chippewas of the Thames First Nation Law;
- (g) to fair and equal access to programs and services, subject only to the regulatory organization that may be applicable; and
- (h) to address and appeal any decisions that may arise from time to time.

4.3 Every member/citizen of Chippewas of the Thames First Nation is equal before and under the laws of Chippewas of the Thames First Nation, without discrimination or prejudice, including the fish.

Review and Appeal of Administrative Decisions

4.4 Chippewas of the Thames First Nation shall provide procedures for the appeal or the review of administrative decisions for Chippewas of the Thames First Nation and its Public Institutions.

Reasonable Limits

4.5 This Constitution guarantees the rights and freedoms set out above subject only to such reasonable limits set out in the Chippewas of the Thames First Nation laws as can be demonstrably justified to protect the collective interest of the Chippewas of the Thames First Nation and justified in a free democratic First Nation.

Article 4 lists rights which members can claim against their government. While these rights are strong, this list is on the sparse side of the spectrum when compared to most constitutions.

Article 4.1 mentions the right to **dignity**, which is a right which the most fundamental right in many European and international legal systems.

Article 4.2 chronicles **rights which are distinctive to Indigenous peoples**, including the right to practice treaty rights, speak Anishinaabemowin, and practice Indigenous traditions. Other rights in this section are also commonly found in other constitutions, including the right to spirituality/religion, participation in governance and equal access and equality before and under the law.

Notably **missing** from Article 4.2 list are **rights** which are conventionally found in constitutions. This includes rights to freedom of thought, belief, opinion and expression, including: freedom of the press and other media of communication; freedom of peaceful assembly; freedom of association; the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Furthermore, the equality provisions of article 4.3 do not provide for equal benefit and protection of the law as is the case in Canada’s constitution. Having said this, First Nations citizens may be able to claim these rights as against their government by virtue of the Canadian Charter of Rights and Freedoms. Furthermore, the *Canadian Human Rights Act* allows First Nations citizens to make claims against their governments for failure to abide by these rights. Perhaps this is why such rights are not reproduced in a culturally appropriate Anishinaabe manner in this constitution.

However, some may be curious about why the draft COTTFN constitution does not contain these protects for its own citizens. It is not clear why COTTFN would not also promote and encourage and cultivate these values. It is not clear why the COTTFN would not guarantee these commonly iterated rights and find ways to extend them within the nation. Some might wonder about the implications and symbolism of leaving the task to external political bodies. Anishinaabe nations in the United States include these rights in their constitutions. They are often considered the most precious rights an Anishinaabe citizen possesses. This is particularly the case when a 'rogue' band council tries to force citizens to do things which are contrary to their interests.

I also wonder whether the COTTFN might also choose to reference the international *UN Declaration on the Rights of Indigenous Peoples* as part of the rights its citizens possess against their own and other governments. This document is regarded as the international 'gold standard' for outlining rights of Indigenous peoples around the world. These rights are not only meant to be advanced in relation to external governments, but can also be applied internally.

Article 4.3 is appropriately innovative. The inclusion of fish as equal being before and under the law, without discrimination and prejudice, aligns nicely with Anishinaabe legal traditions which regard all living beings as worthy of respect, honour and dignity. I think this will be important for ensuring stewardship, conversation and ecosystem health remains a central concern for COTTFN. These environmental/natural relationships are a key part of Anshinaabe law. In fact, I would suggest that you consider adding the rocks, plants, crawlers, flyers and four-legged beings to this list. This would further ensure that the equality of life is protected in the constitution.

Some may question whether Article 4.3 might prevent you from using rocks and plants for sustenance, or harvesting and/or eating fish, birds and animals. I could envision a future challenge on these grounds based on the present wording. I don't think such a challenge would succeed. It must be remembered that the constitution is interpreted as a whole. Other sections provide the right to exercise treaty rights and sustain your community. Furthermore, rights (of the fish, etc.) can be limited if such limits are reasonable for the collective interest (Article 4.5). While these limits will help to honour the other life in your territories and ensure they are only used with respect, it does not prevent their 'reasonable' use. When I read this clause I am reminded of the Constitution of India and the special relationship it accords to animals in Part IVA which seeks to "protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." COTTFN is doing something positive and innovative through the inclusion of this clause.

Article 4.4 indicates that the "Chippewas of the Thames First Nation shall provide procedures for the appeal or the review of administrative decisions". Most Anishinaabe constitutions in the

United States, as well as most western constitutional regimes, guarantee independent review processes through a judiciary, peacemaking court, or other structure. This independent review power provides an important ‘check and balance’ against the power of the legislative and administrative arms of government (in this case the Chief and Council). As the constitution currently reads **COTTFN will remain the arbiter of whether appropriate procedures exist for reviewing government action**. This might be the least effective way of ensuring that dispute resolution systems function well. Without a counter-veiling body dispute resolution makes a council the judge of its own actions. These processes often do not cultivate the arms-length legitimacy necessary to encourage effective dispute resolution.

Article 4.5 is a **standard clause** found in most modern constitutions. It is a good clause. It **allows legislatures and reviewing bodies to balance individual rights infringements against the broader needs of the community**. I believe this clause would be interpreted in light of mino-bimaadiziwin and other Anishinaabe innovations in the constitution.

Article 5 – Membership/Citizenship

ARTICLE 5 – MEMBERSHIP/CITIZENSHIP

- 5.1 Chippewas of the Thames First Nation has the right and authority to determine its members/citizens without outside influence.
- 5.2 The Chippewas of the Thames First Nation shall enact laws in accordance with the Law-making process set out in this Constitution to create a Citizenship/Membership Code.
- 5.3 Every person who is a registered citizen in accordance with the Chippewas of the Thames First Nation Citizenship/Membership Code is a member/citizen of the Chippewas of the Thames First Nation.

Membership/citizenship provisions are often amongst the most contentious provisions in constitution-making. Fortunately, in this case these provisions are **unlikely to be contentious**.

Article 5.3 makes it clear that **no person currently entitled to membership in COTTFN will be excluded by these provisions through this constitution**. Furthermore, future membership/citizenship provisions are not detailed in the constitution. While the COTTFN shall (thus mandatorily) enact laws and a Code concerning membership/citizenship in the future, such processes must accord with the COFFTN constitution. All the provisions outlined in the constitution must be followed in dealing with future citizenship issues. This will provide an additional layer of protection for future citizenship laws (which will not be available if the constitution is not ratified). Thus, once the constitution is enacted membership/citizenship issues will be addressed, but every person who is currently a member/citizen will have all the rights and authority to participate in this process that is available to all other people.

Article 6 –Government

ARTICLE 6 – GOVERNMENT

6.1 The Chippewas of the Thames First Nation governing body will fulfill the roles and responsibilities as set out in the Dodomaag system of governance, including the administration of day to day operations of government and the administration of a justice system.

Governing Principles

6.2 Chippewas of the Thames First Nation expects the Chief and Council to:

- (a) wield its authority as a whole and speak with one, unified voice;
- (b) honour and abide by the Seven Grandfather teachings: Zaagidwin (Love), Mnaadenmowin (Respect), Nbwaakaawin (Wisdom), Aakdehewin (Bravery), Debwewin (Truth), Gwekwaadziwin (Honesty), and Dbaadendiziwin (Humility);
- (c) conduct all matters within the First Nation laws of governance, transparency and accountability;
- (d) be loyal to the Chippewas of the Thames First Nation, and respect this constitution;
- (e) preserve and promote peace, unity and well-being of Chippewas of the Thames First Nation;
- (f) provide good, effective, transparent and accountable First Nations government;
- (g) cooperate with one another in mutual trust and good faith;
- (h) consult and inform one another on matters of common interest, and coordinate actions and laws with one another; and
- (i) be committed to the inclusion of community in the direction of the First Nation.

Branches of Government

6.3 The Chippewas of the Thames First Nation shall be comprised of the following five branches:

- (a) the **General Assembly**, in which all Citizens may participate in person to provide input and advise to the Council on all matters regarding the Chippewas of the Thames First Nation;
- (b) the **Elders Council**, in which Elders may participate to provide guidance and wisdom to the Chippewas of the Thames First Nation Council;
- (c) the **Youth Council**, in which representatives of young Citizens learn to carry public responsibility within the Chippewas of the Thames First Nation, and through which they may provide the views of young Citizens and advice to the Chippewas of the Thames First Nation Council;
- (d) the **Council**, in which the Chief, and other elected and appointed representatives of Citizens, make and administer the Chippewas of the Thames First Nation Law, develop public policy, and carry out other responsibilities of the Chippewas of the Thames First Nation;
- (e) the **Advisory Council**, in which appointed Citizens assist the Chippewas of the Thames First Nation Council and Citizens in resolving disputes.

6.4 A branch of the Chippewas of the Thames First Nation must not exercise any power allocated by this Constitution to another branch of the Chippewas of the Thames First Nation except as specifically authorized in this Constitution.

6.5 The Council of the Chippewas of the Thames First Nation shall enact rules of procedure to govern the Chippewas of the Thames First Nation.

Composition of Council

6.6 The Council of the Chippewas of the Thames First Nation shall consist of a Chief and Councillors democratically elected by the voters of Chippewas of the Thames First Nation at elections in accordance with the Leadership Selection Code.

6.7 The Council shall be the Governing Body of the Chippewas of the Thames First Nation, and all of whom must be members of the Chippewas of the Thames First Nation.

- 6.8 The Chippewas of the Thames First Nation acts through its Council in exercising its rights, powers, and privileges and in carrying out its duties, functions, and obligations.

Conduct of Individuals Elected to Office

- 6.9 The Council shall conduct all affairs of the First Nation in accordance with Chippewas of the Thames First Nation laws of governance, transparency and accountability.

Delegation of Jurisdiction and Authority (clarification will be sought on the parameters of this section)

- 6.10 The Council may delegate its jurisdiction or authority or any part of it, in writing, to a legal entity located in a manner consistent with Chippewas of the Thames First Nation laws.
- 6.11 Where jurisdiction or authority, or part of it, is delegated pursuant to Chippewas of the Thames First Nation laws, the First Nation will ensure in writing that the legal entity to which delegation has been made will be accountable to Chippewas of the Thames First Nation for the jurisdiction of authority which has been delegated.
- 6.12 Chippewas of the Thames First Nation will remain accountable to its members for the exercise of the jurisdiction or authority it delegates to any and all legal entities.
- 6.13 Where jurisdiction, or part of it, is delegated by Chippewas of the Thames First Nation pursuant to the First Nation laws, the Chippewas of the Thames First Nation will ensure that the jurisdiction it delegates is not sub-delegated.
- 6.14 Chippewas of the Thames First Nation will ensure, in writing that legal entity to which delegation of jurisdiction or authority from Chippewas of the Thames First Nation has been made, may not, sub-delegate that jurisdiction or authority without the written consent of the majority consent of Chippewas of the Thames First Nation Council

Establishment of Committees

- 6.15 The Council of the Chippewas of the Thames First Nation has the authority to establish committees when needed in accordance with the rules of procedure established and accepted by Council.

Article 6 is the longest provision of the draft COTTFN constitution. It outlines Governing Principles, Branches of Government, Composition of Council, Conduct of Individuals Elected Office, Delegation of Jurisdiction and Authority and Establishment of Committees.

This was one of the provisions (along with rights) about which I expressed concern at the outset of this review. While it effectively empowers COTTFN in relation to external governments, I am concerned that it may not sufficiently limit government in its internal operations. Council has most, if not all the real power in the constitution despite the creation of other branches. It may be appropriate to further diffuse or decentralize power. In particular, the dispute resolution branch (Advisory Council) is weak. It will not have sufficient power in my view to check and balance (and therefore provide appropriate limits on Council's power).

Article 6.1 refers to the **dodomaag** system of government. This is an excellent reference because it potentially strengthens Anishinaabe families, language and tradition. It also enhances the point made above when discussing Article 1, the Supremacy clause. Here is a reference to older Anishinaabe constitutional traditions which you include in the constitution. Beyond the definitions section, this governance system is not explained in any other part of the constitution. I assume this practice is inspired by and drawn from pre-existing Anishinaabe

constitutional traditions as noted. If this is the case, it strengthens the point I made when discussing Article 1, that you might consider having the Supremacy clause include and reference Anishinaabe mazi-kammikwe-inaakinogewin miiniwaa gete-Anishinaabe izhitwaawinan (or other such appropriate language).

Article 6.2 refers to the **governing principles** concerning Anishinaabe governance for the COTTFN. Quite simply this is one of the best sections of Anishinaabe constitutional writing which I have seen. It should serve the community very well. It creates expectations that governance will occur in accordance with our highest teachings as Anishinaabe people. There are many Anishinaabe constitutions in the US, but none are as thorough or as innovative as this article. It sets out an excellent set of expectations concerning governance. While these provisions are likely not enforceable because they are listed as expectations,²¹ they create an honourable standard of governance to which each public can aspire.

Article 6.3 sets out 5 **branches of government**: General Assembly, Elders, Youth, Council and Advisory Council. I foresee a **potential problem** in this section. This problem relates to the **centralization of power** evident in the document. Effective constitutional governance is often centrally premised on ensuring that power is divided so that no one person or body can oppress other individuals and institutions. Traditional Anishinaabe governments often decentralized and divided power between ogimaa (peace/war), speakers, doodems, etc (as will be explained below). However, in the draft COTTFN constitution three of the branches of governance only seem to exist to advise and support council in their role. This includes the General Assembly, Elders and Youth Council. While this is extremely positive and should help make councils decisions much more effective and democratic, they **do not provide any significant independent power for another individual or body to make or review decisions on their own, separate from council.**

The **Advisory Council** may have a broader role than the General Assembly, Elders and Youth Council (though even the Advisory Council seems to also primarily exist to advise council). The Advisory Council may have a degree of future independence because its role is also to advise citizens (not just Council). Nevertheless it is **curious why the Advisory Council has not been made even more independent as a dispute resolution body.**

²¹ There is a question about the value of identifying high-minded principles in a constitution but not having them become enforceable. This is the case with the Seven Grandfathers. Their specific identification encourages governments to live by these higher principles. It makes them politically relevant at all times. However, the fact that they are also not enforceable also helps the branches of government to do their work without being unduly harassed by disgruntled citizens who disagree with them. The general nature of governing principles could be misused by governmental critics if they were enforceable. The challenge is to find the proper balance between enforceability and encouragement. I believe the Draft Constitution strikes an appropriate balance, though there are good arguments to the contrary, concerning the need to hold government strictly accountable in all respects, and not just at the ballot box or more informal customary law-like sanctions.

Perhaps the most important aspect of a constitution is to ensure that authority is distributed among different bodies, institutions or individuals. The **independence of a dispute resolution body is the hallmark of modern constitutional practice** throughout most of the world. The COTTFN draft constitution does not seem to decentralize and provide such independence very readily. Dispute resolution bodies rarely exist to advise legislature.²² The COTTFN council will remain the focus and locus of decision-making authority, and it will be further strengthened. Again, it must be recognized that strong legislative power as exercised through council is vital. Furthermore, council's power will be limited by the obligations created by the constitution to act in certain ways. They will also have to take advice from the General Assembly, Elders and Youth Council, and Advisory Council. Nevertheless, these are all subordinate branches under the current draft COTTFN constitution. It might be helpful to further consider why the independence of dispute resolution, one of the most fundamental aspects of most constitutional frameworks, is missing. Citizens may ask why there is not a greater decentralization of power, particularly away from council to an independent dispute resolution branch. To further strengthen the Advisory Council's role I suggest calling it a COTTFN Court, or using an Anishinaabe word that conveys a similar meaning. I also suggest replacing Article 6.3 (e) with a provision which established a co-equal and independent nature COTTFN Court as a COTTFN branch of government. The clause might read as follows:

the **Chippewa of the Thames Dispute Resolution Court** is independent branch of the Chippewa of the Thames First Nations government and shall have the power of judicial review and the jurisdiction to interpret and construe the laws, ordinances, regulations and actions of the other branches of government under the Chippewa of the Thames First Nation Constitution. The Court shall establish procedures, rules, and legal forms for reviewing the constitutional validity of Chippewa of the Thames First Nation laws in public legal forums which accord with the rule of law and Anishinaabe constitutional law and tradition as set forth in this constitution. The Court shall write, publish and operate in accordance with a Chippewas of the Thames Dispute Resolution Court Code of Judicial Ethics.

I also recommend the addition of an Article 6.16

Composition of Chippewas of the Thames Dispute Resolution Court

6.16

- (a) The Chippewas of the Thames Dispute Resolution Court shall consist of a Chief Judge and Associate Judges.
- (b) The Chief Judge shall be elected by a majority plus one of votes cast in a duly called election.

²² Though in some countries, like Canada, Courts do possess limited Advisory powers.

- (c) Associate Judges may be appointed by the Chief Judge with the advice and consent of the Elders Council.
- (d) A person is not eligible to be a Judge of the Chippewas of the Thames Dispute Resolution Court while simultaneously serving as a member of the Council, Elders Council or Youth Council.
- (e) The term of office for any Chief Judge or Associate Judge shall be seven years. Judges are eligible for re-election or re-appointment if re-elected or re-appointed in accordance with the provisions of this constitution.
- (f) The Chief Judge must be a member of the Chippewas of the Thames First Nation. Associate Judges may be recognized members of other Anishinaabe bands.
- (g) All Chippewas of the Thames Dispute Resolution Court judges shall have knowledge of Anishinaabe culture, traditions, and general history, and must uphold the provisions of this Constitution in discharging their duties.

Traditionally, Anishinaabe people did not generally allow their leaders to accumulate and consolidate power.²³ It was decentralized. Leadership was most often associated with a situation and not a particular person;²⁴ thus chiefly authority was frequently transient and moved from person to person as circumstances required.²⁵ The Anishinaabe word for chief is *ogimaa* means one who counts their followers,²⁶ and followers could often only be counted on for the duration of a particular task.²⁷ Mary Black Rogers recorded the Anishinaabe understanding of leadership as follows:

An Ojibwe root, *debinimaa*, has been variously translated as ‘boss’, ‘master’, ‘the one in charge’, or ‘the one in control’. But the favoured translation of a sensitive bilingual was ‘those who I am responsible for’. The idea of bossing is generally rejected, as is the idea

²³ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*. Cambridge University Press, 1991) at 37-40. However, Anishinaabe leadership values changed through time, see Anton Truer, *The Assassination of Hole in the Day* (St. Paul, MN: Borealis Books, 2011) at 9-34.

²⁴ For the application of this concept to war and diplomacy see Rebecca Kugel, *To Be the Main Leaders of Our People: A History of Minnesota Ojibwe Politics, 1825-1898* (Lansing: Michigan State University Press, 1998).

²⁵ Theresa Schenck, *The Voice of the Crane Echoes Afar* (1997) *My First Years in the Fur Trade* (2002) (co-edited with Laura Peers) at 71, citing Morton Fried, *The Evolution of Political Society: An Essay in Political Anthropology* (New York: Random House, 1967) at 83.

²⁶ Basil Johnston, oral communication, says *ogimaa* is related to the word *agindaussoowin*, which means to count. He told me that a leader counts his or her followers because he knows who they are. He said there could be different kinds of people who count followers in leadership terms. A band leader could be an *ogimaa* to his orchestra, as that person could count his or her follower; likewise an effective teacher could be an *ogimaa* for those who followed. However, see an alternative meaning published by Anton Truer, who writes:

The Ojibwe word for leadership – *ogimaawiwini* – literally means “to be esteemed” or “to be held to high principle”. It comes from the morpheme *ogi*, meaning high, found in other Ojibwe words such as *ogichidaa* (warrior), *ogidakamig* (on top of the earth) and *ogidaaki* (hilltop).

Anton Truer, *The Assassination of Hole in the Day* (St. Paul, MN: Borealis Books, 2011) at 14.

²⁷ Janet Elizabeth Chute. *The Legacy of Shingwaukonse: A Century of Native Leadership* (Toronto: University of Toronto Press, 1998) at 13-14.

of competition, yet both must occur at times. It can be seen that the area of social control, of leadership and political structure, of the various cooperating social units necessary to kinship organization and subsistence activities – all these units must be balanced somehow to accord with the rules of the system about power.²⁸

The balance of power in Anishinaabe leadership practices demonstrates attentiveness to individual autonomy and decentralized power. I am not sure Article 6.3 decentralizes in this manner. Thus, any delegation of authority to a broader authority was usually conditional and related to a particular task, as occurs in Articles 6.10 to 6.15. Anishinaabe individuals were protective of their individual liberties and one way to ensure this was by limiting their influence to a particular event or a specific person's expertise in any given situation.²⁹ As soon as the need for that person's leadership passed the group would generally withdraw their obedience from him or her.³⁰ The reason for this approach was the individuals did not want to cede their liberty to others unless it was absolutely essential for success in some particular endeavor.³¹ Once the necessity had passed autonomy and freedom were immediately restored and these temporary restrictions were removed.³² These practices enhanced human dignity and freedom in significant ways.

The contingent nature of Anishinaabe leadership authority also meant that councils had to be formed for people to decide in some extraordinary circumstances to temporarily suspend their liberty in favor of the group.³³ Again, this is encouraged by having other branches of

²⁸ Mary Black, "Ojibwa Power Belief System," in Fogelson and Adams, eds., *The Anthropology of Power* (New York: Academic Press, 1977), 147.

²⁹ Theresa Schenck, *The Voice of the Crane Echoes Afar* (1997) *My First Years in the Fur Trade* (2002) (co-edited with Laura Peers) at 71, citing Rueben Gold Thwaites, *The Jesuit Relations and Allied Documents*, (New York: Pagent Books, 1896), Volume 6 at 243.

³⁰ Rueben Gold Thwaites, *The Jesuit Relations and Allied Documents*, (New York: Pagent Books, 1896), Volume 6 at 243:

They imagine that they ought by right of birth, to enjoy the liberty of wild ass colts, rendering homage to anyone whatsoever, except when they like. They have reproached me a hundred times because we fear our Captains, while they laugh at and make sport of theirs. All of the authority of the Chief is in his tongue's end; for he is powerful insofar as he is eloquent: and even if he kills himself in talking and haranguing, he will not be obeyed unless he pleases the savages.

³¹ P. de Charlevoix, *Journal of a Voyage to North America*, Vol. 2, London, 1761, (Chicago: The Caxton Club, 1923), Vol. 2 at 23-24:

These chiefs generally have no great marks of outward respect paid them, and if they are never disobeyed, it is because they know how to set bounds to their authority. It is true that they request or propose, rather than command; and never exceed the boundaries of that small share of authority with which they are vested. Thus it is properly reason which governs, and the government has so much the more influence, as obedience is founded in liberty; and that they are free from any apprehension of its degenerating into tyranny..

³² Theresa Schenck, *The Voice of the Crane Echoes Afar* (1997) *My First Years in the Fur Trade* (2002) (co-edited with Laura Peers) at 73.

³³ Edmund Jefferson Danziger Jr., *The Chippewa of Lake Superior* (Norman: University of Oklahoma Press, 1978) at 23:

government under 6.3 (General Assemblies, Elders, Youth and Advisory Councils) Traditionally, each person had “an equal voice and no one was obligated to follow the group”.³⁴ The need for people to talk things out when taking such action shows that individual participation and respect for each person’s choice was essential to the system’s success.³⁵ The role of reason, persuasion and deliberation was a key ingredient in its operation.³⁶ This enhanced the role of merit,³⁷ generosity,³⁸ and good relationships within Anishinaabe leadership and governance structures.³⁹ All of these elements enhanced an egalitarian approach to expertise and authority within their societies.⁴⁰ Decentralization and independent branches of power made Anishinaabe law a vital force in keeping peace and order throughout their communities surrounding the Great Lakes.⁴¹

COTTFN members may discuss the centralization present in Article 6.3 (related to dispute resolution) given historic constitutional traditions which encouraged the opposite way of operating. While it is clear that tradition grows, develops and changes, it is not clear that Anishinaabe legal communities have generally moved towards centralization of their own accord. While the *Indian Act* certainly promoted the primary role of chief and council in governance matters, the *Act* was designed for assimilative purposes. It may be the case that

A Band Civil Chief had no coercive force. Control over affairs depended entirely upon personal prestige and the demands of the moment ... Civil Chiefs, usually men who inherited their position, also presided at band councils and represented their people at common and grand councils. All men and women past the age of puberty were included in open discussions of the band council.

³⁴ Theresa Schenck, *The Voice of the Crane Echoes Afar* (1997) *My First Years in the Fur Trade* (2002) (co-edited with Laura Peers) at 83.

³⁵ “The principle of individual sovereignty in Anishinabeg political life meant that all group decisions were made as a matter of consensus on the part of people who participated in them.” Charles Cleland, *Rites of Conquest: The History and Culture of Michigan’s Native Americans* (Ann Arbor: University of Michigan Press 1992) at 60.

³⁶ George Copway, *Indian Life and Indian History* (Boston : Albert Colby & co., 1858.) at 141:

Among the Indians there have been no written laws. Customs handed down from generation to generation have been the only laws to guide them. Everyone might act different from what was considered right did [sic] he choose to do so, but such acts would bring upon him the censure of the nation, which he dreaded more than any corporal punishment which could be inflicted upon him. This fear of the nation’s censure acted as a might band, binding in all one social, honorable compact. They would not as brutes be whipped into duty. They would as men be persuaded to the right.

³⁷ One hereditary chief expressed the meritocratic source of their authority in this way: “My ancestors were chiefs of their tribes and villages while they lived. I do not hold my title from them, but have derived it from my own merits.” Ronald Satz, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin’s Chippewa Indians in Historical Perspective* (Madison: University of Wisconsin Press, 1996) at 137.

³⁸ “Frequently when a chief receives very handsome goods either in exchange for his peltry, or in recognition of his high position, he will throw them all in a heap, call his followers, and divide all among them.” Johann Kohl, *Kitchi-Gami: Wanderings Round Lake Superior*, (London: Chapman and Hall, 1860) at 66.

³⁹ For an excellent study of history Anishinaabek leadership see Cary Miller, *Ogimaag: Anishinaabeg Leadership, 1760-1845* (Lincoln: University of Nebraska Press, 2010).

⁴⁰

⁴¹ Mark Walters, “‘According to the Old Customs of Our Nation’: Aboriginal Self-Government on the Credit River Mississauga Reserve, 1826-1847” (1999), 30 *Ottawa Law Review* 1-45

centralization is not only needed in Anishinaabe communities today, but necessary. However, the necessity of centralization does not automatically require that strong decentralization must be 'off the table' in present circumstances. Centralization might even require more robust decentralization to ensure that a community remains in balance, and in harmony in their governance relations. Furthermore, experience suggests that communities want to rid themselves of *Indian Act* governance, and the further centralization of power in the Draft Constitution may not accord with this trajectory.

Article 6.4 specifies that branches of government should not exercise authority of other branches of government. However, given that the majority of powers are vested in the council, and exist to advise the council, **overlapping authority is not likely to emerge** under the constitution. In other words, Article 6.4 is not likely to mean much unless other branches, particularly the dispute resolution branch, are made stronger.

Article 6.6 mentions a **Leadership Selection Code** and states that members of council shall be elected in accordance with this Code. This is the first mention of this Code and it is not defined elsewhere in the constitution. I assume this is meant to reference your current Leadership Selection Code, which is an excellent document. However, care needs to be taken that you do not constitutionalize a piece of legislation. Constitutionalization will make the Code harder to change in the future. You might say: ...consistent with 'a Leadership Selection Code' rather than 'the' Leadership Selection Code. The use of the word 'a' as opposed to 'the' creates the future freedom to have a different version of the Leadership Selection Code in the future. The word 'the' would mean 'the' Code you currently have must always be followed through the generations. I also assume you want leadership selection to continue to be inspired by and draw from already existing Anishinaabe constitutional traditions. If this is the case, it strengthens the point I made when discussing Article 1, that you might consider having the Supremacy clause include and reference Anishinaabe mazi-kammikwe-inaakinogewin miiniwaa gete-Anishinaabe izhitwaawinan (or other such appropriate language).

Articles 6.10 to 6.14 are another example of the council being the pinnacle of governance decision-making in the community. While council might delegate its powers to other bodies, accountability in these bodies always ultimately flows back to council, and through council to the membership. While such accountability is laudably necessary where council exercises authority, again it is **not clear why another body (such as a dispute resolution body, peacemaking body, or court) might not have separate non-delegated authority** which is accountable to the citizenry or constitution more generally. Other bodies might oversee delegations of authority. Why are there no real independent branches of government in the constitution, aside from the council? The absence of such authority places the constitution outside of the mainstream of many Indigenous, Anishinaabe and western constitutions. There

may be good reasons for this structure but this will likely have to be explained to the COTTFN membership. Without independent checks and balances in governmental authority there may be questions about whether the *Indian Act's* structures of council-only governance remain the dominant model in the document, despite the many strong and culturally relevant and innovations, and innovations of advice found in the other so-called branches of government.

Article 7 – Relationship with Other Nations

ARTICLE 7 – RELATIONSHIP WITH OTHER NATIONS

- 7.1 Chippewas of the Thames First Nation is a member of the Anishinabek Nation Grand Council.
- 7.2 If there is any conflict between the Chippewas of the Thames First Nation Constitution and any other Nation's Constitution, the Chippewas of the Thames First Nation Constitution will prevail in Chippewas of the Thames First Nation and over Chippewas of the Thames First Nation laws, to the extent of the conflict.
- 7.3 Our Constitution shall prevail over other Sovereign Nations (re-worded or clarification needed on this statement)

Article 7.1 outlines the relationship of COTTFN to the Anishinabek Nation Grand Council (ANGC). Voting for the constitution will affirm that COTTFN is a member of the Anishinabek Nation Grand Council. This affirmation will mean that the ANGC constitution will apply to member nations like COTTFN.

However, in Article 7.2 the COTTFN constitution is also very clear that the ANGC constitution will be subordinate to the COTTFN constitution. Thus, the will and desire of the COTTFN will always prevail over the ANGC if the matter is covered by the COTTFN constitution. Article 7.1 and 7.2 place the ANGC and COTTFN in a decentralized confederated or federal relationship (the nature of the federation is not quite clear at the beginning, as is the case with most federations when new constitutional arrangements are formed). Interestingly enough, there is another federation of Anishinaabe First Nations that function with both a grand council and local tribal constitutions. The Minnesota Chippewa Tribe has worked as a confederation since the mid-1930's. Its members are White Earth Nation, Leech Lake Nation, Grand Portage, Mille Lacs Nation, Bois Fort Nation, and Nett Lake Nation. While some of their member nations are currently redrafting their community level constitutions (White Earth and Mille Lacs) the confederation has generally brought strategic alliance and prosperity to these nations.

Article 7.3 still seems incomplete.

I recommend making a statement that the COTTFN is paramount over the Canadian constitution and the constitutions of other sovereign nations to make it complete. Canada or Ontario or other jurisdictions may or may not recognize this constitution in the near future. However a constitution should take the longer view. If Canada one day recognizes this constitution Article 7.3 would be necessary, and a statement of paramountcy helps to preserve the authorities and jurisdiction recognized by the community in the constitution. In Anishinaabe

constitutions in the United States this issue is taken care of in a Sovereign Immunity clause. While Anishinaabe people have experiences with these clauses in the US context, the concept of sovereign immunity does not have similar legal positioning in Canada. A paramountcy clause as suggested in this paragraph could however mirror some of the US Anishinaabe experience.

I also recommend considering asserting the right of your citizens to equally participate as citizens of Canada and Ontario, consistent with COTTFN law, Aboriginal, treaty and other rights as recognized by the COTTFN constitution and the Canadian constitution.⁴²

You might also consider a statement that expresses COTTFN's desire to peacefully harmonize COTTFN's constitution with the constitution of other nations.⁴³

The constitution does not have to express an adversarial relationship to Canada's constitution or other political authorities to have the force of law.

Article 8 – Institutions

ARTICLE 8 – INSTITUTIONS

- 8.1 The Chippewas of the Thames First Nation has the authority to establish public institutions in accordance with its laws, to perform functions of its government, for the administration of good government, as determined by Chippewas of the Thames First Nation Council.

Article 8 is an important clause because it permits COTTFN to create other public institutions to perform governance functions. If the Council created a public institution that did not function well it could be dismantled by Council. Furthermore, a public institution that functioned in a manner contrary to the constitution could also be found to be an invalid exercise of power, and thus be eliminated. Thus, this clause provides flexibility for operating through institutions without undermining the larger purposes of this constitution.

Article 9 – Conflict of Interest

ARTICLE 9 – CONFLICT OF INTEREST

⁴² The Nisga'a peoples constitution makes a similar statement: "We the Nisga'a, we declare to all the world, We are a unique aboriginal nation in Canada, proud of our history, and assured in our future. We claim and take our rightful place as equal participants in Canadian society. Our destiny is living peacefully together with the other nations in Canada. ..."

⁴³ The Porch Band of Creek Indians (1985) made an even stronger statement about harmonization. While these statement may go too far for your membership, they wrote in clauses 5, 6 and 8 of their preamble.

We the members of the Porch Creek Band of Indians...adopt this Constitution and our Tribal Government in order to:

- (5) Maintain good relation with other Indian tribes, the United States, the State of Alabama , and local governments,
- (6) Support the Government of the United States and encourage members to be loyal citizens,
- (8) Insure that our people shall live in peace among ourselves and in harmony with all other people.

- 9.1 The Chippewas of the Thames First Nation must enact and maintain conflict of interest laws for elected and appointed officials of Chippewas of the Thames First Nation including the procedure for dealing with conflict of interests.

Article 9 creates an obligation to enact a conflict of interest code. This is in line with the best practices of most First Nations. There is no requirement about what the Code must say though it will have to comply with the provisions found in the other articles COTTFN constitution.

Two questions:

- 1) Should the Constitution also specify that First Nation must enact and maintain a conflict of interest law which also applies to employees of the COTTFN?
- 2) Should the Constitution also specify that the First Nations must also enact and maintain and Code of Anishinaabe Ethics for elected and appointed officials and employees of the COTTFN?

As you may know, some nations now appoint a conflict of interest official who has an arms-length relationship from government to ensure conflict of interests are properly addressed before they arise, and when they arise. Some governments also appoint privacy and ethics commissions to deal with even broader issues that are found in the COTTFN constitution. However, the size of the COTTFN must be taken into account in designing such bodies.

The Constitution of the Little Traverse Bay Band of Odawa Indians contains a Conflict of Interest clause which says:

Personal Financial Interest

1. In carrying out the duties of Tribal office, no Tribal Official, elected or appointed, shall make or participate in making decisions which involve a personal financial interest other than an interest held in common by all Tribal members.
2. Tribal members serving on Tribal Council, or the Tribal Chairman or Vice Chairman,
 - a. may not be employed under the Tribal Governmental Administration; and
 - b. may not be a paid consultant for the Little Traverse Bay Bands of Odawa Indians or the consultant for another party in that party's business dealings with the Tribe, while serving as a Tribal Council member, or as Chairperson or Vice- Chairperson, or within one (1) year of serving.⁴⁴

Article 10 – Financial Administration and Management

⁴⁴ See <http://www.ltbbodawa-nsn.gov/OdawaRegister/LTBB%20Constitution.pdf>

ARTICLE 10 – FINANCIAL MANAGEMENT AND ADMINISTRATION

Principles of Financial Administration

10.1 Chippewas of the Thames First Nation will expect the Financial Management and Administration of Chippewas of the Thames First Nation to:

- a. be prudent, open, transparent and accountable;
- b. provide for effective and efficient use of the financial resources of Chippewas of the Thames First Nation;
- c. preserve and protect Chippewas of the Thames First Nation assets and interests; and
- d. ensure due accountability to the members/citizens.

Control of Financial Administration

- 10.3 Members/citizens of the Chippewas of the Thames First Nation have the right to access information on matters dealing with the financial management and administration of First Nations services and programs, excluding information related to personnel matters and any other confidential personal information.
- 10.4 The Council and Administration shall abide by the First Nation laws and policies governing financial management, transparency, accountability and access to information.
- 10.5 The Council may, by resolution, approve agreements for funding to Chippewas of the Thames First Nation, its departments or institutions.
- 10.6 Chippewas of the Thames First Nation Council shall make laws to establish a system of financial administration, through which the Council will be financially accountable to Chippewas of the Thames First Nation members/citizens, and that includes standards comparable to those generally accepted for governments of Canada.

Article 10 deals with important Principles of Financial Administration and the Control of Financial Administration. It is a strong article which should bring greater transparency to COTTFN's financial affairs. It is cutting-edge, and goes above and beyond what most Indigenous or other nations place in their constitutions.

During the Chretien liberal government a *First Nations Governance Act* was proposed. Under section 7 of that Act, which never passed, a band would have been required to create Financial Management rules with respect to:

- the preparation of an annual budget (adopted by the council and presented to members of the band);
- the control of expenditures, including signing authorities;
- internal financial control on deposits, assets management, and the purchase of goods and services, including tenders for contracts;
- loans to band members, loans or guarantees to others, and repayment and collection of loans;
- the remuneration of members of council and band employees;
- debt and debt management,
- deficit management and limitations; and
- an amending procedure.

The COTTFN Constitution deals with these issues at a higher level of generality. The FNGA is too specific concerning certain aspects of financial management. Dealing with issues at a more abstract level is more appropriate in a constitution. The Band needs more flexibility in following the general principles of good financial management. They can set out further details when they pass details dealing with financial management under the constitution.

Article 11 – Public Administration

ARTICLE 11 – PUBLIC ADMINISTRATION

- 11.1 Chippewas of the Thames First Nation will expect the administrative and program services to be administered in accordance with the following values and principles;
- a) a high standard of ethics;
 - b) efficient, effective and prudent use of resources;
 - c) impartial and equitable provisions of programs and services;
 - d) responsiveness to Chippewas of the Thames First Nation public needs, and
 - e) provision of timely, accessible and accurate information.

Article 11 is also a very strong article. It is closely related to concerns addressed in Article 9 and 10.

Article 12 – Constitutional Amendment

ARTICLE 12 – CONSTITUTIONAL AMENDMENT

- 12.1 The Constitution of Chippewas of the Thames First Nations shall be amended only in accordance with the following:
- (a) The Council of the Chippewas of the Thames First Nation, at any regular or special assembly may propose an amendment to this constitution by adopting a resolution approved by at least 60% of its total membership at a special membership meeting.
 - (b) Any proposed amendments to this constitution adopted by the Chief and Council of the Chippewas of the Thames First Nation shall be forwarded to the Elders, Youth and Advisory Councils within 30 days of being adopted by the Chief and Council of the Chippewas of the Thames First Nation.
 - (c) The Chief and Council of the Chippewas of the Thames First Nation shall consider the comments of the Elders, Youth and Advisory Councils received within 90 days of the resolution being adopted and will determine whether to amend, or withdraw the proposed amendment to this constitution or to submit the proposed amendment to the members of the Chippewas of the Thames First Nation at a special Chippewas of the Thames First Nations' membership meeting for approval
 - (d) Any decision by the Chief and Council of the Chippewas of the Thames First Nation to amend, or withdraw the proposed amendment to this Constitution or to submit the proposed amendment for the members of the Chippewas of the Thames First Nation approval shall be authorized by adopting a resolution approved by at least 60 % of the total Chippewas of the Thames First Nation membership.

Article 12 is clear and likely to be non-controversial.

Definitions

Definitions

In this Constitution,

- a. "Advisory Council" means the branch of Chippewas of the Thames First Nation appointed in accordance with this Constitution;
- b. "Annual General Meeting" means a meeting of the General Assembly;
- c. "Anishinaabeg" means the collectivity of all Anishinaabe persons.
- d. "Anishinaabe aadzowin" means living and practicing Anishinaabe way of life in the fullest sense.
- e. "Anishinaabemwin" means the original language spoken by the Anishinaabeg of Chippewas of the Thames First Nation.
- f. "Chief" means the Chief of the Chippewas of the Thames First Nation
- g. "Chippewas of the Thames First Nation" means the government of the Chippewas of the Thames established under this Constitution.
- h. "Citizen" means a person who is entitled to Citizenship and has been enrolled as a Citizen under Chippewas of the Thames First Nation law;
- i. "Citizenship" means the status of a person who is a Citizen;
- j. "Council" means the branch of Chippewas of the Thames First Nation constituted under Article 6 of this Constitution;
- k. "Constitution" means the Constitution of the Chippewas of the Thames First Nation.
- l. "Deshkan Ziibiing" means the people of Antler River
- m. "Dodomaag" means the clan structure and original system of governance of the Anishinaabeg Nation.
- n. "Elder" means a Chippewas of the Thames First Nation member over the age of sixty-five years who is a respected Elder in the Community;
- o. "Elders Council" means the Branch of Chippewas of the Thames appointed in accordance with this Constitution;
- p. "Elector" means any Citizen of Chippewas of the Thames First Nation who is eligible to vote in accordance with the Leadership Selection Code and Referendum Code.
- q. "Mino-bimaadiziwin" means living a good life in the way our Ancestors had intended.
- r. "Seven Grandfather Teachings" means the Anishinaabe teachings on human conduct towards others;
- s. "Special General Meeting" means a special meeting of the General Assembly;
- t. "Traditional Territory" means the geographic area within Ontario identified as the Traditional Territory of Chippewas of the Thames First Nation.
- u. "Youth" means a Chippewas of the Thames First Nation member between the ages of 18 and 25 (age limit is open for discussion).
- v. "Youth Council" means the branch of Chippewas of the Thames First Nation appointed in accordance with this Constitution;
- w. "Zhoonia Trust" means a trust created in ca.1990 that allocates annual payments for eligible elderly band members.

It is unusual to see definitions in a constitution. Definitions are usually found in statutes. However these definitions further clarify elements of the foregoing constitution and will likely assist in its interpretation and implementation.