



MI'KMAW KINA'MATNEWY: A CASE STUDY IN AGGREGATION

By Jennifer McCarthy

Institute On Governance
June 2001

MI'KMAW KINA'MATNEWY: A CASE STUDY IN AGGREGATION*

A. Nature of Aggregated Institution

Community Overview

There are 13 Mi'kmaq communities scattered throughout Nova Scotia. Ranging in size from about 4000 people to only 300, these First Nations tend to have diverse needs in the area of education. While some communities have on-reserve primary, elementary and secondary schools, others send students off-reserve into the public school system. Of the thirteen First Nations in Nova Scotia, only nine have signed the Mi'kmaq Education Agreement and gained jurisdiction over the education of their students. These communities now control primary, elementary, secondary and post-secondary education programs with the support and guidance of the Mi'kmaq Kina'matnewey (MK) — Mi'kmaq Education — organization.

There are 10 staff members at Mi'kmaq Kina'matnewey that help carry out its wide range of activities. The head office in Sidney, Nova Scotia houses 7 regular staff members (Executive Director, Executive Assistant, Director of Programming and Services, Director of Finance and Planning, Secretary of Finance and Administration, Financial Support Officer and the Manager of Finance and Human Resources), and two information technology experts to staff the regional Help Desk for the Atlantic First Nation SchoolNet communities. A community liaison statistician working out of Indian Brook First Nation completes the workforce.

Overall, the student base supported by Mi'kmaq Kina'matnewey is growing. Lauretta Welsh, Director of Finance for MK, says their in-school population has increased by 2.5% since the agreement was first signed in 1997.¹ While most communities have a large ratio of school age residents, not every community has its own school. Those students who attend schools in the provincial system are assisted by an education liaison from their own community. MK supports all these services, and also manages the Nova Scotia Mi'kmaq Language Centre of Excellence, which provides curriculum and services to all 13 Mi'kmaq communities.

Historical Summary

The history of Mi'kmaq Kina'matnewey (MK) goes back almost 10 years to when the Assembly of Nova Scotia Chiefs approached the Department of Indian and Northern Affairs with the idea of creating a Mi'kmaq Education Authority. The goal was to

* This case study was developed with the financial assistance of the Department of Indian Affairs and Northern Development. However, the responsibility for errors or omissions rests with the author and the Institute On Governance.

¹ Interview with Lauretta Welsh, Director of Finance and Planning, Mi'kmaq Kina'matnewey. January 17, 2001.

incorporate self-determination, cultural pride and language preservation into the local education system.

In April 1992, a Framework Agreement was signed by the federal government and the 13 Mi'kmaq chiefs to negotiate the devolution of government-run education programs to the Nova Scotia First Nations. In early 1993, the Mi'kmaq Education Authority (MEA) opened with the sole purpose of providing specialized help in curriculum development to the Mi'kmaq communities. But, as more people became aware and involved in the process, the idea of an entirely First Nation education system began to take hold. In June 1993, the Chiefs changed their request to a transfer of jurisdiction over education to the Mi'kmaq communities, and the MEA, headed by the Mi'kmaq Chiefs, took the lead in negotiations.²

Progress from this point on moved at a choppy pace. In November 1994, a Political Accord was signed committing both parties to the negotiations. The MEA continued to lead the process, but community members were beginning to feel out of the loop and conflicts arose among various groups. When Executive Director, Marjorie Gould, arrived at the MEA in 1995, there were a lot of problems.

“In the summer of 1995, the program was on the verge of being scrapped. People just didn't know what they wanted to do,” says Gould. “The first thing we did was set up meetings to really listen to each other... We began to work together as a team and found the answers to where we wanted to go.”³

To improve citizen input, information sessions were held in each community, and communication between the MEA and its members was supplemented through updates in the local newspaper. The MEA also set up working groups to look at specific concerns, such as funding and legal issues. These groups included chiefs, MEA staff, educators, federal and provincial government officials, and various experts from communities across Nova Scotia. They made a point of including community expertise in the process, and expanding the level of grassroots participation. Around this time, the MEA decided to change its name to Mi'kmaw Kina'masuti to better reflect the cultural goals of its members.

In February 1997, a Final Agreement was signed between nine of the 13 Mi'kmaq communities, Canada and the Province of Nova Scotia. But, the process did not end there. What was once the MEA changed its name again to Mi'kmaw Kina'matnewey, and the participating communities worked at creating templates for the legislation that would complete the transfer. Gould and other community leaders spent the next year following the “horrendous task” of having legislation passed by both the federal and provincial government. Finally, on April 22, 1999 the *Mi'kmaq Education Act* incorporated Mi'kmaw Kina'matnewey in federal law.

² *History Made as Jurisdiction for Education Returned to Mi'kmaq* – Press Release and Background. Mi'kmaw Kina'matnewey. May 4, 1999.

³ Interview with Marjorie Gould, Executive Director, Mi'kmaw Kina'matnewey. January 19, 2001.

Impetus Behind Aggregation

The creation of Mi'kmaw Kina'matnewey was a requirement of the federal government for the transfer of jurisdiction. The government wanted to see an administrative body in place that would retain accountability for the programs and funding involved once the transfer was complete.⁴

Beyond this, there were several reasons for the communities themselves to want to create an organization that would represent and be responsible for all their needs related to education. "There had to be unity," says Marion Paul from Eskasoni First Nation. "The communities couldn't do it on their own."⁵

Paul says there is much greater strength in numbers, and in pooling resources together. "There are advantages to having local people around who know about all the different communities' needs," she says. "It's the idea of communities supporting each other, and gives the smaller ones a sense of belonging and a place to go if they have a problem."

The creation of Mi'kmaw Kina'matnewey was much more than a federal stipulation. The organization was seen as a way to unify the voice of the Mi'kmaw communities in Nova Scotia, and a powerful tool for capacity building among the smaller communities. MK was needed to provide support and advice to those communities that needed it, and share resources and expertise across the province.

⁴ Interview with Laurretta Welsh, Director of Finance and Planning, Mi'kmaw Kina'matnewey. January 17, 2001.

⁵ Interview with Marion Paul, Director of Education, Eskasoni First Nation. March 8, 2001.

B. Governance Structure

Rules of Aggregation Process

When jurisdiction over education was transferred from Canada to the Mi'kmaq Nation, the nine communities that signed the Final Agreement received the power to “make and administer laws with respect to primary, elementary, and secondary education on reserve respecting members resident on reserves in Nova Scotia”.⁶ They also received the authority to enter into agreements with respect to the provision of these education services.⁷

Jurisdiction over education is exercised solely by the band councils of the participating communities, and is outlined in constitutions developed by each community following the principles laid out in the Final Agreement. Any participating community may leave the Agreement by notifying Mi'kmaw Kina'matnewey and the Government of Canada of its change of status by June 30th of the year before. The band council must also show evidence that the community at large has approved the change. If all this is completed, the community's change in status takes effect on April 1 of the following year.⁸ But, since the Agreement itself is only a five-year term, opting out is a rather cumbersome process.

Powers of the Organization

The powers of Mi'kmaw Kina'matnewey are set out in the Final Agreement and federal legislation. Its purpose outlined in Bill C-30 is “supporting the delivery of education programs and services.”⁹ Mi'kmaw Kina'matnewey does not have the authority to pass regulations or legislation unless “specifically provided with that authority by the individual First Nation.”¹⁰

That said, the objectives of Mi'kmaw Kina'matnewey, as explained in its constitution, are much more elaborate:

- a) To assist and provide services to individual bands in the exercise of their jurisdiction over education.
- b) To assist individual bands in the administration and management of education for the Mi'kmaw Nation in Nova Scotia.
- c) To provide the Mi'kmaw Nation in Nova Scotia a facility to research, develop and implement initiatives and new directions in the education of Mi'kmaw people.
- d) To co-ordinate and facilitate the development of short and long term education policies and objectives for each Mi'kmaw community in Nova Scotia, in consultation with the Mi'kmaw communities.¹¹

⁶ *An Agreement with Respect to Mi'kmaq Education in Nova Scotia*. 1997. Section 5.1.1.

⁷ *An Agreement with Respect to Mi'kmaq Education in Nova Scotia*. 1997. Section 5.1.2.

⁸ *An Agreement with Respect to Mi'kmaq Education in Nova Scotia*. 1997. Section 8.1.3.

⁹ *Bill C-30. Statutes of Canada 1998. Chapter 24. Section 10 (1).*

¹⁰ *Mi'kmaw Kina'matnewey Constitution-Resolution*. November 4, 1998. Section 9.

¹¹ *Mi'kmaw Kina'matnewey Constitution-Resolution*. November 4, 1998. Section 4.

In fulfilling these objectives, Mi'kmaw Kina'matnewey administers the Final Agreement, allocates funding to communities, addresses common issues, coordinates language and cultural programming through its Centre for Excellence, holds science camps for Mi'kmaq students, and completes research and studies on various components of the education system. As the Final Agreement signed in 1997 ends its five-year term, Mi'kmaw Kina'matnewey will once again lead community negotiations in the development of a second agreement. In addition, MK helps its member communities develop their education constitutions and is now in the process of supporting the development of community education laws.

As indicated in the legislation, the staff at Mi'kmaw Kina'matnewey take their direction from the communities that signed the Final Agreement. Its membership is made up of the nine signing communities, and each of these is represented by their elected Chief on the Board of Directors. The Board, in turn, takes its decisions with advice from various working groups. Currently, there are six:

- Department of Education (NS) – MK Working Group
- Education Facilities Capital Plan Group
- Education Working Group (made up of Directors of Education from participating communities)
- Funding Working Group
- Implementation Plan Monitoring Group
- Negotiations — 2nd Generation Agreement

Each group is made up of educators, Board members, staff, government officials and other experts at the community level. This grassroots participation allows communities to come together and work through issues before they reach the Board level. “I tell them, you are the experts,” says Gould. “Don’t bring problems to the Board, only bring solutions!”¹²

In this way, Mi'kmaw Kina'matnewey functions on the principle of cooperation and consensus. While its constitution includes a traditional dispute resolution process called Nuji Koqajatekewinu'k, according to Director of Finance, Lauretta Welsh, it has never been used to address a problem.¹³ The organization's strong focus on community participation ensures each First Nation has a chance to voice their concerns and ensure their needs are met.

Role of Citizens

Because Mi'kmaw Kina'matnewey does not have the power to create education laws ensuring high-quality services and accountability, it must work very closely with its participating communities to gather consensus on various issues and encourage them to enact appropriate legislation and bylaws. The community consultation process during the negotiation of the Final Agreement was a prime opportunity for citizens to provide input

¹² Interview with Marjorie Gould, Executive Director, Mi'kmaw Kina'matnewey. January 19, 2001.

¹³ Interview with Lauretta Welsh, Director of Finance and Planning, Mi'kmaw Kina'matnewey. January 17, 2001.

into the process. More importantly, it created a strong base of community involvement that MK would be able to draw on later to implement the Final Agreement.

The Mi'kmaw Kina'matnewey working groups are a prime example of community participation in action. While each community's Chief holds a vote on MK's Board of Directors, the working groups allow community "experts" the opportunity to come together and work out recurring problems and issues. Marion Paul, Director of Education for Eskasoni First Nation, attends the Education Working Group meetings on the second Wednesday of every month.

"It's almost a support group," she says. "I bring a problem that I have in my schools, and there is always another community that has dealt with that already. The problems are often the same right across the board, and other people can always provide advice."¹⁴ The working groups also provide research and advice to the Board of Directors, and therefore allow greater citizen input into MK's decision-making process.

Recently, Mi'kmaw Kina'matnewey began a strategic planning process to ensure full implementation of jurisdiction at the community level. The outcome of the process would be a comprehensive five-year strategic plan for education in each community, and the development of a strategic plan for MK itself.

Beginning in April 1999, consultant's were hired to help MK staff consult with each community, and facilitate the development of individual plans. Then in December 1999, after months of strategic planning at the community level, MK held a week-long symposium to determine the direction and goals for the organization's strategic plan. Seventy-five people from all communities participated in intensive workshops, and then presented the results to the Board of Directors.

"The process of developing community plans had to be completed before we could come up with a strategic plan for MK that was community-based," explains Gould, MK's executive director. "We needed to know what was important, what the goals were, and that MK's goals and the goals of each community were congruent."¹⁵

Funding

Mi'kmaw Kina'matnewey allocates funding from the federal government to its participating communities. The methodology for this process is laid out in the organization's constitution. Overall, the funding received is based on the number of students enrolled in community schools and programs. Lauretta Welsh, Director of Finance, says MK creates the budget for the year and sends it out to each community's band manager, who then creates a cash flow statement detailing when and how much each payment should be. MK collects the cash flows and budgets, and forwards them to Indian and Northern Affairs Canada. Welsh says MK used to receive all the funding and then send it out to the communities, but that just created extra paperwork. Now each

¹⁴ Interview with Marion Paul, Director of Education, Eskasoni First Nation. March 8, 2001.

¹⁵ Interview with Marjorie Gould, Executive Director, Mi'kmaw Kina'matnewey. January 19, 2001.

community receives its payments directly from the government, and at the end of the year, MK reconciles the community's cash flow statements with the government's to make sure everything equals out.

MK has its own budget and funding to administer and report on as well. Several of the organization's projects (i.e. First Nation IT Help Desk, Centre for Excellence) receive funding from sources outside Indian and Northern Affairs, such as the provincial government, Canadian Heritage and the Atlantic Policy Congress. Welsh says even with outside help their programs are currently under-funded. As a result, MK is now in the process of creating a non-profit charitable foundation for fundraising purposes.

Accountability

Mi'kmaw Kina'matnewey's constitution and the terms of the Final Agreement commits it to providing a "fair, open and transparent system"¹⁶ for the implementation and administration of education jurisdiction. The strategic plan outlines the following elements for their "accountability regime":

- An education system "report card" in the Board of Director's annual report to the member communities
- An annual or semi-annual newsletter to the community members from MK
- An annual or semi-annual meeting on education for all interested parties
- Assurance that the MK law-making process meets the rules of natural justice
- Education budgeting and expenditure reporting are conducted openly and fair appeal mechanism(s) have been established
- The Operational Audit of Mi'kmaw Kina'matnewey¹⁷

In particular, MK's constitution requires meetings of the Board of Directors to be open to the public unless the Board determines otherwise¹⁸, and amendments to the constitution to require 75 per cent of the members representing 51 per cent of the registered Mi'kmaw population of bands which are members voting in favour.¹⁹ Each year, the Board of Directors appoints an auditor to hold office during the fiscal year, and a copy of the financial statements and the report of the auditor is sent to each First Nation as well as the Minister of Indian and Northern Affairs Canada.²⁰

The Final Agreement requires MK to provide annual reports to the Government of Canada, and establish annual budgets and cash flow statements.²¹ MK must also work with the communities to establish a regular inspection and maintenance program with

¹⁶ *An Agreement with Respect to Mi'kmaq Education in Nova Scotia: Schedule D. Principles of the Constitutions.* 1997.

¹⁷ *Mi'kmaw Kina'matnewey Draft Strategic Plan.* Mi'kmaw Kina'matnewey. 2000. Page 15.

¹⁸ *Mi'kmaw Kina'matnewey Constitution-Resolution.* November 4, 1998. Section 11(d).

¹⁹ *Mi'kmaw Kina'matnewey Constitution-Resolution.* November 4, 1998. Section 25.

²⁰ *Mi'kmaw Kina'matnewey Constitution-Resolution.* November 4, 1998. Sections 20 and 21.

²¹ *An Agreement with Respect to Mi'kmaq Education in Nova Scotia: Schedule A. An Agreement with Respect to Funding for Mi'kmaq Education in Nova Scotia.* 1997. Sections 4 and 10.

respect to education facilities, and establish an inspection process with respect to public health, safety and environment.²²

Aggregation Outcomes

According to MK's executive director, Marjorie Gould, the creation of Mi'kmaw Kina'matnewey and the transfer of jurisdiction to the communities was only 85 per cent successful.²³ Out of the 13 First Nations that began the negotiation process, only nine signed the final agreement. From this point of view, aggregation was only partially successful because it failed to unify all the Nova Scotia Mi'kmaw communities.

On the other hand, the aggregation process has been successful in terms of capacity building. MK's emphasis on ensuring each community has a voice in the planning process has allowed it to balance the needs of nine very different communities with education services and resources. Marion Paul of Eskasoni First Nation says the creation of MK has had a large impact on each community's ability to provide quality services to their students.²⁴

"Overall, we've learned we can't have one without the other," says Paul. "If we were on our own we'd be way out in left field. But, at the same time, MK needs community input...One organization or community alone would be useless, but together it's ideal."

²² *An Agreement with Respect to Mi'kmaq Education in Nova Scotia: Schedule B. Implementation Plan for the Agreement with Respect to Mi'kmaq Education in Nova Scotia.* 1997.

²³ Interview with Marjorie Gould, Executive Director, Mi'kmaw Kina'matnewey. January 19, 2001.

²⁴ Interview with Marion Paul, Director of Education, Eskasoni First Nation. March 8, 2001.

C. Current and Emerging Issues

There are a number of issues coming to the forefront for Mi'kmaw Kina'matnewey and its member communities. The three most pressing seem to be the implementation of jurisdiction, the general lack of funding and the upcoming negotiations for the second generation agreement.

Ensuring the proper implementation of jurisdiction within the communities was the focus of MK's strategic planning process mentioned earlier. Now that the overall goals and outcomes have been set, MK is working with the communities to develop and implement individual strategic plans, and ensure appropriate community education laws are developed.

The lack of funding for education is a more complex problem. When the communities first began negotiating with the federal government, there was no precedent, no current data and very few studies done to assess local needs. Because of this, Gould says many education programs were transferred "as is" with no way of knowing whether they were being over or under-funded.

In Eskasoni, there seems to be no question. Director of Education, Marion Paul says many of their programs go under-funded, especially post-secondary education. "Twenty years ago we were lucky to have 20 students going on to university. This year we are funding 130 students, but only received money from the government to fund 80," she says. "So, it's kind of like having to steal from Peter to pay Paul. We have to move funds from other programs to pay for our post-secondary students."

To deal with the funding shortfall, MK and its communities have tried to gather funding from sources outside Indian and Northern Affairs whenever possible. They are also looking into the possibility of creating a non-profit charitable foundation to help with fundraising issues. Finally, MK is looking towards the challenge of negotiating a second generation agreement as part of the solution for the funding issue.

The original agreement for the transfer of jurisdiction has a five-year term. As a result, negotiations for the second agreement are set to begin in 2001. Gould says this time, MK knows what to expect and is taking a lot of time to prepare.

"The first time we were ill-prepared," she says. "When you're in negotiations your figures and assessment of needs should be clear. Studies should be done, and the team has to have a certain level of skill."

Gould says MK has taken a much more methodical approach to the negotiation process this time around. A negotiation working group has been created with a mixture of good legal, technical and political skills. The group is involved in training and teambuilding exercises and is carefully gathering the needed facts and figures from research studies done by MK during the past four years.

“You have to know the facts and what the needs are,” explains Gould. “And you really have to know your programs, so that you know how far you can go without compromising your students.”

D. Conclusions

Mi'kmaw Kina'matnewey is a special purpose body created to support Nova Scotia First Nations in implementing their jurisdiction over education. MK was created in legislation, but does not have the ability to legislate. This power rests solely with the individual communities, who make up the membership of the organization.

Often these types of organizations are critiqued for their limited accountability to the electorate, the ease with which members may decide to leave the arrangement (creating instability), and questions over quality of services within this type of quasi-monopolistic organization.

Interviews with staff and community members seem to indicate that Mi'kmaw Kina'matnewey is well aware of these pitfalls, and actively taking steps to avoid them. MK's internal structure includes a range of opportunities for community input into programs and services, and all strategic planning so far has been done in close discussion with community stakeholders. Overall, MK seems to have done a fair job of balancing the different needs of its communities, and including citizen participation into its processes.

The question of instability created by members leaving the agreement is not a large issue for MK. Members wanting to leave must give notice almost a full year before the change in status will take effect, and they must demonstrate a majority of the electorate in the community agrees to the change. Since each agreement is only a five-year term, the option of leaving the arrangement becomes quite cumbersome for the member communities.

Finally, MK is well aware of the importance of evaluating and assessing its services and programs. The organization has just completed a complete evaluation of its Centre for Excellence which provides Mi'kmaw First Nations with language and cultural curriculum services, and also participated in a province-wide assessment of special education programs. Gould says these studies are practical tools for assessing current community needs and developing good research data for the next round of government negotiations. Both studies were completed by outside consultants, and the organization seems eager to have more of this type of research done.

Overall, MK seems to have done an excellent job of gathering resources together and supporting its communities in their education programs and services. Interviewees felt very satisfied with the level of communication and cooperation between the organization and the communities, and felt it provided the smaller communities with a strong resource base to draw on when implementing their jurisdiction over education.