COMMISSION ROYALE SUR LES PEUPLES AUTOCHTONES ROYAL COMMISSION ON ABORIGINAL PEOPLES

LOCATION/ENDROIT: LETHBRIDGE LODGE, BALLROOM A LETHBRIDGE, ALBERTA

DATE: TUESDAY, MAY 25, 1993

VOLUME: 2

"for the record..." STENOTRAN 1376 Kilborn Ave. Ottawa 521-0703

INDEX

Opening Ceremony	126
Opening Remarks by Georges Erasmus	126
Presentation on behalf of Tsuu T'ina Nation Bradford Littlelight Regina Crowchild	127 141
Presentation on behalf of Treaty 7 Tribal Council Gregg Smith Dorothy First Rider Chief Roy Whitney	146
Presentation on behalf of Blood Tribe Tribal Government and External Affairs Committee Les Healy	188
Presentation on behalf of Red Crow College Marie Marule	210
Presentation on behalf of Peigan Indian Band Chief Leonard Bastien Rod North Peigan Edwin Yellow Horn	229
Presentation on behalf of the Métis Jim Penton	263
Presentation by Tony Hall	279
Presentation on behalf of Sik-ooh-Kotoki Friendship Society Mike Bruised Head Stan Knowlton	312 331
Presentation by Keith Chiefmoon	345
Comments by Martin Heavy Head	354
Closing Prayer	356

Royal Commission on May 25, 1993 Aboriginal Peoples 1 Lethbridge, Alberta 2 --- Upon resuming on Tuesday, May 25, 1993 at 9:05 a.m. 3 4 MODERATOR REGGIE CROWSHOE: Good 5 morning, everybody. I would like to welcome everybody here to this morning's session. 6 7 I would like to ask Harrison Black Plume 8 to say the prayer this morning. 9 --- Opening Prayer 10 MODERATOR REGGIE CROWSHOE: I would 11 like to start with opening remarks from the Co-Chair and 12 Commissioner. Then we will go to the three presenters. First we have Bradford Littlelight; next 13 14 will be Dorothy First Rider; and finally Les Healy. At this time I will turn the Chair over 15 16 to Georges Erasmus. 17 CO-CHAIR GEORGES ERASMUS: We just want 18 to remind you that the hearings are to primarily hear 19 people's ideas of how to resolve things, the remedies, 20 the solutions. Sometimes it is necessary to explain what 21 the problems are, but just a reminder for the day that what we would really like to hear from you is your ideas 22

StenoTran

as to how things should be done in the future that are

23

126

Aboriginal Peoples

1 closer to what Aboriginal people and the First Nations 2 are prepared to live with in the country. 3 Let's just go straight into the 4 presentations. 5 BRADFORD LITTLELIGHT, Tsuu T'ina Nation: Mr. Chairman, members of the Royal Commission, 6 Elders, ladies and gentlemen, on behalf of the Tsuu T'ina 7 8 Nation I extend our thanks for the opportunity to present 9 our position on two matters: taxation and the proposed 10 First Nations Chartered Land Act. 11 I wish to make some general comments about the Tsuu T'ina Nation and our activities in 12 administration, finance, business operations and 13 14 management, and our economic development program. 15 In both land base and population, the Tsuu T'ina Nation, Sarcee, is the smallest in the Treaty 16 7 area. We are located next to the city of Calgary on 17 18 our eastern boundary and 18 miles west our neighbours

19 reside in the Bragg Creek area. The total Nation 20 membership is almost 1,000, with an average age of 24 years. 21 During the school year of 1992-93 about 600 members 22 enroled in education programs ranging from K4 to 23 post-secondary.

StenoTran

May 25, 1993

Aboriginal Peoples

On Friday, May 21, 1993, the first class of graduates received their Grade 12 General Equivalency Diplomas. Among the 22 graduates were members who had not been in school for 25 years or more, some of whom had not previously gone past Grade 7. The upgrading program continues, with 50 members still enroled and 50 more registered to begin upgrading in September 1993.

May 25, 1993

8 In total, the Tsuu T'ina Nation Chief 9 and Council oversees a total cash flow projected to be 10 \$40 million in the fiscal year 1993-94. Only 12 per cent 11 of that total is federal government grants and treaty 12 payments.

13 The Nation administration area delivers 14 services ranging from new housing and repairs and land 15 administration to the Elders' Program and the Museum and 16 Culture Department. The Inter-governmental Affairs Department oversees health, social services, education 17 18 and other federally-funded programs and services. 19 The Economic Development Program has 20 under construction the following: 21 - a 15,000 square foot commercial 22 centre;

23 - an 80,000 square foot multipurpose

May 25, 1993

Aboriginal Peoples

1 building; 2 - a 60-acre business park; 3 - a \$4.8 million elementary school, 4 which is on schedule, to open in September 1993; 5 - a 27-hole golf course and club house. 6 In addition, the program manages the Tsuu T'ina Construction Corporation, a 100-head buffalo 7 8 herd, and the Harry Dodginghorse Memorial Agriplex & Rodeo 9 Arena. The total capital costs of these projects is \$22.5 10 million. The Economic Development Program has an 11 additional 10 projects under review or design. 12 On behalf of the Nation, the company board of directors operates the following companies: 13 Tsuu T'ina Cattle Company; Sarcee Developments Ltd.; Tsuu T'ina 14 Golf & Country Club; Sarcee Gravel Products; Tsuu T'ina 15 Nation Gas Stop & Convenience Store; Tsuu T'ina Mechanical 16 Shop; Wolf's Flat Ordnance Disposal Corporation; Tsuu 17 T'ina Nation/U7U Grain Farming Joint Venture; Tsuu T'ina 18 19 Petroleum (property management); Tsuu T'ina Financial, 20 in the way of business park development. 21 All companies are 100 per cent owned by 22 the Nation, and the income and revenue generated are 23 distributed under a formula approved by the Nation members

StenoTran

129

May 25, 1993

23

place by 1994.

Aboriginal Peoples

in 1986. In addition, 80 full-time and 120 seasonal jobs 1 2 have been created on a permanent, long-term basis. 3 The Treasury Board created and appointed 4 by the Chief and Council oversees the financial management 5 of all Nation entities and operations. The Tsuu T'ina Nation Finance & Administration Act governs these 6 activities to ensure the Nation's fiscal affairs are 7 8 efficiently handled. Our computer equipment and 9 mainframe system are state-of-the-art and form the core 10 of an accounting system which is just as effective as any 11 in Canada. 12 I have presented this brief overview of the Tsuu T'ina Nation and activities to you today to give 13 14 you a context in which to place our position on taxation 15 and the proposed First Nations Chartered Land Act. 16 First I wish to deal with taxation. Almost 20 years ago the Tsuu T'ina Nation, Sarcee Nation, 17 18 drafted, passed and received ministerial approval on our 19 property tax by-law, the first of its kind in Canada. 20 In the years since then our needs have grown and changed 21 to the point where a more comprehensive tax structure is 22 required. This work is under way now and should be in

Aboriginal Peoples

I wish to make clear to the Commission that these taxing powers being exercised by the Nation are concerned with non-Nation interests, activities and installations carried out in our territory. Also, we hold the position that our collective and individual income and businesses are not -- I repeat, are not -- taxable by any level of government.

8 On behalf of the Tsuu T'ina Nation, I 9 co-sponsored the attached Resolution at the AFN Assembly 10 in March of this year, 1993, a few months ago. Members 11 of the Royal Commission, take note of that.

12 "Subject: Committee on First Nations

13 Taxing Powers and Fiscal Mechanisms

May 25, 1993

14 This Resolution sets out a direction which we and other First Nations in Canada believe is 15 necessary to resolve taxation matters with Canada." 16 The Tsuu T'ina Nation requests the 17 18 support and assistance of this Royal Commission in 19 achieving these objectives. Although this process may 20 take several years to complete, we are committed to work 21 with the AFN and Canada to reach arrangements that preserve First Nation rights and jurisdiction. With your 22 23 assistance -- I repeat, with your assistance -- we are

Aboriginal Peoples

convinced that solutions satisfactory to all parties can
 be found and implemented.

May 25, 1993

3 I turn now to the First Nations Chartered4 Land Act.

5 The Tsuu T'ina Nation Chief and Council, 6 Nation members, staff and advisors have reviewed the 7 documentation provided to date on this proposal. We have 8 looked closely at the short- and long-term implications 9 of this proposal.

10 We have concluded that this is the most 11 dangerous piece of proposed legislation to come forward 12 since the 1967 White Paper. The Tsuu T'ina Nation is fundamentally, totally and absolutely opposed to this 13 14 proposed First Nations Chartered Land Act. This proposal 15 must be thrown in the garbage bin of history as a terrible 16 proposal whose time will never -- I repeat, never -- come in Canada. 17

At the same time, the misguided Chiefs who support this proposal must have obvious gaps in their education filled. A Chief with a Master's in Business Administration is a great thing. A Chief with an MBA and no understanding

23 -- no understanding -- of our relationship to the land

Aboriginal Peoples

May 25, 1993

1 is a dangerous thing.

2 The Tsuu T'ina Nation is not prepared 3 to see our land base and our future generations jeopardized 4 by people whose vision is limited to making a quick dollar. 5 We have spent many years and a lot of money finding methods 6 of doing business under the existing Indian Act Land Regulations. We have been successful, and our track 7 8 record stands as proof that economic development ventures 9 can be successfully carried on without jeopardizing the 10 land.

11 We are the land. Our Elders have taught 12 us since we were born that each of us has a responsibility 13 to use, enhance, preserve and pass on land for future 14 generations. They will also learn the same lesson and 15 bear the same responsibility. Our Elders have told us, 16 "You can use the land to make a better life for our people 17 as long as you never jeopardize it or lose it. We must 18 always have the land."

This direction and teaching from the Elders guides us at all times. We cannot accept the idea of Tsuu T'ina lands being available for sale on fee simple terms.

23 The government -- the federal

May 25, 1993

Aboriginal Peoples

1 government, your Conservatives -- and supporters of this 2 proposed legislation will try to convince you and us that 3 it is optional, that any First Nation can opt in or out at their choice. Don't believe them. 4 In how many past 5 agreements have they used the words "opt out?" In their favour, sure, but for us, forget it! If even one First 6 Nation opts into such a system, the Government of Canada 7 8 and the banking industry will insist we opt in if we wish 9 to do business.

10 The existing Indian Act lands system, 11 although difficult to work with and time-consuming, allows 12 First Nations to be successful

-- to be successful -- and not jeopardize our land. 13 14 The Tsuu T'ina Nation stands before you 15 as proof that we progress and that benefits can be gained. 16 We say to you, Members of the Royal Commission on Aboriginal Peoples, that you have a responsibility to 17 18 assist us in making a better life for our people and a 19 brighter future for our children and the unborn and many 20 more generations. The proposed First Nations Chartered 21 Land Act jeopardizes all of that, and we ask you for your 22 support and assistance in killing this assimilationist 23 idea, to totally do away with it.

May 25, 1993

Aboriginal Peoples

1 On behalf of the Tsuu T'ina Nation, I 2 appreciate the time and attention of the Royal Commission 3 on Aboriginal Peoples, and I look forward to any questions 4 you may have.

5 For your information, in the package you 6 can see my Resolution. Mr. Chairman, we went through the proper procedure before a full Assembly of the country 7 of Canada's 500 Chiefs. You can see it there. 8 The 9 Chartered Land Act didn't go according to that procedure. 10 It is being promoted today, and the promotion system taking place in that path is wrongfully done. It's 11 12 bribery. I end with that. Thank you, Mr. 13 14 Chairman.

15 CO-CHAIR GEORGES ERASMUS: Thank you.
16 Is anybody else going to present anything to do with this,
17 before we ask some questions?

I understand very clearly that you are opposed to the Chartered Lands Act, taxation, and so forth. Could you explain a bit what you would prefer as the alternative? I haven't had a chance to read the Resolution, and maybe it is all in there. Perhaps you could assist us while I am flipping through. Could you

May 25, 1993

Aboriginal Peoples

1 tell us what you would prefer to occur.

BRADFORD LITTLELIGHT: On the taxation, Mr. Chairman, the Resolution that was addressed by myself, which I moved a couple of months ago, that should not be changed by a few Chiefs. I understand that across the country of Canada there is a few Chiefs trying to change, to amend or whatever.

8 I am not in a position, as a mover, to 9 change that. My good friend from the east, the seconder, 10 Chief Steve Williams, also supports that we stick and abide by this Resolution recognized by the AFN, that you 11 12 yourselves get the federal government to recognize this. We now have in place technicians working 13 14 and following up on these Resolutions. There is no real 15 mandate on this. This can take a year or two or three 16 or four, until we are satisfied ourselves, as First Nations. 17

18 It clearly spells out the Resolutions. 19 It is five pages long, and it addresses the GST which 20 we don't recognize in Sarcee Tsuu T'ina. We are not 21 prepared to be collectors or administrators of the GST. 22 We believe all Native people should be immune from any 23 form of taxation. That is our position -- any form of

May 25, 1993

Aboriginal Peoples

taxation by any foreign government, any municipality,
 city, province. We are immune from them. Forget about
 that.

4 On the Chartered Land Act, that has not 5 gone through the proper procedure. There is no courtesy shown to the other Chiefs of Canada. This is a bought 6 thing by the federal government. This is only led by eight 7 Chiefs, paid with a large amount of money for their own 8 9 personal use. That money could have been spent in a better 10 There are poor people out there. There are poor wav. people in our back yards. 11

12 What they are doing is trying to sell off Indian lands to cover the government's huge deficit; 13 14 yet, they spend millions of dollars sending satellites 15 into the air, sending UN forces over to Yugoslavia, when the Indian people are starving. The poor are right in 16 their back yard, and the Prime Minister brags to Third 17 18 World countries that their people are well taken care. 19 That's a bunch of hogwash.

20 **CO-CHAIR GEORGES ERASMUS:** What should 21 happen in relation to the communities that want that 22 particular legislation? Is there any way that those 23 communities can get what they want?

May 25, 1993

Aboriginal Peoples

1 BRADFORD LITTLELIGHT: Mr. Chairman, 2 with respect to you, you were a leader before and you know 3 that, if a Nation opens the door, that is precedent-setting 4 for all Nations. They follow. So you, Mr. Chairman, who 5 were a former leader of the AFN, know that.

6 The government today cannot be trusted. 7 This Conservative government cannot be trusted. I know; 8 I have been in politics many years as a minor Chief. I 9 was a member of the Siksika Nation before I was a member of the Tsuu T'ina Nation. I also have relatives in the 10 Browning Montana tribe that have lands checkerboard. 11 Mv 12 full-blood grandmother is buried there today. So I have connections all over the place. I have a big clan in 13 14 Siksika, the Blackfoot Tribe. Then I went over to Tsuu T'ina, the Sarcee Tribe. That is where I remain and hope 15 16 to remain.

I am not going to see this through. It's up to you now. I now monitor your activities on this taxation and this Chartered Land Act. This Chartered Land Act didn't go through proper procedure. Ninety-five per cent of the Chiefs of Canada had no say on this, so I say: Why recognize it?

23

CO-CHAIR GEORGES ERASMUS: Is there any

May 25, 1993

Aboriginal Peoples

other organized action by First Nations that are opposed to this? Are they going to be presenting their views to Parliament?

4 BRADFORD LITTLELIGHT: Mr. Chairman, 5 right today, in the last few months, there has been a coalition formed in the city of Calgary. I understand 6 its headquarters is in the city of Calgary. Its membership 7 is expanding all the time. The main leader of that 8 9 coalition is the former traditional Blackfoot Chief of 10 Siksika. Roy Littlechief is the leader of that coalition. 11 It is made up B.C. Chiefs, some northern Chiefs, some 12 representatives of the tribes in Treaty 7. He has a large part of his people of Siksika behind him. 13

14 That is in progress, to try to destroy 15 this document. They are very disturbed about it. The urban Indian people in the city of Calgary are mainly from 16 17 Siksika. Their reasons are probably lack of housing, no 18 voice on their own reserve, so they are forced to the city. 19 In the city they are recognized. On their own reserve I don't know if they are recognized. 20

I have a lot of relatives from Siksika, and they are my interest there. That is why I talk on the part of Blackfoot, because my people are there.

May 25, 1993

Aboriginal Peoples

Two-thirds of my immediate family is there, and one-third
 in Sarcee.

There is a coalition that is opposing this strongly. I am sure on some day in their future they are going to approach the government in some fashion. They have held some rallies in the city of Calgary. They have held Band meetings with the Chief and Council. They have held meetings here and there.

9 It is expanding. It is getting to the 10 point where you are going to hear from them nationally. 11 Maybe it started small, but I vision it to overrule this. 12 CO-CHAIR GEORGES ERASMUS: Thank you very much for the views you have brought forth on this. 13 14 **REGINA CROWCHILD:** I would like to make it clear that I am speaking as a member of the Tsuu T'ina 15 Tribe. I am a member of Tsuu T'ina. 16

With respect to the First Nations
Chartered Land Act, I would like to give a few comments
with respect to my understanding of what the situation
is.

At Sarcee we are very concerned because, when we look at our treaty, we are looking at the relationship that treaty set out for us between us and

Aboriginal Peoples

the non-indigenous peoples of this land. In our treaty we understand that we are supposed to co-exist or live side by side with the new settlers on this land. The only item that was put on the table for discussion is the use of our lands. Our peoples did not sell our lands. They agreed to share our lands to the depth of the plough.

May 25, 1993

7 So, one question: How did Canada attain 8 title to our lands and our resources and how did they get 9 the jurisdiction to govern our way of life when Great 10 Britain had promised that the crown would ensure that we 11 were able to continue to live our lives in a normal manner 12 or in the way we chose to live?

Our peoples have a right of 13 14 self-determination. When we are talking about a right 15 of self-determination, we are talking about our right to 16 freely pursue our social, economic and cultural development, the right to freely pursue our religious 17 18 beliefs, the right to freely dispose of our lands, the 19 right to our own means of progress. That was the 20 understanding, that we would be able to continue that. 21 Now Canada has unilaterally taken our 22 authority and our lands under their jurisdiction. 23 When you look at the proposed Chartered

May 25, 1993

Aboriginal Peoples

Land Act, you are looking at a system again where Canada is trying to delegate some authority to us when our right of self-determination had never been surrendered at the time of the signing of the treaty.

5 Canada, under her Constitution section 6 35, recognizes and affirms treaty and Aboriginal rights. When we talk about our Aboriginal rights, we are talking 7 8 about our inherent rights that we inherited from our 9 forefathers. Yet, Canada takes the position that section 10 35 is an empty box, and the only way they would fill that 11 box is through federal legislation delegating authority 12 to us.

I think it is time Canada started living 13 14 up to her Constitution, to recognize treaty and Aboriginal 15 When you look at this piece of legislation, I rights. 16 do not think it is fair that the federal government should hand-pick certain individuals from across the country to 17 18 follow a system that is designed to promote her cause. 19 Yes, it is optional. It is right that 20 we have a right to manage our own lands. But, although 21 Canada has imposed her laws upon us all these years, we 22 have never recognized or agreed that they had this right 23 to assert their jurisdiction over us. Through this

May 25, 1993

Aboriginal Peoples

1 process we will be doing that in the event that we opt
2 into it.

I feel that any issues of this magnitude should be brought to the treaty peoples. As was set out in the treaty-making process, you have to have open and informed consent. Yet, we have eight individuals across this country who are pursuing this matter on behalf of all the treaty peoples.

9 Canada has a specific relationship with 10 the treaty peoples, and that is where she needs to go to 11 discuss any matters that address this relationship that 12 was set out under Treaty 7.

With respect to taxation, the concept 13 14 of rent was brought to us by the Europeans. In England 15 the peasant farmer would pay a fee to the sovereign or to the king for the use of the land. This concept was 16 17 brought to our peoples, that in exchange for the use of 18 our lands to the depth of the plough the crown, or her 19 Dominion of Canada, will provide a rent to us. It may 20 also be called a taxation, but how could one Nation who 21 does not have title to our lands and our resources try 22 to tax the owners or occupants of that land? 23 I think we need to put these perspectives

May 25, 1993

Aboriginal Peoples

in place. If we need to tax, the right of taxation should
 be from the First Nations or the indigenous treaty peoples
 to tax non-Indian interests on the reserve and on our
 territories.

5 So there is a lot of unfinished business 6 that has to be completed. Our Chiefs have been pushing 7 for a bilateral process between Canada and our leadership 8 on a government-to-government basis; yet, Canada does not 9 intend to pursue that because they feel that they do not 10 need to and that the only form of authority they will give 11 us is what they delegate to us.

12 If you really look at what nations are 13 all about, the First Nations of this land are the true 14 nations in this country. Canada is not a nation. She 15 only inherited her powers or received delegated powers 16 from the Imperial crown. I think it is time we put that 17 in place and do it correctly.

I would like to know how Canada accessed title to our lands and our resources without our consent as treaty peoples. These are our lands. How could they tax us on our lands and how can they delegate authority for us to manage our lands when we have always had that and never surrendered it?

May 25, 1993

Aboriginal Peoples

CO-CHAIR GEORGES ERASMUS: Thank you
 very much for that intervention. Thank you both for coming
 forward.

We will go on to the next presenters now. **GREGG SMITH, Treaty 7 Tribal Council:**Good morning. Welcome to Blackfoot territory to the
Commission, Georges Erasmus, Co-Chair, and Viola Robinson,
Commissioner.

9 Since the establishment of the Royal 10 Commission in 1991, as announced by Prime Minister Brian 11 Mulroney and subsequently in the Throne Speech opening 12 the Third Session of the Thirty-fourth Parliament of Canada, on May 18, 1991 the Government of Canada appointed 13 14 the Right Honourable Brian Dickson as special 15 representative representing the Royal Commission on 16 Aboriginal Peoples.

In the year 1877, the Chiefs of Treaty Nations were signatories to Treaty No. 7, together with representatives of the Government of Canada. Treaty No. 7 is the document which represents the basis for the relationship between Treaty 7 Nations and Canada. The treaty established that we would deal with the federal government as the representative

May 25, 1993

Aboriginal Peoples

of Canada. According to the spirit and intent of the treaty, the treaty established that Canada would forever have certain obligations to us, as long as the sun shines, the grass grows and the waters flow, in exchange for the use and occupation of our traditional territory.

6 One hundred and fourteen years later, today, questions about the nature of this relationship 7 8 have yet to be resolved. Why? Because Canada fails to 9 recognize the spirit and intent of the treaties and only 10 adheres to the strict interpretations of the treaty. 11 During the Constitutional discussions 12 and conferences which have taken place in the past decade, the Treaty 7 Nations supported and confirmed section 91 (24) 13

of the British North America Act. However, no substantive constitutional amendments were agreed to during the process set out in section 37 of the Constitution Act, 17 1982.

18 The Treaty 7 Nations opposed the Meech 19 Lake Accord. Subsequently, the Meech Lake Accord did not 20 receive the consent of all the provinces of Canada and, 21 accordingly, failed to become part of the Canadian 22 Constitution. The Treaty 7 Nations also opposed the 23 Charlottetown Accord. Needless to say, the Charlottetown

May 25, 1993

Aboriginal Peoples

1 Accord also failed to become part of the Canadian

2 Constitution.

Although the Treaty Review process was part of a process which received support from the federal government to allow First Nations to interpret the treaties according to the spirit and intent which would affect the bilateral relationship with the federal government, in order to begin the process of strengthening the bilateral relationship and/or re-establishing the bilateral

10 relationship, there needs to be mutual understanding and 11 acceptance of the spirit and intent of the treaties.

12 Supreme Court decisions, such as Guerin in 1984 and Sparrow in 1990, illustrate that the courts 13 14 acknowledge the Treaty First Nations' inalienable 15 relationship to the land. The whole question of surrender 16 becomes a bit shaky. If First Nations cannot be alienated 17 from their very source, the land, there must be some 18 validity to the claim of the generations of Elders' 19 consistent statements that the First Nations only agreed 20 to share the land to the depth of the plough. Where, then, 21 does legislation such as the Natural Resources Transfer Act of 1930 and the Migratory Birds Act receive their 22 23 legitimacy?

Aboriginal Peoples

1 The spirit and intent of treaties 2 dictates the bilateral relationship with Canada. This 3 relationship is pending the fulfillment of the treaties. 4 To date, Canada has made every attempt to relinquish 5 itself of its legal responsibilities. The Treaty 7 Tribal Council is representative of Treaty members in excess of 6 25,000. Every effort is continually made to ensure that 7 8 Canada adheres to its fiduciary responsibility to Treaty 9 7.

10 In the fall of 1990, the Treaty 7 Tribal 11 Council established a Special Chiefs Committee. The 12 mandate of this committee is to undertake a review of Treaty This review process has identified its goals and 13 7. 14 objectives and will be addressing considerable issues 15 under its Terms of Reference, and has done so to date. 16 Parts of its goals and objectives is a 17 mandate for the Treaty 7 Review Process to present 18 recommendations to the Royal Commission, but not 19 exclusively limited to the following issues. 20 Before we go into the recommendations, 21 I would like at this time to present to you a video production which we commissioned through the Tribal 22 23 Council as showing part of our review process. We will

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

ask Rick to play the video now, and we will go into the
 recommendations following the video presentation.

3 --- (Video Presentation)

4 I would like to introduce some of the 5 people involved in the video production at this time. We have some of our Elders who participated throughout 6 the work of the Task Force through the Elders' interviews 7 8 as well as through the Elders Workshops. We have some 9 of our Elders with us today: Lazarus and Libby Wesley 10 from Bearspaw; Louise Crop Eared Wolf from the Blood Tribe; 11 Rosie Red Crow from the Blood Tribe; Annie Bare Shin Bone 12 from the Blood Tribe; Mary Stella Cross the Mountain from the Blood Tribe; Eddie Yellow Horn from the Peigan Nation. 13 14 As well, we acknowledge the people who 15 have worked with us on the video presentation as well as our producer and owner and operator of Sweetgrass 16 Productions, Mr. Rick Tailfeathers. 17 18 You saw in the last portion of the video

19 the recommendations the Treaty 7 Tribal Council is making 20 to the Royal Commission at this time, dealing with some 21 of the issues that face us in the Treaty Review Process. 22 The first recommendation is that the 23 Government of Canada recognize the Treaty First Nations

May 25, 1993

Aboriginal Peoples

1 as being separate and apart from all other Aboriginal 2 groups and that Treaty 7 First Nations be referred to as 3 Treaty First Nations, not as Aboriginal people. Only 4 Treaty First Nations entered into Treaty agreements. 5 I think this has been a longstanding 6 issue from Day One in constitutional issues, the fact that all Aboriginal people were placed into one group with the 7 Canadian Constitution under section 35. 8 9 That melting pot theory developed 10 through the Constitution Act has created all these 11 problems. This theory, without acknowledging or 12 respecting the acute differences of the First Nations, identified Treaty First Nations, Métis and status people 13 14 as well as the Inuit as Aboriginal people. Without taking 15 away the rights of those Aboriginal people, the Treaty 16 First Nations must be referred to as such -- Treaty First Nations. 17

18 Treaty Nations entered into a legal 19 contract by way of treaties with the crown. This cannot 20 be ignored, nor can it be watered down in the melting pot 21 theory. Treaty First Nations are in a unique category, 22 unlike other Aboriginal groups. Our Aboriginal and 23 inherent rights have already been established.

Aboriginal Peoples

1 Recommendation No. 2: That the 2 Government of Canada refrain from implementing policies 3 and legislation affecting the treaty, which jeopardize 4 and/or diminish the Treaty First Nations' bilateral 5 relationship, and that the government maintain its fiduciary responsibilities. 6 7 Canada has, from 1877 to this point in 8 time, passed policies and legislation which have been to 9 the detriment of our treaties 10 -- policies and legislation, such as the Membership Act of 1985, the Self-Government Act and, most recently, the 11 12 introduction of the Chartered Lands Act and Working Paper on Indian Government Taxation. Attempts to relinquish 13 14 Canada's fiduciary responsibilities are the underlying 15 basis of these policies and legislation. 16 Recommendation No. 3: That the 17 Government of Canada recognize and acknowledge the spirit 18 and intent in which the treaties were signed.

19 In order to establish the bilateral 20 relationship and/or to strengthen it, it is imperative 21 that the federal government accept the fact that this 22 relationship will be dictated by the spirit and intent 23 of the treaty and the evolutionary nature and mobility

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

of the treaties must be accommodated. We mustn't change,
 but we must adapt.

3 Recommendation No. 4: That the
4 Government of Canada recognize and acknowledge their
5 treaty obligations.

6 Canada, to date, has declared most of their treaty obligations not as treaty obligations but 7 8 as services available to Treaty First Nations, as part 9 of the benevolence of the government. "Services" such 10 as health, education, economic development, et cetera, were originally all treaty promises and, therefore, were 11 12 legally binding upon the crown as being treaty obligations. Recommendation No. 5: That the 13 14 Government of Canada begin a process of fulfilling the 15 treaty obligations according to the spirit and intent in

16 which the Treaty was signed.

17 The spirit and intent of the Treaty 18 versus the narrow interpretation of the written Articles 19 of the Treaty. According to the spirit and intent of the 20 Treaty, promises are evolutionary, not static. 21 Recommendation No. 6: That the

22 Government of Canada continue to endorse the Treaty 23 interpretation and continue to uphold its responsibility

May 25, 1993

Aboriginal Peoples

1 toward the continued interpretation of the spirit and 2 intent of Treaty No. 7.

The treaty interpretation was limited to three years with limited funding. Research is dictated by the availability of funds. There are issues which will have to be addressed upon completion of the review. We require the support and financial support to continue with the issues of treaty.

9 To date, the Government of Canada, 10 particularly Indian and Northern Affairs Canada, has 11 reluctantly dealt with the issue of treaty interpretation, which was their initiative. The Tribal Council initiated 12 the project through the Chiefs Committee and the 13 14 Interpretation Task Force and, to date, have not been 15 funded to the level required to do the work. We have been 16 asked to ask the Royal Commission for funding. Indian Affairs says they have a lot of money. We did do that, 17 18 and we received through the Intervenor Program a 19 contribution which went to the development of our video 20 presentation today.

21 Recommendation No. 7: That the 22 Government of Canada continue to maintain its fiduciary 23 responsibility to all Treaty First Nations.

Aboriginal Peoples

The Government of Canada cannot be 1 2 allowed to transfer its fiduciary responsibilities to the 3 province or to First Nations. That responsibility is 4 intact as long as the sun shines, the rivers flow and the 5 grass grows -- even though they are damming up our rivers, 6 polluting our sun and our environment, and making all kinds of insecticides that are killing our grass. 7 Recommendation No. 8: 8 That the 9 Government of Canada establish a structure to acknowledge 10 and identify the fiduciary responsibility of the 11 government to all Treaty First Nations. 12 A structure is required to be developed by Treaty First Nations and the Government of Canada to 13 14 acknowledge and identify the fiduciary responsibility of 15 government to all Treaty First Nations. In the past, there 16 have been different models talked about, in terms of Treaty Right Protection Offices, et cetera, but not limited to 17 18 those types of models for a dispute mechanism. Recommendation No. 9: 19 That the 20 Government of Canada establish a format to guarantee the 21 viable economic future of Treaty First Nations, to protect their future generations. 22 23 Such things as the Chartered Lands Act

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 is not the tool to guarantee a viable economic future of 2 Treaty First Nations. Nor should Treaty First Nations 3 be penalized if this Act is not passed. The treaties 4 guaranteed our economic future, not the economic future 5 of Third World countries where billions of dollars derived 6 from our natural resources are channelled year after year. According to the spirit and intent of the treaties, 7 8 economic development will evolve with time. I think it 9 is proven fact throughout Indian country, particularly 10 in Treaty 7, that that issue of economic development holds 11 a deeper thread than most other activities involved in 12 treaties.

13 Recommendation No. 10: That a
14 procedure be established for the identification and
15 settlement with the Government of Canada of all land claims
16 of Treaty 7 First Nations.

That includes Lethbridge. The success rate of Treaty 7 First Nations averages about 2 per cent at this point in time. The other claims are still caught up in the process and/or have been rejected through the process. Land claims are with the federal government, not with the provinces. A procedure to identify and settle land claims in a just manner is required. The existing

May 25, 1993

Aboriginal Peoples

land claims process does not work, and has not worked.
 This procedure needs to be developed with the input of
 Treaty 7 First Nations.

4 Recommendation No. 11: A process to
5 develop a new relationship between the Treaty First Nations
6 and the Government of Canada.

7 The completion of the spirit and intent 8 of the interpretation of Treaty 7 will determine the 9 present relationship with Canada and, if there is a need, 10 develop a new relationship or improve the present one. 11 The Treaty of 1877 established the bilateral 12 nation-to-nation relationship with Canada. Nations make

13 treaties; treaties don't make nations.

14Recommendation No. 12: A model for15constitutional reform giving Treaty First Nations an equal

16 and noticeable presence in the development of

17 constitutional reform.

23

As nations, we are entitled to an equal and noticeable presence in the continual development of constitutional reform -- not as observers or special interest groups, but as a nation which is impacted by any and all constitutional reform.

Recommendation No. 13: A mechanism to

Aboriginal Peoples

1 procure the recognition by the Government of Canada of 2 the inherent right of all Treaty First Nations to 3 self-government. It is imperative that Canada recognize 4 and acknowledge 5 -- and I mean Canada in relation to the Government of Canada. The people of Canada have recognized that; it 6 is the Government of Canada which has yet to acknowledge 7 8 -- our inherent right to self-government and to refrain

9 from attempts to impose forms of self-government which

10 amount to nothing more than delegated authority.

May 25, 1993

11 Recommendation No. 14: That a 12 procedure be established for Treaty 7 First Nations and 13 Canada to determine an acceptable format which will 14 guarantee that Canada begins a process to determine its 15 legal obligation, for Canada to ratify the Jay Treaty and

16 for Canada to begin adhering to the terms as outlined in 17 the NAFTA Treaties now being discussed.

18 The Treaty 7 Tribal Council is genuine 19 in its eagerness and willingness to assist and to 20 participate in the sittings of the Royal Commission on 21 Aboriginal Peoples. The Tribal Council Review Process 22 has resolved to fulfill its mandate concurrent with the 23 sittings of the Royal Commission on Aboriginal Peoples.

Aboriginal Peoples

1 The thrust of the Treaty Review Process 2 is to complement and assist the Royal Commission as it 3 undertakes the responsibility of defining a process to 4 create and enhance an innovative, constructive and 5 mutually advantageous relationship between the Government 6 of Canada and Treaty First Nations.

7 At this time in our history we need to 8 find better ways and means of discussing the many issues 9 facing our peoples throughout Canada. We believe in a 10 strong and united Canada -- and that includes Quebec --11 but also one that recognizes Treaty First Nations peoples as partners in Confederation, even as founding members 12 of Confederation. We believe, and we are still 13 14 optimistic, that such a goal can be achieved. 15 We thank you very much. 16 MODERATOR REGGIE CROWSHOE: Thank you,

17 Gregg.

May 25, 1993

18 CO-CHAIR GEORGES ERASMUS: Thank you 19 for your very excellent presentation. I have a number 20 of questions if you people don't mind.

21 We have heard quite often that the spirit 22 and intent of treaties should be reviewed, implemented 23 and be one of the major fabrics of a new relationship.

May 25, 1993

Aboriginal Peoples

How do you see that occurring? Should that occur treaty by treaty? Should that occur somehow nationally in the country between Treaty First Nations as a whole and Canada or should it be a bit of both? How do you see that proceeding?

6 GREGG SMITH: It is the position of Treaty 7 First Nations, and always has been the position 7 of Alberta First Nations, in relation to First Nations 8 9 treaties, that it be done treaty by treaty as a basis. 10 A co-ordinated effort must be maintained as well, whether it is regionally. For instance, in Alberta we have 11 Treaties 6, 7 and 8 which could be co-ordinated 12 13 provincially.

14 Overall, I would think it can be co-ordinated nationally but, at the same time, the 15 individual treaties, treaty by treaty, must have a lot 16 17 of input, must direct the process. We cannot pretend, 18 even as an organization in Treaty 7, to speak on behalf 19 of Treaty 6 or Treaty 8, nor should any other organization 20 pretend to be the spokesperson for any particular treaty 21 area.

That has been the longstanding positionof Treaty First Nations out in the west.

May 25, 1993

Aboriginal Peoples

CO-CHAIR GEORGES ERASMUS: I think I
 understand the basic principle.

3 If that was going to be the approach, 4 if the predominant action should be on a treaty-by-treaty 5 basis, what can we recommend to the federal government that they do that does something for all Treaty nations 6 across the country, whether it is pre-Confederation 7 treaties or the numbered treaties? What can they do for 8 9 the whole country? Let's say you had a Prime Minister 10 and a Parliament that wanted to do something to show the country that they were serious about this. Rather than 11 12 starting a treaty-by-treaty process that might take 100 years, what could they do across the board that would 13 14 immediately start the process for all Treaty Nations, that would start the ball rolling? 15

16 **GREGG SMITH:** I think the Government of 17 Canada, first, has to recognize the separate schedules 18 of Aboriginal peoples. Once they publicly recognize that 19 and don't use the melting pot theory, that process can 20 begin.

They had a process in place in the 1800s where areas, especially numbered areas -- and I can't speak on behalf of pre-Confederation treaties. With the

May 25, 1993

Aboriginal Peoples

numbered treaties they had a process in place where they dealt treaty by treaty area, and why can't that process begin? First they have to do away with the thinking of the melting pot theory and recognize the separate schedules of Aboriginal people.

6 CHIEF ROY WHITNEY: I think another recommendation that could be dealt with in this one is 7 8 that the Government of Canada accept its relationship and 9 responsibility to the Treaty First Nations and establish 10 some type of commissioner, as was used in the film, to work with the Treaty First Nations in each treaty area 11 12 and develop the relationship and create an understanding in this country as to what our relationship is with one 13 14 another and then, in turn, respect that relationship.

As a First Nation, I can access \$800,000 a year to develop self-government, as one First Nation, but Treaty First Nations in this country -- and this is all of them -- can only access \$600,000 a year.

19 The government has an agenda here, and 20 we have an agenda here. The Government of Canada has to 21 accept and recognize its relationship with the Treaty 22 peoples of this country. On the spirit and the intent 23 of that, we have to come together to have an understanding

May 25, 1993

Aboriginal Peoples

of what our old people have said in that film, as to what the spirit and intent is, and not have two separate interpretations.

That has to be worked on. We cannot be going to constitutional tables if both parties do not have an understanding as to that spirit and intent. That is what we are saying here today.

8 **CO-CHAIR GEORGES ERASMUS:** The process 9 to develop a new relationship, I presume in the end it 10 would have to be treaty by treaty also, would it?

11 GREGG SMITH: Yes.

12 **CO-CHAIR GEORGES ERASMUS:** You mention 13 here in a number of instances that there needs to be more 14 work done, for instance, in the creation of some kind of 15 office that deals with this. Chief Whitney just mentioned 16 a commissioner possibly.

Is it possible that in these areas where you talk about either a process or the possibility of an office that additional thinking could occur from the Treaty 7 area, that we might get some more thoughts from you? By the time we make our recommendations, we would like to know what that structure looks like. We want to give it some flesh and blood and bones, so we would very much

May 25, 1993

Aboriginal Peoples

like to get the thoughts of Treaty First Nations on these
 issues, so that that work is done and we are recommending
 what people want. Then, if the government is really
 serious, they create the process and the structures that
 will get everything rolling.

6 **GREGG SMITH:** As I mentioned in the presentation, Georges, there are models out there, and 7 8 we will be reviewing the models that are there -- the 9 Saskatchewan model, the dispute resolution that the Indian 10 Association of Alberta is looking at, resolutions in the 11 United States in terms of dealing with issues. We will 12 be addressing those and looking at those models, but not limiting ourselves. 13

14 We would like to work around those models and pick and choose what might be best for Treaty 7 in 15 16 dealing with those issues. We would be more than happy to share them with the Commission as we develop them. 17 CO-CHAIR GEORGES ERASMUS: 18 In relation to constitutional change in Canada, I believe this area 19 20 was against the Charlottetown Accord. You mentioned that. 21 You recommend that in the future, if there is going to be any constitutional change, Treaty First Nations have 22 23 a clear voice. Perhaps you could think some more about

May 25, 1993

Aboriginal Peoples

1 what that means also.

2 Then you say, with that being provided, 3 then it is possible that constitutional change might occur. 4 Could you tell us what was wrong with what occurred. 5 I presume you have some problems in relation to process, but beyond process what was wrong in substance in the 6 package that was created, and what should be done in the 7 8 future when a constitutional package is being put together? 9 Besides process, what structurally in substance can be 10 put forth that lives with the treaties, lives with the 11 inherent right and so forth?

12 I think, to explain in GREGG SMITH: more detail in reference to the process that is there in 13 14 constitutional reform, the fact that the federal 15 government does not recognize the Treaty relationship with 16 Treaty First Nations, allowing other governments to come 17 into play where they are discussing and moving away from 18 that bilateral relationship which we recognize and 19 allowing the provinces to come in and decide and talk about 20 the future of our people in a treaty relationship. Unless 21 we decide that they come into play, that process is wrong. 22 I point out again the fact that we are 23 all put into one melting pot, and the separate schedules

Aboriginal Peoples

1 in the process are not recognized to deal with treaty issues 2 where the federal government and Treaty First Nations 3 should be sitting down constitutionally and discussing 4 the issues. Based upon Treaty First Nations's own 5 initiatives, it would be up to them to invite the provinces where they are located geographically to be involved in 6 the discussions. Other than that, until that recognition 7 8 is given to Treaty First Nations, I think it has to go 9 that way. The separate schedules of Aboriginal peoples 10 have to be recognized first of all.

May 25, 1993

23

11 **DOROTHY FIRST RIDER:** It is imperative 12 that the Government of Canada recognize Treaty people as 13 such, as First Nations. In order for any constitutional 14 reform to be a success, they are going to have to have 15 representatives from Treaty First Nations to represent 16 themselves.

17 In the past, one of the failures of 18 constitutional reform has been because Treaty First 19 Nations were lumped in with the melting pot theory, and 20 they were being represented by other Aboriginal groups, 21 by other national groups. Treaty First Nations never did 22 have a voice.

CO-CHAIR GEORGES ERASMUS: I understand

May 25, 1993

Aboriginal Peoples

that very clearly. Let's go back to the Charlottetown
 Accord just so we can understand very clearly, and the
 country will understand, what went wrong.

I understand how the process went wrong. I understand that very clearly. Now let's get to the substance of what was being proposed. How was that incorrect?

8 GREGG SMITH: I think the substance of 9 the inherent right to self-government was recognized by 10 Treaty First Nations, but that wasn't the issue for Treaty 11 First Nations. The substance, in relation to inherent 12 right to self-government, was recognized, but not the issue 13 for Treaty First Nations.

14By that, I mean that the Treaty bilateral15relationship was being totally ignored in this16relationship on the inherent right to self-government.17CO-CHAIR GEORGES ERASMUS: Let me see18if I have it right.19One part of the relationship was being

addressed, that part which Treaty First Nations have always said they had, and that is that they have always had the inherent right to self-government. But because it was being addressed without the Treaty relationship of nation

May 25, 1993 Aboriginal Peoples

1 to nation being addressed at the same time, it was not 2 adequate.

3 Is that partly what you are saying?
4 GREGG SMITH: Yes, that is partly what
5 I am saying.

6 DOROTHY FIRST RIDER: It was also the 7 fact that self-government, if it came into play, was going 8 to replace the treaties. Also it was going to limit 9 self-government and the sovereignty of Treaty First 10 Nations, especially in Treaty 7.

11 The Blackfoot linguistic group within 12 Treaty 7 signed an international treaty with the United 13 States of America, which is referred to as the Lamebull 14 Treaty.

15CO-CHAIR GEORGES ERASMUS:The what?16DOROTHY FIRST RIDER:The Lamebull

17 Treaty.

18 If we had basically accepted what was 19 offered in the Charlottetown Accord, it was going to limit 20 our sovereignty. I believe in section 37.2, subsection 21 (2), of the Charlottetown Accord, it specifically stated 22 that we were going to have the ability to negotiate 23 self-government within Canada, and that would have

May 25, 1993

Aboriginal Peoples

1 automatically domesticated our treaties. We still hold 2 to the fact that the treaties are international in scope, 3 and we are not willing to domesticate them. 4 CO-CHAIR GEORGES ERASMUS: Had the 5 treaty relationship been addressed at the same time as the inherent right, would that possibly have done it? 6 7 DOROTHY FIRST RIDER: The spirit and 8 intent of the treaties have to be acknowledged first. 9 If First Nations are willing to go into self-government, 10 it is something they are going to pursue themselves and the form of self-government that is right for them, not 11 12 the kind of self-government that was being introduced by the Government of Canada. 13 14 CO-CHAIR GEORGES ERASMUS: I think I have a far better understanding of it now than I did before. 15 16 Does anybody want to add anything to that? Could you give us copies of this Lamebull Treaty 17 18 that you referred to? DOROTHY FIRST RIDER: We will mail a 19 20 copy to the Commission. 21 CO-CHAIR GEORGES ERASMUS: Thank you. 22 COMMISSIONER VIOLA ROBINSON: First of

23 all, I want to thank you for your very succinct presentation

May 25, 1993

23

Aboriginal Peoples

1 that you have made to us this morning and the video. I 2 think it gives a very clear message of your treaty issue. I just want to go back a bit and pursue 3 4 a little further Georges' questioning dealing with the 5 Constitution..

6 Can you tell me that the constitutional process, as it exists now, requiring First Ministers of 7 8 all provinces to be a part of amending the Constitution, 9 and to amend the Constitution it deals with Aboriginal 10 people

-- do you feel that process is the right way to deal with 11 12 Aboriginal people?

13 GREGG SMITH: I think once the federal 14 government sits down with Treaty First Nations -- and they 15 have that authority through section 91(24) at this present time -- and begins constitutional discussions around 16 Treaty First Nations' issues, then the process could be 17 18 discussed in terms of what Treaty First Nations will do 19 in the existing process with all First Ministers. 20 As I said, all the treaties are different. All the numbered treaties are different in 21 22 nature, and those people representing Treaty First Nations -- it is their privilege, and should be their privilege

May 25, 1993

Aboriginal Peoples

1 and right, to invite whomever they may choose to invite 2 in relation to discussion on their treaty issues. 3 I think the bilateral relationship, in 4 dealing with the federal government first, should be 5 discussed and dealt with in constitutional issues, not just with Indian and Northern Affairs Canada. 6 Our treaties are with Canada. Discussion should be begun 7 8 around that relationship and then the process can be looked 9 at from there. 10 COMMISSIONER VIOLA ROBINSON: So you 11 want to begin your dialogue with the federal government 12 but not necessarily with the Department of Indian Affairs. 13 GREGG SMITH: Exactly. There are too 14 many times that the Department of Indian Affairs assumes 15 total jurisdiction over our treaties, especially when they hand out the \$5 that they talk about. Other than that, 16 when it comes to real treaty discussions, they are pretty 17 18 mıım. 19 COMMISSIONER VIOLA ROBINSON: Who 20 should be your counterpart, then, with the federal 21 government? 22 GREGG SMITH: I think there should be 23 a special Cabinet committee on the federal government side

StenoTran

170

May 25, 1993

Aboriginal Peoples

1 to deal with Treaty First Nations.

2 COMMISSIONER VIOLA ROBINSON: If the 3 government was going to start dealing with Aboriginal 4 people in this country as nations -- and you are a Treaty 5 First Nation and within that you have four or five different nations, Sarcee and all the other nations. If you went 6 across Canada and you looked at nations, you have the 7 Gitksan-Wet'suwet'en out in B.C., you have the Haida who 8 9 don't have treaties but they are nations, you have the 10 different Cree nations and on the east coast you have the 11 Micmac and you have the Maliseet and different nations. 12 Do you think those are the ones that government should be dealing with to talk about a 13 14 constitutional process or an inherent right to 15 self-government? Should they be dealing with those, or 16 should they be doing what they are doing now, dealing with certain national organizations that are really doing all 17 18 the constitutional negotiations at the First Ministers' 19 Conferences?

20 **GREGG SMITH:** I think it adds to the 21 problem when you are dealing with groups of organizations 22 across the country. I think that adds to the problem of 23 the feeling of ownership by First Nations people. If they

May 25, 1993

Aboriginal Peoples

don't feel part of it and have their input into it, it's just another tactic that the federal government likes to see happen in the divide-and-conquer issue that has been happening for years with Treaty First Nations, where you can only give so much to one group -- "Go see that group," like we were told.

7 I will use this as an example, the Royal 8 Commission. We are in the interpretation process in 9 Treaty 7. Indian Affairs said, "We can't fund you to the 10 level that you expected; however, go and see the Royal 11 Commission. They got a lot of money from the federal 12 government. They may be able to help you out." -- which is not the case, the kind of games that are being played 13 14 in relation to that.

We have several examples. On research funding, we are told, "You can't have any research funding. Go and see the Indian Association of Alberta TAR Program; they have all your money." I know how much the TAR Program budget is, and it isn't sufficient to deal with all the issues across the province in specific areas.

This is the point I am making. If the feeling of ownership by First Nations isn't there in dealing with their own issues such as constitutional

May 25, 1993

Aboriginal Peoples

1 reform, their own input into issues surrounding treaty,
2 the trust isn't going to be there even from our own people
3 for other organizations or groups of people to be
4 discussing our issues.

5 COMMISSIONER VIOLA ROBINSON: You said 6 in your presentation that you had a treaty interpretation 7 forum. You were working on it for three years, and then 8 they said there was no more money, so you had to stop.

9 How long do you think it would take to 10 be able to work out the things that you would like to see 11 worked out with respect to that treaty interpretation?

12 **GREGG SMITH:** We were the ones that set 13 the time frame on our process that we are doing. We set 14 the time frame that we would be finished in the spring 15 of 1994. That was our time frame.

16 Indian Affairs' time frame was in 17 relation to the money that supported the process. From 18 Day One it hasn't been to the level of support that we 19 jointly agreed upon, and at this point in time we are still 20 adamant about finishing in the spring of 1994 our process, 21 to whatever tune of money or resources it takes to get 22 it done by March.

23

COMMISSIONER VIOLA ROBINSON: If you

May 25, 1993

Aboriginal Peoples

had that opportunity again, to go back to that treaty interpretation and if you were successful in getting that process going again and you concluded it, would you have achieved something that would move you on to the kinds of thing you would like to see?

6 GREGG SMITH: In dealing with our 7 process, we are hoping to come to some sort of agreement 8 on how we deal with the federal government, an 9 understanding of what our understanding is in relation 10 to Treaty 7 and a process to develop further a relationship 11 on how that treaty is discussed in the future.

As I said earlier, there are different models out there. I know that we can produce to the federal government and all agencies that we can further develop this process. This would be the process with which our people in Treaty 7 feel comfortable.

17 COMMISSIONER VIOLA ROBINSON: I just 18 have one more question. I got a little confused. 19 You said that the devolution to 20 provinces of the federal government's responsibility and 21 a devolution to First Nation governments is not the answer. 22 Could you explain what you meant by that. In a lot of 23 places we have gone, people are saying, "We want to control.

May 25, 1993

23

Aboriginal Peoples

We want the right to control our own affairs and our 1 2 authority. Give us that power. Give us that authority." 3 Did you say that you didn't want the 4 devolution of authority? 5 GREGG SMITH: No, that is not what we 6 are saying. We are saying that the devolution to First Nations of Indian Affairs self-government delegated 7 8 authority Indian nations don't want. That is what we are 9 saying. 10 COMMISSIONER VIOLA ROBINSON: Thank 11 you. I just wanted to make sure I understood. 12 DOROTHY FIRST RIDER: If I could just 13 add on to that, whenever the government basically delegates 14 authority to First Nations, they make every attempt to 15 relinquish their fiduciary responsibilities. That 16 fiduciary responsibility of the federal government is everlasting, as long as the sun shines, et cetera, et 17 18 cetera. So they have to maintain that and not relinquish 19 it. COMMISSIONER VIOLA ROBINSON: 20 So the 21 only way, in your view, is that the Department of Indian 22 Affairs is exercising its fiduciary responsibility through

StenoTran

the Indian Act, and that is not acceptable.

May 25, 1993

Aboriginal Peoples

1 Thank you. 2 CO-CHAIR GEORGES ERASMUS: I have a 3 couple more. 4 Having said what you did about how you 5 don't want the federal government to transfer its fiduciary responsibility, at the same time you are also saying you 6 want them to recognize that you continue to have your own 7 8 inherent right to govern yourselves. 9 Could we talk a bit more about your 10 Treaty 7 Review Process. Did you start by going back and 11 trying to get a proper historical understanding of what 12 actually took place? Is that what you were trying to do first, to get the most definitive understanding of your 13 14 people's view of what took place? 15 DOROTHY FIRST RIDER: Basically, the 16 underlying theme for the whole treaty review process is the understanding of the Elders of the spirit and intent 17 18 in which Treaty No. 7 was signed. To date, the Elders' 19 oral history has been consistent within the three 20 linguistic groups of Treaty 7, the seven First Nations 21 within Treaty No. 7. These oral histories which have been 22 received from these Elders have been compared with Elders'

23 interviews that had taken place in the early sixties,

Aboriginal Peoples

seventies and eighties, and the Elders are still basically 1 2 saying the same thing. 3 At the end of the treaty review process, 4 we are going to determine if there is a common understanding 5 as to the spirit and intent in which Treaty No. 7 was signed. 6 Based upon that, that is going to be presented to the federal government along with recommendations on how to 7 establish, reinforce or determine a new understanding of 8 9 the bilateral relationship with the federal government. 10 CO-CHAIR GEORGES ERASMUS: So the view 11 that the land was being shared and not given up continues to reflect itself. 12 13 DOROTHY FIRST RIDER: It is not a view. 14 It is a belief. CO-CHAIR GEORGES ERASMUS: 15 And the

16 concept that what was being shared was just the surface, 17 whatever land was needed for agricultural purposes, the 18 depth of the plough, is consistent.

19DOROTHY FIRST RIDER: Yes, it has been20consistent all along.

21 **CO-CHAIR GEORGES ERASMUS:** Does that 22 mean, then, that the Treaty 7 nations are considering some 23 kind of process where the land question of your overall

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

territory -- you showed us a map that goes partially into the United States. Are you looking in the end, then, for some kind of process where your historical land rights are somehow taken into accommodation?

5 **GREGG SMITH:** That is being done band 6 by band at this point, tribe by tribe, in relation to their 7 own research activities.

8 In fact, Tribal Council has been working 9 on joint presentations with Treaty 7 First Nations in 10 looking at those issues of the whole traditional

11 territorial aspect in relation to land.

Again, that is being done independentlyby First Nations at this point in time.

14 CO-CHAIR GEORGES ERASMUS: Will vou attempt to come up with a concept on how you will arrive 15 16 at an accommodation with Canada? If you pick up The Globe 17 and Mail today, you will see that there is a large article 18 on the right-hand side of the front page on Nunavut, on 19 the Inuit land rights in the High Arctic and the Eastern 20 Arctic. What they are doing is coming to an accommodation 21 with Canada. They are providing Canada with so much land, 22 and they are retaining so much land, and all the rest of 23 it.

May 25, 1993

21

Aboriginal Peoples

1 Will you be seeking that kind of 2 settlement, something similar, something different? **GREGG SMITH:** There is still some stuff 3 that has to be looked at. There is still some historical 4 stuff that has to be dealt with. 5 6 The whole issue of the Natural Resource Transfer Act in relation to the land and resources has 7 8 to be dealt with. From our perspective, that is still 9 an agenda item that has to be dealt with, in how our 10 resources are being shared with the rest of Canada other 11 than First Nations. That issue has to be dealt with before 12 we can accommodate or even develop an approach with the federal government that is going to work in relation to 13 14 lands. Those issues have to be discussed first. 15 16 Those unfinished business items have to be discussed. 17 CHIEF ROY WHITNEY: Through this 18 process of interpretation, it is designed so that we will 19 be able to create dialogue with the federal government 20 in creating understanding as to what the spirit and intent

really means, as spoken by our old people. 22 How it will look will not be determined

23 by this group of people, the Treaty Interpretation Task

Aboriginal Peoples

1 Force. That will be determined by each First Nation within 2 Treaty 3 No. 7. All we will do is create a vehicle with the federal government for those First Nations to determine what 4 5 inherent right to self-government means to them and what the spirit and intent of treaty is. 6 7 Mrs. First Rider indicated that we must be careful that we don't domesticate the treaties within 8 9 the confinement of Canada. We view them as international documents. In that sense, it is much broader than just 10 11 within Treaty No. 7.

12 So, to answer whether we will establish 13 a relationship with other governments, like the United 14 States of America, because of the Lamebull Treaty, it will 15 be determined by the Blackfoot-speaking tribes.

16 We do want to establish a dialogue with the Government of Canada when this process is finished 17 18 in early spring of 1994, and have as well the Government 19 of Canada begin a dialogue -- and I mean the Government 20 of Canada, not the bureaucratic people of Canada -- with 21 the Treaty First Nations of this area as to the real meaning 22 of the spirit and intent of Treaty No. 7, not a dictionary 23 meaning.

StenoTran

May 25, 1993

Aboriginal Peoples

May 25, 1993

1

CO-CHAIR GEORGES ERASMUS: By the

2 spring of 1994, will you be able to have some idea of what 3 it would mean for Canada if it were to try to live up to 4 the spirit and intent? Will there be some way for them 5 to assess what that actually means?

GREGG SMITH: By election time, we willhave something.

8 CO-CHAIR GEORGES ERASMUS: This fall? 9 DOROTHY FIRST RIDER: We are planning 10 on having a published manuscript in the early part of the 11 spring. I believe the federal government is interested 12 in pursuing an academic debate to basically determine the 13 validity of the research that is included in that

14 manuscript.

15 **CO-CHAIR GEORGES ERASMUS:** What I mean is: If we, as a Commission, are going to be recommending 16 17 to the country that the many hundreds of treaties that 18 exist in Canada, whether they are pre-Confederation or 19 otherwise, that the original spirit and intent needs to 20 be lived up to, that these were solemn promises that should 21 be lived up to, an assessment must be made as to what that 22 means in the real world. What will that mean? What will 23 be different? Will there be costs?

Aboriginal Peoples

May 25, 1993

1 It is obvious that all Treaty First 2 Nations will not be able to do that between now and when we are finished our work. If the work you are doing, and 3 4 other First Nations that are involved in this kind of work 5 -- if you could give us some kind of idea, we would then have at least some examples of what it could mean. It 6 would be very, very useful for us if you could do that. 7 8 **GREGG SMITH:** We will have something to 9 offer.

10 CHIEF ROY WHITNEY: We plan on having 11 that work completed in the spring. But, at the same time, 12 when you speak about what it will cost or what it has cost 13 the Government of Canada, we must look at what it has cost 14 Treaty First Nations. We cannot just look at this as a 15 cost to the Government of Canada. It has cost our people 16 as well.

When we sit down with the Government of Canada, they must be prepared and willing to look at what they have received in return. We are not the only people that have treaty rights. The non-Aboriginal people also have treaty rights. They signed that treaty, and their people have treaty rights in the sense that we agreed to share in the land with them.

Aboriginal Peoples

1 It is an agreement that we have together. 2 They must be willing to sit down and look at their 3 obligations as well as ours. It is not a one-sided venture 4 here. 5 CO-CHAIR GEORGES ERASMUS: No. Ιt 6 would be very, very useful also to show that. 7 One last question: In relation to the 8 Constitution again, there was a fear expressed about 9 treaties being domesticated in the proposed amendments. 10 There is present language in the Canadian Constitution which refers to the treaties. 11 What is the view on that? Is the view that that didn't 12 domesticate the treaties and that the particular language, 13 14 in the way it was put together, in fact didn't harm their 15 contents? When it says "affirm and recognize," it didn't 16 really harm that. If that is the case, was it the specific 17 18 language of the new proposed changes that was possibly 19 going to domesticate the treaties? 20 **GREGG SMITH:** Within the Constitution

of Canada, within the proposed amendments, particularly in the Charlottetown Accord, they are talking about the "within Canada" regime. It is still our belief that

StenoTran

183

May 25, 1993

May 25, 1993

23

Aboriginal Peoples

1 nations sign treaties; treaties didn't make nations. 2 From that perspective, how can we define 3 ourselves within the Constitution of Canada in relation 4 to the whole treaty relationship, the treaty-making 5 process? We can't do it within Canada, within the regime 6 of Canada. We have to ensure that our treaty-making process between nations is understood. 7 8 I believe the Quebec situation is quite 9 similar. Their position is based on a founding nation 10 of this country. We have to look at it from that perspective. This was our land. We are founding members. 11 12 We cannot be looked at within the regime of the Constitution or within Canada, so to speak. We have more 13 14 to lose than Quebec, per se, in relation to the "within 15 the Constitution" context. 16 CO-CHAIR GEORGES ERASMUS: Thank you. 17 MODERATOR REGGIE CROWSHOE: I would 18 like to thank the presenters. We will go to the next presenter, Les Healy. 19 20 Thank you. Good morning. LES HEALY: 21 On behalf of the Blood Tribe, Kainaiwa, we would like to welcome the members of the Royal Commission 22

StenoTran

on Aboriginal Peoples to our traditional territory and

184

May 25, 1993

Aboriginal Peoples

hope you will enjoy your stay here. We also hope that you will leave here with a greater understanding of the issues that are of concern to us and an appreciation of the solutions that we recommend.

5 In our presentation we will attempt to 6 focus on four areas that have been identified in your 7 reports as areas forming the basis of this round of 8 hearings, namely a new relationship, self-determination, 9 self-sufficiency and healing.

10 First we would like to introduce who we
11 are and place our issues in context.

12 Background: Prior to European settlement, Kainaiwa, along with our confederates -- the 13 14 Peigan, Blackfoot, Sarcee and Stoney -- enjoyed exclusive 15 possession of this region for thousands of years. Early 16 explorers described Blackfoot territory as the vast territory between the Saskatchewan River in the north and 17 18 the upper basin of the Missouri in the now State of Montana, 19 bounded on the west by the Rockies and the Cypress Hills 20 to the east. This description roughly approximates what 21 we hold to be our traditional territory.

22 Our origins in this territory and the 23 source of our authority as a nation is best articulated

Aboriginal Peoples

May 25, 1993

12

in the words of our old people who, in their Declaration, 1 2 state: "The Creator put us on this earth all peoples with 3 a unique culture and language to occupy a specific 4 territory of land to fulfill His purpose for Creation. Thus we the members of Kainaiwa ... govern ourselves 5 according to customs given to our people by the Creator." 6 7 European settlement altered the life of 8 the Bloods in fundamental ways, obscured Blood history 9 and denied the validity of our political and land rights. 10 The Canadian government failed to honour the treaties and instead imposed British law over every aspect of our 11

lives, eroding our independence and undermining our authority. The validity of our life systems is under 13 14 constant attack.

15 But the Bloods are a proud and tenacious 16 people and have survived various attempts to assimilate 17 them into Euro-Canadian society and thereby alienate them 18 from their lands and their inherent right to exist as a 19 distinct and politically autonomous people. We are still 20 engaged in the ongoing struggle to preserve for future 21 generations the fundamental values, principles, rights 22 and freedoms that are necessary for Kainaiwa to remain 23 a distinct and unique people.

Aboriginal Peoples

Today the Blood Tribe occupies an area of 540 square miles and has a population of over 7,400 members. The economy is based primarily on agriculture, oil and gas revenue, and small business in basic service areas has recently emerged. However, our economy is largely undeveloped, and the employment rate remains far below the national average.

May 25, 1993

8 Many social problems existing within our 9 communities are symptoms of deeper troubles. They are 10 a response to the trauma of colonization, racism and 11 oppression, the ongoing denial of our fundamental rights 12 and freedoms as a people, as a nation.

A New Relationship: The Blood Tribe 13 14 has, on a number of occasions, presented to Canada its 15 position with regard to the nature of our rights and our 16 relationship with Canada. Today that position, which was advanced in 1983, 1985 and 1987, through the forum of the 17 First Ministers' Conferences on the Constitution, remains 18 19 the same, for it is a position based on the fundamentals of our existence as Bloods/Kainai. 20

The Blood Tribe has always existed as a nation. From time immemorial, we have controlled our lands encompassing thousands of square miles. We have

Aboriginal Peoples

controlled our religious, political, economic and cultural 1 2 destiny. We are the caretakers of this land and of our 3 rights, not for ourselves but for our children and generations into the future. This is a sacred trust given 4 5 to us by the Creator. We have a duty to safeguard this trust against the immediate and perhaps short-sighted 6 interests of political factions, parties, and the federal 7 8 and provincial governments. The land is not ours to exploit; our Aboriginal people and treaty rights are not 9 10 ours to negotiate and limit. They are for our future 11 generations and must be kept intact for them.

12 Our tribal principles, which govern all our actions, are well-articulated in our Elders' 13 14 Declaration, Kainaysinni. This document, in its 15 preamble, is a recording of what the Elders understand 16 to be the purpose of our existence as Kainaiwa. 17 Kainaysinni defines who we are, defines our territory, 18 our governing system, our source of authority and our 19 relationship to the land and our fellow men. Kainaysinni 20 sets out the tribal system and the guiding principles for 21 the protection and preservation of that system. It lays 22 out a very practical quide on what must be done today and 23 in the future to ensure our survival. We must maintain

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 the foundations of our existence, including our land, our 2 language, our culture and our political, economic and 3 social rights.

Our relationship with Canada is based on a treaty relationship and, like our history, we cannot alter that. The Blood Tribe has a historical relationship with Canada, a treaty relationship which is legally binding.

9 The concept of treaty, inaistisinni, is not new to the Blood Tribe. Inaistisinni is an ancient 10 principle of law invoked many times by the Bloods to settle 11 12 conflict, make peace, establish alliances or trade relations with other nations such as the Crow, the Gros 13 14 Ventre, the Sioux and, more recently, the Americans in 15 1855 and the British in 1877. Inaistisinni is a key aspect 16 of immemorial law, which served to forge relationships with other nations. Inaistisinni is a sacred covenant, 17 18 a solemn agreement, that is truly the highest form of 19 agreement, binding for the lifetime of the parties. So 20 solemn is a treaty that it centres around one of our most 21 sacred ceremonies and symbols, the Pipe. 22 Our participation in Treaty 7 in 1877

23 was based on our understanding of inaistisinni.

May 25, 1993

Aboriginal Peoples

Consequently, our expectations of the treaty are that it is a solemn and binding undertaking, existing in perpetuity. We note that we have fulfilled our part of the treaty but, unfortunately, Canada's record does not hold up as well.

6 Political and Land Rights: The Blood 7 Tribe has an inherent right to govern itself according 8 to its own customs, laws and through its own institutions. 9 It has jurisdictional authority over its lands, resources 10 and its members. This status was recognized and affirmed by the Royal Proclamation of 1763; Treaty 7 in 1877; the 11 12 Lamebull Treaty in 1855; and in sections 35 and 25 of the Constitution Act, 1982. No legislative enactment or legal 13 14 fiction can alter that fact.

15 By treaty the Bloods agreed to share 16 their lands with the British crown, except for specifically reserved areas for exclusive Blood use. The treaty 17 18 created a unique relationship between the Bloods and the 19 crown, modifying only one aspect of our rights -- the right 20 to exclusive use of the land. We retain the same legal 21 and political status as we did when we entered the treaties. Our Elders have stated that it is inconceivable that the 22 23 Bloods could have alienated themselves from the land, from

Aboriginal Peoples

May 25, 1993

their sacred obligation as caretakers of the land, or 1 2 relinquished their responsibility for the polity of 3 Kainaiwa and jeopardized future generations of Bloods. 4 Recent judicial decisions of the Supreme 5 Court of Canada held that Indian treaties (Sioui, 1990) are to be afforded a liberal interpretation and 6 uncertainties resolved in favour of the Indians, that they 7 be construed in the sense which would have been understood 8 9 by the Indians and not according to the technical meaning 10 of their words. We are confident that in many key sectors of Canadian society the will is there to deal justly and 11 12 in good faith with the First Nations.

A Future With Canada: It is from the standpoint of the treaty relationship that we must proceed if we are ever to settle the matter of the Bloods in Canada. We must come to an understanding of the true nature of our relationship and then determine how we are going to carry it out within the present-day context.

19 The Blood Tribe views section 91(24) of 20 the Constitution Act, 1867 as constitutional recognition 21 of our bilateral relationship with the crown. This simply 22 gives the federal government the right to deal with the 23 First Nations, to the exclusion of the province. We

Aboriginal Peoples

maintain the position that we will not negotiate the definition of our rights, or of our participation in Canadian federalism with the provinces. Any conflict between the provincial and the First Nations' positions must be resolved by the federal government. We do not agree with the provinces' participation in constitutional amendments concerning our rights.

May 25, 1993

The Blood Tribe viewed the First 8 9 Ministers' Conferences on Aboriginal Rights as being an unacceptable forum for the entrenchment of our sacred 10 11 rights in the Canadian Constitution. This process 12 resulted in failure due to the lack of political will on the part of the First Ministers of Canada. Meech Lake, 13 14 too, failed because it refused to understand that Canada 15 cannot forge ahead without taking proper recognition of 16 its true relationship with the First Nations.

Most recently we were not able to accept the Charlottetown Accord. Our primary concerns with this proposal were that it would alter the existing treaty relationship in a substantive way and, second, that the process for obtaining First Nation participation did not extend to us as a Treaty First Nation. We were not represented by any national organization.

May 25, 1993

Aboriginal Peoples

1 Any discussion with the federal 2 government concerning our future relationship cannot focus 3 on the identification and definition of our rights and 4 of constitutional amendments to stipulate those rights 5 until we have come to a common understanding of our true relationship based on the treaty and on our Aboriginal 6 rights. Such a serious matter requires true commitment 7 8 from the Government of Canada. It requires a special and innovative process with the capacity and willingness to 9 10 address our fundamental rights and freedoms; to understand 11 the nature of the Canada-Blood relationship; and, 12 subsequently, to determine how that relationship will be carried out today. 13

14 Currently we are participants in a 15 Treaty Review Process in co-operation with the other First 16 Nation signatories to Treaty 7. This review is, in part, funded by the Department of Indian Affairs. Our primary 17 18 concern with this review is that it must have the capacity 19 to deal with the substantive issue of the treaty 20 relationship and not merely be an exercise aimed at 21 defining specific treaty rights with the intent of limiting 22 them.

23 While we are in this process of a treaty

May 25, 1993

Aboriginal Peoples

1 review, there are occurring simultaneously

2 federally-initiated legislative proposals which threaten 3 to alter the treaty relationship and limit our political 4 and land rights in a fundamental way.

5 We take this to be an act of bad faith 6 on the part of the federal government as a representative of the British crown. Proposed legislation which gives 7 us cause for concern is the First Nations Chartered Lands 8 9 Act which was intended to go before the House of Commons 10 in May 1993, seeking all-party support to expedite it 11 through before the end of this parliamentary session. 12 Companion legislation to the Chartered Lands Act is apparently currently being drafted for a First Nations 13 14 Lands Management Act, as well as similar initiatives in 15 self-government, forestry and resources, finance and 16 taxation.

Not only do these initiatives threaten the nature of the bilateral relationship between the Bloods and Canada, but they exhibit a blatant disregard for the validity of the treaty relationship and our political and land rights which the treaty recognizes.

The Supreme Court of Canada has held in Sparrow, 1990 that the federal government does not have

May 25, 1993

Aboriginal Peoples

the capacity to define or limit Aboriginal rights through regulation. Policy-makers and legislators must take notice of case law and, as the trustee of First Nations, Canada should ensure that legislation and policy affecting First Nations is in line with the spirit and intent of the law.

7 Self-Determination: Rights of 8 self-determination and the obligatory nature of treaties 9 are principles of international law which, in and of 10 themselves, apply to the Bloods. However, in many 11 instances, interpretations of the international law, 12 particularly as it applied to First Nations, are eurocentric and self-serving. Interpretations tend to 13 14 justify previous actions in an attempt to alter the true 15 nature of the treaty relationship and limit the level of 16 obligations incumbent upon the particular national 17 government.

18 The Blood Tribe's right to 19 self-determination and its political rights is an inherent 20 right that can find support and protection in international 21 law and covenants and should be implemented as a 22 requirement under the human rights international 23 agreements that Canada has endorsed.

Aboriginal Peoples

1 Recent proposals in the form of 2 constitutional amendments and legislative initiatives 3 appear to be coming from a conservative mind set which 4 perceives any rights that Aboriginal people may have as 5 existing at the goodwill of the Canadian government and subsequently can be defined and limited in ways that would 6 minimize the obligations of Canada and maintain the status 7 8 quo.

9 We cannot support any proposals that 10 come from that perspective. What we need is a fresh and 11 innovative approach that will be willing to examine 12 fundamental issues and arrive at a mutual understanding 13 of what the relationship is and how it can be operative 14 today.

15 Such a process must go beyond the 16 existing national frames of reference and look to 17 international developments with respect to human rights, 18 indigenous people's rights and the principles of 19 self-determination, and to international covenants such 20 as the International Covenants on Human Rights, the 21 International Convention on the Elimination of All Forms of Racial Discrimination, and the Helsinki Act. This is 22 an area that Canada can take a lead role in and realize 23

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

its commitment to human rights and world development. 1 2 If mere self-determination is the form 3 of long-term resolution that is envisioned for us, then 4 we foresee little chance for improvement in the future. 5 We see our status as unique and distinct people being eroded, and we cannot support that. 6 7 Self-Sufficiency: True 8 self-sufficiency for First Nations can only take place 9 in an environment that recognizes our true legal, political 10 and land rights and respects our choices. 11 We must be free to develop the economy 12 and to do so in a way that does not jeopardize our land, our treaty relationship, our fiduciary relationship and 13 14 our inherent jurisdiction in the social, economic and 15 political spheres. The development of our economy must 16 preserve, complement and draw on the strengths of key aspects of our community, including the principles, 17 18 values, customs and institutions which are the basis of 19 our society. 20 We do not see such initiatives as the 21 proposed Chartered Lands Act and the First Nations Land 22 Management Act and other proposed companion legislation

23 in taxation, finance, forestry and resources, and

May 25, 1993

Aboriginal Peoples

self-government as being reflective of the type of 1 2 environment that we envision. They are, in fact, in total 3 contradiction to our needs, principles and interests. 4 While such initiatives purport to be 5 aimed at lifting restrictions of the Indian Act which impede the development of the economy, they instead 6 undermine the nature and status of the treaty relationship, 7 8 threaten communal land rights and devolve the fiduciary 9 responsibility.

10 The process for representation and 11 consultation is arbitrary and unrepresentative. 12 Opponents of these initiatives are not acknowledged or provided with adequate means for input. The so-called 13 consultation that occurs is not a true consultation 14 15 process. While the First Nations involved in these 16 initiatives are no doubt confident that these will provide 17 solutions to problems they encounter, they fail to realize 18 the proposals will do long-term damage. They jeopardize 19 the treaty relationship, the fiduciary is affected, and 20 efforts to seek solutions of the fundamental political 21 and legal issues is compromised.

22 Canada must recognize and respect the 23 fact that each First Nation has the right to represent

May 25, 1993

Aboriginal Peoples

itself and protect its interests and its rights. Canada 1 2 cannot demand that we be represented by regional and 3 national bodies to meet its own needs for expediency. 4 While the First Nations Chartered Lands 5 states that it is optional, there are no guarantees for First Nation members that their communal rights to lands 6 will be recognized, preserved and protected. Third-party 7 8 interests are represented and provided for. The reference 9 to a recognition of inherent rights is, at best, a confusion 10 of terms. The rights to develop a land charter would be delegated or subject to Parliament and pursuant to the 11 First Nations Chartered Lands, a federal statute. There 12 is no exercise of First Nation inherent authority in this 13 14 proposed new land management regime.

15 The FNCL, the proposed First Nations 16 Land Management Act, and the other proposals on taxation, 17 finance, forestry and resources and self-government must 18 be seen for what they are -- part of the federal 19 government's continual efforts to devolve its fiduciary 20 responsibility to First Nation governments and the 21 liability in these matters. 22 There is a tremendous amount of funds

23 that have gone into the work to develop the FNCL and, no

Aboriginal Peoples

1 doubt, more to the other proposals that are being 2 There is also a sizable amount of funds going developed. 3 to the development of the FNCL administrative structure, 4 the Board, the Appeal Tribunal, and the administration 5 of First Nations Lands programs under this new regime, while funds have steadily been decreasing in the land 6 management programs currently being administered under 7 8 the Indian Act. Perhaps this is part of the scheme to 9 entice First Nations to opt for the new land management 10 These funds could well become the basis of a fund regime. that can be utilized by First Nations to obtain grants 11 12 and loans to develop their economy, utilizing the trust that would circumvent the restriction of First Nations 13 14 using standard lending agencies.

15 Before we speak of healing or rebuilding 16 the communities throughout Indian country honestly, we 17 have to be prepared to deal sincerely and openly with the 18 fundamental issues of the relationship between Canada and the First Nations. As a Treaty First Nation, we feel that 19 20 the most important area to be resolved is the treaty 21 relationship. At this time we do not feel confident that 22 the federal treaty review process in place has the capacity 23 to deal with the main issue of the nature and status of

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

our relationship with Canada. Until the outstanding grievances are examined and resolved in a satisfactory and meaningful manner, the myriad problems in the communities cannot be effectively dealt with.

5 Recommendations: The following is a 6 number of recommendations we would like to put forward 7 in relation to some of the concerns we have identified. 8 First, there must be a mechanism or some

9 forum put in place by mutual agreement of the parties 10 involved, with the competence to deal with the treaty 11 relationship. This mechanism should be monitored by an 12 independent and competent agency devoid of political or 13 corporate interests.

14 The federal government must recognize 15 and respect the right of each and every First Nation to 16 speak for itself and represent its members and their rights 17 and interests.

There should be a general review and evaluation of the methods and mechanisms of consultation and the development of federal initiatives, policy and legislation with the intent of putting in place a fair and legitimate means of consultation and seeking ratification.

May 25, 1993

Aboriginal Peoples

1 There should be a process established 2 that would examine ways to improve the implementation of 3 the standards that have been set by the courts with respect 4 to the nature and exercise of the fiduciary responsibility 5 and the protection of Aboriginal and treaty rights. 6 There must be procedures developed to oversee respect for Aboriginal rights and treaties and 7 a mechanism to address complaints of failure to adhere 8 9 by federal departments, bureaucrats, and the various 10 levels of Canadian government. There should be 11 independent experts to discuss compliance and recommend 12 improvements. Developmental initiatives in programs 13 14 or in policy or legislation must be cognizant of or review first the link with economic, social, cultural and 15 political rights of First Nations. 16 There must be sincere effort made to 17 18 examine ways to ensure that adequate financial and other 19 resources are made available for comprehensive community 20 development. Such development must be designed to suit 21 our context, occur at our own pace and on our own community 22 initiative. 23 Health, education, literacy, elders and

May 25, 1993

Aboriginal Peoples

youth should receive priority in community development
 initiatives.

3 In closing, Mr. Chairman, at yesterday's 4 meeting of the Treaty 7 Elders prior to coming to this 5 forum, I have been reminded by them to make a point to the Commission with respect to recommendations being heard 6 today. As they have read in various papers throughout 7 8 the hearings in Rounds 1 and 2, they noted the fact that these recommendations, I suppose, are going to be dealt 9 with at the end of your rounds of discussions with various 10 Native organizations throughout the country. I assume 11 12 they will be waiting for these.

Their concern, Mr. Chairman, is that the recommendations be dealt with as quickly as possible and in a meaningful way so that they can see some fruit being born from this particular hearing.

17 Thank you very much, Mr. Chairman.

18 **MODERATOR REGGIE CROWSHOE**: Thank you, 19 Les. At this we will take a short break. When we come 20 back, there might be some further discussion from the 21 Panel.

- 22 --- Short Recess at 11:25 a.m.
- 23 --- Upon resuming at 11:45 a.m.

May 25, 1993

Aboriginal Peoples

1 MODERATOR REGGIE CROWSHOE: We will be 2 starting with a bit of discussion with Les. Then we will 3 be going to Marie Marule, and then Chief Leonard Bastien. 4 CO-CHAIR GEORGES ERASMUS: I would like 5 to thank Les for the presentation he made. It was very 6 good. 7 I would just like a bit of clarification in relation to some of the points that were made here in 8 9 the recommendations. 10 You recommended that a mechanism be 11 found by mutual agreement of the parties to deal with the 12 treaty relationship. As I said to the representatives of the Treaty 7 area, which encompasses the Blood, would 13 14 it be possible to have more ideas in that area? For us 15 to simply recommend this after the amount of money we are going to spend and the amount of travel we are going to 16 do, tens of millions of dollars in travelling across the 17 18 country, just to recommend to them that somebody else come 19 up with a mechanism that is agreeable is going to seem 20 fairly inadequate. I suspect that First Nations 21 themselves will be telling us that it is very inadequate. 22 I am not expecting you to provide it now, 23 but if you could just spend some time thinking about it

May 25, 1993

Aboriginal Peoples

and give us some thoughts, even if it means that we provide perhaps more than one model so that there are numerous models that could speed up what people actually accept in the end.

5 Also, could you tell us a bit more about this mechanism to monitor, some kind of agency or 6 institution that is independent and is competent and devoid 7 8 of political or corporate interests. Is that something 9 different from a Treaty Commission Office? What is that? 10 LES HEALY: Mr. Erasmus, as you are 11 suggesting that we come back at a later date with some 12 development of this agreement, we are at the moment working very closely with the members of Treaty 7 bands to deal 13 14 with this specific issue. At the moment I would probably 15 want to put this particular question on hold until we deal 16 with those others tribes involved with us. 17 MODERATOR REGGIE CROWSHOE: I would 18 like to thank Les for his presentation. 19 CO-CHAIR GEORGES ERASMUS: Thank you, 20 Les. 21 MODERATOR REGGIE CROWSHOE: The next 22 presentation is from Marie Marule. 23 MARIE MARULE, Red Crow Community

May 25, 1993 Aboriginal Peoples

College: Madam Commissioner and Georges, Chair of the
 Commission, I welcome you to southern Alberta and welcome
 this opportunity to address your Commission.

4 I understood from your staff persons 5 that this was to be a verbal presentation. We will be submitting a detailed brief to your Commission, detailing 6 the areas which I will highlight in this presentation. 7 8 My topic addresses the issues related 9 to the post-secondary student support program that was 10 developed by the Department of Indian and Northern Affairs 11 Canada and is presently being devolved to First Nations

12 governments.

The issues concerning this specific program area touch upon Aboriginal and treaty rights, self-government issues and issues related to the bilateral relations between the federal government and First Nations and between the federal government and provincial governments.

19 This specific program issue in its 20 present state demonstrates all the problems with 21 devolution and issues of self-determination of First 22 Nations, issues of self-government of First Nations. 23 In the area of administration of this

May 25, 1993

Aboriginal Peoples

1 program, assurances were given to the Blood Tribe Chief 2 and Council, when they were asked to manage this program 3 for the Department of Indian and Northern Affairs, that 4 they could establish their own guidelines and that funding 5 would be based upon need and that there would be training support for the program as well as funding for the program 6 support staff and administration of the program. But it 7 soon became clear that this was not the case. 8

9 The Blood Tribe Chief and Council

10 delegated the Blood Tribe Education Board to be responsible 11 for this program. In turn, the Blood Tribe Education Board 12 mandated Red Crow Community College to do the day-to-day 13 management of this program.

14 I am President of Red Crow Community 15 College. My Indian name is Iskwigimoksaki(PH). My 16 Canadian identification is as Marie Small Face Marule. 17 The issues of concern with this program 18 are accentuated by the unilateral decision of the Minister 19 of Indian Affairs to cap the funding for this program in the fall of 1991, but the issues related to the deficiencies 20 21 of this program precede that decision.

Red Crow Community College and the BloodTribe Ed Board right now are shouldering the

Aboriginal Peoples

responsibilities for the administrative costs of this 1 2 We have received no funding for the office program. 3 accommodations for this program; we have no operating and 4 maintenance funding for this program. It has been, as 5 a result of the capping, under-funded, and we now have 6 a deficit of close to half a million dollars, which burden is upon the Blood Tribe Education Board and Red Crow 7 8 Community College.

May 25, 1993

9 We are being informed by the Minister 10 that, because their program dollars have increased by 10 per cent over the last couple of years, this program is 11 12 adequately funded. It ignores the fact that, with the present situation of unemployment and recession in this 13 14 country, the demands upon this program have increased 15 significantly. To emphasize this, I mention that in the 16 past two years this program has seen an increase in applications for college level certificate and diploma 17 18 programs by an average of 60 per cent. It was 55 per cent 19 in 1991-92 and it was 63 per cent in 1992-93, and that 20 is the college certificate and diploma area. 21 At the post-secondary level, at the

22 university level, the increase in 1991-92 was 38 per cent 23 and in 1992-93 37 per cent. That is added on in terms of

May 25, 1993

Aboriginal Peoples

1 the increase of those going to post-graduate studies.

The average increase in terms of the number of students we actually funded in 1991-92 was 37 per cent; in 1992-93, 25 per cent.

5 This represented for us initially a potential accumulated deficit of \$882,000 by March 31, 6 1993. This crisis was communicated to the Minister, his 7 8 regional program staff and Director-General, and we 9 received absolutely no response to the indication that 10 this crisis had developed because of the capping of the post-secondary students support program, despite 11 12 assurances that there would be adjustments to budgets that had been under-estimated by the department. 13

Aggravating the situation is the lack 14 15 of clarity of the program's future. Rumours abound that 16 the department intends to phase out funding to this program totally by 1995-96. These are compounded by the main 17 18 estimates presented by the Department of Indian Affairs 19 to Parliament this year, indicating that they were going 20 to reduce the budget for this program by 45 per cent over 21 the next four years -- 45 per cent.

This does not allow for the proper kind of planning to deal with this kind of deficit financing

May 25, 1993

Aboriginal Peoples

and to make appropriate credit arrangements and, most of all, it totally undermines the treaty obligations of the government and our treaty rights. It puts our program staff in a position of conflict of interest, where they are being forced to deny a treaty right to eligible post-secondary students.

7 The nature of the transfer of management 8 to the Blood Tribe involved a Band Council Resolution where 9 the Blood Tribe Chief and Council agreed to take over 10 management of this program if it did not affect treaty 11 rights and it was adequately financed. So that is in 12 breach of that contract and understanding of the management 13 of that program.

14 It also raises the issue of breach of 15 trust responsibilities for treaty Indians.

16 It points to the recommendations that 17 proper mechanisms have to be in place for the decisions 18 about self-government and the management of our own 19 programs, especially in education.

The additional problem with this was the inadequate preparation of First Nations government for the management of such programs. Upon assumption of management of this program, Red Crow Community College

May 25, 1993

Aboriginal Peoples

did not receive any of the files that were under the 1 2 management of the department, of any students. We were 3 not provided with any statistics of preceding years to 4 indicate the growth of this program over the past 10 years. 5 In fact, there was no evidence of any research base or 6 systematic planning for the program. There was no strategic planning, no short-term or long-term planning 7 8 provided. And there were no provisions within the program 9 funding for such planning and statistical data base 10 preparation.

Without these, there is no way of indicating what the trends are over a period of time to help in terms of planning the use of resources and planning for personnel development and growth.

There is evidence in terms of the 15 16 devolution of this program that there was no equatability in the resourcing of the First Nations to that which INAC 17 18 had received for the same program delivery. This is an 19 area in which we believe the Royal Commission could be 20 very useful in terms of researching the non-equatability 21 of this kind of program and service for First Nations compared to that which the government itself had provided 22 23 to them and in comparison to that provided to other

May 25, 1993

Aboriginal Peoples

Canadians who transfer payments and other government
 obligations to post-secondary education.

There is, in fact, evidence that non-Indian students have received far greater benefits through the forgivable loan portions in previous years of student loans than any First Nations student ever received under this so-called treaty right.

8 What is of great concern as well is the 9 recent statistics provided by the Assembly of First Nations 10 which indicate that in the past 10 years the First Nations 11 population has increased by 60 per cent and that the 12 population of First Nations over the age of 19 has increased 13 by 80 per cent. Consequently, the pressure upon a program 14 such as the post-secondary students support program.

Despite the increase in demand upon this program, national statistics by StatsCanada and Secretary of State through its research on the higher education status in Canada indicate that less than 2 per cent of First Nations people receive post-secondary education, compared to 10 per cent among the Canadian population in general.

22 The present cutbacks to post-secondary 23 education right across the board by provincial

Aboriginal Peoples

governments, resulting in downsizing of post-secondary institutions, mean lack of access to post-secondary education for many of the socially disadvantaged in this country, particularly First Nations persons. The increases in tuition costs, estimated at 15 per cent this fiscal year alone, mean a reduction in the number of students that can be supported.

May 25, 1993

This kind of information, this kind of 8 9 research, for planning purposes is not provided for and 10 has not been recognized in decisions concerning the 11 allocation of scarce resources by the Department of Indian 12 and Northern Affairs. Instead, they increased the budget 13 for social assistance programs. They increased the number 14 of participants who are now welfare recipients. The cost 15 of that is even higher than supporting them under the 16 post-secondary students support program. In other words, the response of government has been a negative one rather 17 18 than a positive one to the development of First Nations 19 communities and providing the kind of hope and dignity 20 to our people that this program represents.

It should be recognized that it has not represented a savings to this government. The capping of this program meant that those persons who were eligible

StenoTran

213

May 25, 1993

Aboriginal Peoples

for the post-secondary students support program and we had to defer went on welfare. To avoid deferring any this January, we went to the Social Development Department of our reserve and had the moneys transferred for those persons who were eligible for post-secondary, who would otherwise have to go on welfare.

So what was the point of the capping?
It was to undermine the treaty right and it was, in fact,
to transfer financial burden of this program to the
provincial governments.

11 This raises the issue of the attempt to 12 limit treaty rights to the boundary of the reservations 13 so that, when our post-secondary students leave the reserve 14 to seek university training in Lethbridge or Calgary, they 15 are now treated as non-residents of the reserve. If they 16 intend to switch to what they call SARS, Social Assistance 17 Recipient Service, they must come under provincial social 18 assistance, not under the Blood Tribe Department of Social 19 Development. That, to me, is a means of again transferring 20 costs to the provincial government. Otherwise, they must 21 apply for student loans, again under the provincial government's financial means. 22

23 The program was supposed to allow for

May 25, 1993

Aboriginal Peoples

program support. When the Department of Indian Affairs managed it, you could be certain that the program support dollars were at least 20 per cent, if not higher, of the total program costs. We are operating and providing student support for this program for less than 4 per cent of the total program budget.

7 We have three counsellors who are to give 8 support services to 615 students. They are given a program 9 budget of \$23,000 a year. That is supposed to allow them 10 to travel to and from Lethbridge to counsel students at 11 Lethbridge Community College, at the University of 12 Lethbridge, at Mount Royal College and the University of Alberta, and we have students as far away as California 13 14 doing their Ph.Ds and Master's at McGill and Ottawa 15 University. For that amount of dollars they are supposed to cover their telephone costs, the cost of a financial 16 clerk, all their photocopying, and any other supply costs 17 18 they have for the program. 19 CO-CHAIR GEORGES ERASMUS: Did you say

20 20 per cent was spent by DIAND and then how much -- 3 per 21 cent?

22 MARIE MARULE: Less than 4 per cent.
23 Within this there is no provision for

May 25, 1993

Aboriginal Peoples

personnel development, and the person-year dollars per 1 2 counsellor is \$40,000 a year. We have persons with 15 3 years' experience and a degree in social work who are 4 supposed to get payment out of that person-year dollar. 5 That represents the lack of any kind of 6 negotiations concerning the transfer of these kinds of program and their delivery to First Nations -- no realistic 7 8 appraisal of what the costs are to First Nations. 9 The other area that is completely 10 ignored in education as presently delivered by Indian and Northern Affairs Canada is the area of adult education. 11 12 If you look at the statistics provided by StatsCanada, a significant proportion of the Canadian First Nations 13 14 populations have less than Grade 9 education. If you look 15 at the drop-out rates of our high school students, you 16 will recognize that adult education becomes an extremely 17 important part of education in any reserve community. 18 Yet, there is no systematic provision for this area where 19 literacy basic skills or upgrading are provided or needed. 20 These are all provided through the 21 limited amounts of moneys available through the Canadian Job Strategies Programs, through Pathways or Community 22 23 These are on a year-to-year basis and are far Futures.

May 25, 1993

15

Aboriginal Peoples

1 inadequate to the demands upon them.

2 In addition, there is no provision in 3 any of these programs for special needs at the adult and 4 post-secondary education level, for persons with hearing 5 deficiencies, paralysis of various sorts, et cetera. This year our program funds had to be expended to provide a 6 voice activator for a computer for a student. 7

In addition, there are insufficient 8 9 funds to provide for any tutoring that is required, special 10 transportation needs of students. There is no provision in this program for subsidizing child care costs, despite 11 12 the fact that 60 per cent of the students being provided for under this program presently are single-parent women 13 14 with at least 2.5 dependents.

Also in this whole area of 16 post-secondary and adult education is the fact that there is discrimination in the resourcing of tribally-controlled 17 18 First Nations colleges such as Red Crow Community College. 19 You find by unilateral decision one college in all of 20 Canada receives adequate funding, and colleges like Red 21 Crow Community College do not have anything representing the kind of equitable funding that is provided elsewhere, 22 23 certainly not in any way comparable to that provided by

May 25, 1993

Aboriginal Peoples

the U.S. government through its legislative provisions 1 2 for the federal Indian-controlled colleges. 3 With the emphasis on appropriate adult 4 education for First Nations people and the issue looming 5 ahead of accessibility to university and college programs, our First Nations colleges become more critical to the 6 economic and social development of our communities. 7 We have to endorse all the 8 9 recommendations that were presented by our Tribe 10 representative and the Treaty 7 First Nations 11 representative at this hearing. We would like to have 12 the issue of the right to education as an Aboriginal and treaty right reviewed by the Royal Commission. We would 13 14 like to have it, if necessary, have some kind of forum, 15 be it the Claims Commission forum, address this 16 responsibility as a trust responsibility and a legal obligation of the federal government of Canada. 17 18 The actual details of the program should be negotiable in terms that are equitable to First Nations 19 20 people. In this respect, we had established through the 21 First Nations Treaty 7 Chief and Council an education steering committee for Treaty 7, which has worked with 22 23 the Ed Boards of our various bands and with our

May 25, 1993

Aboriginal Peoples

post-secondary support programs. We had developed a process by which we would do the appropriate research for planning and negotiating with the federal government some kind of educational transfer and resourcing for Treaty 7 areas.

6 We were denied any support for this 7 process and, again, in a discriminatory fashion as similar 8 arrangements had already been made with Manitoba, Quebec 9 and Nova Scotia. These are what they are calling framework 10 agreements.

11 There really is a need for the Commission 12 to research the discrimination between the resourcing of First Nations and provincial governments in all areas 13 14 related to post-secondary education, including the 15 provision of capital dollars for the needs in that area 16 and, certainly to look at the discrimination between those programs administered by First Nations and those 17 18 administered by INAC and, most of all, to look at the 19 discrimination that is imposed upon First Nations versus 20 those under Bill C-31.

At this point INAC is attempting to force First Nations government to take over management of that program for Bill C-31 status Indians. We see that as

May 25, 1993

Aboriginal Peoples

perpetuating dissension within the communities as they downsize the programs and limit access to the program. We believe it is extremely important that the Royal Commission address the issue as to whether treaty rights only exist within the boundaries of the reserve or should extend beyond the reserve to wherever a treaty or Aboriginal person is.

8 More important, for the sake of those 9 First Nations persons who are forced for one reason or 10 another, particularly for education, to leave the 11 reservations, their residence should be treated and deemed 12 as being on the reserve. For other First Nations who 13 prefer to reside off-reserve, let them have the right of 14 where their domicile and residence should be deemed.

15 Lastly, there are general concerns that 16 should be addressed. As you may be aware, in 1989 the 17 Standing Committee on the Department of Indian and Northern 18 Affairs did a review of the post-secondary students support 19 program and brought forward specific recommendations to 20 the government. From our examination of the record of 21 the government since then, these recommendations have been 22 totally ignored. I believe it is, therefore, appropriate 23 for this Royal Commission to look at the implications of

May 25, 1993

Aboriginal Peoples

this disregard for a parliamentary committee's policy 1 2 directives for the democracy in this country and its 3 implications for the accountability of federal civil 4 servants to Parliament and First Nations who are the 5 beneficiaries of the trust they are supposed to be 6 administering. 7 Thank you. 8 CO-CHAIR GEORGES ERASMUS: Thank you. 9 In relation to research and treaty, we definitely are 10 doing the research on treaty rights, which will be beyond 11 the reserve level. 12 Could you tell me a bit more about the funding in the United States which you were saying is 13 14 provided to First Nations post-secondary institutions

15 there, that it is more adequate than what is happening 16 here in Canada.

17 MARIE MARULE: As a recognition of the 18 trust responsibility for education, the U.S. government 19 legislated and established appropriations to 20 tribally-controlled Indian colleges in the United States, 21 of which there are presently a minimum of 26. They provide 22 resourcing to these colleges through several different 23 appropriations which deal with capital costs, which deal

May 25, 1993

Aboriginal Peoples

with full-time-student costs, and which deal with funding 1 2 of the students directly, as well as some special 3 appropriations for particular kinds of institutional 4 requirements. For instance, they have a special fund to 5 assist tribal colleges to establish more adequate 6 libraries. 7 A lot of details can be provided to you by the American Indian Higher Education Consortium, the 8 9 address of which I can provide in my brief. 10 CO-CHAIR GEORGES ERASMUS: Thank you. 11 MARIE MARULE: I might mention one 12 There was a concern raised that there was further thing. 13 discrimination by the bureaucrats and perhaps the Minister 14 in favour of programs managed by First Nations under former 15 Indian Affairs officials and in areas where they have particular support for their government. 16 In other words, there seems to be an indication of some patronage within 17 18 the management of the allocation of funds for 19 post-secondary education. 20 I think it would be appropriate for the 21 Royal Commission to address that concern. 22 CO-CHAIR GEORGES ERASMUS: Thank you. 23 MODERATOR REGGIE CROWSHOE: Thank you.

	Royal Commission on
	May 25, 1993 Aboriginal Peoples
1	I would like to go the next presenter. We are pressed
2	for time. We have Leonard Bastien from the Peigan Nation.
3	He is accompanied by Rod North Peigan and Edwin Yellow
4	Horn.
5	CHIEF LEONARD BASTIEN, Peigan Indian
6	Band: Thank you, Mr. Chairman.
7	First of all, I will begin with a short
8	prayer in my own tongue, just following the advice of the
9	Elders and respecting their wishes to carry on with
10	traditions.
11	(Native language - not translated)
12	First of all, I want to express my
13	appreciation for the opportunity to address the Royal
14	Commission on some of the issues that face the Peigan
15	people. This morning we are primarily here to present
16	our water rights case, our water rights issue, that has
17	been ongoing for some time.
18	With that, the submission that is before
19	you focuses on the issue of water rights because of our
20	unique history involving the Oldman River. It sets out
21	in detail for your information, to go through and act on
22	our behalf, and we have provided recommendations for you
23	to take to the Government of Canada.

May 25, 1993

Aboriginal Peoples

I will read through the Introduction
 because the Introduction captures, in essence, a summary
 of the submission as it is.

This submission is presented to the 4 5 Royal Commission by the Peigan Nation. We address the Royal Commission on the issue of water rights because of 6 our unique history involving the Oldman River. We present 7 our experience in the hopes that the Royal Commission will 8 9 make recommendations to prevent governments from treating 10 other First Nations as our people have been treated and 11 to achieve a just resolution of water issues for our 12 children alive today and those not yet born.

Our history involving water arises out 13 14 of these facts. The Oldman River has always been an 15 important part of Peigan history, legend, spiritual 16 practices and sustenance. It is not surprising that the land which has been set aside as reserve land for the Peigan 17 18 is located on the Oldman River. However, shortly after 19 the reserve was established by the crown, the Oldman River was targeted by the provincial and federal governments 20 21 as a source of wealth for the non-Aboriginal residents 22 of southern Alberta. Our reserve land was likewise 23 targeted as being strategically located to place headworks

May 25, 1993

Aboriginal Peoples

to control the flow of the Oldman River to deliver water
 to non-Aboriginal peoples.

3 The governments have proceeded to 4 expropriate our reserved land and appropriate the waters 5 needed by the Peigan without our consent and despite our objections. They have recently constructed a dam over 6 our objections which will irreparably destroy our fishery 7 8 and change the sacred valley bottom where our medicines 9 and cottonwood trees now grow. We, the Peigan, are left 10 the poorest people in our territory, facing expensive 11 litigation as the only remaining avenue to achieve our 12 proper share of the water now being assigned to third parties who live farther and farther away. We may be left 13 14 to pursue damage control measures only, as experts identify the degradation of our land, resources and way of life 15 by the operation of the dam. We must teach our children 16 to fight the expropriation of our land and water and to 17 18 protect our way of life.

I realize this is a public inquiry.
Because our case is in the courts, I know very well my
presentation and what I say will be held and used against
me.

23 With that, we will proceed. I know the

May 25, 1993

Aboriginal Peoples

media and my good friend, Gary Ellison, follows me around constantly wanting to find out the intricate details of our water rights case but, if I did that, we would be up the creek without the paddle, as they say. I will try to share some of what we can share here.

6 First of all, I want to introduce to the Commission a little bit of our history by discussing our 7 8 Aboriginal rights and Treaty 7: the government's failure 9 to implement certain treaty promises to establish our 10 economy based on ranching and farming; the expropriation 11 of our water and the litigation initiated by the Peigan; 12 construction of the Oldman River dam; and, as I mentioned, we will conclude with recommendations. 13

I will walk through this presentation because I realize that we don't have enough time for me to read it word for word.

The Aboriginal rights and our territory the Peigan lay claim to as a member of the Blackfoot Confederacy contain the areas I am going to mention. The northern boundary of our territory is the Red Deer River, east to the Cypress Hills, and west to the Rocky Mountains, and south to the Yellowstone River.

23 As Peigan people, we always had our laws,

May 25, 1993

Aboriginal Peoples

customs and our institutions, our way of life, our
 practices of religion. Those were gifts to us from the
 Creator. Those are what we have as the mainstay of our
 culture and tradition.

5 The Oldman River always held, and always 6 has and always will, a very significant part of our very 7 existence. The Elders say that the Oldman River was given 8 to us by the Creator, from where it flows out of the Rocky 9 Mountains and where it flows through our reserve.

There is a legend that goes with it, and it is called "Old Man's Gambling Place." The old people refer to it as Utsitakakspi. This is at the headwaters of the Oldman River where this legend derived from.

14 It is up there where our Creator or the 15 representative of our Creator, whom we call Napi -- it 16 is because of Napi that gives us our diverse personality 17 as Blackfoot people, our attitudes, the way we are and 18 why we are the way we are.

He was up there and he met the representative of the Creator of the people on the west side of the mountains. At that particular place they decided to have a little game of who was more powerful. As the game went on -- and this is the Creator that

May 25, 1993

12

Aboriginal Peoples

1 represented the Kutenai people as we now know them today, 2 Flatheads. As they proceeded with their gambling game, 3 which was known as the wheel and arrow game, the Westside 4 people started winning. Finally, at the end, it was for 5 all the marbles, for everything on this side. It was the last game. Napi wanted it all; he wanted it all for us, 6 including the Oldman River, and that is when the Oldman 7 8 River came flowing from out of the mountains and was given 9 to our people for being the lifeblood of the Peigan people. 10 The treaty itself was adhered to by the

11 Peigan in 1877. The understanding of our ancestors who

entered into the treaty has been passed down from

13 generation to generation through the oral history. Ιt 14 is really important that I emphasize that the words to 15 Treaty 7, which have been written down by representatives 16 of the crown, were never translated. Not all terms as 17 expressed by the crown in the written text of Treaty 7 18 conform to Peigan understanding of the treaty. It is clear 19 to see that our people at that time did not understand 20 the written language. There may have been interpreters, 21 and history says there were interpreters, but there was 22 quite a gap between the interpreters and the understanding 23 of our people at that time.

May 25, 1993

Aboriginal Peoples

1 We don't expect you to resolve this 2 century-old problem; however, we have to make mention of 3 the treaty as it is. It is the basis of our court case. 4 During the treaty there was no discussion about sharing 5 of natural resources, other than land for farming purposes. 6 There was absolutely no discussion about alienation of any of our lands or the idea of extinguishment which at 7 that time and still today remains a foreign concept to 8 9 our people. There was no discussion of the Indian Act 10 which would govern our people and our land. There was 11 definitely no discussions of provincial powers that would control our land and resources. 12

13 On those issues, the Peigans' position 14 is that the treaty is silent and that the crown must still 15 come to terms with us on that particular part of the treaty. 16 Some benefits and protections from the 17 treaties were that we would continue with our way of life, 18 with a treaty right that is binding on the crown, the 19 Government of Canada.

20 Some of the concerns of our people are 21 that land would be shared with the foreigners and that 22 it might interfere with our hunting, fishing and other 23 activities, spiritual practices. It was very clearly

May 25, 1993

Aboriginal Peoples

stressed by the representatives of the crown that our way of life within our territory would be protected and preserved.

4 At that time, because of the depletion 5 of the buffalo herd, the crown promised they would quarantee provision of food. Further to that, there was 6 7 the token payments given to us. The head men, and so on, 8 got suits, a flag, treaty payments, medicine, education. 9 Our people interpret those as a symbolic affirmation of 10 respect for the authority of the Peigan and it established the term of the treaty, that it would continue as long 11 12 as the sun shines, the rivers flow, the grass grows, and 13 so on, as was mentioned this morning. The treaty itself 14 gave the Peigan people the opportunity to pursue agriculture and ranching. 15

16 From that perspective, the treaty itself 17 -- and it is written within the treaty that there was 18 opportunity for the Peigan people to get into agriculture 19 and ranching. But right within the terms of the treaty 20 itself is that the reserve of the Peigan Band of Indians 21 shall be on the Oldman River near the foot of the Porcupine 22 Hills at a place called Crow's Creek. That comes directly 23 out of the treaty itself. The acreage and size of the

May 25, 1993

Aboriginal Peoples

1 Oldman River as it is today are still being disputed.

The submission that you have will give specific details as to our arguments and our claims, and I won't go into the specific detail on them.

5 From the treaty itself, there was 6 Governor Laird who was a Commissioner. He stated that, by Canadian law, our reserve would not be taken from us, 7 8 occupied or sold without our consent. That comes directly 9 out of the treaty itself. Also it was reiterated by 10 Colonel McLeod. What they mentioned was that the Queen's 11 officers, the Northwest Mounted Police, would ensure that 12 that took place.

The boundaries, the areas that I 13 14 mentioned earlier, of our traditional territory include 15 areas of the Oldman River from the headwaters, including lands and resources encompassed by the Oldman River's 16 tributaries, the Porcupine Hills, the Crow Lodge Creek 17 18 which is now called Waterton River. This is the area which 19 was chosen for the Peigan people by Chief Sitting Behind Eagle Tail and which was confirmed by the treaty signed 20 21 at Blackfoot Crossing.

From 1877 until 1900 the Peiganscontinued to live, travel and harvest resources within

Aboriginal Peoples

May 25, 1993

1 this selected area.

There is a lot of disagreement between the crown and the Peigan concerning the meaning of the treaty and the size of the reserve based on the written text of the treaty. It is clear that we expect the Government of Canada to protect what we claim and what is in the treaty.

There is a number of areas that we 8 9 specifically outlined for areas that we have presented 10 to the Commission. Peigan Indian Reserve No. 147 was 11 encroached without Peigan consent. Also from the treaty 12 itself, waters from the Oldman River would be reserved 13 to support our economy on the land. The crown would assist 14 us to establish a new economy based on agriculture and 15 ranching, and our way of life -- fish, plants and wildlife 16 -- would be protected in the sacred Oldman River and river 17 valley within the boundaries of the Peigan Indian Reserve No. 147. 18

All of those that I mentioned have not happened. Those have not been lived up to by the crown, the federal government. They continue to breach their fiduciary trust. I will get into the history of it. In 1921 the Lethbridge Northern

Aboriginal Peoples

Irrigation District was formed, and the federal government 1 2 supported this irrigation district. They agreed to it 3 and they expropriated land from the Peigans by the issuance 4 of an Order in Council transferring 207.98 acres to the 5 LNID for a canal right-of-way. That was without the consent of the Peigan. To this day there are no long-term 6 benefits to the Peigan. This was done through the Indian 7 8 Act. At the time of signing the treaty we were not told 9 about this Indian Act.

May 25, 1993

10 Further to that, in 1944 the licence that 11 was issued was patented and gave them the right to use 12 that particular area. This was done without the consent of the Peigan Band. The licence authorized the use of 13 14 the right-of-way on the bed of the Oldman River. They 15 constructed a weir and headworks on the bed of the river 16 and diverted water, trespassed on our land and, again, the federal government did nothing to stop the Lethbridge 17 18 Northern Irrigation District to assist the Peigan or to 19 clarify our rights.

In 1976 the Province of Alberta assumed ownership of the LNID works and the canal right-of-way. This was done without the written approval of the Minister. Again, the federal government, on behalf of

May 25, 1993

Aboriginal Peoples

the Peigans, did nothing to stop the province or to clarify
 the position taken by Alberta.

Also in 1976 the mineral title was excluded from the original transfer, which belongs to the Peigan. The federal government did nothing on Peigans' behalf.

7 The conclusion which we draw from the 8 history is that, when it was expedient in the interests 9 of non-Aboriginal people that our reserve lands be 10 expropriated, the land was taken, notwithstanding sacred promises agreed to and written down by the crown. 11 The 12 Peigan have not mattered. We were ignored. Our rights were debased, in terms of providing wealth to 13 14 non-Aboriginals and their governments.

15 The federal government failed gravely 16 in assisting us in developing a farming and ranching 17 economic base for us. In our presentation we explicitly 18 and specifically give you details of that particular 19 process.

The reserve that was surveyed for us was definitely not what we agreed to at the signing of the treaty. It only represents a portion of what we agreed to in the treaty.

May 25, 1993

Aboriginal Peoples

We have an interest in a 95-square-mile grazing reserve that was surveyed in 1882, and then in 1883 was erased. Today it's the Alberta Ranch. That was done without our knowledge.

5 Stock watering reserves and huge grazing 6 leases to stockmen took up large numbers of acres of our 7 reserve, which was to be part of the treaty of 1877. It 8 just continues to go on and on.

9 Our fiduciary trustee, the federal 10 government, has done nothing on our behalf. There were hay lands that were reserved to us that were taken from 11 12 There were even recommendations by some of the people us. who worked for the federal government at that time, who 13 brought these forward. Those were ignored, and they were 14 15 given to the squatters at that particular time, the 16 newcomers that surround our area today. Back in those days they thrived while our crops withered and died and 17 18 our cattle herds deteriorated. A lot of our people in 19 those times starved through the harsh winters.

That just continued to happen. There were Peigan farmers in those days and even today who do not have the support of financial institutions. Our trustee, the federal government, provided no alternative

May 25, 1993

Aboriginal Peoples

1 financing for Peigan farmers to carry on today.

2 I will just sum it up and read from the 3 submission.

4 Although early records indicate that 5 Peigans were enterprising and had begun to excel in farming, hay production and ranching by the late 1800s, 6 land management practices of the trustee and Indian Act 7 8 legislation turned to the advantage of the non-Indian. 9 Treaty promises were shelved for the Peigan, and at the 10 turn of the century the assistance promised to develop 11 a new economy for the Peigans was overshadowed by the government's first priority, i.e. to induce and foster 12 settlement of the Northwest Territories. 13

The present reserve that we have now, it has been told to us by our Elders, was just a holding pasture for one of the ranchers at that time. They moved us into that particular area known as the Peigan Reserve today. It was just a holding pasture of this rancher called Monsell.

In 1898 the CPR was constructed and sliced our reserve in half. It provided access to Canada and the rest of people around us with what they needed for the economy. That was done without our consent.

May 25, 1993

Aboriginal Peoples

Again, the Government of Canada did not protect our
 interests and made no effort at all to impose terms and
 conditions to mitigate the impact on our developing
 economy.

5 Over the years we have lost a lot of stock 6 and human life. There has been prairie fires. Right now, 7 every time one of our livestock wanders into these areas 8 we are brought before the court with this federal statute 9 dealing with livestock being at large.

10 Further to that, there was the 11 TransCanada Highway that ran parallel to the railway. 12 That dissected our reserve, again without our consent. 13 There is loss of stock today. Even the other day we lost 14 one of our buffalo on that highway. We have lost human 15 life.

All those things -- we would never have agreed to those expropriations, to those terms. The federal government never acted on our behalf.

19 The base of our particular court case 20 today is the Oldman River dam that has been constructed 21 upstream from us. Throughout the process, the federal 22 government has done virtually nothing. Sure, they set 23 up an EARP panel that went around and asked questions,

May 25, 1993

Aboriginal Peoples

like the hearings going on today. The same presentation
 I am making today I presented to the federal Environmental
 Assessment Review Panel, stating a lot of the things I
 am stating today, if not more.

5 What they came out with was a number of 6 recommendations. Their first recommendation was to 7 decommission the dam, which the federal government did 8 not agree to. The second recommendation was they had to 9 come and appease the Peigans.

10 The recommendations came out, I think, 11 exactly a year ago, and we are no farther ahead than we 12 were 10 years ago, 20 years ago, 100 years ago. That is 13 where those things are at.

14 They came out with some good 15 recommendations, but without the federal government acting on them they just become useless. 16 There has been federal 17 water policy that was established in 1985. The water 18 policy indicates that the federal government has the 19 fiduciary trust responsibility of the Native lands and the waters that are contained within the Native lands. 20 21 They are still not acting on those particular policies. 22 It goes on and on.

23 Our water case itself, which we brought

May 25, 1993

Aboriginal Peoples

forward in 1986, has been from our own coffers. 1 I tell 2 you, it's bleeding us dry. We have gotten no particular 3 assistance from the federal government with the litigation, with the cost of it. We are up against a 4 5 provincial government that seems to have all the resources. 6 They make up the laws; they are the law, and they have 7 the resources to fight us. But we are not giving up. 8 Those are our rights, and we are going to stand up for 9 them.

10 The federal government has taken no part 11 whatsoever to assist us financially or by intervening in 12 the case to assist us in defining our water rights.

I just want to make a quote here from the water rights case and the expropriation of our water. The crown promised to the Peigan to reserve land on the Oldman River. It was to protect water required to continue to sustain our way of life and the economic purposes.

This was a promise made prior to any other rights or interests in water which either government subsequently made to third parties. It is a promise which was to be respected. Our water needs should have been well understood by the government and protected against their inconsistent grants to third parties.

May 25, 1993

Aboriginal Peoples

1 In the history of the federal and 2 provincial governments we seem to be non-existent. Maybe 3 we are just a pain in their ribside. That is basically 4 the way we are being treated and being handled. 5 The truth of the matter is that the federal government effectively hides from its obligations 6 and, at the same time, it speaks publicly of its 7 constitutional power and its policy to protect water for 8 9 First Nations. All it is is lip service and no action. 10 The presentation that is before you goes 11 into the history of the Oldman River dam construction, 12 what led up to it, the EARP panel. The Department of Indian Affairs has to be singled out for its lack of commitment 13 14 to the process. When the FEARO panel was going around, 15 they ducked and dodged it. When they finally did 16 participate, it was on an order from government that they participate. They refused to attend the hearings that 17 18 were held on our reserve. They gave a presentation in 19 Edmonton, and again it was just not making any commitment to act on our behalf on our interest in the water issues. 20 21 The gist of it all is that the 22 recommendations that were brought forward from FEARO today are still useless and futile, which leads me into our 23

Aboriginal Peoples

May 25, 1993

1 recommendations.

I will just quote here from the submission. We make a number of recommendations. When we use the word "government", we deliberately do not propose which level of government should participate.

7 It is our position that the federal 8 government must ultimately take responsibility, as the 9 crown's representative, in fulfilling obligations arising 10 from Treaty 7. It is up to the federal government, and 11 not our concern, to involve the province in cost-sharing 12 where appropriate.

There has been much discussion about 13 creating a new future between First Nations, federal and 14 provincial governments over renewable resources, based 15 on some concept of sharing. In dealing with the issue 16 17 of water, this is a very attractive approach since water 18 is renewable and can be shared by First Nations and 19 non-Aboriginal peoples. However, we do not endorse 20 recommendations based on a concept of sharing based on 21 equality. It is our position that the past must be 22 addressed. The present and the future must be based on 23 agreements which respect our ownership and jurisdiction

StenoTran

241

May 25, 1993

Aboriginal Peoples

as the original people of our territory and must give
 meaning to crown promises reflected in treaties.

3 The Past: The federal government 4 should acquire and return to First Nations all lands which 5 have been expropriated from reserves in the Treaty 7 territory. These lands could be re-acquired through 6 purchase, expropriation and compensation to third parties 7 8 or through any other method which achieves the result. 9 For the Peigan, the federal government 10 would return Peigan lands which have been expropriated to benefit LNID and the Province of Alberta for water 11 12 diversion purposes, to the Province of Alberta for highway 13 purposes, and to CPR for railway purposes, and to provide 14 compensation for past loss of use.

The federal government should establish a process to provide compensation for Canada's failure in reserving sufficient water to meet the needs of First Nations within Treaty 7 and for Canada's failure to assist the First Nation in creating an economy based on ranching and farming.

For the Peigan, negotiations would commence to achieve settlement for our losses arising from the government's failure to provide an economy based on

May 25, 1993

Aboriginal Peoples

farming and ranching and to provide sufficient water to meet our needs. The federal government should provide sufficient funds to enable the Peigan to quantify our damages and to negotiate. Mediation paid for by the federal government and agreed to by the Peigan should be provided.

A process acceptable to First Nations of Treaty 7 and the crown should be established to address the fundamental differences between the First Nations' understanding of Treaty 7 and that of the crown.

11 Although this recommendation is broader 12 in scope than the discussion presented in the paper, we make this recommendation because, in dealing with 13 14 questions of sharing natural resources, it is essential that the crown and the First Nation meet minds over what 15 16 natural resources are being referred to and whether some or all of those natural resources form part of reserves 17 protected or promised by treaty. 18

19 The provincial government's position in 20 the court litigation is that they own the water and they 21 own the land because of the 1930 Natural Resources Transfer 22 Agreement. That particular legislation, as it is, we did 23 not give consent to. The federal government was in total

May 25, 1993

Aboriginal Peoples

breach of trust and their fiduciary responsibility in not 1 2 acting on our behalf. They are still not coming forward in the court case; they are just sitting on the fence. 3 4 (+' present, the government should 5 enter into a process agreeable to the First Nations to define First Nations' water rights and other treaty rights 6 dependent upon water for their implementation. 7 8 For the Peigan, agreements should be 9 included which define: 10 - an allocation of water for the Peigan 11 from the Oldman River which can be used according to our terms. It is our water, and it is our right. It is an 12 existing reserved right. 13 14 - instream water flows required to maintain, protect and enhance the natural environment on 15 16 the reserve. That is a confirmed, existing, reserved 17 right. 18 - funding for irrigation development on 19 the Peigan reserve to maximize the economic potential of all reserved lands; 20 21 - funding to provide for a rural water project that would deliver safe drinking water to the 22 23 membership of the Peigan reserve, administration, school

May 25, 1993

23

Aboriginal Peoples

and other reserve facilities and other needs. 1 2 For the future, the government shall 3 recognize First Nation's jurisdiction to pass laws to 4 protect and implement their water rights and to fulfill 5 such agreements as may be concluded regarding water. 6 For the Peigan, this recommendation can 7 be implemented in part by: - the funding of a water office. 8 9 Through this office the Peigan would do our own 10 environmental monitoring, including the stream flow and 11 mercury levels that would affect water quality, riparian vegetation, cottonwood forests, fisheries and wildlife. 12 This would require training and technical equipment such 13 14 as computers, gauges, et cetera. The water office would 15 have the authority to stop all instream activities that 16 are adverse to the Peigan Nation. It would also have the authority to address reduced diversions from the Oldman 17 18 River for irrigation and other purposes, should such 19 diversions negatively impact on Peigan allocations of 20 water. The water office would have at least the same power 21 as a federal agency. 22 This is the Peigan Nation's response to

StenoTran

the Environmental Management Committee recommended by the

May 25, 1993

Aboriginal Peoples

FEARO reports. The water office, as proposed, would meet
 with the committee, and all studies and monitoring would
 be done by Peigan members.

4 - the development of funding agreements 5 to address on an ongoing basis the funding for irrigation projects on the Peigan Reserve to maximize the economic 6 potential of reserve land; the funding for environmental 7 8 enhancement of Peigan reserve land, to compensate for 9 degradation to the natural environment arising from water 10 diversion from the Oldman River; the funding of the 11 administration of the water office; funding for a mediation 12 process agreeable to the Peigan, to address impasses which may arise from decisions made by the Peigan Nation which 13 14 may conflict with others addressing the water needs of 15 non-Aboriginal people.

16 In a nutshell, the Commission has all the basic specific details of argument, history, 17 18 legislation, treaty. We leave that with you. 19 Another comment I wanted to make 20 -- and maybe you have heard it before. On record I have 21 to bring this forward because personally, in my lifetime, 22 I have experienced it with the FEARO process as it was 23 and here again with another procedure.

May 25, 1993

Aboriginal Peoples

1 There was not 100 per cent endorsement 2 by Band Council, but we have come to a consensus that we 3 would come here and make a presentation. For the record, 4 there have been other Royal Commissions that have been 5 put together, and they have come out with reports and recommendations. One example is the Penner Report. 6 They took this same position that I have presented, the 7 8 positions that you heard from the Sarcee Tribe, the Blood 9 Tribe and the other Treaty 7 presentations on education, 10 housing, economic development -- all those treaty positions. They took them, they twisted them around, and 11 12 they brought forward a mandate to extinguish our treaty 13 rights. 14 That is what happened in the past, and 15 we do not want to see those things happen again. If that 16 is the exercise here, then on record we do not endorse this process. We have come here with some faith that this 17 18 particular process would give us an opportunity to exercise

19 our rights and to give respect and recognition to our treaty

20 rights, specifically to the Peigans our water rights.

Thank you.

21

22 MODERATOR REGGIE CROWSHOE: Thank you,
23 Leonard.

May 25, 1993

Aboriginal Peoples

1 CO-CHAIR GEORGES ERASMUS: Thank you, 2 Chief, for a very thorough presentation and thank you for 3 not reading every word but going through and giving us 4 the highlights and then getting to the recommendations. 5 The way you presented it gave us a very good background. 6 I know you can't say too much about the court case, but can you give us some of the basics. Where 7 8 are you at in the court case? 9 CHIEF LEONARD BASTIEN: After seven 10 years we are still in discovery. CO-CHAIR GEORGES ERASMUS: 11 What are 12 your funding costs so far? 13 CHIEF LEONARD BASTIEN: It's in the hundreds of thousands of dollars. 14 CO-CHAIR GEORGES ERASMUS: You have 15 tried to get federal funding and no money has come out? 16 17 CHIEF LEONARD BASTIEN: No. We are 18 stuck between the Rocky Mountains and --EDWIN YELLOW HORN: The federal 19 20 government doesn't take a position on whether we have water 21 rights or not. To date they haven't given us anything 22 for our litigation costs. They continue to ride the fence, 23 as Leonard stated, on the whole issue.

May 25, 1993

Aboriginal Peoples

1 The only time they seem to be helpful 2 is when it is detrimental to the band in our case. 3 I don't know if you people can do 4 anything about that. When is the federal government going 5 to smarten up and start dealing with us fairly? They put all this money into the LRT review; they put a million 6 dollars or so into this Chief's Commission. Then, when 7 8 you look at the past, with the White Paper and all the 9 things they have tried to do to terminate our reserves 10 and our rights to our resources -- when are things going 11 to change? How many Commissions have been put together, 12 like the Penner Report and so on? Millions and millions of dollars have 13 been spent trying to study and understand the Indian issue 14 15 in this country; yet, the political will isn't there. 16 I noticed the right of Aboriginal self-government in your commentary. It seems like people 17 are looking for an avenue to establish if our rights exist 18 19 in this country, but they are already there. They are 20 there in the Constitution; they are there in the Royal 21 Proclamation. The federal government has the power to implement them under section 91(24), if the political will 22 23 is there.

May 25, 1993

Aboriginal Peoples

1 When are they going to do something that 2 is positive instead of wasting everybody's time? Look 3 at all the things people have talked about time and time 4 again -- the high suicides, and so on. Our reserves are 5 overcrowded.

6 In 1877, when they set the treaty aside, 7 the Commissioners set aside 128 acres per person. I think 8 it was a square mile for a family of five. We never agreed 9 on that.

10 Right now the Indian people in southern 11 Alberta are denied the use and access of some of the crown 12 grazing leases that are available out there. Our reserves are being overcrowded with livestock and other things that 13 14 it was set aside for; they were never adequate. Nobody is saying, "Gee, those Indian people over there need a 15 Maybe we should open some of these grazing leases 16 hand. for them." They're not doing this in the south, and I 17 18 don't think they are doing it anywhere.

19 They are looking toward changing the 20 nature of some of the crown lands that are available for 21 hunting and fishing. They want to change the nature of 22 them so they can alienate our hunting rights. All these 23 things are coming about.

Aboriginal Peoples

May 25, 1993

1 The supposed government leaders on our 2 reserve -- Band Councillors if you want to call them that 3 -- are faced with looking at all these problems that are 4 facing our people. Where are the answers? This is 5 supposed to be one of the richest countries in the world. 6 When they took time to try to do away with our rights through the LRT review, that termination 7 8 policy that they tried to bring in, they sure found the 9 resources fast enough to find some solutions to their 10 problems. But now what about the Indian people? We have a future and we have a right to live. We have a right 11 12 to exist like any other nation in the world. We are just continually faced with all 13 these problems, and it is getting worse. If the 14 15 governments of Canada don't start to treat us better in this country, there are going to be a lot of problems. 16 17 You see it every day. If people get frustrated and fed 18 up, then what is going to happen? Maybe it is going to 19 go off the reserve and maybe they are going to create 20 something they don't like. Sure as hell, I don't like 21 to have problems or those kinds of trouble. 22 When you are faced with everyday

23 existence on a reserve and you see people living without

May 25, 1993

Aboriginal Peoples

1 jobs, when you look at children -- they can go up to Grade 2 12, but what about after that? They are cutting back, 3 just like Marie Marule stated. They are cutting back our 4 post-secondary funding. When they get out of Grade 12, 5 what future do they have? 6 CO-CHAIR GEORGES ERASMUS: If you have it just off the top of your head, what was the size of 7 8 the reserve supposed to be according to the natural 9 boundaries? 10 CHIEF LEONARD BASTIEN: From my 11 knowledge, it is well over 1 million acres. 12 CO-CHAIR GEORGES ERASMUS: What was actually surveyed in 1882? 13 14 EDWIN YELLOW HORN: Actually, it was a territorial claim. It was the Porcupine Hills, the Oldman 15 River and Crow's Creek. It was a portion of a territory 16 17 that was reserved by the Peigans within their natural 18 territory. 19 The federal government brought their 20 estimates in under the Indian Act, under the formula of 21 128 acres, but the Peigans themselves never did, to my 22 formal knowledge, agree to that. 23 CO-CHAIR GEORGES ERASMUS: I got that

Royal Commission on May 25, 1993 Aboriginal Peoples 1 part. I am just trying to get an idea of, when they did 2 do the survey and it was fenced in 1900, what size was 3 it at that point? 4 CHIEF LEONARD BASTIEN: The present 5 size today? 6 CO-CHAIR GEORGES ERASMUS: I am working 7 my way to there. Starting away back, before they started 8 cleaving off land. 9 --- (A Short Pause) 10 CHIEF LEONARD BASTIEN: We are having 11 a dispute on the exact acreage. 12 CO-CHAIR GEORGES ERASMUS: Why don't I 13 leave that with you. What I am interested in is your 14 understanding of the size of the land that the treaty in its natural boundaries provides, which is reflected by 15 what is actually written in the treaty, and then what was 16 17 actually surveyed and fenced, and then what it is today. CHIEF LEONARD BASTIEN: We could 18 19 probably provide you with that information. If you give 20 us an address where we could send it, we could forward 21 it to you. 22 CO-CHAIR GEORGES ERASMUS: No problem. 23 EDWIN YELLOW HORN: Could I ask what the

May 25, 1993

Aboriginal Peoples

1 reason for that is.

2 **CO-CHAIR GEORGES ERASMUS:** It is to give 3 us a clear idea of how your land has diminished over time. 4 This is the case in many, many places in the country, 5 where people started with a piece of land but it has just 6 continued to diminish.

7 It is quite different from what the Inuit 8 are signing, for instance, today or tomorrow. The Prime 9 Minister is signing an agreement and providing a land base, 10 I think, three times the size of New Brunswick. Whereas, if you were unfortunate enough to have signed a treaty 11 12 some time ago and then they started putting roads through it and railways through it and needed land for ranching 13 and all the rest of it, it has just continued to shrink. 14 15 I was just trying to get an idea of what was actually promised originally in the treaty. 16

17 EDWIN YELLOW HORN: This LNID,

18 Lethbridge Northern Irrigation District, the headgates 19 are situated on our reserve. The LNID generates in the 20 millions of dollars to the economy of Lethbridge, in McLeod 21 and, I guess, southern Alberta in general.

22 We don't really receive anything from 23 that. Yet, it is our land that is the source of all this

May 25, 1993

Aboriginal Peoples

wealth that is being created. Just as we say in our case,
 it is just another situation where we have been
 disregarded.

4 That is all we are trying to tell the 5 provincial and federal governments, to settle these issues. Settle them with us so we can go on with our lives. 6 If they continue stealing -- it is just stealing; that 7 is what they are doing. If you bring it to them and tell 8 9 them that is what they are doing, then they all don't like 10 it and they start writing racist things in the paper. 11 That is no way to deal with things. 12 CO-CHAIR GEORGES ERASMUS: Thank you very much for coming forward and presenting this. 13 14 We are going to break for lunch now. I suggest that we break for just a little over half an 15 hour. We will try to resume at two o'clock sharp. 16 --- Luncheon Recess at 1:20 p.m. 17 18 --- Upon resuming at 2:12 p.m.

 19
 MODERATOR REGGIE CROWSHOE: We are

 20
 starting our afternoon session now. Our next presenter

 21
 is Jim Penton, and then we will go to Tony Hall.

 22
 JIM PENTON, Métis Senator: Thank you

 23
 very much. It's a privilege to appear before the

Aboriginal Peoples

1 Commission.

I want to speak generally today as well as speaking particularly on behalf of my own people, the Métis. I want to reverse the order of matters on which I wish to speak, because the issue has been raised by speaker after speaker of prejudice in the Lethbridge area and I very definitely want to say something about that. In the first place, I was here when I

9 heard Chief Bastien speak on behalf of his people, the 10 Peigan Nation. I can only say that I applaud everything 11 he had to say. I think the rape of the Peigan Nation over 12 the last century has been one of the most disgraceful aspects of Canadian history, at least of western Canadian 13 14 history, to have occurred in the 19th and 20th centuries. 15 What is so awful about it is that it continues into the 1990s, at a time when the larger society prides itself 16 on having divested itself, at least to a certain extent, 17 18 of the prejudiced attitudes of colonialism that have 19 existed in the past.

It has been said that there is a great deal of prejudice in the Lethbridge area. Some people have said that the only thing that differs between Alabama and Alberta is that Alabama is down south and Alberta is

May 25, 1993

Aboriginal Peoples

up north. I concur with that, particularly with respect
 to this region.

I would say that one of the reasons for the extreme prejudice in this area is that it has been government-generated, and the creation of the Oldman River dam has been one of the factors which has been primarily responsible for the enhancement, if you will, of racial prejudice in this area.

9 I have heard farmers say and state to 10 me personally that they were prepared to take up guns and 11 shoot Indians. Much worse than that has been said, and 12 I think the fault must lie with the federal government, 13 above all with the provincial government, and with many 14 of our local politicians who have enhanced racism in this 15 area. It is one of the most disgraceful things that one 16 could witness.

Unfortunately, the judiciary has participated in this as is widely recognized in this community by the fact that the Judicial Council of Canada had to censure the local judge who heard the Milton Born With a Tooth case, and rightly so. I take pride in having written a letter to the Judicial Council which brought about that censuring.

Aboriginal Peoples

Part of this, of course, is due to economic circumstances, but it is government-generated, and the government needs to be told directly that it must change its way if it is ever to have a healthy relationship with Aboriginal people in this area.

May 25, 1993

6 In speaking on behalf of my own people, 7 the Métis, we have just had an Aboriginal census in this 8 area. There are far more Métis than even we believed. 9 As a matter of fact, outside of Lethbridge, in all of the 10 surrounding communities but one, the Métis outnumber 11 treaty Indians. Therefore, we are a much more significant 12 group within the area than even we had believed.

13 Many of our people, however, have been 14 afraid to identify themselves as Aboriginals because of 15 the ongoing prejudice that has gone on in this community and other communities throughout southern Alberta. 16 Being Métis was a stigma, and many of our women married white 17 18 men in order to escape the stigma of Aboriginal ancestry 19 in the past. It is only now that many of our people are 20 standing up and identifying themselves because they are 21 proud of who they are and what they are.

We need to recognize, of course, that our people, in large measure, are in a state of

Aboriginal Peoples

decolonialization. They are undergoing the effects of 1 2 more than 100 years of discrimination and prejudice. 3 Naturally, as is true in the Third World, our people suffer 4 the effects of alcoholism, other forms of drug abuse, 5 broken families, criminal behaviour and everything else. 6 This happens with all colonialized people, and it is that factor which makes our people have very often an unhealthy 7 8 relationship with many of the white people in the larger 9 communities.

May 25, 1993

10 One cannot blame ordinary white persons 11 for not wanting to be subjected to drunkenness, to cheques 12 which are passed and come back with not sufficient funds That is understandable, but we must make 13 in the bank. 14 them understand that this is the result of a government's policy which has created this nightmare for Indian and 15 16 Métis and Inuit people and which negatively affects whites as well, because they have to live with the effects of 17 18 the discrimination that has gone on in Canadian society. 19 It is certainly time that we encourage 20 governments, for the self-interest of all Canadians as 21 well as for the well-being of Aboriginal people, to turn around and call a halt to this kind of nonsense. 22

23 I can only echo again and again some of

May 25, 1993

Aboriginal Peoples

1 the things that Chief Bastien said this morning. I admire 2 his restraint in speaking in the way that he did. It was 3 outstanding.

How can we address these matters? Howcan government come to grips with these things?

6 One of the areas I feel very strongly 7 about is the need for enhanced Aboriginal education. In 8 this sense, it has been held that people within treaty 9 relationships have a somewhat different relationship from 10 non-status Indians and Métis. I think we need to point 11 to the Constitution -- and I would ask the Commission to 12 look at what I am going to suggest.

Section 35 of the Constitution Act, 1982 specifically states that Aboriginal and treaty rights are to be preserved under Canadian law. It is interesting to note that section 35 is not part of the Charter of Rights and Freedoms and, therefore, is not subject to section l of the Constitution, which is a kind of override clause of the Charter of Rights and Freedoms.

I would argue, and argue very strongly, that all Aboriginals have a specific right to their own languages and to education in those languages. If people do not have language rights and cultural rights, they have

Aboriginal Peoples

no rights at all, and the law becomes absolutely
 meaningless. The Constitution of Canada becomes
 meaningless.

May 25, 1993

Therefore, I would argue, and argue very strongly, that the governments of Canada ought to recognize the right of all Aboriginal peoples to education in their own languages.

8 For Métis people, in many cases that 9 means the English language because many of our people have 10 spoken English since we became a people. Many are 11 French-speaking. Both those languages are already 12 guaranteed in the Charter of Rights and Freedoms. But 13 many of our people speak Machif (PH) and a great many speak 14 Cree.

15 In order for us to preserve our unique 16 nature, I believe very strongly that we ought to have 17 control of our own educational institutions to preserve 18 our culture.

In our Aboriginal census of Lethbridge and the local area, which was recently completed, there is a very large population of Aboriginal people in this city, particularly of persons of Blackfoot background who want to preserve, I think rightly, their culture and their

May 25, 1993

Aboriginal Peoples

well-being. When I suggested that, on the basis of 1 2 numbers, the Blackfoot people living in Lethbridge ought 3 to have a right to an independent school, there was a 4 generally positive response from the local community. 5 There is a question over the 6 establishment of a French school in this community; there are only some 50 students. Apparently, the provincial 7 8 government feels that French-speaking students have a 9 right. I don't want to criticize that in any way; I feel 10 positively toward French speakers. Many people have pointed to the cost factor but, if you look at the number 11 12 of Blackfoot speakers in the city in comparison to the number of French speakers, it seems that if any group, 13 14 on the basis of history, tradition, right and common sense, 15 should have a right to an independent, freestanding school, 16 it should be persons of Blackfoot background -- Peigans, Bloods and all of the other Blackfoot nations. 17 18 This I believe is something which could

be recognized by our governments, particularly our federal government, and support could be given for education for all Aboriginal peoples at base level. I hope our Aboriginal peoples will move, and move very quickly, in the area of taking over education.

May 25, 1993

23

Aboriginal Peoples

There needs to be an enhancement of our
 languages. There needs to be an enhancement of our
 traditions and of our culture.

4 Many of us, persons such as myself, are 5 perfectly happy in the larger society. My lifestyle is essentially very similar to that of other people in the 6 larger society. Yet, many Métis who are not protected 7 8 in any way by treaty rights, who have no claim on medical 9 or educational support in the way that treaty Indians do, 10 are living in this province in circumstances which are 11 worse than those of many people living in the Third World. 12 If you go up into northern Alberta, you see that, and it's a damned disgrace in any civilized or so-called 13 14 civilized community.

15 I do want to state positively that the 16 provincial government for all of its sins -- and it has 17 many -- has in many ways done some pretty positive things 18 respecting our people. We in Alberta are the only Métis 19 people who have a land base. I would like to see land bases established for our people at least in the other 20 21 western Canadian provinces, particularly Manitoba and 22 Saskatchewan.

We need our people enumerated. We need

May 25, 1993

Aboriginal Peoples

1 control over our own development on those land bases and,
2 above all -- and I want to come back here to education
3 -- we need control over educational institutions, in some
4 instances in co-operation with First Nations people. Many
5 of our people are closely related to the Cree.

6 I should mention in passing that one of the things that is interesting, which has arisen out of 7 8 our census which I hope to be able to make available to 9 the Commission, is that in this area there is a large 10 constituency of non-Blackfoot Natives. To the north and east of the city, the overwhelming majority of treaty are 11 12 Cree, and there is also a very large population of non-status Indians in this area. Many of these people 13 14 are coming to us because they say that they are not 15 represented, that they have no one to speak for them.

16 I, recognizing the justice of that 17 request, want to say that their concerns are our concerns, 18 and I want to speak on their behalf.

19 The concerns of Aboriginal people in 20 urban centres is going to grow. If our people are not 21 given adequate institutions to preserve their culture, 22 to enhance their well-being, to enhance their pride, they 23 are going to become ghettoized and destroyed, and in many

May 25, 1993

Aboriginal Peoples

1 parts of this country it is taking place already. All 2 one has to do is go to a place like Regina where our people 3 are being brutalized in the extreme.

Of course, when I speak of land rights in Saskatchewan, I sometimes scratch my head. With the growth of Indian and Métis populations in that province, I think the time is soon going to come when we are going to take it back and, after all the farmers leave, maybe restore the buffalo.

10 In any case, I want to look a little 11 further at this matter of education.

12 I think there needs to be a tremendous stress on education which enhances the pride and abilities 13 14 of our youth. A good deal is said -- and I am sure the 15 Commission has heard this many times -- about the plight 16 of Aboriginal women. I don't want to disparage those 17 remarks in any way. I have heard them over and over again. 18 But my own experience is that the group within our society 19 which is suffering the most is Aboriginal men. It is 20 largely our men, both Indian and Métis, who are in the 21 prisons and penitentiaries of this country.

Part of that arises out of the fact thatthe pride of our people has been killed in many individuals.

Aboriginal Peoples

Our young men have suffered a psychological castration 1 2 complex for the last 100 years, and it is time that this was stopped so that our young men can turn to positive 3 4 pursuits by way of education, so that we can break the 5 cycle of criminality and imprisonment, so that we can break the cycle of the mistreatment of women and children in 6 our communities -- and it happens all over, again a result 7 8 of colonialism. It is only through positive education 9 controlled by our own peoples that that can take place. 10 This brings me to the whole question of 11 relations with non-Native organizations.

12 I heard one of the speakers say yesterday 13 that he supported the idea that Aboriginal peoples be represented in the House of Commons. There has been talk 14 15 about Aboriginal people being represented in the Senate. 16 I think that is misguided, even though we Métis supported that idea when we felt it was the best thing we could get. 17 18 Like the Maoris of New Zealand, I believe the appropriate 19 place for Indians, Inuit and Métis is to be represented 20 in the House of Commons where we have some real power. 21 It would be nice, too, if we had governmental reforms which 22 would give the white people a little more power in the 23 House of Commons through appropriate reforms.

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 Something has to be done about the 2 judiciary as well. One of the great scandals of Canadian 3 society is that a handful of men can appoint practically 4 all of the justices and judges in this country, many of whom -- and with all due respect for those who are not 5 -- are political hacks. It's a crime that the Prime 6 Minister of this country can appoint all of the justices 7 of the Supreme Court except the Chief Justice who is on 8 9 the bench already but whom he appointed as Chief Justice. 10 What does that say about justice? It says the dice are 11 loaded.

12 All Canadians need some form of mechanism to change this situation, and the Aboriginal 13 14 people must have something to say about the justice system, 15 or it never will be just with our people. It is all right to have token judges or justices in some place, but we 16 must have power at higher levels. Therefore, instead of 17 18 being divided, as we often are, into the various Aboriginal 19 groups, we need at least to form some sort of common front. 20 I must say that while I, as someone who 21 speaks for the Métis community, feel nothing but the best 22 of goodwill to treaty people, I would beg some of our treaty brothers and sisters, as well as some of our white brothers 23

May 25, 1993

Aboriginal Peoples

1 and sisters, to speak up on behalf of us because we have 2 peculiar needs. We have fallen through the cracks of this 3 nation for the last 125 years. When it was to our advantage 4 to be considered Indians, the government considered us 5 white. When it was to our advantage to be considered white, the government considered us Indians. Time and 6 7 time again we have fallen through the cracks, and we don't 8 want that to happen.

9 We believe that justice for all 10 Aboriginals and whites within Canadian society will only 11 arise when people of goodwill recognize that we all live 12 in this country together and must be concerned about the well-being of one another, not simply our own narrow 13 14 prejudices, likes, interests or whatever it may be. 15 Therefore, I want, in particular, to 16 have the Commission look again at this suggestion I have made -- and you may already have looked at it; I have no 17 18 idea -- about section 35. Look at this and see whether

19 this is or is not a basis for governmental support of 20 Aboriginal education which I think is one of the most 21 central features of the renaissance, if you will -- not 22 only the renaissance, but the survival of Aboriginal people 23 in this country.

May 25, 1993

23

Aboriginal Peoples

1 With those remarks, Mr. Chairman, I will 2 be happy to answer any questions. 3 MODERATOR REGGIE CROWSHOE: Thank you. CO-CHAIR GEORGES ERASMUS: 4 Thank you 5 for your presentation. 6 Could I ask you just one question. When you are saying "Métis", how would you define who a Métis 7 person is? The reason I ask is -- and it is not a facetious 8 9 question. We have been getting differing impressions from 10 different parts of the country as to who a Métis is. 11 In some places it is somebody who has 12 an Aboriginal parent and a non-Aboriginal parent. In other cases it is people who have come from the Red River 13 14 and have considered themselves Métis. What do you mean when you say "Métis"? 15 16 JIM PENTON: I use the term in a broad 17 sense, but in general the position we take here in Alberta 18 -- and it is our official position -- is that a Métis person 19 is a person of Aboriginal, Indian and European descent 20 but whose origins go back to the Red River Settlement or 21 western Ontario and the midwestern United States. 22 Over the years some people have been

StenoTran

added to the Métis community through general acceptance,

269

Aboriginal Peoples

May 25, 1993

20

1 through the intermarriage of one Aboriginal parent with 2 one European parent, but they have always been part and 3 parcel of the Métis community. They have been recognized. 4 In other words, if somebody comes up here 5 from Florida and says, "I am half Indian and half white; therefore, recognize me as Métis," we say, "No, that is 6 not appropriate because you are not part of our community." 7 8 Blood quantum is not a factor, however. 9 Louis Riel was one-eighth Indian and seven-eighths white. 10 We consider him a Métis. We have instances where we have 11 people who are seven-eighths Indian and one-eighth white, 12 and most of us, like myself -- I don't know how much. I couldn't quantify because many of my forefathers and 13 14 foremothers were Métis for so many generations that I don't have any idea what the blood quantum was. 15 16 CO-CHAIR GEORGES ERASMUS: Thank you 17 for that. That is very clear. 18 Those are our questions. Thank you for 19 coming forward. If you have any other thoughts that you

JIM PENTON: Thank you very much. I
appreciate that, and I will send you a copy of our census.
I think it will be somewhat enlightening.

want to put down, please do so and send them on to us.

Aboriginal Peoples

May 25, 1993

CO-CHAIR GEORGES ERASMUS: It will be
 very useful. Thank you.

3 **MODERATOR REGGIE CROWSHOE:** At this 4 time, we would like to go on with Tony Hall of the University 5 of Lethbridge, Professor of Native American Studies 6 Education.

TONY HALL, Professor of Native American
Studies Education, University of Lethbridge: I will see
what I can do in a half-hour.

10 I have brought a number of documents 11 which I hope give some kind of background or elaboration 12 to various points I want to raise. As a time-saving procedure, I would like to be able to refer to these 13 14 documents without reading from them. I am hoping, whatever the protocol is, that I could formally request 15 16 that these documents be considered to be an appendix to the proceedings as published. I see Mr. Erasmus affirming 17 with a head shake. 18

19 CO-CHAIR GEORGES ERASMUS: Certainly.
20 That is no problem at all.

21 **TONY HALL:** The subject which I had 22 thought about in advance is the subpoena powers, the 23 judicial powers of RCAP, the Royal Commission on Aboriginal

May 25, 1993

Aboriginal Peoples

Peoples. I am going to leave that until the end, if there
 is any time.

3 Just briefly, let me say that the Royal 4 Commission, by virtue of being a royal commission, has 5 judicial powers. The Royal Commission could be requesting, indeed commanding, any witness to come 6 forward. For instance, if we wanted to explore the 7 8 relationship of the Ministry of the Environment to the 9 Oldman Dam, the Royal Commission could be demanding that 10 Ralph Klein, for instance, come forward and give whatever 11 answers he could share about what took place when he was 12 in that job.

The Royal Commission could be demanding that Kim Campbell come forward to explain her actions when she was Minister of Justice and was very active in using the powers of the federal crown against Aboriginal people in court, using the resources of the Ministry of Justice to argue extinguishment, for instance.

19 The Royal Commission could, along with 20 hearing from volunteer witnesses such as myself and all 21 those whom you are hearing today, also be going at other 22 approaches, other lines of inquiry. The Royal Commission 23 could also be calling forth documents which are classified

May 25, 1993

Aboriginal Peoples

1 and wouldn't be available through other means.

2 As the members of the Commission will 3 recall, we had a discussion on this on May 1, 1992 at a 4 meeting of about 100 researchers involved with the work 5 of RCAP. About 10 or 15 of us put in writing our request that the Commission consider using these powers. Among 6 those who signed the document were Brian Slattery, who 7 8 I believe is now legal counsel for RCAP, Patricia Montour, 9 Marvin Storrow who acted for Musqueam in the Sparrow and 10 Guerin cases, Marie Marule, Jean Morrissette, John Milloy, Professor of Native Studies at Trent. 11

12 Having introduced that subject, let me change tack, because there is so little time. The desire 13 14 of RCAP, apparently, at this stage is to get concrete 15 recommendations and suggestions in this round, so let me 16 go right to the jugular and come forward with a list of recommendations I would like to make. I make these in 17 18 terms of directing them essentially at the federal 19 government through the Royal Commission. Of course, the Royal Commission will decide to what extent these 20 21 recommendations should be brought forward. But I would like to clarify that I am directing this at the Government 22 of Canada through RCAP, and I bring this forward from a 23

May 25, 1993

Aboriginal Peoples

position in academia -- these proposals that my own federal
 government should be reshaped and reformed.

3 In my view, no legislative approach is 4 appropriate to replace the Indian Act. There is section 5 35 in the Constitution Act, 1982 which recognizes and affirms existing Aboriginal and treaty rights, and there 6 is legislation of the British Parliament which now has 7 constitutional status. It used to be called the British 8 9 North America Act; it is now called the Constitution Act, 10 1867. Section 91(24) of the Constitution Act, 1867 is 11 explicit that the federal government, the Dominion 12 Parliament, has legislative responsibility for Indians and lands reserved for the Indians. 13

14 The point I want to affirm is that with 15 section 35 and section 91(24) we have all we need in the 16 Constitution already to elaborate a regime of Aboriginal self-government. The federal government has it within 17 18 its powers tomorrow, or this evening, to simply say as 19 a matter of policy that, henceforth, they will choose to interpret section 35 as if it means something, as if it 20 21 contains a great deal. At the times of the First Ministers' Conferences they called this the "full box 22 23 theory."

Aboriginal Peoples

Existing Aboriginal and treaty rights could be interpreted by the federal government to include the inherent right of Aboriginal self-government. It could be interpreted so that it confirms and lays out a realm of Aboriginal jurisdiction.

May 25, 1993

6 What the federal government is currently saying is, "We can't change the Constitution; therefore, 7 settle for second best. Settle for a series of acts 8 9 through the federal legislature which will put in place 10 a land regime, a forestry regime, self-governance regime." 11 To my way of thinking, this leads away 12 from the recognition which the federal government surely has in its power to make, that section 35 includes the 13 14 inherent right of Aboriginal self-government and is 15 sufficient to be the basis of a regime of Aboriginal 16 self-governance.

Having said that, section 91(24) makes it clear that it is the federal government which has the specific responsibility. I want to throw into the mix here a word which you will hear again and again. This word is "fiduciary obligation," which essentially means that the federal government has really an obligation to protect a sphere of interest, to defend a sphere of

Aboriginal Peoples

May 25, 1993

1 interest.

2 I would like to introduce the concept of there being an Aboriginal interest in Canada. Various 3 4 corporations and provincial governments will attempt to 5 encroach upon this sphere. The Alberta government is doing that in a very concrete way with the Oldman Dam and 6 its claims that it controls the river, the fish in the 7 river, the banks of the river, the beds of the river, the 8 9 waters flowing through the river.

10 No, the way the Constitution Act, 1867 11 is set up makes it clear that Indians are within the federal 12 sphere, fish are within the federal sphere, inland navigation is within the federal sphere. The federal 13 14 government has the fiduciary obligation to protect that 15 Aboriginal interest against the encroachment of other 16 orders of government, most specifically the provincial order of government. 17

The provinces' strong card in Confederation is to claim monopoly control of natural resources. So, when we are talking in Canada about mining or dam-building or logging, all of these activities proceed under the auspices of provincial jurisdiction.

23 The federal fiduciary obligation is to

May 25, 1993

Aboriginal Peoples

be protecting that existing Aboriginal and treaty right
 against encroachment.

3 I would argue that, once the federal government as a matter of policy decides that it is going 4 5 to change its wayward ways and respect Canadian law and 6 affirm Canadian law, then it falls upon the federal government to start taking provincial governments to 7 8 court, provincial governments who encroach upon that 9 Aboriginal interest in Canada. This is where I think the 10 federal government has been -- and the word is charged 11 -- "criminally negligent" in failing to uphold that 12 fiduciary obligation.

We heard this morning from the Peigan 13 14 Chief and some of the councillors that the federal 15 government would simply not take a position, would not 16 help them in court let alone go to court using the resources of the Ministry of Justice to affirm the position that 17 18 the Peigan have water rights as affirmed in that treaty. 19 To my way of thinking, we don't need new What we need is a decision at the Cabinet 20 legislation. 21 level and then simply we need the federal government to begin to respect the finer spirit of the existing 22 23 Constitution and begin to act on that.

Aboriginal Peoples

1 I talked about the Ministry of Justice 2 tending to side with the provinces in arguing 3 extinguishment in these different court cases, in 4 litigation. Let me mention specifically the case of the 5 Teme-Augama Anishnabai or the Gitksan-Wet'suwet'en. In 6 each of these cases, when the case got to the provincial level of courts and then to the federal level, the federal 7 8 Ministry of Justice went to court to argue extinguishment. 9 The federal government went to court siding with the 10 provinces. 11 Historically, the provinces have taken 12 a hostile position in terms of Aboriginal and treaty 13 rights. This goes right back to the St. Catharines Milling 14 case. We expect this from the provincial governments. 15 The provincial governments have gone to court using all of these noxious theories of racial hierarchy, theories

15 The provincial governments have gone to court using all 16 of these noxious theories of racial hierarchy, theories 17 such as the idea that Indians were primitive and, 18 therefore, they had no laws, therefore they couldn't 19 exercise any kind of land tenure. That, I think, is really 20 destructive of the finer aspects of Canadian citizenship 21 when governments go to court arguing that on all our behalf. 22 Yet, when the federal government adds 23 its voice to the provincial governments in court, in

StenoTran

278

May 25, 1993

May 25, 1993

Aboriginal Peoples

arguing this type of line on all our behalf, in my view,
 this really undermines the quality and decency of Canadian
 citizenship.

4 I, for one, would like to press this line 5 of questioning with Kim Campbell. How did she justify, as responsible minister during her regime as Minister of 6 Justice, these positions that she was taking? 7 8 Unfortunately, we don't seem to have an electoral process 9 sufficiently interested in issues to be able to press 10 things to this extent. This is why we might depend on, 11 for instance, the Royal Commission to be able to look into 12 processes.

For instance, what happens within the Ministry of Justice? What is the process which invariably leads the Ministry of Justice to the conclusion that it is in the national interest to go to court arguing Aboriginal extinguishment? What is the relationship between the bureaucrats and the politicians as that process unfolds?

I was hoping the Royal Commission might be able to use its powers of subpoena to go in and dig out some of the documents that would shed light on this and let us hear from some of the bureaucrats who give this

May 25, 1993

Aboriginal Peoples

1 kind of advice, and let's see if logging companies, oil 2 companies, hydro-electric dam-building companies have 3 some kind of inside track in this process.

Let's make no mistake about it. It's a political process that comes up with the idea that you go into court arguing extinguishment. That's a political decision made on a political basis. Once you get into court and you have that assumption, then you start to develop the technical arguments.

10 Let me turn to the treaty right part of 11 section 35, existing Aboriginal and treaty rights. I want 12 to introduce this section by referring to a passage from the transcript of the negotiation of Treaty No. 3, 13 14 negotiated in what is now the Kenora area. This treaty 15 is sometimes referred to as the Northwest Angle Treaty. 16 I refer, of course, to Alexander Morris' book, "The Treaties of Canada with the Indians of Manitoba and the 17 Northwest Territories." 18

In this negotiation the passage I am about to read occurs more or less as the major details of the negotiation are put in place, and they are talking about questions of implementing the treaty. Somebody who is referred to as simply "Chief" -- and I assume it is

May 25, 1993

Aboriginal Peoples

Mawadopamay(PH) -- is said to have said, according to this manuscript, "All the promises that you have made me, the little promises, and the monies you have promised, when it comes to me year after year, should I see that there is anything wanting through the negligence of the people that have to see after these things, I trust it will be in my power to put them in prison."

8 Then the Governor says, "The ear of the 9 Queen's Government will always be open to hear the complaints of her people, and she will deal with her 10 11 servants that do not do their duty in a proper manner." 12 Essentially here this treaty negotiator, this First Nations treaty negotiator, is 13 14 dealing with the question of: How will this treaty be 15 implemented? How will it be enforced? He goes to the 16 point of saying: If the people charged to implement this treaty and enforce it don't do their job, I trust I will 17 18 be able to put them in prison. I think he is quite possibly 19 even thinking in terms of putting a violator in an Indian prison; it is not explicit. 20

21 Clearly, he is looking for some kind of 22 sense that there will be real penalties that come into 23 play if these treaties aren't upheld and that individuals

May 25, 1993

Aboriginal Peoples

can be held criminally liable for not upholding the 1 2 treaties. His concern is simply brushed away, as these 3 concerns were throughout several of these negotiations, 4 more or less with the view that the Queen doesn't lie --5 you are dealing with Queen Victoria; she loves her red children. Then it goes on to say: We will always be able 6 to hear your complaints, and we will deal with those 7 8 servants who don't do their duty.

9 Who in Canada could point to a single 10 case where a violator of Aboriginal and treaty rights has 11 ever been put in prison? Who could point to a single case 12 where a violator of a treaty has ever had to face a charge 13 in court?

Existing Aboriginal and treaty rights are part of the laws of Canada -- not only part of the laws of Canada, but the supreme law, the constitutional law.

I think this Chief was quite far-sighted because he was concerned that there was no implementing procedure being put in place to enforce the treaty and also to renew the treaty relationship. If a treaty is going to be for as long as the sun shines, as long as the water flows, there are certainly basic underlying

May 25, 1993

Aboriginal Peoples

principles. But as times change, as the country changes, the way one fulfills those principles is going to have to adapt and change. He is looking for some kind of regime, some kind of institutionalized mechanism which will see that the treaty is respected and renewed and developed along with the development of Canada.

7 This is one of the strongest 8 recommendations I would like to bring to the Royal 9 Commission, that the treaties require some kind of 10 implementing process, some kind of institutional 11 arrangement that will see that the finer spirit of the 12 treaties is realized, that the relationship is renewed, and that the treaties are respected by all who live in 13 14 the country -- such an implementing body, such a treaty 15 commission, such a treaty regime.

16 I think we have to think really long and hard in this country about this institution known as the 17 18 crown. You hear this referred to in different ways in 19 a sort of technical sense. But let's recall that these 20 treaties were negotiated between Indian nations on the 21 one side and with the monarch on the other side. The Indian nations were not negotiating with John A. Macdonald. They 22 23 were not negotiating with bureaucrats. They were not

May 25, 1993

Aboriginal Peoples

negotiating with those parts of the Canadian government which change. The politicians come and go as elections take place. They were dealing with that part of the non-Aboriginal government which was meant to represent permanence, continuity, stability.

6 Of course, the Royal Proclamation of 1763 made it absolutely explicit and clear that the only 7 8 person with the constitutional authority to enter into 9 these treaty arrangements was King George III or his royal 10 heirs. Hence the idea that First Nations, in making 11 treaties, were not dealing with the functionaries of 12 government, were not dealing with the politicians, but were dealing actually with the woman herself, Queen 13 Victoria, in many cases and that the integrity of these 14 15 treaties, the respect which they could command, the image 16 of these treaties was very much associated with the 17 royalty.

We have to really think long and hard now. How do we reflect on this historical development and how can we evolve in a fashion which respects these basic principles, but deals with the reality that the monarchy is an institution of fading relevance and significance to many Canadians?

Aboriginal Peoples

1 I think we even have to get to the point 2 where we have to sort of look toward Queen Elizabeth II, 3 the woman herself, and say, "Look, we know this is a 4 constitutional monarchy, and we know there are severe 5 constraints on what you can do, but you, the woman inside this institution called the monarchy -- it's time you spoke 6 up. Your ministers, the various governments which have 7 8 been spawned by this institution called the crown have 9 not been respecting the finer spirit of the monarch's 10 promises." I don't think it is unreasonable to look to the woman herself and say, "In defending the good name 11 12 of your family, the House of Windsor, you can't wash your hands of this any more. You have to speak up." 13

Meanwhile we in Canada have to start to conceptualize how we could develop some approach to treaties which really deals with the reality of how they historically developed and the central role of the monarchy in these treaties.

I would propose that this imagined treaty regime, this treaty commission, would have to have an arm in the Governor General's office and would have to be structured in such a way that we did our best to see that there was some kind of arm's-length relationship

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

with the political arm of government which, after all,
 is going to change as politicians come and go and as one
 or another politician achieves popularity.

First Nations just can't be held ransom to who is the latest, most popular face in the Canadian political spectrum. They were promised a level of continuity in terms of their treaty relationship, and we have to build that into our institutions.

9 I believe that this treaty commission 10 should have an arm as well in the United Nations because 11 these treaties have an international dimension. These 12 treaties are not, as Joe Clark and others have argued, 13 mere domestic arrangements. They have an international 14 dimension, and there is no way that the United Nations 15 can be excluded from dealing with this reality.

I really think treaties are a very strongly developed aspect of the Canadian constitutional heritage. Of course, the British, in fighting the French and in fighting the Americans and in trying to hold a land claim vis-à-vis the United States made strong alliances with First Nations and allied with First Nations in some instances militarily.

23 The War of 1812 was largely fought by

Aboriginal Peoples

Native people north of the line, who were fighting against 1 2 Americans who sought to annihilate and extinguish the 3 crown's claim. First Nations were fighting for the future 4 of their own First Nations. They were developing their 5 own foreign policy positions, but the fact is that there is this strong tradition of alliance between the crown 6 and First Nations in Canada. That has resulted in there 7 8 being a very strong tradition of treaties in this country's 9 constitutional heritage.

May 25, 1993

10 Think of the Nunavut Treaty which is just 11 now being finalized to some extent. Who lives in the 12 Eastern Arctic? The overwhelming majority of people who live there are Inuit, and Canada's claim to jurisdiction 13 14 and sovereignty in the Eastern Arctic draws a great deal 15 from the fact that the Inuit in that area acknowledge Canada 16 and feel some sense of alliance or even identification with Canada. So Canada's claim to sovereignty and 17 18 jurisdiction in that part of the country depends upon its 19 relationship with the Inuit.

If you read that back through Canadian history, there were so many big parts of the country where the crown's claim depended upon the assertion of some kind of treaty relationship with the First Nations.

Royal Commission on Aboriginal Peoples

May 25, 1993

18

19

20

21

22

23

1 In reflecting on this treaty 2 relationship, we also have to reflect on the relationship 3 of treaty status with the concept of Canadian citizenship. 4 It seems to me there is a very unclear relationship between 5 First Nations people and Canadian citizenship. Many Elders, at the time the franchise was extended in 1960, 6 including Albert Lightning of Alberta, felt that it was 7 some kind of trick to extend the franchise, that once 8 9 registered Indians had the franchise, the federal 10 government would begin to downplay the treaty relationship 11 and begin to treat First Nations people as a particular 12 category of Canadian citizen. I think that has to be dealt with. 13 The 14 very essence of the Indian Act, the very central concept 15 of the Indian Act from its inception was to draw some kind 16 of clear distinction between Canadian citizens and registered Indians, and that has never been worked out. 17

status where First Nations people have a citizenship in StenoTran

Is there, for instance, a dual citizen

So, in working our way through the constitutional status

of these treaties and how they fit into the Canadian polity,

we also have to be cognizant of this question of how First

Nations citizenship relates to Canadian citizenship.

288

May 25, 1993

Aboriginal Peoples

1 their own Aboriginal nationality and also in Canada? What 2 is the relationship to citizenship in the province? Could 3 it be that First Nations have a dual citizenship in Canada 4 but, given section 91(24), are not citizens of the province 5 in the sense that others who are resident with the provincial boundaries are? 6 7 The time is so dear; so little time and 8 so much to say. 9 My final recommendation would have to 10 do with the whole concept of extinguishment. I think we in Canada have to get beyond, first in our imagination, 11 12 the notion that somehow it is possible to extinguish Aboriginal identity, Aboriginal title, Aboriginal culture 13 14 This has been the whole thrust of the Indian Act. This was the whole thrust of the residential schools. 15 This 16 has been the whole thrust of the land regime in many ways. 17 18 I think, in the 20th century, with the 19 horrible genocidal excesses of the Second World War behind 20 us and genocide and ethnic cleansing rearing its ugly head

21 in different parts of the world, we in Canada should have 22 arrived at the point where we could say we unequivocally 23 put aside this regime of Aboriginal extinguishment which

May 25, 1993

Aboriginal Peoples

has often been the overriding element of policy in terms
 of the Department of Indian Affairs' approach to First
 Nations people.

4 I get back to this notion that I think 5 we have to conceptualize that there is within Canada a permanent, inalienable, inextinguishable sphere, which 6 we might refer to as the Aboriginal interest in Canada. 7 8 We could conceptualize this in terms of areas of land; 9 we could conceptualize this in terms of spheres of 10 jurisdiction; we could conceptualize this in terms of 11 linguistic and cultural vitality.

12 The federal government has the responsibility to create a shield, a defence, so that other 13 14 orders of government and corporate interests can't 15 encroach upon this inalienable sphere. But we have to 16 get away from the idea that this sphere of Aboriginality can be extinguished, encroached upon, little by little 17 18 cut away, cut off. This has been the approach, of course. 19 Even the Sparrow case, which is often 20 cited as an enlightened bit of jurisprudence, essentially 21 describes a regime of extinguishment. There are certain 22 procedures which a government has to go through in order 23 to annihilate the Aboriginal title, the Aboriginal

May 25, 1993

Aboriginal Peoples

1 interest in certain lands and resources.

2 What you get is a picture in 1492 of the 3 whole of the lands being the Aboriginal sphere of interest 4 and then being cut away, cut away, infringed upon, 5 lessened, narrowed, and that process continues yet. I 6 think the Chartered Lands Act that is being talked about 7 is yet another encroachment and infringement.

8 What I am proposing is that the 9 Commission do what it can to advertise to the Canadian 10 people that we have to get away from this obsession with the kind of extinguishment, based on the premise ultimately 11 12 that First Nations people are transitional, that eventually they will disappear, that eventually they will 13 14 blend in with the rest of society, and that Canada's future 15 is in terms of some kind of melting pot where these distinct 16 identities are gradually watered down and infringed upon. We have to break out of that stream of history, a stream 17 18 of history which has an incredibly strong momentum and 19 impetus.

I am sure people who are part of this stream and part of this impetus, unless they have a historical sensibility, may not even realize the movement in history that is being carried forward. We have to find

May 25, 1993

Aboriginal Peoples

ways to cause the society to become self-conscious about
 that and change that approach.

3 In terms of -- I guess I could call this a recommendation, but almost more a point of information 4 5 or a progress report. I would like to draw attention to various initiatives which are under way to see that the 6 7 NAFTA treaty, the treaty between Mexico, the United States 8 and Canada, is not set in motion in a way which will infringe 9 upon the deeper structure of treaties with First Nations, 10 will not infringe upon this Aboriginal sphere of interest, will not limit the possibility of Aboriginal governments 11 12 to make decisions in their territories and in their spheres of jurisdiction. 13

14 Unfortunately, in the way the NAFTA 15 treaty has been conceived and the way it has been implemented up until now, there has been no cognizance 16 17 or respect for the reality that the United States, Canada 18 and Mexico are all founded on a deeper structure of treaty 19 relations with indigenous people. Of course, it is a very 20 different type of situation from, for instance, the 21 Maastrict Treaty in Europe.

In Europe, most of the peoples of Europe are represented by governments where their language is

May 25, 1993

Aboriginal Peoples

the official language of the government. The governments,
 to some extent, reflect the cultures of the indigenous
 peoples. Beyond that, there is a European Parliament
 attached to the Maastrict Treaty.

5 What we have in Canada, Mexico and the United States are nation states which largely reflect the 6 languages, cultures, institutions of Europe, largely 7 8 reflect the values of the majority population whose 9 ancestors come from other territories, so these 10 governments don't reflect the values and cultures of 11 indigenous peoples. Not only that, these nation states 12 laid claim to a land mass, to some extent, on the basis of treaties made with First Nations, treaties which in 13 14 a sense acknowledge the inherent right of self-government 15 of those who entered into these treaties.

You could look at this present debate and at what was in the Charlottetown Accord and say it was redundant because of the mere fact that the sovereign of the British Empire acknowledged a people as capable of making a treaty. Where would they get the authority, the autonomy, the power to make a treaty other than from their own sovereignty and jurisdiction?

23 So you have this whole regime of treaty

May 25, 1993

Aboriginal Peoples

relationship with First Nations, and on top of this regime is being placed another treaty, the NAFTA treaty, which outlines all kinds of trade relationships, capacities of governments to make decisions in so many spheres, outlines ways that corporations can take governments to court for infringing upon their free and fair competition as they would see it.

This week, I believe, Lloyd Axworthy is 8 9 bringing an amendment on behalf of the Liberal Party to 10 the floor of the House of Commons. The federal government 11 is trying to ram this legislation through, using closure 12 and not allowing for proper hearings. Kim Campbell speaks of the politics of inclusion. What we are seeing in the 13 14 way the NAFTA treaty is being forced is the politics of 15 exclusion par excellence.

I saw a pretty ugly manifestation of the politics of exclusion three weeks ago when Vicky Crowchild Aberdeen was shoved away from the door at the Tory leadership debate in Calgary, at the Roundup Centre, when she heard the phrase uttered, "Stop the Indians," and when she was denied access to hear a debate between those who are vying for the position of Prime Minister of Canada.

23

Aboriginal Peoples

1 This politics of exclusion is trying to 2 hive off Aboriginal people and Aboriginal affairs to some 3 very small area of government, and meanwhile you go ahead 4 and negotiate for the lands and resources of Canada --5 who has access and all these basic strategic things. This is pretty cynical, but I think we have been given a very 6 solid slogan for the next federal election. 7 The politics of exclusion which 8 9 Aboriginal people have known throughout, certainly since

10 1867 and the people in the east far before that, has been 11 developed and made more sophisticated so that many, many 12 Canadians feel excluded from the vital centres of 13 decision-making over their own futures. I guess Native 14 people are the most extreme example of that unfortunate 15 process in history of which more and more people are 16 becoming conscious.

I will end it there. Thank you.

18 **MODERATOR REGGIE CROWSHOE:** Thank you,

19 Tony.

17

May 25, 1993

20 **CO-CHAIR GEORGES ERASMUS:** One area 21 that I have a question on -- and you have sort of explained 22 it. You make the point that, because section 35 is there 23 and 91(24), there is no need for legislation.

May 25, 1993

Aboriginal Peoples

Most of those heads of power in 91 provide a basis for the federal government to make legislation, and then they have regulations and policy. Primarily, they use it for legislation.

5 If they were to do away with the Indian 6 Act, as you seem to be indicating, and not come up with 7 other legislation, what would be the basis of defining 8 what in fact is their authority? They have the head of 9 power, and section 35 is there, but there is a lot of 10 question about what section 35 actually means. What would 11 be used?

12 TONY HALL: These heads of power in the British North America Act -- a large part of the British 13 14 North America Act broke down jurisdiction between the provincial government and the dominion government and 15 16 listed a number of areas where the dominion government or the federal government would have preeminence, would 17 18 have jurisdiction, and other areas where the provincial 19 government would have jurisdiction.

These phrases that were used, phrases like "navigation", "post office", "Indians and land reserved for Indians", are what Georges is referring to as heads of power.

May 25, 1993

Aboriginal Peoples

1 Ninety-four in this list of dominion 2 areas of jurisdiction, of legislative responsibility, 3 referred to Indians and lands reserved for the Indians. 4 On one hand, this was blatantly racist 5 in that you are talking about a people as an area of jurisdiction. You are talking about Indians. Of course, 6 there is nothing in the British North America Act which 7 8 mentions the Nitsitape(PH), Anishnabai, Haida, Dene. 9 They mention this group called Indians and say that it 10 is under the authority of the federal Parliament. 11 So, in a sense, there is no 12 acknowledgement of the basic human rights of First Nations 13 peoples at all, that they are human beings and, after all, have jurisdiction over themselves, that they should be 14 15 deciding things for themselves. 16 Out of this head of power came the Indian 17 Act which established a regime where a Minister of Indian 18 Affairs would have authority and jurisdiction in the 19 day-to-day affairs of Indian people. In a sense, that 20 is a very Victorian, in the worst sense of the word, 21 antiquated aspect of the Constitution. 22 On the other hand, in the whole history 23 of British colonization of North America, it was clear

May 25, 1993

Aboriginal Peoples

1 that the local government would always try to push away 2 any Indian resistance to exploitation of natural 3 resources. So, in large measure, for instance, the 4 American Revolution was about the local colonies becoming 5 exasperated with the British imperial authority and trying to push away the central authority. In turn, the central 6 authority and the British Empire understood that, in order 7 to have a decent relationship with Indian nations in the 8 9 interior, you couldn't leave this to the local governments, 10 to the colonies. This relationship had to be within the 11 sphere of authority of the central government.

12 In the present day this continues. The 13 provinces are always trying -- Quebec is trying to get 14 the hydro-electric development --

15 CO-CHAIR GEORGES ERASMUS: Could you
16 answer the question. What authority would the federal
17 government use if they didn't have legislation?

18 **TONY HALL:** In a sense, I am trying to 19 show this idea of the central government having 20 responsibility for this relationship. There are strong 21 antecedents in history, and I think whoever wrote 91(24) 22 sort of understood that it was vital that the central 23 authority have responsibility for this relationship.

Aboriginal Peoples

This relationship then develops through treaty, and treaty has no legislative dimension. Treaties are with the sovereign of the United Kingdom and Ireland. In fact, treaties weren't taken and put in Parliament. I would argue that any legislative approach takes away from the logic, from the historic integrity of the treaty relationship.

May 25, 1993

There is within the Canadian tradition, 8 9 which is British tradition in large measure, this whole aspect of the unwritten constitution. You don't have to 10 make everything explicit. In fact, by making things 11 12 explicit, you limit them and tie them down. The First Ministers in the Charlottetown Accord certainly didn't 13 14 want to be explicit about the powers of First Ministers 15 and where exactly they are getting their authority.

16 This is why I would be very distrustful 17 of a legislative approach. I think there is a lot in the 18 unwritten aspect of Canada's Constitution. The document 19 itself doesn't describe the treaty relationship. We speak 20 of the spirit and intent of treaties, the fact that people 21 were negotiating these who didn't speak English at the 22 time. What did they think they were doing? What did they 23 think they were hearing?

May 25, 1993

Aboriginal Peoples

1 CO-CHAIR GEORGES ERASMUS: How do you 2 deal with the fact that in NAFTA and in the Free Trade 3 Agreement with the United States and other international 4 treaties the states that are involved generally have to 5 have domestic legislation to carry out what in fact they 6 signed in the treaties? 7 TONY HALL: To my way of thinking, the 8 Indian Act has nothing to do with the treaties. In fact, 9 the Indian Act represents a betrayal --10 CO-CHAIR GEORGES ERASMUS: I understand 11 that. If the Indian Act were done away with, you say there 12 is no need for legislation to implement the treaties. I am asking how that jibes with the fact that treaties 13 14 are also international in nature? 15 TONY HALL: I am not really sure what you are getting at, Georges. Do you want to elaborate? 16 Is there something that would help me to understand? 17 CO-CHAIR GEORGES ERASMUS: 18 I was just 19 wondering how you brought the two together. The only way 20 NAFTA is going to be able to be law in Canada is if the 21 federal government actually passes legislation. What makes First Nations treaties, which are also international 22

23 in nature

May 25, 1993

Aboriginal Peoples

1 -- how can you implement those without federal legislation? 2 TONY HALL: I am arguing that there is 3 a great deal the federal government could do through 4 policy, simply through deciding at the Cabinet level that 5 existing Aboriginal and treaty rights is a large sphere of Canada and begin to develop policies, procedures, 6 regimes which conform to that and even then going to court 7 8 to stand for the principle that existing Aboriginal and treaty rights is an expansive sphere in this land. A lot 9 10 could be done in that way. 11 CO-CHAIR GEORGES ERASMUS: Thank you. 12 MODERATOR REGGIE CROWSHOE: At this 13 time we will take a five-minute break, and then we will 14 go to the next two presenters. --- Short Recess at 3:25 p.m. 15 --- Upon resuming at 3:40 p.m. 16 17 MODERATOR REGGIE CROWSHOE: We will 18 start with the next two presenters. We have Mike Bruised 19 Head, Executive Director, Sik-ooh-Kotoki Friendship 20 Society. The topic is economic development. 21 MIKE BRUISED HEAD, Executive Director, Sik-ooh-Kotoki Friendship Society: Oki, Reggie. Oki, 22 23 Georges. Oki, Viola.

May 25, 1993

Aboriginal Peoples

1 (Native language - not translated) 2 Good afternoon, Reggie, Georges, Viola. 3 My name is Mike Bruised Head. I am from the Blood Tribe, 4 from the Blackfoot Confederacy. I guess I have 20 minutes 5 to say 20 million things that will cost \$20 million. 6 After going through the information on the terms of reference for this Commission and the 7 8 literature, Framing the Issues, and a process to deal with 9 Native issues in this country called Canada, I can't help 10 but use a report that was put together through another 11 Commission called the Cawsey Report. If we were to follow 12 through on all their recommendations, it would come close to the tune of \$53 million. I can't help but imagine the 13 14 costs that each recommendation may possibly carry through 15 your travels throughout this country. 16 I guess my presentation tries to cover those things that may be somewhat cost-free. What I am 17 18 going to say today may be actually implemented, rather 19 than having 400-odd recommendations that will be difficult

20 to implement because of lack of funding and financial

21 sources.

I hope that what I say today I don't have to repeat, as young as I am, at some future Commission

May 25, 1993 Aboriginal Peoples

1 that may travel across this country again.

2 First of all, a little preamble on the3 Friendship Centre.

Next year we are going to be celebrating our 25th anniversary here in Lethbridge, in 1994. In the past 24 years we have seen many people come through the doors of the Friendship Centre, utilizing our services and programs, from referral to culture to recreation and just about everything under this sun of ours.

10 Since the inception, the Friendship 11 Centre here in Lethbridge, I guess like the 100-odd 12 Friendship Centres in this country, 14 in this province, 13 has helped create that liaison, that transition of the 14 Native people migrating into the urban centre. We have 15 helped in the adjustment, and we are still continuing to 16 do so.

Twenty-four years later, today, we face elimination and extinction like all other Native programs in this country because of federal and provincial cutbacks. Everything seems to be taxed to death; yet, when it comes to federal Native programs, they are on the wayside sooner or later.

23 I don't think I have to really visionize

Aboriginal Peoples

what may happen. I think the liaison, working with the 1 2 non-Native community, helping the Native people adjust 3 to Lethbridge whether they have been here for the last 4 25 years or just arriving in the city of Lethbridge, will 5 be somewhat chaotic. As somebody said earlier, the ugly head of racism is going to come up again, social chaos, 6 unemployment and, when social problems exist, to a large 7 8 extent, it epitomizes that there is something very wrong. 9 These are just to name a few that inevitably will erupt. 10 I have been working with the Friendship 11 Centre for going on six years. As a possible resolution 12 that I ask right off the bat is that there be continual long-term funding agreements, with no cutbacks, from the 13 14 federal government to the Friendship Centre -- the 15 national, the provincial and the local Friendship Centre 16 programs.

17 The Friendship Centres in this country, 18 I think, deserve the recognition that they have been pushed 19 to do the political, the legal, the social, the economic, 20 the educational, and whatever is needed to help these 21 Native people adjust to the city. Some of the reserve 22 communities cannot and are unable to facilitate their needs 23 of housing, economic development, education, land base

May 25, 1993

Aboriginal Peoples

1 and just opportunities for them to survive.

As I have already addressed in my opening statement, I looked and synthesized my presentation today to come up with resolutions to these problems and recommendations that will have a potential process when the dust settles after this forum and after this Royal Commission wraps up its references and roles and duties of their trip.

9 I want to present some recommendations 10 that are dealing with current reality and in a practical way to resolve some of the issues that we face today. 11 12 At the same time, I will possibly duplicate a lot of things 13 other Native groups have already addressed. The following 14 are just some of things to address and, if necessary, I 15 would like to attach appendices or supplements or any other 16 background information to what I am going to say.

17 The first item is language preservation. 18 I would like to see the federal and provincial governments 19 and any religious or church groups that were involved in 20 the loss of our language compensate the Native people in 21 this country, to bring back our languages, to pay for those 22 people still fluent in their mother tongue, to pay for 23 the materials and the preservation costs. I think an

May 25, 1993

Aboriginal Peoples

apology is a start from the Anglican and some of the Catholic churches, but it still doesn't even hit the pain of people that were forced to speak a foreign language other than their own.

5 The second is literacy programs. We estimate 60 to 70 per cent of urban Native people living 6 in this country are functionally illiterate, meaning 7 having Grade 8 or less education. To have long-term 8 9 funding literacy programs for Native people, especially 10 the urban Native people, and that these literacy programs 11 have Native representation and governments to address 12 them, not to have these pilot projects that are coming out every so often from the provincial and federal 13 14 governments.

15 The third is museum artifacts, to have 16 the federal and provincial museums return those sacred 17 artifacts to Native people for us to retain and to maintain 18 our sacred ways and our sacred ceremonies, to return these artifacts to people who know what to do with these artifacts 19 20 and who have the right to handle them, to discuss them, 21 to transfer them, and who have the right to bring them 22 home.

23 Those are the main three. We talk about

May 25, 1993

Aboriginal Peoples

identity; we talk about self-government; we talk about self-determination; we talk about self-sufficiency. I think those three and possibly other very core bases create the foundation that leads toward self-government, and it is all speaking of identity.

6 The fourth item is border crossing, which some of the Elders brought to my attention, to speak 7 8 on their behalf -- to establish a working relationship 9 with the federal immigration and customs officials and 10 with the Native people for a more peaceful and 11 understanding approach for people crossing the borders 12 of Canada and United States and the process where we have our ceremonial bundles, pipes and artifacts that the 13 14 customs and immigration officials have a right to handle 15 and touch and open.

We as first people should have the right to say our prayers in Montana, for example, with the Browning Blackfeet Nation. They are a part of the Blackfoot Confederacy.

To have something that will alleviate this sacrilegious activity from our perspective, the white people touching our sacred bundles. Maybe one of these days, before I cross the Canadian border, I will strip

Aboriginal Peoples

myself and sit naked in my vehicle, so they will have easier 1 2 access to strip search us. But I imagine I will probably 3 have to deal with another law called whatever you are charged for doing that. You just can't win sometimes. 4 5 The fifth item is the Pathways Program. 6 I would like to have the three governing bodies of this 7 country -- the Métis people, the Native Council of Canada, 8 and the Treaty people -- to review and investigate the 9 Pathways project that is being co-ordinated and monitored 10 by the Canada Employment and Immigration Centre. It seems 11 as though that project should be labelled "Pathways to 12 Failure," with all the difficulties and barriers that we are coming into in trying to determine our own training 13 14 program and what is good for us and what is right for us 15 and what we want to learn, not what they want us to be.

16 I think Native people should be 17 full-time, permanent employees of CEIC. We need our own 18 Native people sitting on the other side to work jointly 19 with the Canada Employment Centre staff and the Native management boards. I think a full review and 20 21 investigation should happen, to see whether this thing 22 is doomed to fail or whether we are expending our money 23 wisely and, if it is doomed to fail, why. It seems that

May 25, 1993

Aboriginal Peoples

everybody has their own agenda, including the federal
 government and the bureaucracy of the Canada Employment
 Centre.

4 The next item is taxation. I ask this 5 Royal Commission not necessarily physically to reverse but to begin the lobby of the Supreme Court decision on 6 taxation with regard to taxation for status Indians living 7 8 off the reserve. It is hard enough that we cannot find 9 jobs in our Native communities; now we are providing taxes. 10 I guess maybe it's another detrimental thing for me and many other urban Indians or people working off the reserve 11 12 to go back home and go on welfare.

Many status people are employed off-reserve, and I don't think it is justified, when they are working for their people, that they have to pay taxes, too.

Also, all Friendship Centres should be immune from paying taxes and the Goods and Service Tax. With the low and decreased funding, it is difficult enough to pay taxes; yet, we are just getting a drop in the bucket for funding. I wouldn't mind if we were getting a million dollars and they were charging GST; I wouldn't mind that, but not just on a measly \$100,000.

Aboriginal Peoples

1 My seventh item is racism and 2 employment. There are policies of employment equity. 3 These are just policies. I think the federal government 4 needs to legislate these, to penalize those businesses, 5 colleges, schools, institutions, organizations that receive federal grants but do not employ Native people. 6 It's all talk now, and everybody is breaking the rules. 7 8 How many Native people do you see on federal contracts? 9 Very few. If they are hired, it's on a part-time, casual, 10 seasonal basis. 11 There should be more visibility of

12 Native people, especially status people who seem to be 13 falling through the cracks. These Native people should 14 be hired on a full-time basis, permanently, rather than 15 just ad hoc, catch-all kinds of employment programs.

16 The eighth item, speaking for the 17 Friendship Centre, is that the Friendship Centre should 18 be allowed to apply for bursaries or grants or loans as business organizations are allowed to. The Friendship 19 20 Centre is not allowed to tap into different kinds of 21 business grants or loans because of the criteria that they fall under the federal government and Secretary of State. 22 23 We need an outlet sooner or later. We want to obtain

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 self-sufficiency, but at this point in time, with 2 continuing cutbacks, what is the alternative? There are 3 only so many goodwill dollars that go to non-profit 4 organizations. I think the Friendship Centre should be 5 allowed to have a more business and economic enterprise 6 approach and be allowed to maintain some business 7 functions.

8 The ninth item -- I just want to tell 9 a little story. This being a long weekend, I was at the 10 Waterton Park on Sunday having a family picnic. Two things 11 occurred to me that, if I had done something, I think I 12 would be making this report from a maximum federal 13 penitentiary.

I think Native people are sick and tired of racist attitudes. If we take the law in our own hands, the consequences will be, I guess, at our expense.

I was in Wiarton going up to Cameron Lake, and we were looking for a picnic table. There were two tables by a picnic site, and there were four people, all non-Native, two females and two males. We stopped to use the washroom, and we started working our way toward the picnic table to have lunch there. These four people were not using one table. They saw us coming, and one

May 25, 1993

Aboriginal Peoples

1 person grabbed his plate and moved over to look like he 2 was utilizing the picnic table. I guess within three or 3 four minutes I had to maintain myself; if I hadn't had 4 my family, I don't know where the heck I would be today 5 -- calming myself down because of this kind of attitude that continually exists every day. We backed out, and 6 my spouse gave them the good old finger, a sign that we 7 didn't tolerate that. 8

9 The second part is the same thing, 10 looking for a picnic table, this time in downtown Waterton 11 by the lake. There were three people there. Two people 12 were putting on their diving equipment, and we asked 13 politely, "Can we use the other table?" This one guy that 14 was videotaping these people putting on their diving 15 equipment did not hesitate and said, "No!"

I was kind of surprised. They kind of whispered to each other, and the other guy putting on his diving suit said, "Oh, no, we got our wires crossed. You can use it." I guess I said things that are unmentionable and unprintable, so I won't say them.

21 Number nine is to pursue that there be 22 a complaints office -- and it is not the first time I have 23 heard these stories -- and that all federal national parks

May 25, 1993

Aboriginal Peoples

address racism, too, whether it is from the tourist people,
 the businesses or the federal Parks officials. We will
 not tolerate these any more.

I think this is part of the whole thing of racism. Those parks belong to us, more so than anybody else because we were here first. Yet, we feel like we are from an alien country going into parks, just the way we are treated.

9 The tenth item is that I would like to 10 have this Royal Commission suggest to the proper authorities and organizations to organize a Federation 11 12 of Municipalities National Conference, meaning to get all 13 the mayors or representatives of each major urban centre 14 to have a forum, a conference, with city council reps, urban Native people represented, to strategize on urban 15 16 There is already a Federation of Municipalities Indians. 17 committee, but I think they need to do more -- to spearhead 18 this, to discuss employment, racism, business 19 opportunities and any other issues that city councilmen 20 and mayors should be addressing along with their Native 21 colleagues living in the communities, and this should be

22 a national conference.

23

It has never been done, and I think this

May 25, 1993

Aboriginal Peoples

would be a step forward to having a very solid and good
 urban relationship between Native people and city
 governments.

The eleventh item is the constitutional, the legal, the cultural, historical and language differences of off-reserve or Treaty Indians and the Métis must be recognized separately. Their legal and political positions vary, and they should be processed separately, not integrated into the dominant Canadian society's idea of the melting pot syndrome.

11 I think the reason the three groups of 12 Indian government exist is because of the fact that they are all proud of who they are. I don't think they should 13 14 be amalgamated into one melting pot. We all speak 15 different religions, we have different ceremonies, we have 16 different cultural values, and so on and so forth. I think 17 we should not be put into one pot, just to be stirred around 18 to satisfy the agenda of the federal government and 19 whatever hidden cause they usually have.

The twelfth item is to have research grants and foundations that are directed at studying Native people, to have Native representation. We are being studied to death, and I think we will continue to be studied

Aboriginal Peoples

to death. But, if we are going to be studied to death, 1 2 let's have our own people study us to death. How many 3 dollars have been set aside for research? I think the 4 Native people should be allowed grants for us to study 5 the parliamentary system, for us to study the white people, for us to study the institutions that are still somewhat 6 vague to us, and any other topic that would create justice 7 8 and at least have some kind of co-operation. We want 9 dollars to study the activities of Parliament, for us in 10 our own terms to find out what they are there for. 11 In conclusion -- my colleague, Stan, is 12 kicking me in the shin. I am truly grateful to be allowed 13 to address my issues and presentation to the Royal 14 Commission on Aboriginal Peoples. I know one day I will 15 be an Elder, if I live long enough, since we have a mortality 16 rate of 60 or 65, males and females. If I live long enough, I might be a good Elder. I pray that my children and my 17 18 future grandchildren will benefit from my presentation 19 and from the other submissions that have been addressed at this forum. 20

I hope in my lifetime I will live to see those changes and my people to be given back the honour and respect that we deserve. This country was first ours,

StenoTran

May 25, 1993

Royal Commission on May 25, 1993 Aboriginal Peoples and we are still at the bottom of the list. 1 2 I thank you all, and I also ask kindly: 3 Please take what we have said today to heart because we 4 are the people; we come from the land. 5 Thank you. 6 MODERATOR REGGIE CROWSHOE: Thank you, Mike. The Panel will ask some questions now. 7 CO-CHAIR GEORGES ERASMUS: 8 Thank you 9 for your presentation. 10 In your Point No. 10 you recommended that 11 the Royal Commission get together with the Federation of 12 Municipalities and have a conference on urban Aboriginal peoples. You might be surprised, but this took place last 13 June. We contacted the Federation of Municipalities some 14 15 six or eight months earlier. At the beginning they were 16 very enthusiastic. We put together some ideas; they put together ideas and meetings. The closer we got to the 17 18 meeting, the less interest the municipalities had. 19 In the end there were less and less 20 mayors going to come. In the end, I don't think there 21 was a single mayor that showed up. There were officials 22 sent from certain places, but no one had any authority 23 to actually participate in anything. They came as

May 25, 1993

Aboriginal Peoples

1 observers.

2

We were actually quite disappointed. As you state, it is a very, very important area. 3 What 4 we did was invite Aboriginal people from all of the major 5 cities, the large ones, in the country. In Alberta we had Calgary and Edmonton, and right from Montreal all the 6 way across the country. We knew there were other urban 7 8 areas like Lethbridge, for instance, and many other areas 9 that were being left out, but what we did was take nine 10 or ten of the huge ones -- Toronto, Montreal, Vancouver, et cetera -- and we brought a cross-representation of 11 12 Aboriginal people from those cities so that we could have this dialogue that we thought was absolutely necessary. 13 14 There was a huge turnout by Aboriginal people, a huge turnout, and there were even more wanting 15 16 to come. We had hundreds of Aboriginal people that came. 17 Unfortunately, on the other side of the coin, we were 18 hoping that we would have police chiefs, mayors, people 19 delivering social housing -- all the different services. 20 It ended up that the services that came were the Aboriginal services -- the Friendship Centres, 21 22 all of the different organizations that Aboriginal people 23 have created in the large urban areas.

Aboriginal Peoples

1 The dialogue that we had hoped for didn't 2 occur, unfortunately. Since then we have discovered that 3 the municipalities have decided to create a committee; 4 they are looking at this issue. They are having a 5 conference -- if they didn't have it this past weekend, I think it is this coming weekend. This issue actually 6 is part of their annual meeting. Their committee has been 7 8 looking into it, and it is going to be delivering a report. 9 We are sending one Commissioner to it, 10 and we have some of our officials going to it. 11 Unfortunately, the dialogue we had hoped for -- it was 12 a good dialogue. Because we had so many Aboriginal people there, we learned a lot. We had lots of workshops and 13 14 so forth, but they were not as good as they could have 15 been.

I am telling you that just to let you know that we made an effort there, and we will make more efforts in the future. We recognize that as an important part of our work.

That was our first Round Table. The reason we started off with that first was because there has been lots of work in other areas, but one of the areas where there has not been a lot of work yet is Aboriginal

May 25, 1993

	Royal Commission on
	May 25, 1993 Aboriginal Peoples
1	people living in an urban area what institutions are
2	going to be there in the future, and on and on.
3	MIKE BRUISED HEAD: If I may, Mr.
4	Chairman, I was involved in a conference similar to this
5	in Calgary. I was one of the presenters with regard to
6	policing and how to deal with policing problems.
7	I guess what you have said supports this
8	thing of Canada and each local municipality. I have to
9	give some credit to the City of Lethbridge the aldermen,
10	Alderperson Debbie Crampo and the Mayor for the support
11	they have given us. But it is unfortunate that that same
12	kind of support either doesn't exist or it's nil in other
13	parts of Alberta and Canada.
14	I think maybe this Commission in its
15	findings and concluding remarks should really establish
16	if not only Lethbridge but Canada is really, truly racist.
17	MODERATOR REGGIE CROWSHOE: I would
18	like to thank you for your presentation. We will move
19	on to Stan.
20	STAN KNOWLTON: Oki. (Native language
21	- not translated)
22	Georges, Reggie, Viola, my name is Stan
23	Knowlton. My Indian name, translated, would go something

StenoTran

319

Royal Commission on May 25, 1993 Aboriginal Peoples like Man Like Rabbit in Motion. 1 2 I would like to start off with a brief 3 letter that I have here to give some idea of where I will 4 attempt to go with this. It starts out: "Dear Mr. Knowlton: 5 6 Thank you for your thoughtful response 7 to our program on bilingualism. The 8 Aboriginal perspective on it is one I 9 hadn't thought of. 10 I congratulate you on your work to 11 keep your language alive. I wish you 12 every success with it. Please keep me 13 informed of your progress." 14 It is signed "David Suzuki." 15 I have another letter here that goes something like this: 16 "Dear Mr. Knowlton: 17 18 Many thanks for your letter and 19 wonderful package. You are doing so 20 many important things. Your thoughts 21 about immersion as being the crucial key 22 to preserving linguistic traditions 23 seems so right.

StenoTran

320

May 25, 1993

Aboriginal Peoples

1	I would very much like to hear more
2	about your work as the project
3	progresses."
4	This is signed "Miriam Nitham,
5	Representative for United Nations on Aboriginal
6	Languages."
7	I have another document here, a quite
8	lengthy document of about 500 pages which is only half
9	of it. This comes from the Fitzer Institute, entitled
10	"The Dialogue between Indigenous and Western Scientists."
11	This involves some 30 scientists, some of the best
12	scientists in western ways of thinking.
13	The research that the Sik-ooh-Kotoki
14	Friendship Centre does here in Lethbridge is being
15	recognized. It goes a long way. I think we have to start
16	taking it a lot more seriously. At this particular point
17	I believe we are on the cutting edge of a new era but,
18	unfortunately, this era comes from our past. A lot of
19	times what happened is that a lot of what we had was taken
20	away.
21	We have often referred to the countries
22	of Canada, United States and Mexico as North America.
23	They have their constitutions, and we have problems with

May 25, 1993

Aboriginal Peoples

it. In the last couple of days I went from a reserve into
 the city. In that time period I went from a reserve status
 to an urban Indian, and I went into the States and I became
 nothing.

5 These are the problems we have with them. 6 Unfortunately, we are not here to talk about the problems. 7 Some of the work that we do is 8 interpretation. When we talk about languages, we talk 9 about culture. We talk about a perspective. We talk 10 about all the things that make us who we are. 11 I came from a reserve. I have been in the city for maybe 15 years, over half of my life, and 12 I still haven't turned white. In fact, I seem to keep 13 14 going back to my original roots. 15 In the research I do, a lot of times I

16 am unable to find it from my own people because the boarding schools have blocked it all off. A lot of times it takes 17 18 careful study. One of the recent things I discovered is 19 that the Blackfeet did have a written language. It is 20 something that most people don't know about. We have 21 computerized it so that we can start teaching it in school but, unfortunately, it is classified as artifacts and not 22 23 subject to federal grants.

May 25, 1993

Aboriginal Peoples

1 This 50-page document is not even 2 classified as literature. We have astronomy which is 3 being displayed in the Planetarium in Calgary but, as far 4 as the scientists are concerned, it is not considered 5 astronomy.

A lot of times, when we look at these types of situation, we do have a language problem; we do have a communication problem. Just very recently we were given the ability to vote. Before that we weren't considered humans; we weren't given that right. Those attitudes still continue today.

A lot of the problems that we see in the city are the direct result of Aboriginal people not being treated like people, or the Aboriginal people themselves not really seeing themselves as being complete, as in my case.

There is a reason why I went out to look for who I was. What I found out was that we did have our own constitution; we were complete at one time, but these things have been taken away. It is up to us to go out and look for those things, to re-discover who we really are.

23 One of the things that we found out as

Aboriginal Peoples

we went through here, as we talked with many different 1 2 groups, is the common motif that occurs all over the place 3 which makes reference to Turtle Island. Turtle Island 4 encompasses the whole North American continent, the 5 Ellesmere Islands in the north representing the head, Labrador representing one of the flippers, Florida another 6 flipper, Mexico the tail, California another flipper, 7 8 Alaska another flipper, and then the shell is divided into 9 13 areas which represent the custodians of those areas. 10 These custodians 11 -- and we belong to one of them. In our language we use 12 the word "Spoo-pii" to describe the Turtle, which means an area which is high. 13 14 This area that you are in right now, what 15 we have here is that the water flows off in all directions 16 from this area, which represents that high spot. 17 All these areas, as in the live turtle, 18 are what represents our sacred constitution, the 19 Constitution of Turtle Island. One of those areas on that 20 turtle's back -- like any other turtle, it is broken into

21 13 areas. We represent one of those areas, and within

22 those areas it breaks down further.

23 If you come through Calgary, the

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 Blackfoot people refer to this area as the Old Man and 2 the Old Woman, as in the river. The Rocky Mountains 3 represent the backbone. The Nose Hill in Calgary is the 4 centre of his face. The Bow River is his bow. The 5 Porcupine Hills is his breastplate, The Elbow River is his elbow. The Belly River represents part of his stomach 6 -- and it goes all the way down to Missoula where you have 7 the Blackfoot River. 8

9 Off to the east you have the Old Woman. 10 She looks back this way. Likewise, her body parts are all marked. This forms part of the Constitution of Turtle 11 12 Island. It doesn't include just the Canadian 13 organizations, like the Treaty 7 groups. It doesn't just 14 include the AFN; it doesn't just include the Treaty 15 Alliance and different organizations we have today. Ιt 16 goes clear from Mexico all the way to the tip.

17 What we have to do is realize that this 18 Constitution has been there for a long time. It still 19 exists. We can still utilize it, which we do. It has 20 its own legal system; it has its own economic system; it 21 has its own education; it has its own philosophy; it has 22 its own language; it has its own logic. We can utilize 23 those things. We have been doing it for the last 500 years.

May 25, 1993

23

Aboriginal Peoples

It's nothing new. It is something that, if more people 1 2 realized what it was and realized that it's not a threat, 3 it's who we are, it's what we are, it is something that 4 is very real and we can use it; I use it every day. 5 It is something that, through education, 6 was taken away from me. I learned the Canadian system. 7 I learned the American system. I learned every other system, but I never learned my own. I was 30 years old 8 9 before I started finding these things out. I was 30 years 10 old before my education in the Canadian and the American system stopped and I started looking at my own and realized 11 12 how important it was. 13 It is our tradition. Like I said, we 14 are working in areas of high technology. We are utilizing 15 virtual reality programs to teach our language. We are moving into computers. We are moving into areas where 16 17 science is just beginning to go. It's time we quit looking 18 at our systems; I think they are not worth looking after. 19 It's time we started revising them, to get to know what 20 they are. It's through that that we will find ourselves. 21 As Aboriginal people, we can no longer 22 afford to simply just ad hoc our futures, the future of

StenoTran

our children. There are too many organizations that deal

May 25, 1993

Aboriginal Peoples

with little more than crisis management. We have to get
 away from those.

In the Friendship Centre we see what happens on a daily basis. There are people who don't know who they are. We deal with it every day; we experience it.

7 Moving into a system, what I call the Constitution of Turtle Island, doesn't really cost 8 9 anything. It's nothing to be scared of. It is something 10 in this area that we can implement, and we have been 11 implementing it. It is a type of urban Aboriginal 12 government, whatever you want to call it. It is something where we can use existing resources that are currently 13 being thrown at inefficient or obsolete programs. I guess 14 15 the most important thing about it is that it works, not 16 only for Aboriginal people but for everybody else. Ιt has huge benefits that go with it. 17

18 If you look at the tourism industry and 19 the different industries that are out there which are 20 moving in the directions of eco-tourism, one of the things 21 that is mentioned is that cultural and leaving the land 22 the way it is are some of the things that people are 23 beginning to look at. Again, we are in an economic

May 25, 1993

Aboriginal Peoples

1 situation where we can start utilizing that.

So there are many advantages to this. It eventually will pay for itself. We don't have to depend on anybody. It can exist within the other framework that the other people have brought over here. It is completely compatible. It could be an alternative to the failing system that we see happening all over the place. I see this thing taking us into the 21st

9 century. As it is, countries under economic systems are 10 becoming obsolete. The present system does not allow 11 scientists to go beyond the use of their own languages 12 right now. With that, we have to have systems. We are going into space. We are doing things where there is going 13 14 to be a lot more expected than what we have right now. 15 Rather than buying into this system, we can use our systems 16 right now to get that.

The scientists are in a position where they are looking to us to provide that leadership. I don't think they are looking for us to use their system to do it. They want us to start using our own. They want us to start thinking the way we used to think a long time ago.

23 It would be nice to fix the system. In

May 25, 1993

Aboriginal Peoples

a lot of cases I don't think it is worth fixing. 1 I think 2 we have to look at the future; we have to go on with it. 3 With that, some of the things we have 4 come up with, our language has been around for a long time. 5 I have a site here. If I was to hold up this picture here and show you a pyramid of Egypt that I have found 6 in the prairie, there would probably be a lot of fascination 7 8 with it. This particular site was something like 9 Stonehenge where our writing used to be stored -- there 10 is a little syllabic writing here.

Growing up, this is what the system did to us, hoping that they could kill our languages, kill our culture. Boarding schools were put in place to do the same thing. A lot of times I would say they were about 90 per cent efficient in what they did. It is scary to sit here.

This document was written in the early 18 1800s, with Blackfoot syllabics. That language has 54 19 characters, and English has 26. They only have 13 that 20 are in common. The Blackfoot language is verb-based; the 21 English language is a system which is noun-based. So there 22 is very little communication that occurs between them. 23 Yet, we hold meetings with the language.

Aboriginal Peoples

1 We are missing a lot of things here. 2 The thing about it is that this document that I have here 3 was put together by a group of Elders. A lot of the 4 information I have is confirmed in there, if you can 5 understand it. Eventually, we will have full understanding of it. 6 7 It is through our legends that we are 8 able to locate geographical wonders like this, an old 9 Stonehenge structure dating back 20,000 years. 10 There are five archaeological surveys 11 out there to prove that this site doesn't exist. There 12 is all this stuff out there that we haven't even begun 13 to look at yet. Yet, we have to start doing it. The 14 children that we have growing up in the cities depend on 15 this. The children on the reserves, children everywhere, depend on leaders looking at this line. We ought to quit 16 laughing at it and take it seriously. I have taken it 17 18 seriously, and I have been laughed at. I have been thrown 19 out of a few buildings. I have been thrown out of a few 20 meetings. 21 The thing is that it took us two meetings

22 for these scientists to sit down, almost a week, to get 23 them to even begin to start listening to us. And, do you

StenoTran

May 25, 1993

May 25, 1993

Aboriginal Peoples

1 know what? They quit laughing. I think it is time that 2 Aboriginal people start looking at these things that we 3 do have, start putting it together and start showing them 4 what we can do.

5 I would like to thank you. 6 MODERATOR REGGIE CROWSHOE: I would 7 like to thank Stan for his presentation. There may be 8 some questions from the Panel. Then I would like to 9 present Keith Chiefmoon, and then we will break at 5 10 o'clock.

11 CO-CHAIR GEORGES ERASMUS: Do you have 12 enough of those things that you were holding up to share 13 with us?

STAN KNOWLTON: All we had was 20 14 15 minutes. With this meeting we had six days. I would like 16 to extend an invitation to come over and visit our Centre. We could sit down and go through everything we have. 17 18 In the meantime, I will give you what I do have. I will 19 mail them to you. I would like to keep the door open at 20 some future date where we can sit down and go over it in 21 a lot more detail.

22 CO-CHAIR GEORGES ERASMUS: Can you just
 23 tell me who was supposed to have blown up this site that

Aboriginal Peoples

May 25, 1993

1 you were talking about?

2 **STAN KNOWLTON:** It was blown up by the 3 government. It was all part of their assimilation 4 program. With the material that we do have here, it puts 5 a measurement on how far they have gone and the extent 6 they would go to.

7 CO-CHAIR GEORGES ERASMUS: How far back 8 does the written language of the Blackfeet go? 9 STAN KNOWLTON: We have a document here 10 with some of the dates in here, which we have been able 11 to put back to the early 1800s, 1827, 1819. These are 12 some of the dates they are using in this particular 13 document.

There is a lot of things that we do have to get together on. The language is only part of a greater constitution. The systems are all still intact, but they exist within the languages themselves. We have to do a lot more studying on the languages.

19 CO-CHAIR GEORGES ERASMUS: We will be 20 very interested in looking at the stuff you are going to 21 provide. Thank you for coming forward.

22 **MODERATOR REGGIE CROWSHOE:** I would 23 like to thank Stan and Mike for their presentations. At

StenoTran

332

Royal Commission on May 25, 1993 Aboriginal Peoples 1 this time I would like to present Keith Chiefmoon. 2 KEITH CHIEFMOON: Thank you very much. Mike asked me to take his chair because it was still hot, 3 4 but I will take the one that is cold. 5 (Native language - not translated) 6 I just wanted to thank you for taking the time to come to Lethbridge. First of all, I was 7 8 supposed to be here in attendance with Alderman Ed Martin. 9 He is the Deputy Mayor as well as the Chairman of the 10 Task Force on problem housing. Unfortunately, he is busy with meetings, and he extends his apologies and said I 11 12 should address the issues that we were going to talk about. The topic that we decided to air in this 13 presentation deals with housing, and we have referred to 14 15 it as social housing. I was told I only had about 20 minutes, so I will make it brief. I will give you some 16 17 historical data on what has happened and the reason why 18 we came up with the topic. 19 As you know, racism is very much alive 20 and well here in the city of Lethbridge. Part of the reason 21 is that we have had several incidents that keep coming 22 It came to the point that the City Council appointed up. 23 this Task Force to deal with the issue of housing, or

333

May 25, 1993

Aboriginal Peoples

1 emergency shelter as I will explain later on.

2 We worked with the various committee 3 members. We had committee members from the City, some 4 of the councillors, members of the Native community, the 5 Friendship Centre, the City Solicitor. A group of us decided that there had to be something to accommodate the 6 7 many of the Aboriginal people who are usually, for lack 8 of a better word, sleeping on the streets on any given 9 night. I consulted with the City and the City Police, 10 and they have told me that on any given day, even today, you are going to find 20 to 25 adults that need emergency 11 12 shelter. Some of them are not on assistance because they are just more or less left out. They are to the point 13 14 that they just don't want to bother going through all the 15 bureaucracy of having to apply to Social Services and then 16 getting bounced around.

Actually, they really don't have any voice. Moreover, housing is a major issue for us, not only for the homeless but for the many students who come to Lethbridge to study. They are trying to better themselves; yet, they face this problem. The doors are slammed in their faces, and it is very frustrating. I went through that lots of times.

Aboriginal Peoples

1 When I first started at the university, 2 I ran into the problem. I phoned up the Lethbridge Herald. 3 There was an ad that said there was a place, so I phoned 4 up and they said, "Yes, come over and have a look." I 5 asked how much the deposit was, the damage deposit, and what have you. They said, "Do you drink?" I said, "No." 6 "Do you smoke?" "No." They said, "Well, come over and 7 have a look." 8

May 25, 1993

9 When I knocked on the door and they saw 10 who I was, they said, "I'm sorry, but we just rented it 11 out 10 minutes ago." I said, "But you said on the phone 12 to come and have a look." "Sorry."

13 That happens constantly. The issue is 14 that housing is a problem, not only if you are here in 15 the city, but not to mention what happens at the reservation 16 level.

I was the General Manager of the Housing Department on the Blood Reserve some three years ago. At that particular point, the backlog of families that did not have access to housing was 700 families. That is how much the demand was -- and I am only speaking of the Blood Reserve. I would imagine the circumstances are almost similar on the Peigan Reserve. The reason I quote

May 25, 1993

Aboriginal Peoples

1 the Blood Reserve is because I know that was the data I 2 had.

What happens? There is no housing on the reservation, so they are forced to go to the cities only to be subjected to houses that are sub-standard, are really old, and in the winter time they get very cold. The electricity and heat is quite high and, as a result, they have to pay quite a bit to maintain a reasonable level to keep themselves comfortable.

10 That is why we had talked about this. 11 Mr. Martin on the City Council was very concerned. He 12 did not want to find one of the regulars here in the city on one of these cold winter mornings dead on the street. 13 14 The City of Lethbridge is prepared to put in some dollars to work in conjunction with the provincial and federal 15 service agencies to come up with an emergency shelter. 16 17 However, what has happened is that the 18 provinces are not co-operating, the federal government

19 is not co-operating. It is coming to the point that the 20 City is prepared to provide this type of emergency shelter 21 because they feel that type of service is required. 22 One of the problems that was addressed

23 is, "You have to go back and see your Chief and Council."

Aboriginal Peoples

We have done that. We phone the Chief and Council. They say, "No, no, we're too busy here. You guys are off-reserve. You guys deal with it over there." We go through Social Services again and they say, "Well, you're under federal jurisdiction." So this thing goes on and on and on, and we're getting fed up with it. We are tired of that, and we are looking for a practical solution.

May 25, 1993

8 We agreed with the City that this is what 9 is required. These serious discussions have been taking 10 place in the past 18 months. It just didn't happen that 11 we applied yesterday.

Not only that, but the disabled on the reservation have no voice. They are totally excluded from the housing programs. They are bounced around, to the point that they have to move into the cities, and the cities are having a hard time trying to keep up.

17 The other thing I wanted to address is 18 the students. There are a lot of students coming to school 19 here. As one of the expert sociologists or psychologists 20 indicated, you have to have a good home in order to excel 21 in your studies. What happens is that, when students come 22 to the city, it is not a very good situation, so they end 23 up commuting back and forth to the reservation. That adds

337

Royal Commission on May 25, 1993 Aboriginal Peoples on to why this housing has to be addressed. 1 2 We feel that, if it is not addressed, 3 it causes more problems. What usually happens is that 4 they end up being statistics. They say, "These Native 5 students came, and they failed in their studies." But they don't realize that all the factors weren't equal. 6 7 There have to be some accommodations 8 made for students. The ones that have gone on usually 9 end up moving back to the cities, and they are the ones 10 that have struggled through. As a result, only a small portion have been able to succeed. 11 12 I know that, as far as some of the Native students who have tried, they get bounced around here, 13 and it makes it very frustrating. 14 15 In the recommendations I have made, I have four points: 16 17 Emergency shelter should be a priority. 18 19 We should have an urban Indian housing 20 program. 21 Also, in addition to that, there should be a student housing program because of the two higher 22 23 learning institutions in the city.

StenoTran

338

Aboriginal Peoples

1 I also want to include that the 2 indigenous people should be allowed to sit on what they 3 call the Landlord-Tenant Board so that they can advocate 4 the views of the Aboriginals or the indigenous people that 5 have to appear before that particular board. 6 That is what I have included. Again, my apologies for my colleague, Ed Martin. He was going 7 8 to be here, and I guess he had meetings. That is my presentation. 9 10 MODERATOR REGGIE CROWSHOE: Thank you 11 for your presentation, Keith. At this time, the Panel 12 has some questions. 13 CO-CHAIR GEORGES ERASMUS: I have just 14 one. When you were telling us about the need for housing on the Blood Reserve, did you say there was a backlog a 15 couple of years ago of 700 families? 16 17 KEITH CHIEFMOON: Yes. CO-CHAIR GEORGES ERASMUS: How big is 18 the Blood Reserve? How many people are there on the 19 20 reserve? 21 KEITH CHIEFMOON: I think the Tribal 22 official who spoke this morning estimated that there were 23 7,000. Land-base-wise, that is the biggest reserve in

StenoTran

May 25, 1993

Royal Commission on May 25, 1993 Aboriginal Peoples Canada. I think the population has exceeded 7,000, 7,500. 1 What has happened there is that the majority of these tribal members are moving to the neighbouring cities. If you drive around in the neighbouring cities, such as Cardston, you will find that there is a high rate of families living in the town of Cardston, Fort McLeod, Lethbridge, McGrath, Raymond because of the fact that the tribe just can't keep up with the demand. CO-CHAIR GEORGES ERASMUS: Thank you. COMMISSIONER VIOLA ROBINSON: I have just one question. Did you say that the City was prepared to contribute something for the establishment of an emergency shelter? **KEITH CHIEFMOON:** Yes. There was a committee established called the Task Force on Problem Housing, and that is what the City is prepared to make a contribution, just so that we can address the need for this emergency shelter. With the co-operation of the City Police 22 and Social Services, on any given day there are 20 to 25 23 adults that require this emergency shelter.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

StenoTran

340

May 25, 1993

Aboriginal Peoples

1 COMMISSIONER VIOLA ROBINSON: You don't 2 have any kind of urban housing society? 3 **KEITH CHIEFMOON:** There is, but again 4 there is a backlog. I can't really speak for them, but 5 there is an existing housing program called Treaty 7. There is a backlog of all these families. I think they 6 only allow -- I forget how much, but they just can't keep 7 8 up. 9 The other program that is available is 10 the Low Rental Housing Program. Again, the Native people have applied, and they are usually away down the list. 11 12 I think they have a one-year or two-year waiting list that exists all the time. 13 14 COMMISSIONER VIOLA ROBINSON: Thank 15 you. 16 CO-CHAIR GEORGES ERASMUS: Thank you for coming forward. 17 18 MODERATOR REGGIE CROWSHOE: Thank you, 19 Keith. 20 There is one person at the mike, and then we will break for dinner so that we can start the Youth 21 22 Circle at 6 o'clock. 23 MARTIN HEAVY HEAD: Thank you very much.

May 25, 1993

Aboriginal Peoples

My name is Martin Heavy Head, and I am the Native Students
 Services Officer at the U of L. I work with American Native
 Studies.

I also am the Chairman of the Treaty 7 Urban Indian Housing Authority here in Lethbridge. We started out in 1986. Actually a little before that, we did a Needs Assessment for the City of Lethbridge. When we did that Needs Assessment back then, there were 800 families that applied for housing here in Lethbridge. At the time we didn't have one house.

With those 800 families applying, we started working with CMHC in their Urban Native Housing Program. To date we now have 156 houses, 110 here in Lethbridge, about 30 in Calgary, and about another 10 in Cardston.

We are well aware of the housing problem for Native people here in town. In fact, there are places referred to as Indian Village, Mexican Village, Devil's Corner, that are tenanted by low-income Native families that really have no other place to go. The slum landlords here in town are doing a great business.

We have bought these houses that are individual family units, but we can't even come close to

Royal Commission on May 25, 1993 Aboriginal Peoples 1 providing for the demand that is out there. 2 What happened this year is that this 3 program has been cut by CMHC. The other program that 4 exists specifically for Native people is the on-reserve 5 or Rural Native Housing Program, and that hasn't been cut 6 yet. 7 One of the things that I would like to 8 recommend is that the Urban Native Housing Program be 9 continued after this year because it is serving a great 10 need, especially here in Lethbridge and also in Calgary. 11 With that, I would like to thank you very 12 much for your time. 13 CO-CHAIR GEORGES ERASMUS: Thank you 14 for coming forward with that. MODERATOR REGGIE CROWSHOE: Could I ask 15 16 Martin to come up to the front. We will end this afternoon's session and break for dinner. We will start 17 the Youth Circle at 6 o'clock. 18 19 I will ask Martin Heavy Head to say the 20 closing prayer. 21 --- Closing Prayer 22 --- Whereupon the Hearing was concluded at 23 5:00 p.m.

StenoTran

343