RECLAIMING OUR NATIONHOOD STRENGTHENING OUR HERITAGE

Report to the Royal Commission on Aboriginal Peoples

Assembly of First Nations

1993

We, the Original Peoples of this land, know the Creator put us here.

The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.

The laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our languages and our traditions from time immemorial.

We continue to exercise the rights and fulfil the responsibilities and obligations given to us by the Creator for the land upon which we are placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

TABLE OF CONTENTS

INTRODUCTION

We, the Assembly of First Nations, want to see fundamental change in our human condition and in our relationship with Canada. We see these changes as providing our social and economic advancement and as essential to maintaining social peace. As First Nation leaders, we have a duty to ensure that our people are treated justly in our homelands and our country. We insist on fair and respectful treatment. This is a responsibility we bear for future generations of our peoples.

While we would like to see a new relationship emerge between First Nations and Canada, we are firmly of the view, that the principles of this new relationship are in our history and especially in our history of treaty making with European nations and Canada.

In fact, it is the very neglect and denial of the rights and obligations in the treaties and the first principles, based on an equal nation-to-nation relationship, that is the cause for most of our current problems and grievances and the reason for our demand for a new relationship.

The new relationship will emerge from the restoration of the first principles. We can move forward together by restoring what was good, and by redressing what was bad, in our common past. Our people want a future, based on a discourse with Canada, that is respectful and knowledgable about our history and our indigenous human rights, in this land that we call Mother Earth.

This place which is now called Canada, is our only home on Mother Earth. It is the homeland of our nations. Our ancestors explored and settled all the forests, the rivers and the lakes, the mountains and the plains, the coasts and the inland and all the seasons of the land. Today our people's paths through our lands have been severely restricted by the acts of not the Creator, but by the actions of new settlers.

We shared this bountiful land with our many distinct aboriginal brother nations for thousands of years before the arrival of Europeans. We had ancient agreements on how to share the land and its resources. These agreements, later known as treaties, were an established tradition among First Nations.

Our songs, our spirits and our identities are written on this land, and the future of our peoples is tied to it. It is not a possession or a commodity for us - it is the heart of our nations. In our traditional spirituality, it is our Mother. We are passionate about this land, and we want you to understand that passion is not about power and individual wealth. It is reflective of the strong spiritual teachings which our nations share, of respect for Mother Earth and of all Creation. It is our life.

We are this land, and yet we have been excluded in most bitter fashion. This is painful for our peoples, and it shows in the suffering we have collectively endured for several centuries. Our traditional homelands have been taken over by a society, which has built a Nation-State that does not include our peoples, our collectivities, and disregards our human right of self-determination. This is an agonizing experience for us, because we have been victimized in our own home, in our own lands. No human race deserves to be dispossessed of its past and future heritage.

When the Europeans arrived, we again shared our land and resources and taught them how to survive. Our earliest relationship with the first settlers was as equal partners in commerce and trade, and military alliance. These agreements or treaties clearly signified a special relationship as brothers, equals and allies and were expected to be honoured by all parties. . . "as long as the sun shines".

The treaties we signed with Europeans were meant to ensure the continued existence of our cultures and ways of life. However, we realized shortly after contact that our cultures and peoples were very different and that it would be important not to have one dominate or impose its values and traditions on the other.

Our systems of government evolved over thousands of years and they permitted us to live in harmony with one another and with our environment. First Nations did not elect governments by holding elections on the basis of one person-one vote majority rule. Instead, we used traditional methods to select our governments.

We selected our own leaders, made our own laws and governed our own affairs. Our traditional governments regulated all aspects of life -- from housing and adoptions to land use and social assistance. Our nations used customs, tradition and ceremonies to maintain harmony. We had our own justice systems to resolve disputes and maintain peace.

Traditional First Nations governments included representatives of every family or clan. Traditional First Nations governments did not operate on the basis of majority rule. Instead, we operated by consensus, a system which requires everyone to agree on a particular course of action. Consensus, however, does not mean unanimity. Under consensus, the 'majority' must find a way of accommodating the interests and concerns of the 'minority'. And, the 'minority' conforms with the wishes of the 'majority'.

Consensus is based on a principle that sets life in the First Nations clearly apart from the Canadian, American and European experience. That principle is the importance of collective rights over individual rights. First Nations lived by codes that made the interests of the family, clan and nation more important than the interests of the individual.

Our lives were dominated by the need to fulfil our duties to our families, communities and nations. This way of life imposed an obligation on individuals to place other people's needs first. As a result, two distinctive features -- sharing and co-operation -- became a central focus of First Nations' life. The people of the First Nations willingly sacrificed some individual freedom to the common good, because that way of life ensured the comfort, well-being, safety and survival of the nation.

In addition to the traditions involving consensus and majority rule, there were other major differences in the way First Nations and Europeans governed themselves. First Nations, in many regions, the Micmac and Iroquois in the east, for example and the Blackfoot in the west, established a sophisticated form of federal government called a confederacy.

Under this system, individual nations were free to do as they wished, the confederacy provided unified action. The idea of a federal government amazed Europeans who were being ruled by absolute monarchs. The Americans were so intrigued by the Iroquois Confederacy that they modeled their own system of government after it.

Much has changed since early contact with European governments and peoples. Our populations have been decimated by disease; our traditional economies destroyed; our traditional and sacred territories fenced off and forbidden to us; our children have been taken from us and we have been confined to small pieces of land called 'reserves'.

We believe that many of the problems we face today are rooted in the failure to honour our treaty relationships. We have consistently reminded governments to keep their word. Since the 1700s, we sent delegations to Britain to assert our rights. After 1867, we sent delegations to Ottawa. We have argued our case before the League of Nations and the United Nations. Our treaties are sacred agreements and we will dishonour the memory of our ancestors if we do any less.

We insist that all deliberations on the future of our peoples respect the fact, that we approach issues of political and social change from a different perspective. Like our ancestors, we regard the right to be different not as an obstacle, but as a foundation for our co-existence as distinct peoples.

Our struggle for a future is not about power - it is about survival and justice. We have been victims of both power and injustice. We believe, that as a consequence of that victimization, our future relationship can and must not be based on the abuse of power and the perpetuation of injustice.

As you have established during the Commission hearings across the country, our peoples are in dire circumstances. The physical, mental, emotional and spiritual health of our peoples has been undermined by policies based on attitudes which have attacked our identity as distinct people, and sought to assimilate us into an alien culture and economy. Our lands have been taken illegally and unjustifiably. Our languages and cultures have been ridiculed, undermined and nearly eradicated.

The suffering our peoples have experienced in residential schools and through explicit policies of assimilation need to be publicly addressed in Canada. Only then, can the basis for a new relationship be established. Public acknowledgement of historic wrongs our people have experienced, must be made by Canadian governments.

An environment for healing must be created, not just for First Nations but for all of Canada. Canada must face the brutal truth of its record with First Nations. Churches have recently extended apologies to First Nations. Their example must be followed by governments. However, both churches and governments must go far beyond apologies.

First Nations no longer have self-determination. First Nations are ruled by the Indian Act and many other federal and provincial laws. The Indian Act imposes many barriers to First Nations' advancement. Traditional governmental systems, structures and practices are not recognized under the Act. First Nations still need the Minister of Indian Affairs approval to enact even the most ordinary of laws.

We have been regulated and governed by the Indian Act for over a century - an oppressive colonial legislation that attempts to tell us who we are as peoples. This law has been used to deny our peoples the freedom of association, the freedom of religion; in short - their freedom as a human race.

Amending the Indian Act will not work. The larger issue remains lack of control over our lives, and the non-recognition of the right of self determination for First Nations. Imposed systems, which remove responsibilities have not worked. We have to reinstitute our own systems; we have to take the responsibility.

We are faced with complex problems and fewer resources to deal with them. Canada has relieved First Nations of any authority and responsibility for control of their communities. It is not possible for distinct societies to be self-reliant when the imposed system is dictated by principles reflecting another societies values.

Sometimes even we believe that we are on the brink of extinction as peoples. The loss of our diversity, our contribution to the heritage of the world community, would be a tragedy for all.

Against all odds, our peoples have miraculously survived oppression and colonization. We have resisted complete assimilation of our cultural identities, our languages and our traditional governing institutions and economies. We are now on the path of renewal - the healing of our people and our indigenous nations.

Although our identities have been shaped by our encounters with European newcomers to this land, we also have shaped and influenced their identities. Yet, our contribution to this country has not been recognized. Our peoples' histories appear erased in the official version of Canada. This is unacceptable, this is wrong.

We have come full-circle in our ties with Canada. Contemporary First Nations understand and embrace the vision of our ancestors, who treated the new settlers as relatives, with whom to share a common commitment to our Great Mother.

We are deeply offended at the mention of the myth of two founding nations in Canada. At Confederation in 1867, only representatives of the English and French settlers participated in the founding - we were ignored. We need to attain recognition as distinct nations, deserving of respect.

We focus in this report on our vision for the future. We emphasize where we expect to go and how we see you, the Royal Commission, assisting us in this voyage. We have based our recommendations on First Nation customs, traditions and teachings - to express how we see the future.

The approach to change we advocate in this report is holistic in nature. But it will also take extensive constitutional, legislative and policy changes and developments. We realize that this is a great challenge. There has been enough agonizing over our situation by all concerned. It is time we dealt with our situation in a comprehensive and extensive fashion .... together.

Our report addresses particular concerns and contains specific recommendation, to ensure that you, as Commissioners, will have a full understanding of our aspirations.

Our message is also directed to all levels of Canadian governments, to all First Nation governments, to First Nation people and all the people of Canada.

As the Royal Commission on Aboriginal Peoples, governments will be looking to you for solutions. You carry the responsibility for our futures. We ask that you carefully consider our vision of a new relationship and our recommendations for change. Our people will remember you, and your efforts as a Commission, for a long time into the future. Remember us, and especially our children and the coming generations, in discharging your mandate.

TREATIES

We want treaty justice. Treaty making and the nation-to-nation relationship it represents, is the basis of all dealings between First Nations and the Crown. We want to have our treaties honoured and respected according to our understanding of the treaties. Where there are uncertainties in our relationships with the Crown, as in areas of Canada without treaty agreements, we want to enter into new treaties. The existing treaties and the treaty making process must be seen as the foundation for all policies, political discussions, negotiations and future developments regarding First Nations.

The treaties between the First Nations and the Crown are the connecting thread of the history of Canada. There are several hundred treaties which have been concluded between the Crown and First Nations. These include pre-confederation treaties, post-confederation treaties and modern land claims agreements and treaties.

It was through the formation of alliances, the development of partnerships and understanding of respective responsibilities and rights of the European newcomers and our peoples, that we came to shape Canada as it is today.

It is important for the Royal Commission to clearly understand how we see treaties and treaty relationships. To us, the treaties stand as a covenant between nations that are sovereign and capable of signing treaties. Nations make treaties. To us, therefore, the treaties stand for a relationship with the Crown which is based on consent, free will and the sanctity of a promise. Treaties were solemnized in a spiritual context and the importance of maintaining treaty relationships is reinforced by that fact. We cannot today consider breaking what was agreed to in a political and spiritual context by our ancestors.

Treaties were not a one-sided relationship dictated by governments of the original European newcomers to our homelands. They have always been and will always be a relationship based upon basic principles of trust, partnership and mutual respect captured in the treaties. This is why our treaties are so important to us. They must remain the basis of any new policy direction for the future, as this was always the original intention.

Our treaties also reinforce our belief how wrong the Indian Act has been in subjecting our peoples to a system of government which undermines our inherent autonomy and our rights flowing from treaty promises. The Indian Act must be seen for what it is - a gross denial of treaty rights and of our relationship with the Crown based on the Crown's duty to us to fulfil its promises.

The principles which the treaty-making process demonstrates are simple, yet they are of enormous significance to the achievement of social peace and reconciliation with our peoples

in Canada today. It was brought into existence without discussion, consultation or consent of First Nations.

When the Crown entered into treaties with our people, this was done in a manner based on our spiritual ceremonies and practices of solemnizing agreements. When the treaties were concluded, we shared the sacred pipe with the Crown's representatives, or we shared other ceremonies including an exchange of gifts or wampum. The fact that our ceremonies were used, tells us that the basis of our relationship with non-aboriginal governments is one which respects the fact that we are different.

It respects the fact that we have our own cultures, political systems, spirituality and that these are not inferior to those of European peoples. It also means that our customs and traditions are significant and ought to be followed and respected by officials of government when dealing with our peoples.

The process of treaty making between First Nations and European newcomers is the backbone of our relations. This process is important because of the principles which it represents both historically and for the future: respect for our independence as peoples and a commitment to mutually agreed upon conflict resolution and the highest duty to honour one's word. In other words, the equality of the First Nations and the Crown as nations was respected in the treaty-making process.

These principles have been the foundation of our relationships since earliest contact. These principles are also the basis upon which we want to build mutual future relations - a basis which recaptures the true spirit of the treaties and the relationship of respect for our differences and our political autonomy.

historic context

ANY CONTEMPORARY POLICY ON TREATIES BETWEEN THE CROWN AND FIRST NATIONS MUST BE PLACED WITHIN THE HISTORIC CONTEXT OF TREATY MAKING. IT IS PROPOSED THAT KEY PRINCIPLES FROM THE TREATY-MAKING PROCESS BE USED AS THE BASIS FOR ANY NEW POLICY ON FIRST NATION RELATIONS IN CANADA.

THESE KEY PRINCIPLES SHOULD INCLUDE RESPECT FOR FIRST NATIONS CULTURE AND SPIRITUALITY, RESPECT FOR THE MUTUALITY OF THE RELATIONSHIP, RESPECT FOR THE EQUALITY OF PEOPLES, FIRST NATION AND CANADIAN, AND A FUNDAMENTAL COMMITMENT TO THE PRINCIPLES OF HONOURING OBLIGATIONS FLOWING FROM SPECIFIC TREATIES.

1

First Nations see the treaty relationship with the Crown as one embodying a nation-to-nation relationship. The treaty represents the agreement of two independent parties - the Crown and First Nations. As First Nations we know that the independence of our peoples in entering into treaties has to be preserved and sustained. Treaties did not in any way eliminate or reduce the independence or autonomy and integrity of our nations. We are distinct nations -- distinct peoples with distinct languages, cultures, traditions and governments. We are also nations in the sense that each First Nation has a political responsibility for its people. Our treaties reinforce these concepts.

inherent right

TREATIES BETWEEN FIRST NATIONS AND THE CROWN REINFORCE THE INHERENT RIGHT AND RESPONSIBILITY OF FIRST NATIONS TO GOVERN THEIR PEOPLE. ANY FUTURE POLICY BY THE GOVERNMENT OF CANADA MUST RECOGNIZE THIS IN A FUNDAMENTAL WAY. THE NATION-TO-NATION RELATIONSHIP BETWEEN FIRST NATIONS AND THE CROWN IS THE BASIS FOR SUCH POLICY. THIS HISTORIC RELATIONSHIP, CONFIRMED IN OUR TREATIES, MUST BE ENTRENCHED IN THE CONSTITUTION OF CANADA.

2

The treaty relationship between First Nations and the Crown has not been respected by the Crown or Canadian governments. One very important goal of the Assembly of First Nations is to ensure that treaty obligations are honoured, and to ensure that our people see treaty justice. In the treaty process, First Nations never relinquished the inherent right to govern themselves.

We will not accept a future which does not include treaty justice for our peoples. Our treaty history in Canada has been one of consistent breaches of the terms of our treaties - and fraud and abuse in the treatment of our agreements. We have seen many instances where what was agreed to by our peoples at treaty time did not find its way into the official text or record of the treaty. We have seen far too many instances where promises made in the treaties have been either ignored, unilaterally altered or frustrated because of government unwillingness to honour their spirit and intent.

spirit and intent

FIRST NATIONS TREATIES MUST BE IMPLEMENTED IN ACCORDANCE WITH THE SPIRIT AND INTENT AS UNDERSTOOD BY FIRST PEOPLES, ESPECIALLY OUR ELDERS, WHOSE KNOWLEDGE OF THE TREATIES IS STRONG. SPIRIT AND INTENT MEANS MORE THAN THE ENGLISH OR FRENCH TEXT BUT REQUIRES AN EXAMINATION OF THE WRITTEN AND ORAL HISTORY OF THE TREATY NEGOTIATIONS.

3

The spirit and intent of treaties is important in order to place the relationship between First Nations and the Crown on a proper footing. For far too long we have been subjected to one-sided interpretations of the treaties. Whether this is in regard to our land, health or education rights, we have been consistently dictated to in regard to treaty rights. When we have offered our perspectives, either in the courts or in discussions, these have been consistently downplayed or disregarded.

The oral histories of the treaties must be recorded in a manner which is not adversarial, so that the First Nations' record of treaties can be preserved for the future.

record oral history

THE GOVERNMENT OF CANADA MUST FUND A MAJOR INITIATIVE TO RECORD THE ORAL HISTORY OF FIRST NATIONS TREATIES. THIS WOULD ALLOW FIRST NATIONS THE RESOURCES REQUIRED TO GATHER OUR HISTORY OF THE TREATIES AND RECORD THEM IN A CULTURALLY APPROPRIATE WAY FOR THE PURPOSES OF EDUCATING COMMUNITY MEMBERS AND FOR NEGOTIATIONS WITH GOVERNMENTS.

THE ORAL HISTORY OF THE TREATY MUST BE ACCEPTED IN SUCH NEGOTIATIONS OR PROCEEDINGS AS VALID - AND AS A BASIS FOR DEVELOPING RESPONSES TO TREATY GRIEVANCES, INCLUDING ISSUES OF INTERPRETATION ARISING IN IMPLEMENTATION DISCUSSIONS.

4

In addition to our difficulties with the spirit and intent of our treaties being disregarded, First Nations' governments have several basic grievances stemming from the attitude and policies of the government of Canada toward treaties. Those treaties which were entered into on the basis of fraudulent promises, misrepresentation or under circumstances of duress have never been remedied.

Many of our treaties have not been implemented in a comprehensive manner by governments. This can no longer be tolerated as it has eroded the trust of First Nations in Canadian governments and in the honesty of government officials. This has tainted all of our experiences and in order to build a good relationship with Canadians, this condition must be reversed.

treaty review

IT IS ESSENTIAL THAT THE CROWN, REPRESENTED BY GOVERNMENTS, ESPECIALLY THE FEDERAL GOVERNMENT, ENGAGE, IN CONJUNCTION WITH TREATY NATIONS, WHICH SO REQUEST, IN A COMPREHENSIVE TREATY REVIEW PROCESS TO CONSIDER THE NATURE OF THE TREATY RELATIONSHIP AND PROBLEMS IN REGARD TO INTERPRETATION OF TREATIES, AND DEVISE A DETAILED PLAN FOR THE IMPLEMENTATION OF TREATY RIGHTS.

THIS TREATY REVIEW PROCESS MUST BE STRUCTURED AS THE FIRST PHASE OF THE IMPLEMENTATION PROCESS.

5

The treaty review process will mean little to First Nations, if it does not have government involvement of the highest level. The government of Canada must restructure its administration and executive to reflect its priority on treaty implementation. The Department of Indian Affairs has consistently shown to be unable to deal with treaty issues and as a consequence treaty implementation concerns have been disregarded for far too long. The restructuring of government is necessary in order to afford proper status and attention to treaties.

A critical part of the restructuring of First Nations policy, is to ensure that the Crown maintains its fiduciary obligation towards First Nations. These obligations flow from the nature of the relationship between First Nations and the Crown and from treaty promises.

Fiduciary obligations stemming from treaty promises must be fulfilled honourably and in a non-adversarial fashion. Although the Department of Indian Affairs in the past three years has provided token response to the need for treaty review, requirements for a comprehensive review have never been met.

office of treaty obligation

AN OFFICE OF TREATY OBLIGATION MUST BE CREATED BY THE FEDERAL GOVERNMENT IN CONJUNCTION WITH FIRST NATIONS. ALL MATTERS STEMMING FROM TREATIES, ESPECIALLY FIDUCIARY OBLIGATIONS MUST BE ADMINISTERED BY THIS OFFICE. A SENIOR OFFICIAL, RESPONSIBLE FOR TREATY OBLIGATIONS, MUST REPORT DIRECTLY TO THE FEDERAL CABINET AND OVERSEE THE OPERATIONS OF THE OFFICE. THE OFFICIAL MUST REPORT ANNUALLY ON THE REVIEW PROGRESS AND TREATY IMPLEMENTATIONS.

IT MAY PROVE TO BE DESIRABLE FOR SIMILAR PROVINCIAL OFFICES TO BE ESTABLISHED TO DEAL WITH MATTERS WHICH HAVE BEEN TRANSFERRED TO PROVINCIAL JURISDICTION AND ARE CRITICAL TO TREATY JUSTICE.

6

While the federal government needs to be restructured in order to deal with treaty issues, restructuring alone is not sufficient, without major policy changes and other extensive measures. During treaty negotiations, the Crown sent a Treaty Commissioner to meet with First Nations representatives and discuss the terms of the treaties and the nature of the relationship. In many instances it was agreed, that further discussions would be held in the future to reconsider issues or to deal with emerging issues.

treaty commissioner

THE FEDERAL GOVERNMENT MUST APPOINT A TREATY COMMISSIONER FOR EACH TREATY AREA. THE RESPONSIBILITY OF THE TREATY COMMISSIONER WILL BE TO ACT AS AN INTERMEDIARY BETWEEN GOVERNMENT AND FIRST NATIONS AND FACILITATE THE HONOURABLE AND JUST RESOLUTION OF TREATY DISPUTES THROUGH NEGOTIATED AND DIPLOMATIC MEANS.

THE TREATY COMMISSIONER WILL BE APPOINTED FOLLOWING DISCUSSIONS WITH FIRST NATIONS AS TO THE MOST APPROPRIATE REPRESENTATIVE AND THE NATURE AND EXTENT OF THE RESPONSIBILITIES OF THE COMMISSIONER. EACH TREATY COMMISSIONER WILL REPORT ANNUALLY ON THE PROGRESS IN RESOLVING TREATY GRIEVANCES AND ON OBSTACLES TO TREATY IMPLEMENTATION.

7

The federal government must review all policies and legislation to ensure their full compliance with the treaty promises made to First Nations. We are seriously concerned about the trend toward off-loading responsibilities for treaty First Nations to the provinces and the retreat from fulfilling existing promises.

We have experienced this recently in the area of education, social assistance and health services. This must be addressed, not only within the context of a comprehensive treaty review process with First Nations from each treaty, but also on a national scale in order to ensure that the federal government is fulfilling its fiduciary responsibility and not unilaterally altering or diminishing its obligations.

off-loading to provinces or First Nations

THE FEDERAL GOVERNMENT MUST STOP THE TREND TOWARD OFF-LOADING OBLIGATIONS EITHER TO PROVINCIAL GOVERNMENT OR FIRST NATIONS. IN THE AREAS OF SOCIAL ASSISTANCE, EDUCATION AND HEALTH, THE FEDERAL GOVERNMENT HAS ACTED IN A MANNER INCONSISTENT WITH TREATY OBLIGATIONS AND MUST AGAIN ASSUME RESPONSIBILITY FOR TREATY FIRST NATIONS.

THE FEDERAL GOVERNMENT MUST PROVIDE SUFFICIENT RESOURCES WHICH WILL ENABLE THE TREATY FIRST NATIONS TO MAINTAIN REGULAR COMMUNICATION NETWORKS RESPECTING TREATY ISSUES.

8

The rights of treaty First Nations are fully portable. There was never any agreement or suggestion either at treaty time or later, that our people would only be entitled to their rights if they lived on reserves. Many reserves post-date treaty time. The current federal practice of restricting treaty rights to those living on reserves, is a breach of treaty promises. It is also another example of the imposition of the Indian Act.

portable rights

TREATY RIGHTS ARE FULLY PORTABLE AND FIRST NATIONS CITIZENS MUST NOT BE RESTRICTED TO THE ENJOYMENT OF THEIR TREATY RIGHTS ON THE BASIS OF RESIDENCE ON RESERVE LAND. THE GOVERNMENT MUST ENSURE THAT ALL POLICIES AND LEGISLATION AFFECTING FIRST NATIONS REFLECT THE FACT THAT A TREATY PROMISE IS BINDING. NO RESTRICTIONS MUST BE PLACED ON TREATY RIGHTS WITHOUT THE CONSENT OF FIRST NATIONS.

9

While the position of treaty commissioner is significant for the purpose of treaty review and treaty implementation, it is inevitable that disputes will continue to arise over the application and interpretation of treaties. It is not appropriate for these disputes to be resolved in Canadian courts, as these forums are adversarial in nature and are not in keeping with the principle of equality of the parties. The courts do not reflect the values, perspectives or approaches of First Nations. In order to respond to disputes over specific treaty issues, either in the treaty review process, or a dispute arising from a specific issue like hunting, trapping or fishing rights, a specific jointly established tribunal is required.

In New Zealand, conflicts arising from the Treaty of Waitangi are sometimes referred to a tribunal. While the model is not entirely appropriate in Canada because of differences in

treaty relationships, a similar institution is required.

We will not accept subjecting our elders to the adversarial court process where they can tell the story of our treaties. It is humiliating and culturally insensitive. We need, as the only forum, an appropriate system based on creative co-operation between First Nations leadership and the government.

treaty tribunal

A TREATY TRIBUNAL OR TRIBUNALS MUST BE ESTABLISHED BY THE FEDERAL GOVERNMENT IN CONJUNCTION WITH TREATY FIRST NATIONS IN ORDER TO RESOLVE DISPUTES ARISING FROM TREATIES, INCLUDING TREATY IMPLEMENTATION ISSUES. THE TRIBUNAL SHOULD HAVE A BROAD MANDATE AND SHOULD BE STAFFED BY FIRST NATIONS AND GOVERNMENT REPRESENTATIVES AND DEAL WITH TREATY ISSUES WHICH REQUIRE FORMAL RESOLUTION.

10

Over the years, a number of grievances have arisen with respect to treaties. Governments have unilaterally altered the terms of treaties without First Nations consent. This is a violation of the treaty relationship, premised on mutuality and consent.

The example of unilaterally changing the nature of treaty hunting rights by the 1930s Natural Resources Transfer Agreements in Manitoba, Saskatchewan and Alberta is a case in point. Our treaties were altered without consent or consultation. This is unacceptable and wrong. The Migratory Birds Convention Act is another example of how hunting rights have been reduced without consent. These grievances are significant and it is crucial that our people be compensated for losses associated with breaches of treaty relationships, through unilateral acts, to alter terms earlier agreed upon.

remedies for breaches

IT IS IMPORTANT THAT VIOLATIONS OR BREACHES OF SPECIFIC TERMS OF TREATIES, OR THE TREATY RELATIONSHIP, BE REMEDIED. APPROPRIATE REMEDIES COULD RANGE FROM LEGISLATIVE CHANGES TO MONETARY AND LAND COMPENSATION.

A FULL RANGE OF REMEDIES SHOULD BE AVAILABLE FOR COMPENSATION FOR TREATY BREACHES. THE TREATY COMMISSIONER MUST BE GIVEN THE MANDATE TO REVIEW THE SUITABILITY OF ANY APPROPRIATE REMEDY FOR TREATY VIOLATION.

11

The treaty relationship between First Nations and the Crown is significant for all Canadians. Canadian people know very little about our treaties and our treaty history. It is critical that the public be educated about our history in this area and that their education be presented in a culturally appropriate and sensitive fashion.

resources for public education

IT IS NECESSARY TO PROVIDE SUFFICIENT RESOURCES FOR FIRST NATIONS TO LAUNCH PUBLIC EDUCATION CAMPAIGNS ON ALL ISSUES RELATED TO FIRST NATIONS IN SCHOOLS AND COMMUNITIES. THIS SHOULD BE DONE ON BOTH THE NATIONAL AND REGIONAL LEVEL.

THE PRODUCTS OF THE CAMPAIGN MUST BE MADE AVAILABLE AS WIDELY AS POSSIBLE, INCLUDING TO NEW IMMIGRANTS AND THOSE WISHING TO EMIGRATE TO CANADA.

12

SELF-DETERMINATION AND RESTRUCTURING GOVERNMENT RELATIONS

The Assembly of First Nations has consistently advocated the recognition of the inherent right to self-determination for our peoples. We believe we have this right to determine our future as peoples as an inherent right - rights as peoples who have always been here.

We don't have to prove this to anyone, because our peoples and our governments came first. We put the responsibility to prove our inherent right of self-determination on those who deny that this right exists, as we are confident that their knowledge of this country and its people is incomplete.

To describe our government as a 'right', is to miscast how we view it, because it is not a right in the sense of how rights are understood in the Canadian political system. Governing our people and our lands is a responsibility we must fulfil as First Nations. Self-determination is not something about which we have a choice. It is as responsibility we have been entrusted with by the Creator.

Even though we represent many different First Nation cultures and traditions we all agree on one basic teaching: we were put here by the Creator to care for this land we call Mother Earth. This means we have a responsibility to maintain good relations with all of her creation.

This responsibility requires we govern ourselves according to our own customs, traditions, values, spirituality and especially in a manner that respects and honours all of Creation.

This is why we emphasize to Canadians that we are 'nations' of distinct people with unique governments, customs, cultures, languages and ways of life. We can not shirk the responsibilities we have been given. We are asking that Canadians understand and respect that we have this responsibility and we wish to emphasize that we do not see it as inconsistent with a democratic society or with our relationship with Canadians.

WE WANT OUR RIGHT TO SELF-DETERMINATION FULLY RECOGNIZED AND IMPLEMENTED. WE WANT THE INHERENT RIGHT TO SELF-GOVERNMENT TO BE EXPLICITLY RECOGNIZED AND PROTECTED WITHIN THE CONSTITUTION OF CANADA. WHILE THIS INHERENT RIGHT IS ALREADY AMONG THOSE ABORIGINAL TREATY RIGHTS PROTECTED BY SECTION 35, AN EXPLICIT, CLARIFYING AMENDMENT IS REQUIRED TO ENSURE THAT ALL GOVERNMENTS WITHIN CANADA RECOGNIZE THE LEGAL AUTHORITY OF FIRST NATION GOVERNMENTS AND COMPLY WITH THE INHERENT RIGHT OF FIRST NATIONS TO SELF-GOVERNMENT.

TO EFFECTIVELY IMPLEMENT OUR RIGHT TO SELF-DETERMINATION WILL REQUIRE THE ELIMINATION OF THE INDIAN ACT AND A NEW DIRECTION IN GOVERNMENT POLICY BASED ON RESPECT FOR THE AUTONOMY OF OUR NATIONS. THE EXERCISE OF SELF-GOVERNMENT NECESSARILY INCLUDES JURISDICTION OVER ALL MATTERS RELATING TO OUR PEOPLES AND OUR LANDS.

recognition and implementation of rights

THE FEDERAL GOVERNMENT MUST STOP USING SECTION 91(24) TO UNDERMINE AND LIMIT INHERENT, ABORIGINAL AND TREATY RIGHTS. SECTION 91(24) MUST BE USED TO PROVIDE GUIDANCE TO ALL LEVELS OF GOVERNMENT IN FULFILLING THEIR OBLIGATIONS TO FIRST NATIONS.

13

recognition of inherent rights

THE GOVERNMENTS OF CANADA MUST RECOGNIZE THAT THE INHERENT RIGHT TO SELF-DETERMINATION IS THE BASIS FOR ALL POLICIES, LEGISLATION AND RELATIONS REGARDING FIRST NATION PEOPLES.

14

The right to self-determination is a right of peoples recognized in international law in numerous instruments, like the United Nations Charter and the International Bill of Rights. First Nations are confident that international law supports their claim, as does their history in this country, now called Canada.

Self-determination is a simple concept in terms of our relations with Canada. It means we will take control over our lives to ensure that our rights, languages, cultures, traditions and people are sustained and flourish in the future. We view this as fulfilling our responsibility for future generations. We want to ensure that our nations survive even in light of the great tide of assimilation we have experienced in Canada. Self-determination is about self-preservation and does not in any way resemble the Indian Act.

Self-determination will not lead to a 'patch-work' Canada. Separation from the Canadian State is not, as some critics suggest, our objective. Our political status is a crucial issue for us, because we have never been formally part of the Canadian State.

We are seeking new relations and partnerships with Canada as part of the exercise to our right to self-determination. We are seeking this in friendship and not hostility. We realize that our history here has connected us to other peoples and governments and an independent course is not the one our nations are seeking. This is not to say that should Canadians reject our rights and our peoples that we would continue to extend a hand of friendship.

We do wish stronger presence on the international stage, so we can advocate for improved standards for the rights of indigenous peoples in Canada and across the world.

The fact that we have never been a part of the Canadian federation is important, if Canadians are to understand our political difficulties.

In 1867, the British North American Act was passed and First Nations were simply listed as a head of jurisdiction under the responsibility of the federal government. This is not inclusion as a partner in confederation - it is domination by one level of government.

In 1982, when the Canadian Constitution was fundamentally changed, through the addition of the Canadian Charter of Rights and Freedoms, and many other new provisions, First Nations were neither consulted nor did they consent. They were not brought into the federation at that time.

Our experience in Canada has been one of denial of our identities, rights and cultures. Instead of being true to our treaties and treaty relations, the government of Canada passed the Indian Act which while ostensibly protecting our interests has set out a colonial regime to regulate and govern all aspects of our lives. This is not a partnership - this is dominance and oppression. The Indian Act and the bureaucracy that administers it, are a colonial relic that must be abolished.

Indian Act phased out

THE INDIAN ACT MUST BE PHASED OUT, AS IT IS INCONSISTENT WITH FIRST NATIONS INHERENT RIGHT TO SELF-DETERMINATION. THE TRANSITION TO SELF-DETERMINATION MUST BE THE TOP PRIORITY FOR ALL GOVERNMENTS IN CANADA.

15

The demise of the Indian Act does not mean the end of federal and provincial governmental fiduciary responsibility to First Nations. Those obligations to First Nations and their lands must continue because they are not rooted in the Indian Act and the transition to self-determination does not mean Canadian governments are able to withdraw from their duties to First Nation citizens and governments.

The Indian Act has wreaked havoc on our people over the past century. While its effects are fairly well known, one key area where it has left scars is in terms of First Nation governments. The Band Council system imposed by the Act has severely undermined our traditional governing systems and attacked our consensus form of democracy, which is almost universal for First Nations peoples. First Nations are demanding recognition for their governments and are designing new governing institutions and structures rooted in both First Nations traditions and contemporary community needs.

control of citizenship

THE RIGHT OF FIRST NATIONS TO DETERMINE AND CONTROL THEIR CITIZENSHIP MUST BE RECOGNIZED AS INTEGRAL TO THEIR RIGHT TO SELF-DETERMINATION. THE INDIAN ACT MUST BE ABOLISHED AND THE AUTHORITY OF FIRST NATIONS PEOPLE IN THIS AREA EXPLICITLY RECOGNIZED.

16

The Indian Act has been strongly criticized by First Nations leaders, as well as by numerous human rights organizations, because of the imposed definition of who is or is not an "Indian". The Indian Act, in imposing a government defined test for who is an Indian, has undermined the rights of our nations to define their specific citizenship - a basic element of the right to self-determination of peoples.

re-establish governments

THE MOVE TO RE-ESTABLISH AND STRENGTHEN FIRST NATION GOVERNMENTS MUST BE ENCOURAGED BY ALL LEVELS OF GOVERNMENT. THE ESTABLISHMENT OF FIRST NATION GOVERNMENTS BASED ON FIRST NATION TRADITIONS, INCLUDING HEREDITARY SYSTEMS, CLAN SYSTEMS AND OTHER GOVERNING STRUCTURES SHOULD BE ENCOURAGED AND INNOVATIVE INSTITUTIONS DEVELOPED TO REFLECT BOTH THESE TRADITIONS AND CONTEMPORARY GOVERNING NEEDS.

17

First Nation governments maintain jurisdictions which reflect the inherent right of self-determination of our peoples. Except where we have agreed to limit our jurisdiction by treaty, or given our consent in some way to a reduction in our jurisdiction, our peoples continue to enjoy jurisdiction over all areas of government.

Although the Indian Act only recognized a very limited form of jurisdiction for First Nations, the Act is not reflective of our rights, our realities or our status as First Nations. First Nations jurisdiction must be recognized for the eventual and complete transition from the Indian Act to self-government.

In this context, Canadians have a choice. Our jurisdictions can be recognized and orderly arrangements can be made for the transition to self-government, or First Nations can assume jurisdiction unilaterally without discussion or negotiation with other governments.

First Nations jurisdiction

ALL LEVELS OF GOVERNMENT MUST RECOGNIZE THE FULL JURISDICTION OF FIRST NATIONS GOVERNMENTS OVER ALL AREAS PROMOTING THE DEVELOPMENT OF FIRST NATIONS AS PEOPLES, ESPECIALLY WITH RESPECT TO LANDS, RESOURCES, CULTURE, TRADITIONS AND CITIZENSHIP. FEDERAL AND PROVINCIAL GOVERNMENTS MUST VACATE JURISDICTION OVER ALL MATTERS REQUIRED BY FIRST NATIONS TO EFFECTIVELY EXERCISE THEIR FULL LEGAL AUTHORITY.

THE RECOGNITION OF OUR JURISDICTION MUST BE ACCOMPANIED BY A PROCESS FOR DEVELOPING AN ORDERLY TRANSITION TO SELF-GOVERNMENT. THIS PROCESS MUST BE DEVELOPED WITH FIRST NATIONS POLITICAL REPRESENTATIVES AND GOVERNMENT REPRESENTATIVES. IT MUST BE CLEAR THAT OUR JURISDICTION IS NOT DEPENDENT ON NEGOTIATED AGREEMENTS BUT THAT THIS OPTION IS AVAILABLE TO ENSURE SOCIAL PEACE.

18

The Crown owes a fiduciary responsibility to First Nations. This flows from its position as protector of our lands from non-Indian interference which can be traced to the Royal Proclamation of 1763, and even prior to this date. The Crown owes a specific fiduciary responsibility to First Nations in order to ensure that aboriginal and treaty rights are fully recognized and respected. This has been clearly embraced by the Supreme Court of Canada as part of the highest law of Canada, enshrined in section 35 of the Constitution Act 1982, in the Sparrow judgement.

The fiduciary obligations of the federal and provincial governments also have a duty to protect aboriginal and treaty rights and require that the Crown maintain a certain standard of contact. This included, that the Crown should be a zealous advocate and protector of the rights of First Nations and that the Crown disclose to First Nations all information regarding the specific impact of policies and legislation.

It further requires, that the Crown not place itself in a conflict of interest situation with First Nations. This latter point is important because the Crown does act adversarially to First Nations's interests in a variety of political and legal fora. This behaviour is inconsistent with the duties of a fiduciary responsibility and we call upon governments to ensure the fulfilment of all fiduciary obligations.

fiduciary obligation

THE FULFILMENT OF FIDUCIARY OBLIGATIONS TO FIRST NATIONS, FLOWING FROM RELATIONS BETWEEN FIRST NATIONS AND CANADA, IS ESSENTIAL. IT WILL REQUIRE FUNDAMENTAL CHANGE IN GOVERNMENT ATTITUDE TOWARD FIRST NATIONS AND THEIR RIGHTS IN POLITICAL AND LEGAL FORA AND THE GENUINE FOSTERING OF AN HONOURABLE APPROACH TO NEW RELATIONSHIPS.

19

A process to negotiate the transition from the Indian Act to self-government is important to First Nations because of their history of treaty-making. For many First Nations treaties will form the basis for any discussions of jurisdiction or self-government. For others, treaty-making process will be used to articulate the relationship between First Nations and Canada because this is the tradition which respects independence, partnership and consent.

The negotiation process must be conducted in good faith and it must be expeditious if it is to succeed. Otherwise First Nations will have no option but to assert their rights unilaterally.

Time is of the essence. First Nations feel that they have suffered for too long under the Indian Act and dramatic changes are required to move away from the system in a fashion which is peaceful and strengthens friendship with Canadian governments and their people.

negotiation secretariat

IT IS CRUCIAL THAT NEGOTIATIONS ON THE TRANSITION TO SELF-GOVERNMENT, WHEN DESIRED BY FIRST NATIONS, PROCEED ON AN 'IN GOOD FAITH' BASIS AND THAT THE CONDUCT OF GOVERNMENT PARTIES BE CAREFULLY SCRUTINIZED TO ENSURE THAT PATTERNS OF BEHAVIOUR OF THE PAST, SUCH AS FORCEFUL NEGOTIATION TACTICS AND THE DENIAL OF RIGHTS, ARE NOT REINFORCED IN THE PROCESS.

A NEGOTIATION SECRETARIAT MUST BE ESTABLISHED TO HANDLE THE PROGRESS OF NEGOTIATIONS AND MUST BE INDEPENDENT FROM THE DEPARTMENT OF INDIAN AFFAIRS.

20

The negotiation process is preferred for resolving disputes between First Nations governments and Canadian governments over jurisdiction. First Nations do not consider the court system attractive for resolving conflicts over jurisdiction because of the complexity and time consuming nature of the process.

It would also involve great expenditure of resources. Disputes which do go to court today, are on very narrow issues, and the implementation of the inherent right to self-determination requires a broader approach to the resolution of disputes and a broader political vision of Canada, which recognizes First Nations rights as part of the fabric of the nation.

conflict tribunal

FIRST NATIONS AND ALL LEVELS OF GOVERNMENT MUST ESTABLISH A SPECIAL TRIBUNAL TO DEAL WITH CONFLICTS ARISING FROM THE TRANSITION TO SELF-GOVERNMENT. THIS TRIBUNAL MUST BE CONSTITUTED OF EQUAL NUMBERS OF FIRST NATION AND NON-FIRST NATION MEMBERS AND IT MUST BE AVAILABLE TO DEAL WITH SPECIFIC DISPUTES WHICH ARISE, OR GENERAL DIFFICULTIES GETTING NEGOTIATIONS STARTED.

21

First Nation responsibilities

FIRST NATIONS MUST JOINTLY DETERMINE AND RECOMMEND CHANGES IN CANADIAN LEGISLATION POLICY, FINANCING AND OTHER NON-ABORIGINAL GOVERNMENT INSTITUTIONS, NECESSARY TO CONFORM WITH THE INHERENT RIGHT TO SELF-GOVERNMENT.

FIRST NATIONS MUST JOINTLY IDENTIFY AND BEGIN TO PASS LEGISLATION TO AFFECT SYSTEMIC CHANGE AND, IN THE LONG TERM, FIRST NATIONS MUST ESTABLISH INSTITUTIONS NEEDED TO EXERCISE THEIR RIGHT TO SELF-GOVERNMENT.

22

LANDS AND RESOURCES

"I remember our head chief, when approached some years ago about surrendering his reserve, replied in this way. He bent down, plucked a handful of grass and, handing it over, said: 'This you can use.' Then, bending down with his right hand, he picked a handful of earth and pressed it to his heart and said: 'This is mine and will always be mine for my children of the future"....

James Gladstone or Akay-Na-Muka's (1887-1971) excerpt from his maiden speech in the Senate on August 13, 1958 upon his appointment to the Senate, the first First Nations person to be so honoured.

First Nation peoples, as all peoples, want to live with dignity within their own homeland. First Nation peoples have always been willing to share their land in a manner which would ensure the livelihood of all peoples for future generations. The oral tradition of the treaties clearly demonstrates this willingness to share. The traditional understanding of the sacred treaty agreements clearly expresses the original intent that in exchange for sharing the land, First Nations people had secured the guarantee of inherent right to the lands and resources required to continue supporting themselves.

Since before the Royal Proclamation of 1763, which articulated the Crown's commitment to protect First Nations' land interests and jurisdiction, First Nations have always understood their relationship with the Crown to be one intended to ensure mutual benefit. First Nations generally did not view the land and its resources in terms of rights to exclusive possession. Today, they are surrounded by those who believe in exclusive rights and active exploitation of resources. Land is viewed as a commodity rather than the primary source of sustenance.

First Nations urge Canadians to ensure governments honour the solemn commitments and treaties made between First Nations and the Crown - in return for the sharing of this land. That commitment, in the understanding of First Nations, consists primarily of the trust that First Nation interests are secured by the Crown. The Crown, in right of Canada, will protect lands and resources that the original peoples of this land require.

First Nations legal interest in land and resources must exist today in a contemporary sense and should not be tied to some narrow historical concept of land use and occupancy. The spirit and intent of the First Nation leadership's acceptance of treaty, was to secure the livelihood of future generations. First Nation leaders have always understood that life would change in the future and have worked towards ensuring prosperity have therefore emphasized the protective nature of the bilateral relationship with the Crown which was consummated by the treaty-making process. First Nations understand the defense of their rights to be a reasonable commitment on the part of the Crown, considering the great advantage accorded the government of Canada in exchange for this protection.

Today, First Nations possess only a fraction of the lands once completely within their domain.

The majority of First Nation peoples exist in abject poverty, confined to small parcels of land, called reserves, which are totally inadequate to sustain a viable economy. There is little room for optimism in communities where the federal government dictates all aspects of life, even on such a limited land base. Meanwhile, the surrounding traditional lands are either considered public domain or occupied by third party interests, which always take priority over First Nations' needs.

Government attempts to resolve these issues through cumbersome processes such as the "comprehensive claims policy", have proven to be unsatisfactory. First Nations can not accept the federal government's policy requiring the extinguishment of rights guaranteed in Canada's constitution. First Nation proposals on how the land and its resources could be shared without surrender of First Nation interests, are ignored by government officials.

Many First Nations have ratified claims settlement agreements reluctantly, often feeling that many outstanding issues remain unresolved. Experience to date has shown that failure to address these concerns guarantees many more years of ongoing disputes in the implementation of agreements.

This situation is disturbing for First Nations which feel that it is the Canadian government which should bring forward claims where First Nations have never surrendered their lands to the Crown. First Nations question why they must initiate claims, as it is they, who have lived on the land since time immemorial, unlike those who claim to possess the underlying interest in right of the Crown.

Even where Canadian governments contend, that lands were surrendered by written treaties, traditional elders and leadership of the Treaty First Nations continue to reaffirm their precise oral understanding that - their forefathers merely agreed to share the land with the newcomers up to a level of six inches below the surface. Nothing more was given up through these agreements. Treaties were considered sacred covenants by our forefathers.

Even though Supreme Court rulings affirm that the Indian interpretation is to be favoured whenever there is a dispute over treaties or agreements, conflicts continue over treaty interpretation and implementation with respect to land title and access to resources.

Since Canada acquired the authority of the British Crown to deal with First Nations, and the federal government assumed authority for "Indians and lands reserved for Indians" through Section 91(24) of the Constitution Act, 1867, it has also inherited the responsibilities which this relationship entails. These trust-like responsibilities, referred to as fiduciary obligations, require that the Crown conducts itself in good faith in accordance with the highest legal standards, with respect to the inherent, aboriginal and treaty rights of the First Nations - including lands, resources and other interests.

Where Canada has breached lawful obligations with respect to First Nation lands and assets, or failed to fulfil specific requirements pursuant to statute or treaties, it has attempted to address such matters through what are known as the specific claims negotiation process - rather than through the courts. While negotiations are preferred to lengthy and costly court battles, this policy too, has proven inadequate. Although there are literally thousands of unresolved claims left outstanding, only a few dozen have been settled over the past twenty years.

It is in the handling of so-called specific claims, that the federal government's conflict of interest becomes most evident. The federal government is attempting to minimize the Crown's liabilities, while at the same time it is in a fiduciary relationship with First Nations, with obligations to act in the claimant's best interests. These claims provide a clear example of how the government acts as judge and jury in claims against itself.

For many years, First Nations have called for fundamental change in both these claims policies. These faulty processes must be replaced by new, independent mechanisms which will provide for fair and equitable settlements. However, the federal government's unilateral approach continues to prevail despite the First Nations' many attempts at consultation in recent years. Such issues need to be dealt with at the political level, rather than by public servants who have a vested interest in maintaining the status quo. The legal rights and political interests of First Nations should not be subject to the whims of bureaucrats.

Unless fundamental issues concerning the ownership and jurisdiction of lands and resources are satisfactorily addressed, no package of limited measures will address unresolved issues, let alone provide the basis for prosperity in First Nation communities.

The key to resolving the issue lies in ensuring that First Nations have sufficient lands and resources to sustain a reasonable standard of living, and consequent prosperity. First Nations also face conflict with special interest groups,which maliciously promote a false notion of special rights, a term used to oppose First Nation hunting and fishing rights. This misguided opposition also subjects First Nations to racism. This type of hostility is most often rooted in a widespread lack of understanding about the nature of collective rights and the long-standing legal relationship of First Nations with the Crown.

While First Nations see land and resources as key to the survival of future generations, it must be emphasized that all Canadians will benefit from the resolution of these issues. Prosperous First Nation communities will have a positive impact on the Canadian economy. First Nations are clearly tied into the greater Canadian economy and reality dictates, that this will always be so.

First Nations want a fair and just share with respect to lands and resources. Any reasonable person will agree that First Nations, who were willing to share when called upon, are entitled to the same courtesy in the modern context. Once the will to be fair is established, suitable political, social and economic arrangements will follow.

"We know our lands have now become more valuable. The white people think we do not know their value; but we know that the land is everlasting, and the few goods we receive for it are soon worn out and gone."

Canassatego
Six Nations

GOALS:

I FIRST NATIONS WANT FIRST NATIONS LAND RIGHTS AND JURISDICTION RECOGNIZED

HOW THIS GOAL CAN BE ACHIEVED:

a secure land base

THE GOVERNMENT OF CANADA MUST RECOGNIZE THAT FIRST NATIONS ARE LEGITIMATE GOVERNMENTS WHICH NEED FULL AUTHORITY AND CONTROL OVER THEIR LAND AND RESOURCE BASE.

ALL LEVELS OF GOVERNMENT MUST RECOGNIZE AND RESPECT FIRST NATIONS LAND RIGHTS, WHETHER BASED ON INHERENT, ABORIGINAL OR TREATY RIGHTS.

THE FEDERAL GOVERNMENT MUST ENSURE THAT FIRST NATIONS OWNERSHIP, JURISDICTION, ACCESS OR ANY OTHER INTERESTS IN LANDS RESOURCES AND WATER BE IMPLEMENTED IN A MANNER MOST BENEFICIAL TO FIRST NATIONS.

23

In order for First Nations to achieve their objectives of self sufficiency, and to be meaningful contributors to Canadian society, federal and provincial governments must provide explicit constitutional recognition of the inherent right of First Nation governments to ownership and control of a defined land and resource base.

Areas of First Nations exclusive jurisdiction must be recognized by all levels of government.

Where required, the federal government must formally vacate its lawful authority to allow First Nations jurisdiction to be recognized and put into practice.

The provinces must also fully recognize First Nation governments and allow for the implementation of First Nations authority.

In order to implement First Nations inherent rights, including jurisdictional authority over lands and resources, it is essential that appropriate constitutional amendments be put in place which will ensure, that all levels of government will comply with the spirit and intent of the inherent, aboriginal and treaty rights of First Nations.

As the constitution of Canada is the supreme law of the land, and Section 35 recognizes and affirms aboriginal and treaty rights, the Government of Canada and all provincial governments must ensure, without delay, that all laws are consistent with such rights.

This requires that all levels of government carry out a comprehensive review of all laws, regulations and policies which have any implications for the recognition and implementation of inherent, aboriginal and treaty rights.

This review, which must commence without delay, must involve formal and ongoing consultation with First Nations. All levels of government must take into account the First Nations' interpretation of the content of these constitutional rights.

While such a legal appraisal is long overdue, it can only be effective if all governments ensure, that their laws will be made consistent with the legal rights of the First Nations, in formal consultation with First Nations on a government to government basis.

Federal and provincial governments must recognize First Nation governments as legitimate governments in their own right, with jurisdiction over their lands and resources.

This will mean, that appropriate protocols, mechanisms and intergovernmental bodies to address the various land and resource issues, need to be established in a cooperative manner among the governments concerned, and these in turn must be adequately funded by the federal government.

Negotiations and other arrangements concerning jurisdictional issues, such as areas of shared or overlapping jurisdiction, must also be conducted on a government to government basis.

II FIRST NATIONS WANT AN ADEQUATE LAND BASE

HOW THIS GOAL CAN BE ACHIEVED:

not limited to reserve lands

FEDERAL AND PROVINCIAL GOVERNMENTS MUST ENSURE THAT FIRST NATIONS HAVE AN ADEQUATE LAND BASE AND THAT FIRST NATION RIGHTS WITH RESPECT TO LANDS, WATER OR RESOURCES WILL NOT BE LIMITED TO RESERVE LANDS

24

First Nation interests extend far beyond the bounds of any Indian Reserve. Canadian courts have indicated that no distinction can be made with respect to First Nation interests in reserve lands and unsurrendered or traditional lands.

First Nations communities cannot be expected to be economically viable, if the entire resource base is restricted to existing reserves, which are for the most part minimal in size and barely provide for actual living space. This was not the understanding at the time of treaty, which is illustrated by the ongoing hunting and gathering rights exercised by First Nation citizens throughout their traditional territories.

All levels of government in Canada, in conjunction with First Nation governments, must enter into negotiations with respect to the areas of exclusive and shared jurisdiction of their respective governments.

The issues to be resolved, include First Nation interests in off-reserve lands and waters, the management of renewable and non-renewable resources, as well as government proceeds from the development or exploitation of any of these resources.

Until such time as First Nation communities are economically self-sufficient, the federal government must provide greater assistance directly to First Nations and to assist them to develop lands or resources for the benefit of their peoples.

Assistance for these activities must be based on jointly developed criteria, which will include the objective of developing viable First Nation economies.

Viable First Nation economies will benefit not only First Nation citizens, but all Canadians, especially in the more isolated or northern regions of the country. Economically vibrant First Nation communities contribute to the economy as a whole.

Where traditional activities are no longer feasible for subsistence or commercial purposes, existing rights must be supplemented with access to other existing resources, such as non-renewable resources.

This approach will help fulfil the spirit and intent of the treaties, wherein the forefathers of the First Nations intended to secure a livelihood for future generations.

It would also ensure that the basic human rights of indigenous peoples, such as the right to a means of subsistence, are maintained without creating a state of dependency.

III FIRST NATIONS WANT OUTSTANDING CLAIMS AND LAND AND RESOURCE ISSUES RESOLVED

HOW THIS GOAL CAN BE ACHIEVED:

fair and equitable settlements

FIRST NATIONS INTERESTS IN ALL MATTERS RELATING TO LAND AND RESOURCE ISSUES MUST BE DETERMINED ONLY WITH THE FULL INVOLVEMENT OF FIRST NATIONS THROUGH EFFECTIVE INTERGOVERNMENTAL MECHANISMS. UNILATERAL FEDERAL OR PROVINCIAL DETERMINATION OF THESE ISSUES IS NOT ACCEPTABLE TO FIRST NATIONS.

25

First Nation governments must have substantial and equitable financial and technical means for pursuing the clarification of rights, the settlement of claims and the resolution of disputes with other governments. Such costs must be covered by the federal government, pursuant to their fiduciary obligations and other equitable responsibilities.

Disputes between governments regarding land and resource issues, whether initiated by federal or First Nation governments, must be resolved at all times in a manner which respects the government to government relationship.

Joint initiatives, must be undertaken by federal and First Nations governments, and provincial governments where appropriate, in order to establish independent claims mechanisms to manage and facilitate the validation and negotiation of claims as well as to facilitate the modern treaty making process.

All levels of government in Canada must stop the never ending cycle of avoiding First Nation land and resource issues, thereby leaving them for future governments to resolve. The time for decisive action is long overdue.

Adequate funding must be directed to First Nations from the federal government for programs, specifically designed to maintain research institutions and processes to address a broad range of matters concerning land rights.

The Crown is obligated to assist First Nations in the protection and implementation of inherent, aboriginal and treaty rights.

To eliminate conflicts of interest on the part of the Crown and to ensure that principles of fairness and equity prevail, independent claims mechanisms must be established to manage and facilitate the validation and negotiation of claims, and the modern treaty making process. These bodies should also make use of the full range of dispute resolution devices such as mediation, arbitration and creative use of the courts.

Such processes must be jointly designed, established and empowered by both the First Nations and federal and provincial governments. The process must also be adaptable to regional, historical and cultural variations. Financial resources will have to be made available if these issues are to be resolved.

In terms of overall expenditure, failure to address legal and political issues will mean greater liabilities and expenditures in the future. Resources must be committed immediately to support a quick and efficient resolution process as further delay will ensure tremendous costs over the long-term.

It is important that all levels of government are prepared to take the legislative measures required to facilitate the establishment and operation of these mechanisms. This joint process with First Nations will ensure that the actions of all governments are complimentary.

Federal and provincial governments must enact laws which ensure that Sections 25(1); 35 of the Constitution Act, 1982 and Section 91(24) of the Constitution Act, 1867 (BNA Act) are upheld and given full effect.

independent mechanism

THE GOVERNMENT OF CANADA AND FIRST NATIONS MUST JOINTLY DEVELOP, EMPOWER AND ESTABLISH AN INDEPENDENT MECHANISM TO CONFIRM CLAIMS AGAINST THE FEDERAL GOVERNMENT, AS WELL AS MANAGE AND FACILITATE NEGOTIATIONS BETWEEN FIRST NATIONS AND THE FEDERAL GOVERNMENT.

26

This independent claims body must have quasi-judicial power which, while not necessarily binding, should have sufficient authority to compel parties to take action to resolve issues. The claims body must have the ability to determine Crown liability, facilitate negotiation processes, resolve compensation issues and monitor implementation of settlement agreements.

The independent claims body should have authority to appoint a tribunal at the request of parties to the claim. The inquiries and findings of the tribunal should not be restricted by predefined, narrow definitions of lawful obligations, but should be based on legal arguments presented by the parties.

The tribunal should have the ability to ensure that governments make appropriate changes in the law, as First Nations are not able to rely on the existing judicial system.

The independent claims body must be directly accountable to parliament and First Nation governments. Its financing must not be subject to arbitrary measures by the government of the day or the whims of government officials. To ensure fairness, this body must be made an integral part of the judicial system and not subject to political manipulation.

Compensation must be based on principles of fairness and equity, ensuring that First Nations are fully indemnified for all losses, including all costs of bringing forward and resolving such matters.

The settlement of claims will not be a solely financial or monetary transaction. Settlements must take into account the cultural, economic, social and spiritual significance of the loss to First Nations.

Compensation for claim settlements should not be limited by federal budget allocations. As with the payment of court settlements, compensation should be paid directly out of the Consolidated Revenue Fund.

Federal and provincial governments should accept the legal burden of showing that their conduct in relation to any Indian claim is or was consistent with their legal and equitable obligations to First Nations.

modern treaty making

THE FEDERAL GOVERNMENT MUST IMPLEMENT A NEW APPROACH TO NEGOTIATING AGREEMENTS DEALING WITH ABORIGINAL TITLE, AS THE EXISTING COMPREHENSIVE CLAIMS PROCESS IS NOT A TRULY MODERN TREATY MAKING PROCESS AND IS CONTRARY TO SECTION 35 OF THE CONSTITUTION.

27

Urgently required measures include:

i) an independent mechanism, jointly established and empowered, which would manage and facilitate negotiations as required, thereby ensuring an equitable approach to negotiation;

ii) joint agreement between the parties on the subjects and parameters, and process for negotiation;

iii) no requirement that constitutionally protected aboriginal or treaty rights be extinguished;

iv) First Nations' inherent right of self-government must be fully recognized and affirmed through negotiation, resulting in the entirety of agreements being constitutionally protected;

v) effective interim protection will be applied to those lands, resources or other interests which are subject to a claim by First Nations;

vi) all loan funding will be forgiven and adequate funding for all aspects of the process provided in future;

vii) in cases involving aboriginal title, such title should be presumed to exist in favour of the aboriginal occupants of their territory, subject only to disproof by the Crown.

litigation

ABORIGINAL AND TREATY RIGHTS ARE CONSTITUTIONALLY RECOGNIZED AND SHOULD THEREFORE ONLY BE RULED UPON BY COURTS COMPETENT IN THIS PARTICULAR AREA OF EXPERTISE. THE FEDERAL GOVERNMENT MUST CHANGE EXISTING LAWS TO ELIMINATE CROWN RELIANCE ON TECHNICAL DEFENCE SUCH AS CROWN IMMUNITY FROM SUIT, ACT OF STATE, STATUTES OF LIMITATION AND THE DOCTRINES OF LACHES, ESTOPPEL AND ACQUIESCENCE, WHICH WERE NEVER INTENDED TO DEPRIVE FIRST NATIONS OF LEGAL RIGHTS AND REMEDIES.

28

Claims issues in courts or other adjudicative bodies must be heard by persons who have received special training in the nature and history of claims issues, the unique nature of inherent, aboriginal and treaty rights and understand the culture and spirituality of aboriginal peoples.

Litigation or reference of a particular claim or issue therein should be available to First Nations as an alternative to the negotiation process. Provision for such litigation must be seen as part of the overall claims policy, with adequate funding to be provided to First Nations for the advancement of aboriginal, treaty and other First Nations rights claims in the courts.

Hence, the federal government should take immediate measures to ensure that those First Nations, who so wish, have additional accessibility to the judicial system. Litigation funding should be made available to First Nations through an independent agency not subject to manipulation by governments.

In order to ensure First Nations governments have equitable access to the courts, a very substantial program to support First Nations litigation must be put in place, especially where such matters have constitutional implications or involve crown fiduciary obligations.

Special provision must be made to enable First Nations to secure now, in an admissible form, the evidence of community elders with respect to claims issues.

IV FIRST NATIONS WANT TO FREELY EXERCISE THEIR HUNTING, FISHING, TRAPPING AND GATHERING RIGHTS

HOW THIS GOAL CAN BE ACHIEVED:

hunting, fishing trapping and gathering

THE INHERENT, ABORIGINAL AND TREATY RIGHTS OF FIRST NATIONS TO HUNTING, FISHING, TRAPPING AND GATHERING MUST TAKE PRECEDENCE OVER OTHER THIRD PARTY INTERESTS.

FIRST NATIONS MUST HAVE ACCESS TO ALL TRADITIONAL TERRITORIES IN ORDER THAT FIRST NATIONS PEOPLES MAY FREELY EXERCISE THEIR RIGHTS AND JURISDICTIONS WITH RESPECT TO HUNTING, FISHING, TRAPPING AND GATHERING RESOURCES.

FIRST NATION RIGHTS WITH RESPECT TO HUNTING, FISHING, TRAPPING AND GATHERING CANNOT BE LIMITED TO SUBSISTENCE PURPOSES. THE EXERCISE OF THESE RIGHTS MUST BE INTERPRETED IN A CONTEMPORARY CONTEXT WHICH NECESSARILY INCLUDES COMMERCIAL ACTIVITIES AS THESE ARE ESSENTIAL TO THE SUSTENANCE OF VIABLE ECONOMIES.

29

These rights cannot be restricted to subsistence use as the key factor must be a continuing livelihood for First Nations. Therefore, these rights must be understood in their contemporary context and not diminished by interpretation which apply to outmoded or historical practices.

All levels of government must acknowledge and accommodate First Nations' inherent jurisdiction regarding renewable resources.

This recognition should be embodied in political protocols, co-management and resource-sharing agreements which are mutually-developed by First Nations and the Crown.

First Nations inherent jurisdictions must be implemented to ensure that traditional laws and practices are accorded the legitimacy and respect any other law is accorded.

First Nations jurisdiction must apply to all involved or affected persons, including user-groups which are represented by their respective governments.

This should be accomplished through legislative enactments which are mutually-developed by the First Nations and Crown in right of Canada as well as provinces, where appropriate.

First Nations require financial support to develop their own structure and mechanisms which will ensure effective participation in the management of vital wildlife and renewable resources. Such support should also be adequate in order to develop and maintain the technical expertise and capital expenditure First Nations require to participate in management.

ENVIRONMENT

All life, including our own, springs from the sacred mother earth. Her destruction has been witnessed by First Nations. Our traditional and spiritual beliefs have guided our people to live in peace and harmony with Mother Earth.

First Nations peoples are committed to taking the necessary steps to support our Mother Earth in healing, so that there will be a place for all future children.

The environment is fundamentally important to First Nation Peoples. It is the breadth of our spirituality, knowledge, languages and culture. It is not a commodity to be bartered with to maximize profit, nor should it be damaged by scientific experimentation.

The environment speaks of our history, our language and relationship to her. It provides us with nourishment, medicine and comfort. Our relationship and interaction was and is the basis and source of independence. We do not dominate her. We harmonize with her.

First Nations in Canada are distinct cultural communities with unique lands and rights based on original and historic use and occupancy. First Nations cultures, economies and identities are inextricably tied to traditional lands and resources. As original surviving inhabitants, our lands are part of nation-states of the world established and controlled by people who arrived after us. Within many nation-states, including Canada, aboriginal rights to those lands and resources are consistently undermined and/or threatened by the effects of colonization and resource exploitation.

In Canada, there is a fundamental imbalance that has spanned history between the First Nations and the European newcomers who have settled and prospered on our traditional lands in the last five hundred years.

First Nation peoples in Canada are seeking to correct not only the imbalance of relations, but the imbalance in the enjoyment of human rights, including land and resources and a decent standard of living.

The arrival of European nations on our lands have affected us in many ways. Our peoples were dispossessed of our territories and resources. Neither we, nor the Europeans, could understand the other's perspective on land. In signing the numbered treaties, First Nations were agreeing to sharing the land on a nation-to-nation basis, to allow settlers to use it with care.

Many First Nations communities in Canada and around the world are faced with environmental injustice. First Nation communities have experienced rapid and irreversible change to their community health and environment. A threat to the security and well-being of First Nation communities exists in Canada, brought on by clear-cut logging, industrialized pollution, hydro-electric development, mining and others. Many of our communities and traditional territories contain high levels of toxic substances in water, soil, in the air and in natural wildlife, that communities depend on for subsistence purposes.

The role of aboriginal peoples in decisions relating to the environment, has not been fully recognized by Canadian governments from the very beginning of the colonial era.

Current laws and regulations, both domestic and international, to protect the environment are inadequate, on and near traditional territories of First Nations. This is clearly demonstrated by continued environmental destruction and the ever increasing global urgency to address environmental matters. This is related to rampant harvesting and exploitation of natural resources - to meet the western industrialized nations' compulsion to consume beyond their needs and availability of resources. This is blatant disregard for generations unborn.

Environmental policies must be integrated with social and economic policies. It is just beginning to happen. The environment is not an entity in itself, but an intricate part of a greater whole of society and the economy. The interdependence that exists between all three must be taken into account when current out-dated policies are being amended. We cannot separate the need for a healthy environment in the name of economic prosperity. The two are inseparable and fundamentally dependent on one another.

First Nations support the need for strong, national, enforceable standards for environmental protection. First Nations governments can make significant contributions toward environmental protection on lands in which First Nations have an interest, particularly in their communities and on their traditional territories. However, recognition of First Nations' authority and jurisdiction over these lands is essential.

First Nations support economic growth and development, which is essential to the implementation of self-government in First Nations communities. However, such development must comply with environmental standards designed and implemented by First Nations governments.

If we, as First Nations, are to achieve our aspirations and remedy the devastating effects of poverty and dispossession, our governments and social institutions will have to take a lead role in guiding our communities towards a better future. This is the First Nations' concept of self-determination.

First Nations will ensure their rightful place and emphasize their inherent right and their duty to protect the environment from further injustice and will strive to secure the well-being of future generations.

Self-determination will ensure the recognition of First Nations to have consenting powers for the development of projects impacting on the environment.

First Nations in Canada will then be in a position to not only help themselves but to help and provide leadership to developed and developing nations in terms of the environment, resource management and economic prosperity.

GOALS:

I WE WANT A WORLD IN WHICH WE, AS FIRST NATIONS, ENJOY AND EXERCISE THE RIGHTS WHICH THE CREATOR HAS GIVEN US, AND BENEFIT FROM THE PROSPERITY OF THIS LAND.

WE WANT CONTROL OF OUR DESTINY AND PEACEFUL CO-EXISTENCE WITH CANADIAN SOCIETY. IN ORDER FOR THIS TO HAPPEN, FIRST NATIONS MUST HAVE AN EQUITABLE SHARE OF LANDS, RESOURCES AND JURISDICTION, AND FISCAL CAPABILITY TO FULFIL THEIR RESPONSIBILITIES AS SELF-DETERMINING PEOPLES.

First Nations philosophy with respect to natural and customary law, respect and use for all elements of the earth will be recognized and respected as an integral part of decision-making by society at large. It will also form the basis of international instruments for environmental protection and sustainable development strategies.

The fiduciary responsibilities of the federal government relating to environmental protection of land and resources will have been exercised and implemented by the federal government. First Nations will be fully involved in all decision making processes that impact on their traditional territories.

First Nations will determine the appropriateness of development activities on or near traditional territories. First Nations will develop sustainable development strategies according to their unique culture, needs, community decision-making processes and geography.

The federal government will review all current social, economic, and environmental policies to determine and assess, with First Nations, their direct or indirect impact on First Nations traditional territories and communities.

First Nations will begin translating their philosophy on the environment by developing local environment or natural resource regimes as an integral component to local and regional government, so they can deal with all environmental issues on a proactive basis.

HOW OUR GOALS CAN BE ACHIEVED:

With sufficient resources, tools and opportunities, any First Nation community will find local solutions to problems through customary and traditional laws, decision-making processes and traditional knowledge that is culturally appropriate and determined by that community. First Nation community laws and natural resources regimes, including environmental protection based on community needs, customs and traditions have not received widespread, institutional and financial support. Much of this information needs to be formalized and articulated by each First Nation in a manner suitable for their needs and also for public consumption to foster the necessary support and respect.

financial support

THE FEDERAL GOVERNMENT MUST ESTABLISH A FINANCIAL SUPPORT PROGRAM FOR TRIBAL COUNCILS, REGIONAL ORGANIZATIONS AND INDIVIDUAL FIRST NATIONS TO DEVELOP AND STRENGTHEN EXISTING CAPACITIES OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND IN THE AREAS OF ENVIRONMENTAL ASSESSMENT, FORESTRY, WATER AND FISHERIES.

28

First Nations are intertwined with environmental issues and have first hand exposure to degradation and contamination of natural resources for development activities. The issue largely rests with access to the tools and expertise to address the problem.

The process to protect the environment, as our elders have directed us to do, must begin with the understanding that the responsibility we profess must begin with the establishment and jurisdiction of local, regional and national institutions.

First Nations have few environmental or natural resource institutions in communities, regional offices and national organizations to effectively address environmental issues. They are sporadic, unlinked and lack effective communication mechanisms to interface and develop strategic alliances. First Nation local and regional centres are required, based on geography, demographics and site specific resource management and rights disputes.

For the few organizations that have established environment programs, resources are not sufficient. Resources that should have been allocated to such First Nation institutions, in accordance with the government devolution policy, are being spent by governments to establish environmental bureaucracies and to protect the federal government from liability under such legislative instruments as the Canadian Environmental Protection Act and the

soon-to-be proclaimed Canadian Environmental Assessment Act. This is essentially done by managing processes by forcing First Nations to carry-out environmental screenings and assessments in accordance with federal regimes while disregarding First Nations rights to determine and establish laws in this regard. The primary goal of the federal government is to demonstrate due diligence, in the event it has to defend itself in court.

First Nations want meaningful participation and consultation in decision-making affecting First Nations' environmental protection. First Nations want to actively engage themselves to develop community-based sustainable development, by supporting traditional economies and strategies for the protection and conservation of natural resources.

First Nations must fully participate in the development of domestic and international instruments dealing with the protection of the environment and sustainable development issues.

Currently, no comprehensive inventory and information base on existing community and regionally based models exists in order to assist communities develop interim legal frameworks for First Nation regulations and management regimes.

Co-management regimes, and natural resource agreements with provinces exist sporadically across the country, but ultimately the provinces assert and retain control and jurisdiction over resources. The process and structure of developing co-management regimes must be fundamentally assessed and redirected to ensure parity and an equitable distribution of representation, authority and decision-making.

These types of agreements have often been the result of a history of land use and occupancy disputes.

We must begin to recognize and understand that cumulative environmental effects are felt in every community across the country. There are no new frontiers to exploit to sustain life globally, let alone any sustainable livelihood from harvesting resources off the land. The waters, air, land and food sources are polluted and contaminated with toxins which impact upon the entire health of communities - socially, mentally, physically and economically. Past and current development activities have systematically displaced our peoples off the land.

recognition of rights

INTERNATIONAL NATION STATES, INCLUDING CANADA, MUST RECOGNIZE TREATY AND ABORIGINAL RIGHTS TO TERRITORIES AND ABORIGINAL USES OF THE LAND FOR HUNTING, TRAPPING, FISHING AND GATHERING AND TAKE URGENT STEPS TO RESPECT AND IMPLEMENT THESE RIGHTS.

FIRST NATIONS MUST DOCUMENT TRADITIONAL KNOWLEDGE AND PRACTICES TO ENSURE THE DETAILED UNDERSTANDING OF THE ENVIRONMENT THAT HAS ACCUMULATED FOR THOUSANDS OF YEARS IS NOT LOST AND RE-INSTITUTE IT INTO THE COMMUNITY. FIRST NATIONS MUST IDENTIFY AND DEMARCATE THEIR TRADITIONAL TERRITORIES AND PROMOTE AND ASSERT THE RECOGNITION OF THEIR RIGHTS.

29

The loss of traditional subsistence activities results in greater reliance on wages and non-traditional economies, and on purchasing cheap carbohydrates such as wheat, flour and sugar. This reduces the quality of the diet and leads to poor health and higher mortality rates, particularly for infants and children. Health problems frequently associated with people who hunt and fish include anemia, vitamin deficiencies and low resistance to infectious diseases. In communities that have shifted from a wildlife diet to one that is rich in carbohydrates, cardiovascular diseases have increased considerably. Links between diet changes and diabetes are under study in Canada and Australia.

Traditional subsistence activities more than supplement the wage economy. They also contribute to better mental health by providing stability and cultural identity. Subsistence strengthens the family unit, provides meaningful work and satisfies the need for self-reliance, self-esteem and personal fulfilment. Declining health, combined with the erosion and loss of subsistence activities, can result in stress, lead to domestic violence, alcohol and drug abuse-which in turn may affect the breakup of families and communities. This can be further aggravated by government policies and programs to relocate and assimilate people affected.

Policy changes in federal/provincial legislation and regulations are needed which currently derogate and do not protect treaty and aboriginal rights to trap, hunt, fish and gather. In addition, mechanisms need to be established to ensure that the federal government meets its fiduciary responsibilities towards First Nations on environmental matters - such as water quality and access issues, environmental contamination, waste management, environmental assessment processes and protection and restoration of fish and wildlife habitat.

First Nations must begin, as some communities have, to assert and practice the rights we promote. We must support our specialists and experts in the fields of natural science and conservation and strongly support our communities - so they can strengthen their capacities and to appropriately address environment and quality of life issues.

For example, the Federation of Saskatchewan Indian Nations (FSIN) has in place a Memorandum of Understanding on Wildlife Management between the FSIN, the Government of Canada, the Canadian Wildlife Federation, and Saskatchewan Wildlife Federation. The agreement states general principles to provide a broad framework for future agreements. It is a record of the parties intentions, and is not considered to be a treaty or to create legally enforceable obligations.

The FSIN has also entered into its third reading of the FSIN Wildlife Development and Conservation Act. It is an Act to confirm and recognize Treaty Indian Nations' government jurisdiction, control, and management over wildlife; hunting-fishing-trapping-gathering practices of Treaty Indian People; and Treaty Indian approaches to development, conservation, and management of enforcement systems.

The existing regulatory and legislative base of federal/provincial governments must be assessed and overhauled in order to determine the effect on First Nations as it impacts on use and access to natural resources. Interim legislative and regulatory reforms may be required to respond to First Nations jurisdictions and authorities for transitional purposes towards the full exercise of the inherent right to establish and implement laws over natural resources.

In order for a new relationship to occur between First Nations and Canada, basic respect must occur, based on the following principles:

- First Nations have their own unique view and philosophy regarding the environment.
- The environment is one of the spheres of jurisdiction of aboriginal governments.
- Aboriginal governments have the right and an obligation to protect the environment.
- Fiduciary obligations by the federal government exist.

The current state of the environment and socio-economic conditions of First Nations are a direct indication that existing federal/provincial legislation and regulations do not address their concerns.

Current legislative instruments have abrogated or derogated from treaty and aboriginal rights that exist under the Constitution Act of 1982.

environmental law and self-government

FIRST NATIONS AND THE FEDERAL GOVERNMENT MUST DEVELOP A STRATEGY TO ENSURE THAT APPLICATION OF ENVIRONMENTAL LAWS ON FIRST NATIONS LANDS ARE NOT INCONSISTENT WITH THE PROCESS OF DEVOLUTION AND SELF-GOVERNMENT. THE FEDERAL GOVERNMENT MUST ENSURE RESOURCES TIED TO PROGRAMS AND SERVICES ARE TRANSFERRED TO FIRST NATIONS.

A COMPREHENSIVE REVIEW MUST BE UNDERTAKEN BY FEDERAL AND PROVINCIAL GOVERNMENTS TO AMEND EXISTING POLICIES AND REGULATIONS WHICH ARE DEEMED BY FIRST NATIONS AS INCONSISTENT WITH ABORIGINAL AND TREATY RIGHTS. THIS REVIEW MUST BE PREDICATED ON PRINCIPLES WHICH WOULD ENSURE AN EARLY, EFFECTIVE, COMPREHENSIVE AND CULTURALLY APPROPRIATE CONSULTATION PROCESS WITH IMPACTED COMMUNITIES.

THE FEDERAL GOVERNMENT MUST SUPPORT AND RESOURCE THE ESTABLISHMENT OF A NATIONAL FIRST NATIONS ADVISORY COUNCIL WITH APPROPRIATE AUTHORITY TO ENSURE FEDERAL LEGISLATIVE, REGULATORY AND POLICY INITIATIVES ARE COMPLEMENTARY TO FIRST NATIONS CONCERNS, ASPIRATIONS AND TREATY AND ABORIGINAL RIGHTS.

30

First Nations must not be viewed as interest groups. First Nations have an inherent duty and responsibility to protect and care for the environment and have contributions to make in terms of policy and economic development impacting on traditional lands and economies. First Nations must be involved in the conceptualization stages and pre-planning stages to set the appropriate policy direction for any activity which may impact on First Nations.

Water management issues are not new to First Nations. Water is the basis of our survival for health, subsistence and the practice of our rights to hunt, fish, trap and gather. First Nations have a special interest in water management which can benefit all Canadians. Our respect for the land and water remain unchanged, the spiritual affinity with the environment continues and a deep-rooted appreciation and respect for the life-giving and cleansing qualities of water is maintained.

Resources like water are continually being eroded and degraded by hydro dams, mining, forestry and the pulp and paper industry. Water is the foundation and giver of life. First Nations have witnessed the wholesale destruction of waterways and watersheds.

The federal government has presently considerable jurisdiction with respect to the management of First Nations waters, and maintains a trust responsibility to First Nations with respect to water rights, even though the government continually contends that water is the responsibility of the provinces. To compound the issue, no federal legislations exists, dealing specifically with the management of water on First Nations lands, on reserve lands or otherwise in Canada. No special agency or institution deals with First Nations water rights. First Nations urgently require legislative and policy changes which will reflect First Nation management and control of water resources.

The federal government, with First Nations, must examine their position towards resources and develop ways to adopt them as the basis for new water management policies.

Governments must also support First Nations so they will be able to educate children, resource managers and others in relation to First Nations' philosophy in respect to resources.

The management and control of water and other resources will provide the necessary economic foundation for the continued existence and prosperity of our nations. Through the control of resources, First Nations will be able to continue their traditional subsistence harvest, enter into commercial resource development, ensure revenue flow to communities for reinvestment for environmental protection and sustainable development strategies.

The government of Canada must adopt immediate interim policy changes which will enhance First Nations self-government initiatives and control over water resources. This may be achieved through the establishment of a First Nations Water Advisory Council and a First Nations Water Management Institute for training, research and technical advisory services which will develop and strengthen First Nations capacity to deal with issues at the local, regional and national level.

water rights **THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE THE ESTABLISHMENT OF A NATIONAL FIRST NATIONS WATER COMMISSION, WHICH WILL EXAMINE AND DEVELOP POLICIES AND CARRY OUT ACTION-RESEARCH IN THE AREAS OF WATER ACCESS, CONTROL, JURISDICTION AND MANAGEMENT ISSUES AND ESTABLISH A RESEARCH CLEARINGHOUSE.**

THE FEDERAL GOVERNMENT MUST REVIEW THE CURRENT FEDERAL WATER POLICY IN LIGHT OF THE GUERIN AND SIOUI DECISION, TO AFFECT CHANGE AND ENSURE CONSISTENCY AND ACCORDANCE WITH FEDERAL FIDUCIARY RESPONSIBILITIES TO FIRST NATIONS.

31

First Nations will develop education and information vehicles to implement local, regional and national environmental strategies and programs. First Nations will want to ensure vehicles, some of which will blend traditional knowledge and western science and legal instruments, are disseminated for the use and benefit of First Nations.

First Nations must develop the capacity to assess and respond to environmental issues by expanding and building on the knowledge base of the community, whether it be natural and customary law, traditional knowledge and western science. This process involves data gathering and analysis, information sharing and networking, dealing with resource management training needs, regulations, enforcement and monitoring, jurisdiction and researching specific issues for local, regional and global solutions.

environmental monitoring

THE FEDERAL GOVERNMENT MUST ESTABLISH A FINANCIAL SUPPORT PROGRAM FOR FIRST NATIONS ORGANIZATIONS TO MONITOR ENVIRONMENTAL ISSUES AND IMPACTS AS A RESULT OF PROPOSED OR ON-GOING DEVELOPMENT ACTIVITIES. THIS WOULD INCLUDE THE EFFECTS ON TRADITIONAL LAND AND COMMUNITIES, AND ENSURE THE FINANCIAL CAPACITY TO TAKE MITIGATIVE ACTION, RESTORE AND CLEAN-UP CONTAMINATED SITES AND EFFECTIVELY PARTICIPATE IN FEDERAL, PROVINCIAL AND MUNICIPAL REGULATORY PROCESSES.

32

Numerous recommendations have been made on the need for First Nations to have a practical, national policy on the environment for communities, so they have the possibility of developing their own environmental management regimes.

A draft First Nations Environmental Assessment Process handbook was recently produced as a transitional tool for First Nations to develop their own environmental assessment process and management regimes, taking into account local decision-making processes, geography and demographics.

Western ideology has always seen the environment as raw, untouched, or having enormous potential. Therefore, western society has not adapted but tended to modify the environment to suit individual, industrial, and social needs of their people. This has led to the destruction of the natural environment.

This has led to water as an exportable commodity under the North American Free Trade Agreement. An issue sensitive to Canadians, particularly in British Columbia, where it could mean the export of water to the north-western United States, without regard to treaty rights to water access.

Concerns for community health, economic and social impact, require a full assessment of proposed federal or provincial policies. It is incumbent on government policy sectors to include, in the broadest sense, First Nations involvement and participation in policy development activities.

"They came for our land, for what grew or could be grown on it, and for our clean air and pure water. They stole these things from us, and in the taking they stole our free ways and the best of our leaders, killed in battle or assassinated. And now, after all that, they've come for the very last of our possessions; now they want our pride, our history, our spiritual traditions. They want to rewrite and remake these things, to claim them for themselves. The lies and thefts just never end."

- Margo Thunderbird

In recent years, there has been a growing awakening world-wide of the irreversible global impact of the continual destruction of biodiversity and the inter-related ancestral knowledge of First Nations.

Traditional knowledge is based on the knowledge collected by generations, with Elders being the active repository of this information. Language, traditions, rites, and rituals are the tools which pass on this knowledge.

traditional knowledge

THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE THE ESTABLISHMENT OF INDIGENOUS KNOWLEDGE AND MANAGEMENT CENTRES OF EXCELLENCE, TO SHARE INFORMATION AND ASSIST OTHER FIRST NATIONS COMMUNITIES IN DEVELOPING THEIR OWN SYSTEMS AND FOSTER WIDE APPRECIATION OF ABORIGINAL KNOWLEDGE.

33

Our wealth of knowledge which emerged from our holistic and community life is based on harmony between human beings, animals, plants, waters and other elements of nature. It is also being increasingly recognized as scientific in some sectors. Scientific research in the field of biodiversity and particularly in pharmaceutical research now presents new issues and concerns for First Nations.

There is great interest in substantiating traditional knowledge for its scientific merits and how this knowledge and the millennium of experience on the environment and the interaction of natural elements could benefit environmental planning and management of the local and regional environment.

The methodology and process of documenting traditional knowledge needs to be explored further, to ensure the principles and philosophy is understood in its entirety, before it can be documented in such a way that it becomes beneficial for society in general. This process can only be effective if First Nations are the controlling element in the flow of information.

On a local and regional level, transitional processes need to be identified in order to enable First Nations to engage in action-research which will strengthen and re-institute traditional knowledge for local, regional and national planning. This would then elevate to strategic alliances with First Nations in the Americas and Asia who are engaged in parallel struggles.

Interaction between First Nations from different regions, including the Americas, must be supported to develop communication links to promote and protect traditional knowledge. This in turn will promote sustainable resource management, foster exchange on traditional knowledge systems and establish First Nations perspectives on sustainable development.

First Nations have taken the position that aboriginal and treaty rights are inherently linked to a stable and viable environment, and that Canada is obligated to protect the environment in order to ensure that benefits of rights can be enjoyed in perpetuity by aboriginal people.

HEALTH AND SOCIAL DEVELOPMENT

Before the arrival of the Europeans, the people of the First Nations were healthy, enjoyed a rigorous lifestyle, and a nutritious diet. The explorers and settlers carried unknown, communicable diseases to North America, which devastated First Nations communities. These diseases, especially smallpox, measles and influenza began a decline in community health. Centuries of colonialism, repression and indifferent health policies have resulted in aboriginal people having the poorest health status in the Americas.

Today the life-expectancy of First Nations is ten years less than the national average, the infant mortality rate is 2.2 times higher and the post-neonatal mortality rate 4 times higher than the national average, according to 1991 government statistics..

Currently many diseases are raging at epidemic levels in First Nations communities. Diabetes ranks as the most prevalent chronic disease condition found in First Nations populations. The tuberculosis rate among the registered Indian population is nine times the national average. It has also been reported that up to 30 percent of the population in some First Nations communities suffers from a disabling condition.

1991 government statistics show that suicide among First Nations youth, aged 1-19 years, is six times the national rate. In some communities, Fetal Alcohol Syndrome is thirty times the general population and domestic violence has reached epidemic proportions in many First Nations communities -- communities with few resources to address the problem.

Many First Nations also have unacceptably low standards of living, which further contribute to poor health. Half the houses on reserves, according to government reports, are unsuitable and unhealthy places. The rate of overcrowding is eleven times higher than in surrounding communities. The housing situation is detailed in another section.

The issue appears to be negligence, caused by the federal government, in its role as federal trustee to First Nations. It has abdicated trust responsibilities by dispersing health care programs and services to various levels of government, without consideration to First Nation governments. These decentralization methods have affected accountability and commitment causing inconsistency in the delivery of health care. The overall impact has resulted in damage to the health and quality of life of First Nations people.

GOALS:

I WE WANT A WORLD IN WHICH ALL PEOPLE, FAMILIES AND COMMUNITIES OF THE FIRST NATIONS ARE HEALTHY AND WELL.

Good health is more than the absence of sickness or disease. It is a balanced state of physical, mental, emotional and spiritual well-being.

While efforts have been made to improve First Nations' health, much remains to be done. If First Nations health is to be raised to a level comparable with that of most Canadians, the underlying causes of their poor health must be addressed. These include the elimination of poverty, improved education, better housing, clean water and sanitation. It also means addressing those factors which have resulted in the political, economic and social disenfranchisement of First Nations. The need for an improved quality of life and attainment of health and wellness for First Nations is also paramount to the successful implementation of self-government.

II WE WANT A WORLD IN WHICH TRADITIONAL HEALING AND TRADITIONAL MEDICINE IS PART OF EVERYDAY LIFE FOR FIRST NATIONS PEOPLE.

Before the arrival of Europeans, traditional healers -- shamans, medicine men, herbalists, midwives -- were the leaders of traditional First Nations healing systems. These traditional healers used a holistic approach, namely, that good health or wellness is based on a balance between the physical, mental, spiritual and social realms.

Traditional healing approaches and child care practices, combined with a holistic approach to wellness, kept First Nations people healthy. However, the Canadian education system, coupled with repressive church activities and repressive federal laws banning such ceremonies as the potlatch, undermined traditional spirituality and almost broke the connection with traditional healing practices.

Only in recent years have traditional healers reclaimed their rightful role in Indian health practice. As the role of traditional healers becomes known again in the communities, First Nations people have increased their request for such services. There is no legislative recognition of traditional healers. The federal and provincial levels of government have taken some hesitant steps to support a limited incorporation of traditional healing practices in health care services, but there are problems involved in reviving these practices in a modern day setting.

Many hospitals refuse to allow traditional healers to practice in their facilities. Traditional healers have begun talking about these issues and others, such as self-accreditation and individuals who falsely profess to be experts or specialists in traditional medicine. This dialogue needs to be funded and further facilitated to be fully addressed.

III WE WANT A WORLD IN WHICH FIRST NATIONS EXERCISE DAILY CONTROL AND COMPLETE JURISDICTION OVER ALL AREAS OF HEALTH CARE AND SOCIAL DEVELOPMENT AFFECTING FIRST NATIONS.

The health of a people is determined in large part by their ability to control their health care system. First Nations have no such control. Instead, First Nations people are, for the most part, passive recipients of health care and social services. Any action that allows First Nations people to exercise their inherent right to control their health and social services will improve their health. In fact, First Nations consider the ability to control their health care system to be one of the most important means of improving the health of their people.

Some understanding of the principle of empowerment was attempted with the advancement of Medical Services Branch (Department of Health) Health Transfer Initiative, which the federal government heralded as a response to First Nations self-government aspirations.

While some First Nations have accepted health transfer, others have refused to participate. The majority of First Nations have outstanding concerns that the initiative may be an effort by the federal government to reduce its fiduciary responsibilities to First Nations, and that it is little more than an administrative delegation of health service responsibility.

The challenge in raising First Nations health to the highest possible level, lies in redefining the relationship between First Nations and governments. Full federal recognition of aboriginal and treaty rights to health services would measurably improve First Nations health.

In recent years, the federal government has permitted First Nations to administer some federal health and social development programs. Federal departments, however, retain the authority to design programs, determine resources and set standards regardless of First Nation needs and concerns.

Another challenge to the development of self-government approaches to health care and social services lies in the establishment of standards. Standards are necessary to ensure First Nations right to quality health care is protected. Under self-government, some First Nations may initially deem it desirable to adopt or adapt provincial and federal standards. Other First Nations may want to control their own health care so they can set higher and better health care standards for themselves. For example, First Nations may set aboriginal language requirements or they may allow for midwives or more services such as those provided by community health representatives.

In the area of child welfare, the Department of Indian Affairs refuses to recognize First Nations jurisdiction. Department policy dictates how First Nations should provide services to their children. The department uses a number of strategies to obtain First Nations compliance with the policy. Federal funding of child welfare services is systematically denied to any First Nation that does not follow provincial child welfare laws on reserve.

Especially troubling to First Nations are the overlapping layers of federal, provincial, municipal and institutional health jurisdictions. These overlapping jurisdictions can result in duplication of service and sometimes lead to a lack of proper health care. The Standing Committee on Human Rights and the Status of Disabled Persons has found, for example, that health care for the disabled suffers considerably because of jurisdictional wrangling between the Department of Health and the Department of Indian Affairs.

Until 1985, the Province of Ontario had a policy that explicitly prohibited the extension of provincial health care services to First Nation communities, unless a federal-provincial financial arrangement was in place or unless existing legislation required it. This meant that First Nations requiring access to provincial services, such as vocational rehabilitation and psychiatric counselling, were forced to go off-reserve. Even though this restrictive policy has now been amended, 'access to service' continues to mean that First Nations citizens still must go to urban centres to receive services.

In Alberta, the province extends urban-based ambulatory care and hospital services to all status Indians, as required under the Canada Health Act. However, the province invoices the federal government for all insured health services accessed by Alberta First Nations.

Federal department jurisdictional disputes further add to the problems experienced by First Nations. For example, responsibility for adult care, disabilities and fetal alcohol syndrome, is shared between the Department of Indian Affairs and the Department of Health. Problems arise in the determination of what constitutes a 'health' service (Health) and what constitutes a 'social service' (Indian Affairs), even though the First Nation concept of health encompasses all aspects of human nature. This situation is now further compounded by the recent decision to transfer social service programs from the former Department of Health and Welfare to the newly created Department of Human Resources..

This complicating jurisdictional confusion can no longer be used as an excuse to deny First Nations access to the full range of health care services. The health care and social service system must be rebuilt in a way that better benefits First Nations.

IV WE WANT THE FEDERAL GOVERNMENT TO HONOUR ITS TREATY RESPONSIBILITY TO FINANCE QUALITY HEALTH CARE.

First Nations have always maintained that they are entitled to government-funded health care services by virtue of treaty rights. This was plainly stated in Treaty 6:

> *"A medicine chest shall be kept at the house of the Indian agent for the use and benefit of the Indians..."*

The medicine chest clause in Treaty 6, is the most explicit reference to health in any of the treaties. In other treaty negotiations, government representatives made verbal promises of health care. The federal commissioners told the Blackfoot, Blood, Peigan, Sarcee and Stonies who signed Treaty 7 in 1877, that they would receive "what the Crees got". Since it was just one year after the signing of Treaty 6, they were well aware of "what the Crees got". The fact that the written version of Treaty 7 makes no mention of a medicine chest is irrelevant.

Other treaties include written promises of federal help to fight 'pestilence'. Treaty commissioners often brought doctors with them on their negotiations to show the benefits that would flow from making treaties.

The annual visits by physicians in the post-treaty period, helped to reinforce the view that health was a treaty right. In spite of recent court rulings that require treaties to be interpreted in the way that the original Indian signatories would have understood them, the federal government continues to deny that First Nations have a treaty right to health care. It states that it provides health services to First Nations as a matter of 'custom and moral duty.'

As a result of the refusal of the government to recognize health as a treaty right, First Nations have been denied the full range of health care services. Since the provinces state that the federal government has the responsibility for health services to First Nations on-reserve, they often refuse to extend provincial health services to First Nations. It is the lack of recognition of health as a treaty right, that remains at the root of many First Nations health problems.

HOW THESE GOALS CAN BE ACHIEVED:

rights

THE GOVERNMENT OF CANADA MUST RECOGNIZE THE RIGHT TO FIRST NATIONS CONTROL OVER HEALTH CARE AND SOCIAL SERVICES. GOVERNMENTS AND FIRST NATIONS MUST NEGOTIATE THE DETAILS AND HOW THEY WILL BE IMPLEMENTED.

34

Quality health care is a treaty right. Self-government is an inherent aboriginal right. Such rights are protected under the constitution of Canada. Until First Nations have full control over health care and social services, the federal government must amend its Indian Health Transfer Policy to recognize the right of First Nations to exercise full jurisdiction and not just administrative management of federal health and social programs. Program enrichment must be factored into transfer agreements. Changes must also be incorporated into the Department of Indian Affairs Child Welfare Policy, which maintains provincial superceding authority. Reform to provincial health and child welfare legislation will also be required to reflect First Nations jurisdiction.

clear jurisdiction

GOVERNMENTS IN CANADA AND FIRST NATIONS MUST NEGOTIATE AN END TO THE OVERLAPPING JURISDICTION AND RESULTING GAPS IN SERVICE DELIVERY.

35

These negotiated arrangements will stay in place until First Nations exercise daily control and complete jurisdiction over all areas of health care and social development affecting First Nations people. Overlapping jurisdictions seriously limit the right of First Nations to quality health care, and result in a waste of limited resources.

treaty rights

THE FEDERAL GOVERNMENT MUST RECOGNIZE THE TREATY RIGHT TO QUALITY HEALTH CARE AND DETAILS MUST BE NEGOTIATED WITH FIRST NATIONS.

36

Canada's lack of recognition of quality health as a treaty right has resulted in inferior health care for First Nations people.

The federal government denies that a treaty right to health exists. They maintain that health services they provide to status Indians on-reserve are 'supplemental' to that of provinces.

They argue that First Nations should receive health services from the provinces on the same basis as other Canadians. In practice this means, that on-reserve health services are generally limited to mandatory health programs such as immunization and communicable disease control, as well as maternal and child health, first aid and where appropriate, emergency treatment services.

living conditions

THE GOVERNMENT OF CANADA MUST IMPROVE THE HOUSING, SANITATION AND ENVIRONMENTAL CONDITIONS IN FIRST NATIONS COMMUNITIES.

37

(see housing section)

diabetes

THE GOVERNMENT MUST INCREASE ITS FINANCIAL SUPPORT TO TREAT AND PREVENT DIABETES AMONG FIRST NATIONS. THESE EFFORTS SHOULD CONTINUE TO BE COLLABORATIVE AND CO-ORDINATED WITH FIRST NATIONS AND ALL RELEVANT GROUPS INVOLVED IN DIABETES PREVENTION, TREATMENT AND RELATED SUPPORT SERVICES.

38

Diabetes is reaching epidemic proportions among First Nations and today ranks as the most prevalent chronic disease condition found in First Nation populations. There is an increasing incidence of First Nations children developing non-insulin dependent diabetes mellitus or Type II diabetes, a rare occurrence among the non-aboriginal population. The necessary screening programs for early detection, treatment and health care services, education programs and resources, and other diabetes related support services, relevant to First Nations are scarce to non-existent. Without knowledge about diabetes and education to promote and encourage good glycemic control, Type II diabetes will lead to devastating secondary complications including heart disease, stroke, blindness, kidney failure, nerve damage and amputations. If not detected early or treated properly these complications will cause permanent disabilities and premature death.

tuberculosis

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A STRATEGY TO TREAT AND PREVENT THE SPREAD OF TUBERCULOSIS.

39

Tuberculosis is a communicable disease that can spread easily among people who live in overcrowded housing. There have been several recent outbreaks in Saskatchewan, northern Manitoba and northwestern Ontario. Tuberculosis can be fatal. Any strategy to deal with the disease must be developed by First Nations and supported by government.

HIV/AIDS

THE GOVERNMENT MUST FINANCE THE EFFORTS OF FIRST NATIONS TO DEVELOP NATIONAL, REGIONAL AND COMMUNITY LEVEL PROGRAMS AIMED AT TREATING AND PREVENTING HIV/AIDS AMONG FIRST NATIONS PEOPLE.

40

AIDS is a communicable disease with no known cure. The Human Immunodeficiency Virus (HIV) causes AIDS. The virus is complex and mutates rapidly, preventing medical science from finding a cure. Most HIV infected people develop AIDS which eventually leads to death. Infected individuals can pass the HIV virus by intravenous drug use, sexual contact or an infected mother can pass the virus to her unborn child. As a result, whole families can be wiped out by this fatal disease.

The HIV virus has been identified in First Nation communities. One person infected with HIV is too many in communities that are already affected by other debilitating diseases. Governments have not adequately addressed the issues surrounding HIV/AIDS in aboriginal communities. Education regarding prevention and testing has been initiated without addressing the impact that positive test results have on First Nation communities. Federal funding to First Nations' HIV/AIDS efforts total only $2.5 million per year and do not include funds for the treatment and support of First Nations persons living with HIV/AIDS.

fetal alcohol syndrome

THE GOVERNMENT MUST IMMEDIATELY PROVIDE FINANCIAL SUPPORT FOR THE DEVELOPMENT AND IMPLEMENTATION OF A FIRST NATIONS LONG-TERM STRATEGY TO PREVENT FETAL ALCOHOL SYNDROME/FETAL ALCOHOL EFFECTS AND ITS TRAGIC RESULTS, AS WELL AS ASSIST THOSE LIVING WITH FAS/FAE TODAY.

41

Fetal Alcohol Syndrome leads to life-long, irreversible physical and mental impairment, including mental retardation. The Parliamentary Committee on Health Issues called for three specific recommendations targeted for aboriginal groups. These recommendations included establishment of a Special Aboriginal Committee on Alcohol and the Foetus; the design and delivery of aggressive campaigns to increase awareness of the results of alcohol on the foetus and, to review and evaluate existing programs for those with learning disabilities resulting from FAS/FAE in order to develop more effective and appropriate community-based programs for this population group. The governmental response to these recommendations was disappointingly negative, with the result that these recommendations are not being implemented.

suicide

FIRST NATIONS MUST DEVELOP, AND GOVERNMENTS MUST FUND A STRATEGY TO INCREASE THE POTENTIAL IN FIRST NATIONS YOUTH AND COMBAT YOUTH SUICIDE.

42

This strategy must include community development support programs specifically designed to combat the problem of suicide, including training and employment opportunities. The strategy must also support programs aimed at combatting child abuse, family violence, sexual abuse and substance abuse. Recreational, fitness and cultural programs aimed at increasing youth self-esteem must also be supported.

violence

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, ENHANCED STRATEGIES TO COMBAT DOMESTIC VIOLENCE, INCLUDING EDUCATION AND HEALING CAMPAIGNS, TREATMENT PROGRAMS FOR BATTERERS, CRISIS PATROL TEAMS AND SAFE HOMES.

43

Domestic violence has reached epidemic proportions in many First Nations communities. Most of the violence is directed against women. This has been caused in part by government policies and some doctrines which have undermined the traditional role and respect for women in First Nations communities. The problem of domestic violence has been largely ignored and as a result, there are few services for victims and essentially no services for offenders in many First Nations communities. The programs must include training in the area of domestic violence awareness and intervention for First Nations leaders and service providers. First Nations must also take all necessary steps to return First Nations women to a place of honour and respect within their societies.

mental health

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A POLICY AND STRATEGY TO DEAL WITH MENTAL HEALTH ISSUES AMONG FIRST NATIONS PEOPLE.

44

There are serious mental health problems in many First Nations communities. The federal health department chose to address them by subsuming the issues as part of the Brighter Futures Program (Department of Health). As a result, many mental health issues are not dealt with at all and the ones that are dealt with remain underfunded.

adult care

THE GOVERNMENT OF CANADA MUST TAKE IMMEDIATE ACTION TO OVERCOME DEFICIENCIES IT HAS ALREADY IDENTIFIED IN THE PROVISION OF ADULT CARE SERVICES FOR FIRST NATIONS CITIZENS.

45

The Departments of Health and Indian and Northern Affairs, have both undertaken studies which identify serious deficiencies in their provision of home nursing care and long-term care facilities and services to First Nations. Despite these findings, no action has been taken by either department and increasing numbers of elderly and persons with disabilities are not receiving adequate care.

disabilities

THE GOVERNMENT OF CANADA, TOGETHER WITH FIRST NATIONS, MUST ESTABLISH A JOINT PROCESS TO ADDRESS OUTSTANDING ISSUES AFFECTING OUR CITIZENS WITH DISABILITIES.

46

In some First Nation communities, 30% of the population suffer from some form of disability. Disability interferes with quality of life. Affected citizens are systematically denied the opportunity to participate in their personal care and in their family and community life. The government's Strategy for the Economic Integration of Disabled Persons does not adequately address the needs of First Nations citizens with disability.

In its report, Completing the Circle, the Parliamentary Committee on Human Rights and the Status of Disabled Persons, highlighted the outstanding needs of First Nations citizens and the continued lack of federal action on these issues.

First Nations, along with government, must take the necessary action to ensure that the rights of First Nations people with disabilities are protected. Furthermore, programs and services aimed at meeting their needs must be developed and established with direct consultation and involvement of First Nations people with disabilities.

remote regions

GOVERNMENTS AND FIRST NATIONS MUST MAKE HEALTH CARE AND SOCIAL SERVICES AVAILABLE IN UNDER-SERVICED REGIONS.

47

Health and social services are unevenly spread across Canada. First Nations have the right to quality health care and culturally appropriate social services regardless of where they live. Therefore, strategies must be developed so that health care and social service professionals are encouraged to move to remote and isolated areas. Other strategies must address increased access and availability to health care and social services in urban centres and remote areas.

traditional medicine

GOVERNMENTS IN CANADA MUST ENSURE THAT HOSPITALS AND OTHER HEALTH CARE INSTITUTIONS ALLOW FIRST NATIONS PATIENTS THE RIGHT TO PRACTICE TRADITIONAL MEDICINE AND BELIEFS WITHOUT INTERFERENCE FROM HOSPITAL PERSONNEL.

48

The right to practice traditional medicine and beliefs is guaranteed by the Charter of Rights and Freedoms. The Province of Ontario, for example, has funded a traditional healing program at Lake of the Woods District Hospital in Kenora, Ontario since the late 1970's. Under the program, First Nations patients who want traditional healing are put in contact with a traditional healer. Similar programs are needed in all health facilities accessed by First Nations populations.

travel expenses

THE FEDERAL GOVERNMENT MUST MAINTAIN AND IMPROVE ACCESS FOR TRADITIONAL HEALERS THROUGH THE NON-INSURED HEALTH SERVICES PROGRAM.

49

The federal government includes some traditional healing services within the Non-Insured Health Benefits program where by First Nations have access to such services. However, persons must be referred by a physician or by MSB officials. Biases on the part of these persons may influence their willingness to make such referrals. Traditional healing plays a valuable role in the health and social well-being of First Nations' people and discussions are required to determine how to improve access and availability.

partnerships

FIRST NATIONS MUST DEVELOP AND GOVERNMENTS MUST FUND 'MODELS OF PARTNERSHIP' BETWEEN TRADITIONAL HEALING AND 'WESTERN' MEDICINE.

50

First Nations recognize the valuable role that traditional healers have provided in the treatment and care of First Nations' patients in 'western' medical institutions. They also commend the Ontario Ministry of Health, the Lake of the Woods Hospital and the Lake of the Woods Pow-wow Club for initiating and supporting such models of partnership.

traditional healing

FIRST NATIONS MUST CONDUCT, AND GOVERNMENT AND MEDICAL ASSOCIATIONS MUST SUPPORT, A SERIES OF ROUND-TABLE DISCUSSIONS PERTAINING TO TRADITIONAL HEALING.

51

There is a need for First Nations traditional healers to meet and discuss issues of mutual importance, such as 'accreditation' and abuses by some self-proclaimed healers. More discussion is needed to reach a consensus as to whether traditional healing should be integrated into 'modern' medicine. Traditional healers also need the chance to discuss aspects of pharmacology -- healing with plants, roots, herbs, bark and others.

midwives

GOVERNMENTS IN CANADA MUST RECOGNIZE THE ROLE OF TRADITIONAL MIDWIVES. THEY MUST ALSO REMOVE ALL RESTRICTIVE LEGISLATION AND POLICIES WHICH PREVENT FIRST NATIONS WOMEN FROM USING MIDWIVES DURING NORMAL NON-MEDICAL RISK CHILDBIRTH.

52

First Nations have long recognized the role of traditional midwives. They also oppose the needless stress imposed on First Nations women by a government policy which forces women to be flown out of remote communities five weeks before birth. This 'modern' medical practice has been imposed on First Nations people and separates families at a time when they should be together. First Nations must encourage individuals to become trained midwives. There are three culturally sensitive midwifery programs presently being conducted by McMaster University, Laurentian University and Ryerson Polytechnic Institute.

professionals

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A PROGRAM TO INCREASE THE NUMBER OF FIRST NATIONS HEALTH CARE AND SOCIAL SERVICES PROFESSIONALS.

53

One of the most successful developments in recent years has been the increase in the number of First Nations health care and social service professionals. The lack of trained professionals has been an obstacle to better health in the past. Consequently, Health Canada and Indian and Northern Affairs, along with First Nations, must increase the number of health care related training programs, scholarships and address First Nations education concerns, in particular the capping of funds for post-secondary education. The Native Health Careers Program has helped increase the number of aboriginal health professions, but is now one of the programs being considered for elimination under current federal cost-cutting measures.

health-care standards

FIRST NATIONS MUST ENSURE QUALITY HEALTH CARE AND SOCIAL SERVICES BY INSTITUTING CULTURALLY-APPROPRIATE HEALTH CARE STANDARDS.

54

First Nations have the responsibility to establish standards of health and social care for their people. A few aboriginal health bodies have already done so. The Society of Aboriginal Addiction and Recovery Services has set standards for addictions treatment centres. As well, the Manitoba First Nations Personal Care Homes Directors Association is in the process of setting standards for personal care homes. Various regional First Nations social service bodies are setting up service standards for child welfare. These approaches must continue and be expanded to all areas in First Nations health and social services.

co-ordination of health and social services

FIRST NATIONS MUST CO-ORDINATE, AND IF NECESSARY, INTEGRATE THEIR HEALTH CARE SYSTEMS AND SOCIAL SERVICE PROGRAMS.

55

In some First Nations, community health and social programs often work in isolation of each other, a situation that leads to fragmented programming, reduction in standards of care, service duplication and a waste of valuable financial and human resources. Co-ordination through committees or service integration should improve the health status of First Nations, while maximizing limited resources.

assimilation through children

THE GOVERNMENT OF CANADA AND CHURCHES INVOLVED IN CARRYING OUT RESIDENTIAL SCHOOL POLICIES MUST FORMALLY AND PUBLICLY APOLOGIZE TO FIRST NATIONS FOR THE DAMAGE CAUSED BY THE RESIDENTIAL SCHOOL SYSTEM. THIS APOLOGY MUST BE COUPLED WITH EFFORTS TO MAKE AMENDS AND COMPENSATION FOR THE PEOPLE WHO WERE VICTIMIZED.

56

It must be recognized that Indian residential schools took a terrible toll on traditional language and culture of many First Nations people. It has been determined that some school staff abused First Nations children physically, sexually and emotionally. These systems produced many dysfunctional individuals, families and communities. The loss of self-esteem and parenting skills contributed to alcoholism, the disintegration of families and suicide. The damage from these policies was immediate and will continue to be experienced for years to come. First Nations people need help to recover.

Churches responsible for operating residential schools should assume their responsibilities and establish funds that can be directed to helping the victims of the residential schools obtain short and long term care.

child care

THE FEDERAL GOVERNMENT MUST DEVELOP A NATIONAL CHILD CARE PROGRAM AND RECOGNIZE FIRST NATIONS CHILDREN AS A PRIORITY.

57

The federal Government's National Strategy on Child Care failed to address the child care needs of First Nations people by cancelling its commitment to spend $60 million on First Nations child care. Various pilot child care projects currently operating, such as those by the Meadow Lake Tribal Council and some in Nova Scotia, are now threatened with program termination. Any national child care program must provide First Nations' children with culturally appropriate, accessible child care. Issues of jurisdiction and financing of First Nations child initiatives must be resolved by First Nations and governments.

adoption

FIRST NATIONS MUST ESTABLISH, AND GOVERNMENT MUST FUND, A NATIONAL FIRST NATIONS ADOPTION AND REPATRIATION BUREAU.

58

Many First Nations families have lost children to the child welfare system. Children have been taken out of their community, and often adopted out of the province and out of Canada. Many families don't know where their children are. Many adoptees are trying to find their birth families and learn their culture and heritage. A recent study by Christopher Baggley, a professor at the University of Calgary, found that only 40% of all native adoptions by non-native parents he studied, were successful. A bureau, such as the Repatriation Office of Manitoba, will provide a co-ordinated approach to adoption and repatriation. The costs of repatriation must also be included in existing and future First Nations child welfare funding arrangements.

clearinghouse and research

FIRST NATIONS MUST ESTABLISH, AND GOVERNMENT MUST FUND, A NATIONAL CLEARINGHOUSE OF INFORMATION AND FIRST NATIONS RESEARCH INSTITUTE RELEVANT TO FIRST NATIONS HEALTH CARE AND SOCIAL DEVELOPMENT.

59

Although the federal health department operates fragmented clearinghouses on addictions, family violence and child care, there is no central source of culturally appropriate health promotion and prevention materials for First Nations people. Such a clearinghouse and research institute is needed to share information about successful models and new initiatives and to co-ordinate research efforts. There is lack of information on First Nation research needs and little co-ordination of research developments.

cross-cultural training

UNIVERSITIES, COLLEGES AND TRAINING INSTITUTIONS MUST INCREASE THE CAPACITY OF THEIR GRADUATES TO INTERACT WITH FIRST NATIONS IN A CULTURALLY SENSITIVE MANNER, WHICH INCLUDES UNDERSTANDING AND AWARENESS OF CULTURAL DIFFERENCES AND APPROACHES IN A VARIETY OF CIRCUMSTANCES. ALL LEARNING INSTITUTIONS MUST DESIGN INTEGRATED, COMPULSORY COURSES THROUGHOUT THE DURATION OF THEIR SPECIFIC PROGRAMME AND EVALUATE THE EFFECTIVENESS OF SUCH TRAINING ON A REGULAR BASIS. FUNDING FOR PROGRAM EVALUATION SHOULD BE PART OF THE OVERALL FISCAL PLANNING OF THE INSTITUTION.

ALL PROGRAM AND EVALUATION DESIGN MUST BE UNDERTAKEN WITH THE GUIDANCE AND ASSISTANCE OF FIRST NATIONS PROFESSIONALS IN EACH FIELD.

60

Until such time as First Nations community services are in full operation, based on First Nations perceptions and norms, beliefs, values, traditions and standards - contact with non-aboriginal professionals in a variety of circumstances will continue.

Doctors, nurses, midwives and others in the field of health, - lawyers, judges, the police and others in the field of justice, - teachers, school board members and others in the field of education, - social workers, day care and child-care workers, the public service in general, the private sector and others do not as part of their general or professional education receive training in cross-cultural education.

Non-aboriginal professionals and the general public need to be aware of and sensitive to cultural differences among and between First Nations, the holistic viewpoint of First Nations in regard to community responsibility, health and wellness, learning and perception of life in general. They will also need to be aware of attitudes which may cause unnecessary fear and suspicion and confusion when procedure is not understood or misunderstood.

Optional, ad hoc approaches to training such as voluntary, one day workshops - once a year seminars in response to misunderstandings - accomplish very little and are known to have intensified stereotypes, tended to leave impressions of other cultures as difficult, and have caused friction in the workplace.

urban needs

ALL LEVELS OF GOVERNMENT MUST TAKE IMMEDIATE ACTION TO ADDRESS THE UNMET HEALTH NEEDS OF FIRST NATIONS CITIZENS RESIDING IN URBAN AREAS.

61

Many First Nations citizens are forced to relocate to urban centres for purposes of education, employment or health care. Once relocated, they often lose their entitlement to programs offered by Indian Affairs or by Health Canada. Many encounter discrimination in attempting to access health care. More often, the services provided are not culturally appropriate.

Anicinabe Health Inc., an urban-based aboriginal community health centre in Toronto, is attempting to address the unmet health needs of urban aboriginal persons. Governments, in all provinces, need to support the development of similar urban aboriginal health centres in other areas of the country.

JUSTICE

The Problem

Many recent and well publicized investigations into miscarriage of justice,involving aboriginal people, confirm that the existing justice system has failed First Nations. Far too many First Nation citizens are caught up in the formal justice system in one way or another. This has been documented again and again, perhaps nowhere more succinctly than in the 1991 Report of the Aboriginal Justice Inquiry of Manitoba:

> 'The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely than non-Aboriginal people to be denied bail, to spend more time in pre-trial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated.'

As demonstrated by virtually all inquiries and studies, the conclusion of the Manitoba Commissioners, applies throughout Canada. In most cases, First Nation citizens also suffer most from justice system failure, whether as victims of crime, and related community social breakdown, or as family and dependents of those arrested and jailed.

Even in cases where First Nation citizens have been wrongly convicted, or have been victims of crimes committed by non-aboriginal persons, the justice system has too often shown itself to be incapable of delivering justice without massive external prompting. Cultural blindness, ignorance of our ways and discriminatory and racist attitudes on the part of justice officials, pervade the system. This poisons an already bad relationship between our peoples and the justice system, and fosters the sense of alienation from it, experienced by many First Nation citizens. Negative attitudes on the part of justice system officials also fuel self-fulfilling prophecies regarding criminality in First Nation communities. These self-fulfilling prophecies then serve as a further pretext for the continuing massive intrusion of the Canadian justice system into First Nation life.

Inquiry reports also convincingly demonstrate that the existing justice system has no room for First Nations' perspective on justice. The history, cultures and contributions of First Nations have been omitted from the development of the Canadian justice system. This not only aggravates the general sense of First Nation alienation from the system, but also contributes to the destruction of First Nations, by undermining their own traditions and by preventing them from taking responsibility for their justice problems, in terms appropriate to them.

Concepts developed from the history of a particular society and intended to evolve with it, can properly serve only that society. Such is the case with the Canadian justice system. It reflects the current Canadian perception of justice, and individual rights based on a liberal democratic tradition, rooted in the history of the British Isles, and later in the occupation and settlement of what is now Canada. That history has left no room for contributions that First Nations might have made to its evolution. It has instead almost completely denied the very existence of First Nations' history and has excluded First Nations from having any impact on its development.

The Canadian system of justice is adversarial. An adversarial process implies that two parties assume antagonistic positions in debating the guilt or innocence of an accused person, or in determining who is right in a civil dispute. In such a contest, judges are supposed to be neutral. When the parties take opposing positions, debate the merits of each position, and introduce evidence supporting their own position, all relevant facts are supposed to emerge. It is assumed in the adversarial process, that in order for the truth to be discovered, a contest rather than cooperation will be a more effective process. The process of discovering the truth is more important than the truth or justice. The system attaches too much importance to the rules of the contest and the rights of the contestants.

Such a system in First Nation communities will not promote healing and harmony because First Nations have a very different view of justice. Even though First Nations do not adhere to a single world view or moral code, there are nonetheless commonalities in the approach of all First Nations to justice issues. A justice system from the perspective of First Nations is more than a set of rules or institutions to regulate individual conduct or to prescribe procedures to achieve justice in the abstract. 'Justice' refers instead to an aspect of the natural order in which everyone and everything stands in relation to each other. Actions of individuals reflect the natural harmony of the community and of the world itself. Justice must be a felt experience, not merely a thought. It must, therefore, be an internal experience, not an intrusive state of order, imposed from the outside, and separate from one's experience of reality.

Justice for First Nations has traditionally been the daily, shared experience of citizens of a community, part of general teachings, values and traditions that sustain a people as a people. In short, it has been part of the overall fabric of First Nation lives, and part of the sense of responsibility felt by every community member for the other and for the creatures and forces that sustain all human life. Justice is not a concept easily separable from other concepts that make up the ways by which First Nations have come to know themselves and the world. Nor is it static. It evolves as a First Nation grows and adapts to changing circumstances, so that harmony and balance are maintained.

The imposition of the Canadian system of justice on First Nations has arrested the evolution of their concept of justice. The application of Euro-Canadian norms and procedures on First Nation communities, the emphasis on individual responsibility and punishment for wrongdoing, and the actual outlawing of many First Nation traditions, have combined to

undermine or destroy many important First Nation community values. It is simply not possible for distinct communities of people to be self-reliant and to maintain social cohesion and harmony, when the system for maintaining that harmony and resolving conflict is based on norms, values and principles alien to their history and traditions. At that point, such a justice system cannot serve the people. It can only oppress them. That is where we find ourselves today with regard to the relationship between First Nations and the Canadian justice system.

First Nations suffer crime rates well in excess of those experienced elsewhere in Canada. Violence, substance abuse, juvenile delinquency and suicide that afflict many First Nations reflect underlying social and economic problems and hasten the destruction of our communities. This is not because First Nations are unusually self-destructive or prone to criminal behaviour. High crime rates and social disharmony are not traditional features of First Nations community life. The current social situation of First Nation communities is a direct result of a history of social, cultural and political oppression. It is part of the legacy of dependency, created by past government policies aimed at assimilating First Nations into Canadian society. The official suppression of First Nation traditions, governments and systems of law and their replacement by concepts and institutions of the dominant non-aboriginal society continues. This has a direct and primary role in creating and maintaining intolerable circumstances of social breakdown and economic dependency in First Nations.

Concern among youth that the current situation will not improve flows directly from First Nation community social breakdown. The psychology of inferiority that infects the minds of so many young First Nation citizens all too often leads them to apathy or to self-destructive behaviour. This robs First Nations of their hope for the future and adds an additional element of urgency to what is already a crisis situation for First Nations.

The Canadian justice system has shown itself to be incapable of recognizing and respecting First Nation systems of law. This wilful blindness has played a central role in robbing First Nations and their citizens of the cultural support required to maintain vibrant community life, and individual human dignity. The simple reality remains, nonetheless, that the many and varied societies comprising First Nations are both distinctive and distinct from Canadian society generally. This is a social, cultural and political fact. It is also a principle of Canadian constitutional law that is merely awaiting explicit recognition and implementation. This fact forms the heart of this submission.

Unfortunately, the majority of aboriginal justice reports ignore or gloss over this simple reality. Consequently, they fail to examine the deeper causes of justice administration problems suffered by First Nations and by their individual citizens when they are caught in the machinery of justice. They focus, instead, on the existing system and propose piecemeal reforms and minor accommodations to remedy the causes of the various miscarriages of justice. In short, they focus on the superficial symptoms of the illness to be cured, rather than on the deeper disease.

The Solution

The social harmony upon which First Nation life has been traditionally built cannot be recovered until the problem of community crime and social breakdown have been resolved. And this cannot be done until their root causes have been faced openly and honestly, both by First Nations and by federal and provincial governments. This will mean admitting that current problems result to a great extent from unjust and immoral government policies.

It will also mean admitting that the problems facing us as First Nations go beyond restoring justice and dignity to the individual victims of official neglect. This includes the injustice and outright discrimination experienced by Donald Marshall Jr., Helen Betty Osborne, J.J. Harper, Wilson Nepoose or, more recently, Teddy Bellingham. Restoring justice to individuals who are, or who will be caught up in the Canadian justice system, is nonetheless an important goal to be achieved.

But the solutions to the problems experienced by First Nations must focus on a second and more fundamental goal, that of addressing the need for First Nations healing and self-reliance more generally. This goal must include eliminating dominance by Canada's federal and provincial governments, and the restoration of a relationship of true partnership between First Nations and other levels of government. The impossible situation in which First Nations find themselves calls out for immediate action and poses urgent challenges to First Nations and to Canadian society as a whole.

For First Nations, the challenge remains to reconstruct community self-reliance and social harmony by rebuilding our societies and by renewing our peoples' strength and pride in themselves. This will mean casting off the debilitating dependency relationship fostered by centuries of dominance. We must, as First Nations, renew and update our traditions. We must relearn our ancestors' ways and adapt them to the reality that now confronts us. This is a process of healing that will take time, patience and support.

For federal and provincial governments, the challenge is to accept that there are, and always have been, more than two levels of government in this country. First Nations did not cease to exist, merely because they have been officially ignored or treated as outsiders to the governing process. The other two levels of government must now accommodate First Nations and their systems of justice. This will require a new relationship of true partnership as the Canadian federation adapts to the fact that First Nations will deal internally with a variety of disputes, including criminal matters. The ways in which First Nations may choose to deal with such matters may not be familiar to the dominant society in this country. The federal and provincial governments will have to face this fact as they work with First Nations, to build a new relationship of trust, respect and openness in this area.

Equally, governments will also have to undergo their own process of healing, for if there is one overriding message from the many aboriginal justice inquiry reports, it is that the Canadian justice system is dysfunctional. Both levels of government will have to deal with

the many ways in which the Canadian justice system has failed First Nations and other aboriginal peoples. There are many inquiry recommendations that must be implemented fully in consultation with First Nations. Canadian society will therefore have to relearn the meaning of justice, and will have to renew its own traditions in this regard. Otherwise, the ugly reality revealed by the justice inquiry reports will persist and the malady of discrimination, racism and injustice will continue to infect relations between First Nations and Canadian society.

It is our view that only by following the path of healing can both First Nations and the Canadian justice system address the current justice problems properly. In the context of justice administration, this sentiment was captured most succinctly in the report of the Royal Commission on the Donald Marshall Jr. Prosecution: 'Native Canadians have a right to a justice system they respect and which has respect for them.'

Failure to follow this advice in the area of justice administration will make it increasingly difficult to renew the Canadian federation to meet the other challenges awaiting us. We, therefore, propose two goals towards which First Nations and other Canadian governments can strive. We also focus on a number of key inquiry recommendations in an effort to prompt action in areas where consensus appears already to have been achieved.

DUAL GOALS FOR FIRST NATIONS AND GOVERNMENTS

There are two goals toward which First Nations and the federal and provincial governments should strive: one deals with internal aspects of problems confronting First Nations and focusses on building a justice administration infrastructure in First Nations. The other deals with an aspect that is external to First Nations and focuses on reform of the current justice system in line with the many inquiry recommendations.

GOALS:

I. WE WANT A WORLD WHERE RECOGNITION AND SUPPORT FOR FIRST NATIONS EXISTS SO FIRST NATIONS CAN DEAL INTERNALLY WITH JUSTICE ISSUES.

In order to restore community social and political harmony, First Nations will have to design, develop and implement their own justice systems. This must be done consistent with powers and resources of First Nations, their contemporary needs, and the reality of two other levels of government in this country. First Nations must now accept their responsibility to themselves and to future generations, by making critical decisions that will shape their institutions and guide their processes of community reconstruction.

This will mean, therefore, that First Nations will exercise an inherent right of self-government regarding justice processes which will assist healing. It will serve as an acknowledgement of our history and change the perceptions of our youths about their identity. Most importantly, it will enable citizens of First Nations to participate in dignity in the administration of justice.

There are evident limits to all rights, even to an inherent one. But those limits will only become important, as the First Nation justice systems are developed during the design and implementation process. An inherent right cannot be granted by other governments since it comes from a people, from their distinct history and culture. We must, therefore, become partners again, working towards the sharing of power, resources and responsibilities in a renewed commitment to each other and to the Canadian federation.

Background

It is beyond question that First Nations as societies were at one time completely self-reliant. In justice matters, they maintained harmony in their communities through the observance and enforcement of values and standards that were entirely community-based. By relying on their traditions, First Nations were able to handle any form of societal, family, political or individual conflict or dispute without outside assistance. Those traditions, while sharing common features, were nonetheless distinctive reflections of the many distinct peoples comprising First Nations.

For example, according to the Mik'maq tradition, dispute resolution is not a state responsibility. There is no adjudicative institution, inquisitional system or professional elite, because there are no public wrongs. There are only private wrongs, which are dealt with by families themselves. In the Mik'maq tradition, harmony, not justice, is the ideal. The priority, therefore, is to resolve a conflict quickly so as to maintain harmony. If an offender repents and wishes to make peace, an exchange of presents and other suitable amends takes away bad

feelings and restores good thoughts. Justice is thus a law of peace and not one of punishment and retribution.

Several hundred years ago, the Haudenosaunee, or Iroquois Confederacy, developed a participatory democratic form of government, to prevent the abuse of human beings by cultivating a spiritually healthy society. The goals were to overcome customs of the past that had sparked conflict and fostered disunity and to establish full peace beyond mere law and order. The Haudenosaunee are of the view that human beings whose minds are healthy, always desire peace. Human beings, therefore, have minds that enable them to achieve peaceful resolution to their conflicts. For the Nations of the Haudenosaunee, internal domestic law is thus the power which unites people ideologically and administratively under a commonly accepted dispute settlement process.

The original Clan System of the Anishinabek was a spiritually-endowed Great Law, underpinning a system of social order and a structure of government. Its spiritual significance lay in its application to the social and political good of the people. The Anishnabek world view is expressed through their language and through the Law of the Orders. This law instructs people about the way of life and standards of conduct. This law was not codified, but was understood and passed on from generation to generation. Correct conduct is concerned with appropriate behaviour, with what is forbidden, and with ensuing responsibilities. The laws include relationships among human beings, as well as the correct relationship with plants, animals and the physical world. The laws were taught through legends and other oral traditions.

According to the Anishinabek, justice is the pursuit of the true judgment required to re-establish equilibrium and harmony in relationships, family and society. It is straight and honest while at the same time respectful of the integrity of all persons, both the wronged and the wrong-doer. On the one side is the eternal, unchanging truth of the Creator; on the other, is the ever-changing, unfolding truth of human reality within Creation. In between, is the law of balance and harmony, toward which humankind must strive, characterized by integrity, humility and respect.

From the Blood tribe perspective, everything must be understood in relation to everything else. Therefore, tribal customs and traditions derive their meaning from within their social, economic, religious and cultural setting, and not as individual elements fragmented or alienated from their environment. Hence, customary or traditional law cannot be separated from religious practices, political and economic institutions, or social stratification.

Blood tribe traditional approaches to justice are based upon the principle that every person should be given his due. This involves a reference to the moral standard of the tribe. Acceptable behaviour can only be ascertained in light of competing interests in the tribe. However, individual and group interest, if the occasion arises, would be sacrificed in favour of the greater tribal interest. As a result, social sanctions, along with the appropriate machinery to enforce them, have developed to protect individual as well as tribal interests.

For the Blood, this instrument was the Ikunuhkahtsi, normally composed of tribal chiefs or headmen, religious leaders, and respected elders. It was called upon to settle disputes, carry out punishment, maintain order and tribal equilibrium, and guard against and/or expel external aggression.

In these examples of traditional First Nation justice, it is clear that justice cannot be separated from the origin of the concept of law more generally. The basic concept of the Great Law of the people and the concepts of enforcement or conflict resolution mechanisms are inextricably linked. In general, the principles of harmony, healing and full community responsibility are common themes among all First Nations. In our view, this demonstrates the practical difficulty of discussing any First Nation justice system separately from general law-making or legislative authority. Any attempt to do so will not address the need to re-establish full community responsibility and ownership of the problems that First Nations are now experiencing. Hence, our emphasis on the First Nation inherent right as the foundation upon which important aspects of community life, such as justice administration, must be built.

HISTORICAL CROWN RECOGNITION OF FIRST NATIONS JUSTICE SYSTEMS

The maintenance of law and order on First Nations territories is an integral part of First Nations history and custom. It is also part of the larger thread of First Nation law. First Nations had their own systems of law prior to the arrival of Europeans. This jurisdiction has never been explicitly surrendered or extinguished. Rather, it is our view that historically the British and later the Canadian Crown's position was non-interference in internal First Nation society matters. In our view, this position is a principle of Canadian constitutional law.

Non-interference in First Nation affairs was the historical practice of the British Crown at the time of first contact between our respective societies. Although the earliest British 'grants' of land on the east coast, of what is now the United States, were silent on the relationship between First Nations and settlers, a practice quickly developed whereby settlers only could acquire lands from First Nations through purchase. This subsequently became reflected in the treaty process, which formalized the reality of the government-to-government relationship between the British authorities and First Nations. One clear and vital aspect of this relationship was non-interference by each in the internal affairs of the other.

For example, according to Mik'maq Article 8 of the Treaty of 1752, internal justice issues are addressed and the mechanism to be used in resolving disputes between Mik'maq and non-Mik'maq.

> '8. That all disputes whatsoever that may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tryed in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages & Priviledges as any others of His Majesty's Subjects.'

Something had to be in place to regulate relations between Mik'maq citizens and the settlers, but the fact that the treaty makes no mention of internal Mik'maq justice matters is significant, all the more so when one considers that it was the British authorities who prepared the written version of the treaty. However, the traditional Mik'maq justice system continued to play a leading role in internal Mik'maq affairs.

This arrangement called for a 'two legged' justice system based on the concept of co-habitation. For incidents involving Mik'maq citizens on Mik'maq territory, their traditional system would apply. For disputes between settlers, the English justice system would be used. For matters that involved the two peoples, the English Civil justice system, with input from the Mik'maq, would come into play. The Mik'maq refused to be administered under the political authority of the local settlers or under criminal law in connection with justice matters. Instead, the Civil law of England - the fundamental principles of contract, property, and torts - was understood to be the appropriate basis on which to measure the conduct of affairs between the two peoples.

Certain of the later Canadian numbered treaties contain a clause that states that the tribes to whom the treaty applies will maintain peace and good order between each other, between themselves and with other tribes and non-aboriginal peoples. The following example is from Treaty Three of 1873.

> 'And the undersigned Chiefs, on their own behalf and on behalf of all other Indians inhabiting the tract within ceded, do hereby solemnly promise and engage to strictly observe this treaty, and also to conduct themselves as good and loyal subjects of Her Majesty the Queen. They promise and engage that they will in all respects obey and abide by the law, and that they will maintain peace and good order between each other, and also between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians or whites, now inhabiting or hereafter to inhabit any part of the said ceded tract, and that they will not molest the person or property of any inhabitants of such ceded tract, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract, or any part thereof; and that they will aid and assist the Officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.'

In our view, part of the clause states a promise on the part of the tribes to maintain peace and order in their internal affairs. Evidently, this can only be accomplished if the communities themselves are capable of maintaining peace and harmony without outside assistance. This treaty provision, like the one referring to the Miq'maq, speaks volumes about the understanding on both sides about self-reliance and the sense of community responsibility in First Nations at the time, and about the ability of First Nations to maintain social order in their own territories.

Nor is the promise of mutual non-interference restricted to the treaty process between the Crown and First Nations. It must be recalled, that treaties are merely the formal expression of a relationship between different peoples, different nations. That nation-to-nation relationship exists whether captured in the language of a treaty or not. It exists today. Thus, the historic British practice and policy of non-interference, now a Canadian constitutional principle, applies equally to First Nations that have yet to enter into a formal treaty relationship with the Canadian state.

Desired Action

To begin the healing process, First Nations should investigate and compile their traditional laws and procedures. This will mean conducting full community consultations, especially with the elders who are the carriers of much of the traditional knowledge of First Nations. This will provide a starting point and basis for the restoration of community harmony. An important feature of this recommendation is the notion that First Nations, not the leadership or outside experts, have to take responsibility and address their own problems and design their own solutions. The key is full community involvement.

It is important to note that First Nations customary law is not static. As in other societies, it has the capacity to evolve to meet changing needs, values and circumstances within First Nation communities. Customary law is merely a label that describes a source of law, rather than a particular concept of law. As mentioned earlier, although there are commonalities in the approach of First Nations, they are diverse in how they characterize and deal with justice issues. First Nations may wish to codify these traditions, and this is their right, but they may not. Codification has never been a feature of First Nations laws since they were understood in the same context as spiritual teachings and handed down orally.

The design, development and control of First Nation justice systems must be First Nations-based. The need for full community consultation must be stressed, as a justice system based on harmony and healing requires full community participation and acceptance. The problems in First Nation communities are not dealt with by the Canadian justice system with its emphasis on punishment and deterrence. These principles do not require individuals to make amends to society. As a consequence, the problems that led to the criminal behaviour in the first place, go unresolved. Full First Nation community involvement in internal justice

matters will correct this shortcoming of the Canadian justice system and will restore harmony and respect to the community.

Federal and provincial governments must recognize the inherent right of First Nations to develop their internal justice systems and must provide funding and other support to assist this community process. Clearly, a recommendation that simply promotes increased government expenditure would be troublesome at this time. However, this recommendation is tied to a more fundamental one.

Governments should conduct a thorough review and audit of the current justice system. Accurate figures about cost implications of the current approach to First Nations, and justice administration are essential, if existing funds are to be targeted more precisely. Such an accounting would cover all costs, from crime prevention through policing and courts to corrections, parole and re-integration into society. There is no accurate figure on how much is being spent on crime associated with First Nations and their citizens. It is our view that such an accounting would reveal a massive level of existing expenditure that could be re-allocated in focused ways, without increasing overall costs to the system.

In fact, overall justice system costs might actually be reduced. Costs are actually escalating in program areas associated with First Nation problems, such as drug and alcohol abuse, child welfare, and youth crime. The implementation of justice systems in First Nation communities should in the long run lessen costs in these and other areas of justice administration. The need for constant involvement of external authorities is eliminated. The current level of criminal and related justice administration problems in First Nation communities will be reduced as First Nations heal and become self-reliant in addressing their own problems.

But the investment must go beyond financing justice systems. It must also encompass economic development. There is little doubt that poor economic conditions and centuries of dominance are largely responsible for most of the social breakdown and related crime problems experienced by First Nations. It is time to abandon sterile academic debates about the precise link between crime and social and economic problems, and face the fact that 'justice' includes economic justice. Canada must face its moral, as well as its financial deficit. The issue is becoming more critical in light of the apparent intention of both levels of government to target First Nation programs for large-scale cutbacks.

Reductions in First Nation programs, without First Nation economic development and new First Nation justice systems, will pave the way for more human tragedy and despair. Ironically, this will also likely lead to increased costs for justice administration. An increasing proportion of the First Nation population is composed of young persons who have little hope for their future. It is unrealistic to think that substance abuse, crime and delinquency rates will not soar if current programs are slashed. First Nations, having borne the burden of Canada's hunger for land and resources over the centuries, should not now have to bear the burden of Canada's present financial problems, especially if the solution is merely more precise targeting of existing financial resources.

Given the emphasis on First Nations designing and implementing their own justice systems, it would be neither productive nor realistic to speculate on the desired scope and extent of First Nation justice authority or linkages with the existing Canadian justice system. Nor would it be appropriate to discuss politically sensitive issues of the application of the Criminal Code and the Charter of Rights and Freedoms. The reality of the challenge is to design and obtain community acceptance of local justice systems. The need to work out arrangements with other levels of government means, that such issues will have to be dealt with during the implementation stage. It is then that concrete definitions, precise linkages and harmonization with policies and practices of other governments will be worked out.

First Nations are often challenged to express their position on the need for universality and uniformity in the area of criminal law and fundamental rights and freedoms in Canada. In our view, the principles and purposes embodied in the Criminal Code and the Charter are important to any society, because they elaborate rules relating to personal safety and security of property. First Nation governments and citizens are no less concerned about personal safety and security of property than others in this country. It is clear, that no government can function now or in the twenty-first century, if it fails to respect individuals and their right to personal security, and to participation in the institutions of government. Given the origins, philosophical underpinnings, and the confusing and sometimes contradictory and complicated language in both the Criminal Code and the Charter, it is not at all clear that these instruments are the best way for First Nations to protect their values or the rights of individuals.

What is important about these documents is their intent to maintain social control and order and fundamental rights and freedoms. If this can be better achieved through alternative approaches or through differently composed documents, then that is an option that First Nations must explore in the context of their own journey of healing and discovery. It is not at all clear at this point that there is much to be gained by First Nations having to turn to the Canadian courts in Charter proceedings to resolve internal matters. These are the same institutions that have so often been singled out in the justice inquiry reports as insensitive to First Nation values, cultures and rights. It is possible that First Nations may choose this option for reasons appropriate to them. But choice is the key. Such a choice must be made by the First Nation involved in the course of implementing the system of justice it has designed. Otherwise, the inherent right will have no meaning and the whole purpose of the healing journey for First Nations and for the other two levels of government will have been lost.

THE CO-OPERATION OF THE CROWN

The implementation of First Nation justice systems requires a high degree of political will and respect for First Nations political equality, by Canadian governments. But it is precisely this political will and respect that have been lacking in relations between First Nations and the federal and provincial governments in justice administration. Two recent aboriginal justice inquiries specifically endorsed principles and approaches consistent with the vision described in this portion of our submission.

In August 1991, the Aboriginal Justice Inquiry of Manitoba called in no uncertain terms for just this type of approach:

> 'The federal and provincial governments recognize the right of Aboriginal people to establish their own justice systems as part of their inherent right to self-government.
>
> The federal and provincial governments assist Aboriginal people in the establishment of Aboriginal justice systems in their communities in a manner that best conforms to the traditions, cultures and wishes of those communities, and the rights of their people.'

Later that same year, the Law Reform Commission of Canada issued a similar call in its report using more muted language:

> 'Aboriginal communities identified by the legitimate representatives of Aboriginal peoples as being willing and capable should have the authority to establish Aboriginal justice systems. The federal and provincial governments should enter into negotiations to transfer that authority to those Aboriginal communities.'

Despite these recommendations, there has been no appreciable movement by Canadian governments in this direction. There have been certain changes and projects initiated which are more properly described as 'tinkering' with the system, or as adapting it to First Nation communities and citizens. Existing government policy development in this area does not demonstrate an intention to embrace the need for stronger solutions to the problems.

For example, the existing, though unfinished policy of the federal government in the area of aboriginal justice generally is, that new approaches must be 'based on the principle that solutions are to be found within the Constitution of Canada, present and future, as interpreted by the Supreme Court of Canada'. The current federal aboriginal justice initiative is described in the 1991 Justice Department discussion paper, Aboriginal People and Justice Administration .... "it does not envisage an entirely separate system of justice for aboriginal peoples, although community justice systems, for example as connected to aboriginal self-government, are both possible and desirable."

The problem with this approach is that it offers insufficient scope for the exercise of the inherent right of First Nations to design and implement their own justice systems. Although the federal position attempts to have it both ways by referring to present and future constitutional rights, the language is not broad enough to afford First Nations the respect they will require if the inherent right is to have more than mere rhetorical significance.

The federal position was developed without consulting First Nations and indeed, without their knowledge. It is being implemented now with minimal First Nations representation among the employees of the federal Department of Justice, and without an effective consultation mechanism for assessing the views of First Nations. At this point, it appears that the bulk of the funds has been used for internal hiring and administrative costs, remote from the real needs of First Nations. This is simply another in a long line of non-First Nation solutions to First Nation problems.

The federal aboriginal policing program, although better funded, suffers from many of the same problems, including a lack of aboriginal employees and no First Nation consultation mechanism. In addition, it is hampered by the requirement that First Nation police forces established under its auspices, must find their source of legal policing authority in provincial legislation. This exists even in areas such as western Canada, where many First Nations have treaty provisions, guaranteeing their right to police their own communities. This federal program treats First Nations as equivalent to provincial municipalities. It allows provinces a large role in First Nation internal matters and offers no scope for the inherent right of First Nations to exercise their own internal social control. It also lends itself to the type of federal/provincial bickering over cost sharing that has become all too familiar a feature, and threatens to worsen. While federal and provincial bureaucrats squabble, the urgent problems confronting First Nations do not disappear.

There is no shortage of recent research directed at examining whether or not First Nation justice systems can be accommodated within the current constitutional framework, or whether constitutional reform is necessary. Such expert research has concluded that recognition of First Nation justice systems does not require constitutional reform. The powers already exist in all three levels of government. The inherent authority exists with First Nations now to vest a First Nation justice system with a maximum range of jurisdiction in regard to subject matter, territory and persons. The system will not necessarily be based on Canadian law. It will be based on First Nations rights and law. New laws will be required to address intergovernmental connections and implementation.

Major constraints are lack of political will on the part of federal and provincial politicians, and failure by governments to commit sufficient financial resources to this task. All that is required at this stage, is the desire by government to implement necessary changes. The time for study, talk and bureaucratic and political delay has run out.

It is time for action - joint federal, provincial and First Nation action. Implementation now, is therefore, the major recommendation of this portion of our submission. Federal and

provincial governments must report why major recommendations from inquiry reports have not been acted upon. They should also assist in the establishment of a resource centre that would work with First Nations in the process they are about to undertake.

HOW THIS GOAL CAN BE ACHIEVED:

inherent right to justice systems

FEDERAL AND PROVINCIAL GOVERNMENTS MUST RECOGNIZE THE INHERENT RIGHT OF FIRST NATIONS TO DEVELOP THEIR OWN INTERNAL JUSTICE SYSTEMS IN ACCORDANCE WITH THEIR OWN TRADITIONS, NEEDS AND ASPIRATIONS.

62

funding and technical support

FEDERAL AND PROVINCIAL GOVERNMENTS MUST PROVIDE FUNDING AND TECHNICAL SUPPORT FOR FIRST NATIONS TO INVESTIGATE AND COMPILE THEIR TRADITIONAL LAWS AND PROCEDURES, TO CONDUCT FULL COMMUNITY CONSULTATIONS, TO CONDUCT RESEARCH WHERE REQUIRED, TO SET UP PILOT AND DEMONSTRATION PROJECTS TO TEST MODELS, AND TO IMPLEMENT THE JUSTICE SYSTEM ULTIMATELY CHOSEN BY THE COMMUNITY.

63

review and audit of present system

FEDERAL AND PROVINCIAL GOVERNMENTS MUST CONDUCT A COMPLETE REVIEW AND AUDIT OF THE CURRENT JUSTICE SYSTEM, AND PROVIDE ACCURATE FIGURES ON COST IMPLICATIONS OF THE PRESENT APPROACH TO FIRST NATIONS AND JUSTICE ADMINISTRATION AT ALL STAGES FROM CRIME PREVENTION THROUGH POLICING, AND COURT TO CORRECTIONS, PAROLE AND REINTEGRATION INTO SOCIETY IN ORDER TO REALLOCATE CURRENT EXPENDITURES.

64

resolve land claims and treaty issues

FEDERAL AND PROVINCIAL GOVERNMENTS MUST RESOLVE, ON AN URGENT BASIS, LAND CLAIMS AND OUTSTANDING TREATY ISSUES, AND MUST INVEST IN FIRST NATION ECONOMIC DEVELOPMENT IN ORDER TO DEAL WITH SOCIAL AND ECONOMIC DEPRIVATION THAT UNDERLIES AND AGGRAVATES CRIME PROBLEMS IN FIRST NATION COMMUNITIES.

65

report to independent body

FEDERAL AND PROVINCIAL GOVERNMENTS MUST BE REQUIRED TO REPORT TO AN INDEPENDENT BODY, CREATED TO MONITOR GOVERNMENT PROGRESS IN IMPLEMENTING ALREADY EXISTING INQUIRY RECOMMENDATIONS. THIS BODY MUST REPORT TO PARLIAMENT YEARLY AND MUST BE COMPOSED OF ABORIGINAL ACADEMICS, MEMBERS OF THE ABORIGINAL LEGAL COMMUNITY AND JUDGES.

66

aboriginal justice institute

AN ABORIGINAL JUSTICE INSTITUTE MUST BE CREATED AS RECOMMENDED BY THE LAW REFORM COMMISSION OF CANADA TO CONDUCT RESEARCH AND EVALUATE GOVERNMENT PROGRAMS AND ASSIST ABORIGINAL COMMUNITIES, WHERE REQUESTED, IN DEVELOPING AND TESTING OPTIONAL MODELS OF JUSTICE SYSTEMS. THIS INSTITUTE MUST BE MANAGED AND STAFFED PRIMARILY BY ABORIGINAL PEOPLE.

67

II WE WANT A WORLD WHERE THE CURRENT JUSTICE SYSTEM IS REFORMED IN LINE WITH THE MANY ABORIGINAL JUSTICE INQUIRY RECOMMENDATIONS TO THIS EFFECT.

Background

Although the primary goal of First Nations is to deal with internal justice matters without interference, there can be no question that the existing system requires reform. As already discussed, the current system is dysfunctional and in need of healing. This is an external dimension to the problem of delivering justice to First Nations. Since 1967, there have been more than thirty inquiry reports and studies which examined how aboriginal persons are treated in the Canadian justice system. They demonstrate convincingly the existence of severe aboriginal over-representation at all stages. Most reports also show that overt and systemic discrimination are pervasive, and that aboriginal peoples in this country have lost faith in the ability of the system to deliver justice.

Recommendations from all reports have focused primarily on reform to the existing Canadian justice system. Of the many hundreds of recommendations made, only a few, which do not require significant jurisdictional or structural change, have been implemented. We suspect that if the inquiry findings had been that aboriginal peoples have been treated too leniently by the justice system, federal and provincial governments would have acted quickly to resolve that problem. We also suspect that if the group involved was not aboriginal peoples, but instead an identifiable segment of Canadian society such as Canadian youth, these same governments would have acted quickly. For example, the Juvenile Delinquents Act was replaced relatively quickly by the Young Offenders Act, when it became clear that juvenile courts did not provide youth with adequate procedural safeguards. Major reform was

instituted to ensure safeguards for young offenders. No major reform has been undertaken to ensure similar safeguards for aboriginal persons in the system, despite official government hand-wringing about the problem.

Police, prosecutors, defence lawyers and judges have all been found by these inquiry reports to have been agents of systemic discrimination. The evidence of systemic discrimination lies in the adverse impact the system has on aboriginal peoples:

> Aboriginal people are policed more extensively or at least are more likely to draw the attention of police; they are more likely to be charged with multiple offenses than non-aboriginal persons; they are more likely to be denied bail, and held in pre-trial detention for longer periods of time; lawyers spend less time with their aboriginal clients than with non-aboriginal clients; aboriginal offenders are more than twice as likely as non-aboriginal to be incarcerated; in pre-trial detention, judges apply standards that have a negative impact on aboriginal persons such as employment, mobility, family ties, whether accused has a fixed address etc. in determining whether to grant bail; lack of legal representation because of low income; no trials in aboriginal communities and no jury by ones peers; sentencing dependant on employment and income status which places aboriginal people at a disadvantage; pre-trial detention contributes to more convictions and harsher sentences as the judge hearing bail has already found that the offender should be in jail.

The problem of systemic discrimination is not easy to deal with. There are no identifiable 'racists' to fire in order to purge the system. Rather, it is the system itself that is the bad element. The problem of systemic discrimination is the structural denial of another perspective, another set of values and experiences. The current justice system truly is blind. It cannot 'see' differences, even vital differences like those that exist between profoundly different cultures and world views of aboriginal and non-aboriginal people. The result is insensitivity and application of standards of conduct that are often wholly foreign to aboriginal persons.

The subjects of harmony and healing must be addressed for First Nation citizens incarcerated in penal institutions as well. Elders believe that healing is required for aboriginal inmates, as there are harmful effects on an individual's mind and spirit from being locked up. Prison officials are beginning to recognize the importance aboriginal elders and healers can have within their institutions. Changes in official attitudes are slow, disrespect is still often shown to elders by some officials, and funding is not available to bring elders to the prisons.

In order to change the situation in which First Nations find themselves with regard to justice administration, a real commitment is required to full implementation of the recommendations found in the many existing government-sponsored studies and inquiry reports. Despite the magnitude of the problem, there is much the justice system can do to assist in reducing the degree to which aboriginal people face discrimination. Equality and fairness must be the hallmark of the Canadian justice system. This will involve addressing the legacy of centuries

of oppression and exploitation that has marked Canadian policy. The justice system has been a central instrument of the destructive policies of the past. We believe it can play a positive role in the future by helping to make reasonable accommodation for aboriginal peoples.

HOW THIS GOAL CAN BE ACHIEVED:

Given the extremely large number of recommendations that have been made in various inquiry reports and studies, we could have again compiled a long list. We have not done so. Instead, we have grouped some of the more prominent recommendations by theme. The most important of all the recommendations, however, must be mentioned separately - the need for implementation. If there is no will to act, then compiling list upon list of recommendations will be useless. At this point, action, not more words, will speak loudest. We offer the following as a sample of where governments can begin immediate action.

The Alberta Task Force Report compiled more than 700 recommendations from previous aboriginal justice reports. They have been grouped into the 'top ten'.

THERE IS A NEED FOR CROSS-CULTURAL TRAINING FOR NON-NATIVE STAFF WORKING IN ANY CAPACITY WITH FIRST NATION CITIZENS IN THE FIELD OF JUSTICE.

68

THERE IS A NEED TO EMPLOY MORE NATIVE CITIZENS IN ALL AREAS OF THE JUSTICE SYSTEM.

69

THERE IS A NEED TO HAVE MORE COMMUNITY-BASED PROGRAMS IN CORRECTIONS.

70

THERE IS A NEED FOR MORE COMMUNITY-BASED ALTERNATIVES IN SENTENCING.

71

THERE IS A NEED FOR MORE SPECIALIZED ASSISTANCE TO NATIVE OFFENDERS.

72

THERE IS A NEED FOR ADDITIONAL NATIVE COMMUNITY INVOLVEMENT IN PLANNING, DECISION-MAKING AND SERVICE DELIVERY.

73

THERE IS A NEED FOR ADDITIONAL NATIVE ADVISORY GROUPS AT ALL LEVELS.

74

THERE IS A NEED FOR INCREASED RECOGNITION OF NATIVE CULTURE AND LAW IN CRIMINAL JUSTICE SYSTEM SERVICE DELIVERY PROGRAMS IN THE JUSTICE SYSTEM.

75

THERE IS A NEED FOR ADDITIONAL EMPHASIS ON CRIME PREVENTION PROGRAMS FOR ABORIGINAL OFFENDERS.

76

SELF-DETERMINATION MUST BE CONSIDERED IN PLANNING AND OPERATION OF THE CRIMINAL JUSTICE SYSTEM.

77

Similar recommendations have emerged from the subsequent reports. We endorse these recommendations. They are all recommendations worthy of implementation, because they deal to a great extent with cultural blindness and systemic discrimination in the current system. Many could be implemented unilaterally by governments, by simply changing civil service hiring and training policies, and by emphasising crime prevention and community involvement rather than reactive policing and merely processing people through the system. First Nation community involvement will evidently require more than simply sending non-aboriginal officials to set up programs. This is the area where recognition of the inherent right and the naturally evolving First Nation healing process, will require governments to harmonize their efforts with those of First Nations - and wait to be invited to participate, on terms acceptable to the community.

Many inquiries have provided detailed lists of recommendations in other areas. Recommendations concerning police included:

> creation of aboriginal controlled police forces; increasing the numbers of aboriginal police officers on all forces: strengthening police cross-cultural education; improving police relations with aboriginal communities and changing some police practices that undermine good community relations. Most importantly, governments must improve the manner in which complaints of police misconduct are dealt with. There must be more openness in the process and it must be more impartial. It is simply too expensive and time-consuming to conduct a commission of inquiry every time the police are suspected of misconduct in the arrest and conviction of First Nation citizens. An improved complaint, investigation and hearing process will help.

With respect to sentencing, incarceration should be used only as a last resort:

> where the person poses a threat to another individual or to the community, where other sanctions would not sufficiently reflect the gravity of the offence, or where the offender refuses to comply with the terms of another sentence. There should be greater use of restitution, community service orders, placing adults under supervision of someone in the community, open custody and other options. Fines should be imposed only if the ability to pay is demonstrated and incarceration for non-payment of fines should be rare and, in any event, should be imposed only after a show-cause hearing. Where incarceration is required, it should be in a community-based facility in the home community of the offender, if one exists, or in a more culturally appropriate facility as close to the individual's home as possible. Community sentencing panels should be accommodated, where requested, to assist the courts. In general, there is a need for innovative sentences in order to have the offender recognize the impropriety of actions, to promote prevention of repetition by returning accused, victim and community to a state of harmony, without jail. Use of interpreters and translation into aboriginal languages in all justice procedures must be implemented, where appropriate.

In both sections of this submission dealing with the internal and the external aspects of the justice problems now confronting First Nations, we have made a number of recommendations. At several stages, we have reiterated one recommendation above all the rest. We close this submission with that recommendation: <u>implementation now</u>. The problem is clear. We have proposed a two-pronged way of dealing with it. What remains is action.

EDUCATION

Children are the First Nations most precious resource. They are the link to past generations, the enjoyment of the present generation, and the hope for the future. First Nations intend to prepare their children to carry on their cultures and governments.

Because education shapes the minds and values of First Nations' young people, it is vitally important that First Nations governments have jurisdiction over educational programs which have such a lasting impact.

It is the right of First Nations to safeguard and develop their languages, cultures, economies, institutions and traditions in order to determine and control their future development as peoples, according to their values and priorities, and to ensure the integrity of their societies.

The education of our children is a fundamental tool in developing and strengthening self-government in our communities.

Equality of access to education and life-long learning is a fundamental right of all First Nations children. This fundamental right extends to the following:

EVERY FIRST NATION STUDENT IS ENTITLED TO:

* A cultural environment that respects and reinforces the history and traditions of all aboriginal people.

* Access to educational technologies, information systems and training on their effective use.

* Access to a life-long effective educational system to enable students to reach their full potential and then pass that on to others.

* A safe learning environment that challenges students to contribute to their communities.

* The right to inherit a world that is environmentally sound and free from hostilities.

Education for First Nations people is an inherent aboriginal right. Because of our treaties with the Crown, the federal government is legally obligated to provide adequate resources and services for education. First Nations proclaim and affirm their inherent aboriginal rights of

self-government and demand their treaties and rights be respected and recognized by all levels of government.

Revision of the Indian Act is unacceptable to First Nations as a means of ending paternalism and establishing federal recognition of the inherent aboriginal right of self-government and jurisdiction over education.

First Nations cannot exercise jurisdiction over education or any other program without full fiscal and operational control. The term jurisdiction means the right of each sovereign First Nation to exercise its authority, develop its policies and laws, and control financial and other resources for the education of its citizens.

First Nations will determine the extent of the need for resources and allocation of resources to various programs and services required in their communities.

First Nations expect the federal government to recognize and uncompromisingly support First Nations education authorities, and other designated authorities, as the final legal authority over the jurisdiction and management of First Nations schools.

It is the right and obligation of First Nations to provide comprehensive quality education which includes, but is not limited to, culture, language and traditions, pre-school, elementary, secondary, special education, post secondary education, upgrading, skills development, basic skills training, vocational education, human resource development and adult education. This right is not externally circumscribed. First Nations jurisdiction over education must also extend to citizens of First Nations beyond reserve boundaries who attend provincial or territorial educational institutions.

Self-government is the cornerstone to our survival as a people. This means First Nations exercising their inherent right to govern and make decisions affecting their own lives and the affairs on their own lands and resources, with all of the duties and responsibilities of governing bodies.

First Nations have never relinquished their inherent right to exercise self-government, although the practice of First Nations self-government has been greatly disrupted by the action of federal, provincial and territorial policies and laws.

First Nations provided their own form of education long before Europeans came to this country. For thousands of years teaching was done by family members and relatives. Women and elders were especially acknowledged as natural teachers of First Nations people.

Traditions of our people dictated that women and elders transmitted the culture, language and skills necessary for children to grow up and survive in a harsh environment. They transferred customs to their families and gave advice when decisions had to be made.

Children spent their days with their mother, collecting berries, medicines, firewood, fetching water, working hides and making clothes. The evenings were spent sitting around the fire, listening to stories, intricately woven by parents and grandparents.

Storytelling provided children with lessons and examples to guide them in their relations with the Creator, Mother Earth, their families and their governments. Mothers and elder were the repositories of knowledge and wisdom. They were the institutions which educated the young. The men of the community supported women in their natural role.

This form of education effected the child positively because it addressed itself to the total community. The child had the opportunity to develop a good self-image as an individual and as a member of the First Nations.

From 1600 to 1750 schools were operated by missionaries. Teaching during this period concentrated primarily on religious matters. Decisions regarding the education of First Nation children were made in Europe, with interests of European settlers in North America taking precedence. Funding for education came from charitable societies in Europe. The stated objectives for First Nation children, who were schooled with the children of colonists, were 'acculturation and assimilation.'

From 1750 to 1850, the British and French influence continued to dominate education. Churches were still actively involved and dedicated to converting First Nations to christianity. After this period, however, an opinion began to evolve which dictated that "native people should be educated apart from other North American inhabitants particularly to protect natives from social exploitation."

From about 1850 to 1950 schooling for First Nations became segregated ..."in order to be protective." Until the passing of the BNA Act in 1867, Indian education was exclusively the domain of European religious groups.

After 1867, federal responsibility for ...."Indians and lands reserved for Indians," became a component of confederation. This coincided with the introduction of boarding schools. The church and government jointly operated these schools, the church managed the schools, while the government inspected and financed them.

Boarding schools had a very high mortality rate. It was estimated at the turn of the century, that 50 percent of the children attending those schools did not live to benefit from the education they received. Enrolments in the schools were very high, so government operating funds could be obtained, as funding was dependent on per capita grants.

In 1948 the federal government began to alter policy concerning aboriginal education. The government accepted full financial responsibility for First Nations education but that responsibility did not include the building and operation of schools on reserves. Instead,

arrangements were made with provincial governments to provide facilities and teachers in existing provincially run schools. The federal government reimbursed school boards by paying tuition for First Nation students.

The government made provision for 60 percent of First Nations students in integrated schools. The objective of this new policy was to abolish the separate political and social status of First Nations, to enfranchise First Nations and merge them into the rest of the population on an 'equal footing'. During that time the Indian Act stipulated that a person would be enfranchised under the following conditions: a person would be removed from band membership as a result of living outside Canada for over five years without authority from the Superintendent General, and a person was enfranchised as a result of his/her profession.

The Act further stated .....'any such Indian of the male sex and not under 21 years of age who was able to speak, read or write English or the French language, was sufficiently advanced in the elementary branches of education, was of good moral character and free from debt, was so declared to be enfranchised and would no longer be deemed an Indian within the meaning thereof '.

In June, 1969 the federal government presented the White Paper. This paper proposed the elimination of all constitutional and legislative bases of discrimination against 'Indians.'

As a result of discussions of a number of jurisdictional matters, the emergence of the aboriginal leadership began to be felt in Canada. The appalling conditions faced by First Nations were articulated to the Canadian public and resulted in the policy statement .....'Indian Control of Indian Education'. Aboriginal education became a major government focus, and subsequently, the policy statement was adopted in principle by the Department of Indian Affairs. This policy statement was based on two basic principles: parental responsibility and local control of education.

In 1988, a four year, six million dollar national review on First Nations education was completed and released by the Education Secretariat of the Assembly of First Nations. It was entitled *'Tradition and Education: Towards A Vision Of Our Future'*. The review analyzed four aspects of First Nations education: jurisdiction, quality, management and financing.

The primary conclusions drawn from *Tradition and Education* research were:

> Education is an inherent right which must be respected by all levels of government. In particular, First Nations governments must assure that children, teachers of their children and community members understand fully, that the concepts of self-government and self-sufficiency are related.

The research results of *Tradition and Education: Towards A Vision of Our Future,* indicated that communities exercising a degree of jurisdiction over education of their children tend to rate statements of self-government philosophy higher than communities not involved in these processes. Given this trend, it is imperative, that provincial and territorial schools serving First Nations children, include contemporary First Nations issues in the curricula.

Tradition and Education found, based on an analysis of obstacles related to effective preparation and implementation of First Nations jurisdiction over education, that all attempts at restructuring and reorganizing education systems must adhere to the philosophy of education as defined and articulated by First Nations.

This above statement must be fully supported by all levels of government affected by this transfer of jurisdiction over education. Formalized mechanisms must be in place to guarantee, that representatives of First Nations are directly involved in all pre-planning, assessment, preparation, implementation, administration and evaluation of a systematic framework for the transfer of jurisdiction to be effective.

The role and responsibilities of the federal government as it relates to the transfer process must be clarified and funding for First Nations must be provided to gather needed information, conduct assessments, provide preliminary training, create an administrative structure and execute jurisdiction and management over First Nation schools.

Since the completion of the National Review, *Tradition and Education: Towards A Vision Of Our Future* in 1988, and the Ratification of the *Declaration of First Nations Jurisdiction Over Education* in 1989 by the Chiefs of Canada, the only movement by the federal government towards recognition and implementation of the recommendations of the study was the commissioning of the MacPherson Report which was released in September, 1991.

The MacPherson Report clearly stated that the process set in motion by *Tradition and Education* should continue. On the First Nation side, MacPherson recommended a continued consultative process ....."especially one firmly focused on the identification and actual implementation of substantive education reforms in the near future." On the government side, MacPherson recommended the willingness to enter into serious discussions and negotiations with First Nations "about the process and substance of major reforms in the field of Indian education."

The preferred mechanism for moving forward in First Nations education is constitutional amendments, dealing with the fundamental relationship between the government of Canada and First Nations.

Given the complexity and difficult negotiations required for constitutional reform this mechanism is still preferred.

In the interim, First Nations must consider other alternatives such as a National First Nations Education Act. This Act would be more comprehensive and empowering than the scant provisions currently contained in sections 114-123 of the Indian Act. Furthermore, repeal and reform of all sections of the Indian Act that relate to education are not adequate since the Act exists solely to administer paternalistic policies and practices that interfere with the exercise of meaningful jurisdiction over education and true self-government.

THE WAY OUR GOALS CAN BE ACCOMPLISHED:

recognition of right to self-government

RECOGNITION BY FIRST NATIONS' RIGHTS TO SELF-GOVERNMENT MUST BE ENTRENCHED IN THE CONSTITUTION IT MUST ENCOMPASS THE RIGHT OF ABORIGINAL PEOPLES AS THE FIRST PEOPLES TO GOVERN THE LAND, PROMOTE THEIR LANGUAGES, CULTURES, TRADITIONS AND EDUCATIONAL PRACTICES.

78

First Nations demand that all paternalistic administrative practices stop. In recognition of the government's devolution processes, the process of passing duties from one body to another has resulted in First Nations administering federal programs without being able to exercise authority. First Nations demand that the federal government fully recognize its obligation to finance First Nations education and deal with First Nations on a nation-to-nation basis.

education relevant to needs

OUR AIM IS TO MAKE EDUCATION RELEVANT TO THE PHILOSOPHY AND NEEDS OF FIRST NATIONS PEOPLE. WE WANT EDUCATION TO GIVE OUR CHILDREN A STRONG SENSE OF IDENTITY WITH CONFIDENCE IN THEIR PERSONAL WORTH AND ABILITY. WE BELIEVE IN EDUCATION AS A PREPARATION FOR TOTAL LIVING, AS A MEANS OF FREE CHOICE OF WHERE TO LIVE AND WORK, AND AS A MEANS OF ENABLING US TO PARTICIPATE FULLY IN OUR SOCIAL, POLITICAL AND EDUCATIONAL ADVANCEMENT.

79

The federal provincial and territorial governments must relinquish their administrative and policy functions and the federal government should retain its role as a funding source only.

First Nations declare their jurisdiction over education for their people, and First Nations will negotiate directly with the federal government under a negotiated bilateral process to finance education needs. First Nations call for the establishment of an independent advisory council to support negotiations between First Nations and the federal government. Through these mechanisms, First Nations will allocate and distribute resources to fund high quality, locally defined education programs that meet the unique needs of their people.

implementation of 'Tradition and Education'

IMPLEMENTATION OF THE RECOMMENDATIONS IN *TRADITION AND EDUCATION* MUST PROCEED. CONSENSUS ON AND MOVEMENT TOWARDS A TRANSITION TO MEANINGFUL FIRST NATIONS JURISDICTION OVER EDUCATION MUST TAKE PLACE IMMEDIATELY.

80

aboriginal education council

NEGOTIATIONS MUST TAKE PLACE IMMEDIATELY TO ESTABLISH AN INDEPENDENT BODY, SUCH AS A NATIONAL ABORIGINAL EDUCATION COUNCIL, TO ASSUME RESPONSIBILITY FOR POLICY PLANNING, COORDINATION AND TRANSFER OF JURISDICTION ACCEPTABLE TO FIRST NATIONS AS DEFINED IN *TRADITION AND EDUCATION* AND THE 1972 *INDIAN CONTROL OF INDIAN EDUCATION* POLICY PAPER.

81

All levels of government must work together to implement the principles contained in *Tradition and Education.*

This process must take place within a time frame of not more than 18 months, which is consistent with the devolution process taking place within the Department of Indian Affairs. Currently, more than half the federal funds allocated to First Nations education, are allocated to provincial school costs for educating our youth.

The development of First Nation controlled institutions of higher education will bring education funds within the jurisdiction of First Nations.

The advantages of maintaining a national framework for First Nations jurisdiction over education are - to provide a mechanism for the deliberations of problems and solutions, to act as a watchdog on federal, provincial and territorial policies and practices which might affect local First Nation education authorities and to secure funding.

A national framework will also provide a mechanism for research and informed commentary on education policy for First Nation leaders and their representative organizations. A national framework mechanism will administer national educational initiatives and evaluate projects carried out under any program in which First Nation children or adults can participate, or from which they can benefit and disseminate the results of such evaluation.

A national framework will also provide technical assistance capabilities to First Nation education authorities, institutions and organizations in order to further assist them in improving the education of First Nations children.

A national framework will assist in developing criteria and regulations for the administration and evaluation of resources awarded under the First Nations Education Act.

First Nations education authorities will develop locally defined philosophies and goals for their education programs and will be accountable to the parents and the community for the management of schools and education programs.

First Nations will establish, develop and maintain their own data banks which will provide accurate and state-of-the-art information on management systems, administrative issues, laws, personnel policies and jurisdictional powers.

First Nations education will remain a holistic approach that incorporates a deep respect for the natural world. First Nations language and cultural values are taught and enhanced through education and the education process actively involves many partners - parents, the community, and the school. Linkages and regional co-ordination through data bases will enhance this developmental process.

LANGUAGES AND LITERACY

"Our Native language embodies a value system about how we ought to live and relate to each other... it gives a name to relations among kin, to roles and responsibilities among family members, to ties with the broader clan group... There are no English words for these relationships because your social and family life is different from ours. Now if you destroy our language, you not only break down these relationships, but you also destroy other aspects of our Indian way of life and culture, especially those that describe man's connection with nature, the Great Spirit, and the order of things. Without our language, we will cease to exist as a separate people."

Eli Taylor, elder
Sioux Valley First Nation

As Eli Taylor points out, our mother tongue is the web that links our culture, spirituality, customs and traditions. Our languages are the cornerstone of who we are as a people. Without our languages our cultures cannot survive.

All First Nations people have a fundamental right to use and to be educated in their mother tongue. This is an inherent aboriginal and treaty right. The federal government has a legal obligation to provide the resources that will enable us to exercise this right.

In a recent study of language use in 171 First Nations communities across the country, the languages in 69 percent of communities were found to be declining, endangered or critical. Over two-thirds of the communities will lose their language within one or two generations, unless steps are taken to strengthen the language.

Several First Nations languages are in a critical state. There are no Huron speakers in Canada, although there are Huron speakers in the United States. There are only five speakers of Tagish, a language spoken in the Yukon, left in the world.

Although many First Nations languages have been put into written form, different ways of writing the same language have evolved. Only two languages, Cree and Oji-Cree are widely used in schools, media, signs and publications.

At present over two-thirds of First Nations language programs are limited to the preschool

and early elementary grade levels. First Nations language programs for adults are available on less than 20 percent of reserves surveyed. Although roughly half of all First Nations students are enroled in a provincial education system, only one-quarter of all aboriginal language programs take place in provincial schools. To further complicate matters, First Nations languages are usually taught as a separate subject with the aim of promoting cultural awareness rather than fluency.

Many First Nations people have worked hard for their communities to keep their languages alive - people like Mik'maq teacher Murdina Marshall, Mohawk teacher Dorothy Lazore and Saulteaux teacher Linda Pelly. They have done so with little help.

To heal the wounds caused by residential schools and a variety of other elements of colonialism, First Nations must undergo a social renewal based on traditional values, knowledge and spirituality. These essential elements of culture are embodied in and transmitted by our languages. The greater use of our mother tongue in our daily lives is an integral part of the current healing process of our communities. Regaining fluency will help strengthen our families and communities. Language revitalization is not just a goal in itself, but a means of achieving renewal and rebirth.

Since the first languages spoken on this land were the languages of the First Nations, and since all languages are equally deserving of dignity and respect, the languages of First Nations people must be protected and promoted as a fundamental element of Canadian heritage.

While the support of the governments of Canada is crucial to the revitalization of our languages, First Nations citizens and governments carry the primary responsibility. First Nations are committed to saving and strengthening our mother tongue. In doing so, we will rely on those who know best the language and teachings that were given to us by the Creator - the elders.

The elders were the driving force behind the official policy on languages that was adopted by the Assembly of First Nations in 1988:

DECLARATION ON ABORIGINAL LANGUAGES

The Aboriginal Languages were given by the Creator as an integral part of life. Embodied in Aboriginal languages is our unique relationship to the Creator, our attitudes, beliefs, values, and the fundamental notion of what is truth.

Aboriginal language is an asset to one's own education, formal and informal. Aboriginal language contributes to greater pride in the history and culture of the community; greater involvement and interest of parents in the education of their children; and greater respect for Elders.

Language is the principle means by which culture is accumulated, shared and transmitted from generation to generation. The key to identity and retention of culture is one's ancestral language.

GOALS:

I **WE WANT A WORLD IN WHICH ALL THE PEOPLE OF THE FIRST NATIONS ARE FLUENT AND LITERATE IN THEIR MOTHER TONGUE.**

II **WE WANT A WORLD IN WHICH FIRST NATION LANGUAGES WILL BE THE OFFICIAL LANGUAGES OF FIRST NATIONS COMMUNITIES. THEY WILL BE PART OF EVERYDAY FAMILY LIFE FOR ALL FIRST NATIONS PEOPLE. THEY WILL BE USED IN ALL AREAS OF COMMUNITY LIFE -- IN SCHOOLS, BUSINESS, GOVERNMENT SERVICES, LOCAL NEWS MEDIA, SOCIAL PROGRAMS, RECREATION ACTIVITIES, PUBLIC SIGNS AND ADVERTISING.**

III **WE WANT A WORLD IN WHICH OUR LANGUAGES ARE OFFICIALLY RECOGNIZED BY THE GOVERNMENT OF CANADA. THEY WILL ENJOY GREATER USE AND RESPECT BY CANADIAN SOCIETY. THEY WILL BE USED TO DESCRIBE THE PEOPLE AND PLACES OF THE FIRST NATIONS.**

THE WAY THESE GOALS CAN BE ACHIEVED:

constitutional recognition

THE GOVERNMENT OF CANADA THROUGH LEGISLATION MUST RECOGNIZE, PROTECT AND PROMOTE FIRST NATIONS LANGUAGES ON THE SAME BASIS AS ENGLISH AND FRENCH AND ENSHRINE THIS RIGHT IN THE CONSTITUTION.

82

First Nations people are guaranteed the right to practise their language and culture by virtue of treaty and aboriginal rights. These rights are further protected by the constitution and international agreements. These include the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights.

First Nations want their languages to have the same legal rights and status as English and French - the official languages of Canada. This can be achieved through constitutional recognition, protection and promotion.

This recognition will mean that the federal government will be required to finance First Nations language development in the same way support is provided to English in Quebec and French in the rest of Canada. This applies to teacher training, curriculum development, in-service training and the like.

The Charter of Rights and Freedoms protects and promotes the language and culture of English-speaking and French-speaking Canadians. It guarantees publicly funded English language education in Quebec and French language education in other provinces.

First Nations languages are entitled to the same level of support. Currently the federal government spends 100 times more to promote Canada's two official languages than it does on the promotion of all 59 aboriginal languages. And yet, there are more aboriginal people than francophones in Newfoundland, the two northern territories and all the provinces west of Ontario.

Canada must recognize that aboriginal languages flourished on this land for thousands of years, centuries before English and French were recognized as founding languages.

The recognition that aboriginal languages embody a wealth of knowledge will enrich the heritage and future of all Canadians.

redress damage

ALL LEVELS OF GOVERNMENT MUST REDRESS THE DAMAGE CAUSED BY PAST EFFORTS TO SUPPRESS FIRST NATIONS LANGUAGES AND CULTURES.

83

The federal government must put the same level of support and financing into First Nations languages that it did into some other more recent federal educational initiatives, such as the national literacy program.

Despite its obligation to recognize and protect First Nations languages, the federal government has failed to do so. Governments actively tried to eradicate our languages and cultures until a generation ago. One of the major instruments of this cultural oppression was the residential school. The trauma and destruction these schools caused, can still be measured today in terms of various social ills afflicting our people.

In recent years the federal government has replaced oppressive policies with more passive policies, which still strongly appear to have assimilation as their goal. If First Nations language, culture and communities are to survive and flourish, the federal government is responsible to take the necessary steps to redress the wrongs of the past.

All levels of government in Canada must financially support the promotion and protection of aboriginal languages in First Nations communities and in Canadian society.

Governments must support the development and use of aboriginal languages in education, publishing and in the communications media.

redress by churches

CANADIAN CHURCHES MUST REDRESS THE DAMAGE CAUSED BY PAST EFFORTS TO SUPPRESS FIRST NATIONS LANGUAGES AND CULTURES.

84

Churches must educate their members as to the history of efforts to eradicate First Nations languages, culture and spirituality and consider efforts to assist in the revitalization of First Nations languages.

In the past Canadian churches used their status and authority to attack our languages and spirituality. They must now help us re-establish our traditional language, culture and spirituality.

Churches should make one annual collection available to First Nations which will be solely devoted to language revitalization in First Nations communities.

central element

FIRST NATIONS MUST MAKE ABORIGINAL LANGUAGES A CENTRAL ELEMENT OF THEIR EDUCATIONS SYSTEM.

85

First Nations have the right to elementary, secondary, post-secondary and community education programs in their mother tongue.

First Nations must be able to provide aboriginal language instruction in day-care centres, pre-school programs, from Kindergarten to grade 12 and to adults. Communities that wish to provide bilingual and immersion programs must be assisted to do so.

First Nations must control the design of all language programs, including those for teacher accreditation. This will ensure further that the expertise, knowledge and wisdom of the elders will be respected and acknowledged.

First Nations must be able to provide in-service training for aboriginal language teachers and must have the necessary resources to develop and publish appropriate curriculum materials.

First Nations must have the ability to help their people become highly literate in an aboriginal language and in English or French.

official status

FIRST NATIONS GOVERNMENTS MUST PROTECT AND PROMOTE FIRST NATIONS LANGUAGES AND CULTURE IN THEIR CONSTITUTIONS, SELF-GOVERNMENT ACCORDS AND LAND RIGHTS AGREEMENTS.

86

First Nations can achieve this by formally recognizing the official status of their language by adopting a policy or language charter. This will protect language and culture. It will also promote First Nations language use in all areas of community life.

First Nations must also have the ability to write their treaties, constitutions, laws, land rights agreements and self-government accords in their mother tongue.

central to community life

FIRST NATIONS MUST BE SUPPORTED TO MAKE THEIR LANGUAGES A CENTRAL ELEMENT OF COMMUNITY LIFE.

87

With appropriate support:

First Nations will be able to adopt official language charters or bylaws to promote, monitor and regulate use of the First Nations language in administration, education and community life.

They will be able to hold annual gatherings of elders, community members and First Nations government to review progress and develop plans and strategies that will further protect, promote and develop First Nations languages and culture.

First Nations will be able to establish language councils or advisory committees at the community or tribal level, to implement language planning by conducting needs assessments and research on language planning approaches, and define and implement a policy to ensure that First Nations languages are used in all matters of First Nations community life.

With support, First Nations will also be able to establish standards for written and oral language by approving terminology, developing dictionaries and standard orthographies and by acting as advisors to First Nations governments on language issues and programs.

They will carry out activities to promote and protect First Nations languages, including language awareness campaigns, curriculum development at all levels of learning, and linguistic research. First Nations will establish the position of Language and Culture Coordinator/Commissioner to oversee the implementation of language planning, language services and language education in all areas of First Nations governments.

strengthen languages

FIRST NATIONS MUST TAKE THE RESPONSIBILITY TO STRENGTHEN THEIR LANGUAGES.

88

First Nations will establish local or tribal Language Councils. These councils will encourage aboriginal language use, guide curriculum development, direct research, oversee planning, monitor the provision of services and education and advise First Nations governments.

First Nations will develop a vocabulary and body of literature so that the mother tongue can becomes the first language in every area of First Nations life.

First Nations will need support for research and development of traditional writing systems including support for the publication of dictionaries in the language and syllabics, where appropriate.

In order to enhance mother tongue literacy in the classroom and the community, First Nations will require assistance to publish additional documents to support existing materials and enhanced language curricula.

All efforts to strengthen aboriginal languages must be guided and controlled by the elders.

language/literacy foundation

THE FEDERAL GOVERNMENT MUST FINANCE THE ESTABLISHMENT AND OPERATIONS OF A FIRST NATIONS LANGUAGES AND LITERACY FOUNDATION.

89

The foundation is in the process of being established by the Assembly of First Nations and will be directed by an Elders Advisory Council.

clearinghouse **THE FEDERAL GOVERNMENT MUST PROVIDE THE RESOURCES TO ESTABLISH AND OPERATE A NATIONAL CLEARINGHOUSE ON FIRST NATIONS LANGUAGES.**

90

A national clearinghouse is needed to maintain a database on curriculum materials and resource personnel and to monitor research on bilingual and immersion language training.

The clearinghouse will share and distribute information on language research and programs to First Nations. It will also publish and distribute information to students and teachers of aboriginal languages, to education authorities and to others interested in promoting First Nations languages and literacy.

sharing **FIRST NATIONS MUST ESTABLISH EFFECTIVE MECHANISMS TO SHARE KNOWLEDGE AND RESOURCES CONCERNING THEIR LANGUAGES.**

91

These mechanisms will, among others, include regional and national associations of First Nations language teachers and regional or tribal language councils.

HOUSING

According to federal government statistics for 1991, over half the 65,000 housing units in First Nations communities fail to meet basic standards of physically acceptable housing conditions. About one third have neither piped water nor sewage disposal systems.

Additionally there is extreme overcrowding. The current backlog of housing units is approximately 11,000 new units and 11,000 renovations.

Of the 829 communities with allocated housing units, 307 lack adequate fire protection services, while 100 communities lack adequate electricity.

These extremely poor housing conditions in the majority of First Nations communities result in social, physical and mental ills, impacting on health, education and social well being.

Poor living conditions and housing shortages are the direct result of the lack of a sound economic base in First Nations communities and the failure of the federal government to provide adequate financial resources to meet First Nations housing requirements.

It appears that government gives assistance for perceived social needs with no consideration to obligations flowing from treaty or aboriginal rights. To buy and sell pieces of land, First Nations believe is akin to buying and selling air or water. First Nations lands must remain inalienable and non-mortgageable, not subject to seizure.

A wide range of program delivery problems worsen the intolerable situation. These include inflexible federal laws and regulations which interfere with and hinder decision making by First Nations in such areas as pre-purchase of building materials for shipping to remote communities.

Other delivery problems result from lack of authority by First Nations over policy and regulatory development and implementation. First Nations have been put into the situation of delivering inadequate programs, devised by people unfamiliar with First Nations and their communities.

First Nations realize that they must acquire management and technical skills necessary to have housing that meets their physical and socio-cultural needs.

Clearly, federal housing policies and programs have not achieved their objective. It is essential that adequate housing resources, and control over all aspects of housing, including policy and program development and delivery be solely under First Nations jurisdiction.

GOALS:

I WE WANT A WORLD IN WHICH ALL FIRST NATIONS PEOPLE LIVE IN SAFE COMFORTABLE HOUSING.

II WE WANT A WORLD IN WHICH FIRST NATIONS PEOPLE CONTROL THE PLANNING, DESIGN AND CONSTRUCTION OF THEIR HOUSES AND OTHER BUILDINGS IN THEIR COMMUNITIES.

III WE WANT HOUSES WHICH REINFORCE TRADITIONAL FAMILY AND CULTURAL VALUES.

IV WE WANT FIRST NATIONS PEOPLE TO LIVE IN HOUSING AND COMMUNITIES THAT REFLECT THEIR CULTURAL HERITAGE.

THE WAY THESE GOALS CAN BE ACHIEVED:

treaty rights

THE FEDERAL GOVERNMENT MUST WORK JOINTLY WITH FIRST NATIONS TO ESTABLISH A FORUM FOR BILATERAL DISCUSSION TO RESOLVE ISSUES RELATING TO ABORIGINAL AND TREATY RIGHTS TO HOUSING.

92

legislation & policy

THE FEDERAL GOVERNMENT MUST CHANGE POLICY AND LEGISLATION IN ORDER THAT FIRST NATIONS CAN DEVELOP, IMPLEMENT AND ENFORCE THEIR OWN LAWS, REGULATIONS AND POLICIES IN REGARD TO ALL ASPECTS OF HOUSING.

93

In the short term, the federal government must amend the Indian Act, to enable First Nations to develop and implement their housing policies and programs without interference.

In keeping with the concept and basic principles of self-determination, the federal government must empower the governing body in each community to develop and decide on housing delivery structures, standards for construction, renovation and installation of buildings and services, land tenure, allocation and use, environmental protection and financing of housing.

First Nations will further be responsible for the enforcement of laws and the training, education and counselling for First Nations personnel.

other legislation

THE FEDERAL GOVERNMENT MUST CHANGE THE FINANCIAL ADMINISTRATION ACT AND THE INCOME TAX ACT IN ORDER TO FACILITATE TRANSFER OF FUNDS TO FIRST NATIONS

94

The federal government must develop policies and processes to convey financial resources to First Nations as transfer payments and not on the basis of a welfare handout.

All levels of government in co-operation with First Nations must establish alternative sources of funding for housing, such as enabling First Nations citizens employed off-reserve to have their income tax directed to First Nations, instead of provinces.

The federal government must immediately enter into agreement with First Nations to ensure long-term commitment of federal funds for housing in First Nations communities.

housing delivery structures

FIRST NATIONS MUST ESTABLISH AND THE FEDERAL GOVERNMENT MUST FUND FIRST NATIONS HOUSING DELIVERY STRUCTURES.

95

Housing delivery structures, under the direction and control of First Nations, will oversee the development and implementation of their own policies and plans, the implementation of an accurate First Nations housing inventory, the application of standards of construction and renovation in First Nations communities and facilitate access to housing management and technical training by First Nations citizens.

First Nation institutions

THE FEDERAL GOVERNMENT MUST PROVIDE THE RESOURCES AND EFFECT LEGISLATIVE AND REGULATORY CHANGES TO ENABLE FIRST NATIONS TO ESTABLISH AND OPERATE INSTITUTIONS TO IMPROVE HOUSING QUALITY, INCREASE THE NUMBER OF HABITABLE UNITS AND THE FLOW OF ECONOMIC BENEFITS TO FIRST NATIONS.

96

The government must fund a system of Inspection Units directed and controlled by First Nations to ensure compliance with First Nations standards of construction, environmental protection and health requirements.

The government must facilitate and support the development by First Nations of organizations and companies to minimize and manage risk to First Nations housing stock and ensure replacement of units lost to fire and other hazards.

The government must co-operate with and assist First Nations in establishing financial institutions - to finance housing construction and renovation in First Nations communities without jeopardizing the land held in trust for First Nations.

ECONOMIC DEVELOPMENT

In the past decade, there has been a substantial increase in the number of business starts by First Nations. Presently economic activity is not keeping up with a growing labour force and this is reflected in economic statistics. The 1986 census supports the need for First Nations to drive the engines of their economies in order to achieve economic self-sufficiency.

One in four persons living on reserve had no income in 1985, compared to one in eight for the Canadian population. Only 7% of people living on reserve who had an income earned more than $25,000 compared to 26% of the Canadian population. The labour force participation rate for aboriginal people is 43% compared to 67% for the Canadian population.

GOALS:

I **WE WANT A WORLD WHERE FIRST NATIONS HAVE JURISDICTION AND CONTROL OVER THEIR ECONOMIC FUTURE BY ENTRENCHING FIRST NATIONS RIGHTS IN THE CONSTITUTION, DEVOLVING ECONOMIC DEVELOPMENT PROGRAMS TO FIRST NATIONS AND IN THE MEDIUM TERM, HARMONIZE FEDERAL POLICIES WITH FIRST NATIONS OBJECTIVES.**

II **WE WANT A WORLD WHERE FIRST NATIONS HAVE ECONOMIC, FINANCIAL AND MANAGEMENT TRAINING INSTITUTIONS, CONTROLLED BY FIRST NATIONS AND REFLECTING THE POLICIES, PRIORITIES AND VALUES OF FIRST NATIONS.**

III **WE WANT A WORLD WHERE FIRST NATIONS HAVE ACCESS TO BUSINESS AND CAPITAL FINANCING, IN ORDER TO BUILD STRONG, SELF-SUFFICIENT ECONOMIES THROUGH ACCESS TO SOURCES OF FINANCING, INCLUDING REVENUE SHARING, CONTRIBUTION BONDS AND TRUST FUNDS.**

IV **WE WANT A WORLD WHERE FIRST NATIONS HAVE STRONG SELF-SUFFICIENT ECONOMIES REGARDLESS OF THEIR LOCATION IN CANADA, INCLUDING TRADITIONAL ECONOMIES, WHERE FIRST NATIONS CAN PARTICIPATE IN TRADITIONAL PURSUITS AND SUPPORTIVE EDUCATION AND TRAINING POLICIES.**

THE WAY THESE GOALS CAN BE ACHIEVED:

self-sufficiency

THE FEDERAL GOVERNMENT MUST SUPPORT FIRST NATIONS COMMUNITIES THROUGH FINANCIAL ASSISTANCE TO ENTREPRENEURS AND THE CREATION OF NEW INSTITUTIONS IN ACHIEVING ECONOMIC SELF-SUFFICIENCY.

97

Gaining access to capital both for start-up and expansion remains the primary issue for First Nation's new and emerging enterprises. The undertaking of new activities requires significant start-up capital which may be recovered over a long period of time. However, it is often difficult to access such venture capital without physical collateral. The existence of sources of venture capital is critical for developing and maintaining the benefits of innovative ideas within First Nations.

In addition, in order to guide, coordinate, and facilitate economic development at both the community and macro level, the establishment of a number of institutions will be needed. The power to make decisions must be in the hands of First Nations peoples and at arms length from political organizations.

Various advisory groups may have to be appointed to facilitate co-operation with government, financial and business institutions. As these institutions develop, they will assume responsibility for all coordination and policy in regard to First Nation economic development currently held by the Department of Indian Affairs and departments such as Industry and Science Canada, and Canada Employment and Immigration. These institutions will be building on some of the foundation work carried out by such initiatives as the Canadian Aboriginal Economic Development Strategy (CAEDS) and the Aboriginal Employment and Training Strategy.

jurisdiction

THE FEDERAL GOVERNMENT MUST RESOLVE JURISDICTIONAL ISSUES INHIBITING FIRST NATIONS ECONOMIC DEVELOPMENT.

98

Constitutional guarantees must clarify federal/provincial issues related to resources in First Nations territories and First Nations inherent right to those resources and lands.

Issues to be resolved associated with natural resources include forestry, mining, hunting,

fishing, trapping, gathering of berries and medicines, harvesting, including wild rice and fruit.

Clarification of jurisdiction by governments involved has to be established in order to address issues of taxation, licensing, cost sharing, environmental assessment and standards. A clear demarcation of responsibilities is required, so that business development is not operating on confusing assumptions.

For First Nations to achieve their long term objective of economic sovereignty, the federal government must provide a constitutional guarantee to establish a First Nations and government revenue sharing arrangement, based on the principle of the three orders of government. Recognition of First Nations jurisdiction over economic development must be explicitly recognized and constitutionally defined.

control

ALL LEVELS OF GOVERNMENT MUST BEGIN NEGOTIATIONS WITH FIRST NATIONS IN REGARD TO THE TRANSFER OF ALL ECONOMIC, EMPLOYMENT AND TRAINING SUPPORT.

99

All levels of government and First Nations must establish a time-frame and develop a transfer plan based on mutually agreed upon criteria.

In the medium term, First Nations must prepare to take control of their lives by acquiring appropriate management skills through initiatives such as employer-centred internship, work/training, and apprenticeship programs.

Over the long term, First Nations must attain control over all aspects of training, education and development in order to ensure that skills development programs are responsive to economic development opportunities and in harmony with cultures and values.

In order to prepare for full transfer of programs, the involvement of all members of the community must be considered, specific emphasis on training programs for women must be put in operation, and on and off reserve economic links must be developed and maintained. Provision for the development of new and emerging economies must be made and comprehensive planning strategies for primary services, manufacturing, traditional economies, and local strategic and long term planning must be instituted.

lands and resources

ALL LEVELS OF GOVERNMENT MUST NEGOTIATE WITH FIRST NATIONS GOVERNMENTS FOR LAND AND RESOURCES WHICH WILL CONTRIBUTE TO ECONOMIC

SELF-SUFFICIENCY OF FIRST NATIONS.

100

Access to land and resources through appropriate legislation is a prerequisite for full participation of First Nations in the Canadian economy and must be acknowledged by all levels of government. Changes in the constitution must include First Nations in decisions related to land, resources and the environment and constitutional guarantees must support the principle that First Nations have a voice in resource planning through co-management and agreements.

gaming

ALL LEVELS OF GOVERNMENT MUST ACKNOWLEDGE FIRST NATIONS JURISDICTION OVER GAMING WHERE IT IS AN OPTION BEING CONSIDERED BY A FIRST NATION, AND SUPPORT THE ASSEMBLY OF FIRST NATION'S: RESOLUTION ON GAMING AND FUNDAMENTAL PRINCIPLES TO SUPPORT GAMING ON RESERVES, ADOPTED ON FEBRUARY 3, 1993.

101

The federal government must immediately recognize the authority of First Nations over all aspects of gaming on First Nation's land and selected urban areas. Without a clear definition and settlement of the issue, First Nations will continue to be forced to exercise their rights in this area. This will continue to be a cause of disagreement between First Nations and the federal and provincial levels of government.

economic development agency

THE FEDERAL GOVERNMENT MUST SUPPORT THE DEVELOPMENT OF THE NATIONAL FIRST NATIONS ECONOMIC DEVELOPMENT AGENCY TO MANAGE, CO-ORDINATE AND DISSEMINATE ECONOMIC DEVELOPMENT FUNDS FOR FIRST NATIONS.

102

The National First Nations Economic Development Agency with a mandate to manage, co-ordinate and disseminate economic development funds for First Nations, will act as a national umbrella organization to manage First Nations economic development, training and development and institutional support funds from departments responsible for Labour, Employment and Training.

National and regional boards, accountable to First Nations communities, with a minority board representation by government, will manage the agency. Each board will be responsible for policy direction of the agency, based on an Act of Parliament, negotiated between First Nations and the federal government.

The agency will be legislated and funded, constitutionally guaranteed, based on a funding formula tied to an agreed upon revenue sharing agreement. The funds will not limit First Nations from accessing other economic development and training funds available from existing government program areas. The agency will be part of a new partnership and constitutional guarantee, designed to support self-government and the economic self-sufficiency objectives of First Nations.

THE NATIONAL FIRST NATIONS ECONOMIC DEVELOPMENT AGENCY will combine the following functions:

- think tank — to continue the on-going process of analyzing the structure of traditional economies as well as the structure of moneyed economies to determine the most appropriate "rules of the household".

- data collection — data will be entered on the existing First Nation businesses, the host of Community or tribal development corporations and forms of economic endeavour such as cooperatives and joint ventures. A second data bank will provide a comprehensive human resources inventory.

- consultants — staff will be available to communities to research and advise on strategies to solve specific problems.

- community economic development — a team will be made available to launch a community development enterprise by establishing a framework for consultation.

- precedents — the institute will monitor precedents so they can be used as examples by other communities. One dimension will be historical research and another the monitoring of new developments. One example of historical precedent is the designation of some First Nations as 'advanced'. Conditions created by the designation have facilitated economic development.

financial institution

THE FEDERAL GOVERNMENT MUST ASSIST IN THE ESTABLISHMENT OF A FIRST NATIONS FINANCIAL INSTITUTION, MANAGED AND CONTROLLED BY FIRST NATIONS.

103

A First Nations Financial Institution managed and controlled by First Nations, is fundamental to long term development of First Nations' economies. It will ensure that adequate capital will be made available to support increased economic development.

The First Nations Financial Institution will be funded through revenue sharing and the use of sources such as the Consolidated Revenue Fund. The Consolidated Revenue Fund consists of Indian moneys collected by the government in accordance with the Financial Administration Act. At present, the balance in the account would be sufficient to form the basis of a financial institution.

The First Nations Financial Institution will service First Nations, First Nations members and private investment. It will provide a wide range of financial services to First Nations communities and businesses such as bank type services, loans and other financial services. It will issue special bonds, develop a capital projects fund, provide for loans and other financial services supporting the establishment of new businesses and the expansion of existing ones. A First Nations insurance company will be developed as an additional subsidiary.

institute for business management

THE FEDERAL GOVERNMENT MUST ASSIST IN THE CREATION AND SUPPORT THE DEVELOPMENT OF A FIRST NATIONS INSTITUTE FOR BUSINESS MANAGEMENT AND ADMINISTRATION.

104

As a long term goal, the creation of a First Nations Institute for Business Management and Administration will be developed. The institute would originate from The National First Nations Economic Development Agency. A First Nations Institute for Business Management and Administration will involve the training of senior management and administrators, necessary to ensure that a high level of knowledge and skills to manage economies is in place, consistent with values and local economies.

The institute will provide small business training for First Nations entrepreneurs and managers, develop accreditation of instructors and degree programs. It will further provide local and national services, develop teaching models via satellite and distance learning techniques, provide training for trainers and work co-operatively with other institutions including federal training centres and the private sector.

Encouraging the diffusion of new ideas on a regional basis would greatly assist regional economic diversification and improve First Nation's economic opportunity.

bonds

THE FEDERAL GOVERNMENT MUST ENACT LEGISLATION THAT ENABLES FIRST NATIONS TO ISSUE BONDS TO SUPPORT ECONOMIC DEVELOPMENT IN FIRST NATION TERRITORIES.

105

The issuance of bonds by First Nations will provide access to capital and investment, which in turn will be used to develop the necessary infrastructure for successful economic development.

The issuance of bonds will be based on the following principles: the federal government will enact legislation so that First Nations can issue bonds, which will support economic development and infrastructure on First Nations territories and will access local wealth and investment. Bonds will also serve to establish links between First Nations and other financial institutions.

trust funds

THE FEDERAL GOVERNMENT MUST DIRECT THE AUDITOR GENERAL TO UNDERTAKE A FULL REVIEW OF ALL TRUST FUNDS HELD ON BEHALF OF FIRST NATIONS SINCE THE SIGNING OF THE TREATIES, IN ORDER TO ACCOUNT FOR FIRST NATIONS' FUNDS.

106

Although the federal government has a fiduciary responsibility for monies managed and held in trust since the signing of the treaties, there has never been an accounting or report on how these funds have been managed.

The government must therefore develop a data base of First Nations trust funds and provide a full report, based on annual reports separated by treaty.

The report must analyze the trust funds to determine if they have been managed responsibly and make appropriate recommendations for trust fund reform.

The report must be prepared by an independent accounting body, approved by First Nations, using accepted practices. The completed report must be submitted to First Nations and the government of Canada.

traditional economies

THE FEDERAL GOVERNMENT MUST DEVELOP A POLICY WHICH SUPPORTS THE DEVELOPMENT OF TRADITIONAL ECONOMIES.

107

Because of the fragile nature of traditional economies, the government must assist in the development of a TRADITIONAL ECONOMIES SUPPORT FUND, such as the CREE HUNTERS AND TRAPPERS INCOME SUPPORT PROGRAM. The program and fund will be managed and controlled by First Nations in collaboration with the FIRST NATIONS ECONOMIC DEVELOPMENT AGENCY.

Government action in this area is particularly urgent in order to support remote and isolated communities, which have been adversely impacted by the anti-fur lobby and resource exploitation.

Support of research in traditional economies including ecological knowledge, will bring understanding of the importance of these economies to First Nations as well as Canada. To ensure that these specific economies flourish, the following policies are recommended: the establishment of traditional resource regimes and agreements, the integration of traditions into local economic planning, the development of training and education programs and programs which mitigate the effect of mega projects and development.

The impact of environment degradation must be studied and supportive resources and administrative policies must be developed. Jurisdictional issues which adversely affect traditional economies must be eliminated and new resource management agreements and policy will have to be developed. Any deterioration of traditional economies to welfare economies must be reversed.

environment **FIRST NATIONS, GOVERNMENT AND BUSINESS MUST ESTABLISH PROGRAMS WHICH MITIGATE ADVERSE AFFECTS OF MEGA PROJECTS AND DEVELOPMENT PROJECTS WITHIN OR NEAR FIRST NATIONS TERRITORY.**

108

These national programs will include co-management and decision making by First Nations, government and business in regard to individual projects, as well as access to spin-off business opportunities, income support for traditional harvesters and provision to retain and support families to return to the land once projects have been completed.

co-ordination **THE FEDERAL GOVERNMENT MUST DEVELOP A NEW POLICY WHICH WILL FACILITATE CO-ORDINATION OF FIRST NATIONS PROGRAMS.**

109

As a medium term goal, until governments devolve themselves of their responsibilities to First Nations, governments must work with First Nations to provide for developments such as greater local decision making, term financing arrangements, flexible financial controls and arrangements, flexible policy and criteria, training, briefings and sharing of information of programs and complete access to information on criteria and process with First Nations.

procurement **THE FEDERAL GOVERNMENT MUST DEVELOP POLICY, MODELED ON THE EMPLOYMENT EQUITY POLICY, WHICH WILL PROVIDE FOR PARTICIPATION OF FIRST NATIONS BUSINESSES AND DEVELOPMENT CORPORATIONS IN GOVERNMENT CONTRACTS.**

110

Development of a new federal government procurement policy, which provides for specified participation of First Nations business and development corporations in government contracts, could significantly contribute to economic development within First Nations communities.

Government contracts can help provide vital experience, especially for small start-up companies. Many firms, particularly small First Nation companies, find it difficult to develop or expand technologies, without some assurance of a continued demand or a large order over, which they can spread the development cost of designing and customizing a product or

service. Government contracts present one such means, but the awarding of government contracts tends to be a lengthy process.

In creating policy, the development of a data base of First Nations contracts must be considered, as well as the provision of training on working harmoniously with First Nations. Monitoring and reporting the progress and implementation of the policy must also be considered, ensuring that the policy is implemented and adhered to by contractors and departments. A review of the eligibility of contractors, who apply for federal contracts, must be in place.

local self-sufficiency

THE FEDERAL GOVERNMENT MUST ADOPT A POLICY AND DEVELOP A PROGRAM FOR FIRST NATIONS LOCAL ECONOMIC SELF-SUFFICIENCY WHICH SUPPORTS SELF-GOVERNMENT BY REDUCING ECONOMIC DEPENDENCY AND BY DEVELOPING A LOCAL ECONOMIC DEVELOPMENT CAPACITY.

111

Economic options for First Nations which emphasize the immediate and long term potential of the community are:

BAND: The band is the major employer and contributor to the local economy. Employment generated from this sector is stable and expandable. There is potential to establish new private businesses, which could provide services to band governments and programs.

PROVISION OF LOCAL GOODS AND SERVICES: Most First Nations have an underdeveloped private sector to provide local goods and services. This situation results in considerable economic loss. Income which comes to First Nations is almost immediately spent on goods and services purchased off-reserve. Not only is there a loss of potential wealth, but also a considerable loss of employment opportunities. Businesses located in First Nations communities create work and facilitate the circulation of money within the community.

REGIONAL/EXTERNAL MARKET: Many First Nations territories have business opportunities in tourism and in primary sectors. Tourism is one of the fastest growing sectors in the Canadian economy. First Nations have the potential to tap into both the domestic and foreign market. The primary sector, specifically forestry and silviculture provide potential opportunities as well. As this sector is going through restructuring, First Nations will require technical and management training, in order to enter these sources of employment.

TRADITIONAL ECONOMY: Most First Nations have under-developed traditional economies. First Nations must include aspects of traditional economies in all planning,

training, education and development. Elders, hunters, trappers, gatherers and artisans must be involved in economic planning. Traditional ecological knowledge also provides a basis for resource management and rights.

Traditional culture is linked to cultural continuity, spirituality and healing in First Nations communities and should be a priority in all economic, social and educational planning.

HIGH GROWTH AND EMERGING INDUSTRIES: Computer technology and communications are the fastest growing sectors of the Canadian and international market. The Canadian economy is dominated by the service sector, which includes high growth and emerging industries. Data processing, computer software and services, computer hardware, telecommunications, remote sensing and geographic information systems have been identified as areas for First Nations to explore.

education

THE FEDERAL GOVERNMENT MUST DEVELOP POLICY TO INCREASE FIRST NATIONS CONTROL OF EDUCATION AND INCREASE FUNDING TO IMPLEMENT THE POLICY.

112

Increased levels of education have been the key to recent increases in First Nations starting businesses and employment in new areas.

Although education is detailed in another section, it is essential to emphasize this goal because of its importance in all aspects of economic development. Human resources development is the cornerstone of First Nations economic self-sufficiency and self-government.

Any First Nations education policy must include and increase First Nations' control of education from kindergarten to grade 13, and an increase in post-secondary education support. It must affirm the centrality of education for First Nations economies and employment and recognize that income and capacities for economic growth are an educational function.

First Nation citizens, governments and institutions must work together, to improve the quality of basic education within First Nations. In addition to First Nations language and culture, the study of science and technology in the school system must be encouraged along with the concept of life long learning. Priority must also be extended to the enhancement of school-to-work transition.

At present, post secondary education is faced with inadequate administrative funding; departmental criteria and budget caps have led to students being denied funding or First

Nations having to incur a deficit; the current spending plan expires in 1995-96 and the government has not provided information on future spending levels.

Curriculum and materials focused on local economic development, traditional economies and indigenous knowledge, combined with economic models must be developed. Apprenticeship and co-op programs must be expanded.

The Canadian Aboriginal Science and Technology Society (C.A.T.S.) and the Canadian Aboriginal Science and Engineering Association (C.A.S.E.A.) are two national, incorporated, non-profit organizations, working to increase the number of Canadian aboriginal engineers and scientists, and to develop technologically informed leaders within the community.

Among a number of initiatives, members encourage school counsellors to provide direction to aboriginal students to enter the appropriate maths and science courses and to design and develop mentoring programs relating to science activities. They also encourage the establishment of scholarship programs for elementary and high school students.

Members further encourage the development of more positive aboriginal role models within communities by working with parents and students and by strengthening the technological background of leaders.

training & development

THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE FIRST NATIONS SELF-GOVERNMENT AND TRAINING INITIATIVES.

113

Governments, in conjunction with First Nations, must establish national and regional institutions which will support training and development initiatives. These institutions will develop all aspects of management training and increase the administrative capacity of First Nations in self-government and economic development.

Specific training will increase the capabilities of First Nations and focus on areas such as curriculum development, research and development and the training of instructors. Training initiatives will build on existing First Nations institutions and where gaps exist, develop innovative alliances in highly technical fields.

national initiatives

THE FEDERAL GOVERNMENT MUST ESTABLISH NATIONAL INITIATIVES TO SUPPORT FIRST NATIONS CITIZENS, GOVERNMENTS AND INSTITUTIONS IN DEVELOPING SKILLS REQUIRED TO ACCESS EMPLOYMENT IN INFORMATION, ELECTRONICS, COMPUTERS, TELECOMMUNICATIONS AND OTHER INFORMATION TECHNOLOGIES.

114

To ensure that First Nations participate fully in the new economy, the need for a national initiative exists which will undertake pilot projects to create new employment, research barriers which may prevent First Nations from participating. Support for the development of a universities and high-tech science and engineering organizations will be required.

TAXATION

"In the old days we had a tradition of caring and sharing. If a person was sick or injured the Chief would delegate others to hunt for him or provide fire wood. We redistributed our wealth for the good of all, and that is what any good system of taxation is supposed to do.

Ernie Crowe
Elder
Piapot First Nation, Saskatchewan

Over the past decade, the issue of taxation has become one of the most divisive in the relationship between First Nations, the governments of Canada and Canadian society. From the point of view of First Nations, it is difficult to understand why governments are so determined to collect taxes from First Nations and their citizens. For the peoples of the First Nations, taxation means a sharing of human and material resources for the common good of all. From our point of view, we have shared everything that we have, our land, our resources, our lifestyles, our languages, our cultures. What else do we have left to give? What more can Canadian governments and Canadian society expect us to contribute?

First Nations across North America have occupied this continent for tens of thousands of years. They could not have survived and thrived in such a harsh environment without practising principles of wealth and labour redistribution which were designed to nurture the individual and strengthen the collectivity. Whether these forms of redistribution of wealth followed the dictates of tradition, such as the potlatch ceremonies of the First Nations of the west coast, or were less formal, such as the practices of the Chiefs of the Great Plains, they nevertheless accomplished the collective aims and objectives of the First Nations and their citizens.

Taxation is, essentially, a sharing of resources for the common good. Although the nature of the sharing may be different and definitions of the 'common good' can vary from culture to culture and government to government, the important concept remains that the collective interest is placed before the rights of the individual in order to provide a better lifestyle for everyone. In this sense, the jurisdiction to levy, collect and redistribute labour and wealth has been exercised by First Nations for a very long time.

First Nations peoples still pursue their traditional activities of hunting, fishing, gathering and trapping to a very large extent. Anthropological research suggests that in northern Canada these traditional pursuits contribute up to sixty percent of the local economy, while employment and social assistance makes up forty percent or less. With these traditional activities go the concepts of sharing and redistribution. Hunters will share their meat with family members, the elderly and other members of the community who are unable to hunt for themselves. Fish are similarly divided during the appropriate fishing seasons.

As First Nations peoples make the transition from their traditional economy to one more adapted to the contemporary economy which surrounds them, the traditional ways of sharing will undergo some change. There will be a shift from sharing of labour and commodities to sharing of revenues and provision of programs and services. While the transition engender different ways of doing things, it is certain that traditional values will continue to exert a powerful influence in any contemporary context. In this regard, the economies of First Nations and their institutions of government will evolve in ways which will differ from the mainstream.

While First Nations have not utilized jurisdiction over taxation, in a manner commonly understood by mainstream Canadians its jurisdiction has not been relinquished to Canada or to provinces. Jurisdiction over taxation has been utilized for thousands of years in many different forms across the continent.

First Nations are unanimous in their view, that jurisdiction to share revenue is theirs, and theirs alone. First Nations are also of the view, that taxation of third party interests on reserve land must be within their jurisdiction, and not that of any other order of government. Jurisdiction to levy taxes against third party interests was exercised by First Nations governments. The Huron First Nations, in what is now the Province of Quebec, levied a tax on the property occupied by Jesuit missionaries, on the shores of the St. Lawrence river, as late as the 18th century.

First Nations were prepared, for the most part, to forge a new partnership with Canada during the last round of constitutional discussions which culminated in the Charlottetown Accord. The most essential ingredients of such a partnership would have been the recognition of the inherent right of self-government, a right which is inherent because it was not granted by another level of government but was part of a legacy of self-reliance and autonomous decision making in matters affecting the cultures, languages and economies of First Nations and their specific relationship with their territories and their waters.

First Nations are aware that any effective exercise of the inherent right of self-government will, of necessity, require the creation of a source of revenue which is reliable, sustainable and independent of the largesse of other orders of government. It is impossible to provide programs and services to citizens, without having adequate resources, fiscal and human. Whether those resources are provided as a matter of treaty right, land claims agreements, taxation or otherwise, they must be present when self-government becomes a reality.

The ability of First Nations to exercise jurisdiction over taxation has been curtailed by law since confederation. The right to exercise that jurisdiction has never been extinguished as a result of treaties or constitutionally. In fact, in Treaty No. 8, the Commissioners negotiating the treaty on behalf of the Crown, specifically advised that the signing of the treaty would not lead to taxation or enforced conscription.

Immediately required is a process and a mechanism for discussing taxation regimes which exist in Canada, and for the federal, provincial and territorial governments to work with First Nations, so they can occupy their rightful place in the Canadian polity.

A variety of complex issues arise in relation to taxation. The federal government is concerned about the administrative efficiency of the collection of the goods and services tax. First Nations unanimously profess the view that they, and their citizens, are immune from this type of taxation by the federal government. As a result of the view taken by the federal government, point of sale immunities for First Nations citizens were not incorporated into the policy framework underpinning the GST.

The tax treatment of First Nations citizens in relation to provincial sales taxes varies across the country. In Saskatchewan, for example, First Nations citizens do not pay the Education and Health Tax, a provincial sales tax, on or off reserve. In most other provinces, these taxes are applied, unless the vendor delivers the goods to the reserve. In that jurisdiction, vendors have had to make accommodations when programming their cash registers to take the two differing policies into account. Discussion of issues such as immunity, point of sale exemption and the interplay of jurisdictions, First Nations, federal, provincial and territorial - may now be timely.

The First Nations/provincial taxation issue is equally complex since the provinces are collecting taxes in relation to commodities such as tobacco, alcohol and gasoline, hidden from the ultimate consumer. Most of the commodities in question are purchased by First Nations citizens in off-reserve locations. In most instances the commodities are consumed by First Nations people on-reserve. The reason most purchases take place off-reserve is because of lack of on-reserve retail vendors in most First Nations communities. The provinces levy and collect these taxes based on the taxation power contained in section 92(2) of the *Constitution Act, 1867*. Some provinces collect these taxes even in circumstances where the sale of the commodity takes place on reserve land.

Tax leakage studies by First Nations have demonstrated that the amount of tax revenues generated from First Nations lands, reserves and citizens and paid to other governments, greatly exceeds the amount of grants and contributions received by First Nations governments.

Revenues raised by the provinces in this manner are not specifically directed for the use and benefit of First Nations people, but are utilized for provincial purposes generally. This situation exists despite the fact that First Nations citizens occupy the lowest economic rung in Canadian society, have the highest rates of suicide and accidental deaths, the lowest rates of matriculation and the highest rates of child apprehension and incarceration.

Provincial expenditures targeted for the amelioration of the appalling conditions of their populace should be first and foremost to First Nations peoples. Yet the fact remains, that a very small percentage of provincial spending actually relates to First Nations. The provinces consistently take tax revenue from First Nations citizens and argue that the provision of

programs and services for First Nations citizens is a federal responsibility exclusively. Provinces play a similar game with respect to national programs funded under the Established Program Funding (EPF) formula. First Nations citizens are counted for purposes of receiving federal monies, but provinces are loathe to provide a proportionate amount of benefits to First Nations citizens.

Even though First Nations have consistently taken the view that they are immune from federal, provincial and territorial taxation on and off reserve, those governments have equally consistently sought to apply, by and large, their taxation regimes against First Nations, their institutions and their citizens.

Our view is that our citizens have prepaid their taxes by agreeing to share this vast nation with others. Our treaty rights, and our rights to immunity from all forms of federal, provincial and territorial taxation, on and off reserve flow from that agreement to share, and are inviolate. Taxation, on- and off-reserve, flow from that agreement to share and are inviolate. We are also firmly convinced that the present economic woes of the federal, provincial and territorial governments will continue into the future and, unless we are in a position to obtain recognition of inherent taxation jurisdiction, we will be at the mercy of finance ministers who will continue to ignore our historic relationship and attempt to exert their jurisdictions.

Many, if not all, of our institutions and reserve based businesses were created on the basis that their employees would receive, and continue to receive, a measure of immunity from income and other forms of taxation such as the GST. The unilateral move to delimit such traditional immunities will wreak havoc with business plans of these institutions and businesses, and will create significant hardship for the employees who rely upon their entire income to make ends meet.

GOALS:

I **WE WANT A WORLD WHERE FIRST NATIONS ON AND OFF RESERVE ARE IMMUNE FROM ALL FORMS OF FEDERAL, PROVINCIAL AND TERRITORIAL TAXATION.**

II **WE WANT A WORLD IN WHICH FIRST NATIONS HAVE EXCLUSIVE JURISDICTION TO RAISE REVENUE THROUGH TAXATION.**

III **WE WANT A WORLD WHERE RESOURCE REVENUE SHARING ON TRADITIONAL TERRITORIES IS THE JURISDICTION OF FIRST NATIONS.**

IV **WE WANT A WORLD WHERE FIRST NATIONS CITIZENS ARE NOT SUBJECT TO CONFLICTING FEDERAL/PROVINCIAL/TERRITORIAL TAXATION REGIMES.**

THE WAY THESE GOALS CAN BE ACHIEVED:

First Nations want to make the governments of Canada and Canadian society, understand what the taxation issue means to First Nations citizens. It is the hope of First Nations that a relationship can be built with Canada based on the original principles by virtue of which our ancestors agreed to share the abundant resources of their lands and waters.

With respect to taxation, the following principles are paramount in the view of the First Nations:

> Our relationship with the governments of Canada is an international relationship - sovereign-to-sovereign, nation to nation, government-to-government. As a result of this special relationship, our governments, our institutions and our citizens are immune from the taxation laws of Canada.
>
> First Nations never relinquished the inherent right to govern themselves within the boundaries of their territories, and never surrendered jurisdiction over their citizens when they left First Nations territories.

A fundamental aspect of the inherent right to govern one's own affairs is the right to gather, redistribute and deploy human and material resources of one's society for the common good.

First Nations are prepared to enter into a new partnership with the governments of Canada on equitable terms and conditions. In particular, First Nations are prepared to enter into arrangements in relation to taxation that will take into consideration the unique situation of First Nation citizens.

tax immunity

FIRST NATIONS, THEIR INSTITUTIONS AND CROWN CORPORATIONS MUST BE IMMUNE FROM THE PAYMENT OF FEDERAL, PROVINCIAL OR MUNICIPAL TAX.

115

One level of government can not tax another. This is an established principle in Canadian law and one which should be extended to First Nations. For example, Revenue Canada has recently taken the position that income earned from monies paid to First Nations in Saskatchewan, pursuant to the treaty land entitlement agreement, may be taxable. This policy contradicts the notion that First Nations ought to be recognized as one of three orders of government in Canada. It is also contradictory to s. 90 of the *Indian Act* which provides a notional reserve situs for monies appropriated by parliament for the use and benefit of First Nations and their citizens.

Citizens of First Nations must be immune from the payment of federal or provincial tax on or off reserve. If these citizens must pay tax, it should be paid to their own First Nations governments.

Just as Canadian citizens who are residents of Canada pay tax on their world income to the government of Canada, regardless of where it is earned, First Nations citizens who are 'residents' of their First Nation should pay tax to their First Nation government. World income of transient residents is the subject of tax treaties between nations. Similar instruments could be used between the First Nations and Canada to further the historic relationship between parties which exists to this day.

First Nations recognize that jurisdictional recognition of their right to raise revenues by means of direct and indirect taxation is necessarily incidental to the exercise of the inherent right to self-government.

First Nations are not interested in the 'granting' of municipal status under the *Income Tax Act* for taxation purposes. It would deny our historical existence as independent, self-governing

societies that make us dependent upon the largesse of other orders of government and diminish our inherent sovereignty.

First Nations governments deserve the same consideration as other orders of government.

It was recognized in the Charlottetown Accord, that First Nations would form one of three orders of government within Canada, each sovereign in its own sphere. If First Nations governments are to prosper and have the capacity to provide programs and services for their people, they must be recognized as having the right to use all available taxation tools in order to achieve their goals. Anything less, diminishes the nature of self-government and trivializes the concept that First Nations have the ability to control their destinies.

utilize taxation powers

FIRST NATIONS MUST BE ABLE TO UTILIZE THEIR TAXATION POWERS IN ORDER TO ATTRACT BUSINESS TO AND RETAIN BUSINESSES ON FIRST NATIONS TERRITORIES-IN ORDER TO ACCELERATE ECONOMIC DEVELOPMENT AND EMPLOYMENT IN THEIR COMMUNITIES

116

The lack of economic opportunities for citizens of First Nations in their communities is well documented. In the past 127 years, the legislative policies of federal, provincial and territorial governments have done very little to ameliorate the economic conditions of First Nations peoples. First Nations governments must be recognized as having the capacity to creatively utilize their taxation powers to allow for economic development in their territories. This might well mean, that taxation regimes of First Nations will, for quite some time, provide incentives to business, First Nations and non-aboriginal people, to locate their businesses on reserve land. This disparity should be allowed to continue, until First Nations have achieved fiscal competence, equal to other orders of government, and First Nations citizens enjoy a standard of living comparable to that of other Canadians.

Without an engine for economic development, the progress of First Nations and their citizens will falter and First Nations will be perpetually relegated to transfer payments. That scenario is unacceptable.

Opponents of the use of taxation policy by First Nations as a means of attaining economic advantage will argue, that all orders of government should operate on a level playing field. But First Nations need to build much needed infrastructures and create opportunities. Affirmative action appears to be the only way in which equality can be attained within a reasonable length of time.

revenue sharing

THE FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS MUST EQUITABLY SHARE WITH FIRST NATIONS REVENUES WHICH ARE DERIVED FROM NATURAL RESOURCES IN THEIR TRADITIONAL TERRITORIES.

117

First Nations in all regions of Canada maintain that they have not given up the right to share in renewable and non-renewable natural resources. Royalties and taxes derived from the exploitation of mines, minerals, forests and waters by federal, provincial and territorial governments must be equitably shared with First Nations governments.

The Treaty First Nations of western Canada are firmly of the view that they agreed to share the land in their traditional territories with the immigrant settlers for the purposes of agriculture. The elders say, "we gave up the depth of a plough, nothing more". These First Nations are of the view that they did not agree to an outright transfer of all mines, minerals, forests and waters.

First Nations will not exercise their taxation powers in such a manner as to diminish the treaty and fiduciary obligations of the federal government, nor should this be expected by the federal government.

In regions of Canada covered by numbered treaties, the federal Crown made solemn promises, that First Nations would enjoy certain rights as long as the "sun shines, the rivers flow and the grass grows". These rights are obligations of Canada which must be fulfilled, and First Nations will not be party to any agreement or arrangement which diminishes those rights or lessens responsibilities.

First Nations have fulfilled their end of the bargain by sharing their lands and their resources. Canada must fulfil her end of the bargain by living up to her promises in perpetuity.

First Nations who have not signed treaties, take the view, that Canada owes them a fiduciary obligation by virtue of the use of their lands and resources. Comprehensive claims, and other similar agreements are treaties and are endowed with the same solemnity as their historical counterparts. It is not the intention of any First Nations government to supplant, through the use of taxation powers, the fiduciary obligations of the federal Crown.

extradition from other regimes

FIRST NATIONS MUST NEGOTIATE EXTRADITION FROM FEDERAL, PROVINCIAL AND TERRITORIAL TAXATION REGIMES

118

First Nations and their citizens are confronted with a vast array of taxation regimes, federal, provincial and territorial. First Nations must find ways and means of extricating themselves from the confusion of taxation laws, regulations and policies which apply to them.

Recognition of the immunity of First Nations from taxation regimes of the federal, provincial and territorial governments will dispel, to a great degree, the current confusion of contradictory laws to which First Nations peoples are subjected. If immunity cannot be granted at the individual level immediately, then the tax revenues currently collected from First Nations, their institutions and citizens should be repaid to First Nations governments until an acceptable solution is found.

First Nations and their citizens are subjected, federally, to taxes in relation to income, personal and corporate, goods and services tax, customs and excise duties. Provincially, they are subjected to income taxes, provincial sales taxes, gasoline, tobacco and alcohol taxes, succession duties and estate taxes.

For example, although s. 87 of the *Indian Act,* makes it clear that taxes are not to be levied upon the personal property of First Nations or their citizens on reserve lands, many provinces continue the practice of levying taxes on commodities such as tobacco and gasoline. Most First Nations citizens do not have the choice to purchase these commodities on reserve land even though they are, primarily, consumed there.

Taxation issues are immensely complex and it would not be possible for all First Nations. simultaneously to adopt a single approach to jurisdiction over taxation. We recognize that it will not be possible to arrive at mutually satisfactory solutions immediately. Fundamental changes will have to be initiated to address the inherent right of self-government, immunity from federal, provincial and territorial taxation, and issues surrounding the taxation jurisdiction of First Nations.

Opportunities exist to redress issues of taxation and resource revenue sharing in the short term. There must be commitment and political will to institute the necessary process for change without delay. The following are suggested actions to be taken:

Short Term:

M.O.U. for out-standing issues

THE FEDERAL GOVERNMENT MUST ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE ASSEMBLY OF FIRST NATIONS TO DEVELOP A FRAMEWORK WITHIN WHICH OUTSTANDING ISSUES RELATING TO INCOME TAX, GOODS AND SERVICES TAX AND CUSTOMS AND EXCISE DUTIES ARE ADDRESSED.

119

The M.O.U. will establish a bilateral process which will require the parties to address outstanding taxation issues. As part of the federal government's commitment to negotiate in good faith, sufficient resources must be made available to the Assembly of First Nations, to enable negotiations to proceed. The Assembly of First Nations, with regional First Nations organizations will put in place a national and regional framework, through which the flow of information and decision-making can be expedited. This will enable regional organizations to develop their own framework to address outstanding taxation issues with provincial and territorial governments.

maintain status quo

THE MINISTER OF REVENUE MUST AGREE TO MAINTAIN THE STATUS QUO FOR INCOME TAX POLICY AND INTERPRETATION OF S. 87 OF THE INDIAN ACT, UNTIL THE NEGOTIATION PROCESS IS CONCLUDED.

120

Revenue Canada's interpretation of the decision of the Supreme Court of Canada in *R. v. Williams* if implemented will create significant hardship for a large number of First Nations. Clearly First Nations, their citizens and institutions are vulnerable to legislative policy changes and court interpretation. Such policy changes must be held in abeyance until the parties have had a reasonable opportunity to discuss greater details of taxation jurisdiction.

Medium Term:

policy review

THE GOVERNMENT OF CANADA, IN CONJUNCTION WITH FIRST NATIONS, IN THE MEDIUM TERM, WILL INITIATE AND COMPLETE A POLICY REVIEW IN RELATION TO TAXATION AND IMPLEMENT SUCH POLICY CHANGES WITHIN 18 MONTHS TO 3 YEARS.

121

All parties will work towards implementing such legislative change as may be necessary to facilitate the vacation of taxation fields of jurisdiction by the federal government.

negotiation with governments

THE FEDERAL GOVERNMENT MUST FACILITATE AND SUPPORT FIRST NATIONS NEGOTIATIONS WITH PROVINCIAL AND TERRITORIAL GOVERNMENTS TO ARRIVE AT EQUITABLE SOLUTIONS TO RESOLVING ISSUES PERTAINING TO JURISDICTION OVER TAXATION.

122

Regional First Nations organizations will require the assistance of the federal government in 'bringing to the table' provincial and territorial governments in relation to taxation issues. The federal government must facilitate the creation of bilateral processes through which matters of taxation will be addressed to the satisfaction of First Nations.

Long Term:

commitment to constitutional recognition

THE FEDERAL GOVERNMENT MUST MAKE A COMMITMENT TO CONSTITUTIONALLY RECOGNIZE AND ACCEPT TAXATION JURISDICTION OF FIRST NATIONS AS PART OF THE INHERENT RIGHT OF SELF-GOVERNMENT.

123

The entrenchment of the inherent right of self-government was unanimously accepted by first ministers and aboriginal leaders in the Charlottetown Accord. The federal government must not be seen to renege on commitments to First Nations.

Taxation jurisdiction of First Nations is fundamental to the creation of an economic base and self-sufficiency. Without an adequate economic base, self-government cannot succeed.

First Nations have no desire to unduly impair the integrity of the Canadian tax system. Nor do First Nations have desire to create situations under which individuals would become subject to double or triple taxation, or lose their recourse to having disputes relating to tax resolved on a fair and equitable basis.

MEDIA - COMMUNICATIONS

First Nations are passive recipients of news and programming and are bombarded daily by images and news created by the dominant culture. The easy availability of satellite television from the United States further exacerbates the one-way flow of information into our communities.

The absence of positive aboriginal role models in the mass media also contributes to the social and cultural devastation experienced in First Nations communities today. It is not surprising that many First Nations leaders and parents blame television, among other things, for the trouble youths are facing in coping with everyday life. Since aboriginal broadcasting is restricted to the north, the majority of aboriginal people do not have access to programming relevant to their culture, values or reality.

The establishment of a 'home-grown' aboriginal communications network appears vital to achieving greater self-identity and self-determination.

'Canadian content' stipulations have resulted in significant strides in some areas of media coverage of First Nations issues. This is a much welcomed development, however, a more balanced and more accurate representation of First Nations people in every sphere of the mass media is still not apparent.

The relationship between the media and First Nations peoples urgently requires a process of education on both sides, in order to promote mutual understanding. The media - print, broadcasting, and the advertising industry - need to assume responsibility for reflecting the full complexity of First Nations concerns and for offering a more positive perspective. Similarly, First Nations peoples have a responsibility to develop a good working relationship with the media by educating them about First Nations cultures, aspirations and priorities.

As a part of the struggle for self-determination, First Nations peoples need to become more media literate. The benefits of this are two-fold. The capacity of First Nations themselves to interpret and understand the world around them is increased and secondly, it provides greater control over the perceptions of non-aboriginal people about First Nations citizens.

Many Canadians have little, if any, interaction with First Nations peoples in their daily lives and are likely to develop images and perceptions from newspaper articles, television programs, and commercials. Too many of those still perpetuate stereotypes which foster racism and discriminatory practices.

If media images have become a substitute for social experience, it has become urgent to achieve more peaceful co-existence and to take a close look at what is being portrayed.

For First Nations peoples the mass media are yet another reminder of their marginal role in Canadian society. It is no surprise that First Nations peoples experience a degree of cynicism; too often when they look into the 'mirror of Canada', they do not see themselves. All too frequently news stories or articles only deal with 'problems', if they deal with aboriginal issues at all.

The tendency of the media is to emphasize conflict, differences, violence, death and destruction. The media pays less attention to harmony, consensus, peace, life and growth. The media's insistence on the immediacy of news, accelerates public discussion and heightens tension. It has become routine for the news media to seek reaction to events before they actually happen. The immediacy and pace of news is at odds with the more leisurely pace of life in First Nations communities. Many communities are working hard to rebuild their societies, run a number of successful programs and deeply resent their depiction as 'troublemakers' or 'losers' or 'complainers'.

One of the main stigmas facing First Nations is the perception that they are a 'burden' to society. This attitude continues to prevail in the media treatment of aboriginal issues. It has also become a convenient excuse for the public and politicians to dismiss First Nations aspirations.

A vicious circle develops when First Nations issues are devalued and dismissed. It seems at times that the only way to get media and public attention is to set up roadblocks. The resultant media coverage then reinforces the stereotype of "Indians on the warpath."

A particularly pervasive and unproductive media approach is to highlight the perception of First Nations people as being divided among themselves. The implication for the public and politicians becomes one of ... "how can we support their causes when they don't even agree among themselves?". First Nations concerns thus become trivialized and ignored, again perpetuating the cycle. When media coverage promotes such a simplistic attitude, it does not reflect the many layers and realities of the issues.

Media is neither 'objective' nor 'fair'. There is a clear bias in favour of the Canadian status quo. They cherish 'democracy' and 'majority rule' and trivialize First Nations traditional governments based on consensus, heredity, clan mothers, the potlatch. They glory in 'the rule of law' which has dispossessed and oppressed First Nations people. They believe that economic growth is inherently good and that some forms of weather are inherently bad.

First Nations communities are currently experiencing a process of healing and renewal which is complex and requires sensitive and responsible treatment. First Nations' contact with the media tends to occur when there is a conflict or crisis, not before. A more pro-active approach to media and public relations is, therefore, essential to developing greater acceptance and understanding of First Nations aspirations and goals among the public and mass media.

First Nations people need to educate themselves about media technology and systems if they are to exercise greater control over the media. Active, powerful messages must come from First Nations people and their leaders. Learning to use the media to advantage, as opposed to reacting to it, is urgently needed.

GOALS:

I WE WANT A WORLD IN WHICH FIRST NATIONS ARE ACCURATELY AND SENSITIVELY PORTRAYED IN THE MASS MEDIA. WE WANT THE MASS MEDIA TO DEPICT OUR PEOPLES, HISTORIES, CULTURES AND CONTRIBUTIONS TO CANADA IN A WAY THAT PROMOTES UNDERSTANDING AND ACCEPTANCE OF OUR GOALS OF SELF-DEVELOPMENT AND SELF-DETERMINATION.

II WE WANT A WORLD IN WHICH FIRST NATIONS PEOPLES PARTICIPATE IN ALL SECTORS OF THE MASS MEDIA.

III WE WANT TO IMPROVE THE RELATIONSHIP BETWEEN FIRST NATIONS AND THE MASS MEDIA AND TO WORK WITH THE MEDIA TO ADDRESS ISSUES OF ACCESS, REPRESENTATION AND BIAS.

IV WE WANT FIRST NATIONS PEOPLE TO BE MORE KNOWLEDGABLE ABOUT THE MASS MEDIA AND LEARN RIGHTS AND EXERCISE THEM EFFECTIVELY IN A MANNER THAT PROMOTES FIRST NATIONS INTERESTS AND ENCOURAGES GREATER RACIAL HARMONY AND RECOGNITION OF OUR DISTINCT CULTURES.

V WE WANT FIRST NATIONS TO HAVE THEIR OWN MEDIA SYSTEMS TO ENABLE THEM TO COMMUNICATE WITH THEIR CITIZENS IN A MANNER THAT WILL PROMOTE OPEN AND HONEST DIALOGUE ABOUT SELF-GOVERNMENT.

THE WAY THESE GOALS CAN BE ACHIEVED:

representation

THE FEDERAL GOVERNMENT MUST APPOINT FIRST NATIONS REPRESENTATIVES TO THE BOARDS OF DIRECTORS OF THE CBC AND THE CRTC.

124

regular programs

NATIONAL BROADCAST NETWORKS MUST DEVOTE REGULARLY SCHEDULED PROGRAMMING TO THE COVERAGE OF ABORIGINAL PEOPLE AND ISSUES.

125

These initiatives should become part of a nation-wide effort to communicate to all Canadians the distinct history, aspirations and hopes of the First Nations. The federal government can require these changes through amendments to the Broadcasting Act and the policies/mandate of the CRTC.

increase funding

THE FEDERAL GOVERNMENT MUST INCREASE ITS FUNDING TO FIRST NATIONS MEDIA.

126

The Northern Native Broadcast Access Program has been strangled by cutbacks. The program is not in effect in southern Canada, effectively denying First Nations in southern Canada a service that is relevant to the development of First Nations citizens. A national effort by the federal department responsible for communications to develop First Nations community based capacities, programming and infrastructure in the fields of communications and information technology, is an absolute requirement in order to address equality of access and quality of programming issues.

subscriber fees

THE CRTC MUST REQUIRE THE CABLE INDUSTRY, THROUGH A SURCHARGE ON SUBSCRIBERS FEES TO CONTRIBUTE TO A FUND WHICH WILL BE USED TO PRODUCE HIGH-QUALITY ABORIGINAL PROGRAMMING. THE FUND WILL BE CONTROLLED AND MANAGED BY FIRST NATIONS PEOPLE.

127

employment barriers

THE MASS MEDIA MUST REDUCE EMPLOYMENT BARRIERS FOR FIRST NATIONS PEOPLES.

128

It has become urgent to establish recruitment, training, and apprenticeship programs, affirmative actions policies and scholarship opportunities specifically targeted at First Nations youths and women.

Examples of media agencies that have taken such steps are the CBC Northern Service, the Saskatoon Star-Phoenix and the Canadian Press. Regrettably, these initiatives have not resulted in greater representation or employment of First Nations peoples in the media. Training and recruitment programs must therefore lead to real jobs and other relevant opportunities for First Nations recruits, if they are to have an impact.

The CRTC requires measures to ensure that private broadcasters institute employment equity programs for First Nations, as part of licensing requirements.

sensitization of staff

THE MASS MEDIA MUST EDUCATE AND SENSITIZE THEIR STAFF REGARDING FIRST NATIONS PEOPLES AND THEIR ISSUES.

129

The purpose of such a step would be to train and prepare journalist to cover aboriginal issues. Such programs are needed to ensure that journalists and advertisers are more aware of the impact of racial stereotyping and bias in reporting and coverage of First Nations issues. The industry has taken similar steps in combatting gender stereotyping in the mass media, which can serve as a good model for change in this regard.

journalism studies

UNIVERSITIES AND COLLEGES MUST REQUIRE JOURNALISM AND COMMUNICATIONS PROGRAMS TO INCLUDE THE STUDY OF FIRST NATIONS PEOPLES AND THEIR ISSUES.

130

Educational courses must also ensure that students are aware of and sensitive to a variety of stereotypes that can be created. The appropriate study of history, norms, traditions and expectations of First Nations lifestyles must also become part of the course of study.

press councils

THE NEWSPAPER INDUSTRY MUST EXPAND PRESS COUNCILS ACROSS THE COUNTRY.

131

Press Councils exist in Ontario, British Columbia and Alberta as part of an effort to improve understanding and greater accountability between the press and general public. These councils do not have legal status or enforcement powers, however, they do monitor and adjudicate complaints from the public. At this point few attempts have been made to involve First Nations peoples in the design and make-up of these councils.

These councils could serve as a forum for debate between First Nations and the press establishment.

joint council

FIRST NATIONS AND THE MASS MEDIA MUST ADDRESS THROUGH A JOINT COUNCIL MEDIA PROBLEMS FACED BY FIRST NATIONS.

132

The council must include representatives of the daily and weekly newspaper industry, magazine publishers, private radio and television broadcasters and the CBC. The council will examine and assess media coverage of First Nations issues and address issues related to access and representation of First Nations in the mass media. There is also merit to utilizing such a council as a focal point for establishing professional standards for the press.

commitment

FIRST NATIONS MUST COMMIT THEMSELVES TO THE PRINCIPLES OF FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION.

133

use of media

FIRST NATIONS MUST INCREASE THEIR USE OF THE MEDIA AND THEIR MEDIA LITERACY SKILLS.

134

Communities can increase their effort to access and distribute newspapers and magazines, through subsidies if necessary, and read at home and in schools

media council

FIRST NATIONS MUST CREATE A NATIONAL MEDIA COUNCIL.

135

The council will educate First Nations people on the role and responsibilities of the media and on complaint or grievance procedures of the mass media. The council will perform a 'watch dog' function and monitor media bias and develop a 'media access manual', specifically developed and targeted for use by First Nations communities.

new technology

136

FIRST NATIONS MUST BECOME MORE KNOWLEDGEABLE ABOUT COMMUNICATION AND INFORMATION TECHNOLOGY.

First Nations leadership must make an effort to develop realistic strategies for accessing technology which will advance First Nations goals and viewpoints among the general public and the mass media.

MUSEUM ISSUES

Early aboriginal collections from Canada were made by explorers, fur traders, by canoe or by ocean going vessel on the West Coast, Hudson Bay employees, British military officers, and finally and most thoroughly by missionaries. As most of these people came from Europe, the earliest aboriginal pieces of collections are in European museums.

Europeans and Americans held World Fairs in cities like London and Paris, Chicago and Philadelphia, mostly geared to the Victorian ideal of progress and civilization. Canadian aboriginal material exhibited at these fairs was later deposited into newly established museums. In Europe, the early material that had been displayed in 'curiosity cabinets', found its way into museums.

Much of the early impetus for collecting was the belief that aboriginal peoples were disappearing and by collecting their objects, a record of the 'vanishing peoples' would remain. During colonization, death rates were staggering.

In pre-contact days, a museum was not necessary to recall the past. Stresses of contact with the 'newcomers' led to the realization that to cope with the past, a museum can be the vehicle to focus and perhaps heal not just the past as.... '.. history is about how we understand ourselves, now, as peoples as nations...' (newsletter, Royal Commission on Aboriginal Peoples, April 1993).

In Canada, the first repatriation of First Nation objects occurred in 1979. Consistent pressure from First Nations led to the return of potlatch goods from the Northwest Coast, after 60 years in museums, to the first reserve-based museums in Canada. About that time the Land Claims process, both comprehensive and specific, was building momentum, as First Nations sought to regain what was theirs.

By 1988, the combination of the land claims process and a museum exhibition entitled **'The Spirit Sings'**, focused international attention on Canada's relationship with First Nations.

At that point the Assembly of First Nations took a major step by organizing a conference in conjunction with the Canadian Museums Association where the National Chief raised the question: "What kind of role should native people play in the presentation of their own past, their own history?"

In the past five years, First Nations have noted that nearly every museum in Canada, whether provincial, federal or municipal, has taken a close look at its specific policies on repatriation, access, and training for First Nations people.

Repatriation or return of objects to their original owners is one of a spectrum of solutions in attempting to develop a new partnership between First Nations and museums.

In 1992 the Assembly of First Nations and the Canadian Museums Association published the Task Force Report, 'Turning the Page: Forging New Partnerships Between Museums and First Peoples.' Goals and recommendations presented here are consistent with that report.

GOALS:

I WE WANT A WORLD IN WHICH FIRST NATIONS HAVE ACCESS AND CONTROL OVER THEIR CULTURAL OBJECTS, ARCHIVAL DATA AND HUMAN REMAINS HELD IN MUSEUMS, IN CANADA AND OTHER COUNTRIES.

Objects as well as individuals are of themselves powerful carriers of tradition, and it is these objects that First Nations wish to control. In the early twentieth century many objects were sold to museums as a result of poverty and a sense of cultural dislocation. Some objects were put in museums as a kind of trust account for future generations. Oral traditions collected at that time, including songs, are part of First Nations cultural patrimony.

In the history of mankind, no one has ever deposited bones of their ancestors in museums. Provincial legislation protecting cemeteries does not include ancient First Nation burial grounds. At this time the **Canadian Museum of Civilization** and the **Royal British Columbia Museum** are inventorying their holdings of human remains. Policies are now in place for the return of these collections, when requested.

II WE WANT A WORLD IN WHICH WE WILL BE CONSULTED AND ACTIVELY PARTICIPATE ON ALL MATTERS RELATING TO THE PRESENTATION OF FIRST NATIONS HISTORY AND CULTURE TO THE PUBLIC BY GOVERNMENTS OR PRIVATE INSTITUTIONS.

In the past, First Nations were presented in museum exhibits 'as standing outside the flow of time', in idealized settings described as 'golden age ethnography', nearly always in the past tense.

A new partnership is evident in recent First Nations involvement with museums: An award winning collaboration between **The Manitoba Museum of Man & Nature** and the **Manitoba Association of Native Languages; the McCord Museum of Canadian History** and the **Canadian Museum of Civilization** have established First Nation consultative committees for inaugural exhibits. **The Glenbow Museum** policy requires support of First Nations before exhibiting religious and ceremonial objects.

Le Musee de la Civilization policy sets out co-operation principles with First Nations. **The Royal Ontario Museum** refurbished a travelling exhibition for the **Woodland Cultural Centre.** The **Kitimat Centennial Museum** is holding artifacts in trust until the Haisla Band constructs its own museum. The **Museum of Anthropology**, University of British Columbia has produced many exhibitions in collaboration with and co-curated by First Nations. The **U'Mista Cultural Centre** consulted closely with the American Museum of Natural History on an exhibition.

III WE WANT A WORLD IN WHICH WE OPERATE OUR OWN MUSEUMS AND CULTURAL CENTRES.

Full scale museums are expensive to operate, and many communities are considering cultural centres with multiple uses, including a museum component. Some First Nations are involved in land claims where they are able to negotiate control over their ethnological and archaeological materials, as well as oral history.

Some projects such as **Head Smashed-In Buffalo Jump Interpretive Centre**, and **Wanuskewin Heritage Park**, involve several funding partners in the development and presentation of First Nations history to the local population and for tourists. Projects of this size incorporate First Nation consultation and collaboration and underscore the need for training of First Nations citizens for management positions.

HOW WE CAN ACHIEVE OUR GOALS:

repatriation requests

ALL LEVELS OF GOVERNMENT, THROUGH THEIR FUNDED MUSEUMS, MUST ACT ON FIRST NATIONS REPATRIATION REQUESTS.

137

First Nations and Canadian museums have developed a case by case approach to repatriation requests that respects the different circumstances in each request, whether potlatch regalia,

wampum or medicine bundles. The flexibility in solutions and time frames offered by this system appears more satisfactory than seeking a legislative approach, as was done recently in the United States.

Funding of the replication of objects slated for repatriation or retention by the museum is an opportunity for valuable training for First Nation artists and craftspersons.

equal partners

ALL LEVELS OF GOVERNMENT OR SPONSORS OF EXHIBITS MUST ENSURE THAT APPROPRIATE FIRST NATIONS REPRESENTATIVES WILL BE INVOLVED AS EQUAL PARTNERS WITH ANY EXHIBITION, PROGRAM OR PROJECT DEALING WITH FIRST NATIONS HERITAGE, HISTORY OR CULTURE.

138

In the past, museum professionals interpreted and displayed First Nation's history without consultation and collaboration with First Nations. Not only must First Nations be involved in exhibition concept and planning, but museums must include First Nation performing artists and visual artists in their interpretive programs.

accessability to all communities

FEDERAL AND PROVINCIAL GOVERNMENTS MUST FUND THEIR MUSEUMS TO COMPLETE COLLECTION INVENTORIES AND DEVELOP VIDEO DISCS OR ELECTRONIC OUTREACH IN ORDER TO MAKE THESE COLLECTIONS ACCESSIBLE TO ALL FIRST NATIONS COMMUNITIES.

139

First Nations need to know the location of their cultural patrimony. Video disc images and disc/ readers/printers should be available to all First Nations. All archival material in museums should be available to First Nations, respecting that some materials may have limitations on access requested by other First Nations.

locating objects

THE FEDERAL GOVERNMENT MUST PROVIDE FUNDS TO FIRST NATIONS TO ASSIST THEM IN LOCATING OBJECTS OF CULTURAL PATRIMONY OR HUMAN REMAINS HELD OUTSIDE THE COUNTRY.

140

It may be necessary for large museums to assist in the repatriation process, if an application for funding to the Cultural Properties Export Review Board is required.

care of objects

FEDERAL AND PROVINCIAL GOVERNMENTS MUST PROVIDE ACCESS AND FACILITIES TO CARE FOR CULTURAL OBJECTS.

141

Access to collections can provide the opportunity for videotaping collections and describing the significance on camera in a First Nation language, and/or English and French. These videos could be shown on local television stations.

A space should be provided for the performance of rituals necessary to ensure the well-being of sacred objects. First Nations should train museum professionals in the ongoing care of their sacred materials while in museum collections. No user fees should be charged to First Nations citizens by museums.

permits for field work

PROVINCIAL AND TERRITORIAL GOVERNMENTS MUST CONSULT FIRST NATIONS BEFORE THEY ISSUE PERMITS FOR ARCHAEOLOGICAL FIELD WORK IN THEIR AREA.

142

These consultations are necessary as conditions may be attached to permits, for example, whether surface collecting only, or regarding the disbursement of archaeological materials or in regard to employment opportunities.

interpretation of histories

FIRST NATIONS MUST TAKE THE INITIATIVE AND PROVIDE INTERPRETATION OF THEIR HISTORIES ON RESERVES

143

Recently, a First Nation erected a monument to a great chief of the last century, after finding the provincial designation of the Chief was biased and inaccurate.

positions in museums

QUALIFIED FIRST NATIONS CANDIDATES MUST BE CONSIDERED FOR ADMINISTRATIVE AND CURATOR POSITIONS IN MUSEUMS AND ART GALLERIES AND ON THE BOARDS OF TRUSTEES.

144

Professional training is available through some museums which offer a praticum, internships and fellowship programs.

First Nations request that funding be provided to the Canadian Museums Association, to co-ordinate First Nation candidates for training programs and employment opportunities.

QUEBEC

Although the First Nations of Quebec share the same goals as other First Nations in Canada, some issues are of particular concern to them because of the possibility of Quebec's secession from Canada. Issues such as the effect of Quebec's secession on First Nations treaties and lands, jurisdiction, the citizenship of the First Nations of Quebec and others need to be addressed and the First Nations of Quebec need to be assured by governments that their rights will be respected.

Before any of the issues raised by the possibility of Quebec's accession to sovereignty can be settled, the fundamental right of all First Nations of Canada to self-determination must be recognized.

This recognition is the necessary basis of fruitful discussion and negotiation between First Nations, the government of Canada and the provinces in order to build a new relationship that will promote and protect the interests of all parties.

I WE WANT A WORLD IN WHICH THE GOVERNMENT OF CANADA RECOGNIZES THE RIGHT OF SELF-DETERMINATION OF FIRST NATIONS.

On several occasions, including the recent International Conference on Human Rights held in Vienna, Austria, the government of Canada opposed the use of the plural 'peoples' in regard to First Nations because of a concern that it might be interpreted as a recognition of the right to self-determination, which in turn could be used by First Nations as a basis for secessionist claims.

As a result of the position adopted by the government of Canada, the First Nations of Canada are recognized as "peoples" under Canadian law, including the Canadian Constitution, but they are denied such status under international law by Canada.

International law is not very explicit on the issue of secession. Although accession to full sovereignty is one of a number of ways to exercise the right to self-determination, the U.N. Declaration on Friendly Relations clearly states, that it cannot be realized at the expense of territorial integrity or political unity of an independent State, which respects the principles of equality of rights and of the right to self-determination of peoples. According to the terms of the Declaration, secession would only be considered as an acceptable option for colonized peoples and peoples under foreign domination. On this basis the right to self-determination is invoked by liberation movements.

International law does not expressly prohibit secession and international experts tend to agree that the existence of a new State is a question of fact, and that it would be assessed on the basis of its effectiveness.

International law clearly does not see the right to self-determination as automatically synonymous with secession.

The work being done at the international level, whether it be the Draft Universal Declaration on the Rights of Aboriginal Peoples or studies conducted by the U.N. Working Group on Indigenous Populations, as well as reports of international experts on the issue of self-determination of indigenous peoples, clearly shows, that the right to self-determination of indigenous peoples is not meant to pose a threat to the integrity of sovereign States.

As stated in the report presented by the Meeting of Experts to review the experience of countries in the operation of schemes of internal self-government for indigenous peoples to the U.N. Commission on Human Rights in September of 1991:

1. The self-determination of peoples is a precondition for freedom, justice and peace, both within the States and in the international community.

2. Indigenous peoples have the right to self-determination as provided for in the International Covenants on Human Rights and public international law and as a consequence of their continued existence as distinct peoples. This right shall be implemented with due consideration to other basic principles of international law. An integral part of this is the inherent and fundamental right to autonomy and self-government.

3. Self-government, self-administration and self-management of indigenous peoples constitute elements of political autonomy. The realization of this right should not pose a threat to the territorial integrity of the State."

The Draft Declaration on the Rights of Indigenous Peoples is also based on the premise that the right to self-determination of indigenous peoples should be exercised within the States in which they live, as reflected by the thirteenth preambular paragraph:

> "Believing that indigenous peoples have the right to freely determine their relationships with the States in which they live, in a spirit of coexistence with other citizens;"

The Assembly of First Nations of Canada has repeatedly stated that its goal is not a separation from Canada but rather the establishment of a strong partnership with Canada, a partnership which ensures the survival and development of First Nations.

we are peoples

THE GOVERNMENT OF CANADA MUST RECOGNIZE THAT ALL FIRST NATIONS OF CANADA ARE PEOPLES UNDER INTERNATIONAL LAW AND THAT AS PEOPLES, WE HAVE THE RIGHT TO SELF-DETERMINATION.

145

All peoples have the right to self-determination and the lack of recognition of the right of First Nations to self-determination could place the First Nations of Quebec in particular, in a precarious position in light of Quebec's claim to sovereignty.

II WE WANT A WORLD IN WHICH THE GOVERNMENT OF QUEBEC RECOGNIZES THE RIGHT TO SELF-DETERMINATION OF THE FIRST NATIONS OF QUEBEC.

Quebec claims that it can accede to sovereignty on the basis of the right of the Quebec people to self-determination, as guaranteed under the terms of Article 1, paragraph 2 of the Charter of the United Nations, as well as in the Declaration of Friendly Relations and in Article 1, paragraph 1 of the two International Covenants on Human Rights.

However, as peoples, the First Nations of Quebec have the right to self-determination on the basis of the same provisions. Consequently it becomes necessary to assess the effects of Quebec's claim to sovereignty on the rights of First Nations. The validity of the exercise, by the Quebec people, of its right to self-determination depends, among other things, on their willingness and their ability to take into account the right to self-determination of the First Nations of Quebec.

The possibility of Quebec's accession to sovereignty raises questions as to the future of treaties to which both the provincial government of Quebec and the federal government of Canada are parties along with First Nations. These issues need to be addressed and can only be answered by all parties working together.

The possibility of Quebec's sovereignty also raises questions as to the territories and reserves of the First Nations of Quebec. It must be made absolutely clear that even if Quebec were to accede to sovereignty, such sovereignty could not affect the existence and the status of the territories and reserves of First Nations. Contemporary international law and legal instruments in process recognize the rights of aboriginal peoples to their traditional territories, including the right to recover lands of which they were dispossessed without their consent.

right to self-determination

THE GOVERNMENT OF QUEBEC MUST RECOGNIZE THE RIGHT OF ALL PEOPLES, INCLUDING THE FIRST NATIONS OF QUEBEC, TO SELF-DETERMINATION.

146

The possibility that Quebec might secede from Canada poses serious threats for the First Nations of Quebec who need concrete assurance that their rights will be respected and their aspirations taken into account.

prior consultation

THE FIRST NATIONS OF QUEBEC MUST BE ASSURED THAT THE POLITICAL FUTURE OF QUEBEC WILL NOT BE DECIDED WITHOUT PRIOR CONSULTATION AND NEGOTIATION WITH THEM.

147

Should the people of Quebec be asked to vote on the issue of secession and should they decide in favour of it, discussions and negotiations with the First Nations of Quebec must be held before, and not after secession.

no treaty modification

THE GOVERNMENT OF QUEBEC MUST ACKNOWLEDGE THAT IT CAN NOT UNILATERALLY MAINTAIN OR SUSPEND OR IN ANY WAY MODIFY THE STATUS OF TREATIES TO WHICH IT IS PARTY.

148

Treaties to which provincial and federal governments are party along with First Nations can be affected by the change of political status of one of the parties and since such treaties with the First Nations of Quebec are at particular risk in the event of Quebec's accession to sovereignty, it is essential that the First Nations of Quebec be assured that a sovereign Quebec could not and would not make any decision regarding the fate of such treaties without the consent of the First Nations party to them.

rights to and on territories

THE GOVERNMENT OF QUEBEC MUST EXPRESS ITS COMMITMENT TO RESPECT THE RIGHTS OF FIRST NATIONS TO AND ON THEIR TERRITORIES.

149

Contemporary international law recognizes and protects the rights of First Nations to their traditional territories and the government of Quebec must express its consent to be bound by international law, conventional as well as customary law, as it did in the case of the International Covenants on Human Rights.

III WE WANT A WORLD IN WHICH THE FEDERAL GOVERNMENT ACKNOWLEDGES AND FULLY ASSUMES ITS FIDUCIARY DUTY TOWARD FIRST NATIONS TO ENSURE THAT QUEBEC'S FUTURE IS NOT DECIDED AT THE EXPENSE OF FIRST NATIONS.

Experts consulted by Quebec's committee on matters relating to the accession of Quebec to sovereignty, including those from the United Nations, seem to believe that if Quebec becomes a sovereign State, it will automatically take over powers presently held by the federal government in regard to First Nations.

For example, treaties to which the federal government is a party might or might not continue under Quebec law. First Nations would become nationals of Quebec and First Nations lands would come under the jurisdiction of a sovereign Quebec. None of these statements are

compatible with the recognition of the right to self-determination of the First Nations of Quebec. The government of Canada has a duty, in virtue of its fiduciary obligation, to ensure that the right to self-determination of First Nations is recognized and respected by the government of Quebec.

rights protected

THE GOVERNMENT OF CANADA MUST ENSURE THAT IN THE EVENT QUEBEC DECIDES TO BECOME A SOVEREIGN STATE, THE RIGHT TO SELF-DETERMINATION OF THE FIRST NATIONS IN QUEBEC WILL BE PROTECTED AND ITS EXERCISE GUARANTEED.

150

The fiduciary duty of the federal government has its roots in the aboriginal title of the First Nations of Canada. The fiduciary obligation is owed principally, although not exclusively, by the federal government. Therefore, the government of Canada must protect the interests of First Nations in Quebec. The unanimous constitutional entrenchment of the inherent right to self-government of First Nations would afford such a guarantee.

right of option

THE GOVERNMENT OF CANADA MUST GIVE THE FIRST NATIONS IN QUEBEC FULL ASSURANCE THAT AS PART OF ITS FIDUCIARY DUTY IT WILL ENSURE THAT FIRST NATIONS OF QUEBEC ARE GIVEN THE OPPORTUNITY TO EXERCISE THEIR RIGHT OF OPTION IN THE EVENT OF QUEBEC'S ACCESSION TO SOVEREIGNTY.

151

Under international law the First Nations of Quebec would have a right of option in the event of Quebec's accession to sovereignty, and such option includes the right to keep the nationality of origin rather than acquiring the nationality of the successor state. The freedom of choice of First Nations in Quebec with regard to political status, which is an integral part of the right to self-determination, includes the right to choose between belonging to a sovereign Quebec or Canada. This right of option would be discussed with Quebec before its accession to sovereignty.

However, should Quebec fail to consult and negotiate with the First Nations of Quebec, the government of Canada would have to intervene on behalf of the First Nations.

IV W WANT A WORLD IN WHICH THE GOVERNMENT OF QUEBEC BOTH AFFIRMS, AND CONDUCTS ITSELF ON THE BASIS OF A FULL RECOGNITION OF LEGAL AND POLITICAL RIGHTS OF FIRST NATIONS IN QUEBEC.

The province of Quebec continually argues in the courts and in the political arena that the rights of First Nations in Quebec are different from the rights held by First Nations in the rest of Canada. The government claims that the existence of a civil law system in Quebec private law, as well as the fact that Quebec was a colony of France, has created a different system of rights for First Nations in Quebec.

These arguments are consistently made to deny aboriginal rights, including title and jurisdiction, of First Nations in Quebec. They are unfounded in history, fact and law.

The source of the rights of First Nations in Quebec is our original occupation and dominion over the land. This is the same source as that of the rights of First Nations in other provinces of Canada.

A civil law system has no effect on the rights of First Nations because the law relating to those rights is public law, which is not governed by the civil law system.

A number of treaties were concluded between the French Crown and First Nations in the old colony of Quebec. In these treaties the French Crown recognized and acknowledged the independence of the First Nations. First Nations continuously asserted their rights to land as against the French and the English.

In its decision in R. v. Sioui, a case originating from Quebec, the Supreme Court of Canada affirmed that, in their relations with the British and the French, the First Nations had historically been regarded as independent nations.

In spite of these clear pronouncements and historical facts, the government of Quebec continues to deny the legal and historical foundation of First Nations' rights in Quebec. Recently, the Quebec Court of Appeal stated that it is far from certain that aboriginal title was preserved in the old colony of Quebec, the court noted that there is a serious theory that the act of taking possession of land in the name of the King of France obliterated all other rights. The court also held that the Royal Proclamation of 1763, a fundamental document for First Nations' rights, had no application in the old colony of Quebec.

The government of Canada, for its part, has refused to become involved on behalf of First Nations in Quebec in their struggles with the provincial government.

assert rights

IN ORDER TO OPPOSE THE DENIAL OF THE GOVERNMENT OF QUEBEC OF FUNDAMENTAL ABORIGINAL AND TREATY RIGHTS, FIRST NATIONS IN QUEBEC MUST DEVELOP A STRATEGY TO ASSERT THEIR RIGHTS BOTH IN THE POLITICAL FORUM AND IN THE COURTS.

152

The existence of a united strategy will enable First Nations in Quebec to organize an effective campaign to combat the government of Quebec's denial of their rights.

honour fiduciary obligations

THE FEDERAL GOVERNMENT MUST HONOUR ITS FIDUCIARY OBLIGATIONS TOWARDS FIRST NATIONS IN QUEBEC AND INTERVENE ON THEIR BEHALF BOTH IN THE COURTS AND THE POLITICAL ARENA AS AGAINST THE GOVERNMENT OF QUEBEC'S REFUSAL TO RECOGNIZE THE LEGAL AND HISTORICAL BASIS FOR FIRST NATIONS RIGHTS.

153

The Crown in right of Canada is in a fiduciary relationship with First Nations in Canada and as such owes fiduciary obligations to First Nations. This fiduciary obligation is held principally by the federal government but is shared with the provincial governments, including the government of Quebec.

treaty process

THE GOVERNMENT OF CANADA MUST ACKNOWLEDGE THE EXISTENCE OF AN ONGOING TREATY PROCESS AND TREATY RELATIONSHIP IN QUEBEC AND COMMIT ITSELF TO THIS RELATIONSHIP FOR THE FUTURE.

154

The James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement are contemporary examples of an ongoing treaty relationship between First Nations and the Crown. The treaty process is a preferred model for the relationship between the Crown and First Nations.

existence of aboriginal rights

THE GOVERNMENT OF QUEBEC MUST REVIEW ITS POSITION ON THE EXISTENCE OF ABORIGINAL RIGHTS IN THE OLD COLONY OF QUEBEC AND PUBLICLY ACKNOWLEDGE THAT SUCH RIGHTS EXIST IN THE PROVINCE

155

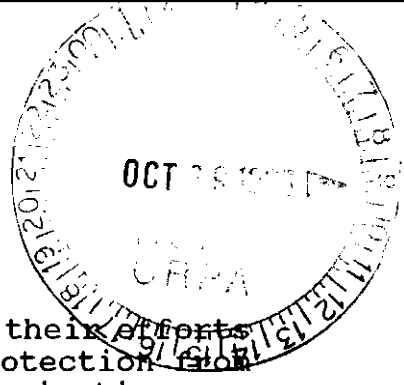
Aboriginal rights, including title and jurisdiction, of First Nations in Quebec do not depend upon recognition by the province for their existence. These rights are original rights, now constitutionally protected, which are held by First Nations in Quebec in the same manner as they are held by First Nations in the rest of Canada. Nevertheless, a positive and harmonious relationship between the government of Quebec and First Nations in the province cannot be achieved unless the government of Quebec acknowledges the existence of aboriginal rights in all areas of the province. The government of Quebec must also acknowledge the right of the First Nations of Quebec to self-determination. This acknowledgement must be confirmed in both the political arena and in arguments presented by the government of Quebec in the courts.

agreement on nation-to-nation relationship

THE GOVERNMENT OF QUEBEC AND FIRST NATIONS IN THE PROVINCE MUST ENTER INTO AN AGREEMENT FORMALIZING THEIR NATION-TO-NATION RELATIONSHIP AND ACKNOWLEDGING THE LEGAL AND HISTORICAL BASIS FOR FIRST NATIONS RIGHTS TO LAND AND JURISDICTION IN THE PROVINCE.

156

Once the province of Quebec has acknowledged the legal and historical foundation of First Nations rights in the province, this recognition should be formalized by agreement.



INTERNATIONAL ISSUES

Indigenous peoples throughout the world are united in their efforts to assert their rights un er international law to protection from state-sponsored discrimination and to self-determination as "peoples". First Nations in Canada have and continue to be part of this worldwide movement, and are active in a number of international forums.

Nor is this a new departure for First Nations. From the very beginning relations between our peoples and the European societies that established themselves on this continent have been coloured by principles drawn from international law. The treaty process itself, the doctrine of the fiduciary relationship between our peoples and the nation to nation political relationship reflected most recently by the various rounds of constitutional discussions since 1981 attest to this fact. As recently as 1990 the Supreme Court of Canada has reminded governments in this country that international law continues to be relevant to the treaty relationship between us. In Sioui the Court noted:

> ...we can conclude from the historical documents that both Great Britain and France felt that Indian nations had sufficient independence and played a large enough role in North America for it to be good policy to maintain relations with them very close to those maintained between sovereign nations.
>
> The mother countries did everything in their power to secure the alliance of each Indian nation and to encourage nations allied with the enemy to change sides. When these efforts met with success, they were incorporated in treaties of alliance or neutrality. This clearly indicates that the Indian nations were regarded in their relations with the European nations which occupied North America as independent nations.

In the same way it should not be forgotten that after the First and Second world wars representatives of the Six Nations Confederacy sought international recognition of their status as peoples whose treaty relationship with the settler societies of North America was based on international law principles. More recently, the Cree people of James Bay have also actively sought international recognition of their treaty relationship with Canada and Quebec and support for their quest to preserve their historic homelands from unrestrained hydro-electric development and attendant environmental damage.

Issues of concern to First Nations and to other indigenous peoples are now taken more seriously both domestically and on the

international stage. This is partly the result of the evolution of domestic and international human rights instruments. The United Nations has since its inception been concerned with the rights not only of individuals, but also of peoples. This is demonstrated by the U.N. Charter itself which, in Article 1, states that a primary purpose of the United Nations

is to "develop friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples."

Article 55 of the Charter sets the tone for international concern with human rights: the United Nations states that it shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all...". In response there have been dozens of human rights declarations and nearly two dozen treaties, conventions and covenants dealing with the subject, beginning with the 1948 Universal Declaration of Human Rights.

Two major examples of ratified human rights instruments are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights. Passed by the U.N. General Assembly in 1966, they entered into force in 1976 upon receiving the required ratification of 35 member states. Each has now received well more than the required number of signatures, including that of Canada. Article 1 of each covenant is identical, and offers further support for the rights of Aboriginal peoples in Canada and elsewhere for self-determination based on international law principles.

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The creation of instruments containing human rights standards is how the United Nations creates modern international human rights law. Even where member states do not agree to be bound by such instruments, the very existence of such standards provides criteria for assessing the behaviour of all states. This is the primary way in which indigenous peoples call attention to their claims in the international arena, although formal complaints to international human rights bodies are becoming more common. In 1981, for example, the United Nations Human Rights Committee in Lovelace v. Canada found Canada to be in violation of its obligations under the International Covenant on Civil and Political Rights. Other human rights complaints by Canadian Aboriginal persons are now pending in the international forum, including one by the Micmac with respect to their collective right of self-determination.

The United Nations through its agencies and organs has taken a direct interest in indigenous peoples since the 1950s. Since the more recent creation of the United Nations Working Group on Indigenous Peoples in 1982, its openness to a wide variety of indigenous peoples and groups as a forum for developing indigenous human rights standards and for denouncing state practices has enabled our issues to assume an increasingly high profile at the international level. The declaration by the United Nations of 1993 as the International Year of the World's Indigenous Peoples is yet another indication of the importance attached to the welfare of the

world's indigenous peoples. The value of the potential contribution of indigenous people on the international stage has recently been recognized, especially in the context of addressing world-wide environmental problems.

International concern with the rights of indigenous peoples is of growing significance for Canada and for some other states that fear the international identification of First Nations within their borders as indigenous "peoples". They deny that the right of self-determination applies to them, arguing that Aboriginal peoples are mere "populations" i.e. groups that retain some distinct cultural characteristic, but which are already assimilated into the body politic of the state and therefore without access to the status of "peoples" in the international sense. Even when some states admit that First Nations may possibly fall within the definition of "peoples", the further argument is made that the right of self-determination only applies to peoples beyond the borders of existing states i.e. in overseas colonies distant from the dominant society. In other words, such states assert that there can be no "peoples" within the borders of existing states.

This is popularly known as the "blue water" thesis. It arose in the 1950's in the context of U.N. Article 73 which calls for U.N. members to accept as a "sacred trust" the obligation to assist the peoples of "non-self-governing territories" for whom they are responsible to "develop self-government". They are also obliged "to take due account of the political aspirations of the peoples..." . But what these states, including Canada, fail to understand is that the right of a people to self-determination does not necessarily imply its independence in the sense that a modern nation-state asserts such independence. Rather, self-determination means simply the freedom of a people to choose how it will be governed.

In short, self-determination means nothing more than what First Nations have never ceased to assert domestically in Canada: the ending of the suppression of First Nations governments and societies by the dominant non-Aboriginal society represented first by the colonial governments and now by the federal and provincial governments. Self-determination means the right to govern ourselves and to promote our own languages, cultures and traditions and to take the measures we require to protect the integrity of our societies. Self-determination also implies, among other things, the further right to compensation for the seizure and exploitation of our lands and resources and to participate equally in decisions regarding how the precious natural environment will be managed in the future. Our goal is nothing less than to replace the existing relationship of dominance with human rights principles anchored in international law and supportive of our collective right to self-determination.

S nce 1993 s the Internat onal Year of the World's Ind genous Peoples, it is appropriate to consider the light in which Canada will be reflected 501 years after the landfall of Christopher Columbus on our soil. Canada prides itself on its commitment to the advancement of, and respect for, human rights. It has gained a positive international image in this regard. Unfortunately, this positive image belies the truth in Canada - a long history of denial, suppression and disrespect for the Aboriginal and treaty rights of First Nations. This history has made an enormous and negative contribution to the current situation of First Nations in Canada - a situation described repeatedly by the Canadian Human Rights Commission in their annual reports as a national tragedy and dramatically exemplified by the current horrendous conditions of the people of Davis Inlet, Labrador.

It can hardly be surprising then, that First Nations have used and will continue to use international forums to raise such issues and to gain attention for their legitimate and long standing grievances. The collective rights of First Nations are not secure in Canada. The colonization of our lands and the oppression of our peoples has undermined our collective rights and has weakened our ability to bring our issues forward with pride and vigour. First Nations in Canada are not alone, however, in experiencing the destruction of lands, cultures, languages and ways of life. This has been the tragic experience of indigenous peoples around the world. It is therefore appropriate that this submission to the Royal Commission go forward in this International Year of the World's Indigenous Peoples.

International perspectives have always informed relations between First Nations and the European-derived societies on this continent. They continue to be directly relevant in their own right and in terms of giving shape to the present relationship between our respective societies. First Nations have been denied their legitimate place in the creation of the nation-state called Canada. They are denied even now a real role in determining their own futures and in helping shape the overall future of Canada itself. First Nations now need more than ever to continue to participate in international forums and to seek the support of the international community in advancing domestic issues of importance ranging from self-determination for themselves to protection of the environment for all Canadians. The Royal Commission can spur all parties to make the commitments necessary to the vital tasks at hand. We accordingly put forward the following recommendations in the spirit of the new relationship between government and First Nations that is unfortunately often better reflected in the international forum than domestically.

First Nations enjoy the right under international law to self-determination as peoples whose international status finds increasing recognition in a variety of international instruments and forums. Canada is obligated to respect this right and has itself undertaken to support it through such instruments as the International Covenant on Civil and Political Rights. This right to exist as recognized political entities and as Nations in their own right grounds the relationship between First Nations and Canadian governments. It has never been surrendered or legitimately taken away by any outside authority. First Nations governmental authority exists as a fact, as a matter of domestic constitutional law and as a right under international law. This power to develop laws and institutions is therefore not dependent for its existence upon the approval of other governments. Nonetheless, the government of Canada has repeatedly opposed the recognition under international law of the aboriginal peoples of Canada as peoples. This is so even though the Canadian Constitution itself refers to the aboriginal peoples of Canada.

The right to self-determinat on means that peoples have the liberty to freely determine their political status, as well as to freely pursue their economic, social and cultural development. In no case may a people be deprived of its means of subsistence. Moreover, as First Nations, we have a great responsibility to preserve the land and secure the livelihood of our future generations. We, the indigenous peoples of the world, acknowledge our interdependence with the living earth, as well as other beings, for our survival and sustenance.

ratify ILO

THE GOVERNMENT OF CANADA SHOULD RATIFY THE INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES (169).

157

The ILO is a U.N. agency based in Geneva that focuses on indigenous issues in the context of its larger mandate with respect to international labour matters. Thus, it views indigenous groups essentially as workers in need of protection from exploitation and discrimination by the dominant society in their respective countries. The ILO pioneered an early study of indigenous issues in 1953, and four years later passed Convention 107 on the "Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries".

This is still the only ratified international instrument protecting indigenous human rights as such and defining indigenous populations. The ILO General Conference passed a revised version in 1989. The new Convention 169, "Convention Concerning Indigenous and Tribal Peoples in Independent Countries", by its terms changes its focus from "populations" to "peoples" and attempts a definition of "Peoples" more in conformity with the views of indigenous peoples themselves. In all cases self-identification as indigenous or tribal is a determining criterion in identifying who is to be regarded as falling within the protections offered. Together these two instruments, Conventions 107 and 169, recognize the historic relationship between indigenous peoples and the lands they inhabit and support the rights of indigenous peoples to control their own institutions and to guide their own economic development on those lands on terms that are appropriate to them.

The United Nations and the International Labour Organization (ILO), recognize that the establishment and protection of the rights of indigenous peoples are an essential part of human rights and a legitimate concern of the international community. The two organizations are active in the setting and implementation of standards designed to ensure respect for existing rights of indigenous peoples and the adoption of additional rights. First Nations must continue to be involved with the ILO's Convention concerning tribal and indigenous

peoples, and lobby for its ratification by Canada. We must further lobby for international conventions and treaties proposed by UNESCO against discrimination and racism.

create U.N. commission

CANADA AND FIRST NATIONS SHOULD JOINTLY LOBBY THE UNITED NATIONS FOR THE CREATION OF A UNITED NATIONS COMMISSION ON INDIGENOUS PEOPLES WHOSE SOLE FOCUS WILL BE THE OVERALL PROTECTION OF INDIGENOUS PEOPLES WORLDWIDE.

158

Given the rising prominence of indigenous issues both internationally and domestically within many of the United Nations member states, it is timely and logical to put indigenous issues on a more firm and permanent foundation within the United Nations framework. The ILO is inappropriate since its primary focus is on international labour matters, while the Working Group on Indigenous Peoples is not a permanent body and, moreover, appears to be drawing to a close and losing its potential influence because of lack of support by United Nations member states. A permanent commission will provide a more stable framework within which states, non-governmental organizations and indigenous peoples will be able to address emerging issues. This will be vital if the potentially explosive issues of international environmental degradation and suppression of indigenous cultures are to be addressed properly in an increasingly unstable world.

A permanent body established by the General Assembly would further promote First Nations issues and aspirations and would continue to implement the findings and recommendations of the Working Group. The Working Group on Indigenous Peoples has carried out very important work including a study of treaties between indigenous peoples and the respective member states. This important work must be continued.

international declaration

FIRST NATIONS IN CANADA MUST INITIATE AND SUPPORT THE DEVELOPMENT OF AN INTERNATIONAL DECLARATION WHICH RECOGNIZES AND PROTECTS INDIGENOUS PEOPLES AND THEIR COLLECTIVE HUMAN RIGHTS.

159

There is a need for a strong Declaration on Indigenous Rights in the international arena. In Canada, such a Declaration must be implemented in domestic law and will thereby help to ensure that governments do not back away from commitments on aboriginal and treaty rights.

All First Nations have an interest in ensuring that their collective rights receive the full protection of international law. To date, such international declarations have only rarely had the full input of those most concerned and affected by them. This is especially the case with respect to indigenous issues.

This must change and we must now become more active as the architects of our own destiny, both domestically and internationally. Failure to do so will mean that non-First Nations governments and non-governmental organizations, neither of which reflect fully First Nation interests or viewpoints, will continue to draft such instruments.

direct representation

FIRST NATIONS MUST INITIATE AND SUPPORT THE DEVELOPMENT OF A PROTOCOL THAT ENSURES INDIGENOUS PEOPLES ARE REPRESENTED IN INTERNATIONAL FORUMS BY THEIR OWN PEOPLE RATHER THAN BY NON-GOVERNMENTAL ORGANIZATIONS.

IN CONSULTATION WITH FIRST NATIONS, CANADA MUST PROVIDE FINANCIAL SUPPORT FOR THE CREATION AND MAINTENANCE OF A FUND TO FINANCE FIRST NATIONS' DIRECT PARTICIPATION IN RELEVANT INTERNATIONAL FORUMS.

160

Although non-governmental organizations recognized by the United Nations, some of which are Aboriginal, have done good work in the past in attempting to protect the rights and interests of all indigenous peoples under international law, it is time for the indigenous peoples to begin to represent themselves and their interests and perspectives more directly. As a first step, we must secure agreement among ourselves and with the international community to participate directly in international forums, otherwise we will continue to watch from the sidelines while issues vital to us are debated by others.

The United Nations Voluntary Fund for indigenous participation in international meetings and conferences is simply insufficient to permit the participation of all the affected indigenous peoples. It is also inappropriate that indigenous peoples within the borders of Canada not be supported directly by the state which has benefitted from the appropriation of First Nations lands and resources. The advent and continued existence of Canada as a nation state has been the single most significant political event in the modern existence of First Nations, and has led to many of the conditions which prevent First Nations from moving forward more quickly with pride and confidence. It is therefore fitting that Canada financially assist First Nations to attend international meetings at which issues of mutual interest and significance will be discussed.

Canada to support right to self-determination

THE GOVERNMENT OF CANADA SHOULD SUPPORT THE INCLUSION OF THE RIGHT TO SELF-DETERMINATION OF INDIGENOUS PEOPLES IN THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES.

161
Canada's own Charter is a response to and a reflection of the International Covenant on Civil and Political Rights and an indication of the degree to which Canada respects and conforms to international standards. That being the case, it is simply inconceivable that Canada not support the right of self-determination of indigenous peoples which has now emerged as a legitimate element of modern international law. This is all the more so when one considers that Canada has long since ratified the International Covenant on Civil and Political Rights which itself supports self-determination in its opening article.

treaties as international instruments

THE GOVERNMENT OF CANADA MUST SUPPORT THE RECOGNITION BY THE INTERNATIONAL COMMUNITY OF OUR TREATIES AS INTERNATIONAL INSTRUMENTS.

162
As Sioui in Canada and as Cherokee Nation vs. State of Georgia in the United States graphically illustrate, the treaties between First Nations and the European colonizing nations in North America have always been based on, and reflective of, prevailing international law principles. First Nations were recognized as having the capacity to enter into and to fulfil their obligations under these instruments. The instruments remain, but Canada now refuses to respect their international character and continues to fail to carry out its obligations under them or attempts to apply domestic law to their interpretation.

Given the failure of Canada to respect the international character of its own treaties, the international community must become involved in assuring that the obligations of its member state Canada, will be carried out.

recognition of treaties

CANADA MUST SUPPORT THE RECOGNITION BY THE INTERNATIONAL COMMUNITY OF THE SPIRIT AND INTENT OF TREATIES AS UNDERSTOOD BY FIRST NATIONS.

163
In domestic law, Canadian courts have now recognized that treaty interpretation must take into consideration the perspective and understanding of those who signed them. It is no longer acceptable to ignore First Nations perspectives on the meaning and intent of treaty provisions, and this is all the more the case where terms in the treaty may be ambiguous or otherwise difficult to interpret. The reason for this rule of interpretation is straightforward: Treaties were drafted by only one party, the Crown, in English, and often do not adequately mirror the intentions or understanding of the First Nations signatories. Treaties are not simply domestic contracts. They are international in character. It is now time that Canada's domestic rule of treaty interpretation be brought to the international arena. Failure to do so will put the lie to the new relationship of partnership between Canada and First Nations and will demonstrate that Canada is not committed to rules of interpretation developed by its own courts.

promote and protect human rights

FIRST NATIONS MUST TAKE A LEADERSHIP ROLE IN ESTABLISHING AN INTERNATIONAL ORGANIZATION CONSISTING OF INDIGENOUS PEOPLES AND THEIR GOVERNMENTS FOR THE PROMOTION AND PROTECTION OF INDIGENOUS PEOPLES AND THEIR HUMAN RIGHTS.

164
The borders between modern nation states such as Canada and the United States were constructed without the consent or advice of First Nations and often fail to respect our traditional territories. First Nations sometimes find themselves split up by such boundaries, and subject to the jurisdiction of governments not of their choosing. Only by coming together in one large international organization can we, as indigenous peoples, overcome the fragmentation of our nations that invasion, colonization and artificial borders have brought about. Our challenges are common. We must re-establish the pre-contact harmony and spiritual unity of all indigenous peoples if our collective voice on the international stage is to carry real weight and be effective.

support all indigenous peoples

FIRST NATIONS MUST SUPPORT INDIGENOUS PEOPLES IN THEIR QUEST FOR SELF-DETERMINATION AND INDEPENDENCE.

165

In many parts of the world, the future of indigenous peoples is in great jeopardy because of state-sponsored attempts to disperse or to assimilate them. In some cases, genocide is being practised against indigenous peoples on a massive scale. First Nations must do all they can to support our indigenous brothers and sisters to free themselves from the oppression that bears down on them. The challenges, dangers and opportunities we face as indigenous peoples are common to all of us, differing only in degree. We must call for the self determination and independence of all indigenous peoples worldwide. We cannot abandon our fellow indigenous peoples.

RECOMMENDATIONS

Treaties:

historic context

ANY CONTEMPORARY POLICY ON TREATIES BETWEEN THE CROWN AND FIRST NATIONS MUST BE PLACED WITHIN THE HISTORIC CONTEXT OF TREATY MAKING. IT IS PROPOSED THAT KEY PRINCIPLES FROM THE TREATY-MAKING PROCESS BE USED AS THE BASIS FOR ANY NEW POLICY ON FIRST NATION RELATIONS IN CANADA.

THESE KEY PRINCIPLES SHOULD INCLUDE RESPECT FOR FIRST NATIONS CULTURE AND SPIRITUALITY, RESPECT FOR THE MUTUALITY OF THE RELATIONSHIP, RESPECT FOR THE EQUALITY OF PEOPLES, FIRST NATION AND CANADIAN, AND A FUNDAMENTAL COMMITMENT TO THE PRINCIPLES OF HONOURING OBLIGATIONS FLOWING FROM SPECIFIC TREATIES.

1

inherent right

TREATIES BETWEEN FIRST NATIONS AND THE CROWN REINFORCE THE INHERENT RIGHT AND RESPONSIBILITY OF FIRST NATIONS TO GOVERN THEIR PEOPLE. ANY FUTURE POLICY BY THE GOVERNMENT OF CANADA MUST RECOGNIZE THIS IN A FUNDAMENTAL WAY. THE NATION-TO-NATION RELATIONSHIP BETWEEN FIRST NATIONS AND THE CROWN IS THE BASIS FOR SUCH POLICY. THIS HISTORIC RELATIONSHIP, CONFIRMED IN OUR TREATIES, MUST BE ENTRENCHED IN THE CONSTITUTION OF CANADA.

2

spirit and intent

FIRST NATIONS TREATIES MUST BE IMPLEMENTED IN ACCORDANCE WITH THE SPIRIT AND INTENT AS UNDERSTOOD BY FIRST PEOPLES, ESPECIALLY OUR ELDERS, WHOSE KNOWLEDGE OF THE TREATIES IS STRONG. SPIRIT AND INTENT MEANS MORE THAN THE ENGLISH OR FRENCH TEXT BUT REQUIRES AN EXAMINATION OF THE WRITTEN AND ORAL HISTORY OF THE TREATY NEGOTIATIONS.

3

record oral history

THE GOVERNMENT OF CANADA MUST FUND A MAJOR INITIATIVE TO RECORD THE ORAL HISTORY OF FIRST NATIONS TREATIES. THIS WOULD ALLOW FIRST NATIONS THE RESOURCES REQUIRED TO GATHER OUR HISTORY OF THE TREATIES AND RECORD THEM IN A CULTURALLY APPROPRIATE WAY FOR THE PURPOSES OF EDUCATING COMMUNITY MEMBERS AND FOR NEGOTIATIONS WITH GOVERNMENTS.

THE ORAL HISTORY OF THE TREATY MUST BE ACCEPTED IN SUCH NEGOTIATIONS OR PROCEEDINGS AS VALID - AND AS A BASIS FOR DEVELOPING RESPONSES TO TREATY GRIEVANCES, INCLUDING ISSUES OF INTERPRETATION ARISING IN IMPLEMENTATION DISCUSSIONS.

4

treaty review

IT IS ESSENTIAL THAT THE CROWN, REPRESENTED BY GOVERNMENTS, ESPECIALLY THE FEDERAL GOVERNMENT, ENGAGE, IN CONJUNCTION WITH TREATY NATIONS, WHICH SO REQUEST, IN A COMPREHENSIVE TREATY REVIEW PROCESS TO CONSIDER THE NATURE OF THE TREATY RELATIONSHIP AND PROBLEMS IN REGARD TO INTERPRETATION OF TREATIES, AND DEVISE A DETAILED PLAN FOR THE IMPLEMENTATION OF TREATY RIGHTS.

THIS TREATY REVIEW PROCESS MUST BE STRUCTURED AS THE FIRST PHASE OF THE IMPLEMENTATION PROCESS.

5

office of treaty obligation

AN OFFICE OF TREATY OBLIGATION MUST BE CREATED BY THE FEDERAL GOVERNMENT IN CONJUNCTION WITH FIRST NATIONS. ALL MATTERS STEMMING FROM TREATIES, ESPECIALLY FIDUCIARY OBLIGATIONS MUST BE ADMINISTERED BY THIS OFFICE. A SENIOR OFFICIAL, RESPONSIBLE FOR TREATY OBLIGATIONS, MUST REPORT DIRECTLY TO THE FEDERAL CABINET AND OVERSEE THE OPERATIONS OF THE OFFICE. THE OFFICIAL MUST REPORT ANNUALLY ON THE REVIEW PROGRESS AND TREATY IMPLEMENTATIONS.

IT MAY PROVE TO BE DESIRABLE FOR SIMILAR PROVINCIAL OFFICES TO BE ESTABLISHED TO DEAL WITH MATTERS WHICH HAVE BEEN TRANSFERRED TO PROVINCIAL JURISDICTION AND ARE CRITICAL TO TREATY JUSTICE.

6

treaty commissioner

THE FEDERAL GOVERNMENT MUST APPOINT A TREATY COMMISSIONER FOR EACH TREATY AREA. THE RESPONSIBILITY OF THE TREATY COMMISSIONER WILL BE TO ACT AS AN INTERMEDIARY BETWEEN GOVERNMENT AND FIRST NATIONS AND FACILITATE THE HONOURABLE AND JUST RESOLUTION OF TREATY DISPUTES THROUGH NEGOTIATED AND DIPLOMATIC MEANS.

THE TREATY COMMISSIONER WILL BE APPOINTED FOLLOWING DISCUSSIONS WITH FIRST NATIONS AS TO THE MOST APPROPRIATE REPRESENTATIVE AND THE NATURE AND EXTENT OF THE RESPONSIBILITIES OF THE COMMISSIONER. EACH TREATY COMMISSIONER WILL REPORT ANNUALLY ON THE PROGRESS IN RESOLVING TREATY GRIEVANCES AND ON OBSTACLES TO TREATY IMPLEMENTATION.

7

off-loading to provinces or First Nations

THE FEDERAL GOVERNMENT MUST STOP THE TREND TOWARD OFF-LOADING OBLIGATIONS EITHER TO PROVINCIAL GOVERNMENT OR FIRST NATIONS. IN THE AREAS OF SOCIAL ASSISTANCE, EDUCATION AND HEALTH, THE FEDERAL GOVERNMENT HAS ACTED IN A MANNER INCONSISTENT WITH TREATY OBLIGATIONS AND MUST AGAIN ASSUME RESPONSIBILITY FOR TREATY FIRST NATIONS.

THE FEDERAL GOVERNMENT MUST PROVIDE SUFFICIENT RESOURCES WHICH WILL ENABLE THE TREATY FIRST NATIONS TO MAINTAIN REGULAR COMMUNICATION NETWORKS RESPECTING TREATY ISSUES.

8

portable rights

TREATY RIGHTS ARE FULLY PORTABLE AND FIRST NATIONS CITIZENS MUST NOT BE RESTRICTED TO THE ENJOYMENT OF THEIR TREATY RIGHTS ON THE BASIS OF RESIDENCE ON RESERVE LAND. THE GOVERNMENT MUST ENSURE THAT ALL POLICIES AND LEGISLATION AFFECTING FIRST NATIONS REFLECT THE FACT THAT A TREATY PROMISE IS BINDING. NO RESTRICTIONS MUST BE PLACED ON TREATY RIGHTS WITHOUT THE CONSENT OF FIRST NATIONS.

9

treaty tribunal

A <u>TREATY TRIBUNAL</u> OR TRIBUNALS MUST BE ESTABLISHED BY THE FEDERAL GOVERNMENT IN CONJUNCTION WITH TREATY FIRST NATIONS IN ORDER TO RESOLVE DISPUTES ARISING FROM TREATIES, INCLUDING TREATY IMPLEMENTATION ISSUES. THE TRIBUNAL SHOULD HAVE A BROAD MANDATE AND SHOULD BE STAFFED BY FIRST NATIONS AND GOVERNMENT REPRESENTATIVES AND DEAL WITH TREATY ISSUES WHICH REQUIRE FORMAL RESOLUTION.

10

remedies for breaches

IT IS IMPORTANT THAT VIOLATIONS OR BREACHES OF SPECIFIC TERMS OF TREATIES, OR THE TREATY RELATIONSHIP, BE REMEDIED. APPROPRIATE REMEDIES COULD RANGE FROM LEGISLATIVE CHANGES TO MONETARY AND LAND COMPENSATION.

A FULL RANGE OF REMEDIES SHOULD BE AVAILABLE FOR COMPENSATION FOR TREATY BREACHES. THE TREATY COMMISSIONER MUST BE GIVEN THE MANDATE TO REVIEW THE SUITABILITY OF ANY APPROPRIATE REMEDY FOR TREATY VIOLATION.

11

resources for public education

IT IS NECESSARY TO PROVIDE SUFFICIENT RESOURCES FOR FIRST NATIONS TO LAUNCH PUBLIC EDUCATION CAMPAIGNS ON ALL ISSUES RELATED TO FIRST NATIONS IN SCHOOLS AND COMMUNITIES. THIS SHOULD BE DONE ON BOTH THE NATIONAL AND REGIONAL LEVEL.

THE PRODUCTS OF THE CAMPAIGN MUST BE MADE AVAILABLE AS WIDELY AS POSSIBLE, INCLUDING TO NEW IMMIGRANTS AND THOSE WISHING TO EMIGRATE TO CANADA.

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THE PRODUCTS OF THE CAMPAIGN MUST BE MADE AVAILABLE AS WIDELY AS POSSIBLE, INCLUDING TO NEW IMMIGRANTS AND THOSE WISHING TO EMIGRATE TO CANADA.

12

Self-Determination and Restructuring Government Relations:

WE WANT OUR RIGHT TO SELF-DETERMINATION FULLY RECOGNIZED AND IMPLEMENTED. WE WANT THE INHERENT RIGHT TO SELF-GOVERNMENT TO BE EXPLICITLY RECOGNIZED AND PROTECTED WITHIN THE CONSTITUTION OF CANADA. WHILE THIS INHERENT RIGHT IS ALREADY AMONG THOSE ABORIGINAL TREATY RIGHTS PROTECTED BY SECTION 35, AN EXPLICIT, CLARIFYING AMENDMENT IS REQUIRED TO ENSURE THAT ALL GOVERNMENTS WITHIN CANADA RECOGNIZE THE LEGAL AUTHORITY OF FIRST NATION GOVERNMENTS AND COMPLY WITH THE INHERENT RIGHT OF FIRST NATIONS TO SELF-GOVERNMENT.

TO EFFECTIVELY IMPLEMENT OUR RIGHT TO SELF-DETERMINATION WILL REQUIRE THE ELIMINATION OF THE INDIAN ACT AND A NEW DIRECTION IN GOVERNMENT POLICY BASED ON RESPECT FOR THE AUTONOMY OF OUR NATIONS. THE EXERCISE OF SELF-GOVERNMENT NECESSARILY INCLUDES JURISDICTION OVER ALL MATTERS RELATING TO OUR PEOPLES AND OUR LANDS.

recognition and implementation of rights

THE FEDERAL GOVERNMENT MUST STOP USING SECTION 91(24) TO UNDERMINE AND LIMIT INHERENT, ABORIGINAL AND TREATY RIGHTS. SECTION 91(24) MUST BE USED TO PROVIDE GUIDANCE TO ALL LEVELS OF GOVERNMENT IN FULFILLING THEIR OBLIGATIONS TO FIRST NATIONS.

13

recognition of inherent rights

THE GOVERNMENTS OF CANADA MUST RECOGNIZE THAT THE INHERENT RIGHT TO SELF-DETERMINATION IS THE BASIS FOR ALL POLICIES, LEGISLATION AND RELATIONS REGARDING FIRST NATION PEOPLES.

14

Indian Act phased out

THE INDIAN ACT MUST BE PHASED OUT, AS IT IS INCONSISTENT WITH FIRST NATIONS INHERENT RIGHT TO SELF-DETERMINATION. THE TRANSITION TO SELF-DETERMINATION MUST BE THE TOP PRIORITY FOR ALL GOVERNMENTS IN CANADA.

15

control of citizenship

THE RIGHT OF FIRST NATIONS TO DETERMINE AND CONTROL THEIR CITIZENSHIP MUST BE RECOGNIZED AS INTEGRAL TO THEIR RIGHT TO SELF-DETERMINATION. THE INDIAN ACT MUST BE ABOLISHED AND THE AUTHORITY OF FIRST NATIONS PEOPLE IN THIS AREA EXPLICITLY RECOGNIZED.

16

re-establish governments

THE MOVE TO RE-ESTABLISH AND STRENGTHEN FIRST NATION GOVERNMENTS MUST BE ENCOURAGED BY ALL LEVELS OF GOVERNMENT. THE ESTABLISHMENT OF FIRST NATION GOVERNMENTS BASED ON FIRST NATION TRADITIONS, INCLUDING HEREDITARY SYSTEMS, CLAN SYSTEMS AND OTHER GOVERNING STRUCTURES SHOULD BE ENCOURAGED AND INNOVATIVE INSTITUTIONS DEVELOPED TO REFLECT BOTH THESE TRADITIONS AND CONTEMPORARY GOVERNING NEEDS.

17

First Nations jurisdiction

ALL LEVELS OF GOVERNMENT MUST RECOGNIZE THE FULL JURISDICTION OF FIRST NATIONS GOVERNMENTS OVER ALL AREAS PROMOTING THE DEVELOPMENT OF FIRST NATIONS AS PEOPLES, ESPECIALLY WITH RESPECT TO LANDS, RESOURCES, CULTURE, TRADITIONS AND CITIZENSHIP. FEDERAL AND PROVINCIAL GOVERNMENTS MUST VACATE JURISDICTION OVER ALL MATTERS REQUIRED BY FIRST NATIONS TO EFFECTIVELY EXERCISE THEIR FULL LEGAL AUTHORITY.

THE RECOGNITION OF OUR JURISDICTION MUST BE ACCOMPANIED BY A PROCESS FOR DEVELOPING AN ORDERLY TRANSITION TO SELF-GOVERNMENT. THIS PROCESS MUST BE DEVELOPED WITH FIRST NATIONS POLITICAL REPRESENTATIVES AND GOVERNMENT REPRESENTATIVES. IT MUST BE CLEAR THAT OUR JURISDICTION IS NOT DEPENDENT ON NEGOTIATED AGREEMENTS BUT THAT THIS OPTION IS AVAILABLE TO ENSURE SOCIAL PEACE.

18

fiduciary obligation

THE FULFILMENT OF FIDUCIARY OBLIGATIONS TO FIRST NATIONS, FLOWING FROM RELATIONS BETWEEN FIRST NATIONS AND CANADA, IS ESSENTIAL. IT WILL REQUIRE FUNDAMENTAL CHANGE IN GOVERNMENT ATTITUDE TOWARD FIRST NATIONS AND THEIR RIGHTS IN POLITICAL AND LEGAL FORA AND THE GENUINE FOSTERING OF AN HONOURABLE APPROACH TO NEW RELATIONSHIPS.

19

negotiation secretariat

IT IS CRUCIAL THAT NEGOTIATIONS ON THE TRANSITION TO SELF-GOVERNMENT, WHEN DESIRED BY FIRST NATIONS, PROCEED ON AN 'IN GOOD FAITH' BASIS AND THAT THE CONDUCT OF GOVERNMENT PARTIES BE CAREFULLY SCRUTINIZED TO ENSURE THAT PATTERNS OF BEHAVIOUR OF THE PAST, SUCH AS FORCEFUL NEGOTIATION TACTICS AND THE DENIAL OF RIGHTS, ARE NOT REINFORCED IN THE PROCESS.

A NEGOTIATION SECRETARIAT MUST BE ESTABLISHED TO HANDLE THE PROGRESS OF NEGOTIATIONS AND MUST BE INDEPENDENT FROM THE DEPARTMENT OF INDIAN AFFAIRS.

20

conflict tribunal

FIRST NATIONS AND ALL LEVELS OF GOVERNMENT MUST ESTABLISH A SPECIAL TRIBUNAL TO DEAL WITH CONFLICTS ARISING FROM THE TRANSITION TO SELF-GOVERNMENT. THIS TRIBUNAL MUST BE CONSTITUTED OF EQUAL NUMBERS OF FIRST NATION AND NON-FIRST NATION MEMBERS AND IT MUST BE AVAILABLE TO DEAL WITH SPECIFIC DISPUTES WHICH ARISE, OR GENERAL DIFFICULTIES GETTING NEGOTIATIONS STARTED.

21

First Nation responsibilities

FIRST NATIONS MUST JOINTLY DETERMINE AND RECOMMEND CHANGES IN CANADIAN LEGISLATION POLICY, FINANCING AND OTHER NON-ABORIGINAL GOVERNMENT INSTITUTIONS, NECESSARY TO CONFORM WITH THE INHERENT RIGHT TO SELF-GOVERNMENT.

FIRST NATIONS MUST JOINTLY IDENTIFY AND BEGIN TO PASS LEGISLATION TO AFFECT SYSTEMIC CHANGE AND, IN THE LONG TERM, FIRST NATIONS MUST ESTABLISH INSTITUTIONS NEEDED TO EXERCISE THEIR RIGHT TO SELF-GOVERNMENT.

22

Lands and Resources:

a secure land base

THE GOVERNMENT OF CANADA MUST RECOGNIZE THAT FIRST NATIONS ARE LEGITIMATE GOVERNMENTS WHICH NEED FULL AUTHORITY AND CONTROL OVER THEIR LAND AND RESOURCE BASE.

ALL LEVELS OF GOVERNMENT MUST RECOGNIZE AND RESPECT FIRST NATIONS LAND RIGHTS, WHETHER BASED ON INHERENT, ABORIGINAL OR TREATY RIGHTS.

THE FEDERAL GOVERNMENT MUST ENSURE THAT FIRST NATIONS OWNERSHIP, JURISDICTION, ACCESS OR ANY OTHER INTERESTS IN LANDS RESOURCES AND WATER BE IMPLEMENTED IN A MANNER MOST BENEFICIAL TO FIRST NATIONS.

21

not limited to reserve lands

FEDERAL AND PROVINCIAL GOVERNMENTS MUST ENSURE THAT FIRST NATIONS HAVE AN ADEQUATE LAND BASE AND THAT FIRST NATION RIGHTS WITH RESPECT TO LANDS, WATER OR RESOURCES WILL NOT BE LIMITED TO RESERVE LANDS

22

fair and equitable settlements

FIRST NATIONS INTERESTS IN ALL MATTERS RELATING TO LAND AND RESOURCE ISSUES MUST BE DETERMINED ONLY WITH THE FULL INVOLVEMENT OF FIRST NATIONS THROUGH EFFECTIVE INTERGOVERNMENTAL MECHANISMS. UNILATERAL FEDERAL OR PROVINCIAL DETERMINATION OF THESE ISSUES IS NOT ACCEPTABLE TO FIRST NATIONS.

23

independent mechanism

THE GOVERNMENT OF CANADA AND FIRST NATIONS MUST JOINTLY DEVELOP, EMPOWER AND ESTABLISH AN INDEPENDENT MECHANISM TO CONFIRM CLAIMS AGAINST THE FEDERAL GOVERNMENT, AS WELL AS MANAGE AND FACILITATE NEGOTIATIONS BETWEEN FIRST NATIONS AND THE FEDERAL GOVERNMENT.

24

modern treaty making

THE FEDERAL GOVERNMENT MUST IMPLEMENT A NEW APPROACH TO NEGOTIATING AGREEMENTS DEALING WITH ABORIGINAL TITLE, AS THE EXISTING COMPREHENSIVE CLAIMS PROCESS IS NOT A TRULY MODERN TREATY MAKING PROCESS AND IS CONTRARY TO SECTION 35 OF THE CONSTITUTION.

25

litigation

ABORIGINAL AND TREATY RIGHTS ARE CONSTITUTIONALLY RECOGNIZED AND SHOULD THEREFORE ONLY BE RULED UPON BY COURTS COMPETENT IN THIS PARTICULAR AREA OF EXPERTISE. THE FEDERAL GOVERNMENT MUST CHANGE EXISTING LAWS TO ELIMINATE CROWN RELIANCE ON TECHNICAL DEFENCE SUCH AS CROWN IMMUNITY FROM SUIT, ACT OF STATE, STATUTES OF LIMITATION AND THE DOCTRINES OF LACHES, ESTOPPEL AND ACQUIESCENCE, WHICH WERE NEVER INTENDED TO DEPRIVE FIRST NATIONS OF LEGAL RIGHTS AND REMEDIES.

26

hunting, fishing trapping and gathering

THE INHERENT, ABORIGINAL AND TREATY RIGHTS OF FIRST NATIONS TO HUNTING, FISHING, TRAPPING AND GATHERING MUST TAKE PRECEDENCE OVER OTHER THIRD PARTY INTERESTS.

FIRST NATIONS MUST HAVE ACCESS TO ALL UNOCCUPIED CROWN LANDS WITHIN THEIR TRADITIONAL TERRITORIES IN ORDER THAT FIRST NATIONS PEOPLES MAY FREELY EXERCISE THEIR RIGHTS AND JURISDICTIONS WITH RESPECT TO HUNTING, FISHING, TRAPPING AND GATHERING RESOURCES.

27

Environment:

financial support

THE FEDERAL GOVERNMENT MUST ESTABLISH A FINANCIAL SUPPORT PROGRAM FOR TRIBAL COUNCILS, REGIONAL ORGANIZATIONS AND INDIVIDUAL FIRST NATIONS TO DEVELOP AND STRENGTHEN EXISTING CAPACITIES OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND IN THE AREAS OF ENVIRONMENTAL ASSESSMENT, FORESTRY, WATER AND FISHERIES.

28

recognition of rights

INTERNATIONAL NATION STATES, INCLUDING CANADA, MUST RECOGNIZE TREATY AND ABORIGINAL RIGHTS TO TERRITORIES AND ABORIGINAL USES OF THE LAND FOR HUNTING, TRAPPING, FISHING AND GATHERING AND TAKE URGENT STEPS TO RESPECT AND IMPLEMENT THESE RIGHTS.

FIRST NATIONS MUST DOCUMENT TRADITIONAL KNOWLEDGE AND PRACTICES TO ENSURE THE DETAILED UNDERSTANDING OF THE ENVIRONMENT THAT HAS ACCUMULATED FOR THOUSANDS OF YEARS IS NOT LOST AND RE-INSTITUTE IT INTO THE COMMUNITY. FIRST NATIONS MUST IDENTIFY AND DEMARCATE THEIR TRADITIONAL TERRITORIES AND PROMOTE AND ASSERT THE RECOGNITION OF THEIR RIGHTS.

29

environmental law and self-government

FIRST NATIONS AND THE FEDERAL GOVERNMENT MUST DEVELOP A STRATEGY TO ENSURE THAT APPLICATION OF ENVIRONMENTAL LAWS ON FIRST NATIONS LANDS ARE NOT INCONSISTENT WITH THE PROCESS OF DEVOLUTION AND SELF-GOVERNMENT. THE FEDERAL GOVERNMENT MUST ENSURE RESOURCES TIED TO PROGRAMS AND SERVICES ARE TRANSFERRED TO FIRST NATIONS.

A COMPREHENSIVE REVIEW MUST BE UNDERTAKEN BY FEDERAL AND PROVINCIAL GOVERNMENTS TO AMEND EXISTING POLICIES AND REGULATIONS WHICH ARE DEEMED BY FIRST NATIONS AS INCONSISTENT WITH ABORIGINAL AND TREATY RIGHTS. THIS REVIEW MUST BE PREDICATED ON PRINCIPLES WHICH WOULD ENSURE AN EARLY, EFFECTIVE, COMPREHENSIVE AND CULTURALLY APPROPRIATE CONSULTATION PROCESS WITH IMPACTED COMMUNITIES.

THE FEDERAL GOVERNMENT MUST SUPPORT AND RESOURCE THE ESTABLISHMENT OF A NATIONAL FIRST NATIONS ADVISORY COUNCIL WITH APPROPRIATE AUTHORITY TO ENSURE FEDERAL LEGISLATIVE, REGULATORY AND POLICY INITIATIVES ARE COMPLEMENTARY TO FIRST NATIONS CONCERNS, ASPIRATIONS AND TREATY AND ABORIGINAL RIGHTS.

30

water rights

THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE THE ESTABLISHMENT OF A NATIONAL FIRST NATIONS WATER COMMISSION, WHICH WILL EXAMINE AND DEVELOP POLICIES AND CARRY OUT ACTION-RESEARCH IN THE AREAS OF WATER ACCESS, CONTROL, JURISDICTION AND MANAGEMENT ISSUES AND ESTABLISH A RESEARCH CLEARINGHOUSE.

THE FEDERAL GOVERNMENT MUST REVIEW THE CURRENT FEDERAL WATER POLICY IN LIGHT OF THE GUERIN AND SIOUI DECISION, TO AFFECT CHANGE AND ENSURE CONSISTENCY AND ACCORDANCE WITH FEDERAL FIDUCIARY RESPONSIBILITIES TO FIRST NATIONS.

31

environmental monitoring

THE FEDERAL GOVERNMENT MUST ESTABLISH A FINANCIAL SUPPORT PROGRAM FOR FIRST NATIONS ORGANIZATIONS TO MONITOR ENVIRONMENTAL ISSUES AND IMPACTS AS A RESULT OF PROPOSED OR ON-GOING DEVELOPMENT ACTIVITIES. THIS WOULD INCLUDE THE EFFECTS ON TRADITIONAL LAND AND COMMUNITIES, AND ENSURE THE FINANCIAL CAPACITY TO TAKE MITIGATIVE ACTION, RESTORE AND CLEAN-UP CONTAMINATED SITES AND EFFECTIVELY PARTICIPATE IN FEDERAL, PROVINCIAL AND MUNICIPAL REGULATORY PROCESSES.

32

traditional knowledge

THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE THE ESTABLISHMENT OF INDIGENOUS KNOWLEDGE AND MANAGEMENT CENTRES OF EXCELLENCE, TO SHARE INFORMATION AND ASSIST OTHER FIRST NATIONS COMMUNITIES IN DEVELOPING THEIR OWN SYSTEMS AND FOSTER WIDE APPRECIATION OF ABORIGINAL KNOWLEDGE.

33

Health and Social Development:

rights

THE GOVERNMENT OF CANADA MUST RECOGNIZE THE RIGHT TO FIRST NATIONS CONTROL OVER HEALTH CARE AND SOCIAL SERVICES. GOVERNMENTS AND FIRST NATIONS MUST NEGOTIATE THE DETAILS AND HOW THEY WILL BE IMPLEMENTED.

34

clear jurisdiction

35

GOVERNMENTS IN CANADA AND FIRST NATIONS MUST NEGOTIATE AN END TO THE OVERLAPPING JURISDICTION AND RESULTING GAPS IN SERVICE DELIVERY.

treaty rights

36

THE FEDERAL GOVERNMENT MUST RECOGNIZE THE TREATY RIGHT TO QUALITY HEALTH CARE AND DETAILS MUST BE NEGOTIATED WITH FIRST NATIONS.

living conditions

37

THE GOVERNMENT OF CANADA MUST IMPROVE THE HOUSING, SANITATION AND ENVIRONMENTAL CONDITIONS IN FIRST NATIONS COMMUNITIES.

diabetes

38

THE GOVERNMENT MUST INCREASE ITS FINANCIAL SUPPORT TO TREAT AND PREVENT DIABETES AMONG FIRST NATIONS. THESE EFFORTS SHOULD CONTINUE TO BE COLLABORATIVE AND CO-ORDINATED WITH FIRST NATIONS AND ALL RELEVANT GROUPS INVOLVED IN DIABETES PREVENTION, TREATMENT AND RELATED SUPPORT SERVICES.

tuberculosis

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A STRATEGY TO TREAT AND PREVENT THE SPREAD OF TUBERCULOSIS.

39

HIV/AIDS

THE GOVERNMENT MUST FINANCE THE EFFORTS OF FIRST NATIONS TO DEVELOP NATIONAL, REGIONAL AND COMMUNITY LEVEL PROGRAMS AIMED AT TREATING AND PREVENTING HIV/AIDS AMONG FIRST NATIONS PEOPLE.

40

fetal alcohol syndrome

THE GOVERNMENT MUST IMMEDIATELY PROVIDE FINANCIAL SUPPORT FOR THE DEVELOPMENT AND IMPLEMENTATION OF A FIRST NATIONS LONG-TERM STRATEGY TO PREVENT FETAL ALCOHOL SYNDROME/FETAL ALCOHOL EFFECTS AND ITS TRAGIC RESULTS, AS WELL AS ASSIST THOSE LIVING WITH FAS/FAE TODAY.

41

suicide

FIRST NATIONS MUST DEVELOP, AND GOVERNMENTS MUST FUND A STRATEGY TO INCREASE THE POTENTIAL IN FIRST NATIONS YOUTH AND COMBAT YOUTH SUICIDE.

42

violence

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, ENHANCED STRATEGIES TO COMBAT DOMESTIC VIOLENCE, INCLUDING EDUCATION AND HEALING CAMPAIGNS, TREATMENT PROGRAMS FOR BATTERERS, CRISIS PATROL TEAMS AND SAFE HOMES.

43

mental health

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A POLICY AND STRATEGY TO DEAL WITH MENTAL HEALTH ISSUES AMONG FIRST NATIONS PEOPLE.

44

adult care

THE GOVERNMENT OF CANADA MUST TAKE IMMEDIATE ACTION TO OVERCOME DEFICIENCIES IT HAS ALREADY IDENTIFIED IN THE PROVISION OF ADULT CARE SERVICES FOR FIRST NATIONS CITIZENS.

45

disabilities

THE GOVERNMENT OF CANADA, TOGETHER WITH FIRST NATIONS, MUST ESTABLISH A JOINT PROCESS TO ADDRESS OUTSTANDING ISSUES AFFECTING OUR CITIZENS WITH DISABILITIES.

46

remote regions

GOVERNMENTS AND FIRST NATIONS MUST MAKE HEALTH CARE AND SOCIAL SERVICES AVAILABLE IN UNDER-SERVICED REGIONS.

47

traditional medicine

GOVERNMENTS IN CANADA MUST ENSURE THAT HOSPITALS AND OTHER HEALTH CARE INSTITUTIONS ALLOW FIRST NATIONS PATIENTS THE RIGHT TO PRACTICE TRADITIONAL MEDICINE AND BELIEFS WITHOUT INTERFERENCE FROM HOSPITAL PERSONNEL.

48

travel expenses

THE FEDERAL GOVERNMENT MUST MAINTAIN AND IMPROVE ACCESS FOR TRADITIONAL HEALERS THROUGH THE NON-INSURED HEALTH SERVICES PROGRAM.

49

partnerships

FIRST NATIONS MUST DEVELOP AND GOVERNMENTS MUST FUND 'MODELS OF PARTNERSHIP' BETWEEN TRADITIONAL HEALING AND 'WESTERN' MEDICINE.

50

traditional healing

FIRST NATIONS MUST CONDUCT, AND GOVERNMENT AND MEDICAL ASSOCIATIONS MUST SUPPORT, A SERIES OF ROUND-TABLE DISCUSSIONS PERTAINING TO TRADITIONAL HEALING.

51

midwives

GOVERNMENTS IN CANADA MUST RECOGNIZE THE ROLE OF TRADITIONAL MIDWIVES. THEY MUST ALSO REMOVE ALL RESTRICTIVE LEGISLATION AND POLICIES WHICH PREVENT FIRST NATIONS WOMEN FROM USING MIDWIVES DURING NORMAL NON-MEDICAL RISK CHILDBIRTH.

52

professionals

FIRST NATIONS MUST DEVELOP, AND GOVERNMENT MUST FUND, A PROGRAM TO INCREASE THE NUMBER OF FIRST NATIONS HEALTH CARE AND SOCIAL SERVICES PROFESSIONALS.

53

health-care standards

FIRST NATIONS MUST ENSURE QUALITY HEALTH CARE AND SOCIAL SERVICES BY INSTITUTING CULTURALLY-APPROPRIATE HEALTH CARE STANDARDS.

54

co-ordination of health and social services

FIRST NATIONS MUST CO-ORDINATE, AND IF NECESSARY, INTEGRATE THEIR HEALTH CARE SYSTEMS AND SOCIAL SERVICE PROGRAMS.

55

assimilation through children

THE GOVERNMENT OF CANADA AND CHURCHES INVOLVED IN CARRYING OUT RESIDENTIAL SCHOOL POLICIES MUST FORMALLY APOLOGIZE TO FIRST NATIONS FOR THE DAMAGE CAUSED BY THE RESIDENTIAL SCHOOL SYSTEM. THIS APOLOGY MUST BE COUPLED WITH EFFORTS TO MAKE AMENDS AND COMPENSATION FOR THE PEOPLE WHO WERE VICTIMIZED.

56

child care

THE FEDERAL GOVERNMENT MUST DEVELOP A NATIONAL CHILD CARE PROGRAM AND RECOGNIZE FIRST NATIONS CHILDREN AS A PRIORITY.

adoption

FIRST NATIONS MUST ESTABLISH, AND GOVERNMENT MUST FUND, A NATIONAL FIRST NATIONS ADOPTION AND REPATRIATION BUREAU.

58

clearinghouse and research

FIRST NATIONS MUST ESTABLISH, AND GOVERNMENT MUST FUND, A NATIONAL CLEARINGHOUSE OF INFORMATION AND FIRST NATIONS RESEARCH INSTITUTE RELEVANT TO FIRST NATIONS HEALTH CARE AND SOCIAL DEVELOPMENT.

59

report to independent body

FEDERAL AND PROVINCIAL GOVERNMENTS MUST BE REQUIRED TO REPORT TO AN INDEPENDENT BODY, CREATED TO MONITOR GOVERNMENT PROGRESS IN IMPLEMENTING ALREADY EXISTING INQUIRY RECOMMENDATIONS. THIS BODY MUST REPORT TO PARLIAMENT YEARLY AND MUST BE COMPOSED OF ABORIGINAL ACADEMICS, MEMBERS OF THE ABORIGINAL LEGAL COMMUNITY AND JUDGES.

66

aboriginal justice institute

AN ABORIGINAL JUSTICE INSTITUTE MUST BE CREATED AS RECOMMENDED BY THE LAW REFORM COMMISSION OF CANADA TO CONDUCT RESEARCH AND EVALUATE GOVERNMENT PROGRAMS AND ASSIST ABORIGINAL COMMUNITIES, WHERE REQUESTED, IN DEVELOPING AND TESTING OPTIONAL MODELS OF JUSTICE SYSTEMS. THIS INSTITUTE MUST BE MANAGED AND STAFFED PRIMARILY BY ABORIGINAL PEOPLE.

67

THERE IS A NEED FOR CROSS-CULTURAL TRAINING FOR NON-NATIVE STAFF WORKING IN ANY CAPACITY WITH FIRST NATION CITIZENS IN THE FIELD OF JUSTICE.

68

THERE IS A NEED TO EMPLOY MORE NATIVE CITIZENS IN ALL AREAS OF THE JUSTICE SYSTEM.

69

THERE IS A NEED TO HAVE MORE COMMUNITY-BASED PROGRAMS IN CORRECTIONS.

70

THERE IS A NEED FOR MORE COMMUNITY-BASED ALTERNATIVES IN SENTENCING.

71

THERE IS A NEED FOR MORE SPECIALIZED ASSISTANCE TO NATIVE OFFENDERS.

72

THERE IS A NEED FOR ADDITIONAL NATIVE COMMUNITY INVOLVEMENT IN PLANNING, DECISION-MAKING AND SERVICE DELIVERY.

73

THERE IS A NEED FOR ADDITIONAL NATIVE ADVISORY GROUPS AT ALL LEVELS.

74

THERE IS A NEED FOR INCREASED RECOGNITION OF NATIVE CULTURE AND LAW IN CRIMINAL JUSTICE SYSTEM SERVICE DELIVERY PROGRAMS IN THE JUSTICE SYSTEM.

75

cross-cultural training

UNIVERSITIES, COLLEGES AND TRAINING INSTITUTIONS MUST INCREASE THE CAPACITY OF THEIR GRADUATES TO INTERACT WITH FIRST NATIONS IN A CULTURALLY SENSITIVE MANNER, WHICH INCLUDES UNDERSTANDING AND AWARENESS OF CULTURAL DIFFERENCES AND APPROACHES IN A VARIETY OF CIRCUMSTANCES. ALL LEARNING INSTITUTIONS MUST DESIGN INTEGRATED, COMPULSORY COURSES THROUGHOUT THE DURATION OF THEIR SPECIFIC PROGRAMME AND EVALUATE THE EFFECTIVENESS OF SUCH TRAINING ON A REGULAR BASIS. FUNDING FOR PROGRAM EVALUATION SHOULD BE PART OF THE OVERALL FISCAL PLANNING OF THE INSTITUTION.

ALL PROGRAM AND EVALUATION DESIGN MUST BE UNDERTAKEN WITH THE GUIDANCE AND ASSISTANCE OF FIRST NATIONS PROFESSIONALS IN EACH FIELD.

60

urban needs

ALL LEVELS OF GOVERNMENT MUST TAKE IMMEDIATE ACTION TO ADDRESS THE UNMET HEALTH NEEDS OF FIRST NATIONS CITIZENS RESIDING IN URBAN AREAS.

61

Justice:

inherent right to justice systems

FEDERAL AND PROVINCIAL GOVERNMENTS MUST RECOGNIZE THE INHERENT RIGHT OF FIRST NATIONS TO DEVELOP THEIR OWN INTERNAL JUSTICE SYSTEMS IN ACCORDANCE WITH THEIR OWN TRADITIONS, NEEDS AND ASPIRATIONS.

62

funding and technical support

FEDERAL AND PROVINCIAL GOVERNMENTS MUST PROVIDE FUNDING AND TECHNICAL SUPPORT FOR FIRST NATIONS TO INVESTIGATE AND COMPILE THEIR TRADITIONAL LAWS AND PROCEDURES, TO CONDUCT FULL COMMUNITY CONSULTATIONS, TO CONDUCT RESEARCH WHERE REQUIRED, TO SET UP PILOT AND DEMONSTRATION PROJECTS TO TEST MODELS, AND TO IMPLEMENT THE JUSTICE SYSTEM ULTIMATELY CHOSEN BY THE COMMUNITY.

63

review and audit of present system

FEDERAL AND PROVINCIAL GOVERNMENTS MUST CONDUCT A COMPLETE REVIEW AND AUDIT OF THE CURRENT JUSTICE SYSTEM, AND PROVIDE ACCURATE FIGURES ON COST IMPLICATIONS OF THE PRESENT APPROACH TO FIRST NATIONS AND JUSTICE ADMINISTRATION AT ALL STAGES FROM CRIME PREVENTION THROUGH POLICING, COURT TO CORRECTIONS, PAROLE AND REINTEGRATION INTO SOCIETY IN ORDER TO REALLOCATE CURRENT EXPENDITURES.

64

resolve land claims and treaty issues

FEDERAL AND PROVINCIAL GOVERNMENTS MUST RESOLVE, ON AN URGENT BASIS, LAND CLAIMS AND OUTSTANDING TREATY ISSUES, AND MUST INVEST IN FIRST NATION ECONOMIC DEVELOPMENT IN ORDER TO DEAL WITH SOCIAL AND ECONOMIC DEPRIVATION THAT UNDERLIES AND AGGRAVATES CRIME PROBLEMS IN FIRST NATION COMMUNITIES.

65

THERE IS A NEED FOR ADDITIONAL EMPHASIS ON CRIME PREVENTION PROGRAMS FOR ABORIGINAL OFFENDERS.

76

SELF-DETERMINATION MUST BE CONSIDERED IN PLANNING AND OPERATION OF THE CRIMINAL JUSTICE SYSTEM.

77

Education:

recognition of right to self-government

RECOGNITION BY FIRST NATIONS' RIGHTS TO SELF-GOVERNMENT MUST BE ENTRENCHED IN THE CONSTITUTION IT MUST ENCOMPASS THE RIGHT OF ABORIGINAL PEOPLES AS THE FIRST PEOPLES TO GOVERN THE LAND, PROMOTE THEIR LANGUAGES, CULTURES, TRADITIONS AND EDUCATIONAL PRACTICES.

78

education relevant to needs

OUR AIM IS TO MAKE EDUCATION RELEVANT TO THE PHILOSOPHY AND NEEDS OF FIRST NATIONS PEOPLE. WE WANT EDUCATION TO GIVE OUR CHILDREN A STRONG SENSE OF IDENTITY WITH CONFIDENCE IN THEIR PERSONAL WORTH AND ABILITY. WE BELIEVE IN EDUCATION AS A PREPARATION FOR TOTAL LIVING, AS A MEANS OF FREE CHOICE OF WHERE TO LIVE AND WORK, AND AS A MEANS OF ENABLING US TO PARTICIPATE FULLY IN OUR SOCIAL, POLITICAL AND EDUCATIONAL ADVANCEMENT.

79

implementation of 'Tradition and Education'

IMPLEMENTATION OF THE RECOMMENDATIONS IN *TRADITION AND EDUCATION* MUST PROCEED. CONSENSUS ON AND MOVEMENT TOWARDS A TRANSITION TO MEANINGFUL FIRST NATIONS JURISDICTION OVER EDUCATION MUST TAKE PLACE IMMEDIATELY.

80

aboriginal education council

NEGOTIATIONS MUST TAKE PLACE IMMEDIATELY TO ESTABLISH AN INDEPENDENT BODY, SUCH AS A NATIONAL ABORIGINAL EDUCATION COUNCIL, TO ASSUME RESPONSIBILITY FOR POLICY PLANNING, COORDINATION AND TRANSFER OF JURISDICTION ACCEPTABLE TO FIRST NATIONS AS DEFINED IN *TRADITION AND EDUCATION* AND THE 1972 *INDIAN CONTROL OF INDIAN EDUCATION* POLICY PAPER.

81

Language and Literacy:

constitutional recognition

THE GOVERNMENT OF CANADA THROUGH LEGISLATION MUST RECOGNIZE, PROTECT AND PROMOTE FIRST NATIONS LANGUAGES ON THE SAME BASIS AS ENGLISH AND FRENCH AND ENSHRINE THIS RIGHT IN THE CONSTITUTION.

82

redress damage

ALL LEVELS OF GOVERNMENT MUST REDRESS THE DAMAGE CAUSED BY PAST EFFORTS TO SUPPRESS FIRST NATIONS LANGUAGES AND CULTURES.

83

redress by churches

CANADIAN CHURCHES MUST REDRESS THE DAMAGE CAUSED BY PAST EFFORTS TO SUPPRESS FIRST NATIONS LANGUAGES AND CULTURES.

84

central element

FIRST NATIONS MUST MAKE ABORIGINAL LANGUAGES A CENTRAL ELEMENT OF THEIR EDUCATIONS SYSTEM.

85

official status

FIRST NATIONS GOVERNMENTS MUST PROTECT AND PROMOTE FIRST NATIONS LANGUAGES AND CULTURE IN THEIR CONSTITUTIONS, SELF-GOVERNMENT ACCORDS AND LAND RIGHTS AGREEMENTS.

86

central to community life

FIRST NATIONS MUST BE SUPPORTED TO MAKE THEIR LANGUAGES A CENTRAL ELEMENT OF COMMUNITY LIFE.

87

strengthen languages

FIRST NATIONS MUST TAKE THE RESPONSIBILITY TO STRENGTHEN THEIR LANGUAGES.

88

language/literacy foundation

THE FEDERAL GOVERNMENT MUST FINANCE THE ESTABLISHMENT AND OPERATIONS OF A FIRST NATIONS LANGUAGES AND LITERACY FOUNDATION.

89

clearinghouse

THE FEDERAL GOVERNMENT MUST PROVIDE THE RESOURCES TO ESTABLISH AND OPERATE A NATIONAL CLEARINGHOUSE ON FIRST NATIONS LANGUAGES.

90

sharing

FIRST NATIONS MUST ESTABLISH EFFECTIVE MECHANISMS TO SHARE KNOWLEDGE AND RESOURCES CONCERNING THEIR LANGUAGES.

91

Housing:

treaty rights

THE FEDERAL GOVERNMENT MUST WORK JOINTLY WITH FIRST NATIONS TO ESTABLISH A FORUM FOR BILATERAL DISCUSSION TO RESOLVE ISSUES RELATING TO ABORIGINAL AND TREATY RIGHTS TO HOUSING.

92

legislation & policy

THE FEDERAL GOVERNMENT MUST CHANGE POLICY AND LEGISLATION IN ORDER THAT FIRST NATIONS CAN DEVELOP, IMPLEMENT AND ENFORCE THEIR OWN LAWS, REGULATIONS AND POLICIES IN REGARD TO ALL ASPECTS OF HOUSING.

93

other legislation

THE FEDERAL GOVERNMENT MUST CHANGE THE FINANCIAL ADMINISTRATION ACT AND THE INCOME TAX ACT IN ORDER TO FACILITATE TRANSFER OF FUNDS TO FIRST NATIONS

94

housing delivery structures

FIRST NATIONS MUST ESTABLISH AND THE FEDERAL GOVERNMENT MUST FUND FIRST NATIONS HOUSING DELIVERY STRUCTURES.

95

First Nation institutions

THE FEDERAL GOVERNMENT MUST PROVIDE THE RESOURCES AND EFFECT LEGISLATIVE AND REGULATORY CHANGES TO ENABLE FIRST NATIONS TO ESTABLISH AND OPERATE INSTITUTIONS TO IMPROVE HOUSING QUALITY, INCREASE THE NUMBER OF HABITABLE UNITS AND THE FLOW OF ECONOMIC BENEFITS TO FIRST NATIONS.

96

Economic Development:

self-sufficiency

THE FEDERAL GOVERNMENT MUST SUPPORT FIRST NATIONS COMMUNITIES THROUGH FINANCIAL ASSISTANCE TO ENTREPRENEURS AND THE CREATION OF NEW INSTITUTIONS IN ACHIEVING ECONOMIC SELF-SUFFICIENCY.

97

jurisdiction

THE FEDERAL GOVERNMENT MUST RESOLVE JURISDICTIONAL ISSUES INHIBITING FIRST NATIONS ECONOMIC DEVELOPMENT.

98

control

ALL LEVELS OF GOVERNMENT MUST BEGIN NEGOTIATIONS WITH FIRST NATIONS IN REGARD TO THE TRANSFER OF ALL ECONOMIC, EMPLOYMENT AND TRAINING SUPPORT.

99

lands and resources

ALL LEVELS OF GOVERNMENT MUST NEGOTIATE WITH FIRST NATIONS GOVERNMENTS FOR LAND AND RESOURCES WHICH WILL CONTRIBUTE TO ECONOMIC SELF-SUFFICIENCY OF FIRST NATIONS.

100

gaming

ALL LEVELS OF GOVERNMENT MUST ACKNOWLEDGE FIRST NATIONS JURISDICTION OVER GAMING WHERE IT IS AN OPTION BEING CONSIDERED BY A FIRST NATION, AND SUPPORT THE ASSEMBLY OF FIRST NATION'S: RESOLUTION ON GAMING AND FUNDAMENTAL PRINCIPLES TO SUPPORT GAMING ON RESERVES, ADOPTED ON FEBRUARY 3, 1993.

101

economic development agency

THE FEDERAL GOVERNMENT MUST SUPPORT THE DEVELOPMENT OF THE NATIONAL FIRST NATIONS ECONOMIC DEVELOPMENT AGENCY TO MANAGE, CO-ORDINATE AND DISSEMINATE ECONOMIC DEVELOPMENT FUNDS FOR FIRST NATIONS.

102

financial institution

THE FEDERAL GOVERNMENT MUST ASSIST IN THE ESTABLISHMENT OF A FIRST NATIONS FINANCIAL INSTITUTION, MANAGED AND CONTROLLED BY FIRST NATIONS.

103

institute for business management

THE FEDERAL GOVERNMENT MUST ASSIST IN THE CREATION AND SUPPORT THE DEVELOPMENT OF A FIRST NATIONS INSTITUTE FOR BUSINESS MANAGEMENT AND ADMINISTRATION.

104

bonds

THE FEDERAL GOVERNMENT MUST ENACT LEGISLATION THAT ENABLES FIRST NATIONS TO ISSUE BONDS TO SUPPORT ECONOMIC DEVELOPMENT IN FIRST NATION TERRITORIES.

105

trust funds

THE FEDERAL GOVERNMENT MUST DIRECT THE AUDITOR GENERAL TO UNDERTAKE A FULL REVIEW OF ALL TRUST FUNDS HELD ON BEHALF OF FIRST NATIONS SINCE THE SIGNING OF THE TREATIES, IN ORDER TO ACCOUNT FOR FIRST NATIONS' FUNDS.

106

traditional economies

THE FEDERAL GOVERNMENT MUST DEVELOP A POLICY WHICH SUPPORTS THE DEVELOPMENT OF TRADITIONAL ECONOMIES.

107

environment

FIRST NATIONS, GOVERNMENT AND BUSINESS MUST ESTABLISH PROGRAMS WHICH MITIGATE ADVERSE AFFECTS OF MEGA PROJECTS AND DEVELOPMENT PROJECTS WITHIN OR NEAR FIRST NATIONS TERRITORY.

108

co-ordination

THE FEDERAL GOVERNMENT MUST DEVELOP A NEW POLICY WHICH WILL FACILITATE CO-ORDINATION OF FIRST NATIONS PROGRAMS.

109

procurement

THE FEDERAL GOVERNMENT MUST DEVELOP POLICY, MODELED ON THE EMPLOYMENT EQUITY POLICY, WHICH WILL PROVIDE FOR PARTICIPATION OF FIRST NATIONS BUSINESSES AND DEVELOPMENT CORPORATIONS IN GOVERNMENT CONTRACTS.

110

local self-sufficiency

THE FEDERAL GOVERNMENT MUST ADOPT A POLICY AND DEVELOP A PROGRAM FOR FIRST NATIONS LOCAL ECONOMIC SELF-SUFFICIENCY WHICH SUPPORTS SELF-GOVERNMENT BY REDUCING ECONOMIC DEPENDENCY AND BY DEVELOPING A LOCAL ECONOMIC DEVELOPMENT CAPACITY.

111

education

THE FEDERAL GOVERNMENT MUST DEVELOP POLICY TO INCREASE FIRST NATIONS CONTROL OF EDUCATION AND INCREASE FUNDING TO IMPLEMENT THE POLICY.

112

training & development

THE FEDERAL GOVERNMENT MUST SUPPORT AND FINANCE FIRST NATIONS SELF-GOVERNMENT AND TRAINING INITIATIVES.

113

national initiatives

THE FEDERAL GOVERNMENT MUST ESTABLISH NATIONAL INITIATIVES TO SUPPORT FIRST NATIONS CITIZENS, GOVERNMENTS AND INSTITUTIONS IN DEVELOPING SKILLS REQUIRED TO ACCESS EMPLOYMENT IN INFORMATION, ELECTRONICS, COMPUTERS, TELECOMMUNICATIONS AND OTHER INFORMATION TECHNOLOGIES.

114

Taxation:

tax immunity

FIRST NATIONS, THEIR INSTITUTIONS AND CROWN CORPORATIONS MUST BE IMMUNE FROM THE PAYMENT OF FEDERAL, PROVINCIAL OR MUNICIPAL TAX.

115

utilize taxation powers

FIRST NATIONS MUST BE ABLE TO UTILIZE THEIR TAXATION POWERS IN ORDER TO ATTRACT BUSINESS TO AND RETAIN BUSINESSES ON FIRST NATIONS TERRITORIES-IN ORDER TO ACCELERATE ECONOMIC DEVELOPMENT AND EMPLOYMENT IN THEIR COMMUNITIES

116

revenue sharing

THE FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS MUST EQUITABLY SHARE WITH FIRST NATIONS REVENUES WHICH ARE DERIVED FROM NATURAL RESOURCES IN THEIR TRADITIONAL TERRITORIES.

117

extradition from other regimes

FIRST NATIONS MUST NEGOTIATE EXTRADITION FROM FEDERAL, PROVINCIAL AND TERRITORIAL TAXATION REGIMES

118

M.O.U. for out-standing issues

THE FEDERAL GOVERNMENT MUST ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE ASSEMBLY OF FIRST NATIONS TO DEVELOP A FRAMEWORK WITHIN WHICH OUTSTANDING ISSUES RELATING TO INCOME TAX, GOODS AND SERVICES TAX AND CUSTOMS AND EXCISE DUTIES ARE ADDRESSED.

119

maintain status quo

THE MINISTER OF REVENUE MUST AGREE TO MAINTAIN THE STATUS QUO FOR INCOME TAX POLICY AND INTERPRETATION OF S. 87 OF THE INDIAN ACT, UNTIL THE NEGOTIATION PROCESS IS CONCLUDED.

120

policy review

THE GOVERNMENT OF CANADA, IN CONJUNCTION WITH FIRST NATIONS, IN THE MEDIUM TERM, WILL INITIATE AND COMPLETE A POLICY REVIEW IN RELATION TO TAXATION AND IMPLEMENT SUCH POLICY CHANGES WITHIN 18 MONTHS TO 3 YEARS.

121

negotiation with governments

THE FEDERAL GOVERNMENT MUST FACILITATE AND SUPPORT FIRST NATIONS NEGOTIATIONS WITH PROVINCIAL AND TERRITORIAL GOVERNMENTS TO ARRIVE AT EQUITABLE SOLUTIONS TO RESOLVING ISSUES PERTAINING TO JURISDICTION OVER TAXATION.

122

commitment to constitutional recognition

THE FEDERAL GOVERNMENT MUST MAKE A COMMITMENT TO CONSTITUTIONALLY RECOGNIZE AND ACCEPT TAXATION JURISDICTION OF FIRST NATIONS AS PART OF THE INHERENT RIGHT OF SELF-GOVERNMENT.

123

Media - Communications:

representation

THE FEDERAL GOVERNMENT MUST APPOINT FIRST NATIONS REPRESENTATIVES TO THE BOARDS OF DIRECTORS OF THE CBC AND THE CRTC.

124

regular programs

NATIONAL BROADCAST NETWORKS MUST DEVOTE REGULARLY SCHEDULED PROGRAMMING TO THE COVERAGE OF ABORIGINAL PEOPLE AND ISSUES.

125

increase funding

THE FEDERAL GOVERNMENT MUST INCREASE ITS FUNDING TO FIRST NATIONS MEDIA.

126

subscriber fees

THE CRTC MUST REQUIRE THE CABLE INDUSTRY, THROUGH A SURCHARGE ON SUBSCRIBERS FEES TO CONTRIBUTE TO A FUND WHICH WILL BE USED TO PRODUCE HIGH-QUALITY ABORIGINAL PROGRAMMING. THE FUND WILL BE CONTROLLED AND MANAGED BY FIRST NATIONS PEOPLE.

127

employment barriers

THE MASS MEDIA MUST REDUCE EMPLOYMENT BARRIERS FOR FIRST NATIONS PEOPLES.

128

sensitization of staff

THE MASS MEDIA MUST EDUCATE AND SENSITIZE THEIR STAFF REGARDING FIRST NATIONS PEOPLES AND THEIR ISSUES.

129

journalism studies

UNIVERSITIES AND COLLEGES MUST REQUIRE JOURNALISM AND COMMUNICATIONS PROGRAMS TO INCLUDE THE STUDY OF FIRST NATIONS PEOPLES AND THEIR ISSUES.

130

press councils

THE NEWSPAPER INDUSTRY MUST EXPAND PRESS COUNCILS ACROSS THE COUNTRY.

131

joint council

FIRST NATIONS AND THE MASS MEDIA MUST ADDRESS THROUGH A JOINT COUNCIL MEDIA PROBLEMS FACED BY FIRST NATIONS.

132

commitment

FIRST NATIONS MUST COMMIT THEMSELVES TO THE PRINCIPLES OF FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION.

133

use of media

FIRST NATIONS MUST INCREASE THEIR USE OF THE MEDIA AND THEIR MEDIA LITERACY SKILLS.

134

media council

FIRST NATIONS MUST CREATE A NATIONAL MEDIA COUNCIL.

135

new technology

FIRST NATIONS MUST BECOME MORE KNOWLEDGEABLE ABOUT COMMUNICATION AND INFORMATION TECHNOLOGY.

136

Museum Issues:

repatriation requests

ALL LEVELS OF GOVERNMENT, THROUGH THEIR FUNDED MUSEUMS, MUST ACT ON FIRST NATIONS REPATRIATION REQUESTS.

137

equal partners

ALL LEVELS OF GOVERNMENT OR SPONSORS OF EXHIBITS MUST ENSURE THAT APPROPRIATE FIRST NATIONS REPRESENTATIVES WILL BE INVOLVED AS EQUAL PARTNERS WITH ANY EXHIBITION, PROGRAM OR PROJECT DEALING WITH FIRST NATIONS HERITAGE, HISTORY OR CULTURE.

138

accessability to all communities

FEDERAL AND PROVINCIAL GOVERNMENTS MUST FUND THEIR MUSEUMS TO COMPLETE COLLECTION INVENTORIES AND DEVELOP VIDEO DISCS OR ELECTRONIC OUTREACH IN ORDER TO MAKE THESE COLLECTIONS ACCESSIBLE TO ALL FIRST NATIONS COMMUNITIES.

139

locating objects

THE FEDERAL GOVERNMENT MUST PROVIDE FUNDS TO FIRST NATIONS TO ASSIST THEM IN LOCATING OBJECTS OF CULTURAL PATRIMONY OR HUMAN REMAINS HELD OUTSIDE THE COUNTRY.

140

rights to and on territories

THE GOVERNMENT OF QUEBEC MUST EXPRESS ITS COMMITMENT TO RESPECT THE RIGHTS OF FIRST NATIONS TO AND ON THEIR TERRITORIES.

149

rights protected

THE GOVERNMENT OF CANADA MUST ENSURE THAT IN THE EVENT QUEBEC DECIDES TO BECOME A SOVEREIGN STATE, THE RIGHT TO SELF-DETERMINATION OF THE FIRST NATIONS IN QUEBEC WILL BE PROTECTED AND ITS EXERCISE GUARANTEED.

150

right of option

THE GOVERNMENT OF CANADA MUST GIVE THE FIRST NATIONS IN QUEBEC FULL ASSURANCE THAT AS PART OF ITS FIDUCIARY DUTY IT WILL ENSURE THAT FIRST NATIONS OF QUEBEC ARE GIVEN THE OPPORTUNITY TO EXERCISE THEIR RIGHT OF OPTION IN THE EVENT OF QUEBEC'S ACCESSION TO SOVEREIGNTY.

151

assert rights

IN ORDER TO OPPOSE THE DENIAL OF THE GOVERNMENT OF QUEBEC OF FUNDAMENTAL ABORIGINAL AND TREATY RIGHTS, FIRST NATIONS IN QUEBEC MUST DEVELOP A STRATEGY TO ASSERT THEIR RIGHTS BOTH IN THE POLITICAL FORUM AND IN THE COURTS.

152

honour fiduciary obligations

THE FEDERAL GOVERNMENT MUST HONOUR ITS FIDUCIARY OBLIGATIONS TOWARDS FIRST NATIONS IN QUEBEC AND INTERVENE ON THEIR BEHALF BOTH IN THE COURTS AND THE POLITICAL ARENA AS AGAINST THE GOVERNMENT OF QUEBEC'S REFUSAL TO RECOGNIZE THE LEGAL AND HISTORICAL BASIS FOR FIRST NATIONS RIGHTS.

153

treaty process

THE GOVERNMENT OF CANADA MUST ACKNOWLEDGE THE EXISTENCE OF AN ONGOING TREATY PROCESS AND TREATY RELATIONSHIP IN QUEBEC AND COMMIT ITSELF TO THIS RELATIONSHIP FOR THE FUTURE.

154

existence of aboriginal rights

THE GOVERNMENT OF QUEBEC MUST REVIEW ITS POSITION ON THE EXISTENCE OF ABORIGINAL RIGHTS IN THE OLD COLONY OF QUEBEC AND PUBLICLY ACKNOWLEDGE THAT SUCH RIGHTS EXIST IN THE PROVINCE

155

agreement on nation-to-nation relationship

THE GOVERNMENT OF QUEBEC AND FIRST NATIONS IN THE PROVINCE MUST ENTER INTO AN AGREEMENT FORMALIZING THEIR NATION-TO-NATION RELATIONSHIP AND ACKNOWLEDGING THE LEGAL AND HISTORICAL BASIS FOR FIRST NATIONS RIGHTS TO LAND AND JURISDICTION IN THE PROVINCE.

156

care of objects

FEDERAL AND PROVINCIAL GOVERNMENTS MUST PROVIDE ACCESS AND FACILITIES TO CARE FOR CULTURAL OBJECTS.

141

permits for field work

PROVINCIAL AND TERRITORIAL GOVERNMENTS MUST CONSULT FIRST NATIONS BEFORE THEY ISSUE PERMITS FOR ARCHAEOLOGICAL FIELD WORK IN THEIR AREA.

142

interpretation of histories

FIRST NATIONS MUST TAKE THE INITIATIVE AND PROVIDE INTERPRETATION OF THEIR HISTORIES ON RESERVES

143

positions in museums

QUALIFIED FIRST NATIONS CANDIDATES MUST BE CONSIDERED FOR ADMINISTRATIVE AND CURATOR POSITIONS IN MUSEUMS AND ART GALLERIES AND ON THE BOARDS OF TRUSTEES.

144

Quebec:

we are peoples

THE GOVERNMENT OF CANADA MUST RECOGNIZE THAT ALL FIRST NATIONS OF CANADA ARE PEOPLES UNDER INTERNATIONAL LAW AND THAT AS PEOPLES, WE HAVE THE RIGHT TO SELF-DETERMINATION.

145

right to self-determination

THE GOVERNMENT OF QUEBEC MUST RECOGNIZE THE RIGHT OF ALL PEOPLES, INCLUDING THE FIRST NATIONS OF QUEBEC, TO SELF-DETERMINATION.

146

prior consultation

THE FIRST NATIONS OF QUEBEC MUST BE ASSURED THAT THE POLITICAL FUTURE OF QUEBEC WILL NOT BE DECIDED WITHOUT PRIOR CONSULTATION AND NEGOTIATION WITH THEM.

147

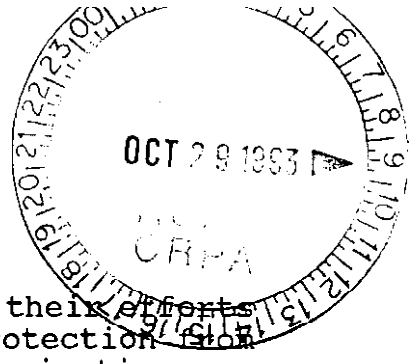
no treaty modification

THE GOVERNMENT OF QUEBEC MUST ACKNOWLEDGE THAT IT CAN NOT UNILATERALLY MAINTAIN OR SUSPEND OR IN ANY WAY MODIFY THE STATUS OF TREATIES TO WHICH IT IS PARTY.

148

"We are at one with the Creator, the Spirit and we are at one with His creation. When we see the land torn, abused and destroyed, we feel the pain. When the rivers and the streams are filled with waste and poison, we feel the pain. For the earth is our flesh; the air is our life breath, the rivers our own blood. We are at one with the creation and at one with this land we love. When we see our fellow man using his knowledge not to be in harmony with the creation, but in conflict with nature, the creation and the Creator Himself by pillaging and destroying, we also feel the pain. As Indian people we are now seeking a vision of tomorrow, we found ourselves in conflict with this immigrant culture. We believe a man who is in conflict with the creation is thus in conflict with the Creator; and since he is part of the creation, he is also in conflict with himself."

-- National Indian Brotherhood, 1978



INTERNATIONAL ISSUES

Indig o s peoples t rou o t ... world are united in their efforts to as r h r r gh s und r n rnational law to protection from state-sponsored discrimination and to self-determination as "peoples". First Nations in Canada have and continue to be part of this worldwide movement, and are active in a number of international forums.

Nor is this a new departure for First Nations. From the very beginning relations between our peoples and the European societies that established themselves on this continent have been coloured by principles drawn from international law. The treaty process itself, the doctrine of the fiduciary relationship between our peoples and the nation to nation political relationship reflected most recently by the various rounds of constitutional discussions since 1981 attest to this fact. As recently as 1990 the Supreme Court of Canada has reminded governments in this country that international law continues to be relevant to the treaty relationship between us. In Sioui the Court noted:

> ...we can conclude from the historical documents that both Great Britain and France felt that Indian nations had sufficient independence and played a large enough role in North America for it to be good policy to maintain relations with them very close to those maintained between sovereign nations.
>
> The mother countries did everything in their power to secure the alliance of each Indian nation and to encourage nations allied with the enemy to change sides. When these efforts met with success, they were incorporated in treaties of alliance or neutrality. This clearly indicates that the Indian nations were regarded in their relations with the European nations which occupied North America as independent nations.

In the same way it should not be forgotten that after the First and Second world wars representatives of the Six Nations Confederacy sought international recognition of their status as peoples whose treaty relationship with the settler societies of North America was based on international law principles. More recently, the Cree people of James Bay have also actively sought international recognition of their treaty relationship with Canada and Quebec and support for their quest to preserve their historic homelands from unrestrained hydro-electric development and attendant environmental damage.

Issues of concern to First Nations and to other indigenous peoples are now taken more seriously both domestically and on the

international stage. This is partly the result of the evolution of domestic and international human rights instruments. The United Nations has since its inception been concerned with the rights not only of individuals, but also of peoples. This is demonstrated by the U.N. Charter itself which, in Article 1, states that a primary purpose of the United Nations

is to "develop friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples."

Article 55 of the Charter sets the tone for international concern with human rights: the United Nations states that it shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all...". In response there have been dozens of human rights declarations and nearly two dozen treaties, conventions and covenants dealing with the subject, beginning with the 1948 Universal Declaration of Human Rights.

Two major examples of ratified human rights instruments are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights. Passed by the U.N. General Assembly in 1966, they entered into force in 1976 upon receiving the required ratification of 35 member states. Each has now received well more than the required number of signatures, including that of Canada. Article 1 of each covenant is identical, and offers further support for the rights of Aboriginal peoples in Canada and elsewhere for self-determination based on international law principles.

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The creation of instruments containing human rights standards is how the United Nations creates modern international human rights law. Even where member states do not agree to be bound by such instruments, the very existence of such standards provides criteria for assessing the behaviour of all states. This is the primary way in which indigenous peoples call attention to their claims in the international arena, although formal complaints to international human rights bodies are becoming more common. In 1981, for example, the United Nations Human Rights Committee in Lovelace v. Canada found Canada to be in violation of its obligations under the International Covenant on Civil and Political Rights. Other human rights complaints by Canadian Aboriginal persons are now pending in the international forum, including one by the Micmac with respect to their collective right of self-determination.

The United Nations through its agencies and organs has taken a direct interest in indigenous peoples since the 1950s. Since the more recent creation of the United Nations Working Group on Indigenous Peoples in 1982, its openness to a wide variety of indigenous peoples and groups as a forum for developing indigenous human rights standards and for denouncing state practices has enabled our issues to assume an increasingly high profile at the international level. The declaration by the United Nations of 1993 as the International Year of the World's Indigenous Peoples is yet another indication of the importance attached to the welfare of the

world's indigenous peoples. The value of the potent al contribution of indigenous people on the international stage has recently been recognized, especially in the context of addressing world-wide environmental problems.

International concern with the rights of indigenous peoples is of growing significance for Canada and for some other states that fear the international identification of First Nations within their borders as indigenous "peoples". They deny that the right of self-determination applies to them, arguing that Aboriginal peoples are mere "populations" i.e. groups that retain some distinct cultural characteristic, but which are already assimilated into the body politic of the state and therefore without access to the status of "peoples" in the international sense. Even when some states admit that First Nations may possibly fall within the definition of "peoples", the further argument is made that the right of self-determination only applies to peoples beyond the borders of existing states i.e. in overseas colonies distant from the dominant society. In other words, such states assert that there can be no "peoples" within the borders of existing states.

This is popularly known as the "blue water" thesis. It arose in the 1950's in the context of U.N. Article 73 which calls for U.N. members to accept as a "sacred trust" the obligation to assist the peoples of "non-self-governing territories" for whom they are responsible to "develop self-government". They are also obliged "to take due account of the political aspirations of the peoples..." . But what these states, including Canada, fail to understand is that the right of a people to self-determination does not necessarily imply its independence in the sense that a modern nation-state asserts such independence. Rather, self-determination means simply the freedom of a people to choose how it will be governed.

In short, self-determination means nothing more than what First Nations have never ceased to assert domestically in Canada: the ending of the suppression of First Nations governments and societies by the dominant non-Aboriginal society represented first by the colonial governments and now by the federal and provincial governments. Self-determination means the right to govern ourselves and to promote our own languages, cultures and traditions and to take the measures we require to protect the integrity of our societies. Self-determination also implies, among other things, the further right to compensation for the seizure and exploitation of our lands and resources and to participate equally in decisions regarding how the precious natural environment will be managed in the future. Our goal is nothing less than to replace the existing relationship of dominance with human rights principles anchored in international law and supportive of our collective right to self-determination.

Since 1993 is the International Year of the World's Indigenous Peoples, it is appropriate to consider the light in which Canada will be reflected 501 years after the landfall of Christopher Columbus on our soil. Canada prides itself on its commitment to the advancement of, and respect for, human rights. It has gained a positive international image in this regard. Unfortunately, this positive image belies the truth in Canada - a long history of denial, suppression and disrespect for the Aboriginal and treaty rights of First Nations. This history has made an enormous and negative contribution to the current situation of First Nations in Canada - a situation described repeatedly by the Canadian Human Rights Commission in their annual reports as a national tragedy and dramatically exemplified by the current horrendous conditions of the people of Davis Inlet, Labrador.

It can hardly be surprising then, that First Nations have used and will continue to use international forums to raise such issues and to gain attention for their legitimate and long standing grievances. The collective rights of First Nations are not secure in Canada. The colonization of our lands and the oppression of our peoples has undermined our collective rights and has weakened our ability to bring our issues forward with pride and vigour. First Nations in Canada are not alone, however, in experiencing the destruction of lands, cultures, languages and ways of life. This has been the tragic experience of indigenous peoples around the world. It is therefore appropriate that this submission to the Royal Commission go forward in this International Year of the World's Indigenous Peoples.

International perspectives have always informed relations between First Nations and the European-derived societies on this continent. They continue to be directly relevant in their own right and in terms of giving shape to the present relationship between our respective societies. First Nations have been denied their legitimate place in the creation of the nation-state called Canada. They are denied even now a real role in determining their own futures and in helping shape the overall future of Canada itself. First Nations now need more than ever to continue to participate in international forums and to seek the support of the international community in advancing domestic issues of importance ranging from self-determination for themselves to protection of the environment for all Canadians. The Royal Commission can spur all parties to make the commitments necessary to the vital tasks at hand. We accordingly put forward the following recommendations in the spirit of the new relationship between government and First Nations that is unfortunately often better reflected in the international forum than domestically.

First Nations enjoy the right under international law to self-determination as peoples whose international status finds increasing recognition in a variety of international instruments and forums. Canada is obligated to respect this right and has itself undertaken to support it through such instruments as the International Covenant on Civil and Political Rights. This right to exist as recognized political entities and as Nations in their own right grounds the relationship between First Nations and Canadian governments. It has never been surrendered or legitimately taken away by any outside authority. First Nations governmental authority exists as a fact, as a matter of domestic constitutional law and as a right under international law. This power to develop laws and institutions is therefore not dependent for its existence upon the approval of other governments. Nonetheless, the government of Canada has repeatedly opposed the recognition under international law of the aboriginal peoples of Canada as peoples. This is so even though the Canadian Constitution itself refers to the aboriginal peoples of Canada.

The r ght to self-determ nat on means that peoples have the liberty to freely determine their political status, as well as to freely pursue their economic, social and cultural development. In no case may a people be deprived of its means of subsistence. Moreover, as First Nations, we have a great responsibility to preserve the land and secure the livelihood of our future generations. We, the indigenous peoples of the world, acknowledge our interdependence with the living earth, as well as other beings, for our survival and sustenance.

ratify ILO

THE GOVERNMENT OF CANADA SHOULD RATIFY THE INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES (169).

157

The ILO is a U.N. agency based in Geneva that focuses on indigenous issues in the context of its larger mandate with respect to international labour matters. Thus, it views indigenous groups essentially as workers in need of protection from exploitation and discrimination by the dominant society in their respective countries. The ILO pioneered an early study of indigenous issues in 1953, and four years later passed Convention 107 on the "Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries".

This is still the only ratified international instrument protecting indigenous human rights as such and defining indigenous populations. The ILO General Conference passed a revised version in 1989. The new Convention 169, "Convention Concerning Indigenous and Tribal Peoples in Independent Countries", by its terms changes its focus from "populations" to "peoples" and attempts a definition of "Peoples" more in conformity with the views of indigenous peoples themselves. In all cases self-identification as indigenous or tribal is a determining criterion in identifying who is to be regarded as falling within the protections offered. Together these two instruments, Conventions 107 and 169, recognize the historic relationship between indigenous peoples and the lands they inhabit and support the rights of indigenous peoples to control their own institutions and to guide their own economic development on those lands on terms that are appropriate to them.

The United Nations and the International Labour Organization (ILO), recognize that the establishment and protection of the rights of indigenous peoples are an essential part of human rights and a legitimate concern of the international community. The two organizations are active in the setting and implementation of standards designed to ensure respect for existing rights of indigenous peoples and the adoption of additional rights. First Nations must continue to be involved with the ILO's Convention concerning tribal and indigenous

peoples, and lobby for its ratification by Canada. We must further lobby for international conventions and treaties proposed by UNESCO against discrimination and racism.

create U.N. commission

CANADA AND FIRST NATIONS SHOULD JOINTLY LOBBY THE UNITED NATIONS FOR THE CREATION OF A UNITED NATIONS COMMISSION ON INDIGENOUS PEOPLES WHOSE SOLE FOCUS WILL BE THE OVERALL PROTECTION OF INDIGENOUS PEOPLES WORLDWIDE.

158
Given the rising prominence of indigenous issues both internationally and domestically within many of the United Nations member states, it is timely and logical to put indigenous issues on a more firm and permanent foundation within the United Nations framework. The ILO is inappropriate since its primary focus is on international labour matters, while the Working Group on Indigenous Peoples is not a permanent body and, moreover, appears to be drawing to a close and losing its potential influence because of lack of support by United Nations member states. A permanent commission will provide a more stable framework within which states, non-governmental organizations and indigenous peoples will be able to address emerging issues. This will be vital if the potentially explosive issues of international environmental degradation and suppression of indigenous cultures are to be addressed properly in an increasingly unstable world.

A permanent body established by the General Assembly would further promote First Nations issues and aspirations and would continue to implement the findings and recommendations of the Working Group. The Working Group on Indigenous Peoples has carried out very important work including a study of treaties between indigenous peoples and the respective member states. This important work must be continued.

international declaration

FIRST NATIONS IN CANADA MUST INITIATE AND SUPPORT THE DEVELOPMENT OF AN INTERNATIONAL DECLARATION WHICH RECOGNIZES AND PROTECTS INDIGENOUS PEOPLES AND THEIR COLLECTIVE HUMAN RIGHTS.

159
There is a need for a strong Declaration on Indigenous Rights in the international arena. In Canada, such a Declaration must be implemented in domestic law and will thereby help to ensure that governments do not back away from commitments on aboriginal and treaty rights.

All First Nations have an interest in ensuring that their collective rights receive the full protection of international law. To date, such international declarations have only rarely had the full input of those most concerned and affected by them. This is especially the case with respect to indigenous issues.

Th s must change and we must now become more act ve as the architects of our own destiny, both domestically and internationally. Failure to do so will mean that non-First Nations governments and non-governmental organizations, neither of which reflect fully First Nation interests or viewpoints, will continue to draft such instruments.

direct representation

FIRST NATIONS MUST INITIATE AND SUPPORT THE DEVELOPMENT OF A PROTOCOL THAT ENSURES INDIGENOUS PEOPLES ARE REPRESENTED IN INTERNATIONAL FORUMS BY THEIR OWN PEOPLE RATHER THAN BY NON-GOVERNMENTAL ORGANIZATIONS.

IN CONSULTATION WITH FIRST NATIONS, CANADA MUST PROVIDE FINANCIAL SUPPORT FOR THE CREATION AND MAINTENANCE OF A FUND TO FINANCE FIRST NATIONS' DIRECT PARTICIPATION IN RELEVANT INTERNATIONAL FORUMS.

160

Although non-governmental organizations recognized by the United Nations, some of which are Aboriginal, have done good work in the past in attempting to protect the rights and interests of all indigenous peoples under international law, it is time for the indigenous peoples to begin to represent themselves and their interests and perspectives more directly. As a first step, we must secure agreement among ourselves and with the international community to participate directly in international forums, otherwise we will continue to watch from the sidelines while issues vital to us are debated by others.

The United Nations Voluntary Fund for indigenous participation in international meetings and conferences is simply insufficient to permit the participation of all the affected indigenous peoples. It is also inappropriate that indigenous peoples within the borders of Canada not be supported directly by the state which has benefitted from the appropriation of First Nations lands and resources. The advent and continued existence of Canada as a nation state has been the single most significant political event in the modern existence of First Nations, and has led to many of the conditions which prevent First Nations from moving forward more quickly with pride and confidence. It is therefore fitting that Canada financially assist First Nations to attend international meetings at which issues of mutual interest and significance will be discussed.

Canada to support right to self-determination

THE GOVERNMENT OF CANADA SHOULD SUPPORT THE INCLUSION OF THE RIGHT TO SELF-DETERMINATION OF INDIGENOUS PEOPLES IN THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES.

161

Canada's own Charter is a response to and a reflection of the International Covenant on Civil and Political Rights and an indication of the degree to which Canada respects and conforms to international standards. That being the case, it is simply inconceivable that Canada not support the right of self-determination of indigenous peoples which has now emerged as a legitimate element of modern international law. This is all the more so when one considers that Canada has long since ratified the International Covenant on Civil and Political Rights which itself supports self-determination in its opening article.

treaties as international instruments

THE GOVERNMENT OF CANADA MUST SUPPORT THE RECOGNITION BY THE INTERNATIONAL COMMUNITY OF OUR TREATIES AS INTERNATIONAL INSTRUMENTS.

162

As Sioui in Canada and as Cherokee Nation vs. State of Georgia in the United States graphically illustrate, the treaties between First Nations and the European colonizing nations in North America have always been based on, and reflective of, prevailing international law principles. First Nations were recognized as having the capacity to enter into and to fulfil their obligations under these instruments. The instruments remain, but Canada now refuses to respect their international character and continues to fail to carry out its obligations under them or attempts to apply domestic law to their interpretation.

Given the failure of Canada to respect the international character of its own treaties, the international community must become involved in assuring that the obligations of its member state Canada, will be carried out.

recognition of treaties

CANADA MUST SUPPORT THE RECOGNITION BY THE INTERNATIONAL COMMUNITY OF THE SPIRIT AND INTENT OF TREATIES AS UNDERSTOOD BY FIRST NATIONS.

163
In domestic law, Canadian courts have now recognized that treaty interpretation must take into consideration the perspective and understanding of those who signed them. It is no longer acceptable to ignore First Nations perspectives on the meaning and intent of treaty provisions, and this is all the more the case where terms in the treaty may be ambiguous or otherwise difficult to interpret. The reason for this rule of interpretation is straightforward: Treaties were drafted by only one party, the Crown, in English, and often do not adequately mirror the intentions or understanding of the First Nations signatories. Treaties are not simply domestic contracts. They are international in character. It is now time that Canada's domestic rule of treaty interpretation be brought to the international arena. Failure to do so will put the lie to the new relationship of partnership between Canada and First Nations and will demonstrate that Canada is not committed to rules of interpretation developed by its own courts.

promote and protect human rights

FIRST NATIONS MUST TAKE A LEADERSHIP ROLE IN ESTABLISHING AN INTERNATIONAL ORGANIZATION CONSISTING OF INDIGENOUS PEOPLES AND THEIR GOVERNMENTS FOR THE PROMOTION AND PROTECTION OF INDIGENOUS PEOPLES AND THEIR HUMAN RIGHTS.

164
The borders between modern nation states such as Canada and the United States were constructed without the consent or advice of First Nations and often fail to respect our traditional territories. First Nations sometimes find themselves split up by such boundaries, and subject to the jurisdiction of governments not of their choosing. Only by coming together in one large international organization can we, as indigenous peoples, overcome the fragmentation of our nations that invasion, colonization and artificial borders have brought about. Our challenges are common. We must re-establish the pre-contact harmony and spiritual unity of all indigenous peoples if our collective voice on the international stage is to carry real weight and be effective.

support all indigenous peoples **FIRST NATIONS MUST SUPPORT INDIGENOUS PEOPLES IN THEIR QUEST FOR SELF-DETERMINATION AND INDEPENDENCE.**

165
In many parts of the world, the future of indigenous peoples is in great jeopardy because of state-sponsored attempts to disperse or to assimilate them. In some cases, genocide is being practised against indigenous peoples on a massive scale. First Nations must do all they can to support our indigenous brothers and sisters to free themselves from the oppression that bears down on them. The challenges, dangers and opportunities we face as indigenous peoples are common to all of us, differing only in degree. We must call for the self determination and independence of all indigenous peoples worldwide. We cannot abandon our fellow indigenous peoples.