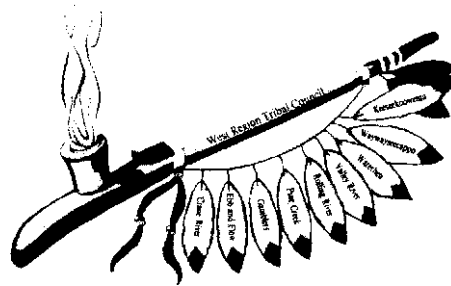


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# West Region Tribal Council

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## REPORT TO

## THE ROYAL COMMISSION

## ON

## ABORIGINAL PEOPLES

## WEST REGION TRIBAL COUNCIL

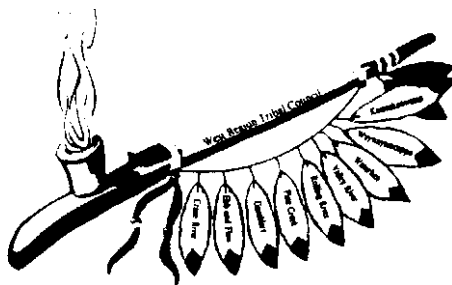
SEPTEMBER 1993

### WEST REGION MEMBER BANDS

Crane River, Ebb and Flow, Gamblers, Pine Creek, Rolling River, Valley River, Waterhen, Waywayseecappo, Keeseekoowenin

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## ROYAL COMMISSION ON ABORIGINAL PEOPLES

### WEST REGION TRIBAL COUNCIL

#### Introduction:

The West Region Tribal Council is comprised of eight (8) First Nations signatory to Treaty #2, 1871 and Treaty #4, 1874 respectively. The purpose of the Tribal Council is to provide technical advisory services to the member First Nations and their membership that would enhance control by each First Nations government. The Tribal Council further emphasizes local control and facilitates the transfer of responsibility from various non-native governmental departments to the respective First Nation.

West Region Tribal Council's eight (8) First Nations have total population of 5,983 as of January 1992. These figures vary depending on Bill C-31 applicants. Total area covered by the First Nations in West Region is 80,388.76 acres. Some First Nations still have outstanding Treaty Land Entitlement settlements that have been ongoing since 1980 or earlier. All First Nations are accessible by all weather roads.

West Region eight (8) First Nations are as follows;

#### Treaty #2

Crane River  
Ebb & Flow  
Keeseekoowenin  
Waterhen

#### Treaty #4

Rolling River  
Pine Creek  
Valley River  
Gamblers

#### Royal Commission - Process

The Chiefs of West Region Tribal Council recognize the importance and the task that the commissioners have undertaken on behalf of First Nations in Canada. Although our report does not cover all aspects, issues, considerations and impediments that our membership face on a daily basis, it does comment on key components that requires a positive resolution in favour of our First Nations.

Throughout the public hearings and round table process, presentations, solutions and recommendations that were made reflect the situations that a majority of First Nations endure. However, the uniqueness, the culture and traditions of each First Nations to self-determination and self-government has to be respected. Furthermore, our Chiefs stress the importance of our Treaties, understanding the original spirit and intent of those Treaties in relation to our sovereignty, our nationhood, our right to self government and the right to determine our future.

First Nations have overcome insurmountable obstacles to achieve the respect and distinction as the original peoples of this great land. First Nations have gained the support of the Canadian public to advance our interest with the Canadian Constitution.

In closing, the tasks of the Royal Commission and our role as First Nations will unending. The recommendations that have been documented to date require action by all three levels of government, First nations. Federal, and the Provincial Governments. Rest assured that First Nations will do their part to ensure that justice is sought.

On behalf of the First Nations of West Region Tribal Council, we applaud the work of the commissioners and the staff of the commission for the excellent material provided to date.

If you require further clarification or information, feel free to contact my office at your convenience.

Thank You.  
Megwetch.

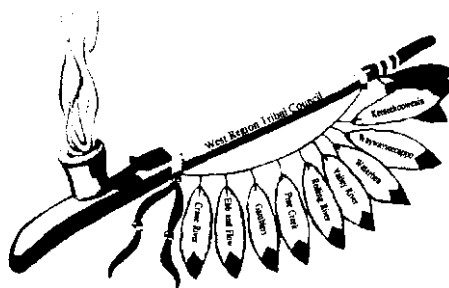


Rod Young  
Executive Director  
West Region Tribal Council

# West Region Tribal Council

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## REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

WEST REGION TRIBAL COUNCIL

1993

AUGUST

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BAND CUSTOM

### WEST REGION MEMBER BANDS

Crane River, Ebb and Flow, Gamblers, Pine Creek, Rolling River, Valley River, Waterhen, Waywayseecappo, Kocseekoowenin

# **FIRST NATIONS JUSTICE**

**PREPARED BY  
ROYCE WILSON**

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**JUSTICE**

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## **JUSTICE**

With the continued development of First Nations, the reality of First Nations exercising their inherent right to assume control towards a parallel justice system is inevitable.

The First Nations of West Region Tribal Council state that the Treaty process did not extinguish our inherent right to self-government. Through this right, First Nations have always exercised various systems of Customary Law prior to the Treaty making process.

## **ABORIGINAL JUSTICE INQUIRY**

With the collective effort of all First Nations in Manitoba, the Provincial Government initiated an inquiry into the justice system and its failure to adequately address the needs of First Nation citizens. The current justice system is overly represented in courts, jails and other aspects of the justice system by Aboriginal people. Various forms of federal and provincial legislation have also infringed on the rights of First Nations peoples.

In summary, the inquiry recommended that the federal and provincial governments recognize the right of aboriginal people to establish their own justice system as part of their inherent right to self-government. The system would be consistent with the traditions, cultural values and languages of First Nations.

The establishment of a fully functional Aboriginal justice system that would include but not be limited to the following:

- a policing service
- a prosecution branch
- a legal aid system
- court systems
- probation service
- fine collection and maintenance enforcement
- correction systems
- parole systems

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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The Inquiry also made recommendations to the following: Land rights, Natural Resources, The Indian Act, Charter of Rights and Freedoms, Child Welfare, etc...

It was strongly recommended that the provincial government should not proceed in amending current legislation without the full consent or participation of Aboriginal peoples. It was also noted that the federal government has a fiduciary obligation to respond to the recommendations from the inquiry. To date, the West Region Tribal Council has not seen documentation to that effect with the exception of the Aboriginal Policing Directorate and its criteria.

In light of all the developments to improve the justice system for Aboriginal peoples, the First Nations of West Region Tribal Council have seen very little progress. The provincial government has responded by initiating certain recommendations of the inquiry to their own agenda with very little input of First Nations. The commitment to adequately respond to the inquiry does not suit the needs of First nations peoples. Furthermore, the chiefs demand that the federal government take an active role in both pressuring the provincial government and to pursue the recommendations as put forth by the inquiry.

Finally, many studies have been undertaken by different sectors of the provincial and federal governments on Aboriginal peoples and their living conditions. Those studies put forth positive recommendations for Aboriginal peoples with very minimal implementation by the governments.

## **ROYAL COMMISSION ON ABORIGINAL PEOPLES NATIONAL ROUND TABLE ON JUSTICE**

Although the First Nations of West Region Tribal Council are under time constraints, the report published by the commission represents a general scope of Aboriginal people and their historic relationship with the Justice System. It is quite evident that the inequitable treatment of Aboriginal people in justice is that of a national crisis.

## **WEST REGION TRIBAL COUNCIL**

To date, the Chiefs of West Region are concerned with the lack of action and cooperation of both the federal and provincial governments. The First Nations through the Tribal Council have pursued various initiatives as contained within

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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## WEST REGION TRIBAL COUNCIL

## JUSTICE

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the Justice Inquiry. However, the responses from the governmental departments were not favourable to the expectations of the First Nations. The Chiefs of WRTC fully believe that, "Jurisdiction without adequate resources is a recipe for failure."

To provide a brief outline of services that are directly associated with First Nation communities.

**Policing:** With the eight (8) First Nations that are affiliated with W.R.T.C., there are three (3) First Nations that have the services of Band Constables. The relationship of those services are often confused and lack cooperation with the local R.C.M.P. detachments. Since the Aboriginal Justice Inquiry, the relationship between the R.C.M.P. detachment. Since the Aboriginal Justice Inquiry, the relationship between the R.C.M.P. and First Nations governments have improved somewhat.

The W.R.T.C. on behalf of the First Nations, submitted a proposal to develop a policing service parallel to that of the R.C.M.P. The service would focus more on a community oriented approach considering the cultural uniqueness of the First Nations. Through our meetings with the Solicitor Generals office, we were informed that the province is reluctant to review any initiatives for policing services.

**Probations:** Three (3) of our First Nations were successful in having a vacant position staffed with one of their First Nation members. The individual will work directly with those communities and their membership.

Through this effort, the unique cultural status of First Nations with enable the Probation Officer to access and make adequate recommendations that First Nations endure on a daily basis.

Other that the aforementioned services, Canada's Courts, Justice System, have policies and actions that were and are well intentioned, however, they are not appropriate. Fundamental differences in cultures and a self legislated legal authority makes Canada's attempt to help First Nations, pernicious. Furthermore, Canada's highest court has recognized the Nationhood of First Nations, and the related principle of non-interference which is consistent with a Nation to Nation relationship. Unfortunately, Canadian Government policy makers and politicians have not.



# **FIRST NATIONS EDUCATION**

**PREPARED BY**

**MARGARET MCKAY  
BETTY ABIGOSIS  
CATHERINE GREEN**

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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WEST REGION TRIBAL COUNCIL

EDUCATION

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FIRST NATIONS VISION ON EDUCATION IS BEST STATED BY ISLAND LAKES PHILOSOPHY OF EDUCATION:

EDUCATION IS THE PREPARATION AND ADAPTATION FOR A MEANINGFUL LIFE IN A CHANGING WORLD. IN ISLAND LAKE, EDUCATION MUST BE ROOTED IN THE TRADITIONS AND CULTURE OF THE NATIVE PEOPLE. THIS MEANS IT MUST TEACH RESPECT AND ENCOMPASS OUR LANGUAGE, OUR HISTORY, OUR LAND AND ALL OUR RESOURCES, INCLUDING ELDERS AND NATURE. IT MUST BE HOLISTIC AND REALISTIC IN THAT IT RELATES NOT ONLY TO ACADEMIC DEVELOPMENT BUT TO OUR SPIRITUAL, EMOTIONAL, PSYCHOLOGICAL AND PHYSICAL GROWTH. EDUCATION MUST ADDRESS NOT ONLY THE NEEDS OF OUR YOUNG PEOPLE BUT IT MUST BE BENEFICIAL TO THE NEEDS OF OUR ADULTS, OUR ELDERS AND MOST IMPORTANT OF ALL, OUR GENERATIONS YET UNBORN.

TO ENSURE THE FUTURE OF OUR IDEAL EDUCATION, THE DIRECTION MUST COME FROM WITHIN OUR COMMUNITIES. THIS CAN ONLY BE ACHIEVED THROUGH COMMITMENT, FLEXIBILITY OF THINKING, COOPERATION, ENERGY, TRUST AND RESPONSIBILITY.

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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WEST REGION TRIBAL COUNCIL

EDUCATION

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## INTRODUCTION

**EDUCATE:** To bring up, give intellectual and moral training to a person, provide schooling for a person, to train a physical or mental faculty.

**EDUCATION:** Educating, being educated, systematic instruction, development of character and/or mental powers.

According to the Oxford dictionary, these definitions describe the nature and purpose of an education. For 5 million years, the Indigenous Peoples of North America have lived and developed a civilization geared for survival in harmony with their environment. The traditions and techniques, like any another civilization, have survived due to their success through the process of evolution. They are the living reality based on survival. Education and training of the young is an integral and essential part of this civilization ensuring the survival of the species, the community and the culture.

**CULTURE:** Rearing and production of a species; improvement by mental or physical training; intellectual development; particular form, stage or type of intellectual development or civilization.

Just over 500 years ago, the European civilizations made contact with the Indigenous civilizations of the Americas. These foreigners learned how to survive in what they perceived as a wild, hostile and uncivilized world. These perceptions lead to a series of judgements and attitudes formed by the Europeans resulting in the invasion, genocide, injustice and enslavement of the Indigenous or First Nations People. It is the legacy of this perception which created the situations and issues we must deal with today. At this point in time, we, the children of both the Europeans and the First Nations People, must work toward a positive resolution of the injustices and develop productive solutions to the situation which was created and has evolved over the past 500 years.

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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## WEST REGION TRIBAL COUNCIL

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Upon arrival in this strange "untamed" world, the survival of the Europeans depended on the education provided by the Indigenous civilizations. They learned how to cure themselves through the medical knowledge of these "Indians". They also learned how to hunt, fish, build shelters, make warm and appropriate clothing from animals. Through the generosity of their hosts, who provided the appropriate education, their survival and success was ensured. The creation of a new race, a mix of Europeans and First Nations People was soon to follow. As more Europeans immigrated, massive tracks of land were appropriated and the "Indians" were pushed aside and imprisoned on small parcels of land called reserves.

The impact of this invasion was devastating for the First Nations as they were no longer able to maintain their civilization as survival was based on an intimate understanding, knowledge and respect of the environment which involved following the seasonal nature and migration of natural resources including hunting, fishing, harvesting of natural crops such as fruits and berries, rice, root crops and grains. The education and spiritual development, an integral part of this culture, was threatened.

Deemed as uncivilized, barbaric and evil, the governments formed by the Europeans decided that it was best to educate and civilize these "Savages." Policies developed and actions made toward this goal were done in the best interest of the "Indians", but more realistically in the best interest of themselves.

Education and assimilation of the First Nations became a strategy, a policy and a brutal force implemented and enforced by the Indian Agents assigned to each Nation and later by the Provincial Governments as they were formed. The traditional education of the First Nations was not understood and therefore was not respected or valued. Furthermore the practice of traditions, language and spirituality was considered illegal and those caught doing so were punished despite the Treaties which stated that the "Indian" were not to be molested or harmed by agents of the Crown or by neighbouring settlers.

All education systems and schools, throughout the World, regardless of race and culture, are designed for the purpose of educating the young and preparing them for their roles as adults in their society. Their objectives, programs and methods of teaching along with their facilities have the culture, language and traditions as their foundation.

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**EDUCATION**

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Why then should the First Nations be denied the same inherent right as another civilization in the World simply because an immigrating ethnic group made an arbitrary value judgement that the culture of their hosts was not appropriate due to their own arrogance and lack of understanding?

For First Nations, Traditional Education is the integration of personal knowledge and skills with every day life. Based on kindness and respect, it is the foundation for building meaningful and productive lives. Education for First Nations Citizens must be improved and appropriate in order to empower these individuals to take control and responsibility for their own destiny.

## **BACKGROUND**

### **TREATY RIGHT TO EDUCATION**

The Dominion of Canada officially recognized the Province of Manitoba in 1870, but had not begun the treaty process with First Nations until 1871, in which the first of these treaties were signed. The Treaty process continued throughout the years, some as late as 1910. Therefore, the Dominion of Canada had already claimed ownership to First Nations lands, without consultation of the land's First Peoples.

It was the intent of the Dominion of Canada to claim ownership and all benefits of the land, originally owned by First Nations, by offering the first inhabitants a treaty which was negotiated under duress, intimidation and obvious language barriers. This act of disillusion was not only intentional, but was advantageous to the government of the Dominion of Canada which was intended to extinguish First Nations's title to the land and it's resources. Throughout the treaty signing process, it is a fact that the major obstacle which faced First Nations negotiations was the language barrier. The treaties were written in a legal Victorian style, which was not only difficult to understand, but has proven to be impossible to translate into First Nations languages.

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# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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Despite the insight and skill exhibited by the First Nation negotiators, it is clear that the natives were not in an equal bargaining position with the Government. The First Nation negotiators which were illiterate to the writings of the Europeans, and did not understand the European educational system. At the time of the treaty negotiations, when the issue of an Education was discussed the First Nations signatories understood education in a holistic or lifelong process. They also understood the future need of First Nations people to acquire the process of the European education system, while maintaining the unique lifelong learning educational system which was inherited throughout the generations.

Therefore, it is understood by First Nations that the Treaty Right to Education is not limited to a time frame of the grades Nursery to 12, but also encompasses the Treaty Right to Post Secondary Education.

## **THE RESIDENTIAL SCHOOL ERA**

The Residential School Era evolved approximately about 1907, and was dissolved around 1980 in which the last residential school was closed in Manitoba.

The Seventy years in which this educational era was implemented, not only did it cause pain and grief to all members of the family, but also abused the children physically, mentally, emotionally, and sexually, while depriving them of an adequate and secure educational environment.

First Nations children, accustomed to the love of the close knit family of Native People, were forced to attend an uncaring, unloving educational institution, which did not allow these emotions to be experienced. The children who were referred to as "le savage" or Savages, were humiliated, demoralized and stripped of all dignity and self worth.

It was the intention of the government to "civilize" the natives, by attempting to force the most vulnerable of our society, the young into a culture, religion and an educational system which was foreign and structured according to European standards, values and priorities. This act of assimilation prohibited the First Nation children to practice their right to their cultural beliefs and traditions. Instead of considering the rights of First Nations as a unique and distinct society, the

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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Government began the assimilation process by ripping the children from their homes to live and believe in a system totally unlike their own.

Until recently, the pain and anxiety incurred during this era was not addressed. The ultimate demoralization of the persecution and deplorable acts performed in these institutions has had a dramatic effect upon First Nations Peoples and is still is being inherited by First Nations children today.

The prohibition of Native Languages in these schools has resulted in a near extinction of traditional languages amongst the youth and the First Nations Communities. Many of the students placed in these schools were beaten and tortured if they spoke their own languages leaving them with no means of linguistic communication as they did not speak or understand the European languages enforced by the institutions. These children, now parents and grandparents, suffered significant mental anguish creating a barrier and inhibiting the teaching of their original language to their children and grandchildren.

## **FEDERALLY CONTROLLED SCHOOLS**

Up until the 1950's government policy provided education for First Nations people mainly through delegation of that responsibility to various Christian religious organizations. From 1890 onwards, this had led to the development of residential schools. "Indian Education" remained almost exclusively in the domain of the Roman Catholic and Protestant denominations until the passing of the BNA Act in 1867,. With the passing of the BNA Act, Government involvement in Indian Education increased somewhat. However, not until 1892 was financial support of any consequence provided by the Federal Government.

Indian and Northern Affairs Canada (hereafter referred to as I.N.A.C.) entered into formal contractual arrangements, now known as joint school agreements, with school boards and Provincial Departments of Education for the education of Indian children. "The first agreement involved the cost-sharing of school accommodation which was entered into in 1949 between the Department and the Province of Manitoba on behalf of the South Indian Lake Band" (Indian Education Paper, Ottawa 1982, p.7). From then on, the movement steadily grew until 1979, when I.N.A.C. entered into 683 such agreements providing for the accommodation of

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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48,757 First Nations children in provincial schools. Provincial curricula were introduced into Federal schools and the level of services should have enabled the smooth transfer of children to provincial jurisdictions, however, the transfers were not smooth for First Nations children. There were minimal increases in parental involvement in education following Government encouragement of the formation of School Committees. In 1963, I.N.A.C. made provision for the organizing and minimal funding of these committees. "By 1971, there were 215 such Committees in existence with greatly increased areas of responsibility." (Indian Education Paper, Ottawa 1982, p.7)

The Hawthorne Report of 1967 provided an in-depth analysis of the political, economic, and educational problems of First Nations Peoples. The report recommended that First Nations Students should be integrated with the rest of the main stream school population. It was believed that decentralization of the federally operated schools would increase efficiency and allow for increased First Nations involvement. It was considered that Provincial systems were able to offer better programs and a wider range of educational opportunities. Above all, it was thought that the economic and social assimilation of First Nation Peoples could be brought about by this means.

In June 1969, a Government White Paper proposed the elimination of all constitutional and legislative bases of discrimination against First Nations Peoples. It addressed the question of education by advocating that all education services be provided by Provincial agencies. The key fact is that the government was not really playing the game of participatory democracy at all, it was playing the game of power treating First Nations as conquered peoples who must be assimilated, despite the fact that in some large geographical areas, Indian people were the overwhelming majority. In fact, the First Nation viewed this decision as a tactic that would eventually eliminate Treaty Rights for all First Nations Peoples. Introduction of the "White Paper" convinced First Nations People of the need to take control of their own education system.



# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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## **LOCAL CONTROL OF EDUCATION**

The National Indian Brotherhood presented a position paper in 1972 entitled "Indian Control for Indian Education." In this statement, Indians reclaimed the right to direct the education of their children by invoking the principles of parental responsibility and local control of education.

Early in 1973, the Federal Government indicated its acceptance of the principles embodied in the paper as the basis for future development in First Nations Education. The agreement did not change the legal context within which educational services are offered to Indians; it did however lead to the adopting of administrative procedures based on the principles concerned.

The past practice of using school committees as advisory bodies, with limited influence, gave way to local education authorities. Establishment of these authorities enabled First Nations control of funds and decision making power. The Federal Government transferred the authority and the funds allotted to First Nations Education and the Bands then determined the relationship that should exist between the Band Council and the Education Authority.

The decentralized nature of I.N.A.C.'s administration caused substantial differences in implementation and consequent inconsistencies in program development. Obstacles to the development of education systems exist in both legislation and government regulations, with funding levels frequently being the most contentious issue between I.N.A.C. and the education authorities. This is a bureaucratic tactic to "divide and conquer" First Nations Peoples. Aboriginal People wanted local "control" of Indian Education. They wanted the ability to decide on their children's future and to ensure that the future chosen would enable their children to become self-sufficient, productive and contributing members of society. The decentralized system only transferred the administration from I.N.A.C. to the Education Authorities, thus limiting First Nations decision-making powers and control.

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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## EDUCATION - TODAY

The educational process to which First Nation People are subjected today remains open to criticism. It remains inadequate to meet the needs of First Nations People. Our children are subject to school programs designed for the majority urban, middle-class society. Particular needs are not being met. This arises in part, from the fact that, only too often, the standard curricula and materials prepared for all schools in the Province are being used. More serious, is the fact that many of the teachers are of middle-class backgrounds bringing with them their values which they impose on their students. They are not experienced or knowledgeable in cross-cultural situations and are, therefore, not alert to adapting curricula to better meet the needs of First Nations children.

There are other weaknesses in the administration of educational programs for First Nations People including:

- Absence of a clearly defined educational objective.

- Failure to provide a meaningful educational program.

- Lack of qualified teaching personnel. Simple academic qualification is not sufficient.

- Absence of parental involvement in determining the school programs.

- Failure to integrate culturally relevant programs that would precipitate "holistic learning."

- The facilities on reserves are medieval in atmosphere.

The Federal Government has agreed, along with the First Nations, to supervise and maintain an Education Framework Agreement to address these weaknesses. This agreement, signed by the Assembly of Manitoba Chiefs, stipulated that education be based upon the needs of the First Nation Communities. However, this option still leaves First Nations subject to some Federal "control" and involvement.

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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The most favourable path for First Nation Peoples to follow would be to expand First Nation Jurisdiction. This expansion can be done through constitutional amendment, Federal Legislation or through the Courts. Today, the political climate in Canada is somewhat hopeful for the First Nations and certainly one that is more likely than any other time in the history of the relations between First Nations and the Canadian Government.

Constitutional amendment would require that the Inherent Right of First Nations Government be recognized. The amendment could go further so as to provide a Federal resourcing obligation for Education. However, the legal basis of First Nations jurisdiction over Education would be attained through the constitutional recognition of First Nations Government itself. This recognition would automatically invoke the necessary financial resources to implement Education.

Although the First Nations of Manitoba have "prima facie" control over Education, there is insufficient control to enable First Nations Students to attain a level of education comparable to the level of education of students in Provincial schools. Furthermore, there is no recognition in the educational system for the differences between the two cultures. Since time the European educational system has influenced First Nations, it has done so in complete disregard for First Nations culture, beliefs and traditional educational practices. After review of the results of European (Now Canadian) education on First Nations, one can only agree with the First Nations position that who else better understands the needs and requirements of First Nation Education then the First Nations Peoples themselves.

## **CONTEXT**

Over the past several centuries, First Nations People have had very little or no control and input into the content and quality of the education of their children. They were forced from their homes, language base, culture and environments and placed in institutions where, without orientation and preparation, they were expected to understand and perform as children in the dominant culture. Young people, subjected to institutions, often suffered from intense culture shock in addition to the new pressures of performance and conformation to foreign values and artificial standards of evaluation. Failure to do so was viewed and judged as intellectual inferiority and social delinquency. Labelled as such, most First Nations students emerged from institutions with a significant and debilitating handicap preventing them from developing themselves as successful and productive members of society. They emerged either by graduating or dropping out as underconfident and underachieving individuals. This type of handicap is unproductive, expensive, detrimental and debilitating to us all.

The impact of assimilation has created a situation where First Nations Citizens are caught between two worlds. They struggle to understand their language, their history and their values in a contemporary context. In order to build successful, productive and creative lives, it is essential that First Nations students have the opportunity and ability to make sense of their past, their present and their prospective futures. Historically, education programs of the dominant culture have alienated individuals, created confusion had no relevance to current living conditions and provided minimal opportunities for gainful, productive and appropriate employment.

Today, educational institutes and programs need to be able to bridge the gap between traditional values and lifestyles and the contemporary living context. For First Nations students the integration of traditional values and contemporary education is essential.

There is a significant and desperate need for improvements in education for First Nations students. The goal of education is to provide knowledge, skills, confidence and values enabling students to lead successful lives and make positive contributions to their communities and to society as a whole.

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# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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Education programs must address the needs, abilities and interests of the students and prepare students for decision making, problem solving and critical thinking. An effective learning environment fosters intellectual and personal growth promoting mutual respect and democratic principals. They need to know their own heritage and to heal from the damages done through the enforced education such as residential schools, to learn in environments conducive to productive learning rather than in environments that alienate them and threaten their self-esteem.

During the impressionable years as adolescents, young people develop a personal identity and a sense of purpose in life. At this time, they prepare for further education, work and begin to emerge into the world of adult roles and responsibilities.

However, for many First Nations Students, this is not the reality. Often frustrated and alienated in mainstream institutions, they dropout and are robbed of this opportunity for exploration and development of knowledge, skills and a positive self-esteem. In stead, they migrate to the cities seeking opportunities and excitement. Homeless and penniless, they squander their youth in pursuit of an escape from reality through drugs and alcohol.

Our greatest asset and resource is our youth. The aim of education is to inspire and awaken the spirit within, stimulate active and healthy participation in the world with pride, self-determination and motivation; to provide the confidence and skills required to participate and become successful and productive people. Our youth is today, tomorrow and the future.

## **INHERENT RIGHT TO EDUCATION**

The Original inhabitants of this land, now know as Canada, once flourished in a life-style and culture which offered a stabilized and lifelong educational system, unlike any other . Before the arrival of the Europeans, the Original Peoples based their education system on a lifelong process inherited through the generations, with each generation obtaining the right to this educational process. The cultural value of this system did not limit the learning process to a time frame, but was taught each day of one's life, until that life was over.

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# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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## WEST REGION TRIBAL COUNCIL

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Each and every First Nation citizen held, by the law of Creation the right to a lifelong learning system as practiced by all generations before them, up to the beginning of time. This lifelong learning system was practiced throughout the seven phases of one's life.

1. The first phase of the traditional Educational process beginning with birth. With the first day of an infant's life, the learning process began and continued throughout that life until that life was complete.
2. The second phase of learning began with the pre-school to elementary age. In this stage, the child developed knowledge rapidly, learning and understanding the teachings quickly.
3. The third phase, was the wondering stage, where the child began contemplating the teachings taught integrating a perspective of life. This wondering period occurred approximately in the Junior High to High School level.
4. The fourth phase, was known as the "truth" age, which developed from the High School age on to the age of Post-Secondary entry level. the truth era focused on the reality of life and how one should deal with all circumstances of life.
5. The fifth phase was the planning stage, where the individual began to plan for the future of his/her life, similar to students attending a post-Secondary Institution.
6. The sixth phase, began with parenthood, where the parent became a teacher. Teaching the young all the experiences and teachings given to them.
7. The seventh and final phase as the "grown-up" stage, where the education process focused on a career orientated life, encompassing all the skills needed for survival. In this stage, the circle of the education process is complete and ends with one's life while being passed on and continuing with the birth and education of another child.

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Native people today, still hold ownership to the Inherent Right to Education as given to them since Creation. The learning system, practiced throughout the cycle of one's life, instilled the values, morals, and survival skills similar to and labelled as the educational system of First Nations. First Nations Education was a holistic and integrated education, developed and refined over 5 million years, was taught and carried throughout an entire life cycle.

## **EDUCATION RECOMMENDATIONS**

Through discussions and gatherings with educators, elders and former students, the following recommendations express the desire of First Nations Communities with respect to the Treaties with respect to education as an inherent right.

### **FUNDING**

1. Preserve existing Treaty Rights to access to education.
2. First Nations Bands are under funded for schools. Funding is not at the same level as for other Provincial schools therefore they do not have the same resources and cannot offer the same programs. Band school facilities are too small. Funding for operations and maintenance is not at par with the Province. Funding discrepancies must be addressed in order to create equality in educational resources.
3. Bands should deal directly with Treasury Board instead of funding going through Indian and Northern Affairs. Elimination of excess and unnecessary administration would result in greater financial resources for education of First Nations Students.

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4. Funding arrangements should be more in line with the needs of the community. Presently Bands cannot hire properly qualified teaching staff to provide good quality education to our youth due to I.N.A.C.'s limitation on funds based on formula. Funding arrangements must be reviewed and redesigned for better and more appropriate value for education dollars.
5. All First Nations should have Education Directors for a Band's Education Authority and should be funded directly and automatically to the Band for local control.

## **INFANT/PRIMARY - PRESCHOOL EDUCATION**

6. Traditionally based Daycare and Pre-school facilities should be developed and implemented where small children learn their language and teaching from the elders in their community.

## **CHILD-ADOLESCENT - ELEMENTARY-SECONDARY EDUCATION**

7. The implementation and integration of First Nations traditional teachings, language and values in the education of our youth. Perhaps a return to a holistic and community integrated system based on the seven phases of life rather than the European based, Provincial and Federal system of grades. These phases could offer levels of education corresponding and superceeding those of Provincial and



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Federal systems. First Nations Communities should consider developing their own curricula which includes teaching Native values and traditions.

8. Educators must understand the traditions and values themselves before they can teach the young. Negative attitudes towards traditional teachings stems from the experiences of our educators and parents in residential schools. The community has to learn. Parents must learn along with the children. Traditional education should be offered to parents and teachers and become a requirement for all educators in First Nations schools and institutions.
9. The school system as a whole, school divisions the public and ourselves must be educated about First Nations traditions and values. The curricula should be designed by elders.
10. Students must not only learn in the classroom, but the must also be taken out side to learn about nature to learn about the world in which we live.
11. Students should do things in groups as opposed to individually to learn co-operation and tolerance. "Keep the Circle Strong"
12. Age should not be a factor. Parents should be encouraged to enroll and join in the classrooms. Teaching and learning and environments would change if parents were learning along side their children.
13. Expenditures for conferences and workshops should be used for learning and attending traditional teachings, gatherings, ceremonies and events. These experiences could be brought back to the schools and shared with the students. Students should attend gatherings and ceremonies as an integral part of their education.
14. Organized extra-curricular activities in sports should be arranged. Currently no such activity exists.

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## **YOUTH/ADULT - POST SECONDARY EDUCATION**

15. Preserve existing Treaty Rights to access to post secondary education.
16. Promote and integrate traditional education with contemporary curricula. First Nations students need access to cultural education as well as contemporary programs in order to pursue career development. Provide appropriate, relevant and quality education for First Nations Peoples.
17. Develop and establish community based post secondary programs. Integrate post secondary educational facilities in First Nations Communities.
18. Develop a Native owned and operated post secondary institution should be established whether it be regional, provincial or national. It should be community based. Education should come to the communities, it is our fundamental right.
19. Universities and colleges only teaches the mind. The Native elders Teachings are holistic. Holistic teaching must take place before we can implement the university or college. We have to heal our people. First Nations Post Secondary Institutions should be design and developed with a cultural foundation including curricula, programs, service and facilities.
20. Integrate traditional, academic and technical programs.
21. Provide flexibility and reciprocity with other facilities within the Confederate Institute, other post secondary institutions and international institutions. Students should be able to transfer from and to other institutions with full recognition of their courses and qualifications.

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22. Offer co-op programs and work study opportunities, providing opportunities to gain experience in their chosen fields during the course of their education.
23. Management and leadership courses should be arranged for Chief and Councils newly elected with no experience in the field of politics and operation and administration of programs by bands.
24. Investigate funding for basic literacy. The government is funding basic literacy programs. This should be addressed as soon as possible. Basic literacy funding could be used to open the classroom up to parents. Evening courses could be arranged with the same curricula.
25. Funding guidelines imposed by the Government after 1989 capped funding which restricts the students in courses they can choose. This situation is unacceptable and must be addressed. First Nations Bands should be supporting and First Nations individual regardless of these guidelines. Students should be supported and encouraged to stay in school where ever they are. Current guidelines are limiting, discouraging and hurting First Nations People.

# **FIRST NATIONS HEALTH CARE**

**PREPARED BY  
GLORIA CAMERON**

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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## **INTRODUCTION**

The Royal Commission on Aboriginal Peoples gave opportunity for the First Nation people of the West Region Tribal Council (WRTC) of Dauphin, Manitoba to participate in the Royal Commission process. The meeting hosted by the West Region Tribal Council (WRTC) gave rise for the people of the First Nation communities to gather as a Nation to discuss comprehensive issues effecting their past, present, and future livelihood. Opportunity availed for the people(s) to practice their Freedom of Speech.

An important area of concern to the First Nation people of the West Region Tribal Council communities, was their health care. First Nation people(s) are striving towards achieving high quality health care. We, the First Nations are aware, that in order for a Nation to survive, a Nation must be healthy. An unhealthy Nation will serve no purpose to this wonderful country now called Canada. Therefore, the First Nation people of Canada must continue to exercise their rights to the preservation, protection and maintenance of their physical, mental and spiritual well-being. Should the original people (humans) of this land become very unhealthy, then the plant life, animal life and the land itself will thus become unhealthy. All creation of life must be preserved, protected and maintained for continued survival. People and government(s) must take dual action to ensure that the survival process occurs in partnership, respect and dignity.

## **HISTORICAL BACKGROUND OF FIRST NATION HEALTH**

Prior to the arrival of the visitors to our country, the First Nation people lived in harmony with one another. There was sharing of the natural resources, medicines, food and land which was provided by the Great Creator for First Nation usage. This is the era in which the First Nation people practiced their inherent rights for survival. During this inherent right era, there was plenty of food, water, air and land was preserved, protected and maintained by the First Nation people in conjunction with the guidance given by the Great Creator.

Holistic health existed within the First Nation people(s) era. Health is life. The health of the First Nation people is Sacred. Health is the overall well being, which can not be divided into parts. All parts make one. The mind, body and spirit must

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be in balance for the purpose of maintaining well being. It is therefore, the birthright of every individual to maintain a balanced life. The well-being of the physical, mental and spiritual growth must be in harmony with all life. It was natural law to maintain a healthy and balanced life-style. Human beings must learn the natural laws of kindness, honesty, sharing and strength within one's self first, before one can begin understanding other human beings and all levels of Creation.

## **HISTORICAL BACKGROUND OF NON-FIRST NATION GOVERNMENTAL HEALTH**

Upon the visitor's arrival to our country, the visitors discovered that the First Nation people (original people) were living a harmonious and balanced lifestyle. A life-style which the visitors were not accustomed to living. The new arrivals (visitors) became alarmed by the wisdom, strength, power, honesty and sharing relationships utilized by the First Nation people of this rich and enormous country. It was very obvious that the First Nation people were in control over their customs, values, traditions and natural laws pertaining to holistic health.

As more people entered the country, the British Crown realized that systems had to be established to govern the people. The Treaty making process began with the original people of the land. Within this process, Treaties were made for the well-being and protection of the First Nation people. A process convened between two Nations based on spirit and intent. Promises and commitments were made with the First Nation people for "As Long as the Sun Shines, Grass Grows and Rivers Flow". The First Nation people were to be involved on all issues pertaining to the Treaties and their well being. It was a Nation to Nation bind which is forever. Treaties remain until Mother Earth no longer exists. As changes to the country were enforced, First Nation people were placed in reservations under the control of the Dominion of Canada. Upon the establishment of the so-called reservations reserved for First Nations, an Indian Act was developed to be administered by the Dominion of Canada through the Department of Indian Affairs and Northern Development. The Indian Act would determine how the "Indians of Canada" would act in their own country, governed by a foreign system in absence of holistic values. Stemming from the Indian Act implementation, DIAND created the Indian Agent Era within the reservations for the purpose of overseeing and maintenance control. This era occurred for many years under documentary for governmental control. Stemming from the documentaries, the government initiated another

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process entitled the Residential School Era. The Residential School Era was supposed to be for the purpose of civilizing and educating the First Nation children to eventually assimilate into Canadian Society as a Canadian, rather than a First Nation people. The children suffered many forms of abuse and emotional pain. Families were separated on long term basis, with some becoming permanent separation. Disfunction began to play its toll on the First Nation people. Canadian Society was unaware of these tremendous governmental movements on the First Nation people. Society tends to see the Aboriginal people of Canada as low class citizens in their own country.

As political government changes emerged within the country, in 1945 it was decided that Indian Health Services should be transferred from the Department of Resources and Mines to the Department of Health and Welfare Canada. Documentations were prepared to monitor the health status of the First Nation people of Canada to maintain and regulate communicable disease control for the best interest of all concerned. Then in 1960, Medical Services Branch, a branch of Health and Welfare Canada, began erecting Medical Services offices at provincial/regional levels to be responsible and accountable for Indian Health Services for the First Nation people of Canada.

Mission Statements and mandates were developed and authorized by Health and Welfare Canada for First Nation health care utilizing the unique and special relationship between the First Nation people and the Federal Government. In the late sixties, government nurses were assigned to work within First Nation communities for the purpose of promoting healthy communities. As communities grew and developed changing structures, community based health staff became employed by the communities to work in harmony with Medical Services Branch of Health and Welfare Canada. This created a greater awareness of health care services accessibility to First Nation people.

As time went on, health care to all Canadians continued to change. Insured health services were made available to all Canadians, under the governance of the Canada Health Act. First Nation people were able to access Provincially insured health services similar to the remaining Canadian Society. The First Nation people are being provided with Provincial and Federal Health Care Services, which now creates jurisdictional health care issues.

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In 1979, an Indian Health Policy was developed by the Federal Government for the purpose of usage to assist Medical Services Branch and First Nation communities in achieving an increasing level of health in First Nation communities. The Indian Health Policy was based on three pillars;

- 1) community development
- 2) special and unique relationship between the First Nation people and the Federal Government
- 3) Canadian Health Care System.

The Indian Health Policy is still in effect to assist in achieving First Nation aspirations. There is no mention of the Treaty Right to Health Care within this policy.

The Canada Health Act promotes the World Health Organization's (WHO) mission which is "Health for All, by the Year 2000". Will they promote, "Health for All Aboriginal Peoples of Canada by the Year 2000?"

## **TREATY RIGHTS, TITLES AND PRIVILEGES TO HOLISTIC HEALTH**

(See attached reference, identified as Appendix "A")

## **HEALTH CARE ISSUES**

Investigations/discussions:

There are many health care issues effecting the First Nation people of Canada. Issues which have been left idle by the Federal Government of Canada, due to priority given to Non-First Nation political priorities.



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Below are a number of health related issues effecting the health of the First Nation people.

**1. Treaty Right to Health Care**

The Federal Government declares that First Nation Health Care derives from Federal policy rather than the Treaty Right to Health Care. Policy is for the purpose of restriction and regulation. Treaty Rights supersede policies.

**2. Band/Provincial/Federal jurisdictional systems relating to Health Care.**

The Provincial/Federal Governments utilize their jurisdictional systems to maintain control over First Nation communities/jurisdictions.

**3. On/Off reserve health care needs.**

Comprehensive health care needs of the First Nation people within communities are not totally being provided by the Federal Government.

Comprehensive health care needs of the First Nation people residing off reserve are not totally being accessed due to governmental interpretation of health care responsibilities (Federal/Provincial).

Off reserve First Nation people are informed that they must first seek health care assistance (non-insured health care) from Social Services (provincial, municipal) agencies prior to the Federal Government taking action to meet their health care needs.

**4. The special relationship between First Nations and the Federal Government.**

The Federal Government of Canada is in a constant policy pushing implementation to First Nation people/communities to purposely destroy the special relationship established from the Treaty Making Process. The special relationship between the First Nation people and Federal Government was established via the Treaty Making Process

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to ensure that the First Nation peoples well-being would always be protected. The special relationship must remain intact to ensure the protection of First Nation well-being.

**5. Federal Transfer Payments to the Province in respect to health care**

Provinces receive monies in transfer payments on behalf of First Nation populations.

The provinces receive millions of dollars via Federal transfer payments for health care to society. First Nation populations are integrated into the funding formulas per transfer payments. Provincial health care policies and regulations versus the Treaty Right to Health Care. The First Nation people did not sign treaties with Provincial Governments, therefore there should be no need to carry Provincial Health Care numbers. Our treaty numbers have power over the Provincial Health Care numbers, because of the fact of Treaty rights superseding policy driven procedures.

The First Nation people are not adequately receiving high quality provincial Health Care. There is a lack of health care services/programs within the Provincial health departments pertaining to the delivery of culturally appropriate health care to Aboriginal peoples.

An evaluation of Federal transfer payments to provinces pertaining to First Nations people is non-existent.

**6. The reluctance of the Minister of Health and Welfare Canada to meet with Chiefs of the First Nations communities in respect to Health Care.** The ministers of Health and Welfare are reluctant to meet with First Nations Chiefs regarding specific health care issues. There is no system/protocol for the Minister and Chief to meet as a Nation to Nation.

**7. Funding formulas utilized by Health and Welfare Canada to fund Community based health systems.**

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The Treasury Board of Canada is unaware of the funding arrangements/requirements of the First Nation communities.

Medical Services Branch (Indian Health Services Directorate) negotiates for First Nation Health care funding.

There is failure to meet the comprehensive health needs of the First Nation people. An evaluation is due on the Medical Services Branch Multi-National Operational Plan pertaining to First Nation health.

8. **Health and Welfare Canada contracts with Non-First Nation organizations in respect to First Nation Health Care (services/business).**

The Federal Government of Canada is allowing Health and Welfare Canada to enter into contractual arrangements with National/provincial non-profit organizations in regards to First Nation health services and payment systems.

Health and Welfare Canada has entered into contractual arrangements with Blue Cross (a non-profit organization for the purpose of capturing date (Treaty entitlement) and payment systems for the Treaty Status non-insured health benefits. (The Non-Insured Health Benefits are Federal health services to First Nations for vision care, dental care, prescriptions, medical equipment/supplies and medical transportation. Blue Cross has been authorized to complete this work on behalf of Medical Services Branch of Health and Welfare Canada. Health and Welfare Canada is slowly attempting to shed its obligation and responsibility to First Nation Health Care. They are becoming negligent in their obligation and responsibility to the well being of the Treaty First Nation people. We do not need a non-profit organization such as Blue Cross to work in/on our best interests to Health Care.

9. **De-Insurance**

The provinces of Canada receive funding from the Federal Transfer

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Payments for Health Care. With this system First Nation people were integrated into the universal health care as trends changed. First Nation people can access Provincially insured health care services, in absence of the thought of utilization of their Treaty Right health care privileges. In the true light of things, First Nation peoples health care services should remain with the Federal Government. The Federal Government is the responsible party for First Nation health care due to the Treaty making processes between the First Nation and the Federal Government of Canada on behalf of the Crown. The de-insurance issue should be reviewed prior to future actions per the First Nation people.

### **10. Relationship between First Nation People and Society in reference to Health Care.**

Today's modern day society does not have a clear understanding of the First Nation people(s) Treaty Rights. Society assumes that the First Nation people receive everything for free. Resources such as education, housing, and health care, etc. Society does not realize what occurred during the treaty making process between the First Nation people and the Treaty Commissioners. Promises and commitments were made for the well-being of the First Nation people for "As long as the Sun Shines, Grass Grows and Rivers Flow". The sharing of the riches of the country flows in it's rightful place. Society must keep in mind, that the First Nation people are the original people of the land. First Nation people are willing to improve the relationship between the two Nations.

### **11. Health Care Transfer Process**

The Federal Government of Canada has given Medical Services Branch of Health and Welfare Canada the mandate to transfer health care to First Nation communities who wish to enter into the Transfer of Control. The Transfer of Control sounds great, but in reality all it is, is the transfer of existing programs presently administered by the community. There are limitations in what a community can transfer to their control and jurisdiction. The real picture is not transferred to

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communities. There are many areas in the comprehensive health care systems, which are withheld from the First Nation communities. The Non-Insured Health Benefits remain to be controlled by Medical Services Branch because of the multi-million dollars involved in the management and payment systems on behalf of First Nation people. Communities must proceed with caution, when decision is made within the Transfer of Control process with the Federal Government of Canada. The transfer process does not indicate the Treaty Right to Health Care. First Nation people must be cautioned on Treaty Rights versus Government Policy procedures in respect to Health Care.

## **12. Bill C-31 Impact on Health Care in reference to First Nation people.**

Stemming from the 1985 Bill C-31 ruling, First Nation communities have had an alarming change in their community membership populations. Health Care costs have risen due to this enactment. Communities are now feeling the Bill C-31 Impact regarding community health services and programs. In true light of things, the communities are underfunded for the delivery and administration of health. Funding formulas developed by the government are failing First Nation community empowerment and development. A comprehensive review is in dire need on the Bill C-31 Impact.

## **13. Residential School Era**

The Residential School Era existed from as early as 1907-1977 within Manitoba. During this Era, the First Nation people suffered many consequences under the order of the Federal Government and Religious Interest Groups. There was loss of language, culture, family bonding, self esteem, and educational development within this phase of time. The people were damaged in many ways. In many ways, too numerous to mention in specific terms. The impact/effects are still here today with the First Nation people. There is much healing yet to be accomplished. The Federal Government was responsible for the Residential School Era, therefore must be held partially responsible to assist in the healing process of our people. Compensations must

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be given to the First Nation people to make change. The establishment of Healing Centres is one route to the compensation era to the First Nation people, along with community based developmental programs. Another area of importance is the requirement of a Canada wide public apology to the First Nation people by the Federal Government and Religious Interest Groups. ninety-nine percent (99%) of Canada's Society is unaware of what occurred during the Residential School Era. They are unaware of the damages which have occurred and of today's existing results.

## **14. Environmental destruction**

At one time, the land of the First Nation people was a clean and safe environment to live in. Today, there are environmental issues affecting the health status of all people.

In the Canadian government Green Plan, the only area of interest given to the First Nation people, was to improve high quality drinking water programs and to improve sewage system implementations. There was no opportunity or priority available for First Nation people to recommend solutions to the Green Plan developmental implementation processes. Many teachings can be provided to governments and society in respect to the caring of Mother Earth.

## **RECOMMENDATIONS**

1. That, First Nation people, continue to gather as Nations to discuss, investigate, and recommend solutions to the well-being of the people, after the end stages of the Royal Commission on Aboriginal People(s) process.
2. That, First Nation people be compensated with Healing Centres to the damaging effects of the Residential School Era. (Support to other areas of Canada).

That, the Crane River First Nation Community of the West Region Tribal area, be financially funded for the establishment of a Healing

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Centre. Finances to be provided by the Federal Government of Canada.

3. That, the Federal Government of Canada refrain from utilizing governmental policies to govern First Nation Health Care. First Nation Health Care derives from Treaty Rights. Treaty Rights remain for "As Long as the Sun Shines, Grass Grows and Rivers Flow". Treaty Rights supersede governmental policies.

That, all First Nation people of Canada protect, promote and maintain their Treaty Right to Health Care.

That, health care needs of the First Nation people be provided in absence of bureaucracy, red tape, restrictions and financial barriers in order for the First Nation people to achieve their goals and aspirations of First Nation health.

4. That, jurisdictional issues pertaining to First Nation health be resolved between First Nation governments and Provincial/Federal governments via investigation.
5. That, improved relationships between the Aboriginal people of Canada (Treaty Status, non-status, Inuit and Métis) Governments of Canada and Canadian Society (people) continue to be implemented upon the completion of the Royal Commission on Aboriginal People(s) process.
6. That, the final report on the Royal Commission on Aboriginal People be distributed to every Aboriginal community in Canada; every Federal Government department in Canada, every provincial Government department in Canada; every Municipal department in Canada for the purpose of Canada wide acknowledgment.

Canadian Society should be given the opportunity to be aware that the Aboriginal people of Canada are attempting to improve the relationships between all parties.

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7. That, the Federal Transfer Payments to the Provinces from the Federal Government continue to be investigated on whether or not the Aboriginal people are benefiting from this process.
8. That, a system/protocol be established for a Chief of a First Nation community to meet with the Minister(s) of Health and Welfare Canada. There is no existing system in place. Opportunity must avail for Nation to Nation meetings to discuss First Nation Health.
9. That, Treasury Board of Canada provide adequate financial resources to First Nation people based on community needs, rather than the funding formulas utilized/developed by internal governmental departments.
10. That, the Federal Government of Canada refrain from authorizing the Department of Indian Affairs and Northern Development (DIAND) and Medical Services Branch (MSB) of Health and Welfare Canada to enter into financial/contractual arrangements for First Nation Health Care to interested provincial departments and non-profit organizations such as Blue Cross, in absence of First Nation consultation and approval.
11. That, First Nation Treaty Right to Health Care be portable within all provinces of Canada and the United States of America. (Canada and the United States was known as Turtle Island prior to the boundary separation).
12. That, the De-Insurance issue to First Nation health care be carefully reviewed and discussed by First Nation governments, Provincial governments and the Federal government.
13. That, Canadian Society be continuously provided with an education and awareness system relating to First Nation people(s) Treaty Right to Health Care.

That, the First Nation communities establish systems for an ongoing sharing sessions with Canadian people(s) government corporations and businesses.



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14. That, the Transfer of Control of Health process optional to First Nation communities by the Government of Canada be carefully reviewed by First Nation people to ensure a successful implementation processes.
15. That, the Government of Canada take action in reference to the Bill C-31 impact now facing First Nation communities. Action in adequate financial arrangements to meet the demands of the Bill C-31 Impact on First Nation communities.
16. That, the Government of Canada provide Aboriginal people of Canada with the same salary/wage scales provided the civil servants in the workplace. Aboriginal people are not receiving proper funding for staff as compared to the government official scales.
17. That, Aboriginal people continue to hire their own people who have graduated from Educational Institutions in order to retain professionalism within Aboriginal organizations.
18. That, the Government of Canada provide personal health care units for the elderly of the First Nation communities.  
  
That, the moratorium on Personal Care Home establishments within First Nation communities be lifted. The Department of Indian Affairs and Northern Development (DIAND) utilizes the moratorium as a barrier to First Nation developments.
19. That, the Government of Canada provide adequate funding for the purpose of First Nation communities to have Health Administrators/Health Program Directors services for their health care systems.
20. That, Health and Welfare Canada terminate implementation of policy/procedures regarding health for First Nation people. Policy development and implementation by the Governmental departments are occurring in absence of consultation and authorization.

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21. That, First Nation people, other Aboriginal people and governments continue to support all disabled people of Canada in their movements to making change within the disabilities issues effecting their well-being.
22. That, the Aboriginal people of Canada continue to exercise and express their Rights and Privileges to Canadian Society and Canadian governments; utilizing the Freedom of Speech concept.
23. That, First Nation institutions and systems replace the governmental departments presently in existence based on the spirit and intent of the First Nation treaties. First Nation people dealing directly with the high government rather than lower level bureaurcracy.

## **CONCLUSION**

The First Nation people of the West Region Tribal Council of the Treaty #2 and Treaty #4 communities are willing to work in harmony with Aboriginal people, Canadian Society and Governments to improve the relationship between all parties concerned.

We can accomplish our goals and aspirations with prayers and with guidance from the Great Creator. Let us all strive for excellence in an environment guided by trust, co-operation and partnership where all people are treated with fairness, dignity and respect.

**\* This report as submitted is not intended to direct prejudice or insult to any given individual or party.**

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## TREATY #2 AND TREATY #4 COMMUNITIES

### TREATY RIGHTS, TITLES AND PRIVILEGES TO HOLISTIC HEALTH

The Treaty Right to Health is an everlasting holistic birthright. Health is life. The health of the Anishinabe people is sacred. Health is overall well being which can not be divided into parts. All parts make one. Holistic health consists of mental, emotional, physical and spiritual well being which maintains a balanced life. It is therefore, the birthright to every individual to maintain a balanced life. The well-being of the mental, emotional, physical and spiritual growth must be in harmony with all life. Health is protection, promotion and preservation of the mental, emotional, physical well being.

The knowledge and wisdom of the Elders continue traditional teachings of human being relationship to the Creation of Life. Human beings must understand their own balanced life in order to have a total understanding of all creation. Human beings must learn the natural laws of kindness, honesty, sharing and strength *within one's self first*, before one can begin understanding other human beings and all levels of Creation.

The Elders were taught as the Elders before them, to share the knowledge of the various levels of creation of life such as the creation of the universe, plant, animal and human life. Each level of creation being given specific instruction on how to live in harmony with themselves and with other levels of creation. All levels of creation must be understood and respected. It is with the sharing of knowledge being passed down from generation to generation that the creation of all life is to be held sacred.

Before the arrival of the Europeans, the original people of this land lived in harmony with all creation of life and with one another. The original people have understood and utilized the natural universality on the total process of life from generation to generation. The simplicity way of life has always delivered the solution set to any given issue that may be misunderstood or creating problems. At the time of the Treaty Making Process, the Anishinabe understood that the Great Mother of Great Britain and the Chief and Headman were at this time thinking in the future for the

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best interest of the Anishinabe's children's, children's, children's, children's, children's, children's, children's, children. The Great Mother of Great Britain also understood that she would continue helping the people maintain a balanced life because the Queen loves her Red children; because what she promises she never changes; because the Queen understood that the land was to be shared under the Great Spirit. In accordance to the traditional teachings of the Anishinabe, how can an individual Nation, society or any form of Government lay claim or control to the wind, earth, plants, animals and human beings while all being part of the Creation of Life.

Today, the Anishinabe carry the birthright of Turtle Island passed on from generation to generation.

For a people who have fallen from a proud state of independence and self-sufficiency, progressive substantial change can come about only where we again achieve that degree of security and control over our own destinies. We do not need to re-create the exact form by which our ancestors lived their lives, the clothes, the homes, or the means of travel. We do need to create new forms that will allow future generations to inherit the values, strengths and the basic spiritual beliefs, the way of understanding the creation of life, that is the fruit of a thousand generations; cultivation of North American soil by the Anishinabe people. If others have also prospered on our land, let stand as a sign between us that Mother Earth can be good to all her children without confusing one another. Let us all work in harmony with one another to enable us to walk side by side, as equals. The responsibility belongs to each one of us to make every effort to develop a strong relationship for the benefit of our Anishinabe's children's, children's, children's, children's, children's, children's, children's children. The process must begin now.

Tomorrow, (future) our Anishinabe's children's, children's, children's, children's, children's, children's children will have a better life and better understanding of life after we have worked together by setting the examples of teamwork with the Great Mother of Great Britain's children's, children's, children's, children's, children's, children's, children's children in order to correct the past and present relationships for the best interest of all people of Turtle Island.

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**HEALTH CARE**

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In conclusion, continued access to quality health care without financial or other barriers will be critical to maintaining and improving the health and well-being of the Anishinabe.

The Mission Statement of Health and Welfare Canada...

**We help Canadians maintain and advance their health and social well-being through leadership, partnerships and dedicated service.**

**We strive for excellence in a work environment characterized by trust and co-operation where people are treated with fairness, dignity and respect."**

Due to the Mission Statement of Health and Welfare Canada and the similarities within the negotiated Treaties between Great Britain and Anishinabe Nations in conjunction with traditional teachings of the Elders that Health is Holistic Birthright for all people.

The Treaty Right to Holistic Health remains from birthright for "As Long as the Sun Shines, Grass Grows and Rivers Flow". Treaties remain until Mother Earth no longer exists. The Treaty Right to Health can never be broken by any given individual or party.

Prepared by:                      West Region Tribal Council  
   Treaty #2 and Treaty #4  
   July 3, 1992

# **FIRST NATIONS**

# **SOCIAL DEVELOPMENT**

**PREPARED BY**  
**LARRY CATAGAS**

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**SOCIAL DEVELOPMENT**

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## **INTRODUCTION**

Social Development encompasses a wide range of programs which are designed to accommodate the various needs of people. Under the global term of Social Development, we will find Child and Family Services, Income Security, Mental Health, Adult Care and others. These are further refined into specialized areas such as Rehabilitation Services, Training, etc. For the purposes of this presentation, we will focus on Income Security and more specifically as it is delivered for First Nation people on and off reserve.

## **BACKGROUND AND ISSUES**

In the late '50's or early '60's, the Government of Canada introduced the "Welfare Program" which provided "rations" for families in need. This program, with good intentions was also made available for First Nations people. Through the years, however, this program has destroyed the drive for most families to provide for themselves. Several generations of native families have become dependant and lost the pride and initiative for self-sufficiency. The lack of economic opportunities in most First Nation communities only reinforced this dependency state. As mentioned, the "Welfare" program is not all bad, for there were and are people who are genuinely in need of these services, such as the aged and the handicapped.

Further to the dependency of clients on the program, it would appear that the Governments whether regional (Provincial and Municipal) and federal (Government of Canada) are lacking efforts in addressing and curtailing the trends and use the Income Security Program as a means of escape. Needless to say, the tax burden is heavy and the outcry of tax-payers will be louder as the welfare rolls continue to climb. The amount of economic development activity and funding is so minute that it creates a situation that enables expenditure with the Income Security Program to increase at a rate of approximately 10% per year, thereby doubling every ten years.

# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**SOCIAL DEVELOPMENT**

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In the 1970's, First Nation Communities were enabled to assume administration of the program under "devolution". However, up to this day, the control in several respects remains with the Indian Affairs Department. Reports filed monthly by the Bands are continuously monitored and scrutinized by Indian Affairs. Yet reports filed by municipal and provincial authorities were never questioned. The program is basically administered under the auspices of Indian Affairs policy which is restrictive and at times fall short of meeting the needs or deviate from those policies applicable to other citizens within the Province. In order to address this problem, the Social Committee has been in the process of devising its First Nations Social Development Manual. The Department of Indian Affairs may have difficulty with certain aspects of this manual due to the issue of control and limitations on funding.

The program is basically intended to be utilized as a last resort - but when other alternatives are not available, First Nation communities have to rely on it.

This program should augment other programs (re: training and employment) to encourage First Nation Citizens to better themselves, rid dependency and retrieve the pride they once had. The present policies restrict the utilization of Income Security Funding for the purposes of supplementing training programs especially in situations whereby the First Nation citizens have to obtain that training off-reserve.

**We therefore recommend to the Royal Commission:**

1. To encourage the Federal and Provincial Governments to increase allocation of resources for Economic Development Activity.
2. To encourage the Federal and Provincial Governments to better utilize Social Development resources as an augmentation of programs which will best promote and encourage training and employment activity.
3. To encourage the Federal Government (Indian Affairs) to accept changes within the First Nations Policy Manual.



# **REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**

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**WEST REGION TRIBAL COUNCIL**

**SOCIAL DEVELOPMENT**

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4. To encourage the Federal and Provincial Governments to introduce programs to create awareness of self and community as an attempt of restoration of pride and initiative to break the cycle of dependency.

●PORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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WEST REGION TRIBAL COUNCIL

NATURAL RESOURCES

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# **FIRST NATIONS NATURAL RESOURCES**

PREPARED BY  
HARVEY PAYNE

**Commentary from Canada and Brazil to the  
World Commission on Environment and Development**

"We are the first to detect when the forests are being threatened, as they are under the slash and grab economies of this country. And we are the last to be asked about the future of our forests. We are the first to feel the pollution of our waters, as the Ojibway peoples of my own homelands in northern Ontario will attest. And, of course, we are the last to be consulted about how, when, and where developments should take place in order to assure continuing harmony for the seventh generation."

Louis Bruyere

President, Native Council of Canada

WCED Public Hearing Ottawa 26 - 27 May 1986

"You talk very little about life, you talk too much about survival. It is very important to remember that when the possibilities for life are over, the possibilities for survival start. And there are peoples here in Brazil, especially in the Amazon region, who still live, and these people that still live don't want to reach down to the level of survival."

Speaker from the floor

WCED Public Hearing Sao Paulo 28 - 29 Oct 1985

"I work with the rubber trees in the Amazon. I am here to speak about the tropical forest.

We live from this forest they want to destroy. And we want to take this opportunity of having so many people here gathered with the same objective in mind to defend our habitat, the conservation of forest, the tropical forest.

In my area we have 14-15 native products that we extract from the forest, besides all the other activities we have. So I think this must be preserved. Because it is not only with cattle, not only with pasture lands, and not only with highways that we will be able to develop the Amazon.

When they think of falling trees, they always think of building roads and the roads bring destruction under a mask called progress. Let us put this progress where the lands have already been deforested, where it is idle of labour and where we have to find people work, and where we have to make the city grow. But let us leave those who want to live in the forest, who want to keep it as it (is).

We have nothing written. I don't have anything that was created in somebody's office. There is no philosophy. It is just the real truth, because this is what our life is."

Jaime da Silva Araujo

National Council of Rubber Tappers

WCED Public Hearing Sao Paulo 28-29 Oct 1985

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## Introduction

Natural Resources are integral components of the culture, tradition and economy of Aboriginal communities. The Aboriginal questions and concerns associated with natural resources were considered in significant detail by the Aboriginal Justice Inquiry of Manitoba. The Aboriginal Justice Inquiry (AJI) of Manitoba released its report in 1991. This submission largely corroborates the findings of the AJI and relies substantially on its research and informed conclusions.

Natural resources covers an array of issues that are of considerable importance to Aboriginal people in Manitoba. There are three major aspects to these concerns: the infringement by federal and provincial policies and legislation on the exercise of Aboriginal and treaty rights by Aboriginal people; the negative repercussions for them produced by large-scale exploitation of renewable resources; and the ongoing disputes regarding the exact scope of constitutionally protected rights and their practical import for the decision-making process on the management of natural resources.

The Migratory Birds Convention Act, an Act passed by the federal government in 1917 to ratify an international agreement with the United States and Mexico has been a source of major conflict between Aboriginal Peoples and the various provincial and federal governments. The Act and the conflict became symbolic of the Aboriginal Peoples' resentment of government disregard for treaty and Aboriginal rights.

A large proportion of the natural resources issues which are discussed in the following pages would be eliminated, if the Government of Manitoba implemented the recommendations of the Report of the Aboriginal Justice Inquiry of Manitoba. This is the substance of our first recommendation.

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**The WEST REGION TRIBAL COUNCIL Recommends  
that:**  
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♦ The Government of Manitoba implement the  
recommendations of the Commissioners of the  
Aboriginal Justice Inquiry of Manitoba.  
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## Aboriginal Rights

First, we will develop a general understanding of the complementary nature of Aboriginal and treaty rights. We also wish to dispel the notion that Aboriginal rights are extinguished by treaty rights.

For Aboriginal Peoples, the land was part of their identity as a people. The earth was their Mother, the animals were their spiritual kin and all were part of the greater whole, which was life. Their culture was grounded in nature. The thinking of Aboriginal peoples was cyclical, rather than linear like that of the Europeans. Everything was thought of in terms of its relation to the whole, not as individual bits of information to be compared to one another. Aboriginal philosophy was holistic, and did not lend itself readily to dichotomies or categories as did European philosophy. So for Aboriginal Peoples, their rights were - and still are - seen in broad, conceptual terms.

The most fundamental right is the right to identity as Aboriginal Peoples. This right is derived from the land and the use of the land, for habitation, hunting, fishing, trapping, gathering food and medicines, or for any other traditional purpose. This right to identity also implies the further right to self-determination, for it is through self-determination that a culture preserves its collective identity. This latter right is violated if the traditional economy of an Aboriginal group is disrupted severely or damaged by the encroachments of a civilization that exploits or abuses natural resources on a large scale, such as a hydro-electric project, abusive forest harvesting, or a strip mine. Further, the right to self-determination implies the right to take charge of ones own affairs so as to ensure effectively that Aboriginal identity and culture will be respected in the political sphere. These are the Aboriginal rights of the indigenous people of Canada.

## Treaty Rights

Like Aboriginal rights, treaty rights are also understood by Aboriginal Peoples in broad, conceptual terms. Through treaties the Europeans sought to occupy the lands of the Aboriginal Peoples and to make the land safe for settlement and for the development of resources. Aboriginal Peoples consider the treaties to be agreements between sovereign nations. We note that the Supreme Court of Canada (SCC) has not entirely agreed with Aboriginal Peoples on this issue. Chief Justice Dickson stated that: "An Indian treaty is unique; it is an agreement sui generis which is neither created nor terminated according to the rules of international law."

Aboriginal Peoples today, feel that their trust has been betrayed and

that the rights assured in treaty have become a series of broken promises. Aboriginal Peoples believe that they were to have been allowed to retain their identities, their cultures, their languages, their religions and their traditional ways of life, including their laws and systems of government. These rights have been denied to them.

The manner in which the reserves have been set aside for First Nations, denies rights. Instead of the reserves being viewed as lands retained by Aboriginal Peoples, the government has persisted in the view that the land was surrendered to the Crown, which then 'gave it back' to Aboriginal people.

Aboriginal Peoples were to have been partners in the new arrangement, with an equal say in defining their ongoing relationship with the Crown. They have been denied that.

Treaties are still seen by Aboriginal Peoples as solemn agreements between sovereign nations, designed to confirm their Aboriginal rights and supplement them with express commitments from the Crown.

The federal and provincial governments, on the other hand, have viewed the matter of treaties differently. The Aboriginal people were not expected to survive long under the new regime and instead be assimilated into the newly developing settler society. Over time, the federal and provincial governments came increasingly to the view that the treaties and Aboriginal rights were relics of the past that could be ignored with impunity. Once the governments had achieved title over the land, the treaties had no significance to them.

In time, the significance of the treaties was reduced to such extent that only those matters specifically addressed by court decisions, were reluctantly accepted by the governments and the effect of the treaties was restricted as much as possible.

In addition, the notion that the treaties had extinguished Aboriginal rights gradually became widespread, especially in provincial government departments and agencies.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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♦ All departments of the federal and provincial governments revise their policies to reflect the view that treaty rights supplement previously existing Aboriginal rights, rather than replace them.  
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## **The Natural Resources Transfer Agreement Act (NRTA)**

In 1930, the federal government unilaterally transferred responsibility for natural resources to the prairie provinces. There was no consultation with Aboriginal Peoples. In Manitoba, the famous Paragraph 13 of NRTA was to define treaty and Aboriginal rights in an increasingly narrow interpretation for more than 50 years! The Migratory Birds Convention Act and what constituted unoccupied Crown land were major issues of contention in the courts. The government won a lot of cases and points but lost a few big ones, such as the right to define 'occupied Crown Land'. That was a daring ploy by the provinces of Manitoba and Saskatchewan which had they succeeded through being upheld by the courts would essentially have given the provinces in the Prairies the right to define and thereby extinguish Aboriginal and treaty rights to resources.

The courts decided that the effect of paragraph 13 was to consolidate treaty rights to hunt, trap and fish. Treaty rights were also subject to federal law such as the Fisheries Act, The National Parks Act and the Migratory Birds' Convention Act. The Constitution Act, 1982 revived treaty and Aboriginal rights. But, Aboriginal people had to wait another decade for the Sparrow decision which interpreted section 35 for the provinces. In Manitoba, there is a reluctance to accept the applicability of the Sparrow decision in Manitoba because it is based on Aboriginal rather than treaty rights and the province would like to take the interpretation that the treaties extinguished Aboriginal rights. This narrow and restrictive viewpoint appears to conflict with Supreme Court of Canada positions which assert that treaties be given a contemporary, broad and liberal interpretation, bearing in mind the expectations of the Indians. Furthermore, matters of doubt should be resolved in favour of the Indians.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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♦ The Natural Resources Transfer Agreement Act, 1930 be amended in consultation with the effected Aboriginal Peoples to reflect appropriate accommodation of Aboriginal and



treaty rights to land and resources.

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The Sparrow decision essentially revived the significance of the treaties and Aboriginal rights in Canadian law, although uncertainty prevails regarding the application of the NRTA and apparent conflicts.

The AJI considers the reaction of governments and enforcement agencies to court decisions, with particular reference to the Flett case and the Migratory Birds Convention Act and its regulations. The AJI expresses amazement that the Department of Natural Resources, in Manitoba continued to enforce the legislation as if the Flett decision had never been rendered. The government flouted the law, as it had no authority whatsoever to ignore this decision. Judge Martin's decision was the law and it deserved to be respected and followed unless or until overturned. It brings dishonour to the government and the Crown when court decisions are not respected solely because the government has lost the case and has launched an appeal. Continuing to prosecute Indians on the same basis that had been rejected by Judge Martin after the trial decision in Flett imposed great hardship on those charged, and brought the government as well as the legal system in Manitoba into disrepute. This cannot be justified and can never be repeated.

Two years later, the Manitoba Court of Queen's Bench upheld Judge Martin's decision in Flett. Both courts declared that subsection 35(1) had fundamentally altered the law. Section 35 had effectively rendered the Migratory Birds Convention Act inoperative when it conflicted with treaty rights.

Again, the Manitoba government chose to appeal and continued to refuse to give full weight to the Queen's Bench decision in the interim. In 1991, the Court of Appeal unanimously refused to grant leave to appeal, in no uncertain terms. The court took the unprecedented action of awarding costs against the government in the amount of \$15,000 to reimburse the Assembly of First Nations. The Crown had already agreed to substantially cover the costs of Flett.

Our courts in Manitoba have spoken clearly in relation to the Migratory Birds Convention Act in the Flett case. They have declared that this Act is of no force or effect to the extent that it conflicts with Aboriginal and treaty rights. The law is clear in Manitoba. Treaty rights must be respected. Rights under treaties will prevail over inconsistent federal or provincial legislation, except for the very limited circumstances where safety or essential conservation practices are at issue.

The AJI discusses what it considers to be a continuing source of conflict in Manitoba: Aboriginal-Crown relations. Further reference is made to the regrettable and unlawful tendency to refuse to honour court decisions that reject government policies concerning resource management, as exemplified by the Flett case. This is a contemporary problem in Manitoba which appears to result from government policy and zealous law enforcement senior officials.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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♦ Measures be implemented to ensure provincial government and departmental compliance with decisions of the courts, to ensure that the unjust Manitoba experience in the Flett case can never be repeated.

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Another example is the decision of the Supreme Court of Canada in the Sparrow case. The Supreme Court delivered its unanimous judgment on May 31, 1990, in which it clearly declared that Aboriginal and treaty rights are entitled to priority in the allocation of fish and game resources. The initial reaction of governments across Canada was that they would have to study the decision; an understandable reaction. However, this reaction cannot justify the application of laws that are contrary to the decision through "sustaining prior enforcement practices against Aboriginal people in a way that suggests the law has not changed" (AJI). Furthermore, governments cannot postpone action indefinitely. More than a year later, the federal government was still reviewing the implications on fisheries and migratory birds harvesting by Aboriginal people. The Aboriginal Peoples of Manitoba still do not know how the federal government will interpret the law. The AJI concludes that such government reactions, increase immeasurably the sense of frustration of Aboriginal Peoples and the problem is contrary to the foundation of the legal system which depends on clarity of the law and respect for the decisions of Canadian courts. Uncertainties created by government must cease immediately. That was the view expressed by the AJI. However, the reality for Aboriginal Peoples in Manitoba is that the provincial government will ignore or delay implementation of the SCC decisions with the same

impunity that has heretofore been applied to the treaties. Fervent in the belief that giving vent to Aboriginal and treaty rights will lead to the decimation of fish and wildlife in Manitoba, the provincial government and its officials persist in affording a minimum recognition to the SCC decision in Sparrow. Some measure must be taken to reduce the arrogance of government officials and policy makers as they persist in minimizing the application of the decisions of the SCC. Leaving the interpretation of SCC decisions to the provincial government is an injustice to Aboriginal Peoples.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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♦ An independent agent (or other  
authoritative body) be established to ensure  
that objective interpretation is given to  
court decisions.

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**The Constitution Act 1982**

Section 35 of the Constitution Act, 1982 recognized and affirmed existing treaty rights. This section has the effect of precluding any parliamentary or legislative interference with those rights. Prior to 1982, interference had taken place under the previous doctrine of parliamentary supremacy, through which the courts concluded that Parliament legally could do whatever it wished, even if it was unjust and dishonourable to violate solemn treaty commitments.

According to the AJI report, the federal government has a narrow understanding of the treaties, largely based on a strict reading. The parts pertaining to natural resources are grouped and summarized as follows:

- ♦ Sovereignty and Allegiance. The existing political order was recognized, as the treaties were signed by the Chiefs. The treaties were considered as recognition of the transfer of sovereignty and allegiance.
- ♦ Surrender of Land. The stated intent of treaty was to open up land for settlement. The Indians, in the words of the lawyers, were said to have ceded, released or surrendered the land.
- ♦ Reserves. Most of the Prairie treaties promised reserves on the basis of a

certain amount of land for each family.

- ♦ Economic Development. The reserves were established for the purpose of farming and development assistance was to be provided.
- ♦ Hunting and Fishing Rights on Surrendered Lands. Promised orally in treaties 1 and 2 and included in writing in all other Manitoba treaties.
- ♦ Regulatory or Legislative Authority of Canada. The Government of Canada reserved for itself certain regulatory authority under the treaties.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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- ♦ The federal and provincial governments revise their understandings and policies regarding the treaties, in light of the Constitution Act 1982 (sec 35) and the decisions, tests and guidelines provided by the Supreme Court of Canada.
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## **Enforcement of Regulations and Statutes**

The primary source of natural resource conflict between Aboriginal Peoples and the federal and provincial governments concerns the harvesting of wildlife. Even the Constitution Act, 1982 affords little protection from the overly zealous pursuit of Aboriginal Peoples by some enforcement staff in the provincial government. Natural Resources officers seek to enforce the general fish and wildlife legislation equally to all people, whereas Aboriginal people are firm in their belief that these laws do not apply to them and that they can continue to hunt freely as their ancestors had done from time immemorial. This conflict in perspectives frequently results in the laying of charges against Aboriginal persons and the seizure not only of what they have harvested, but also of the tools of their trade (i.e., nets, rifles, boats, vehicles, etc.). Stimulated and inspired by misdirected policy and procedures issued by senior staff and the departments' executive, some of the officers have developed behaviours and practices that in many instances constitute harassment. The following unfortunate incident illustrates the zeal with which Aboriginal Peoples hunting at night are pursued. The incident is unfortunate because an officer lost his life. Two patrol vehicles were

travelling are night on back roads in the northern Interlake district in Manitoba: their lights had been extinguished so as to avoid detection by persons suspected of night-lighting in the area. The vehicles collided and a fatality resulted. This incident serves to illustrate the fervour with which some provincial natural resources officers pursue potential violators. The people most likely to be encountered during these night patrols, which also involve spotting-aircraft and two-way radios, are Aboriginal Peoples, who are legally entitled to hunt at night. The pursuit of Aboriginal Peoples by DNR enforcement staff is excessive and in our view constitutes harassment. Better ways must be found to ensure fish and wildlife conservation. In addition, many Aboriginal people plead guilty as charged because they lack the financial resources required to enable legal representation in court. The Aboriginal perception of enforcement officials, stemming from the "Mounties" is that their role is to protect Aboriginal rights. The apparent conflict with this perception is that those who are supposed to be protecting Aboriginal rights are in appearance actively opposing those rights. An Aboriginal person who is charged with hunting on private land, for instance, perceives that his hunting right is being challenged. The actual detail of the case - the fine print, so to speak - is often not well understood. These misunderstandings result in a perception of harassment.

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The WEST REGION TRIBAL COUNCIL Recommends  
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♦ Manitoba Natural Resources Department  
revise its enforcement policies, procedures  
and most importantly staff behaviours and  
practices to eliminate harassment and reduce  
the perception of harassment where it exists.

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### Large-Scale Natural Resource Developments

Large-scale hydro-electric and forestry development projects, in northern Manitoba have caused significant negative effect on Aboriginal Peoples. Future developments should only proceed after consultation and agreement has been reached with the Aboriginal Peoples to be affected. Such agreements should address efforts to minimize or eliminate any negative environmental repercussions, promote Aboriginal economic opportunities, and provide suitable alternative lands and financial compensation. The Aboriginal Justice Enquiry Report Recommended that:

"A moratorium be placed on major natural resource development projects unless, and until, agreements or treaties are reached with the Aboriginal people in the region who might be negatively affected by such projects in order to respect their Aboriginal or treaty rights in the territory concerned."

In 1991, Chiefs Nepinak and McKay (Waterhen First Nation and Pine Creek First Nation) asserted to the Province of Manitoba that:

"Aboriginal and Treaty Rights are more encompassing than hunting and fishing and include the total way of life that is lived on the land. This is a way of life that comes from our values and a way of life that enriches our values."

One principle reinforced in Sparrow is that any regulation or infringement requires consultation with the aboriginal peoples affected. If there is a loss of Aboriginal or Treaty rights, compensation must be considered.

This is my understanding of the meaning of Sparrow and other recent case law as it bears on the issues before us.

The Treaties provided for lands which may be taken up for settlement, mining and lumbering. The Treaties also assured that

our right to hunt, fish and trap would remain unimpaired and we would be as free to hunt, fish and trap as we were before the Treaty: this is one of the rights that the Constitution Act and Sparrow recognised and affirmed.

These assurances of the continuance of our vocations on the land, combined with the provision providing for the use of Crown lands for lumbering, say to me that the degree, nature and extent of lumbering must be CONSISTENT with these rights and our use of resources.

The degree, nature and extent of Repap's proposed operations in our area are not consistent with our rights and existing uses of the land. Repap proposes to take up our best and most valued areas. Clear-cutting methods are not acceptable, in their destruction of the natural balances on the land and permanent roads will lead to changes on the land which will make our traditional way of life impossible, throughout the entire area.

We essentially endorse the recommendation of the AJI regarding this and similar issues.

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**The WEST REGION TRIBAL COUNCIL Recommends  
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♦ The Province of Manitoba ensure through consultation and co-management regimens that large-scale developments do not inflict negative impact on Aboriginal Peoples and their communities and lifestyle.

♦ The Province of Manitoba enable Aboriginal Peoples to advance their own notions and agendas for natural resources without the encumbrance of pre-conceived notions of the form and substance that developments must take being imposed by the cultural slant of the provincial government.

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## **Hunting, Fishing and Trapping Rights**

The AJI divides the history of modern litigation in Canada, in these matters, into two era: Up to Sikyea and; Trying to move away from Sikyea. The

same practice is followed here.

In these matters, R.v. Sikyea was the first major decision by the Supreme Court of Canada in 1964. The court agreed with a Northwest Territories court decision that treaty rights were subject to being overridden by federal statutes. The results of the initial set of judgments are generalised in three basic propositions:

1. Treaty promises are protected against provincial law by section 88 of the Indian Act (and in the Prairies by provisions of the Natural Resources Transfer Agreements).
2. Any Aboriginal or treaty rights are subject to federal laws.
3. Aboriginal rights that are not confirmed by treaties are subject to provincial laws outside of reserves.

The "Trying to move away from Sikyea" era is characterised by an apparent sensitivity to Aboriginal and treaty rights in Canada and a decision by the SCC that Aboriginal and treaty rights are to be interpreted liberally.

The application of the Migratory Birds Convention Act had serious effects on Aboriginal groups in Canada, who traditionally relied upon migratory birds as a plentiful and reliable source of food. In spite of repeated federal pledges to abide by the treaties, the Migratory Birds Convention Act still conflicted with treaty and Aboriginal rights. Repeated protests failed to bring the law in line with federal promises.

In practice, the law was not acceptable even to governments, who adopted policies of limited or selective enforcement.

There is now reason to think that the Sikyea line of reasoning is no longer acceptable to the Supreme Court of Canada, which has recently laid down three innovative rules:

- \* The biases and prejudices of another era are no longer acceptable in Canadian law; indeed they are inconsistent with a growing sensitivity to Aboriginal and treaty rights in Canada.
- \* Legislation and treaties which contain provisions supportive of Aboriginal rights are to be interpreted liberally in favour of Aboriginal people.
- \* Aboriginal title can only be taken away by clear and unambiguous legislation. General legislation, enacted without consideration of these rights, is no longer considered capable of overriding Aboriginal title.



The Constitution Act, 1982 has provided an opportunity for the courts to depart from the previous jurisprudence and to consider the status of Aboriginal and treaty rights in relation to the traditional activities of hunting, fishing and trapping, and their susceptibility to federal law.

The Supreme Court of Canada in the Sparrow case has made it clear that subsection 35(1) of the Constitution Act, 1982 must be given a broad, purposive interpretation in favour of Aboriginal people, and ensures a dramatically new level of legal importance to Aboriginal and treaty rights.

### Commercial Hunting

The law is not clear regarding commercial hunting activities.

There is extensive evidence that a lively trade in fish and game existed prior to contact with the Europeans, so as to constitute an Aboriginal right. Many treaties were negotiated on the understanding that the right to continue commercial harvesting would continue. Thus the AJI concludes, as a general proposition, that hunting, fishing and trapping for commercial purposes are "recognized and affirmed" as "existing aboriginal and treaty rights" within the meaning of subsection 35(1).

At the same time, the AJI report continues, it is necessary to manage these activities to ensure a priority in the allocation of natural resources is granted to Aboriginal Peoples who are hunting and fishing for social, ceremonial and food purposes.

The AJI concludes that it would be preferable for Aboriginal Peoples and their representative organizations to be partners with federal and provincial government departments in the establishment of regulations and standards.

The AJI concludes on these issues that: "Co-management of natural resources is the only suitable method to ensure that the populations of animals, fish and birds are not only conserved but also are encouraged to flourish. This clearly will benefit Aboriginal people, who are entitled

to first priority in any allowable harvesting activities, and other Canadians, as well. It will promote wildlife habitat protection and enhancement of existing stock of harvestable species." (AJI Report)

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The WEST REGION TRIBAL COUNCIL Recommends  
that:  
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♦ The Government of Manitoba actively pursue  
co-management arrangements with Aboriginal  
Peoples to ensure the wise use and  
conservation of natural resources for the  
benefit of all citizens in the Province.

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## Forestry and Timber Rights

Forestry and timber rights are issues that have received almost no attention in Canadian courts or in government policy. The issue is becoming increasingly topical. According to the AJI: "It is clear, however, that large-scale forestry operations can have negative effects upon the exercise of Aboriginal and treaty rights in relation to land usage and wildlife harvesting."

There are two facets: direct use of the timber resource and the impact that use of timber by others has on existing Aboriginal and treaty rights. It is clear that First Nations possess full rights to all timber on reserves and the Supreme Court of Canada has accepted the right to cut trees for firewood for ceremonial purposes as a treaty right (in R. v. Sioui).

In a British Columbia case, the British Columbia Court of Appeal "concluded that pre-Confederation treaty rights prevailed over private property rights exercised pursuant to a provincial licence." In this case the court granted a permanent injunction to prevent the development of a tidal bay marina that would have destroyed a fish bed and impinged access across the foreshore to the bay.

It appears evident that Aboriginal Peoples have, at least, a right to harvest the forest for ceremonial and domestic use. In addition, Aboriginal and treaty rights to hunt, trap and fish must not be infringed or restricted

by logging activities that disrupt the habitat of fish and game. We contend that allowing such disruptions to occur unchecked would be tantamount to rendering the constitutionally protected Aboriginal and treaty rights meaningless (see Large-Scale Natural Resource Developments). Aboriginal people have an interest in off-reserve forests that must be respected. Forestry management could best be realized, in our opinion, by co-management agreements between the Province and the Aboriginal groups affected.

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**The WEST REGION TRIBAL COUNCIL Recommends  
that:**  
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♦ The Province of Manitoba recognise  
Aboriginal and treaty rights to harvest  
timber resources.

♦ The Province ensure that the exercise of  
wildlife harvesting rights is not infringed  
by timber management practices.

♦ The Province pursue the development of  
co-management agreements with the First  
Nations and Metis peoples regarding timber  
resources off-reserve in the Aboriginal  
Peoples' traditional territory.

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## **Water Rights**

Like timber, the Aboriginal or treaty right to water is uncertain. It is similarly multifaceted in terms of both the right to use and the right to prevent others from exploiting it in a manner that damages the interests of Aboriginal people.

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**The WEST REGION TRIBAL COUNCIL Recommends  
that:**  
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♦ Existing Aboriginal rights to water and  
beds of waters be recognized by the federal  
and provincial governments  
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### Subsurface Resources

The Province of Manitoba claims a 50% share in the "minerals" that are  
extracted from Indian reserve lands. The remaining one-half interest is  
received by the Government of Canada to hold for the First Nation concerned.

Like the AJI Commissioners, we see no basis for the Province of Manitoba  
to claim any interest in minerals on Indian reserves.

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The WEST REGION TRIBAL COUNCIL Recommends  
that:  
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♦ In keeping with fiduciary obligations and  
to assist in the economic advancement of  
First Nations, the Province of Manitoba  
formally renounce its half interest in  
minerals within Indian reserves."

♦ First Nations have the right to use and  
control totally all mines and minerals on  
reserve lands and to receive 100% of the  
benefits and income therefrom.

♦ The federal government begin a process of  
negotiations with the First Nations of  
Manitoba to transfer title to the reserve  
lands into the names of the various First  
Nations.  
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## Statutes in Conflict with Aboriginal and Treaty Rights

The following federal and provincial statutes have been identified as being in conflict with the exercise of Aboriginal and treaty rights to natural resources.

### Statutes of Canada

The Indian Act      The Fisheries Act  
The Migratory Birds Convention Act

### Statutes of Manitoba

The Wildlife Act    The Wild Rice Act  
The Crown Lands Act      The Provincial Parks Act

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The WEST REGION TRIBAL COUNCIL Recommends  
that:  
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♦ The federal and provincial governments,  
jointly with Aboriginal Peoples'  
representatives, review these Acts and remove  
inconsistency with The Constitution Act, 1982  
wherever it is perceived to exist.

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## Our Common Future

We have titled this section with the same title as the report of the World Commission on Environment and Development, more commonly known as the Brundtland Report, because of the similarities of the plight of Aboriginal Peoples in Canada to the plight of Aboriginal Peoples in the developing world.

All over the developing world the cultures and continued existence of patterns of behaviour and living of Aboriginal Peoples are threatened by global economics and in particular the corporate development of land and

resources to assist developing countries to repay the national debts that they owe to western developed nations. The situation in Manitoba is similar, an example being the dislocation and disruption of Aboriginal Peoples and their communities in northern Manitoba to accommodate the Manitoba-Hydro developments, starting in the seventies, continuing to the present and projected into the future. The driving force behind these developments is not the need of Manitobans for more electric power, the driving force is profits - in this case, government corporation profits. The problem with generating profit in this fashion is that the cost is largely borne by the Aboriginal Peoples who receive little or none of the benefit.

Forestry activities in Manitoba by two major corporations present a similar scenario: the ways and means of maintaining and developing Aboriginal cultures are being foreclosed. This is cultural genocide, as surely as physical annihilation. We believe that this foreclosure without consultation and without compensation is contrary to the provisions of sec 35 of the Constitution Act 1982. We believe and assert that the guidelines provided by the SCC in Sparrow have application and must be followed by the provincial government before the forestry plans are approved. Mitigation to enable these developments to proceed was the topic of earlier recommendations: Forestry and Timber Rights and; Large-Scale Natural Resource Developments. These developments trend to simplify ecosystems and reduce their diversity of species.

The status quo in natural resources management cannot continue within the provisions of the Constitution Act 1982. Alternative developments, in support of Aboriginal Peoples rights and advancement of local economies have been advanced by Manitoba Grand Chief Phil Fontaine, Dr Georg Lithman, visiting professor from Sweden in applied anthropology and Dr Harvey Payne, a specialist in natural resource development with Aboriginal Peoples. These proposals advance the notion that wildlife resources can be developed in a contemporary fashion in harmony and accord with Aboriginal values and cultures. The proponents contend that wildlife populations are at all time historical lows and that the prospects for recovery under present management regimes is minimal. Present prospects offer continual haggling between provincial authorities and Aboriginal Peoples over an ever-diminishing resource. Gradually more species will be declared locally or provincially

endangered and hunting by all persons will be prohibited over vast areas of the province.

The alternative is the restoration of expansive wildlife populations through a regimen that manages the land base in an integrated fashion. Unquestionably, this will mean some curtailment of forestry activities. The new wildlife populations will be managed to generate both wealth and jobs for local communities, through development of new industries and management institutions in tourism, exotic meats, hunting safari expeditions, educational seminars and ecological tourism. Sustainable development is the essence of these proposals and appropriate technologies and public interest and sentiment provide the energy and force that will drive the development of these new industries. Tourism is the world's fastest growing industry. There are more wealthy travellers than ever before and they seek more from their experience than did the average tourist of the past. The contemporary traveller often seeks an interactive experience with local people and the land. Tour guides will require good knowledge of local history, the culture of local people, the natural history of local plants and animals and the overall ecology of the region. Large herds of animals can be managed and cropped for trophies or exotic meat production for local and export use. Such a regimen will require and support a local institution for management and development.

We believe that Aboriginal Peoples have the right to a share of the natural resources in their region and we believe that we should have the authority and contemporary right to develop the resources in a contemporary fashion. At present, our communities have no economic future. The provincial government proposes large-scale resource development projects wherever possible: these projects do not provide for the needs of Aboriginal Peoples or local economies in general and serve to heighten the conflict between the provincial government and Aboriginal Peoples. Invariably, jobs are promised but rarely do the developments provide more than a few temporary jobs. The forest industry requires fewer and fewer people to harvest and process a given volume of wood. This technological trend will continue, while the volume harvested will probably decrease, further reducing the number of jobs created. The forest industry will never provide for the needs of Aboriginal communities within the forest region.

Our rights to resources cannot be restricted to the right to hunt for



food for as long as wildlife continues to exist with the conflicting activities on the landscape and nor can the province be permitted to restrict or curtail our rights through large-scale developments: curtailments which they lack the authority to legislate. Social and economic justice must prevail if we are to promote the common interest on which sustainable development is hinged. Institutional reform is required to enable Aboriginal Peoples to define and execute an effective role in natural resource use and development. To begin the process a new institution must first be established. The extant governments will not respond to entreated requests or recommendations from Commissions or First Nations. It is perceived that an institution with lobbying and promotional capacity may succeed in advancing new notions in the longer term.

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**The WEST REGION TRIBAL COUNCIL Recommends  
that:**  
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♦ An Aboriginal Institute for Natural  
Resources Management and Development be  
established.

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**Summary of Recommendations**

Throughout this report the West Region Tribal Council has inserted recommendations in the various sections, wherever it seemed appropriate to do so, in keeping with the flow of the text. The recommendations are repeated below without the boxed format used in the text for high-lighting purpose. There are nineteen recommendations.

♦ The Government of Manitoba implement the recommendations of the Commissioners of the Aboriginal Justice Inquiry of Manitoba.

- ♦ All departments of the federal and provincial governments revise their policies to reflect the view that treaty rights supplement previously existing Aboriginal rights, rather than replace them.
  
- ♦ The Natural Resources Transfer Agreement Act, 1930 be amended in consultation with the effected Aboriginal Peoples to reflect appropriate accommodation of Aboriginal and treaty rights to land and resources.
  
- ♦ Measures be implemented to ensure provincial government and departmental compliance with decisions of the courts, to ensure that the unjust Manitoba experience in the Flett case can never be repeated.
  
- ♦ An independent agent (or other authoritative body) be established to ensure that objective interpretation is given to court decisions.
  
- ♦ An independent agent (or other authoritative body) be established to ensure that objective interpretation is given to court decisions.
  
- ♦ The federal and provincial governments revise their understandings and policies regarding the treaties, in light of the Constitution Act 1982 (sec 35) and the decisions, tests and guidelines provided by the Supreme Court of Canada.

♦ Manitoba Natural Resources Department revise its enforcement policies, procedures and most importantly staff behaviours and practices to eliminate harassment and reduce the perception of harassment where it exists.

♦ The Province of Manitoba ensure through consultation and co-management regimens that large-scale developments do not inflict negative impact on Aboriginal Peoples and their communities and lifestyle.

♦ The Province of Manitoba enable Aboriginal Peoples to advance their own notions and agendas for natural resources without the encumbrance of pre-conceived notions of the form and substance that developments must take being imposed by the cultural slant of the provincial government.

♦ The Government of Manitoba actively pursue co-management arrangements with Aboriginal Peoples to ensure the wise use and conservation of natural resources for the benefit of all citizens in the Province.

♦ The Province of Manitoba recognise Aboriginal and treaty rights to harvest timber resources.

♦ The Province ensure that the exercise of wildlife harvesting rights is not infringed by timber management practices.

♦ The Province pursue the development of co-management agreements with the First Nations and Metis peoples regarding timber resources off-reserve in the Aboriginal Peoples' traditional territory.

♦ Existing Aboriginal rights to water and beds of waters be recognized by the federal and provincial governments

♦ In keeping with fiduciary obligations and to assist in the economic advancement of First Nations, the Province of Manitoba formally renounce its half interest in minerals within Indian reserves."

♦ First Nations have the right to use and control totally all mines and minerals on reserve lands and to receive 100% of the benefits and income therefrom.

♦ The federal and provincial governments, jointly with Aboriginal Peoples' representatives, review these Acts and remove inconsistency with The Constitution Act, 1982 wherever it is perceived to exist.

♦ An Aboriginal Institute for Natural Resources Management and Development be established.

# **FIRST NATIONS**

# **BAND CUSTOM**

**PREPARED BY**

**WALLY SWAIN**

# REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

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WEST REGION TRIBAL COUNCIL

BAND CUSTOM

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The Creator of all life has placed a process of a balanced and harmonious way of life. The First Nations understanding and respecting the Creation of Life have practised the inherent right of Natural Laws in the governing process.

The holistic well being of each individual First Nation has to be maintained and if this is not observed the customary laws were implemented accordingly as required with the family, community and nationhood.

The First Nations Customs and the Magna-Carta must be understood by the present European Governments to establish better working relationships. The First Nations Customs are granted from the Great Creator, not from the European Governmental Legislative and policy. The Legislative system and policy development are created by Europeans without First nations participating. The Magna-Carta of the First Nations Customary governing process must be prepared by the First Nations and implemented by the First nations without question from any other authority, government or individual.

The Federal Government must be prepared to LISTEN and HEAR the issues pertaining to First Nations, due to the fact that the First Nations have experienced the various problems imposed by the governmental policy.

The First Nations have identified solutions to the various problems without any form of acknowledgement or correction for change on the issues by the Federal Government.

The Federal Government has continuously transferred various responsibilities to the Provincial Government without participation of the First Nations.

The Federal Government must understand their role of responsibility to the First Nation on behalf of the Crown of Great Britain.