

**REVIEW OF TRIPARTITE PROCESSES
IN ONTARIO**

**AT A CROSSROADS:
CHOOSING PATHS TO
FIRST NATIONS' SELF-RELIANCE**

*Submitted to the Hon. Robert Nault
Minister of Indian Affairs and Northern Development*

Bud Wildman & Grant Wedge

May 31, 2000

Errata:

p. iii

the 18th line from the top of the page should read:

valve to relieve tension, avoid conflict and reach innovative solutions.

p. 51

the 8th line from the top of the page should read:

Council, as he was empowered to do when the Parties are not....

p. 58

3.11 should read:

3.11 To promote greater accountability and public understanding of these issues, the *Secretary-General's Annual Report* should be tabled with the Parliament of Canada's Standing Committee on Aboriginal Affairs, with the Ontario Legislative Assembly's Standing Committee on the Administration of Justice and with the Chiefs-in-Assembly and the *Secretary-General* should be invited to answer questions about the *Annual Report*.

p. 73 – remove 1.10 from the bottom of p. 73
(It is repeated on p. 74)

p.78 The first part of
4.3 should read:

4.3 The *Circle* should be convened

p.80 The first part of
6.2 should read:

6.2 The *Treaty Circle* could facilitate

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EXECUTIVE SUMMARY

The Parties to the Tripartite Process in Ontario find themselves at a crossroads. The challenge now facing the First Nations, Canada and Ontario is to choose which are the best paths to travel together leading to First Nations economic development and self-government. Choosing to co-operate would demonstrate the commitment of the Parties to resolve past grievances and to move forward toward economic, social and governance self-reliance.

This review of the Tripartite relationships and institutions among the Parties – First Nations in Ontario, Canada and Ontario – was conducted over a two month period from March 31 to May 31, 2000. The review was requested by the Hon. Robert Nault, Minister of Indian Affairs and Northern Development. We spoke with representatives of First Nations, federal officials and others about how to improve the process and institutions among the Parties.

We heard a wide range of views about the capabilities and commitments of the Parties to the Ontario Tripartite Process and the mandate of the Indian Commission of Ontario (ICO). We made comparisons with other intergovernmental institutions and processes across Canada, particularly in Saskatchewan, which we visited at the request of the Minister. The recommendations herein are based on our review of the materials available and the contributions we received.

We note a number of First Nations representatives stated that this short review should not be characterized as a formal consultation, particularly when no specific proposals were available for them to consider.

On behalf of Ontario, the Hon. James Flaherty, Minister Responsible for Native Affairs, declined to participate in this review. We have attempted, however, to represent fairly the stated policy positions and concerns of the Ontario government.

During our review, we were repeatedly reminded of the wisdom of the words of a First Nations Elder who told us that *all* long-lasting relationships must be based upon mutual respect and generosity.

There are a large number and variety of Tripartite initiatives across the country aimed at building the capacity of First Nations communities and strengthening their self-reliance. The federal and provincial governments and First Nations recognize that they have to work together to develop decision-making institutions enabling them to strengthen the economies of First Nations. First Nations are developing increasing capacity to exercise their own governance, service their members on- and off-reserve and be more accountable. Yet their representatives expressed frustration over the slow pace of change.

Under the Canadian constitution, jurisdictions in areas of public authority and activity are shared by both federal and provincial governments. As a result of this, many First Nations appreciate that they must negotiate self-government arrangements with both Canada and provincial governments.

At the same time, leaders of First Nations are determined to ensure that the fundamental Treaty relationship is respected. In recent years, Supreme Court of Canada decisions have clarified the contemporary meaning of the constitutional guarantee of Aboriginal and Treaty rights. The courts have encouraged governments to negotiate new arrangements with First Nations which respect their rights.

First Nations are attempting to gain control of their destinies and to promote self-reliance by working out realistic, practical and workable arrangements on a government-to-government basis. While Ontario has not yet developed its First Nations self-government policy, both federal and provincial governments do appear to share the common goal of promoting First Nations' self-reliance by encouraging economic partnerships and growth.

Also, both Canada and Ontario are committed to negotiating settlements to land claims, partly to remove impediments to economic development. The federal government has invited provincial governments, First Nations and the corporate sector to establish forums that will identify areas of co-operation in moving towards First Nations' self-reliance.

Our discussions in Ontario and our examination of processes across Canada revealed that significant benefits are derived from public

education programs about First Nation issues, claims, aspirations and achievements. In British Columbia, the B.C. Treaty Commission and, in Saskatchewan, the Office of the Treaty Commissioner are both engaged in extensive public consultations and education and communications programs. They are demonstrating that greater public awareness and understanding assists First Nations as they negotiate new arrangements to move towards self-reliance.

Similar to the more recent Tripartite *Common Table* in Saskatchewan, over 20 years ago, the Ontario Tripartite Process was established to negotiate and resolve matters of mutual concern to Canada, Ontario and First Nations. The Indian Commission of Ontario was set up with a small staff to support the Tripartite Council of Grand Chiefs and Ministers, and to facilitate and mediate negotiations on First Nations' land claims and self-government. The ICO had a range of powers that could be exercised with the consent of the three Parties. It had considerable success facilitating land claim settlements and First Nations' policing agreements in the mid-1990s. The ICO-assisted Tripartite Process served as a safety valve to relieve tensions, avoid conflict and reach innovation solutions.

Despite some recent success, however, the process itself became a source of tension. In too many cases, it was taking too long for governments to analyse claims and determine whether they were prepared to negotiate. As a result, the Parties failed to make any real progress on major files. The backlog of issues and claims and the apparent inability to agree on setting priorities dashed expectations of fair and speedy resolution of disputes. Little progress was made on issues related to governance, fiscal and administrative arrangements.

Too often, governments became embroiled in jurisdictional conflicts. More recently, the provincial government has been reluctant to engage in First Nation self-government negotiations. Ontario has taken the position that the federal government should take the lead in negotiating self-government arrangements with First Nations. First Nations are caught in the middle of a jurisdictional "ping pong" game between Canada and Ontario.

Many First Nations leaders advocate reform of the Tripartite Process in Ontario. They feel that the major problem with the process has been the ICO's "inadequate" powers. They believe the ICO lacked "teeth". The Commissioner could not use his own discretion. He needed the consent of all three Parties to use the powers of the ICO and he hardly ever used

them. Moreover, in the view of many First Nations representatives, governments were not committed to the Tripartite Process.

The staff of the ICO were very capable and dedicated, but the Tripartite Process was becoming dysfunctional. It was becoming ineffective in addressing, on a government-to-government basis, the broader First Nations issues in Ontario.

We recommend that the Parties consider replacing the Ontario Tripartite Process and mandating a new *First Nations-Canada-Ontario Forum*. It should be managed by a strong *Senior Management Committee* and supported by a small *Secretariat*.

Each Party should commit to meaningful dialogue and be decision-oriented to make progress on substantive First Nations issues. The *Forum* should establish *Sectoral Tables* to negotiate these issues. A *Secretary-General* should be appointed with powers to be exercised at his or her own discretion, when necessary, to produce results.

The *Secretary-General* should report annually to the *Forum* and to the Standing Committees of the Parliament of Canada and the Legislative Assembly of Ontario and the Chiefs-in-Assembly on what has and has not been achieved and why.

It is imperative for all Parties to co-operate to break the cycle of dependency. Mechanisms must be developed to facilitate formation of the economic partnerships desired by First Nations, business and governments. An on-going dialogue about economic development opportunities involving First Nations, business and governments must be initiated immediately.

We propose the formation of an *Economic Opportunities Circle* of representatives of First Nations, business and governments to foster economic partnerships and growth. This *Circle* should be convened by the Ontario Regional Chief and the federal and provincial Ministers with a prominent corporate CEO.

Since all Parties agree on the importance of public education, communications and consultations to inform the general public about First Nations issues, we propose that the *Secretariat* should lead the development and delivery of an on-going, dynamic communications strategy.

Although many people expressed the view that First Nations would have to negotiate agreements with both Canada and Ontario to move toward self-reliance, some leaders of Treaty organizations argued for a bilateral Treaty-based process with the federal government. For those Treaty organizations, we propose that there should be the option of entering a *Treaty Circle* with the Government of Canada. A *Treaty Officer* could be chosen to co-ordinate this process through an independent *Treaty Office*. The *Treaty Officer* would refer any matter the Parties agree might affect provincial jurisdiction to the *First Nations-Canada-Ontario Forum* for its consideration.

The federal and provincial governments should commit to provide sufficient funding for the *Forum*, the *Economic Opportunities Circle*, and the *Secretariat*, according to the objectives and priorities of a five year *Business Plan* and *Annual Work Plan* targets. Canada would be responsible for funding the optional bilateral *Treaty Circle*.

Because First Nations' interests could be significantly affected by the changes we are proposing for their relationship with Canada and Ontario, we believe it would be appropriate for Minister Nault to seek the Chiefs' views formally before acting on these recommendations. We propose that he suggest the Chiefs consider convening an All Ontario Chiefs Summit by mid-autumn, 2000, to consider options for strengthening multilateral and/or bilateral processes among First Nations, Canada and Ontario.

Finally, since the ICO mandate lapsed as of March 31, 2000, concerns have been raised about on-going Tripartite negotiations. We propose that the Parties appoint an interim *Senior Management Committee* that, with the assistance of an interim *Secretariat*, would reactivate the negotiations on those issues that require facilitation or mediation. Also, the *Secretariat* with the Parties should explore ways of expediting the research and negotiation of these files.

All Parties must have realistic expectations about new processes for achieving more successful government-to-government relationships in Ontario. No one process can lead to the resolution of all issues. First Nations and the federal and provincial governments share the goal of encouraging First Nations' self-reliance. The challenge now is whether Ontario, Canada and First Nations can agree to develop a forum for achieving progress on First Nations' issues through discussion and negotiation.

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1. INTRODUCTION:

(1) MANDATE:

The Hon. Robert Nault, Minister of Indian Affairs and Northern Development, requested that we conduct a review of Tripartite relationships and institutions existing among the Parties – the First Nations in Ontario and the Governments of Canada and Ontario – in light of developments respecting the Ontario Tripartite Process and the Indian Commission of Ontario, by:

- (1) identifying long-term policy and process objectives
- (2) assessing the capacity of the Parties to establish effective negotiations leading to expedient and tangible results, and
- (3) recommending appropriate organizational changes

(2) THE SCOPE OF WORK:

The scope of work for this review involved meeting representatives of the First Nations, federal departmental officials and others as deemed appropriate to:

- (1) summarize jurisdictional and regional policy matters needing a Tripartite forum because of Treaty, fiduciary, legislative, jurisdictional, administrative, funding considerations
- (2) assess the current state of discussions

- (3) assess the capacity and willingness of Parties
- (4) analyse the mandate of ICO
- (5) compare and analyse of existing Tripartite institutions and processes in other provinces
- (6) prepare recommendations on scope, mandate and structure of an enhanced Tripartite process by May 31, 2000

(3) PROCESS:

Our review began on March 31st, and over the two month period, we met with about 200 people in meetings at Akwesasne, Kenora, London, Mnjikaning (Rama), Ohsweken, Ottawa, Sioux Lookout, Sudbury, Thunder Bay, Timmins, Toronto, Waterloo, Regina and Saskatoon. We met with the Ontario Regional Chief, the leadership of the four Provincial and Territorial Organizations, 14 of the 15 Tribal Councils, and 9 Independent First Nations – more than 50 Chiefs in all. At the request of the Minister, we travelled to Saskatchewan and met with the Saskatchewan Treaty Commissioner, representatives of the Federation of Saskatchewan Indian Nations, the Governments of Canada and Saskatchewan. In addition, we met and spoke with many other knowledgeable individuals. The list of persons we met with and/or spoke with is attached to this report at Appendix B.

We provided a brief outline of the nature of the review and questions for discussion in advance, and meetings generally lasted from one to three hours. A number of written submissions were provided to us.

It should be noted that a number of Chiefs and other representatives wished to put on record that their meeting with us and participation in this review did not constitute a formal consultation with them, and we ask that no one characterize our discussions as a *consultation*.

We indicated that comments would not be attributed to individuals, and we have attempted to summarize fairly the range of views we heard. Our recommendations are based on what we were told and our experiences.

We requested meetings with the representatives of the Government of Ontario. We wrote on April 10th to the Hon. James Flaherty, Attorney General and Minister Responsible for Native Affairs, and received a response on April 28th, in which he declined to participate in the review until certain conditions were met, as outlined in his correspondence with the Hon. Robert Nault, Minister of Indian Affairs and Northern Development, on April 13th, and with Ontario Regional Chief, Tom Bressette on April 18th. Without having had a chance to speak directly with Ontario officials, we have attempted to represent fairly the stated policy positions and concerns of the provincial government.

The results of this review is structured as follows:

First we set the context of initiatives across Canada and challenges for First Nations and governments in Ontario. Then, we analyse the current legal and policy environments, examining Canada, Ontario and First Nations in Ontario. Following this, we survey intergovernmental processes and developments across Canada, with particular emphasis on Saskatchewan. We turn then to describe the Ontario Tripartite Process and the Indian Commission of Ontario, noting its achievements; land claims and other land-related matters, self-government and administrative activities, etc. Finally, we provide our findings and recommendations for reform of the intergovernmental relationships and institutions of the Parties in Ontario, next steps and a short-term action plan.

2. CONTEXT:

As we began our review of the Ontario Tripartite Process, we were aware of the large number and wide variety of recent exciting initiatives across Canada aimed at building the capacity of Aboriginal communities and strengthening First Nations' self-reliance. First Nations with the federal and provincial governments from Nova Scotia to Saskatchewan and British Columbia recognize that they have to work co-operatively together to develop decision-making institutions, if they are to build strong economies and opportunities for their communities.

The Government of Ontario's policy aimed at encouraging partnerships between Aboriginal communities and the corporate sector, with its goal of First Nations' self-reliance, seems similar in approach. Ontario's *Land Claims Policy* states that First Nations' land claims should be negotiated and settled to provide communities with opportunities for economic

development. Settlements, it notes, would remove barriers to growth and foster a stable climate for investment. Unfortunately, the Ontario government has not, as yet, developed a policy on First Nations self-government to complement its commitment to First Nations' economic self-reliance.

During our review, we were repeatedly reminded of the wisdom of the words of a First Nations Elder who told us that *all* long-lasting relationships must be based upon mutual respect and generosity. Otherwise, a relationship won't be strong and won't stand the test of time.

Governments would be wise to heed this advice as they develop their policies related to First Nations. Government-to-government relationships based upon respect and dignity will be far more successful than dependent relationships. Federal and provincial governments and First Nations must deal with one another. Their relationships must be based on good faith and there must be 'give and take' on all sides if we are to live together and prosper.

In the words of the former Chief Justice of the Supreme Court of Canada, Antonio Lamer: "Let's face it, we are all here to stay." None of the three: First Nations, Canada or Ontario is going to disappear. They must learn to work together.

As we enter the 21st century, the relationship among First Nations, Canada and Ontario must adapt to ensure that prosperity will be shared by First Nations peoples and their neighbours. First Nations leaders emphasized in our discussions that their communities are developing an increasing capacity to administer their own services and programs – to exercise governance as well as to expand economic development. Growing numbers of First Nations Youth are pursuing skills training and higher education. They want to take responsibility for dealing with their communities' problems and to take advantage of their opportunities.

Creating Opportunity: The Liberal Plan for Canada (the Liberal "Red Book") stated in 1993:

The place of Aboriginal peoples in the growth and development of Canada is the litmus test of our beliefs in fairness, justice and equality of opportunity.

Yet, First Nations representatives expressed serious frustration over the slow pace of positive change for their communities. Many continue to

endure economic stagnation with unemployment levels in some remote communities reaching over 80 per cent. The lack of basic services in those communities is both a serious challenge and an enormous opportunity for partnerships with the private sector. Leaders of First Nations told us they are determined to improve conditions for their peoples.

Many First Nations leaders across Ontario acknowledged that under the Canadian Constitution the responsibility for designing, funding and/or delivering health care, education and social programs and administering justice is shared by the federal and provincial governments. If First Nations are to obtain the tools to develop their economies and to deal with community problems, they recognize that they have to negotiate self-government arrangements with both Canada and Ontario where appropriate.

First Nations in Northern Ontario, in particular, find themselves at an economic and social crossroads in 2000. Government and the corporate sector are pressing for further development in the North, especially north of the 50th parallel. Leaders of First Nations are determined to ensure that the fundamental Treaty relationship is respected. In their view, their relationship to the land and resources and to the Crown requires real consultations and agreements about the nature and extent of economic development.

It is in the interests of all governments to work out realistic, practical and workable arrangements to meet these challenges for the mutual benefit of First Nations peoples and the other residents of Ontario. First Nations leaders recognize the need for government-to-government negotiations to gain control of their destinies, to share in the benefits of growth, to protect the environment and to promote community self-reliance.

In order for this to be possible, First Nations representatives across Ontario said there is a glaring need to educate the general public about First Nations issues, claims and Aboriginal aspirations and achievements. They believe that greater public awareness and understanding will assist First Nations as they strive to achieve self-reliance.

3. LEGAL ENVIRONMENT:

There have been significant changes on the legal front since the Ontario Tripartite Process began in 1978. Fundamentally, the entrenchment of "the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada" in section 35(1) of the *Constitution Act, 1982*, represented the watershed in the struggle for constitutional recognition of the First Nations and other Aboriginal peoples by federal and provincial governments. Change has been driven by decisions of the Supreme Court of Canada interpreting Aboriginal and Treaty rights.

The *Sparrow* decision in 1990 rejected the "frozen rights" approach:

Far from being defined according to the regulatory scheme in place in 1982, the phrase "existing aboriginal rights" must be interpreted flexibly so as to permit their evolution over time.
[1990] 3 C.N.L.R. {*Canadian Native Law Reporter*} 160 at p. 171

The court crystallized the issue of the fiduciary relationship between the Crown and First Nations which requires a high standard of honourable dealing:

... the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship. (p. 180)

The court holds that the protection of Aboriginal rights obliges governments to uphold the honour of the Crown because:

The way in which a legislative objective is to be attained must uphold the honour of the Crown and must be in keeping with the unique contemporary relationship, grounded in history and policy, between the Crown and Canada's aboriginal peoples. (p. 181)

The court's *Delgamuukw* decision in 1997 confirmed underlying Aboriginal title for those First Nations who have not signed Treaties. There is a need for negotiation between the Crown and the First Nations rather than litigation, Chief Justice Lamer said in concluding his judgment:

... the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith. Ultimately it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve what I stated in *Van der Peet* ... to be the basic purpose of s.35(1) – “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown”. **Let us face it, we are all here to stay.** [1998] 1 C.N.L.R. 14 at page 86. (emphasis added)

There have been a series of important Treaty cases decided by the Supreme Court in the 1990s: *Horseman* (1990), *Badger* (1996), *Sundown* (1999) and *Marshall* (1999). These cases have established the basis for modern Treaty interpretation, which includes using oral history of the Elders about the spirit and intent of Treaty-making, because the written Treaty documents often do not record the full record of the agreements and intergovernmental relationship established by Treaty.

These kinds of judgements confirm for Treaty First Nations leaders the need to press for clarification of and respect for the Treaty relationship between the First peoples and the Crown.

The Supreme Court has had only one major judgement on the right of self-government. In the *Pamajewon* case in 1996, the Eagle Lake and Shawanaga First Nations in Ontario were not successful in arguing that high-stakes gambling on-reserve was part of their inherent right to self-government. The Court, however, clearly contemplates that there are First Nations' self-government powers protected under the *Constitution*:

Aboriginal rights, including any asserted right to self-government, must be looked at in light of the specific circumstances of each case, and in particular, in light of the specific history and culture of the Aboriginal group claiming the right.
[1996] 4 C.N.L.R. 164 at p. 172

The courts are clear: the Crown has a duty to negotiate modern day arrangements that ensure First Nations' rights are protected.

4. POLICY ENVIRONMENT:

(1) GOVERNMENT OF CANADA:

The federal government has developed a number of new policies since 1993. Canada released a new *Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* in 1995. In response to the Royal Commission on Aboriginal Peoples (RCAP) Report tabled in 1995, Canada released *Gathering Strength – Canada's Aboriginal Agenda*, in January 1997. Canada has existing policies on dealing with claims – specific claims under Treaties and comprehensive claims about Aboriginal title. Canada is actively engaged in joint policy development with the Assembly of First Nations in areas of Specific Claims Policy Reform and Treaty Implementation.

(A) **GATHERING STRENGTH**

Canada's policy response to the *RCAP Report* contained a *Statement of Reconciliation*, followed by a *Statement of Renewal* and then *Canada's Aboriginal Action Plan*, which is summarized in this excerpt from the *Statement of Renewal*:

The Royal Commission on Aboriginal Peoples concluded that fundamental change is needed in the relationship between Aboriginal and non-Aboriginal people in Canada. The Royal Commission's vision included rebuilding Aboriginal nationhood; supporting effective and accountable Aboriginal governments; establishing government-to-government relationships between Canada and Aboriginal nations; and taking practical steps to improve the living conditions of Aboriginal people. It called for a partnership based on the four principles of mutual respect and recognition, responsibility and sharing.

The Government of Canada agrees with the Commission's conclusion that Aboriginal and non-Aboriginal people must work together, using a non-adversarial approach, to shape a new vision of their relationship and to make that vision a reality. In that spirit, Canada is undertaking to build a renewed partnership with Aboriginal people and governments.

Canada's vision of partnership means celebrating our diversity while sharing common goals. It means developing effective working relationships with Aboriginal organizations and communities. Above all, it means all levels of government, the private sector, and individuals working together with Aboriginal people on practical solutions to address their needs. Our common aim should be to help strengthen Aboriginal communities and economies, and to overcome the obstacles that have slowed progress in the past. ...

The government has adopted four closely linked objectives that will guide its commitment to Aboriginal people.

We begin with a commitment to *Renewing the Partnerships*. The government will work with Aboriginal people to help achieve the objective of *Strengthening Aboriginal Governance*, building on treaty relationships where appropriate. This means developing practical arrangements for self-government that are effective, legitimate and accountable; that have the strength to build opportunity and self-reliance; and that can work in a co-ordinated manner with other governments. It also means extending co-management arrangements, negotiating First Nations acquisition of land and resources through claims processes, and taking steps to improve the claims process.

Helping Aboriginal governments and institutions become effective will require financial arrangements that are more stable, predictable, and accountable and that encourage Aboriginal governments to develop their own sources of revenues. To that end, the government will work with Aboriginal partners and with provincial and territorial governments towards the goal of *Developing a New Fiscal Relationship*.

A renewed partnership will provide the base for working together with Aboriginal people in *Supporting Strong Communities*, People and Economies, so that the promise of a brighter future turns into a reality. The federal government is committed to addressing social change for Aboriginal people by focussing on improving health and public safety, investing in people, and strengthening

development. These initiatives will be developed in partnership with Aboriginal people, their communities and governments. All partners have a role in turning these goals into realities.

Gathering Strength has an important commitment about the Treaty relationship:

A vision for the future should build on recognition of the rights of Aboriginal people and on the treaty relationship. ... For most First Nations, the historical treaties are sacred. They impose serious mutual obligations and go to the heart of how the parties wanted to live together. The federal government believes that treaties -- both historical and modern -- and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people.

Gathering Strength speaks to the issue of federal, provincial, territorial, Aboriginal partnerships and co-ordination:

The Government of Canada intends to work with other levels of government to find practical solutions to the problems facing Aboriginal people, both nationally and on a province-by-province basis. The Government of Canada therefore invites other governments to give priority to the establishment and strengthening of forums that will identify areas for immediate co-operation and create the basis for more substantial change over the longer term.

The distribution of responsibilities and powers in our federation means that shared objectives for addressing Aboriginal issues can only be achieved if all levels of government work co-operatively with each other and with Aboriginal people. We need to move beyond debate and disagreements over jurisdictions and responsibilities and employ alternative approaches that support a partnership.

Gathering Strength address need to improve communications:

Partners need to understand one another. To that end, Aboriginal people and other stakeholders will be asked to join in a public education campaign that builds on existing

initiatives, programs and events... in order to build more balanced, realistic and informed perspectives with respect to Aboriginal people, their cultures and their present and future needs.

(B) ABORIGINAL SELF-GOVERNMENT: INHERENT RIGHT POLICY

In 1995, Canada released its approach to the implementation of the inherent right and the negotiation of Aboriginal Self-Government. The policy explicitly states the framework:

The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. It recognizes, as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources. ...

Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution. Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation.

In light of the wide array of Aboriginal jurisdictions or authorities that may be the subject of negotiations, provincial governments are necessary parties to negotiations and agreements where subject matters being negotiated normally fall within provincial jurisdiction or may have impacts beyond the Aboriginal group or Aboriginal lands in question. (pages 3 - 4)

The policy statement notes that the federal government is committed to ensure that the *Charter of Rights and Freedoms* will apply to Aboriginal governments, and provides for the scope of negotiations generally for matters integral to the First Nations culture and essential to its operation as a government.

(C) SPECIFIC CLAIMS POLICIES

Canada has a policy framework for dealing with First Nations *specific* claims against Canada which relate to the fulfilment of Treaties and the administration of land and other Indian assets, released in 1982. As a result of criticisms of the policy and process, Canada established an Indian Claims Commission (ICC) in 1991. The purpose of the Commission was to serve as an appeal body, with powers under the *Inquiries Act*, when Canada rejects a First Nation's claim. Also, if the ICC determines the claim is valid, it tries to try to expedite settlement through alternative dispute resolution processes.

Canada's approach to settlement of specific claims usually involves cash settlements in compensation for past wrongful acts in not providing reserve land or other Treaty provisions, taking of Indians lands or management of Indian assets. First Nations may then use the compensation to purchase land, however, purchased lands do not automatically become "reserve" lands. Canada requires First Nations to satisfy the criteria in its *Additions to Reserve Policy* before agreeing to accept the lands for reserve status.

While Canada has proceeded to settle many specific claims on a bilateral basis, often First Nations are concerned about receiving Crown lands which may be held in right of the province, and provinces may participate in specific claims because of some wrongful acts on their part in addition to Canada. It is not clear that Canada has a clear and consistent policy on the requirement for public consultation in specific claim negotiations, particularly bilateral ones with only cash settlements.

The Indian Claims Commission noted in its *1998/99 Annual Report* that the Department of Indian Affairs's statistics as of 1997/98 showed that nationally there were a total of 151 specific claims in negotiation, 283 others submitted but not reviewed and about 60 new claims were being filed each year.

In October 1998 Canada has released a new *Historic Treaty Land Entitlement (TLE) Shortfall Policy – Validation Criteria and Research Guidelines* in response to recommendations from the ICC. This policy applies to those First Nations which were signatories to the 11 numbered treaties and which have claimed additional reserve land to fulfil what they were entitled to under the Treaty. Three of these Treaties are in parts of Northern Ontario – Treaties #3, 5 and 9. The Nishnawbe-Aski Nation of Treaty #9 has raised serious concerns about the number of TLE claims by First Nations in Northern Ontario.

The Department of Indian Affairs has participated in a *Joint First Nations-Canada Task Force on Specific Claims Policy Reform*, which submitted its report in November 1998. It was reported in the press in May 2000, that the Minister of Indian Affairs is addressing the Task Force's recommendations with his Cabinet colleagues respecting reform of the policy and claims process.

(2) GOVERNMENT OF ONTARIO:

The Ontario government has initiated a number of policies since 1995. In this section, we highlight four key policies and frameworks dealing with First Nations issues – the Aboriginal Policy Framework, the Land Claims and Self-Government Policies, and the Aboriginal Economic Development Strategy. The material cited here is as published on the Ontario Government's website for the Ontario Native Affairs Secretariat, last up-dated April 26, 2000.

(A) ONTARIO'S ABORIGINAL POLICY FRAMEWORK:

The provincial government's overall approach to Aboriginal affairs is set out in its March 1996 *Aboriginal Policy Framework*, the goal of which is:

to help build the capacity within Aboriginal communities to develop stronger economies, become more self-reliant and exercise greater responsibility for their well-being while maintaining balance and stability in relations between Aboriginal and other residents in the province.

(B) ONTARIO'S LAND CLAIMS POLICY:

Ontario's own *Land Claims Policy* states:

A land claim as defined by Ontario is a formal statement submitted to the federal and/or provincial government in which an Aboriginal community asserts that the Crown has not lived up to its commitments or obligations with respect to Aboriginal or treaty rights pertaining to land.

The issues in Ontario land claims usually concern the meaning of original treaty agreements, the extent to which treaty commitments have been honoured and how to provide redress in cases where treaty commitments were breached.

It is Ontario's policy:

... that negotiations provide an effective process for addressing the legal, constitutional and practical issues raised by Aboriginal land claims. Ontario is committed to ensuring that land claim negotiations address the interests and concerns of people who live or who use the lands within the claim area. Meaningful public involvement helps lead to more enduring settlements that are broadly acceptable to those who live and work in the claim area.

The purpose of Ontario's *Land Claim Policy* is stated:

Ontario strives for settlements that are cost- and time-effective to negotiate and implement. It strives for negotiated settlements that result in more constructive and enduring solutions than other alternatives, such as litigation.

Land claim settlements will provide Aboriginal communities with opportunities for economic development, while removing barriers to investment and fostering a stable climate for local businesses and other interests. Settlements aim to promote self-reliance of Aboriginal communities through economic and community development.

Settlements should fall within the government's overall approach to public sector financial management, which stresses efficiency, effectiveness, and greater accountability.

The *Land Claims Policy* as published includes:

- Clear criteria on how Ontario decides whether to negotiate an Aboriginal land claim
- Provisions for public involvement in Aboriginal land claims negotiations
- Provisions for the a Negotiation Framework Agreement at the start of the negotiations
- Ontario's approach to private property and Crown land uses
- Provisions for a "Fast-Track" negotiation process
- Policy to promote more efficient and effective settlements

Ontario notes that 11 claims have been settled in the last three years under the auspices of the ICO.

(C) ONTARIO'S SELF-GOVERNMENT POLICY:

The Ontario government's *Self-Government Policy* states:

The Secretariat participates, where appropriate, in Aboriginal self-government negotiations led by the federal government in order to represent Ontario's financial, legal and constitutional interests. Ontario's view is that the federal government must take the lead on Aboriginal self-government matters as the senior government with responsibility for Aboriginal peoples. Ontario will continue to assess and protect provincial interests in this process and the government will continue to respect existing Aboriginal and treaty rights. To this end, Ontario is monitoring the

federally-led self-government negotiations with the Anishinabek Nation (Union of Ontario Indians) and participating (although not as an official party) in the federally-led self-government negotiations with the United Anishnaabeg Councils (UAC).

It is noteworthy that Information provided on ONAS's website, dated April 26, 2000 states in the section about the *Aboriginal Policy Framework* that: "Over the course of 1996, the Ontario government *will* review the decisions of the Supreme Court of Canada regarding the inherent right to self-government and develop its policy on self-government." (our emphasis) It is not clear whether this review and policy development has been completed as of May 2000.

(D) STRATEGY TO PROMOTE ABORIGINAL ECONOMIC DEVELOPMENT IN ONTARIO:

In July 1998, the Ontario Government announced *The Building Aboriginal Economies Strategy*.

Through the strategy, Ontario is working with Aboriginal peoples, the corporate sector and other government partners to promote Aboriginal business development and encourage Aboriginal partnerships with the corporate sector that can create long-term jobs and economic opportunities for Aboriginal people.

The Building Aboriginal Economies strategy, a co-ordinated framework of more than 30 Ontario government programs and services focussed on four key areas: increasing partnerships, removing barriers, creating opportunities, and improving access. Building Aboriginal Economies is designed to benefit all Aboriginal people in Ontario, including First Nations people, Métis, urban Aboriginal people, women and youth. The goal of the *Working Partnerships Program*, the centrepiece of the strategy is to create opportunities for Aboriginal people by facilitating partnerships between the community and the corporate sector.

(3) FIRST NATIONS IN ONTARIO

There are approximately 150,000 First Nations people living in Ontario, with almost 50 per cent living off-reserve. The federal government's change in the *Indian Act* registry system in 1985 through Bill C-31, has resulted in a significant increase in the number of "registered" or "status" Indians, many of whom are unable to live on-reserve because of the lack of housing, services and jobs. As a result of the Supreme Court of Canada's *Corbiere* decision in 1999, off-reserve members must have access to decision-making in their community.

At the community-level, Indian reserves are governed by *Band Councils* which derive their authority from the federal *Indian Act*, which imposes severe constraints on their authority, ability to govern effectively and accountability to their own members. Many First Nations are seeking to negotiate governance and fiscal arrangements with Canada based on their inherent right of self-government rather than delegated administrative authority from Canada.

Policy initiatives are undertaken by the 134 First Nations in Ontario in a variety of ways (there are 630 First Nations in Canada, and Ontario represents approximately 22 per cent of that total). In Ontario there are occasional meetings of all of the Chiefs; there are Chiefs' meetings at the level of Provincial & Territorial Organizations (PTOs), Tribal Councils and Independent First Nations; and Ontario Chiefs participate in national-level processes through the Assembly of First Nations.

(A) CHIEFS-IN-ASSEMBLY

The First Nation Chiefs in Ontario have regular and special meetings called All Ontario Chiefs Conferences – their 26th Annual assembly is being held in June 2000 at the Couchiching First Nation near Fort Frances. Resolutions passed by the Chiefs-in-Assembly provide mandates for action on behalf of First Nations in Ontario. The All Chiefs elect an Ontario Regional Chief every three years to represent their interests in the Executive Committee of the national Assembly of First Nations.

There is an Ontario Confederacy of Nations of 15 members which meets between All Chiefs gatherings and follows-up on issues and action identified by the All Chiefs.

There is a Planning and Priorities Committee (PPC), comprised of the Ontario Regional Chief, the four PTO Grand Chiefs, a representative of the Independent First Nations and an Elder. The PPC acts as an executive arm to the Confederacy, and oversees the operations of a small secretariat, the Chiefs of Ontario Office.

(B) PROVINCIAL AND TERRITORIAL ORGANIZATIONS

The four PTOs – the Anishinabek Nation (Union of Ontario Indians, formed in 1949), the Association of Iroquois and Allied Indians (AIAI), Grand Council Treaty #3 and the Nishnawbe-Aski Nation (NAN) – each have their own policy and administrative decision-making processes, at the levels of meetings of Chiefs, Executive leadership and staff.

Grand Council Treaty #3 is in the midst of reconstituting a more traditional form of government among the two dozen First Nations in Northwestern Ontario, as part of a Nation Building process.

There are 15 Tribal Councils in Ontario mostly subdivided within the areas of the four PTOs. The Tribal Councils were developed by the Department of Indian Affairs in the 1980s to be the agents for devolution of federal programming. As such, the Tribal Councils have become the main co-ordinators, administrators and/or deliverers of programs and services at the regional and local levels. A number of Tribal Councils are beginning to reorganize themselves to reflect their own governance models. An example is the Mushkegowuk Tribal Council which mandated a new constitution in 1999, providing for its own legislative body, judiciary, clear role for the regional government, greater accountability to their members and direct election of the regional Tribal Chief by the people.

In addition, there are more than a dozen Independent First Nations – from the largest First Nation community by population in Canada, Six Nations of the Grand River; the Mohawks of Akwesasne near

Cornwall; Wikwemikong Unceded Territory on Manitoulin Island; and Bekejwanong - Walpole Island First Nation near Wallaceburg; the Temagami First Nation; and a number of smaller communities along Lake Superior and in Northwestern Ontario.

The Mohawks of Akwesasne are involved also in a Nation Building Process to provide for the exercise of jurisdiction by the Mohawk Council and greater control over and responsibility for their own affairs in their territory.

(C) NATIONAL LEVEL – ASSEMBLY OF FIRST NATIONS (AFN)

The Ontario Chiefs participate in the Assembly of First Nations (AFN) national-level activities, which include annual AFN Chiefs meetings, quarterly national Confederacy of Nations meetings, and an Executive Committee. Every three years, the Chiefs elect a National Chief to be their advocate.

The AFN conducts policy development and lobbying efforts to further the interests First Nations people. For instance, recently AFN has participated in a Joint Task First Nations-Canada *Task Force on Specific Claims Policy Reform*, which reported in November 1998. Also AFN prepared a *Options Agenda on First Nations Agenda for the Creation of a Treaty Implementation Policy*, March 2000.

There is considerable diversity of First Nations in Ontario from the large independent Iroquoian community of Six Nations of the Grand River with 15,000 members – with division between elected and traditional forms of government – to small Ojibway or Cree communities of 300 people or less in the North. There are community, regional, provincial and national structures and networks through which policies are developed and implemented. As a result it can be difficult to reach consensus on an Ontario-wide basis among all the First Nations and their respective organizations.

5. INTERGOVERNMENTAL PROCESSES AND DEVELOPMENTS ACROSS CANADA

(1) ATLANTIC CANADA

There are a number of Tripartite processes and agreements in Atlantic Canada.

A Partnership Forum was established in **Nova Scotia** in 1997 with the 13 Mi'kmaq Chiefs, Canada and Nova Scotia, to address issues of mutual concern including economic development, social services and self-government. A Tripartite agreement on education was reached earlier in 1997 with the Mi'kmaq Chiefs of Nova Scotia, Canada and Nova Scotia. This provided for the transfer of jurisdiction for education from the federal government to the Mi'kmaq communities, including funding for primary, elementary and secondary education on-reserve and post-secondary funding for First Nation members on- and off-reserve. It included a fair, open and transparent political and financial accountability structure along with a process for dispute resolution.

There has been a Joint Economic Development Initiative (JEDI) in **New Brunswick** to focus federal, provincial, Aboriginal and business efforts to increase business ventures.

The *Labrador Inuit Land Claims Agreement-in-Principle* was initialled in May 1999, by the Inuit of **Labrador**, Canada and Newfoundland. It will provide substantial land and resources under the direct control of the Inuit of Labrador, self-government arrangements and participation in decision-making on a government-to-government respecting environment protection, land use, economic development, sharing of revenues from Voisey's Bay, etc.

(2) ALBERTA

There are three numbered Treaties in Alberta – # 6, 7 and 8. Issues about Treaty clarification, renovation and Treaty-based processes have been raised, and the Department of Indian Affairs is proceeding through separate bilateral tables to consider Treaty issues. However, Treaty #7

recently launched a court challenge to the validity of 1930 *Natural Resources Transfer Agreement (NRTA)*, which inhibits the parties from dealing with issues of First Nations' access to and benefits from Lands and Resources off-reserve. There is on-going dialogue between the Indian Affairs Regional Director's Office and the provincial government.

There is no intergovernmental forum to consider matters of mutual concern to Alberta First Nations, Canada and Alberta. As a result, contentious issues often lead to court action. For instance, in January 2000, the Athabaska Tribal Council went to court claiming that Alberta has a constitutional obligation to consult with Treaty #8 First Nations before allowing oil company activities which can interfere with trapping in traditional lands. Alberta has responded that it has no such obligation to consult with First Nations before permitting oil exploration on Crown lands.

(3) BRITISH COLUMBIA

Until recently, there were almost no Treaties with First Nations in B.C. As a result, First Nations in B.C. have argued that they have Aboriginal title claims to most of the province. While the *Delgamuukw* case was making its way through the courts, the Nisga'a Nation was continuing its more than 20 year negotiation process with Canada and British Columbia for a modern-day Treaty providing for land, resources and self-government. In May 2000, the federal law recognizing the *Nisga'a Treaty* was finally proclaimed. The Nisga'a Treaty provides substantial land and resources under the direct control of the Nisga'a Nation, self-government arrangements for the Nisga'a regional and local governments and intergovernmental relations with Canada and B.C.

(A) THE BRITISH COLUMBIA TREATY PROCESS:

In the early 1990s, the Governments of Canada and British Columbia reached an agreement with the B.C. First Nations Summit to establish a framework for negotiating about Aboriginal title – called *comprehensive claims* under federal policy. Spurred by the *Report of the British Columbia Claims Task Force*, the Social Credit administration made the policy decision to actively participate in negotiating with First Nations, reversing almost 100 years of opposition to provincial participation in land claims negotiations. In 1992, the formal *Agreement* was signed

establishing the *British Columbia Treaty Commission*. In 1995, federal and provincial legislation and a resolution of the B.C. First Nations' Summit formally mandated the five member Treaty Commission, with a Chief Commissioner chosen by the three Parties, with two Commissioners selected by the Summit, and one Commissioner each by Canada and B.C.

The Commission has a number of functions: it is the "gatekeeper" for the negotiations – it determines that a First Nation is ready to begin negotiating, in terms of having a clear mandate and resolving overlapping claims; it facilitates and monitors the negotiation process and comments directly on whether the Parties are moving to settlement; it ensures that Interim Measures Agreements are in place; it assists the Parties with public consultation about the negotiations; and, it is responsible for an active general public communication and education program.

In terms of public communication and consultation, there has been a great deal of activity. There is an overall Treaty Negotiation Advisory Committee, which meets monthly, and to which the governments bring policy issues, and the Committee then advises Ministers. There are 24 Regional Advisory Committees, and also Treaty Advisory Committees and Local Advisory Committees to ensure that those who are affected by the negotiations have opportunities to receive information and discuss issues during the course of the negotiations.

The Commission leads the public communications and education processes which includes supporting an independent Speakers Bureau, producing videos, websites, reports, and school curriculum materials. The federal government spends approximately \$ 2 million per year on communications support; the B.C. Treaty Commission's budget is \$250,000 for these communication activities; and the First Nations Summit spends \$150,000 on communications.

Recently, concerns have been expressed that the process has become overloaded with approximately 50 First Nations involved and 40 sets of different negotiations underway. The Assembly of First Nations has stated recently that the federal *Comprehensive Claims Policy* needs to be changed to ensure that fairer settlements can be reached – and reached faster.

(4) MANITOBA

The Manitoba Treaty Land Entitlement (TLE) Framework Agreement was signed by 19 First Nations, Canada and Manitoba in May 1997. Under the TLE agreement, Manitoba provides Crown Land and Canada provides cash compensation to make up for the shortfall of almost 450,000 hectares of land which should have been transferred for reserves under the Treaties signed between 1871 and 1910. Manitoba participated actively in the TLE settlement to fulfil its obligations under the *1930 Manitoba Natural Resources Transfer Agreement*.

As a result of damage to First Nations lands and livelihoods from flooding for hydroelectric power generation, Canada, Manitoba and Manitoba Hydro had agreed to provide compensation through the *Northern Flood Agreement* of 1977. There had been problems with implementation of it, and in November 1999, Minister Nault reintroduced legislation, the *Manitoba Claim Settlements Implementation Act*, to facilitate effective implementation of the Northern Flood and TLE Agreements.

Manitoba does not participate in the federal-Manitoba First Nations "dismantling" initiative, launched in 1995. There is no tripartite intergovernmental forum, but the three parties do liaise on matters of mutual concern through informal networks.

The Sioux Valley Dakota Nation in Southwestern Manitoba is negotiating a comprehensive *Self-Government Agreement* with Canada, and with Manitoba's concurrence, to provide for the exercise of its inherent right.

(5) THE NORTHWEST TERRITORIES

In May 2000, Minister Robert Nault, Stephen Kakfwi, the Premier of Northwest Territories and Richard Nerysoo, representing the NWT Aboriginal leaders, announced the formation of an *Intergovernmental Forum*. The purpose of the Forum is to share information and make decisions on a government-to-government basis. As noted in the press release:

This is significant in the political and economic development of the Northwest Territories. The convergence of significant progress on claims and self-government, diamond mining and increased industry interest in oil/natural gas exploration and development, including a potential pipeline, creates unique opportunities for all northerners. The Intergovernmental Forum provides an opportunity for government leaders to work together on Northwest Territories priorities, now and in the future.

Some key features of the Federal-Territorial-Aboriginal Intergovernmental Forum include:

- mandated, representative governments are at the table to address territorial issues
- the forum is decision-orientated
- all Parties have the capacity to participate
- the forum respects community and regional priorities and issues
- the "intergovernmental relationship" will be shaped and defined by the Parties themselves in partnership, not pre-determined by one Party, and
- a flexible agenda exists, and is supportive of existing relationships; an open, transparent environment exists for discussion and dialogue to occur and basic factual information is provided to all northerners.

(6) NUNAVUT:

With the settlement of the Inuit claim in the Eastern Arctic, there was division of the Northwest Territories, and the creation of Nunavut on April 1, 1999. Through the claim settlement and the new public government, Inuit of Nunavut have substantially increased land and resources under their direct control, and they participate through the territorial government in managing the development of the new territory and its intergovernmental relations.

(7) QUEBEC

There is no formal intergovernmental forum in Quebec, but there is on-going liaison between First Nations and the federal and provincial governments, particularly with a focus on maximizing economic development opportunities.

Tripartite consultative and decision-making bodies were established with the Cree and Inuit peoples through the *1975 James Bay and Northern Quebec Agreement*.

Joint Canada-Quebec discussions occur with the Mohawk communities.

(8) SASKATCHEWAN

(A) BACKGROUND

(Minister Nault requested that we visit Saskatchewan to learn directly about developments there, so more detail is provided in this section than the activities in other provinces.)

There are 72 First Nations in Saskatchewan of Cree, Dene and Dakota peoples, 71 of which are members of the Federation of Saskatchewan Indian Nations (FSIN), which was established in 1948. There are five "numbered" Treaties in Saskatchewan – Treaties 4, 5, 6, 8 and 10. There are five Dakota-Lakota First Nations which are not included in these Treaties. The numbered Treaties were signed in the 19th century – before the creation of the Province of Saskatchewan in 1905. In 1930 the federal and provincial governments made the *Natural Resources Transfer (NRTA)*. First Nations have argued that the governments failed to honour fully the terms of the Treaties, the oral promises made and the spirit of Treaty-making.

(B) TREATY LAND ENTITLEMENT (TLE):

One of the most significant problems was the failure to provide land for reserves as provided by the Treaties. Between 1989 and 1992, the

Federation of Saskatchewan Indian Nations negotiated double bilateral agreements with the Governments of Canada and Saskatchewan a framework agreement to provide for settlement of *Treaty Land Entitlement*, replacing an earlier agreement from 1976. The Office of the Saskatchewan Treaty Commissioner and the Commissioner's personal efforts were instrumental in preparing the research and options for reaching the settlement. The TLE Agreement was confirmed by federal and provincial legislation.

The total value of this cash-only agreement is approximately \$440 to \$600 million over 12 years, split on a 70/30 per cent basis between Canada and Saskatchewan. Initially 26 First Nations were covered by the Framework Agreement, and another three First Nations have negotiated TLE agreements since then. First Nations are committed to use the funds first to purchase land at fair market value on a "willing buyer/willing seller" basis to make up the "short-fall" in reserve land, after which they can use "equity" funds to purchase more land or to make investments. In December 1999, the Lac La Ronge First Nation successfully challenged in court the land entitlement formula applied by Canada and Saskatchewan. It is not clear what impact this case might have on the overall TLE framework if the lower court judgement is confirmed on appeal.

There are provisions in the TLE Agreement to ensure service agreements and off-set for the loss of tax revenues for municipalities when purchased lands are transferred to reserve status. Saskatchewan participated fully in the TLE process to satisfy its obligations under the *NRTA* and to provide security of title to promote a strong regional economy. There was public consultation during the negotiation of the TLE Framework Agreement and implementation is proceeding successfully.

In addition to TLE claims, there are other "specific claims" by First Nations under the Treaties, and validation and negotiation of these is proceeding, in some cases through the efforts of the federal Indian Specific Claims Commission. On May 27, 2000, Canada and Saskatchewan signed an MOU on *Implementation of Specific Claims*, which addresses third party interests, municipal tax loss compensation (\$4.1 million being provided by Canada to Saskatchewan), public utility services and natural resources regulation.

**(C) THE BILATERAL TREATY TABLE &
THE OFFICE OF THE TREATY COMMISSIONER (OTC)**

In 1996, the Federation of Saskatchewan Indians and Canada negotiated a broader mandate for the Office of the Treaty Commissioner. An *Exploratory Treaty Table* was created for the discussion of Treaty rights and/or jurisdictions. It is chaired by the new Treaty Commissioner, Judge David Arnot. The Treaty Table is a bilateral process for the Treaty First Nations and the federal government. The provincial government is invited to observe the proceedings, and its representative does so on a regular and active basis. (See Appendix D for *Order-in-Council*, P.C. 1996-1895, December 10, 1996.)

The Treaty talks are to discuss, but not to re-negotiate the Treaties. The purpose of the discussions is to gain a better understanding of each others' views on Treaty and to try to reach a consensus on a common understanding. The Parties appear to be focussing on the underlying Treaty Relationship rather than Treaty rights. The Government of Canada is represented by a senior negotiator and FSIN by the Executive Director of the FSIN Treaty Governance Office. The Minister and FSIN Chief do not attend the Treaty Table talks, but instead they receive consensus reports from the Commissioner at the direction of the Parties.

The OTC did extensive research and consultation and produced, in October 1998, a 100 page report, *Statement of Treaty Issues*, which proposed a common understanding of the principles of the Treaty relationship. The OTC has contracted Treaty research reports, with agreement by the Parties on the terms of reference, about the Elders' oral history of Treaty-making and documentary history of the Treaties. The Table has just signed off on reports on Education and on Child and Family Services, which the Commissioner will then provide to the Minister and the FSIN Chief. It is noteworthy that the OTC role is simply that of facilitation – the Commissioner has no power to adjudicate on the interpretation of Treaties.

(D) THE TRIPARTITE COMMON TABLE

A Ministerial-level body, the *Common Table*, was created in 1996 by three Parties: FSIN, Canada and Saskatchewan. The federal Minister of Indian Affairs, the provincial Minister of Intergovernmental and Aboriginal

Affairs and the FSIN Chief meet at least twice a year. The Table is supported by a committee of senior officials which meets monthly. See Appendix E for the *Protocol Agreement to Establish a Common Table*.

The purpose of the Common Table is to:

- discuss Treaty matters of mutual concern and priority that affect all three governments
- identify and help with the processes for negotiating and implementing a new framework, and defining the intergovernmental relationship with Treaty First Nations, and
- discuss how jurisdiction and financial matters are linked in First Nation government

Once the federal Minister and FSIN Chief sign-off on the OTC reports, they are presented to the Common Table and, if they are to be the subject of negotiation, then they are referred to working groups made up of all three parties. The Common Table has established two working groups: the Governance Table and the Fiscal Relations Table. Officials and experts from all three Parties are working jointly on defining issues and options for negotiation of new intergovernmental relationship needed to support First Nation governance, and new fiscal arrangements for First Nations. The Parties are committed to working together to reach a province-wide self-government framework. They have agreed to negotiate, over the next two years, for the exercise of First Nations jurisdiction, good governance arrangements, and support for more self-reliant First Nations. Canada provides over \$5 million annually to FSIN to support its participation in the Common Table and the Treaty Table processes, community consultation and communications.

On May 27, 2000, FSIN Chief Perry Bellegarde, federal Minister Robert Nault and provincial Minister James Hillson, signed a framework agreement for the FSIN self-government negotiations. The trilateral negotiations will start with education and child and family services and then proceed to justice, lands and resources, health, housing, etc. The

three Parties recognize that these will be complex and difficult negotiations, but they are necessary to deal with issues of on- and off-reserve jurisdiction and First Nations members, and access to traditional territories, etc.

In a separate but related process, the Meadow Lake Tribal Council, composed of nine First Nations in northwestern Saskatchewan, is negotiating a comprehensive self-government arrangement bilaterally with Canada on the full range of its jurisdiction, with the concurrence of Saskatchewan through a complementary tripartite agreement.

(E) OTC ROLE IN COMMUNICATIONS AND PUBLIC EDUCATION

The OTC has a very active communications and public education program. In conjunction with a Public Education Working Group, the OTC has established a Speakers Bureau, with 30 prominent citizens, who will be available to speak about Treaty and other issues. OTC has produced a website, pamphlets, reports, videos, etc. It is working with provincial education officials to prepare better curriculum materials and teachers' guides for use throughout Saskatchewan educational institutions.

The Office of the Treaty Commissioner has a staff of five, and an annual budget of approximately \$600,000, wholly funded by Canada. The current mandate of the OTC and the Commissioner expires December 31, 2001.

(9) YUKON

In 1993, the Governments of Canada, Yukon and the Council of Yukon Indians (now known as the Council of Yukon First Nations) concluded the *Umbrella Final Agreement* to resolve the Yukon First Nations Comprehensive Land Claim and to provide the basis for negotiation of community-specific self-government agreements. A number of consultative and decision-making processes and boards at local and regional levels are being developed to provide for government-to-government participation in environmental protection, land use planning, economic development, etc.

6. THE TRIPARTITE PROCESS AND THE INDIAN COMMISSION OF ONTARIO

(1) MANDATING THE ONTARIO TRIPARTITE PROCESS

The Ontario Tripartite Process was mandated in March 1978 through companion Orders-in-Council by Canada and Ontario, and by resolution of the Ontario Chiefs, for the purpose:

... of identifying, clarifying, negotiating and resolving matters of mutual concern to the Government of Canada, the Government of Ontario and the Status Indians residing in Ontario.

It was unique in Canada as a senior government forum for federal and provincial Ministers to meet directly on an on-going basis with First Nation leaders. The Ontario process arose out of the breakdown of the bilateral federal Joint Cabinet/National Indian Brotherhood Committee in 1977. Ontario Indian leaders sought to continue to develop a government-to-government relationship with both federal and provincial governments to negotiate and resolve issues of direct concern to Indian people in Ontario.

Mr. Justice Patrick Hartt, appointed by the provincial government to study the impact of economic development pressures in Northern Ontario, recommended such a body in his *Interim Report on the Northern Environment* in 1977. He noted that because the province controlled lands, resources and economic development, it would have to be included in negotiations with First Nations. He focussed on how economic expansion in the North was colliding with Indian rights and interests in that land, which would only lead to more conflict unless there were a forum to reconcile the differences. He proposed that a Ministerial-level Committee should resolve, through negotiation, questions of devolution of authority to govern local issues and access to resources for Indian people.

(2) CREATION OF THE INDIAN COMMISSION OF ONTARIO (ICO)

The Indian Commission of Ontario was created six months later in 1978 with Justice Hartt appointed the Commissioner. The ICO, as an independent body, provided secretariat services to the Tripartite Council, facilitated decision-making and assisted in the resolution of issues

through various working groups. Its role changed over time with the addition of responsibilities for resolution of land claims in 1979, and the addition of a number of new powers and duties in 1980, when the Commissioner was made the Chair of the Tripartite Council and Steering Committee. He was given powers, to be exercised with the consent of the Parties, such as: to convene meetings, meet separately with any of the Parties, request information from the Parties, recommend suspension of any processes and recommend court references for any issue.

The Orders-in-Council have been renewed first on a three year basis, and then a five year basis. There have been three other Commissioners: Roberta Jamieson (1985-1989), Harry LaForme (1989-1992) and Phil Goulais (1992-2000).

(3) MISSION STATEMENT

As stated in the most recent Orders-in-Council for the Indian Commission of Ontario, its objective was:

... to facilitate negotiations and discussions to establish First Nation self-government and negotiations and discussions relating to matters and arrangements with respect to the exercise of jurisdiction and powers by First Nation's governments in Ontario. (P.C. 1995-548, March 31, 1995, see Appendix C)

(4) FUNCTIONS OF THE ICO

As stated in the Orders-in-Council, the function of ICO was:

1. to provide a forum for the negotiation of self-government issues;
2. to facilitate the examination and bring about resolution of any issue of mutual concern to the federal government and provincial government, or either of them, and to all or some of the First Nations in Ontario, which the Tripartite Council refers to the Commission by formal direction or as otherwise requested by the parties; and
3. Under the general direction of the Tripartite Council, to acquaint the residents of Ontario with the activities of the Commission and with the nature and progress of the matters before it.

(5) ACTIVITIES OF THE COMMISSION

The activities of the ICO include: developing the *Tripartite Work Plan* and reporting regularly to the Parties; facilitating Land Claims and larger First Nation land base negotiations; facilitating Self-Government, administrative and co-management negotiations; bringing to the Parties' attention any concern the ICO may have regarding the Parties' commitment to resolve any issue; and, informing Ontarians about the Parties' objectives and activities through public consultations, communications and education.

(6) ICO POWERS:

As set out in the federal and provincial *Orders-in-Council*, the ICO had a range of powers – most of which could be exercised only with the consent of the Parties, including: to convene and adjourn meetings; to meet separately with Parties; to request tabling of documents; to request tabling of documents; to impose deadlines; to set questions and request responses; to present suggestions to any or all of the Parties; to determine whether an impasse in negotiations had occurred; to act as or to arrange for a mediator, fact-finder or arbitrator; to propose suspension of any of the Tripartite processes; to recommend to Tripartite Council appointment of a commission under the *Inquiries Act*; and, to recommend reference to a court of tribunal of any matter. (See Schedule 1 of the OIC, Functions and Duties of the ICO, sections 3 and 4, Appendix C)

(7) THE TRIPARTITE COUNCIL

The Ontario Tripartite Council was comprised of the Minister of Indian Affairs and Northern Development, the Ontario Minister Responsible for Native Affairs, the Grand Chiefs of the four Provincial and Territorial Organizations – Grand Chiefs of the Association of Iroquois & Allied Indians, Grand Council Treaty #3, Nishnawbe-Aski Nation and the Union of Ontario Indians – along with representatives of Independent First Nations, including Six Nations of the Grand River. The Council was the senior governing decision-making body for the process. It was to meet on average once or twice a year to provide direction for tripartite activities, however the Council had not met since March 1998. (Since June 1995, the Council met only four times.) The agendas for the meetings were prepared by the ICO with the supervision of the Senior Steering Committee; but new items were often added at the last moment.

(8) SENIOR STEERING COMMITTEE

The Senior Steering Committee, comprised of senior officials, was responsible for monitoring the progress of the negotiations and the activities of the ICO, including preparation of an *Tripartite Work Plan*, quarterly reports, preparation of agendas for the Tripartite Council, etc. This body had been scrapped in 1985, but then reconstituted after the 1989 ICO evaluation.

At a Tripartite Retreat in November 1997, the senior representatives and the ICO agreed to make a number of improvements to the process, including having the Senior Steering Committee meet six times a year – however, it met only twice in 1998 and in 1999. In the five years since June 1995, it met a total of nine times.

(9) TRIPARTITE WORK PLAN

For 2000-2001, the draft *Tripartite Work Plan* indicated that there were more than 40 active files:

<input type="checkbox"/>	Specific Claims:	Tripartite (6 files) Bilateral with Canada (3)
<input type="checkbox"/>	Land Issues (not Claim Related):	Tripartite (9)
<input type="checkbox"/>	Other Agreements (Notification):	Tripartite (2)
<input type="checkbox"/>	Policing Agreements:	Tripartite (9)
<input type="checkbox"/>	Harvesting Activities:	Tripartite (4)
<input type="checkbox"/>	Other Files:	Bilateral with Canada (4) Current & Proposed (7)

Matters in the "other file" category included planning a workshop to consider issues about the impact of provincial legislation on First Nations; discussion of public consultation issues; and a five-year review by the ICO of a bilateral agreement between the Lac LaCroix First Nation and Ontario, which had been negotiated first without the ICO's assistance.

(10) BUDGET

The Indian Commission of Ontario's budget for 1999-2000 was

\$1,038,193 – of which Canada contributed \$723,600 and Ontario \$313,593. In addition, there was a *Participation Fund* of \$485,163 – of which Canada contributed \$296,120 and Ontario \$189,043. The *Fund* created for the First Nations to access additional funding to support work on specific files accepted on the *Tripartite Work Plan*. Harvesting negotiations through the four PTOs were funded out of this *Fund*. In addition, special project funding was provided to ICO in the amount of \$41,908 from Canada and \$20,000 from Ontario. In 1996 Ontario reduced its core funding to the ICO by 20 per cent, and by another 10 per cent in 1997.

(11) STAFF

In 2000, the ICO staff complement was seven, headed by Commissioner Phil Goulais, first appointed by the Parties in 1992, and renewed for a five year term in 1995. There were three senior negotiators, an Office Administrator and two support staff. Two senior staff left the ICO in 1999 were not replaced.

(12) EVALUATIONS OF THE TRIPARTITE PROCESS & ICO

There have been four evaluations of the Tripartite Process and the Indian Commission: 1982, 1989, 1994 and 1999. The 1999 Evaluation was conducted by Smith & Associates, Campbell Research Associates and Kelly & Associates between April 22nd and August 31st, with a Final Report provided dated November 1999. The evaluators interviewed 39 people using a 64 question interview guide. Interviews took place in Toronto, Six Nations, London, Thunder Bay and Kenora.

The evaluators made 17 recommendations, emphasizing to the Parties the need to define a specific mandate for the ICO, agree on criteria for accepting issues on the *Tripartite Work Plan*, and address the issue of how "self-government" issues could be addressed through the process. Addressing the Commissioner, the evaluators emphasized that he had to develop long-term goals and objectives for the ICO, develop a communications strategy, report on accomplishments, and provide "more visible and proactive leadership with the parties."

(13) ACHIEVEMENTS OF THE ICO-ASSISTED PROCESS

In October 1999, the ICO published an Update – *Track Record of Success and Cause for Hope* – which summarized selected accomplishments since 1990. See Table 1 for highlights since June 1995 on following page.

(A) LAND CLAIMS SETTLEMENTS

The ICO had considerable success in facilitating the settlement of a number of long-standing specific land claims since the late 1980s and the publication of the ICO's *Discussion Paper Regarding First Nations Land Claims*, in 1990. It is interesting to note the number of successes in just the past two and a half years. Nine land claim agreements have been achieved (excluding the two Notification and two Airport Agreements) – three were tripartite (Ontario-Canada-First Nations) and five were bilateral (Canada-First Nations) and one was bilateral (Ontario and a First Nation). In this short period, more land claims have been settled under the auspices of the ICO than in the previous 15 years.

(B) POLICING AGREEMENTS

While the ICO had little success in facilitating negotiation comprehensive self-government agreements, it did assist the Parties to reach innovative Tripartite arrangements to provide for First Nations Policing. In 1981, the *Policing Agreement*, one of the first in Canada whereby the federal and provincial governments agreed to share the costs of an on-reserve Indian Constable program, was signed. Also, an Ontario Indian Police Commission was established to act as an advisory body. Negotiations later provided for regional policing agreements: *1989-91 Six Nations Regional Policing Agreement*, *1992 Province Wide Policing Agreement*, *1994 Wikwemikong Policing Agreement*, *1994 NAN Police Services Agreement*, *1994 Anishinabek Police Service Agreement*, *United Chiefs and Councils of Manitoulin and Lac Seul Policing Agreements*.

Unfortunately, as noted below at page 47, the *Ontario Wide Agreement* expired in 1996 and it has not been re-negotiated, nor have the regional policing service agreements been re-negotiated despite the pressing need for increases in the number of police officers, capital facilities and improved governance arrangements.

Table 1

**TRACK RECORD OF SELECTED LAND CLAIMS AGREEMENTS and LAND-RELATED
ACCOMPLISHMENTS THROUGH THE ICO – FROM JUNE 1995**

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as of October 1999

	ISSUE	STATUS	PARTIES	DATE
1.	Assabaska Shoreline Issue	Final Settlement (<i>ratified by the First Nation</i>)	Canada, Ontario, Onegaming and Mishkosiimiinziibing	October 1999
2.	Enniskillen Land Claim	(<i>Parties directed that final legal draft be prepared</i>)	Canada, Kettle & Stony Point, Chippewas of Samia, and Walpole Island First Nation	August 1999
3.	Cat Lake First Nation Airport Agreement	Settlement	Cat Lake, Ontario	March 1999
4.	Wahnapiatae Notification & Discussion Protocol	Protocol	Wahnapiatae First Nation, Ontario, Canada	November 1998
5.	Caldwell Land Claim	Agreement-in-Principle	Caldwell First Nation, Canada	October 1998
6.	Webequie First Nation Airport Agreement	Settlement	Webequie First Nation, Ontario	October 1998
7.	Grand River Notification Agreement (GNRA)	5-year Renewal Agreement of GRNA (<i>first signed in October 1998</i>)	Six Nations, Mississaugas, G.R.C.A. Canada, Ontario, Brantford, Brant, Dunnville, Haldimand-Norfolk, Onondaga, Paris and South Dumfries	September 1998
8.	Parry Island Boundary	Agreement-in-Principle	Wasauksing, Ontario, Canada	September 1998
9.	Camp Ipperwash	Agreement-in-Principle	Kettle & Stony Point, Canada	June 1998
10.	Whitefish Lake Northern Boundary Claim	Final Settlement	Canada, Whitefish Lake	June 1998
11.	Wahta Mohawks Land Claim	Agreement-in-Principle	Wahta Mohawks, Canada, Ontario	May 1998
12.	Mississaugas of New Credit (200 acre)	Final Settlement	Mississaugas of New Credit, Canada	May 1997
13.	Whitefish Lake Flood Claim	Agreement-in-Principle	Ontario, Whitefish Lake	April 1997

(C) NOTIFICATION AGREEMENTS

In the early 1990s, arising out of the uncertainty caused by a number of significant land claims by Six Nations of the Grand River and tensions arising from the lack of procedures dealing with environmental and land use issues, the ICO facilitated a process with 14 parties to reach accommodation on their wide range of interests. The *Grand River Notification Agreement* was signed in October 1996, by Six Nations of the Grand River, Mississaugas of New Credit, Canada, Ontario, the City of Brantford, the Grand River Conservation Authority, and eight other municipalities. The agreement provided for early notification and improved communication procedures on land use and environmental issues among all the parties. In 1998 the Agreement was renewed for another five years. It has resulted in much improved relations among the parties, and is an example of the importance of intergovernmental co-operation. The Six Nations' pre-Confederation land claim, however, remains to be addressed by both Canada and Ontario.

Another example of this innovative approach to reducing tension and facilitating co-operation was the *Wahnapiatae Notification Agreement*, signed in 1998 by the Wahnapiatae First Nation, Canada and Ontario.

7. OTHER FIRST NATIONS NEGOTIATION ACTIVITIES IN ONTARIO

(1) TREATY LAND ENTITLEMENT:

In 1998, The Nishnawbe-Aski Nation requested that Canada and Ontario establish with NAN a special Tripartite forum to research and negotiate Treaty Land Entitlement claims similar to those faced by First Nations in Saskatchewan. As noted earlier, as of October 1998, Canada has a revised *Historic Treaty Land Entitlement (TLE) Shortfall Policy*, and it is proceeding with initial TLE negotiations with the Chapeau Cree and the Missanabie First Nations. At this time, Ontario has not been prepared to participate in these TLE negotiations. There may be anywhere from a 12 to 44 such TLE claims, which is why overall research and negotiation of a *TLE Framework Agreement* would assist speedy and cost-efficient resolution of these issues. Involvement of both levels of government is key to NAN's vision of ensuring that the affected First Nations receive, sufficient land for community growth and development.

(2) PILOT PROJECTS TO EXPEDITE SPECIFIC LAND CLAIMS

On a bilateral basis Canada agreed in 1996 to two pilot projects with the Michipicoten and Fort William First Nations to accelerate research, identification and resolution of specific their land claims. The process has been assisted by the federally-appointed Indian Claims Commission (ICC). We understand that in the case of Michipicoten, in a two year period, 14 claims were researched, five of which were accepted for negotiation – a very significant acceleration of normal process. These pilots are significantly faster, less expensive and fairer overall; however, more funding is required within the concentrated period.

It remains to be seen whether the experience of these bilateral pilots will be useful in reforming the ICC, given the recommendations of the AFN-Canada *Joint Task Force on Specific Claim Policy Reform* of November 1998. Another challenge is whether the province will participate in this more cost-efficient and effective approach to dealing with past grievances.

(3) OTHER TRIPARTITE AND BILATERAL LAND CLAIMS

At least one major land claim is being negotiated on a Tripartite basis in Ontario outside of the ICO-assisted Process. The Algonquins of Golden Lake commenced negotiations with Ontario and Canada in 1992 regarding their Aboriginal title claim to a large portion of Eastern Ontario, resulting from the absence of any Treaty signed with their predecessors.

The Ontario Government has proceeded with bilateral negotiations with the Temegami First Nation and the Teme-Augama Anishnabai in Northeastern Ontario regarding their Treaty entitlement to a reserve and other benefits under the Robinson-Huron Treaty of 1850.

(4) HARVESTING NEGOTIATIONS

While the ICO has facilitated a series of harvesting negotiations, including separate Tripartite Tables for Grand Council Treaty #3 Trapping, NAN Harvesting, Anishnabek Trapping, and AIAI Hunting, Gathering, Fishing and Trapping, other negotiations occur outside of the ICO-assisted Process. For instance, Justice Stephen Hunter has been facilitating, in 1999-2000, Tripartite commercial fishing negotiations with the Chippewas of Nawash (Cape Croker) and the Chippewas of Saugeen on the Bruce Peninsula.

(5) COURT ACTIONS

A number of lawsuits about land issues have been filed against both Canada and Ontario by First Nations. These involve both pre- and post-Confederation Treaty issues. Court action by the Six Nations of the Grand River and the Williams Treaty First Nations in Southeastern Ontario are examples of legal actions that First Nations were forced into when there was no effective avenue to negotiate settlement of major claims.

(6) SELF-GOVERNMENT ACTIVITIES IN ONTARIO

UNITED ANISHNAABEG COUNCILS (UAC)

Canada is undertaking with a number of First Nation groups in Ontario self-government and Nation-building exercises. The United Anishnaabeg Councils (UAC) concluded a bilateral *Self-Government Agreement-in-Principle* with Canada in 1997. We were informed that Ontario's observer had been asked recently to withdraw from the negotiations on the Final Agreement because of the lack of a provincial policy on self-government.

NISHNAWBE-ASKI NATION SELF-GOVERNMENT FRAMEWORK

Self-government negotiations with the Nishnawbe-Aski Nation have been proceeding throughout the 1990s. Within the framework of Canada's *Inherent Right Policy*, the focus of the NAN negotiations currently is on discussing regional-wide issues of Governance and Education.

ANISHINABEK NATION GOVERNANCE FRAMEWORK

In November 1998, the Anishinabek Nation signed a bilateral *Governance Framework Agreement* with Canada to provide an agenda for negotiating practical and workable self-government arrangements with the 45 First Nations represented by the Union of Ontario Indians. The agreement provides for extensive community consultations, development of community constitutions to deal with selection of leaders, structures and procedures of government and fiscal relations.

The Parties agreed that they "will make every reasonable effort to ensure the full participation of Ontario as a party to the Agreement-in-Principle and the Final Agreement." Ontario has declined to participate in the discussions to date.

In February 2000, the Anishinabek Nation and Canada ratified an agreement on a *Dispute Resolution Process* to expedite their self-government negotiations on governance and education.

BILATERAL NATION-BUILDING

Finally, Canada is supporting Nation-Building exercises with Grand Council Treaty #3 and the Mohawks of Akwesasne. These processes are focussed on internal governance and intergovernmental issues with Canada, but the Parties may, in the future, have to deal with jurisdictions currently occupied by the provincial government which affect the exercise of First Nation powers.

GRAND COUNCIL TREATY #3

Grand Council Treaty #3 signed a *Framework Agreement* with Canada in May 1997 committing the Parties to implement the inherent right of self-government so as to enhance the social, political, economic and cultural well-being of the Anishinaabeg in Northwestern Ontario. The scope of the negotiations includes 12 areas of jurisdiction including governance, lands and resources, economic, cultural and social development, etc. The Parties acknowledged:

... a provincial government must be party in the negotiations where matters being negotiated are those which normally fall within provincial jurisdiction and may be involved in the negotiation of any other matters that affect its interests." sec. 3.2

To date, the parties have not consented to involve and invite Ontario to participate.

MOHAWKS OF AKWESASNE

The Mohawks of Akwesasne signed a *Political Protocol* with Canada in June 1999, to support social and economic development of the community and to facilitate the exercise of jurisdiction by the Mohawk Council of Akwesasne. Six working groups were established in the areas of education, youth and training, economic development, justice, health, capital and infrastructure, and funding arrangements.

**8. FINDINGS AND RECOMMENDATIONS OF THIS REVIEW:
THE ONTARIO TRIPARTITE PROCESS AND ICO**

(1) GENERAL CONCERNS

In 1978, with the establishment by the Chiefs, Canada and Ontario of the Ontario Tripartite Process and the creation of the Indian Commission of Ontario, the Parties embarked on an experiment in decision-making unique in this country. The independent Indian Commission of Ontario was unprecedented in Canada. Over time, the Tripartite activities facilitated by the ICO – land claims, jurisdictional arrangements and powers of First Nations, public consultation and notification processes – opened up important lines of communication with governments and the public.

The ICO-assisted Tripartite Process served as a safety valve to relieve tensions. It substituted dialogue and negotiation for conflict and confrontation, which provided a path for the facilitation and mediation of agreements that otherwise might not have been possible. We cannot help but observe that the aftermath of a court decision like the *Marshall* case in Nova Scotia last year shows that all governments need an on-going forum for addressing issues constructively.

The Ontario Tripartite Process and the ICO were successful in facilitating and mediating a number of settlements of First Nations' issues in the last ten years. Governments may have been anxious to achieve some successes after a number of blockades in Ontario were set up in sympathy with the First Nations protestors in Oka, Quebec in 1990. Also, governments in Ottawa and Queen's Park were prepared to take new approaches to negotiate with First Nations on some issues.

However, despite these successes, it had become apparent to many observers that problems with the current process were themselves becoming sources of tension. In too many cases, it was taking too long for governments to analyse claims and determine whether they were prepared to negotiate. As a result, the Parties failed to make any real progress on major files. An extreme example of this is the Wauzhushk Onigam First Nation Land Claim near Kenora – the oldest ICO file which is still not resolved 19 years after being accepted for negotiation. The backlog of issues and claims, the competition among First Nations to

have issues accepted on the *Tripartite Work Plan*, possibly to obtain resources from the ICO Participation Fund, and the apparent inability to agree on setting priorities in preparing the *Tripartite Work Plan* dashed expectations of fair and speedy resolution of disputes.

Many people, with whom we talked, expressed considerable frustration with the "glacial" pace of change for First Nations in Ontario. We were told that it took *on average* eight years to negotiate settlement of land claims under the ICO's auspices, *after* the claim had been accepted for negotiation. People also pointed to the lack of progress on First Nations' self-government or implementing even so-called "administrative arrangements" on matters such as First Nations Policing or Trapping in Traditional Territories.

During our discussions with First Nations representatives, some leaders pointed out that the ICO staff has concentrated on facilitating and mediating land claim settlements. They said the ICO failed to fulfil its mandate to facilitate successfully negotiations and discussions about jurisdiction and powers of First Nations' governments in Ontario. They maintained that there has been little or no progress on overarching and substantive issues related to the key issues of the need for new governance, fiscal and administrative arrangements.

(2) JURISDICTIONAL TENSIONS BETWEEN CANADA AND ONTARIO

Many people argued that this lack of progress is directly attributable to lack of commitment by governments, particularly the provincial government. They emphasized that complex interactions of federal and provincial jurisdictions under Canada's Constitution create obstacles to the effective functioning of First Nations governments and ability to serve their members.

Frustrations over jurisdictional conflicts between governments are not new to First Nations in Canada. Federal and provincial governments often cannot agree on the division of the Crown's wide-ranging responsibilities to First Nations, who enjoy constitutionally protected Aboriginal and Treaty rights in this country. Provincial governments argue that First Nations peoples are within the exclusive responsibility of the federal government. First Nations often seek to negotiate only with

the federal government, since it does have the *primary* responsibility for dealing with them.

While the federal government clearly has authority for "Indians and lands reserved for Indians" under section 91(24) of the *Constitution Act, 1867*, the provincial government has jurisdiction over a wide range of matters that affect the lives of First Nations peoples, such as education, social welfare, policing and the administration of justice, ownership and control over natural resources, protection of the environment, etc. This has led to conflicts and uncertainty over which laws and which governments have jurisdiction for these areas as they relate to First Nations peoples. Many people pointed to the provincial government's imposition of "Workfare" in First Nations' communities in Ontario, without any prior consultation, and the resultant court challenge by the Mushkegowuk Tribal Council, as a case in point. In their view, this shows lack of respect for First Nations by the Government of Ontario.

The federal government's *Inherent Right Policy* on First Nations Self-Government requires that the provincial government should be involved in negotiating self-government arrangements on matters that affect provincial jurisdiction. Yet, the Government of Ontario has been very reluctant to engage in any First Nations self-government negotiations except "to protect provincial interests". This hinders the ability of First Nations to negotiate reasonable arrangements to provide for their members, frustrating the aspirations of First Nations people to have their own accountable, community-based governments responsive to their particular needs and capacities.

Everyone who spoke with us said emphatically that First Nations peoples have had enough of this jurisdictional "ping-pong" game between the provincial and federal governments – with First Nations caught in the middle.

(3) CONCERNS ABOUT ONTARIO'S POSITION ON SELF-GOVERNMENT

The provincial government has lacked initiative in regard to negotiations on First Nations self-government. Ontario has said it has to "develop its policy on self-government" – *although the ONAS website material notes as of April 2000 that this was to be done in the course of 1996.*

Many who discussed this with us asserted that, in reality, the Ontario government is unwilling to accept First Nations as a "third order of government" in Canada. We were informed that the provincial negotiators in recent rounds of negotiations for renewal of First Nations Policing agreements, facilitated by the ICO, said that they could only participate if they were called "administrative arrangements" rather than "self-government agreements". As a result, despite the glaring need to clarify jurisdictions and to develop First Nations government institutions, little progress has been made to confront the complexity of the issues and to develop creative institutional arrangements through Tripartite negotiations in Ontario.

The Ontario Tripartite Process had made progress on self-government arrangements which contributed to positive changes in First Nations communities – for instance the series of Policing Agreements through the 1980s and 1990s. However, the five year *Ontario First Nations Policing Agreement (OFNPA)* expired in March 1996, and having been unable to reach agreement on a renewal, the Parties have signed annually Memoranda of Understanding to extend it. The last MOU expired in March 1999 leaving nothing in place – as a result, we were informed that Ontario cannot be reimbursed by the federal government for its 52 per cent share of the costs, leaving Ontario owed over \$2 million.

Despite the obvious incentive for all Parties to negotiate renewal of the agreement and deal with the urgent issues of additional funding for more constables and capital facilities, they have not been successful in doing so nor in clarifying the policing governance arrangements.

(4) FRUSTRATIONS WITH THE ICO-ASSISTED TRIPARTITE PROCESS

Frustration, over the perceived lack of commitment of governments to move at more than a snail's pace to resolve Treaty implementation grievances or negotiate First Nations self-government, led many First Nations' representatives to advocate reform of the Tripartite Process in Ontario. They argued that issues like access to resources, education, health care and social services were not being addressed by the Parties. They felt the major problem with the Process was the ICO's and the Commissioner's "inadequate" powers.

They said that the ICO did not have the "teeth" it needed to resolve disputes. For instance, they pointed out that the Commissioner could not force a reluctant Party to the table to negotiate, enforce deadlines on the Parties, arbitrate issues or impose settlements to disputes. The concern raised repeatedly was that the Commissioner could not use his own discretion and that items for the *Tripartite Work Plan* had to have the consent of all of the Parties.

Conversely, other First Nations leaders supported reforming the process, but they questioned how requiring a recalcitrant Party to attend a meeting would ensure actual negotiations would ensue – especially if the Party in question remained uncommitted to bringing about a settlement. They suggested that imposition of Commission decisions might impede overall progress on the First Nations agenda in Ontario even more.

(5) THE NEED FOR POLITICAL WILL

Almost everyone, with whom we spoke, agreed that the essential problem in Ontario is the absence of the **political will** to find creative ways to end the dependency of First Nations peoples.

Many people felt that the formal Process is less important than the commitment – without the political will to find solutions, the most elegant process will not bring results. If there is a genuine will to resolve issues, even a flawed process, while it may slow progress, will not prevent the success of negotiations. Improvements to the process are needed, they argued, but what is really required is a way to bring governments and First Nations together to move towards First Nations' self-reliance.

The recent success of the ICO in facilitating the settlement of land claims by the Parties illustrates that, where there is the political will, negotiations result in agreements. Obviously, the First Nations involved desire successful outcomes and it appears that the federal and provincial governments in the 1990s determined that it was in their interests to resolve these claims as well. As stated in Ontario's current *Land Claims Policy*:

... the successful resolution of land claims can meet Ontario's legal obligations and create a positive environment for economic development for Aboriginal and non-Aboriginal people alike.

(6) SPECIFIC OBSERVATIONS ABOUT THE ICO

During our review, many First Nations representatives and others argued that the ICO-assisted Tripartite Process had become dysfunctional. A number of problems are obvious:

- ▶ The Tripartite Council of Ministers and Grand Chiefs has not met in two years since March 1998 despite the fact that it is supposed to meet twice a year. This seems to indicate a lack of commitment of governments to the Tripartite Process.
- ▶ Agendas for Tripartite Council meetings were too long and unwieldy for productive discussion and effective decision-making and, too often, the agenda of a meeting was not adhered to. This seems to have resulted from the inability of officials to reach consensus. They appear to have "kicked upstairs" many issues to Ministers and Grand Chiefs.
- ▶ The Tripartite Steering Committee has not met more than two or three times per year, instead of the six times per year agreed to at the ICO Retreat held in November 1997.
- ▶ There was no clear process for developing agendas for either Tripartite Council or Senior Steering Committee meetings.
- ▶ Overall, the Senior Steering Committee does not seem to have "steered" the Tripartite Process nor exercised required oversight over the work of the Commission.
- ▶ The *Tripartite - ICO Business Plan* was not developed by the Commission as agreed at the November 1997 Tripartite Retreat.
- ▶ The *Tripartite Work Plan* was unrealistically lengthy – with long-standing items remaining on it even though there was no demonstrable mandate to settle (eg., the Wauzhushk Onigam First Nation Land Claim stalemate cited above at page 44). The Parties apparently were unable to set clear achievable priorities in accepting and scheduling items on the *Tripartite Work Plan*.

- ▶ The *Tripartite Work Plan* has not been developed annually by the Parties. For instance, the 2000-2001 draft *Tripartite Work Plan* appears to be simply an extension of the 1999-2000 one. (Some descriptions of the status of the items in the January 5, 2000 draft have not even been updated from the previous year's plan.)

- ▶ It appears that few new matters have been added to the Tripartite activities in the last five years – despite the pace of settlement of outstanding land claims and continuing pressure from First Nations to have their issues added to the *Work Plan*. A matter can only be added to, or given higher priority on, the *Tripartite Work Plan* with agreement of all three Parties. We were told that in recent years Ontario has not been willing to add new items to the *Work Plan*.

- ▶ The *Ontario-wide First Nations Policing Agreement* expired in 1996 and despite the ICO's efforts, it has not been renegotiated nor apparently have the Solicitors-General been willing to meet face-to-face. Again, this seems to indicate a lack of political will to make the process work for the benefit of all Parties.

- ▶ The ICO has not issued an *Annual Report* since 1994 – *Indian Negotiations in Ontario: Making the Process Work*. While a pamphlet and an update were issued in the fall of 1999, they do not fill the need for a full report on the achievements of, and challenges facing, the Tripartite Process and the work of the ICO. In 1999, the ICO commissioned a 60 page research report – *The Road to Resolution: A History of the Ontario Tripartite Process and the ICO*, by Tonina Simeone, but it was not finalized.

The failure to report annually was clearly an omission by the Commissioner who has overall responsibility for the functioning of the ICO, but it begs the question of why all three Parties – Canada, Ontario and the First Nations – would accept this lack of reporting in the years since 1994.

- ▶ Most of the powers of the Commission can only be exercised with the consent of the Tripartite Council. As a result, one or more of the Parties can effectively veto the use of the Commission's powers.

- ▶ Over the past number of years, the Commissioner has used the ICO's range of formal powers under the Orders-in-Council *very rarely*. For instance, the Wauzhushk Onigam First Nation's Land Claim has been on the ICO *Work Plan* since 1980; the Parties have not *met* since 1998; and there is no evidence that the Parties are committed to negotiating a settlement. Yet the Commissioner did not propose suspension of the "negotiations" to the Tripartite Council, as he is empowered to do when the Parties are not negotiating productively.

- ▶ The ICO has lost staff, but no new replacement staff has been hired in approximately six years. We understand that job descriptions seemed haphazard; no systematic performance evaluations had been conducted. The staff at the ICO were very capable and dedicated to the Process, but they were overworked and under-supported.

- ▶ The ICO has not fulfilled its responsibility to inform Ontario residents of its activities as there has been little public communications activity. The ICO has no staff specifically responsible for communications and public education. As a result, the visibility of the ICO has declined in Ontario. Even many Chiefs do not appear to know what the Commission has been doing in recent years.

- ▶ The ICO has carried out public consultations about land claims negotiations it has facilitated, although sometimes this occurred late in the process. For some files it is not clear whether one or more of the Parties themselves were ambivalent about informing and consulting with the public during the negotiations.

- ▶ The 1999 Evaluation by Smith & Associates – *Review of the Indian Commission of Ontario and the Tripartite Process, Final Report, November 1999* – was not as helpful as it could have been in addressing the problems at the ICO given what we heard from First Nations representatives and others in our sessions. Moreover, the Parties did not establish a process to deal with its recommendations.

(7) REFORMS NEEDED:

1. FIRST NATIONS-CANADA-ONTARIO FORUM

The Ontario Tripartite Process and the situation of the ICO cried out for thorough review and reform. While putting conditions on any provincial participation in our review of the whole process, Hon. James Flaherty, did inform both the First Nations and Canada that Ontario is prepared:

... to participate in discussions aimed at improving the tripartite process by which the concerns of the parties may be efficiently and effectively addressed. (Correspondence with Hon. Robert Nault, March 30, 2000 and copied to all Chiefs in Ontario)

First Nations have stated that they favour *real* reform of the existing Tripartite Process. Many people told us that, over the last 22 years, the capacity within their communities to move forward towards self-reliance has improved markedly. First Nations leaders pointed out that the constitutional amendments, court decisions, the recommendations of the Royal Commission on Aboriginal Peoples, and government policy reviews in the 1980s and 1990s have all significantly altered the context within which First Nations issues must be addressed. The complexity and volume of issues requiring resolution has increased substantially. The problems with the Tripartite Process and the ICO in particular, they stated, meant that the process was becoming ineffective in addressing, on a government-to-government basis, broader First Nations issues in Ontario.

RECOMMENDATIONS:

1.0 FIRST NATIONS-CANADA-ONTARIO FORUM – THE FORUM:

- 1.1 First Nations in Ontario, Canada and Ontario should consider mandating a *First Nations-Canada-Ontario Forum* to replace the Ontario Tripartite Process.**

1.2 The following principles should guide the Parties in the *Forum*:

- Respect for the government-to-government relationships among the Parties**
- Recognition of the evolving relationship among the Parties which involves a balancing of First Nations and federal and provincial interests**
- The common desire to promote self-reliance of First Nations and greater prosperity shared by all**
- Discussions should be decision-oriented**
- Commitment to work co-operatively to achieve realistic, practical and harmonious arrangements**
- Respect for community and regional priorities and issues**

1.3 The purpose of such a *Forum* would be to ensure that cost-efficient and effective alternate dispute resolution mechanisms are developed. It would be a *Forum* for negotiating Ontario-wide and/or regional policies and programs, and issues related to jurisdictions, governance and fiscal arrangements.

1.4 The *Forum* would convene the *Economic Opportunities Circle* as proposed below.

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1.6 The membership of the *Forum* should consist of the Governments of Canada and Ontario, represented by appropriate Ministers, and the Ontario Regional Chief, the Grand Chiefs of the Provincial and

Territorial Organizations (PTOs), and an agreed-upon representative or representatives of the Independent First Nations, as confirmed by the Chiefs-in-Assembly.

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 - education
 - shelter
 - health
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- 1.9 The *Forum* should meet on a regular and as-needed basis, at least twice per year.

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- 2.1** A *Senior Management Committee (SMC)* would be constituted of officials from the Chiefs of Ontario Office, each of the PTOs and Independent First Nations representatives, Indian Affairs Headquarters and the Ontario Native Affairs Secretariat.
- 2.2** The *Senior Management Committee* should be committed to meet on a regular basis, approximately bi-monthly, to manage the process, to confirm priorities for the *Annual Work Plan*, to monitor its progress and to evaluate the work of the proposed *Secretariat*, and to make recommendations to the *Forum*.
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- 3.6** It is preferable to mediate and seek consensus to resolve claims and other issues, but the *Secretary-General* would have the following powers, which should be exercised at the *Secretary-General's* discretion, when necessary, to expedite resolution of issues including to:
- (1)** convene meetings of the *Forum* and *SMC* upon 30 days notice, requiring representation of the Parties
 - (2)** convene and adjourn meetings to consider the financial requirements of the Parties
 - (3)** meet separately or jointly with representatives of the Parties
 - (4)** require, upon reasonable notice, the tabling of any document or information available to the Parties, subject to legal provisions for protection of confidentiality
 - (5)** require the Parties to make available any employee of any of the Parties for the purpose of assisting the *Secretariat* in its facilitating of the resolution of an issue. (If for some reason the Party in question cannot comply, then that Party would have to provide reasons in writing to the *Secretary-General*.)
 - (6)** impose deadlines for the completion of any process being facilitated or mediated by the *Secretariat*
 - (7)** submit questions and to request responses from the parties and to set time limits for receipt of responses

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 - (12) recommend to the *Forum*, the appointment of a Commission of Inquiry under the federal *Inquiries Act*, the provincial *Public Inquiries Act*, or any other appropriate legislation, to inquire into such matters as the *Secretariat* considers necessary. Where a Party does not follow the recommendations to establish a Commission of Inquiry that Party must state its reasons in writing with the understanding that those reasons might be publicized by the *Secretariat*.
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- 3.13** A sub-committee of the *SMC* would have the responsibility of carrying out an annual performance review of the *Secretariat* and the *Secretary-General*.
- 3.14** The *Secretary-General* should establish clear job descriptions for all full-time employees of the *Secretariat* and carry out annual performance reviews of employees. Career development assistance should be provided to *Secretariat* staff.

4. SELF-RELIANCE – THE *ECONOMIC OPPORTUNITIES CIRCLE*:

Throughout the period of our review, the common view expressed repeatedly was that all Parties must co-operate to break the cycle of dependency and to encourage First Nations to move toward self-reliance.

All Parties – First Nations' representatives, business people and officials of governments and social agencies – agreed that the central thrust must be for economic development that will benefit First Nations communities and members, as well as their neighbours. Minister Nault announced on May 18, 2000, the re-orientation of the Department of Indian Affairs' programs and the infusion of new funds into economic development for First Nations. The Ontario government has stated that it is committed to promoting Aboriginal business development and partnerships with the corporate sector.

In March 1996, the Ontario government published its *Aboriginal Policy Framework*. Ontario's stated policy clearly is:

... to help build the capacity within Aboriginal communities to develop stronger economies, [and] become more self-reliant ..

According to the new policy framework, the provincial government:

... is working with Aboriginal peoples, the corporate sector and other government partners to promote Aboriginal business development and encourage Aboriginal partnerships with the corporate sector that can create long-term jobs and economic opportunities for Aboriginal people.

This seems to indicate that the federal and provincial governments do occupy common ground on the priority of stronger economic development.

First Nations leaders – political, technical and business – are seeking "a piece of the action" for their communities. Mechanisms must be

developed to facilitate the formation of economic partnerships to provide new revenues for First Nations communities and job opportunities for their members, particularly their Youth. A noteworthy example of this is the multilateral government/business Ontario Aboriginal Economic Renewal Initiative and its Economic Renewal Secretariat (ERS).

An on-going dialogue about economic development opportunities and partnerships involving First Nations, business and government must be initiated immediately at the highest levels.

RECOMMENDATIONS:

4.0 SELF-RELIANCE – THE *ECONOMIC OPPORTUNITIES CIRCLE*:

- 4.1** *An Economic Opportunities Circle* should be formed to bring together First Nations leaders, CEOs from the private sector, and Ministers/senior officials of government departments such as: Industry Canada, Energy, Mines and Resources Canada, and Indian Affairs; and provincial Ministries of Industry and Trade, Northern Development & Mines, Energy, Science & Technology, Natural Resources and the Ontario Native Affairs Secretariat.
- 4.2** The *Economic Opportunities Circle* would work in conjunction with *First Nations-Canada-Ontario Forum*. The *Circle* would identify opportunities for and impediments to dynamic economic development that would benefit both First Nations and business across Ontario.
- 4.3** The *Circle* should be convened by the Minister of Indian Affairs, the Minister Responsible for Native Affairs, the Ontario Regional Chief and a prominent CEO.
- 4.4** The *Circle* would meet twice each year, with an agenda focussed on how to foster self-reliance for First Nations.
- 4.5** The *Circle* would assist with public communications and education

activities as recommended below.

- 4.6 Liaison and linkages with the *Circle* and the activities of the Ontario Aboriginal Economic Development Initiative and the Economic Renewal Secretariat (ERS) should be considered by the Parties to facilitate more partnerships between First Nations and the private sector.**

5. PUBLIC EDUCATION, COMMUNICATIONS and CONSULTATIONS

Another area of significant widespread agreement was the serious need for on-going public communications and education about Aboriginal issues, Treaties and land claims and First Nation self-government. Almost all of the First Nations leaders, other groups and individuals, with whom we spoke, said that it is imperative that members of the general public become better informed about First Nations peoples in Ontario, their histories and relationships with governments.

While large numbers of Ontarians are sympathetic to the aspirations of First Nations, they may not fully appreciate the complexity of the issues to be resolved. Without accurate information, the public is vulnerable to the spread of half-truths and misinformation about First Nations and relationships with them. Most people felt that a major public education program is required to build and maintain public support for moving forward on these issues.

The *Grand River Notification Agreement*, discussed above at page 40, involving First Nations, Canada, Ontario and area municipalities and agencies, that was facilitated by the ICO, serves as a model for an expanded public consultation mandate for the new *First Nations-Canada-Ontario Forum*. The goal should be to inform and consult with members of the general public and public and private sector agencies, organizations, corporations and groups about First Nations' issues, as well as the activities of the *Forum* and proposed optional *Treaty Circle*. The aim should be to improve relations and facilitate dialogue, understanding and co-operation among such groups and organizations and First Nations and federal and provincial governments.

Many people proposed that an arm's length, non-Aboriginal and non-government body be charged with the responsibility for developing, updating and executing a strategic communications plan about First Nations issues and achievements. The aim of this public education and communications program would be to promote mutual understanding and respect between First Nations peoples and other Ontarians.

In co-operation with educational institutions, this body should prepare curriculum and teachers' guides and materials to assist elementary, secondary and post-secondary students to gain a better understanding and appreciation of First Nations peoples' roles and place in our society.

RECOMMENDATIONS:

5.0 PUBLIC EDUCATION, COMMUNICATIONS and CONSULTATIONS

5.1 There should be on-going, extensive communications and education efforts to inform the general public and First Nations members commenced as soon as possible. The goal should be to foster mutual respect and understanding and to celebrate the richness of our cultural diversity, including:

- First Nations culture, history and issues**
- the relationship between First Nations and the Crown**
- the importance of settling land claims**
- First Nations' achievements and aspirations for self-reliance**

5.2 Public consultations, involving affected stakeholders, municipalities and other groups, should begin as a matter of course early in claims negotiations and/or policy development processes about First Nations' issues. This would apply even when there is only a cash settlement contemplated.

- 5.3 The Secretariat should have the lead role in the development, co-ordination and delivery of public communications and education and public consultations with the active participation of the Parties to the Forum, the proposed optional Treaty Circle and Treaty Officer.**

- 5.4 The Secretariat should lead the development, updating and execution of a strategic communications and education framework and plan, with such components as a Speakers Panel of eminent persons, workshops and conferences, speakers' notes, websites, pamphlets and reports, curriculum materials, video and other audio-visual materials, teachers' guides, for use by elementary, secondary and post-secondary institutions, etc.**

- 5.5 The Secretariat should be allocated sufficient funding by the Parties to ensure that the communications, educational and consultations strategies, plans and materials developed are of high quality, and that the activities have a positive impact on increasing public awareness, knowledge and understanding.**

6. VIEWS ABOUT NEGOTIATING BILATERALLY WITH CANADA

During our review, a number of First Nations leaders favoured bilateral negotiations with Canada. Their position was prompted largely because of their perception that the Ontario Government is not committed to negotiate self-government and to resolve other First Nations' issues.

Other leaders argued that a bilateral process with Canada alone might not bring desired results since, at some point, the First Nations would have to deal with matters that affect provincial jurisdiction. These representatives also pointed out that, historically, the federal government has often said that it is unable to negotiate, on a bilateral basis, agreements which impact provincial jurisdiction without provincial participation.

Some leaders of Treaty organizations, however, have determined that jurisdictional negotiations on behalf of their peoples must be Treaty-based. They have often expressed the frustration that the importance of the Treaties and the Treaty relationship is not sufficiently appreciated. First Nations believe that many Treaty obligations have not been fulfilled by the Crown. The Treaty relationship must be honoured in order to build new partnerships. It is the belief of these leaders that their Treaty-based negotiations must be bilateral only with Canada since the Crown in right of Canada is the other signatory to their Treaties.

It became apparent that some people understood that in other parts of Canada, bilateral Treaty Commissions had been established with a mandate to make binding rulings on Treaty questions, and that provincial governments were not involved in Treaty clarification and negotiation processes. However, as noted above in the survey of developments with the B.C. Treaty Commission and the Office of the Treaty Commissioner in Saskatchewan, no binding powers have been conferred on these independent bodies, nor are there substantive negotiations about issues that affect provincial jurisdictions proceeding without appropriate involvement of the provinces.

Without question, the work of Treaty processes across Canada is helping to increase public understanding of the Treaty relationship and the contemporary meaning of Treaty promises.

RECOMMENDATIONS:

**6.0 OPTIONAL BILATERAL TREATY PROCESS –
TREATY CIRCLE and *TREATY OFFICER***

- 6.1** For those Treaty organizations that choose a Treaty-based approach, there should be the option of entering a bilateral *Treaty Circle* with the Government of Canada.
- 6.2** A *Treaty Circle* could facilitate the clarification, interpretation and understanding of the Treaty-making process, the meaning of Treaties in terms of written provisions and oral promises, the spirit and intent of the Treaties, relevance of Treaties today, etc. Also, it could facilitate negotiations about Treaty issues between the Treaty organization(s) and Canada in areas of Canada's exclusive authority.
- 6.3** The membership of the *Treaty Circle* could consist of representatives of the Government of Canada and the participating Treaty organization(s) and invited Elders from the relevant Treaty organization(s).
- 6.4** A *Treaty Officer* could be chosen by the Treaty First Nations organization(s) and Canada to co-ordinate the bilateral process at the *Treaty Circle* through an independent *Treaty Office*.
- 6.5** The *Treaty Officer*, upon request by the Treaty First Nations organizations and Canada who are Parties to the *Treaty Circle*, could assist in the task of promoting understanding of Treaty obligations and relationship, including issues such as, but not limited to:
- Treaty Land Entitlement
 - child welfare
 - education
 - shelter
 - health

- justice
 - harvesting: fishing, trapping, hunting and gathering, etc.
- 6.6** There should be a capacity to conduct independent and focussed research and prepare reports which will contribute to the understanding of Treaties and resolution of outstanding issues.
- 6.7** The *Treaty Officer* would refer to the *First Nations-Canada-Ontario Forum* any matter the Parties in the *Treaty Circle* agree might affect provincial jurisdiction, for the purpose of multilateral discussion.
- 6.8** Funding for the *Treaty Circle* and *Treaty Officer* would be provided by Canada.
- 6.9** Treaty First Nations and Canada should explore whether the Assembly of First Nations' *First Nations Agenda for the Creation of a Treaty Implementation Policy* is relevant for clarification of their Treaty issues.

7. NEED FOR SUFFICIENT RESOURCES

The *First Nations-Canada-Ontario Forum, Secretariat, the Economic Opportunities Circle* and the optional bilateral *Treaty Circle*, must have sufficient resources to fulfil their respective mandates. The ICO's relatively modest funding (when compared with other intergovernmental processes across Canada), was vulnerable to government cuts in annual budget allocations – such as the reductions in core funding by Ontario in 1996 and 1997. Because of the agreed cost-sharing formula, the provincial cuts resulted in matching federal government reductions.

Many of the First Nations representatives with whom we met suggested that governments should provide funding for approved priority multilateral and bilateral activities on a multi-year basis to ensure stability. Because *Participation Fund* may have created pressures for First Nations to have issues included on the *Tripartite Work Plan* simply to justify funding, alternative funding arrangements should be considered.

RECOMMENDATIONS:

7.0 RESOURCING:

7.1 Adequate funding from Canada and Ontario, possibly on a multi-year basis, should be considered for the First Nations, the *Secretariat* and the agreed-upon priority activities of the *Forum*, and the *Economic Opportunities Circle* to enable successful facilitation, mediation, research, public communications and education, and negotiation and consultation activities, etc. Canada would be responsible for funding the optional bilateral *Treaty Circle*.

7.2 Alternatives to the ICO Participation Fund should be developed to ensure that First Nations have adequate resources to facilitate their participation in the *Economic Opportunities Circle*, the *Forum* and the *Sectoral Table* activities. To promote accountability and results, such allocations would only be made for the priority issues identified within the overall *Business Plan*, and *Annual Work Plan* targets. There should be performance assessments to determine that the funds are being used to achieve results.

(8) NEXT STEPS

First Nations were one of the three equal Parties in forming the Ontario Tripartite Process in 1978 when their leaders were seeking to strengthen their government-to-government relationship with Canada and Ontario. First Nations representatives played a leading role in the evolution of the Tripartite process, the creation of the ICO and the expansion of the ICO's role to resolve land claims negotiations and lead negotiations to re-invigorate First Nations government.

Since the interests of First Nations in Ontario could be significantly affected by the institutional and process changes being proposed here for their multilateral and bilateral relationships with Canada and Ontario, it would seem appropriate for the Minister of Indian Affairs to seek the views of First Nations before acting on these recommendations. Chiefs and other First Nations representatives were careful to note that our short review of the Tripartite Process did *not* constitute a formal consultation with First Nations. Sufficient time and resources would need to be allocated by Canada for consultations with Chiefs, Councillors and First Nations from across Ontario to ensure they are meaningful and productive.

RECOMMENDATIONS:

8.0 CHIEFS' CONSULTATION ABOUT STRUCTURAL OPTIONS:

8.1 The Minister should suggest that the Chiefs consider convening an *All Ontario Chiefs' Summit* by mid-autumn 2000 to consider options for strengthened multilateral and/or bilateral processes to address priority issues among First Nations, Canada and Ontario.

8.2 If the *Summit* proposal is accepted, then a Planning Task Group should be set up by the Chiefs' Priorities & Planning Committee.

8.3 To prepare for the Chiefs *Summit*, sufficient time and resources should be allocated by Canada for the consultation with Chiefs,

Councils and First Nation communities, along with representatives of Canada and Ontario

- 8.4 Relevant documents – including this review, information about multilateral and bilateral processes in Saskatchewan, B.C., N.W.T., the 1999 ICO Evaluation, etc. – should be available to the Chiefs to assist in their preparation for the *Summit*.**

- 8.5 Representatives of multilateral and bilateral processes in other parts of Canada – such as the Federation of Saskatchewan Indian Nations and the Office of the Treaty Commissioner in Saskatchewan, the B.C. Treaty Commission, etc., – should be invited to come to Ontario to provide information about those processes to First Nations representatives in Ontario.**

(9) SHORT-TERM ACTION:

The ICO mandate lapsed when the Orders-in-Council were not renewed by March 31, 2000. Some questions and concerns were raised both about the process by which this occurred and about on-going Tripartite negotiations. First Nations leaders expressed the hope that arrangements could be made to ensure the integrity of the files and the continuation of those negotiations. A few suggested that the pilot project models of the bilateral negotiations of the Fort William and Michipicoten First Nations claims might be explored to expedite settlements. They want Canada and Ontario to work with them to continue the active ICO negotiation files.

RECOMMENDATIONS:

9.0 ACTION ON FORMER ICO FILES

9.1 The Parties should consider appointing an interim *Senior Management Committee* that, with the assistance of an interim *Secretariat*, would review and categorize the active files before the Indian Commission of Ontario at March 31, 2000, into two groups:

- (1) files that do not require facilitation or mediation, and**
- (2) files that do require facilitation or mediation.**

This interim *Secretariat* should facilitate reactivation of negotiations on issues in category (2) and category (1) if requested by the Parties.

9.2 The *Secretariat* should explore with the Parties implementation of expedited, cost-efficient, less adversarial land claims research and negotiation processes similar to the bilateral pilot projects by the Fort William and Michipicoten First Nations with Canada.

9.3 The Parties should consider whether proposed changes arising from the *Report of the Joint First Nations - Canada Task Force on Specific Claims Policy Reform* are relevant to the negotiation and settlement of outstanding claims in Ontario.

9. CONCLUSIONS:

We would like to thank everyone for sharing with us so willingly their time and views, often on very short notice. We were appreciative especially for the efforts which so many Chiefs made to meet and speak with us.

We wish to stress that our recommendations are without prejudice to any existing Nation Building exercises, self-government, governance, sectoral, claims or other processes underway with First Nations and either the Government of Canada or Ontario. Nor are our recommendations intended to pre-empt in any way the important discussions which need to occur at the highest levels to refocus the Parties' commitment to strengthen their relationships.

There is a need for all Parties to have realistic expectations about establishing new processes for achieving more successful government-to-government relationships in Ontario. No one process can lead to the resolution of all issues – big or small, historic injustices or contemporary impasses. Over the last 22 years in Ontario, progress has been achieved through the discussions and negotiations in the Ontario Tripartite Process. The challenge now is whether First Nations, Canada and Ontario can agree on what provides the best forum for continuing progress, more effectively, and without becoming unmanageable.

In conclusion, we believe that the Parties to the Tripartite Processes in Ontario find themselves at a crossroads. The challenge now facing the First Nations, Canada and Ontario is to choose which are the best paths to travel together leading to First Nations economic development and self-government. Choosing to co-operate would demonstrate the Parties' commitment to resolve past grievances and to move forward toward economic, social and governance self-reliance.



APPENDIX A

RECOMMENDATIONS



APPENDIX B

LIST OF CONTACTS



APPENDIX C

ONTARIO TRIPARTITE
ORDER-IN-COUNCIL



APPENDIX D

SASKATCHEWAN
ORDER-IN-COUNCIL



APPENDIX E

SASKATCHEWAN
COMMON TABLE
PROTOCOL AGREEMENT

RECOMMENDATIONS

APPENDIX A

1.0 FIRST NATIONS-CANADA-ONTARIO FORUM – THE *FORUM*:

1.1 First Nations in Ontario, Canada and Ontario should consider mandating a *First Nations-Canada-Ontario Forum* to replace the Ontario Tripartite Process.

1.2 The following principles should guide the Parties in the *Forum*:

- Respect for the government-to-government relationships among the Parties
- Recognition of the evolving relationship among the Parties which involves a balancing of First Nations and federal and provincial interests
- The common desire to promote self-reliance of First Nations and greater prosperity shared by all
- Discussions should be decision-oriented
- Commitment to work co-operatively to achieve realistic, practical and harmonious arrangements
- Respect for community and regional priorities and issues

1.3 The purpose of such a *Forum* would be to ensure that cost-efficient and effective alternate dispute resolution mechanisms are developed. It would be a *Forum* for negotiating Ontario-wide and /or regional policies and programs, and issues related to jurisdictions, governance and fiscal arrangements.

- 1.5 The *Forum* would mandate the *Public Education, Communications and Consultations* initiative proposed below.
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- 4.6** Liaison and linkages with the *Circle* and the activities of the Ontario Aboriginal Economic Development Initiative and the Economic Renewal Secretariat (ERS) should be considered by the Parties to facilitate more partnerships between First Nations and the private sector.

5.0 PUBLIC EDUCATION, COMMUNICATION and CONSULTATIONS:

5.1 There should be on-going, extensive communications and education efforts to inform the general public and First Nations members commenced as soon as possible. The goal should be to foster mutual respect and understanding and to celebrate the richness of our cultural diversity, including:

- First Nations culture, history and issues
- the relationship between First Nations and the Crown
- the importance of settling land claims
- First Nations' achievements and aspirations for self-reliance

5.2 Public consultations, involving affected stakeholders, municipalities and other groups, should begin as a matter of course early in claims negotiations and/or policy development processes about First Nations' issues. This would apply even when there is only a cash settlement contemplated.

5.3 The *Secretariat* should have the lead role in the development co-ordination and delivery of public communications and education and public consultations with the active participation of the Parties to the *Forum*, proposed optional *Treaty Circle* and *Treaty Officer*.

5.4 The *Secretariat* should lead the development, updating and execution of a strategic communications and education framework and plan, with such components as a Speakers Panel, workshops and conferences, speakers' notes, websites, pamphlets and reports, curriculum materials, video and other audio-visual materials, teachers' guides for use by elementary, secondary and post-secondary institutions, etc.

5.5 The *Secretariat* should be allocated sufficient funding by the Parties to ensure that the communications, educational and consultation strategies, plans and materials developed are of high quality, and that the activities have a positive impact on increasing public awareness, knowledge and understanding.

**6.0 OPTIONAL BILATERAL TREATY PROCESS –
TREATY CIRCLE and TREATY OFFICER:**

- 6.1** For those Treaty organizations that choose a Treaty-based approach, there should be the option of entering a bilateral *Treaty Circle* with the Government of Canada.
- 6.2** A *Treaty* could facilitate the clarification, interpretation and understanding of the Treaty-making process, the meaning of Treaties in terms of written provisions and oral promises, the spirit and intent of the Treaties, relevance of Treaties today, etc. Also, it could facilitate negotiations about Treaty issues between the Treaty organization(s) and Canada in areas of Canada's exclusive authority.
- 6.3** The membership of the *Treaty Circle* could consist of representatives of the Government of Canada and the participating Treaty organization(s) and invited Elders from the relevant Treaty organization(s).
- 6.4** A *Treaty Officer* could be chosen by the Treaty First Nations organization(s) and Canada to co-ordinate the bilateral process at the *Treaty Circle* through an independent *Treaty Office*.
- 6.5** The *Treaty Officer*, upon request by the Treaty First Nations organizations and Canada who are Parties to the *Treaty Circle*, could assist in the task of promoting understanding of Treaty obligations and relationship, including issues such as, but not limited to:
- Treaty Land Entitlement
 - child welfare
 - education
 - shelter
 - health
 - justice
 - harvesting: fishing, trapping, hunting and gathering, etc.

- 6.6 There should be a capacity to conduct independent and focussed research and prepare reports which will contribute to the understanding of Treaties and resolution of outstanding issues.
- 6.7 The *Treaty Officer* would refer to the *First Nations-Canada-Ontario Forum* any matter the Parties in the *Treaty Circle* agree might affect provincial jurisdiction, for the purpose of multilateral discussion.
- 6.8 Funding for the *Treaty Circle* and *Treaty Officer* would be provided by Canada.
- 6.9 Treaty First Nations and Canada should explore whether the Assembly of First Nations *First Nations Agenda for the Creation of a Treaty Implementation Policy* is relevant for clarification of their Treaty issues.
- 7.0 RESOURCING:
- 7.1 Adequate funding from Canada and Ontario, possibly on a multi-year basis, should be considered for the First Nations, the *Secretariat* and the agreed-upon priority activities of the *Forum*, and the *Economic Opportunities Circle* to enable successful facilitation, mediation, research, public communications and education and negotiation and consultation activities, etc. Canada would be responsible for funding the optional bilateral *Treaty Circle*.
- 7.2 Alternatives to the ICO Participation Fund should be developed to ensure that First Nations have adequate resources to facilitate their participation in the *Economic Opportunities Circle*, the *Forum* and the *Sectoral Table* activities. To promote accountability and results, such allocations would only be made for the priority issues identified within the overall *Business Plan*, and *Annual Work Plan* targets. There should be performance assessments to determine that the funds are being used to achieve results.

- 8.0 CHIEFS' CONSULTATION ABOUT NEW RELATIONSHIP:**
- 8.1** The Minister should suggest that the Chiefs consider convening an *All Ontario Chiefs' Summit* by mid-autumn 2000 to consider options for strengthened multilateral and/or bilateral processes to address priority issues among First Nations, Canada and Ontario.
- 8.2** If the *Summit* proposal is accepted, then a Planning Task Group should be set up by the Chiefs' Priorities & Planning Committee.
- 8.3** To prepare for the Chiefs *Summit*, sufficient time and resources should be allocated by Canada for the consultation with Chiefs, Councils and First Nation communities, along with representatives of Canada and Ontario
- 8.4** Relevant documents – including this review, information about bilateral and multilateral processes in Saskatchewan, B.C., N.W.T., the 1999 ICO Evaluation, etc. – should be available to the Chiefs to assist their preparation for the *Summit*.
- 8.5** Representatives of multilateral and bilateral processes in other parts of Canada – such as the Federation of Saskatchewan Indian Nations and the Office of the Treaty Commissioner in Saskatchewan, the BC Treaty Commission, etc., – should be invited to come to Ontario to provide information about those processes to First Nations representatives in Ontario.

9.0 SHORT-TERM ACTION:

9.1 The Parties should consider appointing an interim *Senior Management Committee* that, with the assistance an interim *Secretariat*, would review and categorize the active files before the Indian Commission of Ontario at March 31, 2000, into two groups:

- (1) files that do not require facilitation or mediation, and
- (2) files that do require facilitation or mediation.

This interim *Secretariat* should facilitate reactivation of negotiations on issues in category (2) and category (1) if requested by the Parties.

9.2 The *Secretariat* should explore with the Parties implementation of the expedited, cost-efficient, less adversarial land claims research and negotiation processes similar to the bilateral pilot projects by the Fort William and Michipicoten First Nations with Canada.

9.3 The Parties should consider whether proposed changes arising from the *Report of the Joint First Nations - Canada Task Force on Specific Claims Policy Reform* are relevant to the negotiation and settlement of outstanding claims in Ontario.

LIST OF CONTACTS

APPENDIX B

GOVERNMENT OF CANADA:

Hon. Robert Nault, Minister of Indian Affairs & Northern Development
Mr. Bill Austin, Assistant Deputy Minister
Mr. Barry Dewar, Director-General, Self-Government
Mr. Paul Girard, Director-General, Specific Claims
Mr. Ron French, Treaty Policy Unit
Mr. Murray Wagner, Treaty Policy Unit
Mr. Leroy Paul, Senior Policy Analyst
Mr. David Hawkes, Federal Negotiator
Ms. Jocelyn Stoates, Specific Claims
Mr. John Donnelly, Ontario Regional Director-General
Ms. Lori Ramsen, Ontario Region
Ms. Monique Doiron, Ontario Region
Mr. Roy Bird, Saskatchewan Regional Director General
Mr. Ray Gamracy, Executive Advisor, Governance, Sask. North Central Region
Mr. Ken McInnis, Manager, Operational Policy - Self-Government
Ms. Peggy Martin McGuire, Liaison - Exploratory Treaty Table
Mr. Lorne Brownsey, Federal Treaty Negotiation Office, British Columbia

FIRST NATIONS IN ONTARIO:

Mr. Tom Bressette, Ontario Regional Chief, in Ottawa, April 6th

ROBINSON - HURON TREATY CHIEFS, at Sucker Creek, April 11th

WIKWEMIKONG UNCEDED FIRST NATION, in Sudbury, April 25th

Chief Ron Wakegijig

UNION OF ONTARIO INDIANS, EXECUTIVE, in Sudbury, April 25th:

Vernon Roote, Grand Chief, Anishnabek Nation

Eugene Manitouwabe, Vice Chief

Chief Glen Hare, Vice Chief
Chief Mike Esquega, Vice Chief
Chief Ray Rogers, Vice Chief
Leroy Dolson
Nora Sawyer
Natalie Payette-Chevier, Anishnabek Nation staff
Dwayne Nashkawa, Anishnabek Intergovernmental Affairs Director (by phone)
Lewis Debassige (guest)

NORTH SHORE TRIBAL COUNCIL, in Sudbury, April 25th

Chief Angus Toulouse, Sagamok Anishnabek
Chief Harvey Petahtegoose, Whitefish Lake
Greg Agawa, Councillor, Batchewana First Nation
Bernard Petahtegoose, Whitefish Lake

UNITED CHIEFS AND COUNCILS OF MANITOULIN, in Sudbury, April 25th:

Chief Glen Hare, M'Chigeeng First Nation
Chief Patrick Madahbee, Ojibways of Sucker Creek
Chief Albert Cada, Shesheguwaning First Nation
Chief Richard Shawanda, Sheguiandah
Chief Leona Nahwegahbow, Whitefish River
Chief Irene Kella, Zhiibaahaasing First Nation
Christine Sagon, Zhiibaahaasing First Nation
Kevin Mossop, Zhiibaahaasing First Nation
Martin Bayer, UCCM, M'Chigeeng
Donna Debassige, UCCM, MiChigeeng
Gord Waidubence, Sheguiandah
Susan Ramsdir, UCCM
Mikell Billoki, UCCM

WAABNOONG BENJIWANG TRIBAL ASSOCIATION OF FIRST NATIONS,
in Sudbury, April 25th:
Joyce Tababondung

ASSOCIATION OF IROQUOIS & ALLIED INDIANS, in London, May 2nd

Grand Chief Larry Sault
Chief Blayne Commandant, Wahta Mohawks
Chief Vernon Syrette, Batchewana First Nation
Ed Agawa, Batchewana First Nation
Carol Nadjiwon, Batchewana First Nation
Chief Donald Maracle, Mohawks of Tyendinaga
Winston Brant, Mohawks of the Bay of Quinte
Roy Maracle, Tyendinaga Territory
Wm. J. Brant, Tyendinaga Territory
Chief Daniel Laforme, Mississaugas of New Credit
Ward Laforme, Mississaugas of New Credit
Julie Laforme, Mississaugas of New Credit
Chief Leighton Hopkins, Delaware Nation, Moravian of the Thames
Gordon Hopkins, Delaware Nation
Denise Stonefish, AIAI/Delaware First Nation
Chief Glen Cowie, Hiawatha First Nation
Christina Freeburn, Hiawatha First Nation
Laurie Paudash, Hiawatha First Nation
Carol Antone, AIAI
Carol Godby, lawyer
Charles Cornelius, AIAI
Sharon John, AIAI

BEKEJWANONG - WALPOLE ISLAND FIRST NATION, in London, May 2nd

Chief Joseph Gilbert
Valerie Naboose
Lucy Jacobs
Joyce Johnson
Elizabeth Altman

SIX NATIONS OF THE GRAND RIVER, in Ohsweken, May 3rd

Chief Wellington Staats
Phil Monture

SOUTHERN FIRST NATIONS SECRETARIAT, in London, May 3rd

Chief Ray Rogers, Chippewas of Samia
Chief Harry Doxtator, Oneida Nation of the Thames
Chief Mark Peters, Munsee-Deleware Nation
Chief Joe Miskokomon, Chippewas of the Thames
Chief Leighton Hopkins, Delaware Nation, Moravian of the Thames
Martin Powless, LDCC
Charles Cornelius, AIAI
Sharon John, AIAI
Ray Martin, SFNS
Norine Hill, SFNS

MUSHKEGOWUK TRIBAL COUNCIL, in Timmins, May 4th

Lawrence Martin, Tribal Chief
Chief Ignace Gull, Attawapiskat First Nation
Chief Mike Cachagee, Chapleau Cree First Nation
Chris Metatawabin, Fort Albany First Nation
Derek Stephen, Kashechewan First Nation

WABUN TRIBAL COUNCIL, in Timmins, May 4th

Chief Andrew Neshawabin, Brunswick House First Nation
Chief Roy Meaniss, Beaverhouse First Nation
Gloria McKenzie, Beaverhouse First Nation
Jason Batise, Wabun Tribal Council

WINDIGO TRIBAL COUNCIL, in Sioux Lookout, May 9th

Wilfred Wesley, Tribal Chief
Wally McKay

INDEPENDENT FIRST NATIONS ALLIANCE, in Thunder Bay, May 9th

Chief Donny Morris, Kitchenuhamaykoosib Imminuwug, Big Trout Lake
Chief Roger Bull, Lac Seul First Nation

Chief Vernon Morris, Muskrat Dam First Nation
Peter Quill, Pikangikum First Nation
Grace Teskey, IFNA

SHIBOGAMA TRIBAL COUNCIL, in Thunder Bay, May 10th

Doug Semple

NISHNAWBE-ASKI NATION EXECUTIVE, in Thunder Bay, May 10th

Charles Fox, Grand Chief (in Sault Ste. Marie, May 1st)
James Morris, Deputy Grand Chief
Goyce Kakegamig, Deputy Grand Chief
Wilfred Wesley, Windigo Tribal Chief
Rosie Mosquito, NAN
Kathy Chisel, NAN
Sandra Fullerton, NAN

ROBINSON-SUPERIOR CHIEFS, in Thunder Bay, May 10th

Chief John Peterson, Michipicoten First Nation
Chief Mike Esquega, Buntitanabik Zagiin
Cliff Tibishkogijig, Whitesand First Nation
Michael Pelletier, Fort William First Nation
Ernest Trembley, Namaygoosisagagun
Oliver Polle, Gull Bay
Clarence McCready, Beardmore
Theresa Nelson, Beardmore
Chief Yvette Metanoinine, Lake Nipigon Ojibway
Jerry Estey, Pic Mober/Neenagaegamilk
Paul Gladue, Sand Point First Nation
Kim Fullerton, Lawyer
Christine Demdi, Researcher

GRAND COUNCIL TREATY #3, in Kenora, May 11th

Leon Jourdain, Grand Chief
Richard Bruyere, Fort Frances Chiefs Secretariat
George Crow, Kenora Chiefs Advisory Council
Chief Joan Petiquan, Wabuskang First Nation
Chief John Wapioke, Shoal Lake #39
Chief Ed Morrison, Stangecoming First Nation
Chief David Paul, Northwest Angle #33
Chief Glenn Archie, Big Grassy First Nation
Chief Ken Nash, Northwest Angle #37
G. Copenance, Acting Chief, Onigaming
Anthony Copenance, Onigaming
Clifford Bob, Anishinaabeg Kabapikotawanagag Resource Council
Reid Thompson, Grand Council Treaty #3
Andy Sky, Grand Council Treaty #3
Crystal Redsky, Kenora Chiefs Advisory Council
Alanna Cooke, Grand Council Treaty #3

MATAWA TRIBAL COUNCIL, in Thunder Bay, May 11th

Chief Veronica Waboose, Long Lake #58
Chief Laura Medieros, Homepayne First Nation
Minnie Taylor, Homepayne First Nation
Chief Arlene Slipperjack, Whitewater Lake First Nation
Chief Comy Nate, Eabametoong First Nation
Chief Donald Sofea, Nibinamik First Nation
Chief Raymond Ferris, Constance Lake First Nation
Chief Maxine Wesley, Ginoogaming First Nation
Chief Morris Waposse, Neskantaga
Roy Spence, Webequie First Nation
Elsie MacDonald, Webequie First Nation
Paul Capon, Matawa Tribal Council
Elizabeth Moore, Matawa Tribal Council
Lawrence Baxter, NAN

MOHAWKS OF AKWESASNE, at Akwesasne, May 23rd

Grand Chief Mike Mitchell
Russell Roundpoint

OGEMAWAHJ TRIBAL COUNCIL, at Mnjikaning (Rama) May 24th

Chief Lorraine McCrae, Mnjikaning First Nation
Chief Paul C. Sandy, Beausoleil First Nation
Chief J. Edward Williams, Moose Deer Point First Nation
Councillor Jim Marsden, Alderville First Nation
Councillor Keith Knott, Curve Lake First Nation
Councillor Ron Charles, Chippewas of Georgina Island
Nora Sawyer, Ogemawahi Tribal Council
Mel Jacobs, First Nations of the Williams Treaties
Richard Aniol, Negotiator, United Anishnaabeg Councils

INDIAN COMMISSIONERS OF ONTARIO:

Phil Goulais
Harry LaForme
Roberta Jamieson

INDIAN COMMISSION OF ONTARIO STAFF:

Michael Coyle
Mark LaForme
David Mackey
Anne Murphy

FEDERATION OF SASKATCHEWAN INDIANS, in Saskatoon, May 18th

Rick Gamble, Executive Director, Office of Treaty Governance
Bob Mitchell, Chief Negotiator, Governance Table

GOVERNMENT OF SASKATCHEWAN, in Regina, May 17th

Ernie Lawton, Assistant Deputy Minister, Intergovernmental & Aboriginal Affairs

Sandra Folkins, Department of Justice

Ross Mcnab, Department of Justice

Constance Hourie, Intergovernmental & Aboriginal Affairs

Trish Delorimer, Intergovernmental & Aboriginal Affairs

OFFICE OF THE SASKATCHEWAN TREATY COMMISSIONER,

in Saskatoon, May 17th

Judge David M. Amot, Saskatchewan Treaty Commissioner

Kay Lerat, Executive Assistant

OTHERS INDIVIDUALS:

Brian Davey, CEO, Ontario Aboriginal Economic Renewal Secretariat

Audrey Doerr, consultant

Kim Fullerton, Lawyer

Lloyd Girman, Senior Vice President, SNC-Lavalin

Alan Grant, mediator

Jay Kaufman, consultant

Justice Stephen O'Neill

Alan Pope, Lawyer

Alan Pratt, Lawyer

Dr. Bob Rosehart, President, Wilfrid Laurier University

Mike Sherry, Lawyer

Stephen Smart, Lawyer, Negotiator for Canada on NAN Self-Government

Paul Williams, Lawyer

APPENDIX C



P.C. 1995-548 +567
March 31, 1995

(T.B. Rec. 822672)

WHEREAS a Tripartite Council consisting of representatives of the Government of Canada, the Government of Ontario and the Indian Chiefs of Ontario, herein referred to as the Chiefs of Ontario, was established on March 16, 1978, for the purpose of identifying, clarifying, negotiating and resolving matters of mutual concern to the Government of Canada, the Government of Ontario and the Status Indians residing in Ontario;

WHEREAS on September 28, 1978, Mr. Justice E. Patrick Hartt was appointed to a commission, named the Indian Commission of Ontario, by the Governments of Canada and Ontario by Order in Council P.C. 1978-3044 of September 28, 1978 and Provincial Order in Council 2838/78 and a resolution by the Executive Council of the Chiefs of Ontario in August 1978; which appointment was extended to December 1985 by Orders in Council P.C. 1980-3/2996 of October 30, 1980, P.C. 1981-4/255 of January 29, 1981, P.C. 1982-1/3156 of October 14, 1982 and P.C. 1983-3069 of September 30, 1983;

WHEREAS the Government of Canada, by Order in Council P.C. 1985-3117 of October 10, 1985, and the Government of Ontario and the Chiefs of Ontario agreed to appoint Roberta Louise Jamieson, of the Six Nations Indian Reserve, as Commissioner of the Indian Commission of Ontario for a period of six months commencing October 1, 1985 and terminating March 31, 1986; and which appointment was extended to March 31, 1989 by Order in Council P.C. 1986-4/767 of March 26, 1986 with certain terms of reference;

WHEREAS the Government of Canada, by Order in Council P.C. 1989-1/625 of April 13, 1989, the Government of Ontario and the Chiefs of Ontario agreed to extend the Indian Commission of Ontario for a period of twelve months commencing April 1, 1989 and terminating March 31, 1990, and to extend the appointment of Roberta Louise Jamieson for a period of two months commencing April 1, 1989 and terminating May 31, 1989;

- 2 -

WHEREAS the Government of Canada, by Order in Council P.C. 1989-1248 of June 23, 1989, and the Government of Ontario, by Order in Council OC 1584/89, and the Chiefs of Ontario agreed to appoint Harry S. LaForme of Toronto, Ontario, as Commissioner of the Indian Commission of Ontario for a period of ten months commencing June 1, 1989 and terminating March 31, 1990;

WHEREAS the Government of Canada, by Order in Council P.C. 1990-883 of May 15, 1990, and the Government of Ontario, by Order in Council OC 780/90, and the Chiefs of Ontario agreed to extend the appointment of Harry S. LaForme for a period of five years commencing April 1, 1990 and terminating March 31, 1995;

AND WHEREAS the Government of Canada, by Order in Council P.C. 1992-248 of February 10, 1992, and the Government of Ontario, by Order in Council OC 277/92, and the Chiefs of Ontario agreed to appoint Philip Goulais of Sturgeon Falls, Ontario, as Commissioner of the Indian Commission of Ontario for a period terminating March 31, 1995;

THEREFORE, HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, is pleased hereby

(a) to extend the functions and duties of the Indian Commission of Ontario, as outlined in Schedule 1 hereto, for a period commencing on April 1, 1995 and terminating on March 31, 2000 on condition that a review of the Commission's mandate be completed by March 31, 1999; and

(b) to approve that the Governor in Council appoint a commissioner of the Indian Commission of Ontario, effective April 1, 1995.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORMÉMENT



CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

SCHEDULE 1

Functions and Duties of the Indian Commission of Ontario

1. MISSION STATEMENT

The objective and responsibility of the Indian Commission of Ontario is to facilitate negotiations and discussions to establish First Nation self-government and negotiations and discussions relating to matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations' governments in Ontario, and to resolve land claims. All discussions and negotiations conducted under the auspices of the Indian Commission of Ontario are to be on a privileged and without prejudice basis. (In these Orders in Council "First Nation" has the same meaning as "band", as defined by the Indian Act, R.S.C. 1985, c.1-5)

2. FUNCTIONS

- 2.1 To provide a forum for the negotiation of self-government issues;
- 2.2 To facilitate the examination and bring about resolution of any issue of mutual concern to the federal government and provincial government, or either of them, and to all or some of the First Nations in Ontario, which the Tripartite Council refers to the Commission by formal direction or as otherwise requested by the parties as hereinafter described; and
- 2.3 Under the general direction of the Tripartite Council, to acquaint the residents of Ontario with the activities of the Commission and with the nature and progress of the matters before it.

3. DUTIES

- 3.1 To perform in accordance with this Order, all functions, duties and activities assigned by way of a formal direction of the Tripartite Council referring a matter for examination and resolution to the Commission and which direction shall confirm the agreement of the parties as to:
 - a) the nature of the matter;
 - b) the objective of the matter being referred to the Commission;
 - c) the process to be implemented;

- d) the resources to be allocated to the First Nations by the Government of Canada and the Government of Ontario;
 - e) a schedule for completion;
- 3.2 To facilitate the resolution of any matter of concern to one or more First Nations or communities and one or both of the Government of Canada and Ontario, at the request of all the parties involved in that matter, where the Commissioner believes assistance would be appropriate, and subject to the following conditions:
- a) The Commissioner shall forthwith notify the members of a Senior Steering Committee consisting of Senior Officials appointed by each of the Parties (hereafter called the "Senior Steering Committee"), of the involvement of the Commission for consideration at a meeting of the Steering Committee;
 - b) If it is the consensus of the Senior Steering Committee that the Commission should not be involved in the matter, the Commission shall cease its involvement in the matter forthwith, subject always to further review of the matter by the Tripartite Council;
 - c) Upon review and consensus of the Tripartite Council, the involvement of the Commission in a matter may be confirmed or otherwise regulated;
- 3.3 To convene a mutually agreed-upon number of meetings of the Tripartite Council during each calendar year;
- 3.4 To act as Secretariat to the Tripartite Council with respect to any process or mechanism, including the process of mediation, in which the Commission is involved as in accordance with this Order;
- 3.5 To provide a chairperson for all Tripartite activities in which the Commission is involved who shall be the Commissioner or such other person agreed upon by the parties involved;
- 3.6 To provide progress reports to the Tripartite Council on a semi-annual basis, the reports to include a summary description of outstanding issues or concerns and a summary of the Commission's on-going and proposed activities, and which may include suggestions or recommendations for the

parties concerning the matters referred to the Commission. Any recommendations made by the Commission must be discussed by the Tripartite Council at the next scheduled meeting following receipt of the Commission's report;

- 3.7 To assist the Tripartite Council in the identification, examination and resolution of matters of mutual concern to the Tripartite Council, including land claims;
- 3.8 To bring formally to the parties' attention any concerns the Commission may have regarding the parties' commitment to resolve any issue that has been formally adopted by the Tripartite Council for negotiation and resolution;
- 3.9 To foster respectful conduct in negotiations and discussions facilitated by the Commission;
- 3.10 To assist the parties to any particular matter, where requested by the parties, to inform Ontarians about the parties' objectives with respect to the resolution of the matter.

4. POWERS AND AUTHORITIES

- 4.1 To grant to the Commission the powers and authorities listed below which are required to enable it to deal effectively with the matters, including land claims, referred to it;
- 4.2 To convene and adjourn meetings in consultation with representatives of the Government of Canada, the Government of Ontario, and the First Nations in Ontario and upon reasonable notice;
- 4.3 Should the Tripartite Council be required to consider a matter on an urgent basis, to convene a meeting at its sole discretion upon 30 days notice at which alternate representation of the parties would be acceptable;
- 4.4 To convene and adjourn meetings to consider the financial requirements of one or more of the parties;
- 4.5 To meet separately or jointly with representatives of the Government of Canada, the Government of Ontario or the First Nations in Ontario;

- 4.6 To request any representatives to the Tripartite Council, upon reasonable notice:
- a) to deliver to the Commission any document or information available to that party. However, nothing in this Order shall be construed as a requirement of any party to make available information that is privileged or would in court proceedings give rise to a right to receive from the court an order providing exemption from disclosure or is, in the case of information in the possession of Canada, a record for which an exemption is provided in the Access to Information Act, R.S.C. 1985, c.A1, as amended and as it may be amended from time to time, or is, in the case of information in the possession of Ontario, a record for which an exemption is provided in the Freedom of Information and Protection of Privacy Act, S.O., 1987 c.25, as it may be amended from time to time;
 - b) to make available any person in the employ of any of the parties for the purpose of assisting the Commission in its efforts to facilitate the resolution of an issue, provided, however, that should the Government of Canada, the Government of Ontario, the First Nations in Ontario, or any one or more of them be unable to comply with any such request, the reasons for being unable to comply with that request shall be provided in writing to the Commission, and to representatives of the Government of Canada, the Government of Ontario and the First Nations in Ontario, as the case may be;
- 4.7 After due consultation with the parties, to impose deadlines for the completion of any process, or any stage of any process, being facilitated, examined or otherwise by or before the Commission;
- 4.8 To set questions and to request responses from the parties, and in consultation with the party concerned, set a reasonable time period for receipt of the response;
- 4.9 To present verbally or in writing, at its discretion or at the request of the Tripartite Council, to any or all of the parties, suggestions for their consideration and response with a view to alleviating adverse effects and with a view to arriving at a mutually acceptable resolution of any matter which is the subject of negotiation;
- 4.10 After consultation with the representatives of the Government of Canada,

the Government of Ontario and the First Nations in Ontario to the Tripartite Council, to suspend any of the Tripartite processes created by the Tripartite Council, on the condition that the suspension and the Commission's reasons in writing for such suspension shall be discussed and either confirmed or rejected at the next scheduled meeting of the Tripartite Council. Failure by the Tripartite Council to achieve agreement on the issue shall be treated as confirmation of the suspension;

- 4.11 With the consent of the Tripartite Council, to facilitate the reference of any issue, or any element of any matter, to a court of competent jurisdiction or to any tribunal, body or person;
- 4.12 With the agreement of the parties to a matter which has been referred to the Commission for examination and resolution, to act as or arrange for a mediator, factfinder or arbitrator on any issue or any element of any matter;
- 4.13 On the application of a party in a matter which is before the Commission, to determine whether an impasse in the negotiations has occurred. If in the opinion of the Commission an impasse has occurred, the Commission may suggest alternative dispute resolution mechanisms to resolve the impasse, and require the parties to attend one mediation, or other meeting to attempt to resolve the impasse;
- 4.14 To recommend to the Tripartite Council the appointment of a commission under The Inquiries Act, R.S.C. 1985, c.I-11, the Public Inquiries Act, R.S.O. 1980, c.411, or any other appropriate legislation, to inquire into such matters as the Commission considers necessary. Subject to section 4.5 herein, where a party decides not to follow the recommendation of the Commission to establish a commission of inquiry that party shall state its reasons for doing so in writing to all other parties and the Commission within thirty days of the date of the refusal;
- 4.15 To engage the services of such counsel, clerks and advisors as may be required to carry out the functions and duties of the Commission within its budgetary limits;
- 4.16 The authority, to be exercised by the Commissioner, to disburse the funds provided to meet the expenses of the Commission, subject to such terms and conditions as are approved by the federal Treasury Board and by the Ontario Management Board of Cabinet and subject to audit in accordance

with the provisions of the Audit Act, R.S.O. 1980, c.35; and

- 4.17 To agree that all the expenses of the Commission be shared equally among the Government of Canada, the Government of Ontario and the First Nations in Ontario, with Canada's share being subject to approval of the federal Treasury Board and Ontario's share being subject to approval by the Ontario Management Board of Cabinet on the recommendation of the Minister Responsible for Native Affairs.



P.C. 1995-564
April 4, 1995

(T.B. Rec. 822672)

WHEREAS by Order in Council
P.C. 1995-548 of March 31, 1995, the Indian
Commission of Ontario was extended for a period
commencing on April 1, 1995 and terminating on
March 31, 2000;

THEREFORE, HIS EXCELLENCY THE GOVERNOR
GENERAL IN COUNCIL, on the recommendation of the
Minister of Indian Affairs and Northern
Development and the Treasury Board, pursuant to
Order in Council P.C. 1995-548 of March 31, 1995,
is pleased hereby to reappoint, effective April 1,
1995, Philip Goulais of Sturgeon Falls, Ontario,
as Commissioner of the Indian Commission of
Ontario, for a period terminating March 31, 2000.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL

APPENDIX D

**ORDER-IN-COUNCIL ESTABLISHING IN SASKATCHEWAN
THE OFFICE OF THE TREATY COMMISSIONER**

P.C. 1996-1895
December 10, 1996

(T.B. Rec. 824688)

Whereas the Office of the Treaty Commissioner was created in Saskatchewan in June 1989 by an agreement between the Minister of Indian Affairs and Northern Development and the Federation of Saskatchewan Indian Nations to address issues related to treaties, specifically land entitlement and education;

Whereas the mandate of this body was clarified in a further agreement between the parties signed in 1990;

Whereas a joint review conducted by the Federation of Saskatchewan Indian Nations and the Department of Indian Affairs and Northern Development recommended that the mandate of the Office of the Treaty Commissioner be broadened and the Office be more autonomous from the federal government;

Whereas the parties have agreed that this broadened mandate should include a facilitation role for the negotiation and implementation of jurisdictional issues consistent with the federal policy on self-government, as well as a facilitation role in exploratory discussions on treaty issues;

And Whereas the Treasury Board has authorized funding for the operation of the Office of the Treaty Commissioner;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, hereby renews the Office of the Treaty Commissioner as a recognized federal institution to function in the Province of Saskatchewan, subject to the terms and conditions set out in Schedule 1 hereto.

Principles, Mandate, and Role of the Office of the Treaty Commissioner

The principles and mandate of the Office of the Treaty Commissioner are stated in the Memorandum of Agreement between the Government of Canada and the Federation of Saskatchewan Indian Nations signed on October 31, 1996. The service of the Office of the Treaty Commissioner in relation to the Intergovernmental Forum are stated in the General Protocol Agreement signed by the Government of Canada, the Government of Saskatchewan, and the Federation of Saskatchewan Indian Nations on October 31, 1996.

1. Principles

- 1.1 The treaties are a fundamental part of the relationship between First Nations in Saskatchewan and the Crown;
- 1.2 It is desirable to arrive at a common understanding of Treaties 4, 5, 6, 8, and 10 as they apply in Saskatchewan;
- 1.3 There are differences of views over the content and meaning of the treaties, which the Government of Canada and the Federation of Saskatchewan Indian Nations are committed to exploring. The Treaty First Nations believe that the treaties have not been implemented according to their spirit and intent, including oral promises, while the Government of Canada relies primarily on the written text of the treaties as the embodiment of the Crown's obligation;
- 1.4 Respect for Aboriginal and treaty rights is an important part of maintaining the honour of the Crown in its relations with Treaty First Nations;
- 1.5 A renewed Office of the Treaty Commissioner will be an effective intergovernmental mechanism to assist the Government of Canada and the Federation of Saskatchewan Indian Nations in the bilateral process, and in the identification and discussion of treaty and jurisdictional issues.

2.0 Mandate

- 2.1 The Mandate of the Treaty Commissioner is to facilitate a common understanding between the FSIN and the Government of Canada, where they

now have different views, on the following issues:

- 1.1 treaty rights, and/or jurisdiction in the area of child welfare;
 - 1.2 treaty rights, and/or jurisdiction in the area of education;
 - 1.3 treaty rights, and/or jurisdiction in the area of shelter;
 - 1.4 treaty rights, and/or jurisdiction in the area of health;
 - 1.5 treaty rights, and/or jurisdiction in the area of justice;
 - 1.6 treaty annuities; and
 - 1.7 treaty rights, and/or jurisdiction in relation to hunting, trapping, fishing and gathering.
- 2.2 The Government of Canada and the Federation of Saskatchewan Indian Nations agree that, in addition to the above, the subject matter assigned to the Office of the Treaty Commissioner may be further defined and determined by agreement of the Government of Canada and the Federation of Saskatchewan Indian Nations.
3. Role
- 3.1 Within the mandate set out above, the role of the Office of the Treaty Commissioner shall include, but is not limited to the following:
- 3.1.1 facilitating meetings between the Crown and Treaty First Nations, to discuss treaty issues identified herein, or by future mutual agreement between the Government of Canada and the Federation of Saskatchewan Indian Nations;
 - 3.1.2 facilitating and coordinating meetings of essential non-governmental and/or third party interests affected by treaty interpretation and implementation and agreements arising from this process, at the request of the Government of Canada and the Federation of Saskatchewan Indian Nations;
 - 3.1.3 arranging for mediation services upon mutual request by the Government of Canada and the Federation of Saskatchewan Indian Nations. The mediator shall be selected from a list presented by the Commissioner to the Government of Canada and the Federation of Saskatchewan Indian Nations.

Nations involved in the mediation process and must be acceptable to both the Government of Canada and the Federation of Saskatchewan Indian Nations;

- 3.1.4 developing an independent capacity to analyse and report on the positions of the Government of Canada and the Federation of Saskatchewan Indian Nations on specific treaty issues and advising the Government of Canada and the Federation of Saskatchewan Indian Nations of areas of agreement and dispute if:
 - i) requested to do so by the Government of Canada and the Federation of Saskatchewan Indian Nations to this Agreement, and
 - ii) determined by the Treaty Commissioner to be necessary to advance the resolution of an issue;
- 3.1.5 developing a capacity to conduct independent and focussed research and prepare reports which will contribute to the resolution of an issue and promote solutions if:
 - i) requested to do so by the Government of Canada and the Federation of Saskatchewan Indian Nations to this Agreement, and
 - ii) determined by the Treaty Commissioner to be necessary to advance the resolution of an issue;
- 3.1.6 developing a capacity for, and engaging in, public information and public awareness programming as requested by the Government of Canada and the Federation of Saskatchewan Indian Nations to this Agreement;
- 3.1.7 monitoring the implementation of agreements reached between the Government of Canada and the Federation of Saskatchewan Indian Nations as directed by the Government of Canada and the Federation of Saskatchewan Indian Nations;
- 3.1.8 monitoring of the Saskatchewan Treaty Land Entitlement Agreement (September 22, 1992), as requested by the Government of Canada and the Federation of Saskatchewan Indian Nations; and
- 3.1.9 presenting simultaneously to the Government of Canada and the Federation of Saskatchewan Indian Nations, an annual report, detailing the progress on fulfilling the mandate of the Office of the Treaty Commissioner and agreed upon work plan.

3.1.10 under the auspices of the Government of Canada, the Government of Saskatchewan and the Federation of Saskatchewan Indian Nations' intergovernmental forum, facilitating and advancing a common understanding on jurisdictional and related fiscal issues at intergovernmental forum's sectoral negotiation tables, subject to the agreement of the Government of Canada, the Government of Saskatchewan, and the Federation of Saskatchewan Indian Nations and the Treaty.

4. Direction and Evaluation

4.1 The Federation of Saskatchewan Indian Nations and the Government of Canada will establish a joint committee, consisting of the Minister of Indian Affairs and Northern Development and the Chief of the Federation of Saskatchewan Indian Nations, to provide direction to the Treaty Commissioner and to participate and provide direction related to the monitoring, evaluation, and progress of the Office of the Treaty Commissioner process. This committee will meet twice a year or as otherwise agreed upon by the Government of Canada and the Federation of Saskatchewan Indian Nations.

4.2 The Government of Canada and the Federation of Saskatchewan Indian Nations, on an annual basis and through the joint committee described above, will jointly assess the progress being made on matters set out in this Agreement, and the role of the Office of the Treaty Commissioner.

4.3 There shall be an evaluation in the third year following the execution of this Agreement on the effectiveness of the Office of the Treaty Commissioner process and the Government of Canada and the Federation of Saskatchewan Indian Nations agree to participate fully in such an evaluation process.

5. Funding

5.1 Funding for the salary and core operational costs for the Office of the Treaty Commissioner will be provided by the Government of Canada in accordance with Treasury Board approval provided in November 1996.

5.2 Further funding for the Office of the Treaty Commissioner's involvement in the Government of Canada, the Government of Saskatchewan, and the Federation of Saskatchewan Indian Nations' Intergovernmental Forum may be negotiated by the above three parties.

5.3 Funding will be tied to agreed upon products, outputs and time frames.

APPENDIX E

PROTOCOL AGREEMENT TO ESTABLISH A COMMON TABLE

BETWEEN:

HER MAJESTY IN THE RIGHT OF CANADA

*as represented by the
Minister of Indian Affairs and Northern Development*

AND

HER MAJESTY IN THE RIGHT OF SASKATCHEWAN

*as represented by the
Minister of Indian and Metis Affairs*

AND

FEDERATION OF SASKATCHEWAN INDIAN NATIONS

*as represented by
the Chief of the Federation*

BETWEEN:

HER MAJESTY IN THE RIGHT OF CANADA
as represented by the
Minister of Indian Affairs and Northern Development
(hereinafter "Canada")

AND

HER MAJESTY IN THE RIGHT OF SASKATCHEWAN
as represented by the
Minister of Indian and Metis Affairs
(hereinafter "Saskatchewan")

AND

FEDERATION OF SASKATCHEWAN INDIAN NATIONS
as represented by
the Chief of the Federation
(hereinafter "FSIN")

THE PARTIES AGREE AS FOLLOWS:

1.0 PRINCIPLES

- 1.1 A Common Table will be established to discuss issues of mutual concern and facilitate common understandings related to jurisdiction and related fiscal matters.
 - 1.2 The Constitution of Canada recognizes and affirms the existing Aboriginal and Treaty rights of the Indian peoples of Canada. Canada and Saskatchewan recognize the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*.
 - 1.3 Canada has a special relationship with Indians evidenced by the Constitution of Canada and Treaties. Canada recognizes as well that the inherent right may find expression in Treaties and in the context of the federal Crown's relationship with Treaty First Nations.
-

2.0 PURPOSE

2.1 The Common Table will

- i. identify and facilitate effective processes for negotiating and implementing self-government among Canada, First Nations and Saskatchewan;
- ii. discuss the interrelationships between jurisdiction and fiscal arrangements as they relate to the development of First Nations self-government;
- iii. establish other priorities for discussion;
- iv. discuss treaty issues when they affect all three parties; and
- v. review progress of the various processes.

3.0 MANDATE

- 3.1 Processes established under the Protocol will be guided by the mandates and authorities that the parties have in place from time to time.

4.0 MANAGEMENT


- 4.1 The Common Table consists of the Federal Minister responsible for Indian Affairs and Northern Development, the Saskatchewan Minister responsible for Indian and Metis Affairs, and the Chief of the Federation of Saskatchewan Indian Nations.
- 4.2 The Common Table can designate officials to assist with the set up, administration, and preparation of workplans and other details for implementing this protocol.
- 4.3 Where matters are raised which fall within the responsibility of other Ministers or Vice-Chiefs, those Ministers or Vice-Chiefs, or their designates, will be invited to participate in the Common Table.
- 4.4 With the consent of the Parties, the Treaty Commissioner may be asked to facilitate the work of the Common Table.
- 4.5 Each Party will bear its own costs for participating in the Common Table.
- 4.6 The Common Table will meet annually or more frequently as may be agreed upon by the Parties. Designated officials will meet as instructed.

5.0 OTHER TERMS


- 5.1 This Protocol is not a treaty and does not create any legal obligations
- 5.2 Nothing in this Protocol would compel a tribal council to use the services of the Common Table to complete negotiations already underway on self-government.
- 5.3 This Protocol shall continue in force for five years, and can be amended or extended by consent of the Parties.

Signed this 31st day of October, 1996

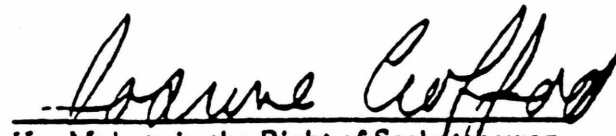
at Saskatoon in the Province of Saskatchewan.




Her Majesty in the Right of Canada
as represented by the Minister of Indian
Affairs and Northern Development




Witness



Her Majesty in the Right of Saskatchewan
as represented by the Minister of Indian
and Metis Affairs



Witness



The Federation of Saskatchewan Indian
Nations as represented by the Chief of the
Federation



Witness