

FIRST NATIONS STRATEGIC BULLETIN

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Now is the Time to Move on an Independent Claims Body: Six Nations Claim in Caledonia is Only One of Many Claims in Canada



Canadian soldier and Mohawk Warrior in stare down during the 1990 'Oka Crisis',
(Photo by Shaney Komulainen)

By Rolland Pangowish

The current confrontation at Caledonia provides a long-awaited opportunity to move on the long promised independent claims body to deal with the huge backlog of First Nation land claims. Such dramatic incidents always seem to raise the question about what is Canada doing to resolve these outstanding claims and grievances that give rise to such confrontations. After the **1990 Oka standoff**, successive Conservative and Liberal governments promised to address the flaws in federal claims policies, but nothing significant has yet been accomplished.

There remain nearly six hundred outstanding claims in the federal specific claims system, which does not include those claims taken directly to the courts. **Six Nations** itself has around two dozen such claims, which it had submitted to the federal government and taken to court due to the problems with the specific claims policy.

Underlying the slow rate of progress toward resolution of these claims, the specific claims policy formalizes the

Government of Canada's conflict of interest in dealing with claims against itself. It has long been recognized that the federal government is acting as judge and hurry in claims against itself. **Former Supreme Court Justice Laforest** had observed that any process to resolve claims would only work if it was not only fair, but must be seen to be fair by the "*Indians themselves*".

Efforts to Reform Canada's Claims Policy

The first effort after Oka was the **Joint Working Group on Federal Claims Policy**, which followed upon the recommendations of the **Chiefs Committee on Claims**, a body formed by the AFN during the Oka crisis. The Chiefs Committee on Claims had put forward the **First Nations Submission on Claims**, which was adopted by the AFN in December of 1990 and made a series of recommendations on the fundamental reform of federal land claims policies. Among those recommendations was the establishment of an independent claims mechanism to address all land claims, including comprehensive and specific claims, as well as all manner of grievances between First Nations and Canada.

At the time, the Conservative Government's **Minister of Indian and Northern Affairs, Tom Siddon**, responded with the Mulroney Government's "**Four Pillars Policy**", which in addition to the setting up the **Royal Commission on Aboriginal Peoples**, included a claims policy reform component that promised a joint process of policy reform for specific claims, which lead to the establishment of a Joint Working Group with First Nations to design policy reforms, while

Special points of interest:

- **Time to Get National Claims Body in Place**
- **Background to Caledonia Land Conflict**
- **Qualifications for National Chief-Time for Improvements?**
- **Are 'Program Chiefs' Undermining Our Rights?**

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an **Indian Claims Commission** to review rejected specific claims was established as an interim measure to “**provide a degree of fairness under the existing policy**”, Minister Sidon declared.

Unfortunately, the policy reform process was limited to specific claims, while another component of that Conservative Governments “**four pillars**” initiative proposed to open up the Comprehensive Claims process to BC First Nations, to address areas where Aboriginal Title was not extinguished. That eventually lead to the establishment of the **BC Treaty Commission process**, but no fundamental changes were made to the Comprehensive Claims Policy, despite the First Nation recommendations to do so.

The Comprehensive Claims policy remains mired in its requirement that First Nations surrender, extinguish or set aside their Aboriginal Title in exchange for agreement benefits and a limited form of jurisdiction over what has in practice worked out to be roughly 10% of their traditional territory. All Aboriginal Title over the vast majority of First Nation territory is effectively extinguished upon implementation of such agreements.

This requirement for extinguishment remains the main cause for slow progress under Comprehensive Claims processes, whether it is in BC under the so-called “**Treaty Commission**” process or elsewhere in the country. The practice of extinguishment was changed to a “**setting aside**” approach first used in the **Nisga’a Final Agreement**, although the recent **Dogrib Agreement** appears to include both the surrender clause and a setting aside provision. This ongoing practice of alienating land rights is not consistent with Canada’s Constitution, which recognizes and affirms existing aboriginal and treaty rights. The ongoing alienation of lands and resources has been repeatedly cited by the **United Nations Human Rights juridical bodies** as the primary reason for the socio-economic marginalization of Canada’s Aboriginal Peoples.

Getting back to specific claims, which are basically defined in federal policy as outstanding lawful obligations of the Crown with regard to the management of Indian lands or other assets, including the failure to fulfill the specific provisions of a treaty or legislation. These basically amount to breaches of the Crown’s fiduciary obligations to First Nations. The broader fiduciary obligations of the Crown not to infringe on aboriginal rights were left to the comprehensive claims and self-government policies, while the overall implementation of treaties has never been addressed by Canada in any formal or effective manner.

The **Joint Working Group** begun in 1991 and composed of federal officials and regional First Nation representatives operating under the guidance of the **Chiefs Committee on Claims**, submitted an **interim report in 1993**, indicating that while it had reached agreement on a number of recommendations for a new claims process, at least 13 significant issues remained outstanding before it could complete its work. Soon after, the Liberal Government of **Jean Chretien** came to power, under an Aboriginal Platform that promised much of what the Chiefs Committee on Claims had originally put forward, promising an independent body that would be jointly developed and appointed to deal with all claims, in addition to recognizing that a larger land base was required to allow First Nations to move toward self-sufficiency.

Unfortunately, the promise to address issues of land rights and claims policy reform were left aside by the Liberals until early in 1997 when the **Joint First Nations-Canada Task Force on Specific Claims Policy Reform** began its work. Although this second effort at joint policy reform was again limited to specific claims despite the Liberal promise to create a body to deal with all claims, it began to produce some results from the outset.

The **Joint Task Force**, or **JTF** as it was dubbed, set out to learn from the recent past experience and began a thorough review of all the previous work done on claims policy. It

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also was provided with access to working papers developed by the **Royal Commission on Aboriginal Peoples** on the subject. Based on the experience of the first Joint Working Group, it made a conscious decision to use the principles of **Alternative Dispute Resolution (ADR)** to guide its work.

This **ADR** informed approach allowed the **JTF** to begin its work by focusing on the areas where there was some general agreement between regional First Nation representatives and federal officials. By this time in 1997, a new Minister of Indian Affairs, **Jane Stewart** was appointed and that Summer, **Phil Fontaine** was elected as National Chief. The **JTF** had already been launched under **Ovide Mercredi’s** leadership, but fit neatly into Phil Fontaine’s “*partnership*” approach with Minister Stewart.

Minister Stewart began to tout the JTF as a shining example of partnership and joint policy development. Minister Stewart explicitly promised that the establishment of an Independent Claims Body for specific claims would be a joint undertaking at every stage. This allowed the joint effort to move far beyond previous efforts as key federal officials from **Justice** and **Central Agencies** were more actively involved in the process of developing recommendations for a new specific claims process. As the federal co-chair of the JTF, **Dan Kohoko**, informed his superiors at the time, “*give me people who will help us show what can be done, not what we cannot do*”.

An interim JTF Report with thorough recommendations was tabled in Fall of 1999. It was designed like draft legislation and basically proposed a new system for specific claims whereby the process would be geared to the claims put forward by the claimant First Nations themselves, rather than the existing process where First Nations are expected to adapt their claims to the federal government’s narrow bureaucratic policy process. The JTF model proposed a Commission that would facilitate negotiations, while a Tribunal with binding powers would be available to resolve disputes, including binding authority to award compensation where negotiations failed to bring about a solution.

Although some important concessions had been made by the First Nations in order to achieve a consensus on the recommendations with federal officials in the JTF, it was felt by many that if such a mechanism could work for the narrowly defined outstanding lawful obligations known as specific claims, perhaps its mandate could eventually be expanded to include comprehensive claims and all manner of First Nation grievances against the Crown, similar to the recommendations of the Royal Commission..

Unfortunately, the partnership ended at the Cabinet door, as the senior levels of the Central Agencies began to question how the JTF had got this far with significant recommendations for an independent claims body. The recommendations were very effective and doable, but too costly for some in government. They shut the door, keeping the recommendations of the JTF from Cabinet consideration, until the Central Agencies did their secret in-house revision of the recommendations, which re-emerged as Bill C-6, the **Specific Claims Resolution Act**, in 2002-03.

Bill C-6 incorporated some of the structural elements of the JTF Report, but revised fundamental aspects of the JTF model, rendering the proposed legislated body an ineffective additional level of bureaucracy to the process. The legislation abandoned the joint appointment of the Commission and Tribunal, as had been promised by the Liberals in 1993 and was recommended by the JTF. **Bill C-6** also imposed a financial cap of **\$10 million dollars** on the Tribunal, effectively removing any effective incentive for the federal government to negotiate fairly in claims of a value under that amount.

Interestingly, the vast majority of specific claims settlements over the past several years have included monetary compensation of over \$10 million. In the JTF process, First Nation representatives had steadfastly resisted any suggestion of a cap on individual claims, rea-



Senate Aboriginal Affairs Committee deliberating on Bill C-6, the Specific Claims Resolution Act. (Photo by R. Diabo)

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Rolland Pangowish during Senate Committee on Aboriginal Affairs proceedings on Bill C-6. (Photo by R. Diabo)



“The Conservative Government is dwelling on the accountability of First Nations for the public funds they receive. It is high time the Government of Canada accounted to First Nations for its mismanagement of Indian lands and assets”



‘Claims Body’ continued from page 3

soning that a lawful obligation is a lawful obligation. It would be prejudicial to differentiate such obligations based on solely on monetary value.

The JTF had recommended an overall five-year budgetary allocation of compensation funds as a means for federal financial management, which was a major concession from the **First Nations Submission on Claims of 1990**, which had recommended that claims be handled like court judgments and paid out from the **Consolidated Revenue Fund**. Ironically, specific claims settlements were paid as contingencies prior to 1990 and it was only after the Chiefs recommended that claims should not be made a budgetary item that a specific claims settlement budget was established by the federal government.

In any case, even with a number of concessions made to reach agreement on the JTF recommendations, the Liberal Government concluded that since it couldn’t really find fault with the JTF model, it would unilaterally develop legislation without First Nations input. When the AFN raised concerns with the way the legislation was drafted and introduced in Parliament, there was no effort to refer to the JTF and further debate was left to the political process of Parliament, where First Nations have little if any direct representation.

The AFN mounted one of its most concerted lobby efforts aimed at convincing the **House** and **Senate Standing Committees on Aboriginal Affairs** to adopt major amendments in an attempt to fix the problems with the Bill. Although **Conservative**, **NDP** and even one **Liberal** members of the Committee assisted by introducing amendments, these were voted down by the Liberal majority without the least bit of consideration.

One of those was former Alliance MP, **Maurice Velacott**, who proposed more than two dozen amendments to make the Bill more closely reflect the JTF model. He has recently been appointed by the Conservative Government to chair the **House Standing Committee on Aboriginal Affairs**, under a cloud of controversy about his support for two police officers convicted in Saskatchewan for dumping a First Nations citizen out in the cold, an act that has lead to several deaths in other cases.

In any case, in 2003, the failure of the House to amend the **Specific Claims Resolution Act**, left the Senate as the final forum where First Nations might get the Bill reconsidered, but the Liberal majority only adopted a few minor amendments, like changing the Tribunal cap from \$5 million to \$10 million. It was still not enough to fix the Bill and it was passed into law in the Fall of 2003. The Bill has not been implemented due to the continuing objections of First Nations.

That is pretty well where it stands today, with the Caledonia conflict centering directly on a long-standing specific claim type issue. Whether the land was actually surrendered or not and whether adequate compensation was ever received, falls into the category of outstanding lawful obligations of the Crown.

Time for Accountability

The Conservative Government is dwelling on the accountability of First Nations for the public funds they receive. It is high time the Government of Canada accounted to First Nations for its mismanagement of Indian lands and assets. Thousands of acres of reserve land and millions of dollars in trust funds have been lost though federal mismanagement and outright fraud. Yet no government has yet to account for these losses.

Perhaps if an independent claims body was in place, the loss of those lands in Caledonia might have been addressed before now. However, in light of the current backlog of nearly six hundred outstanding claims, it is difficult to imagine where this claim would be. The backlog was an issue that was supposed to be addressed with the implementation of an independent specific claims body.

‘Claims Body’ conclusion from page 4

The Conservative Government could easily pass legislation fundamentally revising the **Specific Claims Resolution Act** to make it consistent with the Joint Task Force recommendations. It's House Committee Chairperson has already drafted many of the required amendments. It's Minister of Indian Affairs **Jim Prentice** served on the **Indian Specific Claims Commission** and supported recommendations that it be phased out as originally planned and replaced with an Independent Claims Body with the authority to ensure claims are resolved.

With the current government and media focus on land claims at Six Nations, we have another opportunity to move on the establishment of a truly independent and fair mechanism to resolve these outstanding claims. Such claims are not about the generosity or discretion of the federal government, but are about outstanding lawful obligations on the part of Canada.

These legally enforceable liabilities should be included within calculations of Canada's national debt, as until they are resolved, the costs for settling them will continue to grow, not only in terms of interest and monetary compensation, but in terms of the social and economic costs of such standoffs. The First Nations experience indicates that only when they raise some sort of trouble, do their issues get attention. That is a sad state of affairs, but is the reality when successive governments of whatever stripe continually leave the issue for some future generation to deal with.

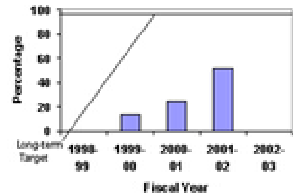
The resolution of such claims would also provide First Nations with badly needed independent capital with which to promote economic development. This is First Nation property, not program dollars or social programs. Unfortunately, specific claim settlements are included within the federal social policy envelope, as if it were some kind of discretionary program, not the settling of outstanding debts owed by Canada to First Nations.

The new Conservative Government's priority on accountability should work both ways for First Nations. If they want First Nations to be more accountable than they already are for federal transfers, then perhaps they should look into their own accountability to First Nations for millions of dollars in lost opportunities caused by the federal mismanagement of First Nation lands and other assets or the non-fulfillment of treaties.

The crisis in Caledonia affords this government a new opportunity to establish a fair, effective and efficient mechanism to deal with such outstanding grievances. Take these claims out of the realm of social policy, where funds are necessarily limited by the priorities of the government of the day, and deal with them as the legal and financial debts they represent.

Will the Conservative Government take that step toward full accountability before it asks First Nations to be more accountable? Or will it put off the issue to another government, or another generation to resolve? Just as importantly, is the First Nations leadership across Canada prepared to undertake this task? Are land claims a priority they care to deal with?

[NOTE: Rolland Pangowish is from the Wikwemikong Unceded Indian Reserve and is a former Land Rights Director with the Assembly of First Nations, Rolland Pangowish Co-Chaired the Joint First Nations-Canada Task Force on Specific Claims



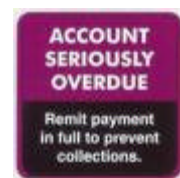
“Take these claims out of the realm of social policy, where funds are necessarily limited by the priorities of the government of the day, and deal with them as the legal and financial debts they represent”



Left Photo: Senator Thelma Chalifoux, Chair of the SCAA with Clerk.



Right Photo: Rolland Pangowish with unidentified person at SCAA proceedings. (Photos by R. Diabo)

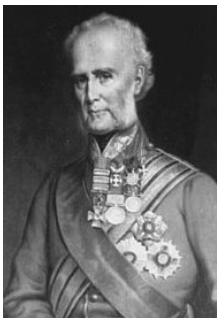


BACKGROUNDER: The Six Nations Plank Road Claim (Tsyonennohkarà:ke) In Brief



Frederick Haldimand, Major General, Governor of Quebec

“On January 18, 1841, the Crown purported to take a surrender from Six Nations even though this document contained only 6 Chief Signatures and did not identify any specific lands”



Sir John Colborne (1778-1863), served as Lieutenant-Governor of Upper Canada 1829-1836.



approximately 950 thousand acres.

In the early 1830's, the Crown approached Six Nations about its development of the lands surrounding and including the Plank road. Six Nations, having been led to understand that they could not prevent the building of Plank Road, indicated that they would be willing to lease this land.

It was clear in January 1835 to the Crown that Six Nations would not surrender the lands surrounding the Plank road. In fact, **Blair, a Crown official**, stated that it would be “*utterly impossible to buy*” as “*the Indians will not surrender to us in perpetuity*”. Blair suggested that the land be “*on rental for a moderate term of years.*”

In that same month, Six Nations stated that they “*will permit half a mile on each side of that road to be leased to the Whites (and) that any money arising from the leases should be paid both principle and interest*”.

In April of that same year, the Chief Superintendent of Indian Affairs set out conditions for leasing the land. In November a public notice was issued which dealt with the problem of squatters and it stated that leases must be applied for - failing which persons on the land would be ejected.

Over the next three years, the Crown confirmed in words and actions that these lands were to be leased for the benefit of Six Nations. By the end of 1836, **Crown official Hepburn** granted all applications for the lease of lands along Plank Road. In the spring of the following year, **Marcus Blair** was explaining to other Crown officials the imperative nature of issuing leases for these lands and recommending surveying of the tier of lots of either side of Plank Road, implying a term of a number of years and suggesting a method of payment.

The Crown thought it would be easier for it to deal with squatters if all or most of Six Nations lands were sold rather than leased.

On January 18, 1841, the Crown purported to take a surrender from Six Nations even though this document contained only 6 Chief Signatures and did not identify any specific lands. Immediately after the surrender, beginning on February 4, 1841, then again on July 7, 1841 and June 24, 1843, Six Nations sent petitions to the Crown disputing the surrender.

Despite the purported surrender in 1841, the Crown continued to ask Six Nations whether it preferred to lease or sell their lands. In October of 1844, Six Nations responded clearly that it preferred to lease and not sell lands including those lands on and surrounding Plank Road.

Unfortunately for Six Nations, **Sir John Colborne**, the Lt. Governor who had approved the system of leasing was succeeded by **Sir J.B. Head** who strongly disapproved of leases.

The **Hamilton Port Dover Plank Road** is today known as **Highway 6** and it runs through the **Townships of Oneida and Seneca**.

The lands comprising the highway and surrounding lots on either side of the highway are part of the lands which were granted to the Six Nations of the Grand River under the **Haldimand Proclamation in 1784**. This legal instrument granted to Six Nations all of the land from the mouth of the Grand River at Lake Erie, extending six miles on each side of the river and extending to the head of the Grand River. The area of this land was

‘6 Nations Claim’ conclusion from page 6

Head unilaterally did not accept the leases.

On December 18, 1844, the Crown purported to take another surrender from Six Nations.

In their pleadings today, Canada and Ontario rely upon this document as proof of the Sale of Six Nations lands.

Hepburn, shed some light on this circumstance in March 1845 when he wrote to **Higginson the Civil Secretary of the Indian Department**. Hepburn said the Crown understood and agreed to grant leases for 21 years on **Sir John Colborne’s** recommendation and it was his intention had he remained Lieut. Governor to have done so. He, however, ceased to be in office before the leases were finalized, and his successor, Sir J.B. Head disapproved entirely of the system of granting leases of Indian lands. The lease arrangements became a nullity.

After 1845, despite the clear wishes of Six Nations not to sell the land, the Plank Road and surrounding lands were patented in fee simple and sold to third parties. Six Nations did not consent to any sale of the lands on or surrounding the Hamilton Port-Dover Plank Road.

In addition, the Crown failed to obtain adequate compensation for the lands which were sold and the Crown has not accounted for the proceeds which it did receive for the lands.

[Source: Six Nations of the Grand River Territory Website:
<http://www.sixnations.ca/CommunityClaimsUpdate.htm>]



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Photos courtesy of CKRZ Radio



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Arguments for the Rule of Law Cannot Pre-Suppose that all Law is Fair, Equitable, and Representative: Just Ask Aboriginal Peoples



April 21, 2006

By Boyce Richardson

Those pesky Aboriginals (Mohawks, yet) are at it again, asserting their right to land, and insisting on negotiation on a nation-to-nation basis.

And, of course, also at it are the establishment-minded types, the politicians, lawyers and sociologists (last night we saw **TVO's** weekly panel of retired politicians, representing all three parties, pontificating) nervously

insisting that the rule of law must prevail. But whose law? And the law defending what interests? That's the question these guys never raise, as they assume that all law represents the fair, equitable and indispensable road-map to a civilized society. But does it?

In my book **People of Terra Nullius** I had a chapter entitled, **The Law, A Doubtful Ally**, in which I showed how the law since before the foundation of Canada, has been used to strip Aboriginals of their rights to land that they had always occupied.

Frankly, Euro-Canadian society for generations operated on the assumption that possession (theirs) was nine-tenths of the law. For example, as they moved into the lower Ottawa Valley, they simply ignored the prescriptions laid down in the **Royal Proclamation of 1763** governing the process of occupation of land. Namely, that no land could be occupied until a deal had been made between the government and the native owners. Of course, the Euros never considered the natives as owners of the land, not in the same sense that Euros owned land.

So began the construction of the double-standards on which all Canadian law has since been based. In spite of repeated protests by the Algonquins occupying the Ottawa river valley, the land was just occupied by businessmen and developers, and the natives moved aside. Eventually, the natives were treated as squatters on their own lands. That is why the government and the church combined to set up the **Maniwaki reserve**, as a place where all Algonquins could be gathered, out of the way of invading loggers. Of course, it didn't really work, because the northern Algonquins never moved to the reserve.

Since then, the story has been one of unremitting unfairness, and, not to put too fine a point on it, theft of land and the resources that land yields.

Something the same story seems to have been at work in the **Mohawk tract of land** now under dispute. In 1784 a huge area of land of some 950,000 hectares was set aside for Mohawks who wanted to come up from the United States, where they had been dispossessed. The current reserve at Brantford comprises some 5 per cent of this grant, the rest having been taken by one means or another in the intervening years. In 1841 the Mohawks are said to have surrendered a plot of land on condition the government would sell it and invest the money for them, but the terms of that agreement were challenged in 1995, and I read this morning that the Mohawks are claiming that part of **McGill University** was built with their funds. (This is not an unusual story, but the sort of thing that has happened all over the country).

Of course, one cannot really blame the present Euro "**owners**" of the land, who have come

‘Rule of Law’ conclusion from page 8

by it through the normal process of exchange, following its alienation nearly two centuries ago.

This is the kind of issue that makes one despair, essentially, of Aboriginal people ever obtaining justice in Canada, since even when they win, it seems they lose.

A similar issue is the **Sun Peaks Ski Resort** controversy in British Columbia, where land has been granted by the British Columbia government, to a Japanese company for a tourist development. But it is land that the **Shuswap people** (or at least the most radically-minded of them) say they have never surrendered, and therefore it is still their land. They claim the mountain on which tourists ski is their sacred mountain.

People who have continued to protest the proposal to expand this tourist development have been arrested repeatedly, jailed, their homes demolished, and even been subjected to harsh and brutal treatment at the hands of the Euro authorities.

And of course there are even more egregious issues: the brutal colonization imposed on the **Innu of the Ungava peninsula**, which has resulted in the complete destruction of their society; the destruction of so much of the native society by the oil industry in Alberta, as exemplified by the treatment of the **Lubicons**; and of course, there is the hangover, the dreadful hangover from the two centuries in which our Euro society has worked by legislative and every other means, to destroy everything that meant anything to Aboriginal peoples across the country, an effort that has left hundreds of Aboriginal communities riven with destructive pathologies.

Can they ever win?

I doubt it.

This morning, Saturday, as if in illustration of what I wrote, the **Globe and Mail** predictably has an editorial claiming that "*The law must prevail in the native dispute*".

[NOTE: Boyce Richardson is a well known writer and filmmaker and he maintains his own website: <http://www.magma.ca/~brich/>]



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Assembly of First Nations Logo

“It is time for election of the National Chief of the Assembly of First Nations in July at their 2006 AGA in Vancouver”



First Nations Summit Logo

To Representatives of Indian Nations Defending Aboriginal Title, Rights and Treaties: Qualifications for a National Chief



By Mildred Poplar

Dear Friends:

It is time for election of the National Chief of the **Assembly of First Nations** in July at their **2006 AGA in Vancouver**. Several years ago I did my own outline of the time the Indian agenda in Canada began to move under the Federal Government process. The last time we openly fought for sovereignty and at least had control over our affairs was when **David Ahenakew** was National Chief. Leaders such as **Bobby Manuel** represented British Columbia at the Executive Committee at that time. It was during **Georges Erasmus** term as National Chief that our affairs began to seriously shift under federal control. Considering he was from Treaty area, did not place Treaties on the AFN agenda and had to be forced to do so by Treaty Chiefs. That is just one example. He was National Chief when **Mulroney** was Prime Minister who basically closed the doors of **Parliament** to our people and he got away with it.

I worked for members of the **Union of B.C. Indian Chiefs** for over 20 years and they and other community members of other Indian nations always had the position that we do not get Aboriginal Title from the federal government. Our peoples have Title from time immemorial. Title is the fundamental principle by which we expected our leaders to negotiate on our behalf. Aboriginal Title is our code of discipline in our relationship with Canada.

I have witnessed the **AFN** trying to lead our people into federalism and we are so

deep into the federal government agenda now that our people are no longer involved in what the National office is doing on our behalf. The National Office no longer speaks the political language our people instilled in the writing of the **First Nations Declaration**. The dream of Indian Government is still in the hearts and minds of the grassroots people and yet some of our Leaders are co-operating with all levels of governments on the wishes of a chosen few.

Before the late **Pierre Trudeau** called the **First Ministers Conference**, the AFN met to be of one mind on the constitutional talks. It was there that a small committee developed the **Declaration of the Assembly of First Nations** and the term First Nations was coined simply to accommodate the status Indian people and the Treaty people within the Declaration. Naturally the **Department of Indian Affairs** took that terminology and defined it the way we see it today.

The one reality we the community people have to address is the Indian bands which signed off on self-government agreements with Canada. We all know that they ceded their Aboriginal Title to Canada and are now under municipal status and have agreed to be part of federalism. **Why are they still members of the Assembly of the First Nations, allowed to dominate the Chiefs' agenda, passing resolutions that affect Aboriginal Title, Rights and Treaties?** If the present National Chief has a restructuring process which still requires the approval of the Chiefs, why is he signing a protocol with the **Indian Friendship Center Movement**?

The Assembly of First Nations does not represent our own way in negotiations with the governments. It also gives a poor leadership showing at the international level and stays true to its status as just an organization. Chiefs are not sent to the international meetings and neither is the National Chief visible in that arena. Most often a junior staff member is sent to Geneva so what kind of power does he have in the international political discussions? None whatsoever.

‘Qualifications’ continued from page 10

ever. Who really is our Leader? Back in 1982 years, we asked ourselves if our people go for Title, Sovereignty, Self-Determination – is that as far as they want to go? As if they weren’t already taking the high road we still reached higher. We knew very well what domestic remedies were and in fact when **Section 37** was inserted we saw it as only a stepping stone to seek recognition of Aboriginal Title.

Those communities which actively fought the Canadian Constitution unless it accommodated our Title, Rights and Treaties knew that Canada would one day rid the Indian organizations and Tribal Councils and the reservations would be the last frontier and the people living on the reservations would be the last line of defense to sustain Aboriginal Title, Rights and Treaties.

We all know that the government has a bureaucracy to rid Indian lands of Title. Their old policies of assimilation has never been abandoned and just refined over and over with new language added. Aren’t the buzz words now **partnership, capacity building, accountability and isn’t quality of life their word and tactics to appease the Chiefs and to keep the AFN under their goals of assimilation?**

I am very concerned that Indian country appears quiet and complacent while Indian sovereignty is being compromised. The government puts money where some First Nations are co-operating with them to extinguish Title **and the community people are quiet on the issue. It will be very difficult to mobilize under the present conditions.**

This was our position at one time:

The entrenchment of the recognition of Aboriginal Title in the Canadian Constitution is our position in order to maintain the true spirit of this principle and that is Title to the land must be recognized from our beginnings, not Canada’s. No group of peoples owns all of Canada – each Indian nation owns tribal territories some of which extends into the United States and off-shore waters. Indian nations altogether cover all lands in Canada.

In Canada Act, **Section 91(24)** gives the federal government the right to make laws for “**Indians and Lands Reserved for the Indians**”. This obligated the federal government to set aside reserve lands. They passed the **Indian Act** which they felt obligates them to provide financial resources in order for Indian peoples to fulfill those laws. This should still be the position from which the AFN negotiates to keep the federal government tied to its Crown obligations. There are critical court decisions in favor of Indian people and yet, we don’t see the AFN using them as leverage to maintain the principles of Indian/Crown relations.

All these points leads me to the election for National Chief in July. What kind of leader are we looking for at this point of time in Canada and around the world?

Ideology

The Indigenous peoples throughout the world have a common philosophy, common heritage and common struggles. We believe we have a Covenant with the Creator to care for and protect the land. There is no way this Truth which is Absolute is reflected in self-government agreements which are man-made and serves only Canada’s self-interest. The National Chief is a Leader who reflects our Ideology and Belief System in managing the affairs of the people. Allowing a sweet-grass ceremony around the installation of the Prime Minister of Canada is a far cry from the essence of our Ideology.

Experience

The National Chief has political experience from community to international level. Takes



Union of B.C. Indian
Chiefs Logo

“I am very concerned that Indian country appears quiet and complacent while Indian sovereignty is being compromised. The government puts money where some First Nations are co-operating with them to extinguish Title **and the community people are quiet on the issue**”



Tahltan Elder being arrested.



“It is time the Assembly of First Nations reworked its agenda in favor of defending Sovereignty, Aboriginal Title, Rights and Treaties and clear the table of the many issues smothering the dreams of the grassroots people”



‘Qualifications’ conclusion from page 11

the lead effectively at home and abroad and stands out as a strong defender of the people, their laws and their lands.

Knowledge

The National Chief knows his or her own people, our political system and political positions on all manner of issues affecting our lives. Our National Leader is knowledgeable on the federal, provincial and territorial government systems, strategies and objectives. He or she has reliable networks at home and abroad in order to make concise decisions and defend our people’s demands. He or she has knowledge of the United Nations Systems and other global entities.

Principles

Evidence of sacrifices he or she has made for the cause of our sovereignty. This is exemplified by the way he or she lives and understands and reflects our peoples’ values. He or she commands respect, loyalty and is loved by his or her people. The main characteristic of a new leader is spiritual leadership.

Political

The National Chief doesn’t have to dance to anybody’s tune or further impress anybody. The National Chief inspires others, has the ability to listen and not afraid to speak the truth. Does not play whiteman’s politics even he or she is aware of how it works. Is disciplined, respects people and is decisive. Is credible due to good reputation, is non reactionary, honest and consistent. Shows concern for peoples’ welfare and future of our children and is easily approachable.

It is time the Assembly of First Nations reworked its agenda in favor of defending Sovereignty, Aboriginal Title, Rights and Treaties and clear the table of the many issues smothering the dreams of the grassroots people who have lost their voice in the political forum which was established so long ago by our forefathers.

I would like you to edit this piece, include your idea of the qualifications for National Chief and what is the agenda for our people before the Conservatives close more doors than just the House of Commons by Mulroney. We then need to support a candidate who reflects Indian Government goals.

Mildred Poplar

Box 1357

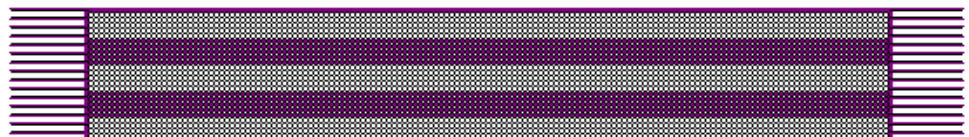
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OPINION: How Long Will the Program Chiefs Continue to Rule the AFN?



By Mukwa

How long will the **Indian Act Chiefs** in Canada continue to support the groveling approach of the current **Fontaine regime at AFN**? One must presume that Fontaine

was elected on the promise that he would bring them more program dollars for their stretched band program budgets. This is the only explanation for the complete abandonment of the original AFN mandate to advocate treaty and aboriginal rights.

Why else would the leaders of First Nation communities across this country tolerate a national leadership who cuts the majority of them out of the day to day pursuit of AFN objectives? Only the closest political associates are allowed into the detailed discussions with government officials and then word might be shuffled back to the Chiefs as the Fontaine clique sees fit.

Why else, but for the promise of more program dollars would the Chiefs across Canada throw their entire focus and priority into the **Kelowna Accord**, when it only deals with enhancing program dollars for the symptoms of dispossession? Social programs like health, housing and education are important, but won't solve the causes of our social and economic marginalization. The promise of temporarily closing the gap in social programs seems to be the short-sighted objective of our Chiefs today.

There is no longer any appetite to tackle the root causes of poverty amongst our Nations, which clearly is the ongoing extinguishment of our rights to lands and resources. Its even more disturbing to observe the growing number of our people who actually believe integrating existing federal and provincial taxation regimes into our **"self-government"** structures provides some kind of solid financial base. Yet dozens of band governments across Canada are quietly doing just that. Just take a look at the recent Conservative budget documents and note the emphasis on these

very taxation initiatives. What does AFN have to say about that?

Many of the types of people associated with the **Indian Taxation Advisory Board**, **Land Management Act** and the **National Centre for First Nations Governance** are promoting these assimilative types of initiatives. This type of approach is really a form a absorbing First Nations into the existing Canadian social and economic structure as the first steps to a form of self-government that is based on total integration. Such a predetermined structure for self-governing institutions that mimic the existing Canadian framework is a deceptive form of assimilation. It will allow for a varied cultural surface to structures that are not derived from First Nations, but from the existing social and economic system. Such initiatives can be better tracked and guided through the development of **"national institutions"** to better track the assimilation of First Nation government into the federal and provincial systems.

Perhaps some will argue that this is not a bad thing, but is beneficial for our people, because it will **"close the gap"** between our peoples standard of living and that of Canadians. Such a view is unnecessarily shallow, as dwelling primarily on our standard of living leads away from any emphasis on rights and jurisdiction. It makes mimicking the existing institutional structures of Canada appear promising, yet little attention is given to revitalizing First Nation governments based on inherent rights and treaty relationships. It's like the modern version of the beads and trinkets mythology.

It may be that the will to fight for our rights has been lost as a growing minority of First Nations are altering the dependence on federal program dollars through signing onto federal policy framework agreements under federal Comprehensive Claims and Self-Government policies. Only a few of our people seem to recognize that these First Nations might pay a severe price, possibly sacrificing not only the future generations of their own people, but the prospects for any other First Nations to make any progress on clarifying the inherent and treaty

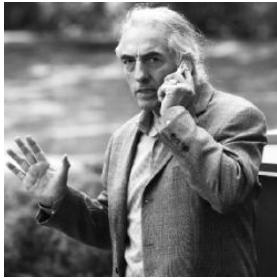


In collaboration with the Department of Indian Affairs, Manny Jules started the Indian Taxation Advisory Board.

"Many of the types of people associated with the Indian Taxation Advisory Board, Land Management Act and the National Centre for First Nations Governance are promoting these assimilative types of initiatives"



In collaboration with the Department of Indian Affairs, Herb George helped start the National Centre for First Nations Governance.



AFN National Chief Phil Fontaine (Photo by Dean Bicknell/CANWEST)

“Prospects for First Nations to make progress on land rights and jurisdiction appear fairly dim at present, despite the rhetoric of Fontaine and his groveling supporters, who say we need to **“close the gap”** and exploit the potential First Nations workforce”



‘Program Chiefs’ conclusion from page 13

rights of their Nations.

A tribal colleague from the United States used a term the other day which I found interesting in terms of our current context in Canada. He referred to **“Program Tribes”**, which I could only assume meant those Tribes in the United States who are dependent on federal programs for the bulk of their revenue and service delivery. Sound familiar?

Unfortunately it appears that the only First Nation communities in Canada that are not so interested in federal programs are the ones who have established another source of federal income. That alternate source of funds is not so much gained from resource revenues or business carried out under the sovereign jurisdiction of the First Nation, as it is in the United States for many Tribes, but is derived from either comprehensive land claim agreements or self-government agreements.

The funds flowing continue to be from federal government program sources, but they only flow through the further extinguishment of either land and resource rights or the setting aside of any possible sovereignty that might exist. Thus, concepts like Tribal Sovereignty and Jurisdiction are being increasingly relegated to the impossible in Canada. These are not on the agenda in any form.

It would appear the majority of our Chiefs in Canada fall into these two categories of First Nations programming. There are those that have no immediate objectives beyond securing more program dollars to run their band administrations. Then there are others, who have signed off their rights under federal policy agreements that provide new types of program dollars in exchange for limiting the exercise of land and governance rights, which is effective extinguishment, without the surrender clause.

This scenario seems to be one of the few plausible explanations for the continuing support for **Fontaine and associates** to continue groveling before the Government of Canada. Any criticism of the federal government that they might venture to express is carefully tempered not to interrupt the continuing flow of federal dollars. Fontaine is especially adept at using catchy slogans with the media to divert attention away from the content of his efforts. Their true objectives are readily apparent to any experienced rights advocate, not just the observations of a radical fringe.

The people at the community level are only beginning to notice that something seems to be amiss here. The leaders chosen to represent them don’t seem to be delivering on the promise of more program dollars, let alone implementing treaty and aboriginal rights. Instead, they are seeing the fluffy promises of new program dollars, but no real delivery. The reality is that our people see the continuing erosion of program and service delivery at the community level, due to the lack of increased dollars, while the available lands and resources within their traditional territories are being increasingly exploited by outsiders.

Prospects for First Nations to make progress on land rights and jurisdiction appear fairly dim at present, despite the rhetoric of Fontaine and his groveling supporters, who say we need to **“close the gap”** and exploit the potential First Nations workforce. Their misguided priorities will likely continue to dominate as long as the Program Chiefs hold sway in Canada. Unfortunately, under a Conservative Government, the dominance of a groveling leadership amongst First Nations can only hasten the retreat away from a rights-based agenda.



Joe Nolan's Platform for National Leadership

By David Helwig

SooToday.com

Saturday, April 08, 2006

Joe Nolan, a member of Garden River First Nation, announced this week that he's seeking the office of national chief of the Assembly of First Nations.

To achieve his goal, Nolan must defeat Phil Fontaine [shown], who's currently serving his second term as national chief and has announced that he will seek re-election.

Fifty-one years old, Nolan is a graduate of Sir James Dunn Collegiate and Vocational School (1972), Sault College (advertising arts, 1974) and Laurentian University (2003, B.A. political science).

He's also studied at Algoma University College and headed an attempt to oust the board of the local Indian Friendship Centre in 2002.

Nolan has worked as a band manager in Garden River, with the Department of Indian Affairs in Toronto and Sudbury and more recently, with the Assembly of First Nations in Ottawa.

The election for national chief will be held in early July in Vancouver.

To whom it may concern,

My name is Joe Nolan.

Please consider this letter as my announcement as a potential candidate for the National Chief of the Assembly of First Nations.

I am 51 year old full-status First Nations member from the Garden River First Nation.

I have a Bachelor of Arts Degree in Political Science from Laurentian University in Sudbury, Ontario.

I also have experience working for both Native and Non-Native governments.

The following seven main points are my platform for this position.

voting system. To accomplish this, I will create an internet voting system for all eligible First Nations members (both on and off-reserve). I will also create a special elections committee to govern all aspects of this web-based voting system. This elections committee will consist of First Nations members who hold positions in Canada such as Bank CEO's, Law Enforcement Officials, University professors, etc.

- 2) 2) To create a new act, "The National Indian Brotherhood Act" for the purposes of holding the AFN and First Nations Chiefs and Councils accountable to its membership, funding governments and various funding agencies.
- 3) To negotiate the transfer of non-dangerous First Nations inmates to the custody and care of First Nations rehabilitation and correctional institutions.
- 4) To implement various programs and services to work with First Nations Youth. (education, culture and sports, etc.)
- 5) To dismantle the Department of Indian Affairs and replace it with the implementation of sovereign Indigenous governing structures.
- 6) To relocate the AFN's Ottawa Office to a First Nations community in Canada, to be owned by the First Nations people. The location will be determined based on a universal vote.
- 7) To develop young native professionals in the administration and governing structures of the new AFN.

Thanks for your time.

Please forward to all media outlets and First Nations organizations.

All the Best,

Joe Nolan, BA
Joe Nolan for AFN Chief 2006
joenolanforafnchief@yahoo.ca

[Reprinted from:

<http://www.sootoday.com>]



"Please consider this letter as my announcement as a potential candidate for the National Chief of the Assembly of First Nations"



- 1) To ensure the delivery of the universal

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it. Feedback is welcome. Let us know what you think of the Bulletin.

Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

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WWW.GATHERINGPLACEFIRSTNATIONCANNEWS.CA/GOVERNANCE.HTM

For More Information on the Six Nations Reclamation of Land in 'Caledonia' Visit These Sites

The Six Nations 'Reclaimers' Website:

<http://www.reclamationinfo.com/>

The Six Nations Elective Council Website:

<http://www.sixnations.ca/>

The Six Nations Live Radio (Sometimes Updates):

<http://www.ckrz.com/>

The Six Nations Solidarity Website:

<http://sisis.nativeweb.org/actionalert/>