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FIRST NATIONS STRATEGIC BULLETIN

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

AFN National Chief's Speech to Canadian Club: *"Negotiation or Confrontation-It's Canada's Choice"*

AFN National Chief Phil Fontaine during speech at AFN Special Chiefs' Assembly in Ottawa December 2006. (Photo courtesy of Fred Cattroll)

By Phil Fontaine, May 15, 2007.

(Check Against Delivery)

Traditional greeting.

First, I'd like to acknowledge the site of our meeting here today. We are gathered on the traditional territory of the Algonquin people and their **Chief, Kirby Whiteduck of Golden Lake**.

I'd also like to thank the Canadian Club for your invitation to speak. We have a lot in common to talk about… goals for ourselves, our families, our country.

Today I'd like to discuss how we can work together to achieve those goals – for each other and for Canada as a whole nation. And yes, there are ways that you can act… as individuals, as members of the Canadian Club, and as employees and officials of your respective companies and organizations.

You see, since the first treaty was signed with us in 1701, our peoples have believed that cooperation must pave the way to progress. We like to believe that all Canadians feel this way.

Our **modus operandi** to date has been respect…relationship building… negotiation… consensus… agreement.

We prefer to hold our heads high when dealing with the federal government of Canada. It is always our way.

We also believe it is the way of all Canadians.

We also prefer to avoid the negative… disagreement… confrontation… or worse.

And we believe that confrontation pits one side against another in what can only make for negative results.

Consider where that attitude has gotten us.

Obviously, not very far.

First, let's look at the state of our First Nations Peoples.

We must admit that First Nations People in Canada live in the most disgusting and shameful conditions imaginable in any developed country.

In **Pukatawagan**, in Northern Manitoba, **Chief Shirley Castel** tells us that some two-bedroom homes have as many as 28 people living in them. People are forced to sleep in shifts and many parents often go without sleep to ensure their children are able to learn and play.

Overcrowding in Canada generally is 7%, according to Statistics Canada. For our people in rural areas it is 19 per cent.

How many of you would be able to function as parents on a Monday morning without sleep?

Survivors of the Residential Schools policy will soon be receiving a compensa-

Special points of interest:

- **Fontaine's Speech to Canadian Club**
- **AFN's DOA Challenged by Warriors Publications**
- **Angus Reid Polls Canadians on FN Issues**
- **FN's Need to Prepare for Consultations with Crown**
- **Prentice Outs His FN Allies**

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Kamloops Indian Residential School

tion package. It is one step towards healing the loss of culture, language and a number of abuses that were inflicted on First Nations people.

However, the number of First Nations children who have been removed from their families and placed into state care is now three times the number of children who were placed in Residential Schools at the height of their operation.

It is my understanding that this is not usually because of deliberate physical or sexual abuse. It is because of poverty and its terrible consequences.

We have laid a complaint at the **Canadian Human Rights Commission** regarding this.

Further, the **United Nations Convention on the Rights of the Child** states that child welfare providers should not remove children from their homes due to poverty. Instead, impoverished families must be provided with the means to safely care for their children.

The Convention spells out the rights of children very clearly: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life.

“the number of First Nations children who have been removed from their families and placed into state care is now three times the number of children who were placed in Residential Schools at the height of their operation”

Remember that Canada is a signatory to this convention.

But aside from this breach of the UN Convention, imagine the effects on our children of removing them from their homes.

Imagine the fear, the loneliness, the loss of language and culture, and family ties – all over again.

And imagine if you returned to your home today to find that your child had been taken away and put into state care. Think of what it would do to them emotionally… and to you.

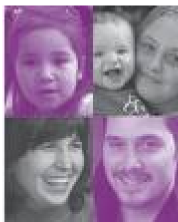
In November of 1989, all parties in the House of Commons joined to vote unanimously to work to eliminate child poverty by the year 2000. The statistics for 2006 show that one in every six children in Ontario lives in poverty – and for Aboriginal children across Canada that number is one in four.

Unfortunately, while programs do exist to assist First Nations families and children, for the past 11 years there has been a 2% arbitrary funding cap on core Indian Affairs services.

As a result, First Nations child welfare agencies receive 22% less funding per child than provincial agencies. Indian and Northern Affairs has to reallocate funds from other essential services just to meet the 11% annual growth in maintenance costs for these agencies.

This is blatant fiscal discrimination.

It doesn’t keep pace with inflation and is certainly outstripped by our young and growing population.



The **UN Human Development Index** ranks Canada at about sixth in the world. First Nations on reserves rank somewhere around 63th, according to Indian and Northern Affairs.

And remember **Chretien** used to rave about Canada being the number one country in the world.

The Department’s own officials have warned the federal government that First Nations’ socio-economic status will continue to worsen and the gap widen -- yet these warnings have not been heeded.

And frankly, we are fearful of the effect this is having on the well-being and public safety in our communities.

So here I am again today… hammering away at yet another group.

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Many of our communities have reached the breaking point. The anger and frustration are palpable. People are so tired and fed up with this type of existence – especially when all around them is a better life… and hope.

Living without hope is perhaps the worst aspect of life for so many of Canada's First Nations peoples.

That lack of hope plays out in many ways. Desperation breeds abuse… suicide… crime… civil disobedience.

And what shame this brings to a country like ours… one of the wealthiest countries in the world. What a black mark it is against Canada internationally.

How can Canada continue to hold itself up as an example for other countries.

By now you're probably thinking, yes, we've heard this. The conditions of First Nations communities have been reported on extensively by the media. They've done their part to tell this story and continue to tell it.

And honestly, notoriety due to the state our peoples have been reduced to is not something we wish to continue.

We realize that out of sight is out of mind. And most of our people are conveniently out of sight in rural and isolated communities.

> "We realize that out of sight is out of mind. And most of our people are conveniently out of sight in rural and isolated communities"

But perhaps this scenario will bring home to you exactly how our people exist.

Consider the situation of **Kelly Morrisseau**.

This is a woman - a mother of three - who was stabbed more than a dozen times and left to die off Gamelin Boulevard, near Gatineau Park, a few weeks before Christmas.

She was seven months pregnant at the time.

Kelly left the **Sagkeeng First Nation community**, north of Winnipeg – where I come from -- when she was three. She moved with her family then to Winnipeg and more recently to Ottawa, where her mom, some of her siblings and other relatives lived.

But life in Ottawa was not what she had hoped. There were no opportunities for her here either. No work. Little hope.

Kelly was found in a parking lot by someone walking their dog early in the morning. She was still alive. She made it to the hospital, but died within an hour, along with her unborn child.

This happened right across the river here.

This was a woman like any other woman in Canada. She had hopes for her children, dreams for her unborn child. She could have been any one of us… our sister… our mother.

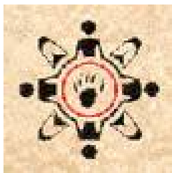
There, but for the grace of God, as the saying goes.

And so where is the public outcry about the loss of Kelly Morrisseau… especially now with the **Robert Pickton trial** underway in BC.

It's estimated that more than 500 First Nations women have disappeared or died violently during the past 30 years.

These are shocking images to think about, I know. They make people feel uncomfortable… It's unfortunate that I have to speak about these realities. But hopefully you'll feel uncomfortable enough to do something about it.

So that's the situation we're left with.



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Now, consider what we've done, as First Nations, to try to eliminate these circumstances.

Think about the number of times and ways - and the number of years - we've been working on these and the other issues that get in the way of our making decent lives for ourselves and our families.

We have been involved in discussions and round tables and negotiations and commissions of inquiry for decades now… decades.

Let me give you a few examples.

In the summer of 1990 – a full 17 years ago now -- the **Oka Crisis** erupted. It led to the establishment of a **Royal Commission on Aboriginal Peoples** in 1992 and the **Specific Claims Commission**. And after four years of study what happened to the report's 400-plus recommendations.

The language used in the report was so hopeful…

"We have been involved in discussions and round tables and negotiations and commissions of inquiry for decades now… decades"

In the Highlights of the report, in a section perhaps appropriately titled **Last Words**, the commissioners stated:

> ***All of us have a part in securing the new relationship - people and governments, Aboriginal and non-Aboriginal organizations, big and small. We have 20 years of building and experimentation to look forward to - using, for the first time in many decades, all the energies of Aboriginal people as they create and live the dream of a Canada that they can share with others and yet be fully at home.***

During that time - and beyond it - we can look forward to a Canada that celebrates Aboriginal heritage and draws strength from Aboriginal peoples as full partners in a renewed federation.

So where did the authors of this report go wrong. Why have so many peoples' ideas and opinions been left to collect dust.

I call for a new relationship… one of mutual respect.

The report also clearly spoke of the consequences of inaction:

> ***History and human decency demand restoration of fair measures of land, resources and power to Aboriginal peoples. On those foundations, self-respect and self-reliance will grow steadily firmer in Aboriginal communities. In their absence, anger and despair will grow steadily deeper - with conflict the likely result.***

The Commission proposed a 20-year agenda for change… 20 years. It would have been completed in just a few years from now.

Here's another example of our efforts.

In 2004 we embarked on another plan to try to get things moving – the **Canada-Aboriginal Roundtable process**. Over 18 months we engaged approximately 1000 people across the country to put forward their best ideas and best solutions to issues we and the government of Canada face.

This was First Nations peoples – individuals like yourselves – coming forward with open hearts, open minds, and in the spirit of good faith.

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The solutions that were reached then were agreed to in Kelowna, in a **First Ministers’ meeting in 2005** and – as you are all aware – the **Kelowna Accord** was shelved by the current government. What a missed opportunity…

Is this a government that thinks it can do better than First Nations peoples on issues regarding our own self-determination? Is it prepared to do better?

Does it have better ideas?

If so, let’s hear them.

The conservatives’ own campaign material states the following:

A Conservative government will:

- ***Accept the targets agreed upon at the recent Meeting of First Ministers and National Aboriginal Leaders, and work with first ministers and Aboriginal leaders on achieving these targets and…***
- ***Replace the Indian Act with a modern legislative framework which provides for the devolution of full legal and democratic responsibility to aboriginal Canadians for their own affairs within the Constitution, including the Charter of Rights and Freedoms.***

Has this happened? No.

Imagine if First Nations people were in the position of making decisions on self-determination for non-Aboriginal Canadians.

Let’s discuss land claims for a moment.

Currently, there is a backlog of about 1100 specific land claims. And at the current rate that they’re moving through the system the Senate has estimated it will take about 130 years to resolve them – more than a century… that would take us past the year 2100. It’s hard to imagine what Canada will even look like by then.

“Many people ask why First Nations peoples are so angry… at this point you must realize we have a right to be”

The Senate Committee, chaired by **Gerry St. Germain**, has stated that in every case where land claims have been settled it has meant an immediate improvement in the lives of our people.

The Senate’s report, by the way, is the title of my speech today – **<u>Negotiation or Confrontation: It’s Canada’s Choice.</u>**

I’m sure many of you are aware how slowly lawyers and courtrooms operate. In some instances it has taken 28 years of legal wrangling just to get a claim moving.

Most recently, on the issue of the latest federal budget, our organization, the **AFN**, made more than 21 presentations to Parliament on many critical issues. We tabled extensive and detailed plans throughout the pre-budget consultation process. And almost weekly our people continue taking their plans and proposals to officials at every level.

And what was the result of this process… We were virtually shut out of the budget.

So, as you can see, First Nations people are beginning to question the so-called rational process.

Many people ask why First Nations peoples are so angry… at this point you must realize we have a right to be.

The question for you is, how can we make this right.

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And I’m not talking about some sort of stop-gap measure. We’ve had our Royal Commission, our round tables and negotiations for decades now… decades.

Our people won’t be put off any longer… or side-tracked. Side-issues aimed at deflecting attention away from our core problems will not work.

And whisper campaigns that try to undermine the confidence non-aboriginal Canadians have in our ability to responsibly govern our own affairs are being met with the facts – clear and simple.

Our governments have proven they are accountable and are more than willing and able to take on new challenges. The will of the Canadian public includes action on First Nations issues. Canadians want this resolved.

The deal that came out of the First Ministers Meeting in Kelowna had widespread support from Canadians because it was viewed as a solid plan.

We have a number of ideas and initiatives that you, your colleagues and the leaders of your organizations and companies, can be involved in.

“Our people won’t be put off any longer… or side-tracked. Side-issues aimed at deflecting attention away from our core problems will not work”

We’ve reached out with the **Make Poverty History campaign** to engage all Canadians. Go to our website and sign the petition. E-mail the link to your children. See how fast they’ll spread it around. Help organize or participate in an event. Be part of a world-wide initiative that is making a difference.

Closer to home, push for land claim settlements. Push for the settlement of the claim right here in your own backyard, at the **old Rockcliffe airbase, on Algonquin territory**. Land claims settlements are one of the most direct routes to self determination for us. Call or e-mail your Member of Parliament. It’ll take two minutes of your time.

Hold your officials accountable.

The **Conference Board of Canada**, as long ago as 1993, stated that unresolved land claims create a major barrier to investment on First Nations lands. This doesn’t have to be.

As we’ve seen in BC recently, First Nations have become so frustrated trying to resolve land claims they’ve begun direct negotiations with the companies involved in resource development on their lands. In effect, they’ve started bypassing the federal government.

Demand that First Nations be given a fair share of resource revenues. Canada’s economy was built on its natural resources and they have made it one of the wealthiest countries in the world. Non-aboriginal peoples have taken full advantage of this richness. It’s time that we received our fair share.

Get involved in procurement and investment. We believe there are tremendous opportunities in the area of procurement. And large companies can easily encourage their suppliers to work with First Nations. We are open for business.

Start providing employment opportunities. Target our people. Lately the media has concentrated on stories relating to the aging population and impending shortage of labor. Just to give you an idea of our population figures, we have more than 750,000 status people – that’s equal to the population of Ottawa. And more than half our population is under the age of 23.

We also know companies that are moving employees from other countries to Canada when we have this largely untapped source of labor right here at home.

We’ve established the **Corporate Challenge** to make our plans for recognition, investment and implementation known and we’re looking for new partners in this initiative. To date **Siemens Canada** and **Bell Canada** have signed **Memorandums of Understand-**

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ing…and companies like **Adobe**, **SixTech**, **Encana** and the **Royal Bank** are all stepping up to this challenge.

Fontaine & Prentice during AFN demonstration, December 2006. (Photo courtesy of Fred Cattroll)

Join them.

Sign a Memorandum of Understanding with the AFN. Draft a plan for addressing any or all of our four key areas: procurements, investments, partnerships and employment. These are the areas where many of you excel.

Take a seat at our **Corporate Table for Peer Review and Dialogue** where we discuss business relationships and ventures to directly reduce the economic gap between our people and other Canadians.

The Corporate Table will publish an Annual Report on the state of the First Nations Economy.

We are also planning an **Economic Summit** where the results of the National Chief's Corporate Table will be made public.

And from there the Corporate Table will provide a forum for international dialogue and action on sustainable economic development with indigenous peoples, internationally.

I'm encouraged by the genuine interest of people I've talked to about this and together I do believe we can achieve important results.

So in closing I have to repeat that we've had the discussions, the talks, the negotiations. The time for that is coming to a close.

As First Nations People we want the same things you want, as written in your Constitution Act in 1867. In fact, it's what all people want -- peace, order and good government.

There has been a lot of discussion in the media about the possibility of a long, hot summer – about the possibility of blockades like the one we saw recently on the **Toronto-Montreal rail corridor**.

I am not about to dispel this concern. The frustration people feel is very real. And as I've tried to explain today, there are other ways.

June 21st, the first day of summer, is National Aboriginal Solidarity Day in Canada and following those celebrations we will be holding a **National Day of Action on Friday, June 29th** to reach out to all Canadians who want to join us in demonstrating that we all want to work towards solutions.

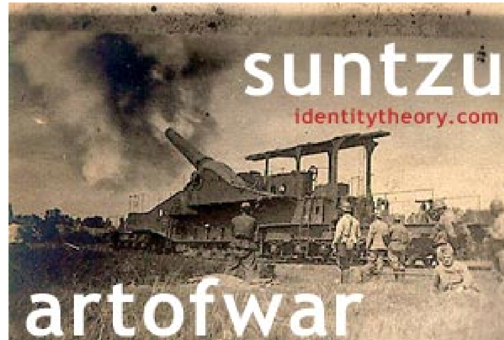
> "we will be holding a **National Day of Action on Friday, June 29th** to reach out to all Canadians who want to join us in demonstrating"

We want this to be a positive experience and an educational one for all Canadians. Events are being planned across Canada and in the National Capital. As a show of support, we invite you to come out and participate in them, either as a group, or as individuals. And bring your families.

Thank you. Meegwetch.

(Questions from the audience)

Discussion Paper on National Day of (In)Action Proposed by AFN



"***Act when it is beneficial, desist when it is not.***"
Sun Tzu, The Art of War

From: Warrior-Publications@hotmail.com

Date: May 21, 2007.

The **Assembly of First Nations (AFN)** has called for a '***National Day of Action***' to occur on June 29, 2007. The purpose of this is to pressure the federal government into providing more funding for Native programs & services. Specifically, it is in response to the recent federal budget, which did not allocate enough funding for Native peoples, according to the **AFN**.

While **Indian Act Chief Terrance Nelson** of the **Roseau River band** in Manitoba has called for 24-hour blockades of railway lines, **AFN Grand Chief Phil Fontaine** has been downplaying the call for militant action, saying that the '***day of action***' is meant to consist of peaceful protests by Natives across the country. But he can't control what individual Chiefs & Bands choose to do, he added.

"**AFN Grand Chief Phil Fontaine** has been downplaying the call for militant action, saying that the '***day of action***' is meant to consist of peaceful protests"

Fontaine's distancing from blockades and other actions may be due to government threats to cut funding to Bands that do engage in economic disruption, such as blocking railways or highways. **Ovide Mercredi**, a former AFN Grand Chief & current Band Council Chief, also released a statement saying direct actions would be counter-productive and lead to a loss of public support for Native peoples.

The AFN, which is comprised of **Indian Act Chiefs** from over 600 bands across Canada, is especially vulnerable to funding cuts since it is a government funded organization.

As noted, the **AFN's** main goal in its '***day of action***' is to gain more funding, which it claims is necessary to making Natives equal citizens in Canada. This is indicative of the assimilation that the AFN promotes. Like the Band Council system it is based on, the purpose of the AFN is to control Native peoples and to administer government policies. Canada's strategy has always been to assimilate Natives, and this is why it established the Band Councils and, later, the AFN.

Part of the Band Council's & AFN's ability to control Native peoples is to appear as an oppositional force against the government. This creates the illusion that they truly represent the interests of the people, and not the government that created & sponsors them. The AFN's attempt to portray itself as more aggressive in its relationship with government may stem from a recent rise in Native militancy, including the **2006 Six Nations land reclamation in Caledonia, Ontario**.

At the same time, the AFN & Chiefs really are engaged in a struggle with the government, not only for more money but also for power & authority. They use genuine Native resistance & the threat of an uprising as political leverage, promoting themselves as the '***rational***' alternative for negotiated settlements that, if ignored, will lead to violence & chaos.

Sometimes, the Chiefs and Band Councils even sound militant, advocating direct action and resistance. In the end however, they never really do anything, and certainly not in a way that challenges the colonial system.

Last year, **Chief Nelson** also threatened a train blockade on the same day, but backed out in the last minute.

According to **Sun Tzu**, before we make alliances we must know the strategy & intentions of any potential allies. In the case

'AFN-DOA' continued from page 8

of the AFN, we already know what this is. It isn't liberation or defending the land, it's assimilation and capitalism, which is all about oppression and resource exploitation.

It would be a mistake to engage in any actions on July 29, 2007, as this will only serve to legitimize the AFN and the Indian Act Chiefs. If there are protests & blockades across the country, people here & around the world will think the AFN is strongly supported by Natives. Many Natives may even believe this.

As it is, because the AFN and Band Councils do not have widespread support, there will likely be little direct action taken, and only a handful of protests across the country. This is probably why **Fontaine & the AFN** have also distanced themselves from actions such as **Chief Nelson's** proposed train blockade. If nothing happens, everything went according to plan (peaceful protests). If there are blockades & occupations, then it will bolster the AFN's '***bargaining***' position with the government.

Either way, our struggle will not be advanced. Instead, it will only add to the level of confusion & misunderstanding perpetrated amongst our people by groups such as the AFN. In a struggle for liberation, we must make a clear distinction between ourselves and our opponent, including those who collaborate and act as neo-colonial agents for the enemy. We must not let our struggle be determined by traitors & sell-outs, Aboriginal capitalists with no principles but the accumulation of more wealth & power, the local agents for a corrupt & oppressive colonial regime.

"We must not let our struggle be determined by traitors & sell-outs, Aboriginal capitalists with no principles but the accumulation of more wealth & power"

In the Spirit of Total Resistance:

BOYCOTT the AFN's 'National Day of (In)Action' on June 29, 2007!

WHAT DO YOU THINK?: Warrior-Publications@hotmail.com, Subject: AFN DOA

Warning: responses will be recorded by government security forces. Use anonymous email address from publicly accessible computer if counter-surveillance is important to you, and especially if discussing tactics & strategies.

Related News to AFN National Day of (In)Action

Train Sabotage & Blockades

On May 16, 2007, it was reported in corporate media that a video "***primer on sabotage***" was uploaded to the popular **YouTube internet site**, containing instructions on how to shutdown railway lines by wrapping thick copper around the rails, thereby triggering safety sensors that will delay (although not derail) passing trains.

The video showed night-time footage of a person wrapping a copper wire around railroad tracks. A preamble to the video stated: "***At a time when money is more powerful than justice, governments need financial (dis)incentives to live up to their own laws.***"

Both **Canadian National** & **Canadian Pacific Railway**, along with the **Federal Transportation Department**, demanded that YouTube remove the video, posted by a group calling itself the **Railway Ties Collective**. It is unknown if this is a Native group, or another acting in solidarity with Natives. The video has been portrayed as being linked to the AFN's proposed '***day of action***' on June 29.

Fiona MacLeod, a Transport Canada spokesperson, stated in response to the video "***We're obviously quite concerned about safety and the security of the railway network is a priority.***"

According to CN spokesperson **Mark Hallman**, the video "***depicts illegal activity and it***

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also displays dangerous behaviour." The next day, YouTube removed the video.

Meanwhile, CN is seeking a permanent injunction against **Mohawks on the Tyendinaga reserve** in eastern Ontario for blocking more than 50 trains last April 20, 2007, which caused an estimated $100 million in losses and caused the diversion of more than 3,000 passengers during a 24-hour period. Last year on the same day, the Tyendinaga Mohawks blockaded the same tracks in response to the police raid on Caledonia.

During a speech to the conservative **Canadian Club of Ottawa** on May 15, **Phil Fontaine, Grand Chief of the AFN**, remarked on CN's proposed lawsuit against the Mohawks for economic losses, saying "***I was really disturbed recently when I heard CN was going to start suing the people who were responsible for the obstruction in their ability to make money. But what the CN spokesman didn't say is that they occupy and possess all sorts of First Nations land***"

("Chief's call for calm arrives with a warning," National Post, May 16, 2007).

"We do not need simplistic calls for 'action' for action's sake (or for more money): we need a resistance movement capable of taking action to defend our land & peoples"

AFN on the Warpath?

Assembly of First Nation's Grand Chief Phil Fontaine has been beating the war drums lately, apparently upset that the federal government has not added more funding to the **Indian Act apartheid system in Canada**, from which he earns his living. Fontaine has called for a **National Day of Action this June 29** to put political pressure on the government. To this end, he recently addressed the conservative Canadian Club of Ottawa with a speech entitled "***Negotiation or Confrontation: It's Canada's Choice.***"

During the speech, Fontaine is quoted as saying "***Many of our communities have reached the breaking point. The anger and frustration are palpable. People are so tired and so fed up with this type of existence-especially when all around them is a better life.***"

What type of existence is Mr. Fontaine referring to? It's certainly not his, since he receives a salary comparable to many other corporate executive officers or high-priced lawyers. What's more, "***this type of existence***" of poverty & oppression for most Natives is maintained, in part, by the AFN and the Indian Act Band Councils (who are part of the problem, not the solution).

Considering the recent history of Indigenous resistance in this country, from **Oka 1990** to **Ts'peten & Ipperwash in 1995**, **Burnt Church in 2000**, **Caledonia in 2006, etc.**, when Natives took direct action across the country, it seems revealing that of all things for the AFN to declare a national day of action around, it's to get more money from the government! Not even the murder of **Dudley George** at Ipperwash in 1995 moved the AFN to call for a day of action (instead, they appealed for silence & submission).

Some people say the **AFN's proposed DOA** should be supported, because action is needed and so too is unity. But we don't need the AFN or the Band Councils to organize us into '***action***'. We know when it's necessary; people put their lives & freedom on the line when the time comes to do so (and when they are able). And we do it not for money, but to defend our people and the land. And when we do, where is the AFN? Usually in the back, trying to elbow their way to the front, with self-serving statements undermining our struggle & determination.

We do not need simplistic calls for 'action' for action's sake (or for more money): we need a resistance movement capable of taking action to defend our land & peoples. While unity is necessary, how can we unite with collaborators whose very purpose is to promote assimilation within our communities (and whose existence is itself a form of division)?

* * * *

ANGUS REID STRATEGIES POLL: Aboriginal Protests-Rail Blockades Unjustified Say Canadians

Rail blockade by Mohawks of the Bay of Quinte, April 20, 2007. (Photo by Jonathan Hayward/CP)

- **Over half of Canadians (56%) believe Aboriginals are unjustified in blocking railway lines over land claims disputes**
- **Nearly seven-in-ten of Canadians (68%) believe the government should speed up the land claims process**
- **Two-thirds (67%) say native leaders should be penalized if federal money used for blockades**
- **Three-in-five (60%) agree federal government should do more to alleviate native poverty**

From May 22 to 23, 2007, Angus Reid Strategies conducted an online survey among a randomly selected, representative sample of 1,097 adult Canadians. The margin of error for the total sample is +3.0%, 19 times out of 20. The results have been statistically weighted according to the most current education, age, gender and region Census data to ensure a sample representative of the entire adult population of Canada. Discrepancies in or between totals are due to rounding.

[VANCOUVER - May 31, 2007] – Recent Aboriginal protests over land claims do not have the support of most Canadians, a new Angus Reid Strategies poll has found.

In the past few weeks, Aboriginal groups have blocked railway lines to protest slow negotiations on over 800 native land claims. But in the online survey of a representative national sample, over half of respondents (56%) say these blockades are unjustified, with 44 per cent saying such actions are completely unjustified.

Canadians over 55, and those voting Conservative in the next federal election, are much more likely to say the blockades are completely unjustified, with this response coming from 58 per cent and 68 per cent of these groups respectively.

Earlier this month, Indian Affairs Minister Jim Prentice warned native leaders of financial penalties in the event federal money is used to plan blockades. Two-in three Canadians (67%) share Prentice's opinion, with high agreement coming from Manitoba and Saskatchewan, and Quebec. Conservative voters (85%) are also highly likely to agree.

However, the vast majority of Canadians express sympathy with Aboriginals regarding the core issue behind the blockades. Nearly seven-in-ten Canadians (68%) believe that the government should speed up existing Aboriginal land claims disputes. Liberal voters and those from Ontario and Manitoba and Saskatchewan are most likely to agree with this sentiment.

And overall, Canadians are very sensitive on the inadequacies of native communities. Three-in-five (60%) believe the government should do more to deal with poverty in Aboriginal communities. Support is especially high from those in Ontario, the Atlantic provinces, and Liberal and NDP voters. Conservatives are markedly split on this issue,

In general, those with university education are especially sympathetic to the aboriginal cause. Compared to other educational groups, a relatively high percentage of respondents with university education be-

"the vast majority of Canadians express sympathy with Aboriginals regarding the core issue behind the blockades. Nearly seven-in-ten Canadians (68%) believe that the government should speed up existing Aboriginal land claims disputes"

‘Poll Results’ continued from page 11

lieve native land claims should be dealt with faster, that blockades are justified, that aboriginal leaders should not be penalized for using federal money for blockades, and that the government should do more on native poverty.

Canadians do not support native rail blockades

Q. As you may know, Aboriginal protesters have blockaded railway lines in recent weeks, as part of ongoing land claims disputes. Do you think these actions are justified?

		Region					
	Total	BC	AB	MB/SK	ONT	PQ	ATL
Completely justified	11%	15%	10%	2%	15%	5%	17%
Moderately justified	24%	23%	21%	27%	26%	24%	17%
Moderately unjustified	12%	10%	10%	9%	14%	11%	11%
Completely unjustified	44%	43%	48%	55%	39%	48%	42%
Not sure	9%	10%	11%	8%	7%	12%	13%
(net) Justified	35%	38%	32%	29%	41%	29%	34%
(net) Unjustified	56%	53%	58%	63%	52%	59%	53%

		Education			Federal vote in next election		
	Total	HS or less	College/Tech school	Univ+	Cons	Lib	NDP
Completely justified	11%	13%	8%	13%	5%	12%	19%
Moderately justified	24%	23%	22%	26%	13%	31%	27%
Moderately unjustified	12%	8%	13%	14%	8%	14%	12%
Completely unjustified	44%	45%	48%	38%	68%	39%	34%
Not sure	9%	10%	9%	9%	6%	5%	8%
(net) Justified	35%	36%	30%	39%	18%	43%	47%
(net) Unjustified	56%	53%	61%	52%	76%	52%	45%

Canadians want the government to speed up existing land claims disputes

Q. Do you agree or disagree with these statements?
The federal government should speed-up existing Aboriginal land claims disputes

		Region					
	Total	BC	AB	MB/SK	ONT	PQ	ATL
Agree	68%	69%	57%	70%	76%	61%	64%
Disagree	20%	18%	30%	18%	15%	24%	26%
Not sure	12%	13%	13%	12%	10%	16%	10%

		Education			Federal vote in next election		
	Total	HS or less	College/Tech school	Univ+	Cons	Lib	NDP
Agree	68%	63%	68%	74%	58%	81%	69%
Disagree	20%	24%	20%	15%	29%	12%	26%
Not sure	12%	13%	12%	12%	12%	7%	5%

'Poll Results' conclusion from page 12

Native leaders should be penalized if federal money is used on blockades

Q. Do you agree or disagree with these statements?
Native leaders should be penalized if federal money is used to plan blockades

	Total	Region					
		BC	AB	MB/SK	ONT	PQ	ATL
Agree	67%	59%	60%	80%	66%	71%	69%
Disagree	17%	22%	24%	8%	20%	12%	15%
Not sure	16%	19%	17%	12%	15%	16%	16%

	Total	Education			Federal vote in next election		
		HS or less	College/Tech school	Univ+	Cons	Lib	NDP
Agree	67%	70%	73%	57%	85%	63%	67%
Disagree	17%	15%	12%	25%	8%	18%	24%
Not sure	16%	14%	15%	18%	7%	18%	9%

More should be done to deal with native poverty, say Canadians

Q. Do you agree or disagree with these statements?
The federal government should do more to deal with poverty in Aboriginal communities

	Total	Region					
		BC	AB	MB/SK	ONT	PQ	ATL
Agree	60%	55%	54%	51%	67%	57%	64%
Disagree	28%	29%	40%	33%	25%	29%	24%
Not sure	11%	16%	6%	16%	8%	15%	12%

	Total	Education			Federal vote in next election		
		HS or less	College/Tech school	Univ+	Cons	Lib	NDP
Agree	60%	57%	55%	70%	43%	77%	72%
Disagree	28%	28%	34%	22%	45%	18%	21%
Not sure	11%	15%	11%	8%	13%	4%	7%

Angus Reid Strategies is a North American full-service polling and market research firm which is a leader in the use of the Internet and rich media technology to collect high-quality, in-depth insights for a wide array of clients. Dr. Angus Reid and the Angus Reid Strategies team are pioneers in online research methodologies, and have been conducting online surveys since 1995. Located in Vancouver, Calgary, Toronto, and Montreal, our team of specialists provides solutions across every type and sector of research.

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CROWN & ABORIGINAL DUTIES PRACTICAL IMPLICATIONS: Looking at Corresponding Aboriginal Duties-It Takes Two to Tango

Logo of the Indigenous Bar Association

David Nahwegahbow, Lawyer, speaking at the National Claims Research Workshop in Ottawa, November 2006. (Photo by R. Diabo)

I. INTRODUCTION

Much has been written regarding the Crown duty to consult and accommodate First Nations with respect to their interests and rights, since the landmark cases of *Haida*[1] and *Taku*[2] were delivered in 2004. As a result of these cases, we now know who is obligated to consult, when the duty is triggered and the degree of consultation required. We even have a clearer picture on the role industry in the consultation process.

The Supreme Court articulated that the duty to consult in based on the honour of the Crown and not strictly on the Crown's fiduciary duties. This means that both levels of government, while within their legislative jurisdictions, must act honourably when their conduct, actions or decisions have the potential to impact upon asserted Aboriginal and treaty rights, even prior to the determination of those rights by the courts or through a land claims settlement.

The *Haida*, and *Taku* cases have touched on the role that First Nations must take in the consultation process. The approach of this presentation will be to discuss and review the corresponding duties on First Nations with respect to the consultation process. The outline of this paper follows the questions posed in the agenda:

- The duty to participate in the consultation process;
- Is there a duty on First Nations to act honourably;
- A First Nations understanding of the duty; and
- Information required to fulfill the duty.

"There is a reciprocal duty on Aboriginal peoples to express their interests and concerns once they have had an opportunity to consider the information provided by the Crown"

research approaches

II. THE DUTY TO PARTICIPATE IN THE CONSULTATION PROCESS

Prior to *Haida,* there were many cases that dealt with consultation. *Sparrow,* mentioned consultation as part of the justification test and said that at minimum Aboriginal people should be informed of a decision that is going to have an impact on them.[3] *Nikal* added that the justification process and consultation should include a standard of reasonableness, Cory J. wrote: "So long as every reasonable effort is made to inform and to consult, such efforts would suffice to meet the justification requirement."[4]

In *Halfway River*[5], the Court of Appeal stated that the First Nations had a reciprocal duty and had to consult in good faith.

There is a reciprocal duty on Aboriginal peoples to express their interests and concerns once they have had an opportunity to consider the information provided by the Crown, and to consult in good faith by whatever means are available to them. They cannot frustrate the consultation process by refusing to meet or participate, or by imposing unreasonable conditions…[6]

In *Haida*, the Supreme Court stipulated the conditions upon which consultation should take place and mainly focused on the Crown's obligation to consult. The duty for the Crown to engage in consultations is triggered when the Crown has real or constructive knowledge of an Aboriginal right or title and is contemplating conduct that may affect those rights as was articulated clearly by Chief Justice McLachlin in *Haida Nation* at paragraph 35:

But, when precisely does a duty to consult

'Aboriginal Duties' continued from page 14

arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it: Halfway River First Nation v. British Columbia (Minister of Forests) [1997] 4 C.N.L.R. 45 (B.C.S.C.) at p. 71 per Dogan J.

In *Haida*, the Supreme Court said that it was the Crown who had to "participate" in the process, but said nothing of a requirement for First Nations to do so:

Put simply, Canada's Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s.. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.[7] (Emphasis added)

Of course, "it takes two to tango". Moreover, the Supreme Court does mention that there is an expectation on the part of the First Nations to consult in good faith and not frustrate the process, which naturally implies participation.[8]

"The duty to negotiate does not give First Nations a veto; they must also make bona fide efforts to find a resolution to the issues at hand"

It was not until a year later, when the Court ruled on consultation in the treaty context, in the *Mikisew Cree* case[9], that the role of First Nations with respect to participating in consultations was further clarified. As part of the consultation process, after the Crown provides notice and information about the potential impact, Aboriginal communities have an *onus* to respond to such notice and are expected to carry their end of consultation. In *Mikisew Cree,* the Court said that there is a reciprocal onus on First Nations with respect to consultation:

It is true, as the Minister argues, that there is some reciprocal onus on the Mikisew to carry their end of consultation, to make their concerns known, to respond to the government's attempt to meet their concerns and suggestions, and to try and reach some mutually satisfactory solution.[10]

The concept of First Nation participation and a reciprocal duty to consult was also articulated in *Platinex Inc.* v. *Kitchenuhmaykoosib First Nation*[11] where the Ontario Superior Court said that after the Crown provides notice and information of the proposed activity, gathers the views of the First Nation and proceeds to meaningfully consult, First Nations must make *bona fide* efforts to find resolutions and that there is a reciprocal duty to consult:

The Crown must first provide the First Nation with notice and full information on the proposed activity; it must clearly inform itself of the practices and views of the First Nation; and it must undertake meaningful and reasonable consultation with the First Nation.

The duty to consult, however, goes beyond giving notice and gathering and sharing information. To be meaningful, the Crown must make good faith efforts to negotiate an agreement. The duty to negotiate does not mean a duty to agree, but rather requires the Crown to possess a bona fide commitment to the principle of reconciliation over litigation. The duty to negotiate does not give First Nations a veto; they must also make bona fide efforts to find a resolution to the issues at hand.[12] (Emphasis added)

The Court went on further to state:

The duty of the Crown to consult should not be interpreted as a veto in favour of First Nations people.

‘Aboriginal Duties’ continued from page 15

The duty to consult is a reciprocal duty and the Crown as well as the Aboriginal party involved must approach this duty by showing ongoing good faith efforts to reach a consensus.[13]

In *Haida*, the Court said third parties do not have an obligation or duty to consult. However, most in industry have taken the position that it is in their best interests to engage directly with First Nations. This is partly due to the fact that, even though they may not have a legal duty, they are the ones most directly affected by a failure on the Crown to properly consult. As we know, this might involve litigation or blockades, which can easily be avoided by good faith consultation. So, it is in the interest of industry to consult to ensure that the Crown effectively discharges its duty. This is evidenced in the *Platinex* case.

In these cases, given that industry does not have a duty to consult, but wishes to do so anyway, what becomes of the First Nation duty to reciprocate? In my view, it cannot be reasonably inferred that, absent the Crown, the First Nation will be have a duty to participate or stay actively engaged in consultations with industry. This is only fair since industry does not have a legal duty to consult either. However, it may makes good sense for both to stay engaged to produce mutual benefits.

> “First Nations do have a legal duty to participate in the consultation process with the Crown once the duty is triggered. In some cases, it will be triggered by the First Nations themselves by notifying the Crown of their interests”

First Nations do have a legal duty to participate in the consultation process with the Crown once the duty is triggered. In some cases, it will be triggered by the First Nations themselves by notifying the Crown of their interests.

III. IS THERE A DUTY ON FIRST NATIONS TO ACT HONOURABLY?

The concept of acting honourably usually comes up in the context of Crown-Aboriginal relations, as it pertains to conduct of the Crown. It is rooted in Crown assertions of sovereignty and reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown, as indicated by the Supreme Court of Canada in the *Haida* case.

The government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples: see for example R. v. Badger, [1996] 1 S.C.R. 771, at para. 41; R. v. Marshall, [1999] 3 S.C.R. 456. It is not a mere incantation, but rather a core precept that finds its application in concrete practices.

The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown”: Delgamuukw, supra, at para. 186, quoting Van der Peet, supra, at para. 31.[14]

And;

Put simply, Canada’s Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.[15]

The “honour of the Crown” forces the Crown to always act honourably when it is dealing with Aboriginal people and their rights, even their asserted rights. The goal is to achieve reconciliation with Aboriginal peoples. The duty to act honourably is a legal duty and it

‘Aboriginal Duties’ continued from page 16

arises because of the power which the Crown holds over Aboriginal peoples.

It is clear that First Nations are the vulnerable party in the power-relationship with the Crown, so they do not have a legal duty to act honourably in the same way the Crown does. However, First Nations do have a duty to reciprocate, where the Crown wishes to engage in good faith consultations with them. In Haida, the Court said that the honour of the Crown requires the Crown to act in good faith to provide meaningful consultation; and the Court went on to say that good faith is required by both sides at all times.[16]

According to the Supreme Court of Canada, First Nations must consult in good faith and have a duty not to frustrate the Crown’s reasonable good faith attempts at consultation; they should not take unreasonable positions to thwart government decisions:

At all stages, good faith on both sides is required. The common thread on the Crown’s part must be the “intention of substantially addressing [Aboriginal] concerns” as they are raised in (Delgamuukw, supra, at para. 168), through a meaningful process of consultation. Sharp dealing in not permitted. However, there is no duty to agree; rather the commitment is to a meaningful process of consultation. As for Aboriginal claimants, they must not frustrate the Crown’s reasonable good faith attempts, nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached: see Halfway River First Nation v. British Columbia (Minister of Forests), [1999] 4 C.N.L.R. 1 (B.C.C.A.), at pg. 44; Heiltsuk Tribal Council v. British Columbia (Minister of Sustainable Resource Management) (2003), 19 B.C.L.R. (4th) 107 (B.C.S.C.). Mere hard bargaining, however will not offend Aboriginal peoples’ right to be consulted.[17]

“First Nations do not have a legal duty to act honourably, they do have a duty to reciprocate in good faith consultations once the Crown has made a commitment to consult in good faith with them”

To conclude on this point, while First Nations do not have a legal duty to act honourably, they do have a duty to reciprocate in good faith consultations once the Crown has made a commitment to consult in good faith with them. In practical terms, this makes good sense, as conceivably, it would make for more successful negotiations that would be beneficial to First Nation communities. This argument gains more credibility when we look at the reasoning behind the honour of the Crown, and that is to achieve reconciliation and balance the interests of Aboriginal claims with those interests of society pending the resolution of their claims.

IV. A FIRST NATIONS UNDERSTANDING OF THE DUTY

What is the First Nation understanding of the duty to consult? This has evolved over the years. In the early days and years prior *Haida* and *Taku,* many First Nations did not see consultation as a viable source of power to advance their Aboriginal rights and interests. In fact, many First Nations were reluctant to participate in consultation processes for fear of having their rights somehow eroded or diluted. This was mainly due to the fact that, consultation previously arose out of the *Sparrow* justification test, where governments were consulting First Nations for the purpose of justifying infringements. Attempts by government officials to engage in consultation were viewed with suspicion. “Consultation” was viewed as a risk to First Nations to which there was little or no corresponding benefits.

This is still partly true and I think it is due to several factors:

- the failure or refusal on the part of the Crown to grasp the meaning of “meaningful consultation”;
- the failure or refusal on the part of the Crown to relinquish some of its decision-making authority or power to enable “meaningful consultations”;
- the lack of a clear set of mutually developed rules to guide the process of consultations between the Crown and First Nations;

'Aboriginal Duties' continued from page 17

- the lack of adequate resourcing for First Nations to develop the capacity to participate in meaningful consultations.

Despite these lingering problems, since *Haida and Taku, it has become clearly* evident across the country that First Nations are taking the duty to consult seriously, and now have a different perspective. First Nations view the duty to consult as a very viable avenue, to join industry and governments to gain the economic benefits that accrue when dealing with natural resources. In fact and in reality, it is the only immediate practical avenue. This is a new era for First Nations when it comes to economic benefits and natural resources, especially since those natural resources are located within their traditional territories and reserve lands.

The development in the law on consultation will allow for reconciliation, in ways that actually benefit First Nation communities. According to principles ennunciated in *Haida,* First Nations must be consulted at the strategic planning stage. The duty to consult is not fulfilled if it only involves consultation that occurs at the operational level. This enables First Nations to contribute to decision-making at higher levels where resource allocations are made. It also enables First Nations to be involved in land use planning and in local economic development. First Nations are demanding that the Crown provide greater access to resources and resource-revenue sharing.

> "From a legal standpoint, many First Nations do not yet have the capacity to respond to the demands of consultation; nor do they realize the complexities and intricate details that are involved in consultation law"

Many First Nations are also engaging industry directly, employing the usage of impact benefit agreements (IBAs). These agreements are signed between First Nations and industry to establish formal relationships to address the impacts of development while at the same time securing economic benefits.

From a legal standpoint, many First Nations do not yet have the capacity to respond to the demands of consultation; nor do they realize the complexities and intricate details that are involved in consultation law. It is important, for lawyers to properly brief their clients regarding the duties of the Crown and the corresponding duties on First Nations. These duties include consulting in good faith and refraining from frustrating the process. It will be critical for First Nations to understand what the terms "good faith," "honour of the Crown" and "reciprocal duty" mean.

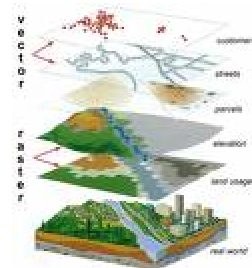
More important, First Nations are not at liberty to remain silent or take a hands-off approach when it comes to consultation. There is a risk that this will be seen as a waiver of their rights or consent to the action being taken. In these circumstances, consultation may proceed without substantially incorporating the concerns and interests of First Nations. Also, if First Nations out-rightly refuse to participate, this may lead a court to conclude that it is acting in bad faith. However, if a First Nation is involved in consultation and somehow determines that the process is flawed or that the Crown is acting in bad faith, then a withdrawal will not constitute consent to the action being taken. In such cases, the First Nation ought to provide reasons for the withdrawal.

It is also important to note that First Nations must make informed decisions in the course of consultation-accommodation processes with the Crown. No one can make proper decisions without having a proper information base upon which to make a decision. Another important point to remember in this connection is that Aboriginal and treaty rights are collective rights – they accrue to a community. Chiefs and Councils are usually the point of contact for consultations, but they have responsibilities to their membership to ensure the collective rights of their members are safeguarded. This will usually involve due diligence in reviewing the project or initiative in question and engaging their community members in the consultation process.

I want to conclude this part of my discussion with a closing reference to the *Platinex* case, where the Court refers to the duty to consult as a "reciprocal duty and the Crown as well as

‘Aboriginal Duties’ continued from page 18

the Aboriginal party involved must approach this duty by showing ongoing good faith efforts to reach a consensus”. What is interesting in this case is the Court’s choice of words: the Court articulated that the parties must show good faith efforts to reach a “consensus.” In my view, the word consensus generally refers to an agreement or harmony, in sentiment or belief. The notion of a consensus is a welcomed concept in Aboriginal circles, as previous case law interpretations favored the fact that the duty to consult did not mean reaching an agreement.[18]



First Nations have always said, felt and believed that they should have more influence on the consultation process. As a result of the failure or refusal of the Crown to relinquish authority, as noted above, many First Nations feel that they are passive bystanders in the process: even though their concerns are supposed to be addressed, often they are not seen as active influential partners in the process. The duty to consult is an important part of the bigger concept of reconciliation between Aboriginal interests and those of the Crown or public interests. If in fact, the notion of consensus takes root, and as First Nations begin to actively involve themselves in the process and push for consensus, I predict that this will further change the landscape of consultations.

V. INFORMATION REQUIRED TO FULFILL THE DUTY

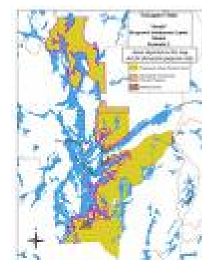
Drawing from what the Court said in *Mikisew*, there is an onus for First Nations to … “to make their concerns known, to respond to the government’s attempt to meet their concerns and suggestions, and to try and reach some mutually satisfactory solution.”[19] The Court in *Haida* also said that First Nation “claimants should outline their claims with clarity, focusing on the scope and nature of the Aboriginal rights they assert and on the alleged infringements.”[20]

In practical terms, what does this mean? Most First Nations do not have the financial or human resources to accomplish what it will take to outline a claim with “clarity.” This is especially true when it involves title to lands, as clarity will undoubtedly mean archival research, land mapping and traditional land use studies. This could be an obstacle to First Nations and to what is required to have meaningful consultations. It is to be noted that the Supreme Court said: “There is a distinction between knowledge sufficient to trigger a duty to consult and, if appropriate, accommodate, and the content or scope of the duty in a particular case. Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate.”[21] It is my view that, as part of its duty to consult, the Crown has a duty to assist First Nations to “outline their claims with clarity”. As such, claimants and their counsel are advised to approach the Crown for funding to carry out the necessary research required to and articulate their interests and claims so that they can contribute in the decisions that will affect them and their lands.

“Most First Nations do not have the financial or human resources to accomplish what it will take to outline a claim with “clarity.” This is especially true when it involves title to lands, as clarity will undoubtedly mean archival research, land mapping and traditional land use studies”

Irrespective of what is required to fulfill the duty to consult, we know for sure that consultations should also take place at the beginning of the decision-making process before there is any action taken.

Generally speaking, to fulfill the duty, consultation processes should include a consultation plan cooperatively developed that speaks to, among other things:



- Identification of First Nation interests, which should outline the impacts, risks and benefits of the action that is proposed.
- Identification of any litigation and how it will be impacted.
- Identification of ongoing treaty negotiations.
- The rules of engagement respecting roles and responsibilities and confidentiality of information.

'Aboriginal Duties' conclusion from page 19

- Environmental impacts and how they will be addressed.
- Identification of how the activity, or how much of it can be addressed by way of economic benefits.
- Identification of the role the First Nation expects to have in the decision-making process.
- Request for funding to participate in the consultation process.
- Make ongoing requests for information and provide the same.

"Identification of the role the First Nation expects to have in the decision-making process"

FOOTNOTES:

1. *Haida Nation* v. *British Columbia*, [2004] 3 S.C.R. 511 [hereinafter *Haida*]
2. *Taku River Tlinglit* v. *British Columbia*, [2004] 3 S.C.R. 550 [hereinafter *Taku*]
3. *R.* v. *Sparrow*, [1990] 1 S.C.R. 1075 at 1119
4. *R.*v. *Nikal* [1996] 1 S.C.R. 1013 at para. 110
5. *Halfway River First Nation* v. *British Columbia (Minister of Forests)* [1999] 4 C.N.L.R. 1 (B.C.C.A.)
6. *Ibid* para 161
7. *Ibid* at para 25
8. *Haida, supra* note 1 at para 42
9. *Mikisew Cree First Nation* v. *Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388,[2005] S.C.J. No.71 [hereinafter *Mikisew*]
10. *Ibid* at para 65
11. [2006] O.J. No. 3140 [hereinafter *Platinex*]
12. *Ibid* at paras. 90-91
13. *Ibid* paras 132-133
14. *Ibid* at paras 16 and 17
15. *Ibid* at para 25
16. *Ibid* at para 41
17. *Ibid* at para 42
18. *Haida, supra* note 1 at para 42
19. *Mikisew supra* note 9 at para 65
20. *Haida supra* note 1 at para 36
21. *Ibid*
22. *Ibid* and *Dene Tha' First Nation* v. *Minister of Environment et al* 2006 FC 1354 [hereinafter *Dene Tha*]

[These materials were prepared by David C. Nahwegahbow, *IPC*, of Nahwegahbow Corbiere and Theresa Bananish, of Bananish Law, Rama Ontario, for a conference held in Ottawa, Ontario, hosted by Pacific Business and Law Institute, April 24 and 25, 2007.]

Why Canadians Side with Militant Indians: *By Any Measure, Indigenous People are Right on Several Major Issues*

By Richard Day, May 20, 2007

It is well known in all quarters that the job of **Phil Fontaine**, as the head of the **Assembly of First Nations**, is to moderate long-standing tensions between his constituents and the Canadian government.

That's why it was rather surprising when Fontaine, speaking recently to the harrumphing curmudgeons at the **Canadian Club**, said that indigenous peoples and agents of the Canadian state are more likely to be meeting on the barricades than in the boardrooms this summer. That's enough to put any captain of industry off his lunch, to be sure, and it should be of concern to all of us.

No one can deny that there has been a gathering wave of direct action over the past months, from the ongoing **Six Nations standoff** to the more recent occupation of a quarry by the **Tyendinaga Mohawk**.

Out west, resistance to the Olympics is being spearheaded by the **Native Youth Movement** and **Harriet Nahanee, a Squamish elder**, was imprisoned for protesting against the expansion of the ironically named Sea to Sky highway (the road to Whistler actually leads to a town-sized shopping mall).

Last week, a group calling itself the **Railway Ties Collective** sent out a news release inviting people to view a video posted on **YouTube** that showed how one might, with a single wire, cause all of the trains on a line to come to a halt. No one knows who produced the video, but there are indications it originated from settlers who support indigenous struggles at Tyendinaga and beyond, and that it was aimed at eliciting further support from non-indigenous activists.

Transport Canada asked YouTube to pull the video, and they complied. It is very likely, however, that it is circulating on other sites and will make its way through the Web to those who want to view it.

What is happening here? Why are so many people, all over the country, apparently giving up on due process and the rule of law? Why are we seeing this resurgence of the "***Indian problem,***" just when we thought we were beyond all of that?

And, perhaps more importantly for the Canadian government, why are so many members of the settler society – non-indigenous Canadians – adding their voices and bodies to this tide of militancy? A simple answer might be: The Canadian state is not itself following the rule of law, nor has it ever done so with regard to indigenous peoples.

The double standards are many and obvious, but this does not stop them from being applied. One need only reverse the roles to see the violence and absurdity of the situation.

Imagine that someone walked up to your front door with a gun, told you to get out of your house, and took it and everything you own. You go to the police, and they tell you to get in a line, they'll deal with you soon. You stand there for a day, a month, a year, several decades, while generations of invaders run your formerly well-kept home into the ground.

This would never happen, of course, to a member of the settler society, but it is, and has been, the norm for the indigenous peoples of the Americas.

If it did ever happen to a "***mainstream***" Canadian, I imagine most people would understand if they decided, even after only a day or two – rather than several centuries – to simply take the house back.

Railway lines have long been iconic fibres, making geographical and symbolic connections that could be said to constitute Canada as we know it. It is therefore fitting that they now are being used to demand justice for the indigenous peoples of this continent, without whose help we would not be here today.

Obviously, disrupting a railway line is an imposition on travellers. Probably commerce will be slowed. It is doubtful, however, that Canadian society will be all but destroyed by these kinds of actions, as so many indigenous societies have been.

Rather, we can hope that it will be improved, that the Canadian government will take this as a clear message to stand by the rule of law, in every case, for every race.

Given the shameful behaviour of our economic and political leaders, it is not at all surprising that many Canadians are siding with militant indigenous groups.

For, by all of the principles that Western civilization holds dear, they are in the right and we are in the wrong.

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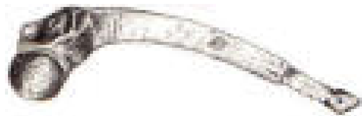

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Exerpt From Proceedings of Standing Committee on Aboriginal Affairs—May 25, 2007

The actual quotes from the Standing Committee are:

Todd Russell: "I can't remember --I was involved for about 13 years--a lower time or a more tense time in terms of the relationship with the federal government and aboriginal peoples since Oka about 15 years ago."

Jim Prentice's response:

"I don't agree with your assessment, and I think if you talked to the leadership of the Federation of Saskatchewan Indian Nations, the Union of Ontario Indians, the Treaty 6, Treaty 7, and Treaty 8 councils in Alberta, the Union of British Columbia Indian Chiefs, and the B.C. First Nations Leadership Council. All of these organizations will tell you that in their view this is one of the best governments that they have ever worked with on the ground getting things done."