VOLUME 10, ISSUES 4-6 APRIL-JUNE 2012

FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

British Columbia Treaty Process Advocate Elected Chair of UN Permanent Forum on Indigenous Issues

Ed John, North American Representative & Chair of UNPFII. (Photo courtesy of UBC Library)

by Kerry Coast

Grand Chief Edward John has spent the past 20 years in the BC treaty process, which produces extinguishment Agreements

The **11th Session of the United Nations Permanent Forum on Indigenous Issues**, the top forum for Indigenous peoples in the world, began with a lurch. The sixteen-member Forum elected, by acclamation, **Grand Chief Edward John** to be their Chair. The announcement was made during a preliminary meeting, May 6, 2012, before the two-week meeting in New York City. Hailing from Tl'azt'en (northern BC), this Chief will be familiar to anyone who has followed the machinations of the BC treaty process over the last twenty years: John was the founding Chair of the **First Nations Summit**, an organization formed to "*represent First Nations*" involved with the **BC Treaty Commission (BCTC)**.

Perhaps, in 1992, the election of a man affiliated with this Summit to Chair the Permanent Forum on Indigenous Issues—understood to be advancing the cause of self-determination, land rights and everything else contained in the **Declaration on the Rights of Indigenous Peoples**, would not be an obvious contradiction in terms. However, twenty years later, after the ratification of two extinguishment treaties in that process, this election must be a point of confusion.

When **Nisga'a** ratified an agreement with British Columbia and Canada in 2000, they released the Nisga'a claim to 100 per cent of their traditional territory in exchange for about 8 per cent of the land back, in Fee Simple Title and with BC holding the underlying title. There were no alarm bells rung by Chief John. Every First Nation in BC was watching that process very closely, as they believed, rightly, that future negotiations in the BC treaty process would follow the Nisga'a template.

When, in 2007, **Tsawwassen** became the first Indigenous people to ratify a Final Agreement produced in the BC Treaty Commission, the text of that document stated:

Tsawwassen First Nation releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, and whether known or unknown, that the Tsawwassen First Nation ever had, now has or may have in the future, relating to or arising from any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Tsawwassen First Nation.

This clause is also to be found in the **Nisga'a Agreement**. It is a surrender, rather than the basis of continuing nation-to-nation relations. Tsawwassen made these concessions for a settlement of less than 1 per cent of their traditional territory, held in Fee Simple. The total cash value of the deal was $33.6 million plus self-government

Special points of interest:

- **Ed John, head of BC Treaty Extinguishment Process, elected as Chair of UNPFII**
- **Phil Fontaine & Bill Erasmus Fail to get Ken Young Permanent job at AFN**
- **Nat'l Chief Candidates Announced**
- **Anti-BCTC Statement delivered at AFN-BC Meeting**

Inside this issue:

Ed John Elected to UNPFII	1
Extinguishing Sovereignty	6
Q: to NC Candidates	7
Fontaine/Erasmus Lose	10
AFN Election Article	17
AFN NC Candidates	19
Anti-BCTC Statement	20

'Ed John UN Rep' continued from page 1

Tsawassen Treaty Signing (Photo courtesy of Bill Keay/Vancouver Sun)

funding of $2.9 million annually over the first five years of the treaty—according to government press releases.

Perhaps Chief John takes a leaf out of then-**Indian Affairs Minister Chuck Strahl's** book, who declared at the time, "*Who am I to say if it's a good deal or not?*"

John is still the Chair of the First Nations Summit today.

Maa-nulth agreed to the same releases when it ratified a Final Agreement in this process later in 2007. Other identical provisions in all three Agreements include the release of Indian Status, including tax-free status; the "*modification*" (extinguishment) of their aboriginal rights to be only those rights exhaustively defined in the Agreements, the dissolution of the Indian Band and the termination of Indian Reserve lands. "*Fee Simple Lands are not 'lands reserved for the Indians*" within the meaning of the **Constitution Act, 1867**, and are not '**reserves**' as defined in the **Indian Act**."

"Chief John has stayed with the process throughout and failed to take any meaningful action to indicate his disapproval of the situation, if he does indeed disapprove. He obviously hasn't resigned in protest"

The role of the First Nations Summit in these "*negotiations*" is, in part, to give advice to the federal government for the allocation of treaty negotiating loans to First Nations for the purpose of developing and ratifying Final Agreements under the **BC Treaty Commission**. These negotiating allowances average a million dollars a year and the 80 per cent which is a loan comes due the moment a First Nation leaves the process or begins implementation of their Final Agreement.

Staying at the table is an offer most First Nations cannot afford to refuse, especially for those who have been at it since 1993, but the only alternative is to ratify an Agreement and extinguish title. Treaty negotiating loans are not included in government audits of First Nations accounts—perhaps because such a loan would immediately place that community in third party remedial management.

Chief John has stayed with the process throughout and failed to take any meaningful action to indicate his disapproval of the situation, if he does indeed disapprove. He obviously hasn't resigned in protest.

Self-determination, recently enshrined in the **UN Declaration on the Rights of Indigenous Peoples**, goes out with ratification of these Agreements as well, replaced by what the governments, the Treaty Commission and the First Nations Summit call "*self-government*"–powers which amount to little more than municipal business under the heavily qualified "*Governance*" chapters. The presence in each Final Agreement of identical chapters, which circumscribe any exercise of self-determination, betrays a theme, one which previous leaders dubbed "*the BCTC Death Row.*"

According to **Chief Negotiator Robert Morales**, **Hul'qumi'num Treaty Group**, in 2007, "*there is one negotiation going on at 47 tables. These were to be government-to-government negotiations, but that's not how it turned out.*"

Maa Nulth Treaty Signing. (Photo by Maa Nulth Treaty Society)

By 2006, the **First Nations Unity Protocol Agreement** included all but one of the treaty-going groups in the province, and had made clear the flaws in the process. Morales said, while Chair of the First Nations Summit Chief Negotiators' table at the time, "*The experience we're having at the Tables and in meetings is that government comes to every table with the same language, with one approach, whether the Nation is small or large, urban or rural. We have realized that we can't change those policies on our own, even at my table where 6,000 people are represented.*"

Since Morales' statements, letters and **FNUPA** actions—which included blockading a Nanaimo ferry sailing with canoes—the **HTG** has been in abeyance from the negotiating table and entered a petition describing the exhaustion of domestic remedies within Canada to resolve the outstanding land title issue. That petition was heard in Washington last year by the **Organization of American States' Inter-American Commission on Human**

'Ed John UN Rep' continued from page 2

Rights, the outcomes of which has not yet been announced.

At the Opening Ceremonies of the **UNPFII 11th Session** at UN Headquarters, **Deputy Secretary-General of the United Nations Dr. Asha-Rose Migiro** noted in her address, "*…we don't have to go far to see examples of Indigenous peoples facing discrimination, even extinguishment.*" As she spoke, Chief John was sitting in front of her.

On the second day of the meeting, an intervention by the **North American Indigenous Peoples Caucus** delivered by **Steven Newcomb** claimed that, "*Negotiations such as in Canada under the Comprehensive Claims Policy… lead to the extinguishment of Indigenous peoples.*"

The **CCP** is the basic platform of the BC negotiations, in direct contrast with the 19 Recommendations by the **BC Task Force** forming the terms of reference or guidelines for the process in 1992. Those guidelines attracted people to the process because they said, in sum, that the government would be open to all types of discussion and conclusions that would lead to real, workable treaties.

Several independent members of First Nations involved in the treaty process have taken their concerns to an urgent action committee of the **United Nations' Committee for the Elimination of all forms of Racial Discrimination (CERD)** in 2009. In reports on Canada's human rights record regarding Indigenous peoples the **CERD** has criticized the process, such as in 2007, when they wrote:

While acknowledging the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned by the State party (Canada) in favour of "modification" and "non-assertion" approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach.

To date, only four Final Agreements have resulted from the negotiating process implemented by the **BC Treaty Commission**, one rejected in the community ratification vote, one awaiting federal approval and two in implementation—but all of them leading to the extinguishment of title of the Indigenous nations concerned.

Aside from these, the negotiation process in BC remains stalled largely due to the evident desire of the governments to pursue policies of extinguishment of Indigenous sovereignty rights and the equally evident desire of the BC Indigenous nations to resist this demand. But they cannot leave the process without triggering the maturation of the negotiating loan.

While Chief John and the Summit Executive exchange polite letters and press releases with Canadian government officials conducting studies on the BC treaty process and welcoming "*recommendations which outline how the federal government can accelerate treaty negotiations in BC*" (**First Nations Summit Press Release: May 4, 2012**) the cost of remaining in the process grows—and the process remains one of municipalization of Indigenous nations which currently have the internationally recognized right to self-determination and demonstrable title to their territories.

Sliammon First Nation is about to go to a ratification vote this summer.

Jackie MukSamma Timothy, a **Sliammon Hereditary Chief**, wrote of the situation:

So called "Canada's" ignorance of our existing and affirmed Title and Rights and the threat of limited financial support for non-participating Nations forced my people into entering the treaty process. And they keep us on the negotiation table, by threatening to demand all the negotiation funds back at once or to limit our financial support by the federal government accordingly. For my Nation it is impossible to pay the amount back or to forgo financial aid. Moreover, the longer the process takes the more power shifts to the benefit of so called "Canada" and "BC", because in the end any agreement resulting in any kind of payment is better than none, given the fact that we have to pay the

Dr. Asha-Rose Migiro, UN Deputy Secretary.

"only four Final Agreements have resulted from the negotiating process implemented by the BC Treaty Commission, one rejected in the community ratification vote, one awaiting federal approval and two in implementation —but all of them leading to the extinguishment of title of the Indigenous nations concerned"

Sophie Pierre, Chief Commissioner BCTC.

'Ed John UN Rep' continued from page 3

DAA & Auditors enter Gitxsan Treaty Office.

loans back. Loans that would not even be necessary without Canada's wrong-doings and their ignorance of our existing Title and Rights.

The number of irregularities in the BC treaty process is staggering and climbing. It is not unusual for communities to fail to hold a vote annually in order to approve continued borrowing for negotiation funding, or to have votes against continuing the loans ignored, according to vocal Indigenous dissidents. **Hereditary Chief Kakila**, **Tenas Lake**, wrote in a letter to the **BC Treaty Commission** from 2007:

We are advised by the Honourable Minister of Indian and Northern Affairs Jim Prentice that these twelve people (the IN-SHUCK-ch Treaty Society) have since 1993 borrowed $9,717,059.00 to engage in these negotiations. We remind that those are the debts of those people alone. In fact, on October 15, 1994, at a duly convened Samahquam General Assembly, for said purpose, the membership specifically voted, by majority, "no" to any proposed Loan Agreements emanating from the British Columbia Treaty Commission.

"The number of irregularities in the BC treaty process is staggering and climbing. It is not unusual for communities to fail to hold a vote annually in order to approve continued borrowing for negotiation funding, or to have votes against continuing the loans ignored"

Most of the original nineteen recommendations of the **British Columbia Task Force**, which were agreed on by the three negotiating parties forming the BC treaty process, have long since been abandoned. For example, every Final Agreement produced has been taken to court by neighbouring nations for failure to resolve "*overlap*" claims. Most negotiations currently underway were initiated by a small minority of community members, over whom the rest of the people in these communities cannot regain control. Court actions such as **Spookw v.Gitxsan Treaty Society et al, 2011**, and the recent blockade by members of the **Gitxsan** against the **Gitxsan Treaty Society** show how serious this flaw is. By insisting that the small, mostly isolated communities are "*autonomous*" in their dealings with the treaty process, the First Nations Summit has absolved itself of any responsibility for those First Nations, which it claims to represent.

Both the **Tsawwassen** and **Maa-nulth Final Agreements** were ratified in votes where "*public relations crisis-management*" firms were hired by the government to produce pro-treaty propaganda, and where treaty negotiating teams promoted only those prominent community members who endorsed the Final Agreement and where immediate fiscal rewards for a "*yes*" vote were offered to community members.

Bertha Williams, **a Tsawwassen Member**, wrote in a letter to **Rudolfo Stavenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People of the United Nations Commission on Human Rights**, July 23, 2007:

I would like to reference some very key items that raise very serious question about the legitimacy of this vote. Under "Members Benefits" two cash incentives to voters are stated." In particular it states that "each elder over 60 will receive $15,000, shortly after ratification day" and "approximately $1,000 per member on Effective Date." I feel that these cash incentive are a bribe to vote YES to the Final Agreement. These are the cash guarantees that are written right into the agreement and that are openly promoted, but I know that there are additional monies paid out just to get people to vote on this agreement. As already set out above, the vote will take place without meeting basic requirements for such a fundamental, constitutional vote.

Rudolfo Stavenhagen, UN Special Rapporteur. (Photo by R. Diabo)

People are not informed about the real content of the agreement they are voting on, but rather the provincial government is paying for the preparation of propaganda material that points to the few mainly cash incentives of the agreement, but fails to point out all the downfalls, such as the extinguishment of our Aboriginal Title to our territories, the loss of the tax exemption and the long-term loss of programs and services that will all result in the further impoverishment of our people.

Many feel that, as a lawyer whose organization gives advice on the allocation of negotiating loans, Chief John is and was aware of how the loan process itself would leave small and isolated communities trapped between descending into a deeper cycle of debt the longer they stuck to their negotiating claims, or acceding to the extinguishment terms offered by Canada, which can afford to wait the process out. This message has been clearly and re-

'Ed John UN Rep' conclusion from page 4

Grand Chief Ed John elected Chair of the UN Permanent Forum on Indigenous Issues. (Photo courtesy of AP/Pier Paolo Cito)

peatedly delivered to the Executive of the **First Nations Summit** by such groups as the **First Nations Unity Protocol**, starting as early as 2006.

Still Chief John is considered respectable. Earlier this year he received a **National Aboriginal Achievement Award** and is on the Board of **Cultural Survival**, an international agency which claims to, "*publicize Indigenous Peoples' issues through our award-winning publications; mount letter-writing campaigns and other advocacy efforts to stop environmental destruction and abuses of Native Peoples' rights; and we work on the ground in Indigenous communities, always at their invitation.*"

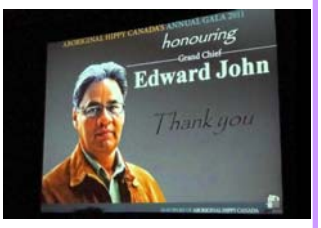
Most of the Indigenous nations whose territories lie within the Canadian Province of British Columbia have no treaties with Canada.

The recent appearance of Edward John on the **Aboriginal People's Television Network** to state that he does not support extinguishment is not an adequate gesture, when read together with his continued involvement, as Chair of the **First Nations Summit**, in this well-documented extinguishment process.

The **UN Permanent Forum on Indigenous Issues** sends the world a mixed message in its choice of Chair, when considering its stated mandate. Perhaps the message will become clear when the Permanent Forum reports its recommendations, which will be received by the **UN Economic and Social Council** to advise member states on Indigenous peoples' rights the world over.

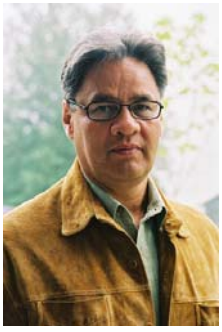
[Kerry Coast is a writer and journalist with a special interest in gaining a legitimate passport. Born beyond the treaty frontier in what is now known as "British Columbia," Coast is first concerned with international recognition of the fact of indigenous title in some thirty indigenous nations which have been occupied by a renegade colony. This article was originally published by the Vancouver Media Co-op. It was republished by The Dominion on June 25, 2012.]

United Nations Permanent Forum on Indigenous Issues 9th Session. (Photo by R. Diabo)



Earlier this year. Ed John received a National Aboriginal Achievement Award.

"The recent appearance of Edward John on the Aboriginal People's Television Network to state that he does not support extinguishment is not an adequate gesture, when read together with his continued involvement, as Chair of the First Nations Summit, in this well-documented extinguishment process"



Grand Chief Ed John

UN Logo

Extinguishing Sovereignty

Jay Taber, Center for World Indigenous Studies. (Photo courtesy of CWIS)

By Jay Taber

There's a term in law to describe coercion to extract something of value from someone under the threat of the commission of serious harm. When the threatened party has already experienced egregious harm by the threatening party, the reality of the threat is taken into account when determining the punishment of the perpetrator. Depending on the degree of threatened harm, extortion can comprise a form of terror, in that it is conducive to extreme anxiety, insecurity and unrelenting fear of reprisal. When the perpetrator of extortion is a member state of the United Nations, and the victim is an ethnic or racial minority within that state, **UN bodies** like the **Committee for the Elimination of all forms of Racial Discrimination** and the **Human Rights Council** have jurisdiction.

"the BC treaty process, designed by the federal government of Canada in collusion with the province of British Columbia, extortion has taken on the form of extinguishing First Nations sovereignty using poverty and debt as a tool to coerce these Indigenous peoples into relinquishing their inherent territories and rights under international law"

Since 2007, when the **UN General Assembly** adopted the **Declaration on the Rights of Indigenous Peoples**, member states like **Canada**, **Australia**, **New Zealand** and the **United States** have implemented measures to counter this human rights initiative–both overtly and covertly. Initially opposing the international law head-on, these four rogue states later decided to pay it lip service, while simultaneously denying its application in state policy. As with other human rights initiatives since the founding of the **UN**, they found it more advantageous to manage the public relations of their non-compliance, than to actually comply. Five years down the road under **UNDRIP**, that hasn't changed.

In the **BC treaty process**, designed by the **federal government of Canada** in collusion with the **province of British Columbia**, extortion has taken on the form of extinguishing First Nations sovereignty using poverty and debt as a tool to coerce these Indigenous peoples into relinquishing their inherent territories and rights under international law. As **Kerry Coast** report[ed] in The Dominion, the government — with assistance from the **First Nations Summit** advisory body — is proceeding with the project of their dissolution and termination. A genteel way of saying ethnic cleansing.

With the appointment of the **First Nations Summit chair** — the lawyer **Grand Chief Edward John** — as **chair of the UN Permanent Forum on Indigenous Issues**, the **UN** itself has taken sides in the struggle between Indigenous nations and UN member states. Like its member Canada, the **UN** has chosen to engage in **PR crisis management**, rather than uphold international law.

For Indigenous peoples in Canada and elsewhere, this signals a willingness of the **UN** to abet their long-term impoverishment by its member states, using those who sell out as a model comprising surrender as consent. The problem with such non sequiturs in human rights is that the result is cultural genocide.

[Jay Taber is an associate scholar of the Center for World Indigenous Studies, an author, a correspondent to Fourth World Eye, and a contributing editor of Fourth World Journal. Since 1994, he has served as the administrative director of Public Good Project. This is reprinted from the Center for World Indigneous Studies.]

Steven Point, Lieutenant Government of BC. (Photo courtesy of Gov't of BC)

Open Question to AFN National Chief Candidates?

Queen Elizabeth II signing Constitutional Act 1982.

Dear National Chief Candidates:

I think it is appropriate to exam how much really changes when Indigenous Peoples vote to extinguish their Aboriginal Title and Rights for a Modern Agreement/Treaty. Nothing really changes. The power still rests mutually and exclusively under section 91 federal and section 92 provincial heads of power in the Canadian Constitution 1982. They do not change the fundamental nature of powers and recognize and affirm the inherent law making powers of Indigenous Peoples as protected in the Canadian Constitution under section 35(1). These agreements still need to be implemented and because the federal and provincial governments retain the exclusive jurisdiction the respective First Nations have merely delegated powers and authority under these agreements.

Under the existing system our lands are ruled by the federal and provincial governments, under these new agreements we get delegated or municipal type powers but subject to federal and provincial law, which makes us merely neo-colonial rulers of our territory. The colour of the delegated decision makers and bureaucrats may change but the ultimate decision in conflict situations is taken by Canada and the provincial settler governments. We had problem with the implementation of the old treaties, needless to say under this framework where there is only delegated authority, implementation is a real issue.

"Under the existing system our lands are ruled by the federal and provincial governments, under these new agreements we get delegated or municipal type powers but subject to federal and provincial law, which makes us merely neo-colonial rulers of our territory"

I raise this issue because Sliammon is in the process deciding if they will vote YES or NO to joining the "Land Claims Agreements Coalition" http://www.landclaimscoalition.ca/index.php which produced the attached map and on its own website raises serious issues with the lack of implementation of their agreements.

Owning and not modifying your Aboriginal Title and Rights is the strongest hand you have. Like our elders have always said everything comes form the land. That is why the federal and provincial governments and resource extraction industries have to face uncertainty when it comes to investments in lands that are not covered by the Old Treaties or so called Modern Treaties. That is why Modern Treaties actually are like tying a six inch string between your legs and then trying to race with someone who does not have a string tied between their legs. That is what modification means.

The international level has said that domestic governments cannot ask indigenous peoples to extinguish their title in any land settlement agreement. The James Bay Cree of Quebec were the last group in Canada to get stuck with the "cede, release, surrender and convey" provisions in the James Bay Agreement. Specifically the James Agreement says:

"2.1 In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Quebec, the James Bay Crees and the Inuit of Quebec hereby cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the territory and in Quebec, and Quebec and Canada accept such surrender."

After this was forced on the James Bay Cree, the international human rights standards forced Canada to rethink this provision. As a result Canada came up with the "modification and non-assertion models". Educated white people in the government were given the task to extinguish Aboriginal Title and Rights without using the terms "cede, release, surrender and convey" but achieve the same result. That is what the existing federal Comprehensive Land Claims Policy is all about. It achieves extinguishment through "modification and non-asseriton" of our Aboriginal Title and Rights. The United Nations have repeatedly found that Canada's policy and negotiation processes result in de facto extinguishment of Aboriginal Title and Rights which is contrary to international law.

I measure the effectiveness of the Assembly of First Nations based on their ability to fight to change the existing federal Comprehensive Land Claims Policy so that it is consistent with the law. The Supreme Court of Canada recognizes that Aboriginal Title and Rights do exist

Haida Chiefs at SCC in 2004. (Photo by R. Diabo)

"Canada is corrupt because it is founded on the "Colonial Doctrines of Discovery" which means that in BC it is based on Captain Cook and Alexander Mackenzie claiming our land. These so called explorers claimed to have been given, by God, the Church and the Crown, the power to steal our land right from under our feet"

Robert Davidson, Haida.

'AFN Question' continued from page 7

here in British Columbia because we have NO AGREEMENTS with the British Crown or with Canada. Therefore because we have no agreements we need to make agreements but those agreements must be based on the recognition and affirmation of Aboriginal Title and Rights. Not "modification and non-assertion" of Aboriginal Title and Rights.

The systematic impoverishment of our families, communities and peoples is based on the fact that all decision making power sits in Ottawa or Victoria and they also make all the money off our land. Ottawa and Victoria do not care for us, the record of poverty and their wealth speaks for itself. The poverty we live in is totally racist and systematically created. The poverty I am talking about began with the settlement of our Aboriginal Territory by the Crown, Canada and BC. Everyone in the world at the human rights level knows Canada is one of the most racist countries in the world because Indigenous Peoples are systematically made poor, in one of the richest countries in the World, a wealth and abundance created by our lands.

Canada is corrupt because it is founded on the "Colonial Doctrines of Discovery" which means that in BC it is based on Captain Cook and Alexander Mackenzie claiming our land. These so called explorers claimed to have been given, by God, the Church and the Crown, the power to steal our land right from under our feet. That is a very racist treatment of us as peoples and as human beings because our connection to the land is not taken into consideration. That is what Aboriginal Title and Rights is all about: to address this racist notion. That is what the so called Modern Treaty fail to address, because they are negotiated under policies that are based on the Colonial Doctrines of Discovery. That is what the Sliammon people are forced to vote on. It is like asking a Canadians if they want to be Canadian or join the USA. Our right to our territory is inalienable.

I strongly dispute the suggestion that the people who blocked the treaty vote of Sliammon were blocking democracy. I do not agree that if issues involving enrolment and voting are in question, voting should take place. I think there is a real conflict in the people who do not want to extinguish their Aboriginal Title and Rights, if they should register and vote because if they do, they feel they will be agreeing to losing their rights if the vote is yes. I know in the Nisga'a and Tsawwassen this was a real internal conflict within people who I spoke to. In Sliammon the decision is supposed to be just 50% plus one. That is far lower than selecting a National Chief. I remember last AFN election it took all night to select a National Chief because the standard is 60%. I also agree with Dexter Quaw who says that voting is not part of our culture because fundamental decision like this were made by consensus. Consensus is the highest form of democracy.

It is clear that God did not given the Queen of England and her sailors the capacity to steal land from Indigenous Peoples. That notion is just as humanly bankrupt as the slave laws. These laws used to say that white people could own black people as slaves. That is wrong. Just as wrong as the law that says that settlers who get Fee Simple Title from the BC government Land Title Office is higher than Aboriginal Title and Rights. Needless to say that the Supreme Court of Canada agreed with us that none of the provincial property rights ever extinguished Aboriginal Title because the province never had power over Aboriginal Peoples. Nevertheless, according to the federal Comprehensive Land Claims Policy, settler 3rd party Fee Simple is not on the table. I disagree with that position because only through putting the settlers property on the table will you get the interest and energy to resolve this problem quickly. A white settler will not wait 20 years to have his mortgage to his home settled like we have been doing under the BCTC. He will tell his MP and MLA he wants it settled by the next mortgage payment or he is out of office.

Needless to say the poverty we have experienced by Canada and BC exercising mutual and exclusive powers over our Aboriginal Title and Rights Territory has been equal to being a slave in our homeland. That is what Colonialism is all about. It results in poverty, suicide, drug addiction and family violence. We have the power to really challenge Cana-

'AFN Question' conclusion from page 8

da economically by having our rights recognized and affirmed. Not by modifying and not asserting them according to the existing policies and agreements worked out today.

Recognition of Aboriginal Title and Rights is one of the first steps to eradicating that tragedy we have been living since Canada and BC have claimed land by the Colonial Doctrines of Discovery. Canada and the provinces say that Aboriginal Title and Rights are unclear and we need these Modern Treaties to define Aboriginal Title and Rights. I do not agree. Our Aboriginal Title and Rights are based on our families and ancestors being buried in our traditional territories for 10 thousand years. It is the Crown Title that is unclear and undefined because it is based on some crazy British sailors with over-exaggerated egos that said they had the power to claim our land right from under our feet. It is Crown Title that is unclear and undefined. Crown Title is based on racism and economic impoverishment of our Peoples. Crown Title is a crime against humanity. We have suffered enough.

We need to address this issue and I like present efforts of the AFN to address this issue. Not all National Chiefs have appreciated our particular situation because they were either from an Old Treaty or Modern Treaty perspective. I know that those of us who have no agreements can establish higher standards than presently exist. We can do this because economic uncertainty in BC is becoming very important with mining and pipelines. We have intentionally decided not to negotiate under a policy that has as it goal the extinguishment of our Aboriginal Title and Rights. Our position needs to be respected just like people who are negotiating have said they must be respected. We have been waiting for 20 years treaty negotiation here in BC with no results. I think we need change.

I do not agree with those people who say that we need to get a deal now because all the development will destroy our land and we will have no money. That is too short sighted for me. Our land will be here forever. It is in fact the federal and provincial governments' economic decisions that are destroying our lands and it is up to us to assume our responsibility, not to play into their microeconomic schemes, but have our macroeconomic powers recognized and engage in a real sustainable economic strategy where our lands will not be destroyed. That is what our elders have taught us.

This kind of fundamental change cannot happen if you participate in negotiation processes under the existing policy of federal government to extinguish and assimilate us as indigenous peoples. We need a policy that is consistent with the law and which is based on recognition and affirmation of Aboriginal Title and Rights. I know that the present leadership of the AFN has established a Comprehensive Land Claims Committee and we have been meeting over the last few years to address this issue. Needless to say the dynamic relationship between those negotiating and those of us not negotiating have caused some problems. These problems are manageable because there is an impasse with most tables negotiating. Sliammon and a few other small tables are the exception. Both the BC Premier and the Minister of Indian Affairs have acknowledged that the BC Treaty negotiations are not working and are exploring different avenues. We are therefore just dealing with a few innocent groups being brought to the chopping block. It is like still executing the death penalty when there is talk about abolishing it.

That is what the forces for maintaining the existing modified and non-asseriton model are circling their wagons around, when they are pushing for the Sliammon vote. I think that the candidates for the National Chief position should clarify their positions on the federal Comprehensive Land Claims Policy?

How will the National Chief deal with existing Comprehensive Land Claims Committee? How will they address this matter with the Harper government?

I will be attending the BC Regional AFN Assembly later this week and hope to see you there.

Warmest regards.

Arthur Manuel

Sliammon Treaty Vote Blockade.

"the forces for maintaining the existing modified and non-asseriton model are circling their wagons around, when they are pushing for the Sliammon vote. I think that the candidates for the National Chief position should clarify their positions on the federal Comprehensive Land Claims Policy"

Ballot Box.

L to R: Kenneth B. Young and Bill Erasmus, AFN Regional Vice-Chief NWT. (Photo courtesy of Bill Erasmus)

Fontaine & Erasmus' Failed Patronage Appointment: *How the Philbillies Roll*

[NOTE FROM EDITOR: This is reprinted in order to pull the 'buckskin curtain' back to give a glimpse into one example of Phil Fontaine's management style as an outgoing National Chief and Bill Erasmus' management style as a Regional Vice-Chief & member of the AFN Executive Committee.]

IN THE MATTER OF an unjust dismissal complaint under

Section 240 of Division XIV - Part III of the Canada Labour Code

BETWEEN:

Kenneth B. Young (Complainant)

- and-

The Assembly of First Nations (Respondent)

Before: D.H. Kates, Adjudicator

Heard: at Ottawa, Ontario on September 21, November 29, 30, December 15, 2010

and on January 6, April 11 and June 28, 2011

Appearances:

For the Complainant: Sidney Green, Q.C., counsel

For the Respondent: D. Bruce Sevigny, counsel

PRELIMINARY MOTION

On March 26, 2010, my appointment as adjudicator was confirmed with respect to the complaint filed by Mr. Kenneth Young, in accordance with subsection 241(1) of the Canada Labour Code, against The Assembly of First Nations (The AFN) concerning his alleged unjust dismissal dated June 29, 2009.

It is common ground that since 2003, Mr. Young has been employed as "a Special Advisor" to the Grand National Chief of The AFN under a series of term contracts that were renewed on each anniversary date. On June 29, 2009, Mr. Young was advised that his current contract would not be renewed and that his employment relationship would thereby be terminated on July 31, 2009. It is also common ground that two extensions of one month's duration were given to Mr. Young thereby culminating in his termination of employment on September 25, 2009.

The employer has challenged my jurisdiction to entertain Mr. Young's complaint, by letter dated November 23, 2009, asserting that" ... "beyond its September 25th end date", Mr. Young was not a permanent employee ... As such, The AFN was not in breach of the Code". It is settled law that should the employer's assertion with respect to Mr. Young's employment status prevail at the material time of his termination, then, indeed, jurisdiction would be lacking with respect to my authority to inquire into his complaint. Thus, counsel for The AFN advised Mr. Young's counsel on September 16, 2010 " ... to confirm we have been in-

"It is common ground that since 2003, Mr. Young has been employed as "a Special Advisor" to the Grand National Chief of The AFN under a series of term contracts that were renewed on each anniversary date. On June 29, 2009, Mr. Young was advised that his current contract would not be renewed and that his employment relationship would thereby be terminated on July 31, 2009"

L to R: Bill Erasmus and Phil Fontaine. (Photo courtesy of Bill Erasmus)

'Ken Young' continued from page 10

structed to seek dismissal of your client's complaint, on a preliminary basis on these jurisdictional grounds ... we will be relying on the Stirbys v. AFN decision dated May 30, 2010".

The complainant's case with respect to the employer's jurisdictional challenge rests solely on the factual assertion that he was appropriately and legitimately confirmed as a permanent employee of The AFN by resolution of its Board of Directors (Executive) at a properly constituted meeting on July 19, 2009 at Calgary, Alberta. Because the meeting of the Board of Directors, as it affected Mr. Young's employment status, was held in camera, no minutes or documentation of the said resolution was adduced in evidence during these proceedings. Nonetheless, Mr. Young maintained that his employment status was made permanent prior to his scheduled termination date and as such his unjust dismissal complaint was properly processed under The Code.

The employer asserted, owing to the absence of documentation supporting the alleged resolution confirming Mr. Young's permanent status, that the onus rested on him to prove by clear and persuasive viva voce evidence of the occurrence of any such resolution. To this end, Mr. Young's counsel called three members of the Board of Directors, inclusive of Grand National Chief, Mr. Phil Fontaine, to establish his sponsorship and the eventual enactment of the resolution confirming Mr. Young's permanent status. The background circumstance culminating in this resolution should be described.

The AFN was described as an organization of aboriginal nations whose primary purpose is to lobby government towards advancing its policies and programmes to the betterment of its aboriginal constituency. It is comprised of over one hundred Aboriginal Chiefs whose Board of Directors is composed of ten Chiefs dispersed throughout the country. The Grand National Chief, Phil Fontaine, heads The AFN and chairs the meetings of the Board of Directors. Since 2003, Mr. Fontaine was elected Grand National Chief for consecutive three year terms.

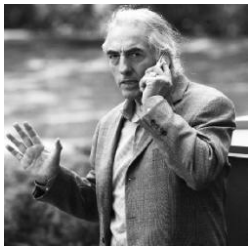
The AFN organization is divided into two groups. One group is the political arm of The AFN whose staff is appointed at the discretion and pleasure of the National Chief and discharges responsibilities related to furthering the policies and programmes of The AFN. Employees comprising the political arm of The AFN are appointed for a specified term that is renewable at the instance of the National Chief. As indicated, Mr. Young was assigned to the political section of The AFN and was appointed to the position of Special Advisor to the National Chief under one year contracts that were renewed annually during the course of Mr. Fontaine's tenure as Grand National Chief.

It is common ground that members of the political group have no security of employment. The AFN was described as a political organization and thereby upon the departure of the Grand National Chief, whether willingly or otherwise, it is anticipated that members of the political group would resign their positions or would otherwise anticipate termination in accordance with the terms of their contracts. The policy considerations underlying the foregoing allows the successor Grand National Chief the prerogative to choose his or her own advisors so that a degree of comfort is assured in carrying out the policies and programmes of the organization. It will be demonstrated that Mr. Young's termination most likely was precipitated by this policy consideration.

The second arm of The AFN was described as "The Secretariat". The Secretariat is headed by the Chief Executive Officer (CEO) responsible for carrying out the administrative and operational functions of realizing the policies and programmes of The AFN. The CEO operates at the instance of the Board of Directors and, more importantly, the Grand National Chief with respect to the implementation of his directives. The Secretariat has a Human Resources Department that is responsible for the hiring, posting and negotiation of employment contracts inclusive of termination and severance allowances. The administrative and support staff (the civil service) are composed approximately of 75% term contracts

ASSEMBLY OF FIRST NATIONS

"The complainant's case with respect to the employer's jurisdictional challenge rests solely on the factual assertion that he was appropriately and legitimately confirmed as a permanent employee of The AFN by resolution of its Board of Directors (Executive) at a properly constituted meeting on July 19, 2009 at Calgary, Alberta"



Former National Chief Phil Fontaine. (Photo by Dirk Biknell)

'Ken Young' continued from page 11

AFN Nat'l Chief Phil Fontaine AFA-AGA 2004. (Photo by R. Diabo)

and 25% indefinite permanent appointments. Should Mr. Young's conversion by the Board of Directors from term to a permanent appointment have succeeded, he would have constituted the first employee during The AFN's history to have by-passed the posting procedures adopted to assure fairness and even handedness with respect to permanent appointments to the Secretariat.

Funding for The AFN is dependent totally on the largesse of the Federal Government. Obviously, job security, whether of a permanent or term appointment, is clearly at the discretion and disposition of The Federal Cabinet to fund The AFN's programmes. And such funding is unfortunately conditioned by the troublesome economy. Thus, at the end of each fiscal year on March 31st, restraint in expenditure is exercised in order to avoid lost employment. Mr. Guy Poirier, Director of Human Resources, described as fallacious the notion that employment on the secretariat side is any more secure than the political side if Government funding is not forthcoming.

During the period of his tenure of employment (2003-2009), Mr. Young, in his capacity as Special Advisor, was deeply involved in the negotiation of the settlement of the largest class action suit in Canadian legal history arising out of the residential school abuse crisis. Mr. Young is a lawyer trained in aboriginal issues and was cognizant of the difficulties encountered in reaching an accommodation with the Federal Government with respect to compensating the many thousands of victims and "survivors" of the wrongdoings visited upon them. Following settlement of the class action suit in September, 2007, Mr. Young was again deeply involved in the administration of the settlement process of satisfying individual claims for compensation. This process was scheduled to last approximately five (5) years at the end of which time all claims were to have been resolved. As September 2012 approached, it was anticipated because of the numbers of the claimants (and the likelihood of the discovery of more residential schools where abuses were alleged to have occurred) that an extension of the 2012 deadline would likely be requested and granted by the Federal Government.

"Mr. Fontaine's plan, carried out in concert with Mr. Watts, was to secure the approval of the Board of Directors converting Mr. Young, while still an employee, to full time permanent status at a meeting on July 19, 2009. To this end, Mr. Young was to be moved from the political side of The AFN to the Secretariat where it was felt he would be more secure in carrying out his duties"

There is absolutely no question that Mr. Young's contribution to the residential school file has been stellar. He was complimented by each of the "stakeholders" in that process for his dedication to the cause of bettering the survivors of this black period in Aboriginal history. The employer, indeed, has conceded that should its preliminary objection fail, it could not satisfy the burden of establishing just cause for the termination of Mr. Young.

The complainant's problems began in early summer 2009 with Mr. Fontaine's announcement that he would not seek re-election to the Grand National Chiefs position and intended to retire from public life. So long as Mr. Fontaine retained the Grand National Chiefs position, Mr. Young was assured of job security and was content to work under the one (1) year term contracts that were habitually renewed on their anniversary date.

L to R: Bill Erasmus and Phil Fontaine. (Photo courtesy of Bill Erasmus)

Mr. Young did not welcome the news of Mr. Fontaine's retirement. He expressed a desire to continue working on the residential school file but appreciated his employment career was short lived owing to the written notice from Mr. Bob Watts, CEO, advising him of his termination effective July 31, 2009.

Mr. Fontaine, in early July 2009, thereby decided to take action to ensure the complainant's employment status beyond the scheduled termination date. On July 20, 2009, his successor was to be elected at The AFN's Annual General Assembly (AGA) at Calgary, Alberta. Mr. Fontaine's plan, carried out in concert with Mr. Watts, was to secure the approval of the Board of Directors converting Mr. Young, while still an employee, to full time permanent status at a meeting on July 19, 2009. To this end, Mr. Young was to be moved from the political side of The AFN to the Secretariat where it was felt he would be more secure in carrying out his duties. Indeed, the rationale for the conversion emphasized Mr. Young's past accomplishments on the residential school file and the contribution that he might continue to make owing to his vast experience, i.e. "corporate memory". The scheme adopted by Mr. Fontaine was by no means to result in the Executive's automatic confirmation. There existed several reasons for this state of affairs.

'Ken Young' continued from page 12

The AFN was described as a political organization comprised of many factions amongst the Chiefs whose priorities did not necessarily conform to the wishes of "the lame duck" Grand National Chief. Mr. Fontaine's scheme on Mr. Young's behalf was designed clearly to undermine the accepted practice of having the incoming successor choose his or her own political staff. In other words, it was anticipated that Mr. Young would accept his notice of termination with equanimity as was the case with Mr. Watts' departure as CEO and numerous other employees on the political side. In addition, Mr. Fontaine's scheme was designed to do "an end around" the posting procedures that were ensconced on the Secretariat side for the appointment of full-time permanent staff. It was, therefore, anticipated that "the bureaucrats" could not be expected to cooperate with Mr. Fontaine's strategy. And, finally, Mr. Young, in his own capacity, was described as a "political gadfly". He had a past history of running (and being defeated) for the Chiefs position in his home Province of Manitoba. He encountered the political enmity of Chief Bill Traverse who, as a result of his success, sat on the Board of Directors. As such, Mr. Traverse raised objections to Mr. Fontaine's proposal to convert Mr. Young to permanent status. Moreover, Mr. Young, despite his outspoken assertions of neutrality was seen to campaign for a candidate who ran against Shawn Atleo who ultimately succeeded Mr. Fontaine as Grand National Chief. In this regard, Mr. Young was required thereafter to do some "fence-mending" by apologizing to Mr. Atleo for his role in the campaign.

Mr. Fontaine's initial effort to secure the Executives' approval of Mr. Young's conversion to full-time status was by means of a teleconference consultation in early July, 2009. The proposal that was put forward was met with some resistance by a few members of The Board. Mr. Fontaine, therefore, decided, because of these "interventions", that he would not put the proposal to a vote. Although, he expressed confidence that the motion would have carried had a poll been taken, Mr. Fontaine preferred to negotiate a consensus amongst the members with respect to Mr. Young's fate. Accordingly, it was decided to defer the issue to a Board Meeting on July 19, 2009, prior to the commencement of the Annual General Assembly scheduled the next day.

In the interim, Mr. Fontaine collaborated with Mr. Watts in their joint effort to secure the desired consensus confirming Mr. Young's transfer to the Secretariat as a full-time, permanent employee.

And, indeed, Mr. Fontaine initially left the distinct impression that he had achieved that objective during an "in camera" meeting of the Board. At that time, Mr. Young was allegedly confirmed as a full-time employee assigned to the Secretariat with the mandate to continue his work on the residential school file. Mr. Fontaine's evidence was supported by both Mr. Watts who discharged the role of Secretary of the Executive meeting and by Mr. Bill Erasmus, Chief of the Dene Nation, whose interest was in retaining Mr. Young's services as the Board member responsible for the supervision of the residential school file. As a result, because the motion was carried by a properly constituted decision of the Board of Directors, Mr. Young's security of employment was presumably assured.

Except for an E-mail dated September 25, 2009, from Mr. Erasmus to Mr. Richard Jock, CEO, there existed no written record supporting the resolution's occurrence. I was advised that because the Board meeting was held "in camera" no minutes documenting the resolution were made. Moreover, there appeared no written confirmation of Mr. Young's changed status dispatched to the Human Resources Department for administrative action. Indeed, Mr. Young, himself, received no written communication confirming his permanent appointment. He was advised of the happy outcome of the Board of Directors' meeting verbally either by Mr. Erasmus and/or Mr. Watts.

The impression that was intended to reflect success in Mr. Fontaine's scheme remained short lived. It was demonstrated that merely because there was absent any written record of the Board of Director's resolution it did not necessarily follow that there occurred no tangible record of what actually transpired during those proceedings.

Notwithstanding Mr. Fontaine's efforts "to cleanse" his office computer of its contents prior

L to R: NC Fontaine & PM Harper (Photo by PMO)

"Notwithstanding Mr. Fontaine's efforts "to cleanse" his office computer of its contents prior to his departure from The AFN, there still remained sufficient documentary evidence that pointed in the direction of an entirely different outcome to the Board of Directors' meeting."

L to R: PM Harper & NC Fontaine. (Photo by PMO)

'Ken Young' continued from page 13

AFN National Chief Phil Fontaine, 2004. (Photo by R. Diabo)

to his departure from The AFN, there still remained sufficient documentary evidence that pointed in the direction of an entirely different outcome to the Board of Directors' meeting.

Firstly, in an E-mail dated July 3, 2009, Mr. Fontaine clearly states why his proposal was not put to a vote during the teleconference call. At that time, he advises Mr. Erasmus "We were going to lose so I deferred it to July 19 ... "

And arising out of the teleconference call, Mr. Fontaine and Mr. Watts appeared to lower their expectations as to what consensus might be achieved on Mr. Young's behalf during the Calgary meeting. In an E-mail dated July 17, 2009,to Mr. Fontaine, Mr. Watts confmns "Phil I spoke to Ken about this tonight. Is this ok with you? Rationale for a six month contract ... " And Mr. Watts goes on to describe the positive aspects to The AFN of retaining Mr. Young on the residential school file for a six month term. In furtherance of the six month tenure contract Mr. Watts asks Mr. Poirier by E-mail "to bring your template to The AGA". When Mr. Watts discovers Mr. Poirier was not attending the meeting in Calgary he describes what he wants by E-mail: "yes, a term contract. Perhaps E-mail it to Bob Watts."

"Mr. Fontaine's response to the damaging E-mails for which he was either the author or the recipient was embedded repeatedly in his lost recollection. He could provide no explanation or excuse for the dichotomy. His testimony was thereby rendered both unreliable and unhelpful"

Following the Board meeting on July 19, 2009, Mr. Watts sent an E-mail to Mr. Poirier dated July 21, 2009 advising, "We will be extending Ken into a new role in the Secretariat". And in elaborating on what the role was to be, Mr. Watts E-mails Mr. Jock on July 28, 2009 advising, " ... the Executive decided that Ken should be extended until the end of the fiscal year." My sense is we should implement the Executive's decision". Finally, Mr. Watts confirmed his understanding of the Board's Resolution dated July 30, 2009, by E-mail to both Mr. Erasmus and Mr. Fontaine:

> "***Subject: Executive Motion***"
> ***Is this the way you remember the motion?***
> ***The Executive Motion regarding Ken Young as follows:***
> ***Moved by R.C. Roger Augustine, seconded by R.C. Bill Traverse***
> ***that Ken Young be transferred to the Secretariat and his contract be extended until March 31, 2010 given the need for good corporate memory on this complex file (emphasis added).***

Much of the adjudication hearing was consumed with counsel's efforts to reconcile the impression of the Executive's decision confirming Mr. Young's permanent status in the Secretariat with the recorded documents of his own supporters indicating at a time almost contemporaneously with the July 19th meeting that the consensus reached was no more than a temporary appointment of nine months duration (September 25, 2009)[the expiry of the second extension] to March 31, 2010).

Mr. Fontaine's response to the damaging E-mails for which he was either the author or the recipient was embedded repeatedly in his lost recollection. He could provide no explanation or excuse for the dichotomy. His testimony was thereby rendered both unreliable and unhelpful in meeting the onus of establishing a clear and persuasive case in support of the resolution confirming Mr. Young's purported permanent employment status.

NC Fontaine, 2007 (Photo by R. Diabo)

Mr. Watts exclaimed he was totally "confused" by these turn of events. He nonetheless made an attempt to rationalize some of the apparent conflicts, contradictions and inconsistencies between his viva voce evidence and the E-mails that he had authored.

Firstly, he maintained that Mr. Young's transfer to the Secretariat indicated that his appointment was intended to be permanent. It was inferred that only permanent employees of the Secretariat occupied full-time positions (and thereby were endowed with job security). Mr. Poirier punctured that hypothesis in advising that 75% of the secretarial staff were term contract employees. Moreover, those remaining employees who were permanent owed their appointments to the posting procedure.

Mr. Watts then explained that the proposal for a six month term appointment was simply a

'Ken Young' continued from page 14

"fallback" position should the Executive fail to endorse Mr. Young in a permanent position. He furthermore suggested that his request of Mr. Poirier for a term contract template may very well have been intended to apply to other members of the political staff who were facing termination.

While he persisted in maintaining the impression that the Executive confirmed Mr. Young's permanent status, no explanation was ever forthcoming for the absence of any documentation to support that outcome. Yet, the written record was fulsome with respect to "Plan B.". Nor did Mr. Watts agree that Mr. Young's political activities had an adverse impact on the Executive in securing permanent status.

Thus, Mr. Watts maintained that the reason Mr. Young's appointment was given a termination date of March 31, 2010, was because at that time the fiscal situation of The AFN might be reassessed to determine whether funding was available, on the residential school file, to maintain Mr. Young's services for another year. In other words, Mr. Young was made a permanent employee subject to The AFN's capacity to afford his services from the one fiscal year to the next.

Mr. Erasmus undermined "funding" as the rationale for inserting a terminal date for Mr. Young's otherwise open-ended appointment. He advised that the settlement terms of the residential school class action provided ample financing by the Federal Government necessary to carry out its provisions. Mr. Erasmus described the funding pursuant to the settlement agreement as almost "a guarantee" to cover all expenses inclusive of staff salaries.

Mr. Erasmus appeared to represent the most steadfast and consistent voice asserting Mr. Young's conversion to permanent status by the Executive's resolution. He neither suffered from an absence of recollection nor was he confused by the contradictory documents that demonstrated a contrary result. In this regard, it should be observed that Mr. Jock, who knew or ought to have known that Mr. Young's term appointment had been extended to March 31, 2010, persisted in extending his expired contract on two occasions for one month's duration. After the second extension, Mr. Erasmus sent an dated September 25,2009, advising Mr. Jock " .... if you don't want to honour the Executive's decision of July 19th to keep Mr. Young on as a full-time employee the Dene Nation has no time for The AFN National office. No one has a right to reverse our decision ... ".

Quite clearly, Mr. Erasmus was sent Mr. Watt's memorandum on July 30, 2009, advising that Mr. Young was appointed to a term contract scheduled to expire on March 31, 2010. While it may ostensibly appear that the contract Mr. Jock failed to honour was the term contract scheduled to expire on March 31, 2010. There was never any indication from the Executive that Mr. Young was ever appointed to a permanent full-time position.

When Mr. Erasmus was asked to explain this contradiction, he merely surmised that "his blackberry was not working" and, therefore, he never received Mr. Watts' memorandum of the Executive's Resolution. Mr. Jock's betrayal, therefore, pertained to his refusal to implement the advice he received from Mr. Watts on July 28, 2009. At no time could Mr. Erasmus credibly assert the existence of a permanent appointment at the Executive meeting he attended.

Arising out of this controversy, the newly constituted Executive (composed of many of the same members of the previous regime) met on September 12, 2009 and was chaired by the recently elected Grand National Chief, Shawn Atleo. It was resolved to refer to Mr. Jock and the Human Resources Department the problems related to Mr. Young's appointment. At that juncture, it was decided to create the permanent, full-time position of Manager, Indian Residential School Unit. That permanent position was to be posted. In his termination letter dated September 15, 2009, Mr. Young is and/or advised" ... we will not be extending and/or renewing your contract beyond September 25, 2009 ... ". He was then invited " ... to submit an application for the position to be posted shortly".

Mr. Young decided not to respond to that invitation because he maintained he already

Bill Erasmus, AFN-VC, NWT. (Photo by R. Diabo)

"Mr. Erasmus appeared to represent the most steadfast and consistent voice asserting Mr. Young's conversion to permanent status by the Executive's resolution. He neither suffered from an absence of recollection nor was he confused by the contradictory documents that demonstrated a contrary result."

Bill Erasmus, AFN Regional VC-NWT (Photo courtesy of Bill Erasmus)

'Ken Young' conclusion from page 15

Bob Watts, former AFN-CEO under NC Fontaine.

filled the function of "Manager" as a full-time permanent Special Advisor.

In summary, I have provided as full and complete a description of the events that transpired between Mr. Fontaine's decision to retire as Grand National Chief in July 2009 and Mr. Young's termination date of September 25, 2009. At no time was it demonstrated by viva voce evidence of a clear and persuasive nature that Mr. Young was confirmed as a permanent employee. Rather, the contrary proved to be the case. Mr. Fontaine could provide no explanation for the documents of Mr. Young's own supporters establishing that the consensus reached at the Executive meeting on July 19th, only confirmed a term appointment. His failed memory and lack of recollection in that regard only undermined the sincere efforts he had made on Mr. Young's behalf.

Mr. Watts' expression of bewilderment and confusion only served to make my task of searching for clear and persuasive proof of a permanent appointment all the more difficult. Moreover, as detailed in this decision, his efforts to overcome the conflicts and inconsistencies between what he said in his viva voce evidence on November 29, 2010 and what he wrote at the time of the meeting on July 19th, 2009 simply undermined his credibility with respect to his assertion of the adoption of a resolution establishing Mr. Young's permanent status.

"I have not been satisfied by clear and persuasive evidence that Mr. Young, at any time prior to his termination, was made a permanent employee. Rather, he remained at all material times a term employee on successive contracts."

Finally, whether or not Mr. Erasmus' "blackberry" failed him on July 30, 2009, is really not momentous. His betrayal, if that is the appropriate description, was at the instance of his colleagues on the Executive and not Mr. Jock. It appeared totally reasonable to conclude that following the teleconference consultation in early July, 2009, Mr. Fontaine probably knew that any vote proposing Mr. Young as a permanent employee would be lost. Accordingly, in preparation for the meeting of the Board of Directors on July 19, 2009, the best that might be hoped for was achieving the consensus to extend Mr. Young's term contract beyond six months to March 31, 2010.

Mr. Young's counsel made emphatic submissions with respect to the employer's failure to call Mr. Jock as a witness to these proceedings. I, too, felt deprived of a fuller more complete and transparent explanation of these events as a result of his non appearance. But on further reflection, I have concluded that the only adverse inference that might reasonably be drawn is Mr. Jock's failure to implement, as he should have, the Executive's resolution to extend Mr. Young's term appointment to March 31, 2010. Owing to that mistake I can only urge the AFN to correct that deficiency and pay Mr. Young compensation from the period between September 25, 2009 and March 31, 2010. But, more importantly, had Mr. Jock been called as a witness, it was hardly likely he would have confirmed the establishment of a permanent appointment where Mr. Young's own witnesses had failed.

As a result of all the foregoing, I have not been satisfied by clear and persuasive evidence that Mr. Young, at any time prior to his termination, was made a permanent employee. Rather, he remained at all material times a term employee on successive contracts.

I, therefore, have no jurisdiction to inquire into the justness of the employer's decision to sever the employment relationship.

DATED at Ottawa, Ontario this 19th day of August, 2011.

"Signed By"

David H. Kates, Arbitrator

Grassroots "hearts" may be with AFN women candidates, but cold math shows Atleo may triumph

National News | 15. Jun, 2012 by Jorge Barrera

By Jorge Barrera

APTN National News

Andrea Michael says she's paying close attention to the race for Assembly of First Nations national chief for the first time ever because this year's field includes four female candidates who could make history by breaking the traditionally male hold on the highest profile position in First Nations politics.

Michael, 36, says it's time for the AFN to be led by a woman.

"This is the first time I have ever had this much interest or paid this much attention to an election, specifically because of the women candidates, the female voices," said Michael, who lives in Cut Knife, Sask., and teaches kindergarten on the Poundmaker Cree Nation. "It is time. Are the old boys ready?"

The 'old boys' aren't ready yet, according to some who watch First Nations politics closely.

"The chiefs are basically conservative. They are going to go with the devil they know than the ones they don't know," said Russ Diabo, a policy analyst who hails from Kahnawake, Que., and has been involved and watched AFN politics for 30 years.

"If we elect a woman, it will be a watershed moment," said Doug Cuthand, a prominent columnist who writes on First Nations issues in Saskatchewan. "At the grassroots level, they'll vote in a woman chief, but it's the old fogies at the national level that have to catch up….Quite frankly, the chiefs out here are very conservative, they are not going to vote for a woman, they'll vote for a guy first."

Incumbent national chief Shawn Atleo is the assumed front-runner in the race, but he's facing one of the largest fields in the history of AFN elections.

The AFN is an organization created to champion First Nation issues at the national level.

Atleo is facing challenges from two AFN vice-chiefs including George Stanley, from the Cree First Nation of Frog Lake in Alberta, and Bill Erasmus, the Dene Nation chief from the Northwest Territories. Former Ojibway Manitoba chief Terry Nelson, who garnered 10 per cent of the vote in the previous election which Atleo won, is also in the running.

It's the four women in the race, including three lawyers, however, that is setting this race apart.

Vying for the national chief's position are: Ellen Gabriel, a Mohawk from Kanesatake who rose to prominence as a spokesperson during the Oka crisis, Joan Jack, an Ojibway lawyer from the Berens River First Nation, former Treaty 3 grand chief Diane Kelly, a lawyer from Ojibways of Onigaming First Nation, and Pam Palmater, a Mi'kmaq lawyer and professor at Ryerson university.

These women candidates have drawn a high level of interest from grassroots First Nations people who have taken to Twitter and Facebook to voice their hope the July 18 election in Toronto makes history.

"Women candidates for chief have won the hearts of the people already, pay attention gentlemen," tweeted Barbara Low.

"Women are doers! It's time!" wrote Brenda Morrison on APTN's Facebook page.

Women were traditionally the political leaders among the Indigenous nations in Canada before colonization, said Lois Frank, 56, from the Blood Tribe in Alberta.

Their place, however, was dislodged through the Indian Act, which erased a woman's Indian status if she married a non-status man. It wasn't until 1985, through Bill C-31 that women were able to retain their status. In 2011, as a result of a court ruling, the government passed Bill C-3 which allowed those women to pass on their status to grandchildren.

"Women had a lot of power, but, because of the Indian Act, women became non-persons unless indentified with a father or husband," said Frank, a former Calgary female entrepreneur of the year who is facing court date next Wednesday on charges stemming from a blockade against trucks on her reserve in 2011 which were on route to a fracking operation. "It took courageous women to change that. Native women are not respected as they should be."

While the hearts and hopes of many grassroots people may be with the women candidates in this year's race, the AFN election's cold math and rules may be too much for any of them to overcome.

AFN Nat'l Chief Shawn Atleo, AFN-SCA 2011. (Photo by R. Diabo)

'Cold Math' conclusion from page 17

Band chiefs are the only ones who can choose a national chief who needs at least 60 per cent of the vote to win. There are only about 630 available votes and with regional politics in play it's extremely difficult for an outsider to upend the status quo and take the election.

As it stands, it appears Atleo has solid support in British Columbia which holds the largest number of votes with about 198. And, according to sources, Atleo has broad support in Ontario, which carries the second largest block of potential votes with about 133.

Even with the strong, as one Alberta chief put it, "anybody-but-Atleo" sentiment among many chiefs in the prairies, it may not be enough to knock him off.

"(Atleo) has a strong B.C. base…I can't see too many bolting," said Diabo. "He'll have 200 to 300 votes out of the gate."

While poverty rates continue to rise and infrastructure on reserves continues to crumble across the country, Diabo said most of the chiefs are not willing to gamble by choosing an AFN leader who could cause trouble with Ottawa.

"Everyone is afraid they'll lose their funding. That is what's keeping everyone there," said Diabo. "The dependency on the federal fiscal transfers has everybody trapped."

According to Cuthand, however, the chiefs are in danger of losing all their legitimacy unless they begin to reflect the will of their grassroots instead of their self interest to keep funds flowing.

"(Atleo) has a strong B.C. base…I can't see too many bolting," said Diabo. "He'll have 200 to 300 votes out of the gate."

"The chiefs are going to have to get relevant or be irrelevant," said Cuthand. "If they try to protect their projects, they are going to find that they are going to be taken over by events."

For Colby Tootoosis, 30, a band councillor for the Poundmaker Cree Nation and former co-chair of the AFN youth council, it's time for chiefs to stop fearing the word "radical" because the stakes are too high to hope change will come sometime down the road.

"We need to pick up the pace. I think radical isn't a bad thing in terms of what is really at stake and how close we are to becoming strangers in our own lands," said Tootoosis. "Our people don't need politicians; we need leaders who are willing to speak the truth."

Whoever becomes the next AFN national chief, Frank hopes they'll move the organization closer to the people.

"The AFN really has to change their image. They are seen as disconnected from the people," she said.

Michael echoes the sentiment.

The First Nation-Crown gathering was such a long way from the dirt roads back home on the rez," said Michael, who is from Beardy's and Okemasis First Nation in Saskatchewan. "There is so much frustration out there and people have had it."

[Reprinted from the APTN Blog.]

NC, PM, GG, CFNG 2012. (Photo by Fred Cattroll)

Assembly of First Nations Election 2012: Candidates for the Office of National Chief

NEWS RELEASE

OTTAWA, ON June 13, 2012 – The Office of the Chief Electoral Officer, responsible for the July election of the Assembly of First Nations (AFN) National Chief, has received nomination papers in proper form from the following persons, listed below in alphabetical order:

1.Mr. Shawn Atleo

2.Mr. Bill Erasmus

3.Ms. Ellen Gabriel

4.Ms. Joan Jack

5.Ms. Diane M. Kelly

6.Mr. Terrance Nelson

7.Ms. Pamela Palmater

8.Mr. George Stanley

According to the AFN Charter, an eligible candidate must:

•Be eighteen (18) years of age or older;

•Be of First Nation ancestry;

•Be a member of First Nation community, in good standing with the AFN; and,

•Have 15 eligible electors, First Nations Chiefs, endorse his/her candidacy.

The 2012 Election for the Office of AFN National Chief will take place July 18, 2012 during the AFN 33rd Annual General Assembly taking place at the Metro Toronto Convention Centre in Toronto, Ontario, July 17-19, 2012.

The AFN Charter article 22 states that the National Chief shall be elected by a majority of sixty (60) per cent of the votes. There are 633 First Nation communities in Canada that are recognized as members of the Assembly of First Nations.

The Assembly of First Nations is the national organization representing First Nation citizens in Canada.

"The AFN Charter article 22 states that the National Chief shall be elected by a majority of sixty (60) per cent of the votes. There are 633 First Nation communities in Canada that are recognized as members of the Assembly of First Nations."

Shawn Atleo

Bill Erasmus

Ellen Gabriel

Joan Jack

Diane Kelly

Terry Nelson

Pam Palmater

George Stanley

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

First Nations Strategic Policy Counsel

Innisfil, Ontario

Phone: (613) 296-0110

E-mail: rdiabo@rogers.com

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.

For Back Issues Go To:

Canada Library & Archives -Electronic Collections

Indigenous Peoples Opposed to the British Columbia Treaty Process

STATEMENT TO THE B.C. ASSEMBLY OF FIRST NATIONS:

June 28, 2012

We are here today as Grassroots Peoples who are opposed to the unjust and illegal British Columbia Treaty Process.

This is a process of Aboriginal Title and Rights extinguishment no matter if the terms used are "*certainty*", "*non-assertion of rights*" or "*modified rights*", the result is the same, the elimination of our Aboriginal Title and Rights as sovereign Indigenous Nations and surrender to the laws of BC and Canada to become merely ethnic municipalities and Canadian citizens.

The B.C. Treaty Process gives unfair advantage to the "*YES*" side within our Indigenous communities and Nations. All of the hundreds of millions of dollars in funding , legal, technical and advisory support goes to the Chiefs and Councils, Staff and Negotiators who are ultimately invested in getting a "*YES*" vote from the Peoples to Final Treaty Settlement offers from the BC & Federal governments.

We represent not only the "*NO*" side in the votes held in **Lheidli T'enneh**, **Tsawwassen** and those opposed to the **Tla'amin Treaty vote**, but we also give voice to those Indigenous Peoples opposed to the BC Treaty Process throughout the rest of the BC region.

OUR POSITION:

We call for an immediate halt to all "*Treaty*" votes throughout the BC region, until the negotiations to reform the federal Comprehensive Claims Policy have concluded between Assembly of First Nations Comprehensive Claims Working Group and the Government of Canada.

We call for open forums throughout the BC region to be held for all interested Indigenous Peoples to discuss a comparison of the key clauses offered by the BC and Federal governments at various "*Treaty Tables*" that negatively impact the Aboriginal Title and Rights of Indigenous Nations.

We call for an end to the use of the racist "*Doctrine of Discovery*" by the BC and Federal governments as justification for the theft of Indigenous lands and resources.

We call for all BC regional Indigenous leaders to fully respect and implement the **United Nations Declaration on the Rights of Indigenous Peoples** in any process affecting the Aboriginal Title, Rights or Sovereignty of any Indigenous community or Nation in the BC region, including the right to Free, Prior Informed Consent (Article 28).

- PRESENTED BY THE COALITION OF INDIGENOUS PEOPLES AGAINST TREATY EXTINGISHMENT