

FIRST NATIONS STRATEGIC BULLETIN

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

New Relationship or “Final Solution” – An Analysis of the Certainty Provisions of the Final Agreements Initialed Under the BC Treaty Process



Arthur Manuel speaking in New York City at an International Forum on Globalization and Indigenous Peoples, Nov. 2006. (Photo courtesy of INET)

Arthur Manuel, Spokesman, INET

Canada has not moved an inch from its policy to extinguish the land rights of indigenous peoples and assimilate us into the existing white settler population. This is also why Canada has opposed the **UN Declaration on the Rights of Indigenous Peoples** and late last year pushed African Countries to stall its adoption after over a decade of negotiations had resulted in a final text. On the domestic level and especially here in British Columbia the three initialed Final Agreements clearly show how Canada wants to do this through these so called modern treaties, although the term Agreements is more appropriate because they simply do not have the makings of a treaty as set out

by international law. They also do not meet the substantive minimum standards as set out in the UN Declaration on the Rights of Indigenous Peoples as adopted by the **UN Human Rights Council** in June 2006.

It is important to point out that all three indigenous groups are all very small Indian bands who have been strategically separated out from their respective nations in the negotiating process so that more pressure could be exercised on them through the historic divide and rule strategy. These Final Agreements modify the full extent of the Aboriginal Rights including Aboriginal Title of each of the Indigenous groups, and they will also affect the entire Aboriginal Nations and even neighboring nations who have not been part of the negotiations. They also modify the constitutional and legal relationship between the indigenous peoples of these three groups vis-à-vis the Canadian and British Columbian governments. These three Final Agreements reflect the present status and the mandates that the government negotiators operate under pursuant to the federal Self-government and Comprehensive Land Claims Policies of Canada.

It is important to point out that all three Final Agreements are nearly or are identical in key provisions that the Canadian and British Columbia governments want indigenous peoples to concede to the federal and provincial governments. Although they took many years to negotiate, they absolutely conform to the blueprint that the governments already set out in the **Nisga’a Final Agreement**. The key provisions include the modification of Aboriginal Rights to be surrendered and Aboriginal Peoples to be under the power or

Special points of interest:

- **Three BC Final Agreements Lead to Extinguishment**
- **Beware of Right Wing Experts on Aboriginal Issues**
- **An Analysis of Canada’s Treatment of Aboriginal Rights**

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Final Agreement initialed with Maa-nulth First Nations, Dec. 9, 2006. (Photo courtesy of B.C. Gov't)

“these Final Agreements are carbon copies of each other in regard to the extinguishment of Aboriginal Title”



Initialing of Tawassan Final Agreement, Dec. 8, 2006. (Photo courtesy of B.C. Gov't)



Lheidli T'enneh Final Agreement was initialed by chief negotiators, Oct. 29, 2006. (Photo courtesy of B.C. Gov't)

jurisdiction of the federal and provincial governments. These Final Agreements are between 221 to 284 pages long and must be examined very carefully because their implications must be fully understood before they can be considered as meeting the standard of “**free prior informed consent**” which has to be reached to make any negotiation or vote on these agreements valid. At the recent UN sponsored meeting on treaties even historical treaties signed in the Prairies between the Crown and Indigenous Peoples have been criticized because of the lack of “**free prior informed consent**”. At that time there was a big difference between how Indigenous Peoples understood the spirit and intent of the treaties to validate their rights whereas the governments read them down to mean the surrender and extinguishment of rights. The problem with these final agreements is that we now have lawyers and technical people on all sides working on them. Still the language and terms are alien to community people and very often the communities are kept absolutely in the dark about the negotiations. Therefore the point about lack of free prior informed consent has to be made very strongly at this stage in the negotiations especially in view of the fact that these Final Agreements are carbon copies of each other in regard to the extinguishment of Aboriginal Title, which points to our people being coerced into a “**final solution**” which will extinguish our rights and assimilate or exterminate our nations.

It is the grassroots Indigenous Peoples, who have not been informed and often pressured to accept an outcome, who will have live under these Final Agreements and they must understand the devastation impacts these agreements will have on their communities and on future generations. They have to weigh the full scope of their Aboriginal Rights, including Aboriginal Title, against the profound limitation that will be imposed by these agreements where very little amounts of land will be returned as “**fee simple**” in exchange for the extinguishment of their Aboriginal Title. It is clear that Indigenous Peoples who live on Indian Reserves are not familiar with “**fee simple**” simply because fee simple does not exist on Indian Reserves. In turn after a final agreement the Indian Reserve will no longer exist and all land will then be under provincial jurisdiction and subject to payment of taxes. Probably even more importantly the land will then be able to be sold to the general public and as poverty will push people to sell land, it will lead to fragmentation of our communities and many of our people will be forced off their fee simple land and into even worse poverty in the cities. When looking at the economic status of most Indian peoples living off reserve, we see that they normally rent property and therefore would not have much experience with private “**fee simple**” ownership of real property. The persons most likely to purchase land that comes on the market following the dissolution of the Indian reserve will be non-indigenous persons. The way land is held and owned off Indian reserve is called fee simple. It is the highest private property interest that can be held by individuals. The owner is registered in the land register, but there is still underlying Crown Title under the individual ownership and if the owner fails to pay the property tax, the property will be lost to the state. Similarly if the person fails to pay their mortgage, it will be foreclosed and again lost. Therefore there is a lot of work that needs to be done educating Indigenous Peoples about the implications of reserve lands being transferred into “**fee simple**” and the loss of Aboriginal Title over their entire traditional territory before any vote on ratification would satisfy a minimum standard of “**free prior informed consent**”.

These three Final Agreements are very long and deal with a lot of issues therefore this first article in a series is going to deal with the Chapter 1, General Provisions of all three Final Agreements. Other Sections and aspects of these Final Agreements will be examined in subsequent articles to be published in the **First Nations Strategic Bulletin**. In particular it will focus on the Certainty provisions with the following headings: Full and Final Settlement; Exhaustively Sets Out Rights; Modification; Purpose of Modification; Release of Past Claims; and Indemnities and Specific Claims. These provisions are contained in each Final Agreement with the exception of Specific Claims which does not exist in the **Tsawwassen Final Agreement**. These provisions give certainty to the federal and provincial govern-

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ments, because they spell out that all Aboriginal Rights, including Aboriginal Title, are then transformed and exhaustively contained in the Final Agreements and can no longer be claimed outside of them. This means that these Final Agreements are the Bible of the **Lheidli T’enneh**, **Tsawwassen** and **Maa-nulth** Indigenous Peoples regarding Aboriginal Rights including Aboriginal Title.

The actual provisions are actually quoted below for the readers to see for themselves the stunning similarity of the wording between the three agreements. It is important to note these similarities because they reflect the fact that these provisions are an integral part of the federal and provincial governments Self-government and Comprehensive Land Claims Policies. It also highlights the fact that there are no genuine negotiations covering a range of solutions like “**extinguishment under the modified rights model**” to some other kind of final agreement based upon “**recognition and coexistence of Aboriginal Rights including Aboriginal Title**”. The model is really unilaterally pushed on the Aboriginal groups at the negotiating table, or one could say they got pulled over the table. It is clear that the wording of these provisions that the federal and provincial governments are committed to use the **Nisga’a Final Agreement** as the precedent to be the “**final solution**” to the so called Indian problem.

The wordings of these provisions are fairly straight forward to any person who has been dealing with these matters. The implications of these provisions do need to be considered and thought out in terms of how they cut back, limit and restrict broader interpretations given to Aboriginal Title and Rights by legal debate and decisions of the Supreme Court of Canada and of course as enshrined in Indigenous law. The 1997 **Delgamuukw** decision and other Superior Court decisions, although conservative have given a much broader concept to Aboriginal Rights including Aboriginal Title than the restrictions established by the narrow confines imposed by the provisions below. Through these politically determined Final Agreements, the federal and provincial governments are creating limitations that undermine and will extinguish Aboriginal Rights that the Courts have recognized, and that are protected by the Canadian constitution and international law. The only way our Aboriginal Title and Rights can be saved from being extinguished is if our people take an informed decision and vote against these Final Agreements. The following are some of the most dangerous provisions contained in the respective final agreements.

Full and Final Settlement

Lheidli T’enneh

37. This Agreement constitutes the full and final settlement with respect to the aboriginal rights, including aboriginal title, in Canada of Lheidli T’enneh.¹

Tsawwassen

This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of Tsawwassen First Nation.²

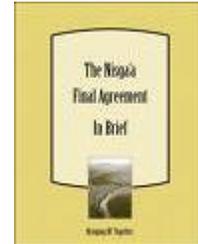
Maa-nulth

1.11.1 This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, of each Maa-nulth First Nation.³

Exhaustively Sets Out Rights (Modified Rights Model)

Lheidli T’enneh

This Agreement exhaustively sets out the Section 35 Rights of Lheidli T’enneh, the attributes and the geographic extent of those rights, and the limitations to those rights to which the Parties have agreed, and those rights are:



“the federal and provincial governments are committed to use the **Nisga’a Final Agreement** as the precedent“



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“This Agreement exhaustively sets out the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation”



a. the **aboriginal rights, including aboriginal title, modified as a result of this Agreement**, in Canada, of Lheidli T'enneh in and to Lheidli T'enneh Lands and other lands and resources in Canada;

b. the jurisdictions, authorities and rights of the Lheidli T'enneh Government; and the other Section 35 Rights of Lheidli T'enneh.⁴

39. **Notwithstanding the common law**, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of Lheidli T'enneh, as they existed anywhere in Canada before the Effective Date, including their attributes and geographic extent, **are modified, and continue as modified, as set out in this Agreement.**⁵

Tsawwassen

12. **This Agreement exhaustively sets out the Section 35 Rights of Tsawwassen First Nation**, their attributes, the geographic extent of those rights, and the limitations to those rights to which the Parties have agreed, and those rights are:

a. the **aboriginal rights, including aboriginal title, modified as a result of this Agreement**, in Canada, of Tsawwassen First Nation in and to Tsawwassen Lands and other lands and resources in Canada;

b. the jurisdictions, authorities and rights of Tsawwassen Government; and

c. the other Section 35 Rights of Tsawwassen First Nation.⁶

13. **Despite the common law**, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of Tsawwassen First Nation, as they existed anywhere in Canada before the Effective Date, including their attributes and geographic extent, **are modified, and continue as modified, as set out in this Agreement.**⁷

Maa-nulth

1.11.2 This Agreement exhaustively sets out the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation, their attributes, the geographic extent of those rights, and the limitations to those rights to which the Parties have agreed, and those rights are:

a. the aboriginal rights, including aboriginal title, modified as a result of this Agreement and the Settlement Legislation, of that Maa-nulth First Nation in and to its Maa-nulth First Nation Lands and other lands and resources;

b. the jurisdictions, authorities and rights of its Maa-nulth First Nation Government; and

c. the other Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation.⁸

1.11.3 **Notwithstanding the common law**, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of each Maa-nulth First Nation, as they existed anywhere before the Effective Date, including their attributes and geographic extent, **are modified, and continue as modified, as set out in this Agreement.**⁹

Modification (Fee Simple Conversion Model)

Lheidli T'enneh

12. For greater certainty, the aboriginal title of Lheidli T'enneh anywhere that it existed in Canada before the Effective Date, including its attributes and geographic extent, is **modified** and continues as the estates in **fee simple** to those areas identified in this Agreement as Lheidli T'enneh Lands and Lheidli T'enneh-owned private fee simple lands described in Appendix H.¹⁰

‘BC Agreements’ continued from page 4

Tsawwassen

14. For greater certainty, the aboriginal title of Tsawwassen First Nation anywhere that it existed in Canada before the Effective Date, including its attributes and geographic extent, is **modified** and continues as modified as the estates in **fee simple** to those areas identified in this Agreement as Tsawwassen Lands and Other Tsawwassen Lands.11

Maa-nulth

1.11.4 For greater certainty, the aboriginal title of each Maa-nulth First Nation anywhere that it existed before the Effective Date, including its attributes and geographic extent, is **modified** and continues as modified as the estates in **fee simple** to those areas identified in this Agreement as the Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands of that Maa-nulth First Nation.12

Purpose of Modification

Lheidli T’enneh

41. The purpose of the modification referred to in paragraph 39 is to ensure that as of the Effective Date:
- a. Lheidli T’enneh has, and can exercise, the Section 35 Rights of Lheidli T’enneh as set out in this Agreement, including the attributes and geographic extent of those rights, and the limitations to those rights to which the Parties have agreed;
 - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement; and
 - c. Canada, British Columbia and all other persons do not have any obligations with respect to any aboriginal rights, including aboriginal title, of Lheidli T’enneh to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the Section 35 Rights of Lheidli T’enneh as set out in this Agreement.13

Tsawwassen

15. The purpose of the modification referred to in clause 13 is to ensure that as of the Effective Date:
- a. Tsawwassen First Nation has, and can exercise, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement, including their attributes, geographic extent and the limitations to those rights to which the Parties have agreed;
 - b. Canada, British Columbia and all other Persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with this Agreement; and
 - c. Canada, British Columbia and all other Persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of Tsawwassen First Nation to the extent that those rights, including aboriginal title, might be in any way other than, or different in attributes or geographic extent from, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement.14

Maa-nulth

- 1.11.5 The purpose of the modification referred to in 1.11.3 is to ensure that as of the Effective Date:
- a. each Maa-nulth First Nation has, and can exercise, its Maa-nulth First Nation Section 35 Rights set out in this Agreement, including their attributes, geographic extent and the limitations to those rights to which the Parties have agreed;



“For greater certainty, the aboriginal title of each Maa-nulth First Nation anywhere that it existed before the Effective Date, including its attributes and geographic extent, is **modified**”





The late George Watts was negotiator of the Maa-nulth claim.

“Each Maa-nulth First Nation releases Canada, British Columbia and all other persons from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown”



‘BC Agreements’ continued from page 6

- b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement; and
- c. Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of each Maa-nulth First Nation to the extent that those rights, including title, might be in any way other than or different in attributes or geographic extent, from the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation set out in this Agreement.15

Release of Past Claims

Lheidli T’enneh

- 42. Lheidli T’enneh releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, whether known or unknown, that Lheidli T’enneh 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, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Lheidli T’enneh.16

Tsawwassen

- 16. Tsawwassen First Nation **releases Canada, British Columbia and all other Persons** from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that 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, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Tsawwassen First Nation.17

Maa-nulth

- 1.11.6 **Each Maa-nulth First Nation releases Canada, British Columbia and all other persons from all claims,** demands, actions or proceedings, of whatever kind, whether known or unknown, that that Maa-nulth 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, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.18

Indemnities

Lheidli T’enneh

- 43. Lheidli T’enneh will indemnify and save harmless Canada or British Columbia, as the case may be, from any:
 - a. costs, excluding fees and disbursements of solicitors and other professional advisors;
 - b. damages;
 - c. losses; or
 - d. liabilities,

that Canada or British Columbia, respectively, may suffer or incur in connection with, or as a result of, any claims, demands, actions or proceedings relating to or arising out of any act or omission, before the Effective Date, that may have affected or infringed any aboriginal right, including aboriginal title, in Canada of Lheidli T’enneh.19

Tsawwassen

- 17. Tsawwassen First Nation will indemnify and forever save harmless Canada or British

‘BC Agreements’ continued from page 6

Columbia, as the case may be, from any and all damages, losses, liabilities, or costs excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, cause of action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:

- a. the existence in Canada of an aboriginal right, including aboriginal title, of Tsawwassen First Nation, that is determined to be other than, or different in attributes or geographic extent from, the Section 35 Rights of Tsawwassen First Nation set out in this Agreement; or
- b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Tsawwassen First Nation.²⁰

Maa-nulth

1.11.7 Each Maa-nulth First Nation will indemnify and forever save harmless Canada and British Columbia from any and all damages, costs excluding fees and disbursements of solicitors and other professional advisors, losses or liabilities, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, cause of action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:

- a. the existence of an aboriginal right, including aboriginal title, of that Maa-nulth First Nation that is determined to be other than, or different in attributes or geographical extent from, the Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation set out in this Agreement; or
- b. any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.²¹

Specific Claims

Lheidli T'enneh

46. Notwithstanding any other provision in this Agreement, nothing in this Agreement precludes Lheidli T'enneh from pursuing its claim, respecting the 1911 surrender of Fort George Indian Reserve #1, in accordance with Canada's specific claim policy or in court.
47. For greater certainty, the Lheidli T'enneh claim referred to in paragraph 46 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for Lheidli T'enneh, or a "reserve" as defined in the *Indian Act* for the use and benefit of Lheidli T'enneh.²²

Maa-nulth

1.11.9 Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes a Maa-nulth First Nation from pursuing claims in accordance with Canada's Specific Claims Policy.

1.11.10 For greater certainty, claims referred to in 1.11.9 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for a Maa-nulth First Nation, or an Indian Reserve for the use and benefit of a Maa-nulth First Nation.²³

In concluding this review of the Certainty provisions of the three Final Agreements one is left to wonder how agreement could have been reached on these provisions. Anyone who



“Each Maa-nulth First Nation will indemnify and forever save harmless Canada and British Columbia from any and all damages, costs excluding fees and disbursements of solicitors and other professional advisors, losses or liabilities”



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has been in working with Indigenous Peoples knows that getting unanimity amongst Aboriginal peoples, is as hard as herding cats. Therefore, it would seem that in this case, just like with all other aspects of the Final Agreements, the provisions were really being forced on Indigenous Peoples. They were really left no other option in coming to a final agreement than agreeing with what the federal and provincial governments want. Coercion again does not meet the internationally accepted requirement of free prior informed consent. It is however probably good to highlight the hectares of “*fee simple*” land that will be subject to these Final Agreements. This is what the **Lheidli T’enneh**, **Tsawwassen** and **Maa-nulth** Indigenous Peoples will be voting on in the Ratification vote needed to implement these initialed Final Agreements. Looking at the provisions and the numbers below it is left up to the reader to judge: Is this a fair deal?

Land Selection Model

Lheidli T’enneh

First Nation	Former Reserve	Provincial Crown Land	Federal Crown Land	Total
Lheidli Tenneh	677	3,361	237	4,275

Tsawwassen

First Nation	Former Reserve	Provincial Land	Additional Land	Total
Tsawwassen	290	372	62	724

Maa-nulth

First Nation	Former Reserves	Additional Lands	Purchased Fee Simple	Total
Huu-ay-aht	1,054	7,163		8,217
Kay’yu:’k’t’h’ / Che:k’tles7et’h’	382	5,916		6,298
Toquaht	196	1,290		1,486
Uchucklesaht	233	2,828		3,061
Ucluelet	199	5,145	92	5,436
Total	2,064	22,342	92	24,498

The Land Selection Model as set out above is the determined objective of the existing federal Self-government and Comprehensive Land Claims Policies. These Policies and the Final Agreements modeled after these policies do not even contemplate any new settlement model based on “*recognition and coexistence*” of Aboriginal Rights including Abo-

“getting unanimity amongst Aboriginal peoples, is as hard as herding cats”



'BC Agreements' continued from page 8

original Title. The effort of the **Assembly of First Nations, Delgamuukw Implementation Strategic Committee** to change the federal Comprehensive Claims Policy from the extinguishment model to a model based on the recognition of Indigenous Rights were rejected in December 2000 by the federal government because negotiations based upon extinguishment under the modified rights model were accepted by the parties negotiating under the **British Columbia Treaty Process**. The fatal weakness of these Final Agreements are a direct result of not forcing the Canadian government to change its Self-government and Comprehensive Land Claims Policy to conform to the Supreme Court of Canada and International Human Rights decisions that specifically recognize Aboriginal Land Rights, and condemn Canada's effort to extinguish Aboriginal Land Rights under the "**modified rights model**". The fact that the governments are well on their way pushing these Final Agreements upon Aboriginal Nations, is also the reason why Canada has been opposing the **UN Declaration on the Rights of Indigenous Peoples** because it recognizes indigenous land rights and would not allow for their extinguishment. The Declaration also recognizes the principle of free prior informed consent, a principle that Canada did not want to recognize in a number of international negotiations, as the government continues to unilaterally push their policies in domestic negotiations.

It is clear that the existing leadership and negotiators are too weak to create the kind change required to ensure recognition and coexistence therefore it is up to the people to take action that will force this fundamental change and stop these agreements before it is too late. It is clear that the federal and provincial governments will try to create a snowball effect by these agreements and force all of us to accept the **Nisga'a Final Agreement Modified Rights Model** as a settlement or "**final solution**" for our Aboriginal Rights. We cannot do this because we will betray our Elders who fought so hard to get us to this very critical crossroads, and it would cause our future generations poverty. Never in the history have our people been in a similarly strong position to create fundamental change to our situation based upon recognition of our land rights, but these Final Agreements could mean a gigantic step backwards and destroy the efforts of our past leaders and peoples. The provision highlighted in this article need to be eradicated from any agreement dealing with our land rights.

Aboriginal Rights including Aboriginal Title must not be modified to be nothing more than "**fee simple**" but recognized as the fundamental "**radical title**" underlying our traditional title just like Canada claims Crown Title underlies all property in Canada. This radical title will then be a basis for collecting tax revenue from all properties held by non-indigenous peoples in our traditional territories. Aboriginal Title is the basis of our right to make decision regarding our traditional territories and benefit from wealth generated from our natural wealth. Aboriginal Title is not limited to our existing Indian Reserves but is our inalienable right to govern over and benefit from our traditional territories. That is what is at stake here. That is why the federal government is so happy with their **one hundred million dollar New Relationship**, because it has brought silence from our elected leadership on these very critical issues. The Indigenous grassroots need to step to the plate and change the existing dynamics or we will lose once and for all our rights as Indigenous Peoples. We will lose our lands, our title and rights for all future generations and we will be to blame for it.

The documents referred to can be gotten on the internet. It is clear that the British Columbia government really supports this process because they have devoted a lot of effort to maintain a public relations campaign including web page with the most recent material on it. The **British Columbia government** has arranged these Final Agreements and related material under the **Ministry of Aboriginal Relations and Reconciliation Webpage** under: <http://www.gov.bc.ca/arr/treaty/final.html>. The Web Page briefly describes each Final Agreement in PDF files:



Gordon Campbell and Stewart Phillip signing Health Agreement. (Photo courtesy of B.C. Gov't)

"It is clear that the existing leadership and negotiators are too weak to create the kind change required to ensure recognition and coexistence therefore it is up to the people"



First Nations citizens protesting outside of Kelowna Meeting, Nov. 25, 2006. (Photo by R. Diabo)

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“the government is trying to sell and promote not only these agreements but to create the groundswell to flood us all with their policies and to wash away our Aboriginal rights in the process”



- Final Agreement
- ◇ Final Agreement
- ◇ News Release
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- Fact Sheets
- ◇ General Overview
- ◇ Certainty
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- ◇ Governance
- ◇ Ratification and Implementation
- ◇ Financial Components
- ◇ Taxation
- Video
- ◇ Final Agreement Initialed

Review the website and see for yourself how the government is trying to sell and promote not only these agreements but to create the groundswell to flood us all with their policies and to wash away our Aboriginal rights in the process. The **British Columbia government’s** primary purpose for endorsing these so called modern treaty agreements because it would allow them to pretend that they are filling the legal and constitutional gap and the uncertainty created by the **Supreme Court of Canada (SCC) Delgamuukw decision** in 1997 in which the SCC recognized Aboriginal Title as an Aboriginal Right. But the only way to deal with the fundamental question of our Aboriginal Title and Rights is through their full recognition. Our elders have told us that we have an obligation to maintain our traditional territories, so how could we ever give them up and how could one group of people be allowed to give up our rights in the name of all future generations. What would mean certainty to the governments of **British Columbia** and **Canada** in securing non-indigenous control would mean certain continued poverty for our children and grand-children.

ENDNOTES:

1. Lheidli T’enneh Final Agreement, October 29, 2006, Chapter 2 – General Provisions , Certainty, Full and Final Settlement, Page 24
2. Tsawwassen First Nation Final Agreement, December 8, 2006, Chapter 2 – General Provisions, Full and Final Settlement, Page 22
3. Maa-nulth First Nations Final Agreement, December 9, 2006, Chapter 1, General Provisions, Certainty, Full and Final Settlement, Page 8

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4. Supra, Lheidli T’enneh Final Agreement, Page 24
5. Supra, Lheidli T’enneh Final Agreement Page 24
6. Supra, Tsawwassen First Nation Final Agreement, Page 22
7. Supra, Tsawwassen First Nation Final Agreement, Page 22
8. Supra, Maa-nulth First Nations Final Agreement, Page 8
9. Supra, Maa-nulth First Nations Final Agreement, Page 8
10. Supra, Lheidli T’enneh Final Agreement Page 24
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16. Supra, Lheidli T’enneh Final Agreement, Page 25
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19. Supra, Lheidli T’enneh Final Agreement, Page 25
20. Supra, Tsawwassen First Nation Final Agreement, Page 23
21. Supra, Maa-nulth First Nations Final Agreement, Page 10
22. Supra, Lheidli T’enneh Final Agreement, Page 26
23. Supra, Maa-nulth First Nations Final Agreement, Page 10



“What would mean certainty to the governments of **British Columbia** and **Canada** in securing non-indigenous control would mean certain continued poverty for our children and grand-children”



Title and Rights Alliance Spring Caravan, Victoria, B.C. (Photo courtesy of UBCIC)



Year End Message: Beware the Flood of “Experts” Propagating Assimilation of Native People



Jonathan Kay, editor and columnist the National Post. (Photo courtesy Fraser Institute)

“Of course, the assimilative aspects of their **“solutions”** are often disguised, for example, as proposals to allow native people to become owners of Indian land”



John Ibbitson, columnist for the Globe & Mail. (Photo courtesy of Fraser Institute)



Boyce Richardson during a protest on Victoria Island by the Algonquins of Barriere Lake, Oct. 2001. (Photo courtesy of Peter Di Gangi)

By Boyce Richardson, December 31, 2006

The election of the Harper government has released at least one extraordinary event -- namely, a veritable flood of experts --- journalists, academics, civil servants, politicians, consultants and their ilk --- all of whom have the solution to whatever problem it is that afflicts the Aboriginal people who live in Canada. Probably the end of the year is a good time to examine what these people have in mind.

Amazingly, these **“experts”**, from right-wing journalist **Jonathan Kay** of the **National Post**, through **John Ibbitsen** and **Jeffrey Simpson**, of the **Globe and Mail**, through a wide variety of others to Goldwater Republican **Tom Flanagan**, an adviser to the Prime Minister, are unanimous on the solution. They believe, or pretend to believe, that the solution lies in assimilating the Aboriginal people, or First Nations, more closely to the value systems and practices of the Canadian norm.

At least some of them espouse this solution as if they had just discovered it. They trumpet it as the great new thing, and are apparently unaware that assimilation has been Canadian government policy since long before there was a Canadian government, and that this policy has been solely responsible for the disasters that today confront so many First Nations communi-

ties. I guess they don't teach that in journalism schools.

Of course, the assimilative aspects of their **“solutions”** are often disguised, for example, as proposals to allow native people to become owners of Indian land, just like other Canadians, a policy that had devastating effects when tried in the United States); or proposals for native people to begin paying taxes on every transaction they make, just like the rest of us; or proposals for handing Aboriginal education over to the provinces. Ibbitsen recently recommended this, and the Globe, after some delay, finally published a letter from **Harvey McCue**, a native person with deep experience in the field of education, in which he said there was not one iota of evidence to support Ibbitsen's claim **“that provincial governments would do the best job running native education programs”**.

McCue put paid to Ibbitsen's whole argument in one convincing paragraph:

“In reality, there is plenty of evidence that the abysmal academic results of native students are caused by provincial ministries of education. They train the teachers who work in the reserve schools, they create the curricula and the learning materials used in the schools, and the provincial pedagogy prevails. Within days of an appointment to a reserve school, teachers learn the hard truths about their training and they struggle endlessly with its deficiencies. Many simply leave. The irrelevance of provincial curricula to the needs of native communities and students is stunning. Ditto for the learning materials. The less said about the efficacy of the pedagogy the better. The solution lies not with the provincial governments but with the development of a native education infrastructure that has the resources and the authority to create a system of education that reflects and responds to native objectives and needs. As long as both levels of governments continue to ignore the root causes of the tragedy that is native education, nothing will change.”

Let me tell it like it is: to the extent that there are damaging pathologies raging in Aboriginal communities, these have been

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wished upon these people by a governmental determination, pursued relentlessly for many years, designed to denigrate native people, to undermine their way of life, destroy their economies, eliminate their languages and beliefs, and shatter their family and tribal structures. All this is clearly written into the historical record.

If there is any doubt that such pathologies are out of control in many parts of the country, proof of it comes across my desk almost every day. Look at **Marie Wadden's** series printed recently in The **Toronto Star**, after a year-old research effort in all parts of Canada. Here is what one man who has lived with the Innu of Labrador for many years, recently wrote to her, (while expressing his disagreement with some of my own reservations about her approach: see Boyce Richardson's Log No 86, Dec 5, for this discussion).

"There is a silent holocaust going on right across the North and not just in Canada. Barring the occasional story on a particularly gruesome cluster (e.g. the teenagers in Nain who one after another week after week jumped off the CBC broadcast antenna) CBC doesn't report suicides here so if you don't have a source in the hospital or RCMP you are protected against the reality of what is happening. I think there was even an element of self-deception in the garish treatment of Davis Inlet. It allowed Canada to avert its eyes from the fact that almost identical stories were (and are) being played out in every northern indigenous village from coast to coast to coast. Recast the story of intentional undermining of Innu culture and society as one of being marooned on an island (never mind the historical facts that the Innu had been visiting this island in the summer for at least 3000 years) and being neglected by government, and it fits smoothly into the conventional Canadian narrative of progress."

In another letter the same man wrote:

"I don't know if the well-intentioned masses in Canada, and 'the west' generally, are reachable or prepared to listen quietly but I am still assuming that they can, given the opportunity and enough self-awareness. Your Atkinson Fellowship articles are surely an effort to place the reality before Canada and invite a reappraisal of policies being pursued in the name of Canada which are turning out to be near ethnocidal in effect. (My emphasis) I cannot see whose interests are served by pretending things are better than they are or muffling the screams for fear of upsetting people. Canada's approach to the mess created has been to both treat the Innu as if they were individually sick and needed treatment and healing, and to systematically ignore or dismiss the social dimension, the context and history."

Another witness came from a remarkable letter written by a native professor in an Ontario university.

"We, contemporary Aboriginal people, are the inheritors of a shredded culture that is the result of 200+ years of barbaric colonialism but we have no conscious understanding of what we have inherited. It is just who we are, we have learned it at the feet of our parents and grandparents, we are exposed to it every day in our communities, we experience it in our homes but we are not conscious of the dysfunction because it is now part of our cultures. It is like learning to catch a ball. You learned as a child through the experience and interaction with your parents, your siblings and you still carry that ability around with you as an adult. You are not conscious of it but you just 'do' catching a ball. If I threw one your way right now you would automatically attempt to catch it even though you may not have caught a ball in years. That learning still exists in the recesses of your brain. Stimulate it and you will respond but it is not a conscious response. The dysfunction in our communities is much the same we are not conscious of it we just 'do' it. The trick is to be able to 'undo' it or decolonize us through a process that makes conscious the unconscious. Only then will our people be able to move from unconscious living and reenacting the dysfunction that we have inherited generation to generation and begin to make and practice new ways to move through lives."



Innu youth sniffing solvents.
(Photo courtesy of CBC)

"There is a silent holocaust going on right across the North and not just in Canada"



Young Innu boys sniffing gas.

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After describing the work he is doing in educating native teachers, he remarks: “...it's all about decolonizing the teachers so they begin to see themselves differently. Not as problems or a set of pathologies, or victims but the survivors of a relentless colonial history. (My emphasis)”

And he goes on:

“I speak of 24 communities in the Sioux Lookout district of northern Ontario. I'm talking about a district that is one-day travel by air from Toronto, the economic powerhouse of Canada. In that district approximately 300 Indian youth are unable to attend high school due to a lack of classroom space, where none of the children passed the grade three literacy test this year, and almost 400 youth from those communities have committed suicide over the last decade all within a population of 2500 children. Yet in spite of a drastic need for elementary teachers in the district there is no money to educate 100 new elementary teachers because of the lack of federal financial support. It's so bad that they have created a fund raising campaign to generate money from corporate donors. Tell me of another jurisdiction in Ontario, or Canada in which this type of social reality can exist. If this was in Mississauga, or Brantford, or Aurora, or Parry Sound all levels of government would fall over themselves to change this reality, but in Sioux Lookout it is somehow acceptable.”

“The recent election of the Stephen Harper government has only increased exponentially the malevolent neglect that has for so long underscored Canada's relationship with Aboriginal peoples. For example, in November of 2005, for the first time in the history of Canada all the provincial, territorial, federal, Indian, Inuit and Metis leaders met to address the inequities experienced by Aboriginal peoples. The resulting Kelowna Agreement promised to focus \$5 billion dollars on Aboriginal health, water, education, and employment over a decade. One of the first things that the Harper government did after being elected was to kill the Kelowna Agreement and not for lack of money either. Canada has boasted fiscal surpluses for years and this year was no exception. The Minister of Finance recently announced a \$12 billion surplus this year alone. The Harper policy of malevolent neglect (my emphasis) has driven Aboriginal people from their lands to urban centres in drastically increasing numbers. This is just another colonial tactic of assimilation by social strangulation (my emphasis), and it is beginning to pay off when you consider that in Ontario it is estimated that 60 to 70 percent of Aboriginal people now live in cities. One can only conclude that colonial racism drives the Harper agenda when it comes to the Aboriginal question (see Harper's chief political advisor Tom Flanagan's First Nations? Second Thoughts).”

These native witnesses state the case better than I could. None of them mention that what is also under way is a systematic effort to de-fang the guarantee of Aboriginal rights provided in Section 35 of the Canadian Constitution. A lucid exposition of this process has been developed and presented in the **First Nation's Strategic Bulletin**, issued monthly under the leadership of **Russell Diabo**, of Ottawa. In every one of the many land claims agreements that have recently been signed, the native side has been required to abandon their constitutional rights, under a variety of language formulations that all lead to the same thing: extinguishment by any other name.

There is much more to be said on this subject. It will no doubt continue to appear in one form or another during the coming year. One important element of this discussion concerns the posture of the native leadership, especially the “**official**” leadership of such bodies as **Assembly of First Nations**, and the Metis and Inuit organizations whose changes of name I have not been able to keep up with.

In a very real sense, every government initiative, every agreement signed with government, has led and does lead, to greater assimilation. And there is a growing section of First Nations thought that prefers to stand on Aboriginal Rights and Title as the basis for all policy.



Prime Minister Stephan Harper

“The recent election of the Stephen Harper government has only increased exponentially the malevolent neglect that has for so long underscored Canada's relationship with Aboriginal peoples”



KAIROS Policy Briefing Paper: Measuring the Federal Government's Commitment to Aboriginal Rights



AFN National Chief Phil Fontaine with several Premiers during the First Ministers' Meeting in Kelowna, B.C. Nov. 25, 2005. (Photo by R. Diabo)

By Chuck Wright and Ed Bianchi

The Kelowna Accord and the UN Declaration on the Rights of Indigenous Peoples are regarded as two important instruments to address human rights issues facing Aboriginal peoples in Canada. This briefing paper examines the current federal government's position on these two agreements as a way of measuring its commitment to Aboriginal peoples' rights.

The **UN Declaration on the Rights of Indigenous Peoples** has been under development for more than 20 years, making it one of the most intensely debated and carefully scrutinized human rights instruments in UN history. Uniquely, the primary beneficiaries of the Declaration, Indigenous peoples themselves, have been an integral part of its development. Unfortunately, the Conservative government of **Prime Minister Stephen Harper** decided to oppose the Declaration at several key UN votes, which could prevent the **UN General Assembly** from ever adopting the Declaration.

The Conservative government has also demonstrated a lack of commitment to Indigenous peoples' rights in its decision to not honour the **Kelowna Accord**, a move that has drawn widespread condemnation from Aboriginal peoples and their supporters, as well as from federal and provincial politicians who were involved in its creation.

Established in November 2005, the Kelowna Accord was an agreement between Aboriginal peoples and federal, provincial and territorial First Ministers that set out benchmarks for addressing Aboriginal poverty and marginalization the areas of education, health, housing and economic opportunities. For example, government and Aboriginal leaders agreed to reduce the housing gap between Aboriginal and non-Aboriginal people through new housing initiatives, changes to current housing delivery and provisions for social and affordable housing. In the spirit of the Accord, the Liberal government committed to investing \$1.2 billion over the next ten years towards Aboriginal housing.

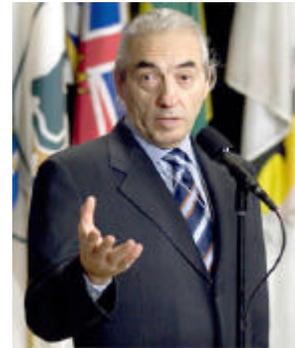
At a recent meeting of the parliamentary **Standing Committee on Aboriginal Affairs and Northern Development (SCAAND)**, AFN National Chief **Phil Fontaine** described the \$5.1 billion deal reached in Kelowna, British Columbia as a "**comprehensive, practical approach**" to addressing the mass poverty in Aboriginal communities, which he called "**the single most important social justice issue facing the country.**"¹

Western premiers also lamented the Conservative government's decision to abandon the Accord. At the **NDP** convention in Quebec City in September, **Manitoba Premier Gary Doer** said: "**It's the first time we had that kind of consensus and plan to move forward. With the wealth we have in Canada today, we have a moral obligation to invest... in inclusion for aboriginal people.**"²

However, the Kelowna Accord has some shortcomings of its own, one being that it is not a rights-based approach to Aboriginal issues and instead, is a charitable response to the basic human rights of Aboriginal people. Furthermore, even the Liberal commitment of \$5.1 billion is insufficient in fully addressing the immense challenges being faced by many Aboriginal people and communities in Canada.

Canada's deficit on Aboriginal Housing

The inadequacy of Aboriginal housing is one manifestation of the marginalization



AFN National Chief Phil Fontaine at FMM in Kelowna, Nov. 25, 2005.

"the Kelowna Accord has some shortcomings of its own, one being that it is not a rights-based approach to Aboriginal issues and instead, is a charitable response to the basic human rights of Aboriginal people"



After OPP raid in Caledonia.

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“the Declaration, if adopted, could become a practical tool to hold the Canadian government accountable for their policy towards Aboriginal peoples, one that pushes the federal government to move beyond charitable impulses towards long-term, rights-based solutions”

and poverty experienced by Aboriginal peoples in Canada. In 1996, the **Royal Commission on Aboriginal Peoples (RCAP)** reported that “*aboriginal housing...[is] in a bad state, by all measures falling below the standards that prevail elsewhere in Canada and threatening the health and well-being of Aboriginal people.*”³ On reserve there is an estimated shortage of nearly 35,000 housing units and this is expected to increase by 2,200 units every year.⁴ In 1996, approximately 13,400 homes needed repairs on reserve and 6,000 needed outright replacement.⁵

It is for these reasons that the UN Declaration on the Rights of Indigenous Peoples is so important. The Declaration establishes a set of international standards that provide guidance for governments in terms of how certain rights relate to the specific situations of Aboriginal peoples. In the case of the Conservative government, their position on the Kelowna Accord reflects their disregard of the right of Indigenous peoples to an adequate standard of living. Thus, the Declaration, if adopted, could become a practical tool to hold the Canadian government accountable for their policy towards Aboriginal peoples, one that pushes the federal government to move beyond charitable impulses towards long-term, rights-based solutions.

Not quite Kelowna

Although the Conservative government professes a commitment to the benchmarks of the Kelowna Accord, the current federal budget reveals a significant gap between rhetoric and financial commitment. Released on May 2, 2006 the budget designates only \$150 million to Aboriginal communities for 2006-2007 (housing, water, and education) and \$300 million in 2007-2008. To reassure Aboriginal peoples, Indian Affairs Minister Jim Prentice has stressed that another \$600 million is earmarked for housing off reserve and in the north, but this is contingent on the existence of a surplus in excess of \$2 billion from the 2005-2006 fiscal year. Regardless, the current budget falls far short of the \$5.1 billion Kelowna-pact.⁶

Recognizing the gap between Conservative rhetoric and financial commitment, former prime minister, **Paul Martin**, introduced Private Member’s **Bill C-292, An Act to Implement the Kelowna Accord**. This Bill encourages the Conservative government to implement the \$5.1 billion committed at the **First Ministers’ Meeting (FMM)**. The Bill is currently being discussed at **SCAAND**, after which it will go back to the **House of Commons** for a final vote. If approved, Bill C-292 may serve to pressure the government to invest more money into Aboriginal housing, education, health and economic development.

Critics of the Accord

While **Phil Fontaine**, Grand Chief of the **Assembly of First Nations (AFN)**, is an avid supporter and proponent of the Kelowna Accord, Fontaine’s position is not fully representative of the opinions of Aboriginal peoples, or of the AFN itself. In fact, for some Aboriginal people the Accord represents the Canadian government’s failure to fully recognize their rights.

In December 2005, chiefs from Quebec abstained from a resolution at the AFN general meeting affirming the Kelowna Accord on the basis that it did not effectively address the problem of Treaty Rights. **Vice-chief Ghislain Picard** explained that Quebec chiefs feel that respect and implementation of treaty and Aboriginal rights and the recognition of full access, control and jurisdiction over their lands, territories and resources is “*the only sustainable means to alleviate the deplorable social and economic situations of many of [their] people.*”⁷ Also, the Quebec chiefs felt that the negotiation process must respect Canada’s constitutional framework insofar as it creates a fiduciary obligation upon the federal government.⁸ Finally, Picard stated that the “*pan-Aboriginal*” process established at the FMM poses a threat to the status and rights of First Nations, since it neglects the distinct



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historical relationships and rights of First Nations.⁹

Former **Neskonlith** chief and **Shuswap Nation Tribal Council** chairman **Art Manuel** voiced a similar opinion at a protest in Kelowna during the **FMM**. He told **Windspeaker**, a national Aboriginal newspaper, that Assembly of First Nations National Chief Phil Fontaine was taking "**totally the wrong approach**" by meeting with the first ministers.¹⁰ Manuel argues that "**the AFN...[has] let the Canadian government off-the-hook by unlinking programs and services from Aboriginal and Treaty Rights...[which] means we will be tied to cutbacks on services that the federal and provincial governments are presently subjecting Canadian citizens to.**"¹¹

There is also a fear that Phil Fontaine's preoccupation with the Kelowna Accord has trumped Aboriginal rights. As **Mukwa** argues in the **First Nations Strategic Bulletin**, issues such as land claims and self-government policy reform have become secondary, with program funding approaches taking up most of the time and resources of the AFN.¹²

Rights not Charity

In 1996, RCAP emphasized that Aboriginal people do not want pity or handouts, but rather for Canada to assume responsibility for the problems resulting from the dispossession of Aboriginal lands and resources, destruction of their economies and social institutions, and denial of their nationhood.¹³

RCAP states that "**for some years, organizations representing First Nations have contended that housing is part of compensation owed to them in return for giving up effective use of the bulk of the Canadian land mass, either through formal treaties or by other less formal means.**"¹⁴ For example, the **Congress of Aboriginal Peoples** argues that "**they have a right to acquire housing with assistance provided by the Government as part of a fiduciary responsibility to Aboriginal peoples whether they are living on or off-reserve.**"¹⁵ These organizations further argue that if "**the resources associated with the lands now occupied by non-Aboriginal Canadians were still in the hands of its original possessors, there would be few serious housing problems among Aboriginal people today.**"¹⁶ From this perspective, addressing the Aboriginal housing crisis as well as other poverty-related issues not only requires government funding, but the appropriate jurisdiction and restitution of land and resources necessary to develop sustainable solutions themselves.

The obligation of the Canadian government to address the poor social and economic conditions within many Aboriginal communities is articulated within its own Constitution. Section 35 (1) of the **1982 Constitution Act** states that "**the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.**" Since many of the issues highlighted by the Kelowna Accord, such as housing and health, are recognized treaty rights, it is a Constitutional obligation of the federal government to provide the resources and create the circumstances necessary for Aboriginal people to achieve a decent standard of living. The large disparity in housing between Aboriginal and non-Aboriginal households is particularly damning of the government's failure to live up to this obligation.

Furthermore, Canada needs to meet its international commitments. As a signatory of the **United Nation's International Covenant on Economic, Social and Cultural Rights**, Canada recognizes "**the right to an adequate standard of living...including adequate food, clothing and housing; and the right to the continuous improvement of living conditions**" (Article 11). Canada's commitment to the ICESCR is a legal obligation; therefore, failure to create the conditions for an adequate standard of living for Aboriginal people is a breach of international law.



“issues such as land claims and self-government policy reform have become secondary, with program funding approaches taking up most of the time and resources of the AFN”



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Declaration on the Rights of Indigenous Peoples



Jim Prentice, Minister of Indian Affairs at AFN Assembly. (Photo courtesy of Fred Cattroll)

“The arguments put forth by the Conservative government are unsubstantiated and, some would say, amount to an act of fear mongering”

Article 21 of the Declaration recognizes the right of indigenous peoples “*to the improvement of their economic and social conditions, including...the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.*” It also suggests that “*states shall take effective measures and special measures to ensure continuing improvements of their economic and social conditions.*” Furthermore, the Declaration affirms Indigenous peoples rights to self-determination, land, resources and development, all essential components to addressing Aboriginal poverty. The Declaration therefore effectively articulates the state’s responsibility towards the individual and collective rights of Indigenous peoples.

Unfortunately, the Canadian government continues to block progress on the Declaration. At the **UN Human Rights Council** in June 2006, Canada was one of two countries, the other being Russia, to oppose adoption of the Declaration. Subsequently, Canada aligned itself with the U.S., Australia and New Zealand to actively lobby African and Asian states – many of who violate the human rights of Indigenous peoples – to vote against the Declaration. On November 28, at the **UN Third Committee**, Canada’s efforts were rewarded when a majority of States voted to support a non-action motion by the Namibian delegation to delay consideration of the Declaration until next year. In the words of **Grand Chief Ed John**, “*the most likely outcome [of the non-action motion] will be that the United Nations never formally adopts the Declaration.*” 17

In vigorously opposing the Declaration, the government of Canada has made erroneous interpretations of what **Indian Affairs Minister Prentice** has described as a “**very radical**” document. For instance, the government has said it is concerned that the Declaration’s provisions on lands, territories and resources are too broad and unclear and therefore could be interpreted as supporting claims of ownership to traditional territories that were lawfully ceded to the government by treaty. However, human rights instruments are generalized in order to apply to various contexts and the Declaration, in itself, could never effectively support a claim to territories that were **lawfully** ceded.

Another concern voiced by Canada is that the concept of free, prior and informed consent (FPIC) could be interpreted as giving veto power to indigenous peoples. Article 32 (2) explains that it is an obligation for States to “**consult and cooperate in good faith with indigenous peoples...in order to obtain their free and informed consent prior**” to making decisions that affect the rights of certain indigenous groups. FPIC is therefore not a veto over all matters of legislation and development, but an important means to ensure that states cannot unilaterally implement decisions or conduct activities that affect the rights of indigenous peoples.

The government has also stated that it is concerned the Declaration does not meet Canada’s objectives of affirming the rights of indigenous peoples as well as non-indigenous peoples. However international human rights law already provides ample promotion and protection of individual human rights and Article 45 of the Declaration reinforces this safeguard. Lastly, the government claims the Declaration is inconsistent with the **Canadian Charter of Rights**, but this claim is mistakenly based on the reading of certain provisions in isolation and interpreting them as “**absolute rights.**” Each statement must be considered in the context of the whole Declaration and all international laws. 18

The arguments put forth by the Conservative government are unsubstantiated and, some would say, amount to an act of fear mongering. By reversing the principled human rights position formerly taken by Canada, this administration has violated its domestic and international legal obligations, including its constitutional obligation to consult with Aboriginal peoples. More importantly, the government’s actions on the Declaration, especially when viewed as part of a larger strategy, including the **Kelowna Accord**, confirm what many Aboriginal peoples and their supporters have feared: this government is not committed to protecting Aboriginal peoples’ rights and is unwilling to take the necessary steps to alleviate their ongoing social and economic problems.



Phil Fontaine and Jim Prentice at press conference, Spring 2006.

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Beyond the Kelowna Accord: Recommendations to the Canadian Government

Because of the poverty experienced by many Aboriginal people and the federal government's obligation to human rights, a greater commitment to the rights of Aboriginal peoples is required of the Canadian government. First, and most importantly, the federal government should ensure that Aboriginal peoples have the economic base necessary for them to address poverty issues, which involves the recognition of Aboriginal title to land and resources. Second, with regard to the right of self-determination, the Canadian government must financially and technically assist Aboriginal peoples to assume full jurisdiction over health, housing, education and governance, as has been detailed by RCAP. Third, the federal government has a moral and legal obligation to meet the basic human right of an adequate standard of living for all Aboriginal people, which requires the government to commit all the resources necessary to achieve this end. Finally, the Canadian government should reverse its position on the Declaration and work to ensure the General Assembly adopts the Declaration at the earliest time possible.

Ultimately, the federal government will need to move beyond the Kelowna Accord to fulfill its obligations to Aboriginal peoples. The poor social and economic conditions experienced by many Aboriginal people is not a matter of charity – it is a matter of justice. Therefore, with or without the endorsement of the United Nations, the Declaration on the Rights of Indigenous Peoples serves as a helpful standard for judging this government's commitment to Aboriginal peoples' *rights*, which, at this point in time, is very poor indeed.

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Canada-Aboriginal Roundtable Logo

"Ultimately, the federal government will need to move beyond the Kelowna Accord to fulfill its obligations to Aboriginal peoples. The poor social and economic conditions experienced by many Aboriginal people is not a matter of charity – it is a matter of justice"



Statue in front of SCC. (Photo by Chris Wattie)

Advancing the Right of First Nations to Information

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

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[Reprint from KAIROS Policy Briefing Paper No. 5, Dec. 2006]