Prince Albert Grand Council Presentation

To The

Parliamentary Standing Committee

On

Bill C 428, the Indian Act Amendment and Replacement Act

Nations Make Treaties
Treaties Do Not Make Nations

Treaty Based Process

For A

Renewed First Nations-Crown Relationship

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PAGC Presentation to the Parliamentary Standing Committee on Bill C 428, the Indian Act Amendment and Replacement Act

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SECTION ONE

I INTRODUCTION

The First Nations, prior to the arrival of the Crown's representatives, were separate and distinct tribes, each having autonomous system of political, fiscal, judicial and social structures. The First Nations exercised the inherent powers as bestowed to them by the Creator, in the form of customary ordinances and legal tradition and within the inherent powers; they were able to put into effect, the legitimacy of;

1. Political agendas (First Nations Government)
2. Fiscal agendas (First Nations Economic Empowerment)
3. Judicial agendas (First Nations Law Enforcement) and
4. Social agendas (First Nations Governance).

Our Elders have stated that the three most elements for survival are;

1. Lands,
2. Air and
3. Water

II SOVEREIGNTY AND THE LEGITIMACY OF NATIONHOOD AND GOVERNMENT

The First Nations, being the Original People of this Land and their unique identity in the pre-treaty and post treaty periods as substantiated through the knowledge of the Elders. We are the beneficiaries of the Inherent Powers and therefore have enabling elements in the form of Customary Ordinance and Legal Traditions to assert the Sovereignty and Jurisdiction of the First Nations and that these inherent powers cannot be and were not expressly transferred to Her Majesty.

Our hereditary roots are with the Indigenous Ancestry with unique powers to govern our people and territory under our own specific laws, custom, values and systems. We do put emphasis that through the customary ordinances and legal tradition of the First Nations, that sovereignty is exemplify and reserved for the First Nations and whereby the our explicit jurisdiction extended to matters between Her Majesty and the Chiefs, between the Chiefs and other tribes of Indians, and between the Chiefs and other of Her Majesty's subjects, whether Indian or whites.

III THE CROWN'S IN RIGHT OF GREAT BRITAIN AND IRELAND

In the beginning, North America and Canada did not exist... at least in the minds of Europeans. They knew of the rich trade possibilities there, but the ocean to the west was a barrier which seemed too vast to cross. When overland trade routes became blocked and the voyage around Africa was found to be long and dangerous, the European nations began to look westward for a shorter journey. Little did they know that they would journey into a whole new world complete with its own unique peoples and land rich in resources.

IV The United Kingdom (Union)

While maintaining separate parliaments, England and Scotland were ruled under one crown beginning in 1603 and in the ensuing 100 years, strong religious and political differences divided the kingdoms. Finally, in 1707, England and Scotland were unified as Great Britain, sharing a single Parliament at Westminster. Successive English kings sought to conquer Ireland. After its defeat, Ireland was subjected, with varying degrees of success, to control and regulation by Britain. The legislative union of Great Britain and Ireland was completed on January 1, 1801, under the name of the United Kingdom. In 1926, the United Kingdom, completing a process begun a century earlier, granted Australia, Canada, and New Zealand complete autonomy within the empire and became charter members of the British Commonwealth of Nations (now known as the Commonwealth).

V Canada and the Commonwealth

The modern Commonwealth is an intergovernmental organization of 54 countries, most with historic links to the United Kingdom, and home to two billion citizens, almost 30 per cent of the world's population. It is the world's oldest political association of sovereign states. Members cooperate within a framework of common values and goals. The Commonwealth has a small permanent Secretariat in London, led by a Secretary-General, currently former Indian diplomat Kamalesh Sharma. It supports intergovernmental meetings, and operates a number of small programs related primarily to preventing conflict and to building support for democratic processes and human rights. The Secretary-General uses his "Good Offices" to support democratic processes and to help resolve conflict. The Commonwealth celebrated its 60th anniversary in 2009.

VI Head of the Commonwealth

Queen Elizabeth II is Head of the Commonwealth, and is Head of State of 16 Commonwealth member countries. In 2012, Canada celebrated the Queen's Diamond Jubilee or 60th anniversary of Her Majesty's accession to the throne as Queen of Canada. Canada invested $7.5 million to increase public awareness and encourage Canadians to organize celebrations at the local level.

VII Commonwealth Heads of Government Meeting

Prime Minister Stephen Harper participated in the Commonwealth Heads of Government Meeting in Perth, Australia from October 28 to 30, 2011. A Commonwealth Heads of Government Meeting is held every two years and is an opportunity for Leaders to discuss global issues and Commonwealth priorities. The next CHOGM will be held in Colombo, Sri Lanka.

There are also regular meetings for foreign, finance, justice, education, health, youth, tourism, gender, environment and sports ministers at which Canadian ministers become acquainted with their counterparts from other countries and both enhance their understanding of international issues and promote Canada's multilateral and bilateral priorities. On December 14, 2012, Commonwealth Heads of Government formally adopted a **Charter of the Commonwealth**, which clearly outlines the organization's fundamental values, principles and aspirations. Canada welcomed this advancement as an important milestone in the Commonwealth's reform and renewal process.

SECTION TWO THE NATION TO NATION RELATIONSHIP

First Nations-Crown Relationship is within the confines of Treaty federalism and is also referred to as treaty constitutionalism. It is a compact that explicitly identifies negotiated agreements between First Nations and the Crown as constitutional documents. In this interpretation, treaties are considered founding political documents between two sovereign parties that at once establish a delegation of power and areas of shared responsibility as well as retention of autonomy for each signatory. Treaties therefore establish a constitutional order that gives force to the central concept of federalism: a constitutionally guaranteed system of both shared and self-rule.

I The Treaty

Under the premise of the Inherent powers, each First Nation began it alliance with Imperial Crown as an independent rule in international law, exercising comprehensive jurisdiction and authority over their territory and people. Prior and during Treaty, the powers of the Indigenous Nations were look upon by the Crown as a foreign jurisdiction who had title to land and authoritative systems. That alliance created by treaty is legally binding and it established an empowerment for dual systems of dominions, each being delegated specific rules and having certain obligations and duties for the fulfilment of;

1. Political covenants,
2. Economic wealth
3. Judicial orderliness and
4. Social healthiness

II Unification through Treaty

The spirit and intent of Treaties were ratified and were to be, simultaneously, implemented under the premise of First Nations customary ordinances and legal traditions and the Crown's constitutional legislation and legal text. The two established orders are distinct and yet equivalent. The treaties created a bi-lateral relationship between the First Nations and the Crown, each being delegated specific rules. This is the Alliance that is being pursued by the First Nations, mainly it is evident that, treaties occur when two or more sovereign states agree (through an international treaty) to exercise certain authorities over delegated areas of responsibility.

III The Genuineness

There is an understanding that the relationship of the First Nations and the Crown are best understood as a branch of international law. That relationship is legally binding and empowered dual legal and mutual systems of authority, each being delegated certain obligations and duties for the fulfilment of political covenants, economic wealth, judicial orderliness and social healthiness.

IV The Disingenuous

It is no secret that First Nations Peoples have been suppressed by legislation and this started and became more visible on the Day after Treaty. As it stands now, it is the continuation of a paternalistic system based on the harsh reality that the First Nations Peoples were under the mercy of Interpreters who were employees of the Crown who in all likelihood did not know the political and legal terminologies of the Crown's systems of government.

It is also based on the realism that they were under the mercy of legal counsel whose primary purpose to ensure the laws of the Crown were the assertion how the articles of treaty would be written and to make certain that process ignored the customary ordinances and legal traditions. The interpreters and legal counsel not only draft the terms and conditions of Treaty but also determine the process how to deprive the First Nations of political, fiscal, judicial and social structures.

V The Collaborated Persuasion

Initially, Canada as a colonial government was subordinate to Britain without powers of its own and historically, the First Nations were the foremost users until federal and provincial collaboration amongst the governments derailed their methods of livelihood. This political collaboration is a bureaucratic ploy to prevent meaningful opportunity to participate in designing the strategic and operational territorial plans. First Nations were bombarded

with policies that were paternalistic designed to assimilate them, mechanisms of disempowerment, and a system of despicable economical labor and to a certain extent, forms of genocide. All told, Canada has acted more like a government with intend on cultural genocide than one concerned with executing its fiduciary responsibilities to the full benefit of the membership of First Nations.

SECTION THREE CUSTODIAL BUREAUCRACY

The confederation of Canada presented the federal government with the challenge of uniting distinct and separate Aboriginal groups under one law. Confederation established a relationship by disregarding the customary ordinances and legal traditions of Indians or Tribes of Indians and uniformly making them legally wards of the state. Systems of control that had been established in prior legislation were now newly defined under one act, the Indian Act of 1867. This act effectively treated Aboriginal people as children—a homogenizing and paternalistic relationship.

I The Indian Act

The Indian Act is a part of a long history of assimilation policies that intended to terminate the cultural, social, economic, and political distinctiveness of Aboriginal peoples by absorbing them into mainstream Canadian life and values. To be federally recognized as an Indian, an individual must be able to comply with very distinct standards of government regulations. The *Indian Act*, in this respect, is much more than a body of laws that for over a century have controlled every aspect of Indian life, as a regulatory regime. The origin of the Indian Act is long and short, a history of oppression and resistance.

The first *Indian Act* adopted an explicit vision of assimilation, in which Aboriginals would be encouraged to leave behind their Indian status and traditional cultures and become full members of the broader Canadian society. This underlying philosophy was clearly expressed by the Canadian Department of the Interior in its 1876 annual report:

"Our Indian legislation generally rests on the principle, that the aborigines are to be kept in a condition of tutelage and treated as wards or children of the State. …the true interests of the aborigines and of the State alike require that every effort should be made to aid the Red man in lifting himself out of his condition of tutelage and dependence, and that is clearly our wisdom and our duty, through education and every other means, to prepare him for a higher civilization by encouraging him to assume the privileges and responsibilities of full citizenship."

Yet despite controversy, the Indian Act is historically and legally significant for Aboriginal peoples. It acknowledges and affirms the unique historical and constitutional relationship

Aboriginal peoples have with Canada. For this reason, despite its problematic nature, to outright abolish the Indian Act have been met with widespread resistance.

Harold Cardinal explained in 1969, we do not want the Indian Act retained because it is a good piece of legislation. It isn't. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be. No just society and no society with even pretensions to being just can long tolerate such a piece of legislation, but we would rather continue to live in bondage under the inequitable Indian Act than surrender our sacred rights. Any time the government wants to honour its obligations to us we are more than happy to help devise new Indian legislation.

RCAP also identifies this situation as a paradox that is key to understanding the Indian Act and the relationship between the Canadian state and status Indians. The Indian Act legally distinguishes between First Nations and other Canadians, and acknowledges that the federal government has a unique relationship with, and obligation to, First Nations. At the same time, any changes to the Indian Act through history have historically been proposed or established unilaterally by the government. First Nations leaders widely agree that if any alternative political relationship is to be worked out between First Nations and the government, First Nations will need to be active participants in establishing it.

II Sun-setting the Custodial Bureaucracy

A parliamentary directive, in the form of the Indian Act, was passed to appease the Canadian Parliamentary aspirations and as it currently stands, the current Regimes consist of the following; the Indian Act, the Ministries and the Department. The three elements work hand in hand to function as the apparatus that deals with First Nations issues. The elements that are alluded too are not stand-alone mechanism and rely on other federal legislations and policies to be effective.

From time to time it has been suggested by certain Chiefs and various federal government ministers, in order to do away with the custodial bureaucracy, a process must be initiated that would be three-fold.

First, abolish the Indian Act, which for over a century has bound the First Nations peoples in a maze of regulations, a First Nations-Crown collaborated approach is required to replace current legislations
Secondly, that the Department of Aboriginal Affairs and Northern Development needs to be dismantled,
Thirdly, do away with the Ministries of Aboriginal Affairs and North Development, Canada,

The federal government's general purpose for the amendments at that time was to move away from casting Indians as wards of the state and instead facilitate their becoming contributing citizens of Canada. The Royal Commission of Aboriginal Peoples (RCAP) points out, however, that by taking away some of the more oppressive, and ultimately unsuccessful, amendments, the government simply rendered the Indian Act more similar to the original act of 1876.

III The Meticulous Gambit Of The Crown, It Heirs, Canada And Saskatchewan

In 1887 John A. Macdonald asserted that **"The great aim of our civilization has been to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion, as speedily as they are fit for the change."**

In 1950, Walter Harris, minister responsible for Indian Affairs, reiterated long-standing Indian policy: **The ultimate goal of our Indian policy is the integration of the Indians into the general life and economy of the country."**

These attitudes are captured well by a letter from Arthur Laing (Minister of Indian Affairs from 1966-1968) to Gordon Robertson claimed, **"The prime condition in the progress of the Indian people must be the development by themselves of a desire for the goals which we think they should want."**

SECTION FOUR THE CROWN'S CONSTITUTIONAL AUTHORITY

Initially, Canada as a colonial government was subordinate to Britain without powers of its own. No one considered interfering with the First Nations' pre-existing power to govern themselves. Further, the Charters in English history did not create powers or rights but rather affirmed existing powers and rights. Therefore there was no legal authority to pass that power to the Dominion government.

I Crown's Legislation-The Royal Proclamation of 1763

The Royal Proclamation is a decisive document, since it was issued by the King of England, who was clearly authorized to make such a policy statement on behalf of the England he ruled. The **Proclamation of 1763** refers to Native Peoples **as Nations or Tribes** with whom they are connected. The use of these terms clarifies that First Nations Peoples were considered Nations to which the Crown did not hold sovereign authority over. It should be noted that within the legislative confines of the Royal Proclamation of 1763, the said Constitution states that it would **"set aside tracts of land, reserving them as Indian hunting grounds, and prohibited grants or purchases of this land, or settlement on it without a license".**

The Proclamation would remain the official policy of the Crown until it is rescinded or changed by some other duly authorized authority. It has been argued this has never happened in Canada and legislation such as the Constitution Acts of 1867 and 1930 left the policies enunciated by the Proclamation as an encumbrance upon the Government of Canada. The question of 1982 Constitution, referencing Section 25, 35 and 52, adds clarity and reconfirmation on the intent of the Royal Proclamation of 1763.

II Canada's Legislation-The British North American Act Of 1867

Canada's original name was *The Dominion of Canada.* So the word Dominion implied that Canada was still subject to the British Crown and British Parliamentary law in certain areas yet was to be an independent nation in other ways. It wasn't until well into the twentieth century that the country became simply known as Canada and the "Dominion" title was dropped. The Constitution Act, 1867 established Canada as a country while ensuring that Britain had significant control over Canada's affairs.
The BNA establishes itself as the Capital.

In the beginning Britain did not intend to let the settlers dominate the First Nations people. The British North America 1867 Act put "Indians and lands reserved for the Indians" as a federal relationship because Britain recognized the First Nations as independent and not part of the settler colony. The federal authority was accorded exclusive administrative authority for **"Indians and Lands reserved for the Indians" in section 91 (24).** Under this Section, exclusive administrative authority was afforded for the Crown to establish Trust Accounts for the First Nations and this is limited the social agendas.

Section 109 of the said Act has the wording, **"Subject to any Trusts existing in respect thereof"** and this is being interpreted as being applied to the trust funds established by the Crown for Indians to lawfully fulfil the fiduciary responsibilities of the Crown and therein the obligation and duties. Also, the wording of the same Act, **"and to any Interest other that the Province in the same"** can only mean the **Interests of the Crees of Red Earth and Shoal Lake** to continue to use the territory , not only to practice their livelihood relevant to Hunting, Fishing, Trapping and Gathering to pursue other means to self-sufficient.

III Natural Resources Transfer Act of 1930

It should be noted that Section I of the 1930 NRTA recognizes section one hundred and nine of the British North America Act, 1867. It is therefore not limited to traditional harvesting but creates an avenue for the First Nations to pursue another form of economy utilizing the renewable and non-renewable resources. The wording, "Subject to any Trust" is interpreted to make direct reference to the trust established though Section 91(24)

and the benefits derived from Treaty. Furthermore, it also mentions, "Any Interests other that o the Crown" and the word, "Interest" is recognition of the First Nations, who still had immediate interest in their territories.

Further, Section 2 of the Same Act makes mention of every other arrangement and the wording, "every other arrangements" is construed to make reference to that of the Relationship created by Treaty and further, the wording, "other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada" and could only mean that Crown is obligated to fulfil, apply and put into effect, the, Legalities of Due Process, as the apparatus to obtain, Free and Prior Informed Consent.

Further Section 10 of the Same Act states, "such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province and is being interpreted to mean that simultaneously, the Treaty rights and the fiduciary under Section 91(24) is still in effect and this particular section is an affirmation of the intent.

IV Constitution Act of 1982

The First Nation accepts that the Section 25 contains the mechanism that guarantees that there will no such infringement until Free, Prior and Informed Consent has been obtained and such shall not be construed, so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, including any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763.

Further, Section 35 affirms the recognition of existing aboriginal and treaty rights are rights exclusively limited to social benefits, but will not hinder those powers relevant to Indigenous Government, Indigenous Wealth and Indigenous Law Enforcement.

Further that the under Section 52, the Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

SECTION FIVE THE SUPREME COURT CASE OF PRECEDENT

Initially, the Papal Bulls have been the basis for the perceived extinguishment of Indigenous land title and the subjugation of indigenous peoples of North and South America. The implementation of the Papal Bulls evolved in the United States through the **Supreme Court Decision of Johnson v. M'Intosh(1823)** which established the precedent

for the denial of Indigenous title to American Indian lands in the United States," and this decision has an enormous impact how the Crown and its heirs, Canada and Saskatchewan assumed control of the Indigenous title to the land and to establish systems of legislative suppression of Indigenous Peoples. Canadian judges often look to the United States for precedents, believing that the two countries are similar in both

(a) Having once been subject to the Royal Proclamation;

(b) Having British ancestry to their legal systems; and

(c) Now possessing sovereign authority over their respective indigenous populations.

Arguments have stated that they are mistaken in doing so. The American Revolutionary War served to disrupt the inheritance of British influence and from a legal and political perspective, this made the United States a new lineage with its own sovereign authority, and therefore not necessarily subject to earlier Proclamations by the authority they rejected.

In contrast, the loyal Canadians followed colonial authority in their progression to independence, and hence were subject to all inherited encumbrances, including those expressed in the Royal Proclamation.

SECTION SIX MODERNIZATION OF CUSTOMARY ORDINANCE AND LEGAL TRADITIONS

The Goal

It is the vision of the First Nations that a **CONSTITUTIONAL and LEGISLATIVE PROCESS** be established as the mechanism that will outline the role of the Proponents relevant to;

- ❒ The Recognition Act
- ❒ Memorandum of Order
- ❒ Recognition and respect the Resurgence of Indigenous Nationhood, Sustaining the Fiduciary and the Implementing the Spirit and Intent of Treaty

The Objectives

To modernize the teaching of the Elders and incorporate the teachings into a treaty-based legislation relevant to the events that happened, "The Day Before Treaty, The Day During Treaty and The Day After Treaty". The teachings need to be reactivated into a process that will establish a legislative base to assert the sovereignty of the First Nations

and to exert the jurisdiction of Chiefs and Council. Only through the development of legislations that will bring into, the Resurgence of Indigenous Nationhood, the Application of the Fiduciary and the Implementation of Treaty and without prejudice, not to jeopardize their unique status as Nations with distinct, people, government, culture, language and territory.

- ❒ To substantiate the validity of the Doctrine of Discovery is and should be construed as purely speculative, ambiguous and certainly not definite.
- ❒ To justify the spirit and intent of the Royal Proclamation is unfinished business
- ❒ To sustain and protect the fiduciary owed to the First Nation
- ❒ To implement the articles of Treaty
- ❒ More importantly, the Chiefs and Councils will concentrate on their suite of legislation that will serve recognition of their sovereign status and jurisdictional integrity
- ❒ To justify that there are irregularities within federal or provincial legislations and neglecting to put into effect the, **Legalities of Due Process** or for that matter, failing to obtain, ***Free and Prior Informed Consent.***
- ❒ To make the federal and provincial governments Accountable through practical negotiations that they violated the terms and conditions of the Royal Proclamation of 1763, the BNA Act of 1867, the NRTA of 1930 and the 1982 Constitution
- ❒ To incorporate the processes established by the courts.

SECTION SEVEN THE MECHANISM OF A RENEWED RELATIONSHIP

The First Nations would rather be PROACTIVE, meaning that they will assert the sovereignty powers of the First Nations and to exert the jurisdiction of Chiefs and Council through the development of legislations based on the Customary Ordinances and Legal Traditions. Certain applicable Crown Legislation will be referenced to ensure that the Duel System of Empowerment agreed to by Treaty is affirmed and that the Crown's Lawful Duties is continual and within the parameters of Due Diligences.

1 The Rationale

A Memorandum of Agreement is to be developed to initiate a Process which gives effect to AFN Statement to Prime Minister where it calls for, "An Immediate High Level Working Process with Treaty Nations Leadership. The MOA would call for a Working Process and a First Nation Driven Policy will be the foundation to develop the political, fiscal, judicial and social agendas as opposed to having another Federal Self-Government Policy being the footing to develop mechanisms with a goal to gradually assimilate and eventually, termination.

2 Proponents

The Chiefs, the Prime Minister and Governor General of Canada, Privy Council of Canada, Deputy Minister of Justice and Deputy Attorney General of Canada and Minister of Finance. (Other Ministers)

3 Practical Negotiation being foremost and Litigation or Mediation as the Last Resort

The First Nations would rather proceed under the confines of practical negotiation and under the premise of Peace, Order and Good Government. The federal government have stated their policies stipulated that Governance, Accountability, Transparency, Disclosure and Redress are essential factors.

Litigation is costly and time consuming, in essence, the role of the courts has been limited to the review of the legal submissions and renders decisions. A collection of historic landmark court cases would be the vital components that would enable the Federal Government to accept the position that practical negations would be the most feasible route. As result a Canada has taken the court decisions and arbitrarily and unilaterally created new policies based on existing federal statutes. In comparison, mediation is seen as nothing but a compromise.

4 Justified Instructions

The Supreme Court of Canada has instructed the federal and provincial governments that treaty provision or statutes should be given a fair, large and liberal construction in favour of the Indians. The courts have served instructions that the federal and provincial governments have the utmost fiduciary duty of justification, if they infringe the treaty rights. These matters should be resolved by negotiation rather than litigation.

We can be working together much sooner and at a much lower cost if the federal and provincial governments were to derail from there rigid and unilateral mode and start a process that will serve recognition for First Nations as legitimate entities. By taking the initiative to resolve these matters jointly with the First Nations, the federal and provincial governments will be doing the people of Canada and Saskatchewan a great service.

The Supreme Court of Canada's decision in Delgamuukw makes it illegal for Canada to maintain its policy of non-recognition and in Canada's history, the unanimous bench of the Supreme Court affirmed the existence of aboriginal title as a "right to the land itself." and therefore affirms the existence of Aboriginal Title and demands that the governments of Canada recognize a meaningful role for Indigenous Nations in all decisions

relating to our Lands and Resources as well as a right to benefit economically from the use of our Lands and Resources. The Supreme Court of Canada has acknowledged the economic component, like for instances, in *Horseman*, the court stated that "The economy of the Indian population at the time of the Treaty had clearly evolved to such a degree that hunting and fishing for commercial purposes was an integral part of their way of life".

5 Occupying the Field

British colonial policies and subsequent land laws were framed in the belief that the colony was being acquired by occupation (or settlement) of a terra nullius (land without owners). The First Nations were look upon as being too primitive to be actual land owners nor held sovereignty and had no readily identifiable hierarchy or political order which the British Government could recognize or negotiate with. The manner with which the Crown assumed possession of the lands, air and water should be construed as Ultra Vires, when they did so without proper authority and which were beyond the powers or authority of the person or organization which took it.

A political and legal apparatus needs to be developed that will enable the First Nations to interrelate with the Crown within a bi-lateral Relationship. The Customary Ordinances and Legal Traditions of the First Nations need to first, substantiate and justify their legal status through legislation, and second, establish their political, fiscal, judicial and social agendas, and then thirdly, the integration of First Nations Laws.

6 High Level Working Process in the Form of a Bi-Lateral Relationship, Recognition of Statutes and Treaty Implementation Statutes

This affirmation of a Renewed Relationship is in line with the Alliance that was created by the Victorian Treaties. This would be in fact and should be referred to as a belated Nation Building, to give effect to the fiduciary and to implement the Spirit and Intent of Treaty. We suggest the best way to begin down this road is to do as we did in **"The Day during Treaty"**, to talk and decide what is in our mutual interests. Good things will happen, we are sure, when we better understand each other.

The proposed **Bi-Lateral Relationship Recognition Statues and the Treaty Implementation Statutes** are to be the foundation and these will be developed in manner simultaneous with input and the output agreed to on a Nation to Nation relationship or government to government. The end result would be a position that will enable the First Nations and Canada to be paramount with the understanding that it is advanced within a legislative process simultaneously ratified by the First Nations and Canada. It would call for the frameworks to establish the political, fiscal, judicial and social institutions.

7 The Four Pillars

The Statues in the form of a Bi-lateral Recognition Act and the Treaty Implementation Act will be guided by the Four Pillars mentioned below and strategies for frameworks relevant to the political, fiscal, judicial and social agendas. In order for First Nations to function as Nations and the Chief and Councillors to function as Governments, the four pillars have to function concurrently. It should be noted that one does not exist in isolation.

A Political Legitimacy of First Nation Government (Self-Government)

The exercise of Self- Government does not exist if the First Nations are expected to rely on core funding or Band Based Funding. As it currently stands, the First Nations operate under the Parliamentary system and the end result of a self-government process alone would be, "Delegated Authority through Federal and provincial Legislations"

Develop a Framework that will substantiate that the inherent powers of the First Nations to govern their people and territory was reserved from Treaty and therefore is an affirmation that their sovereignty and jurisdiction is still whole and therefrom have the ability to enact, implement and enforce their own political policies;

B Fiscal Legitimacy of First Nation Economy (Self-Sufficiency)

The exercise of Self-Sufficiency is the most important element of Treaty. It has been said by Elders that First Nations will not function as governing authorities, if they continue to rely on government funding subsidies; they will remain under the control of the bureaucracy. The First Nations will need to resurrect the spirit and intent of treaty so they can build a foundation relevant to Economic Development, Investment, Taxation, Employment and Training. Revenue sharing in the form of royalties and own source revenue is what should finance Self-Government and Self-Adjudication.

Develop a Framework that will justify that the First Nations agreed to share the land, as the ultimate method of Revenue Equity Benefits and Revenue Sharing and it is the understanding, that under Treaty Negations, self-sufficiency is the principle rule of own resource revenue and further that primary source to generate pecuniary resources is through, the land, the air and the water.

C Judicial Legitimacy of First Nation Justice (Self-Adjudication)

The exercise of Self-Adjudication is an essential element. This would be the legal mechanism that would be implemented collectively. This would ensure that the spirit and

intent of treaty is enforced, to reinforce the legalities of a process that created the bi-lateral relationship with the Crown and, which by now, Canada and Saskatchewan should recognize and respect.

Develop a Framework that will validate the Legal Traditions of the First Nations and shall enable the Chiefs and Council to set out that terms and condition of their orderliness (legal structures and instruments) and under Treaty, it was agreed that First Nations and the Crown would simultaneously enforce the legalities of Treaty through the establishment of judicial institutions as the mechanism to empower the First Nations the ability to enact, implement and enforce their own judicial statues and acts.

D Legitimacy to First Nations Social Units (Self-Determination)

Currently, the fiduciary are more or less limited to Self-determination where it is merely program related and purely administrative. The trustee of Crown or the bureaucracies of the governments focus on the elements of Education, Health Housing and Social Development. The disbursement regime is a case where the First Nations gets subsidies, not the allocation identified in the national budget.

Develop a Framework that will authenticate social standards of healthiness pursuant to the existing fiduciary establish under Section 91(24) of BNA Act and under Treaty therefore will enable the First Nations to establish social institutions so that the treaty rights to social healthiness is fulfilled.

SECTION EIGHT INTERNATIONAL LEGISLATIONS

Human Rights Bodies

The Office of the High Commissioner for Human Rights (OHCHR) works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system: UN Charter-based bodies, including the Human Rights Council, and bodies created under the international human rights treaties and made up of independent experts mandated to monitor State parties' compliance with their treaty obligations. Most of these bodies receive secretariat support from the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights (OHCHR).

Charter-Based Bodies

Charter bodies include the former Commission on Human Rights, the Human Rights Council, and Special Procedures. The Human Rights Council, which replaced the Commission on Human Rights, held its first meeting on 19 June 2006. This intergovernmental body, which

meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council is a forum empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators.

Special Procedures' mandates usually call on mandate-holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. All report to the Human Rights Council on their findings and recommendations. They are sometimes the only mechanism that will alert the international community on certain human rights issues.

OHCHR supports the work of rapporteurs, representatives and working groups through its Special Procedures Division (SPD) which services 27 thematic mandates; and the Research and Right to Development Division (RRDD) which aims to improve the integration of human rights standards and principles, including the rights to development; while the Field Operations and Technical Cooperation Division (FOTCD) supports the work of country mandates.

1. Human Rights Council
2. Universal Periodic Reviews
3. Commission on Human Rights (replaced by the Human Rights Council)
4. Special Procedures of the Human Rights Council
5. Human Rights Council Complaint Procedures

Treaty-Based Bodies

There are nine core international human rights treaties, the most recent one -- on enforced disappearance -- entered into force on 23 December 2010. Since the adoption of the Universal Declaration of Human Rights in 1948, all UN Member States have ratified at least one core international human rights treaty, and 80 percent have ratified four or more. There are currently ten human rights treaty bodies, which are committees of independent experts. Nine of these treaty bodies monitor implementation of the core international human rights treaties while the tenth treaty body, the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture, monitors places of detention in States parties to the Optional Protocol. OHCHR supports the work of treaty bodies and assists them in harmonizing their working methods and reporting requirements through their secretariats.

There are other United Nations bodies and entities involved in the promotion and protection of human rights. There are ten human rights treaty bodies that monitor implementation of the core international human rights treaties :

1. Human Rights Committee (CCPR)
2. Committee on Economic, Social and Cultural Rights (CESCR)
3. Committee on the Elimination of Racial Discrimination (CERD)
4. Committee on the Elimination of Discrimination against Women (CEDAW)
5. Committee against Torture (CAT)
6. Subcommittee on Prevention of Torture (SPT)
7. Committee on the Rights of the Child (CRC)
8. Committee on Migrant Workers (CMW)
9. Committee on the Rights of Person with Disabilities (CRPD)
10. Committee on Enforced Disappearance (CED)

SECTION NINE CONSULTATION OR FREE, PRIOR AND INFORMED CONSENT

The First Nations understand that core of the problem lies not with the Duty to Consult Policy; well basically it is just that, a Policy. But if Canada and Saskatchewan state that Federal and Provincial Polices such as the Duty to Consult and Accommodate can be forced upon us, then the onus is them to substantiate and justify the rationale. The First Nations under the that the Right to Free, Prior and Informed Consent is a broad and comprehensive mechanism that is clearly distinct from the commonly used term "Consultation" which implies an exchange of viewrs devoid of any decision making role. Further, it is a far cry from the prevailing historic experience of Indigenous Peoples, who have been informed of someone else's decision about what will be done with their lands and resources For further clarity, we accept and adopt the international interpretation of Free, Prior and Informed Consent to be;

1) ***Free*** is defined as the absence of coercion and outside pressure, including monetary inducements (unless they are mutually agreed on as part of a settlement process), and "divide and conquer" tactics. It must also include the absence of any threats or retaliation if it results in the decisions to say "no".

2) ***Prior*** is defined as a process taking place with sufficient lead time to allow the information-gathering and sharing process to take place, including translations into traditional languages and verbal dissemination as needed, according to the decision-making processes decided by the Indigenous Peoples in question. It must also take place without time pressure or time constraints. A plan or project must not begin before this process is fully completed and an agreement is reached.

3) ***Informed*** is defined as having all relevant information reflecting all views and positions. This includes the input of traditional elders, spiritual leaders, traditional subsistence practitioners and traditional knowledge holders, with adequate time and resources to find and consider information that is impartial and balanced as to potential

risks and benefits, based on the **"precautionary principle"** regarding potential threats to health, environment or traditional means of subsistence.

4) ***Consent*** can be defined as the demonstration of clear and compelling agreement, using a mechanism to reach agreement which is in itself agreed to under the principle of FPIC, in keeping with the decision-making structures and criteria of the Indigenous Peoples in question, including traditional consensus procedures. Agreements must be reached with the full and effective participation of the authorized leaders, representatives or decision-making institutions as decided by the Indigenous Peoples themselves.

SECTION TEN CONCLUSION

The Indian Act, as reiterated by the Elders was supposed to be a legislative code how the application of the fiduciary would be fulfilled. The Indian Act was to build on the political, fiscal, judicial and social agendas of the First Nations and was supposed to be the mechanism to implement treaty. The Spirit and Intent of Treaty is more or less, 'status quo' and due to the federal government's primarily focus is to provide services under the auspices of the Indian Act. It is safeguarded through federal legislation and ignores the constitutional provision and the Supreme Court instructions. The spirit of intent of Treaty is being held hostage within the parliamentary systems.

In Meetings with the Prime Minister, there was understanding and willingness that in order to deal with the issue of Treaty and the application of the Fiduciary, a Renewed Relationship between the First Nation and Canada is an essential element. We believe what we have presented here is evidence that there is no governmental relationship but more importantly, it evidence that the First Nations as one entity to Treaty and the Chiefs and Councils as willing governments to enter into practical negotiation to enable Canada and the First Nations fill in the gaps on the Application of the Fiduciary and Implementation of Treaty.

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