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FIRST NATIONS STRATEGIC POLICY COUNSEL

Fighting Back: *Turning Canada's First Nations Termination Plan Around*

Rose Nottaway, Land Defender from Algonquins of Barriere Lake at Idle No More Demonstration in Ottawa Jan. 11, 2013, (Photo by R. Diabo)

By Russell Diabo

Since coming to power in 2006, the Harper government has accelerated Canada's First Nations Termination Plan, which started with the Indian Act then continued almost 100 years later with the Liberal's 1969 White Paper on Indian Policy followed by the Conservatives Buffalo Jump of the 1980's and now Harper's current version of Canada's First Nations Termination Plan, which is based upon a racist ideological interpretation of Canada's constitution.

What is Termination?

"***Termination***" is an American policy applied to U.S. Indian Tribes. The Oklahoma Historical Society described it as follows:

> ***Termination**, a mid-twentieth-century U.S. government policy toward American Indians, was enacted to facilitate the long-standing goals of assimilation and self-determination and to end government programs supporting tribes. Termination emerged full force during the post-John Collier (commissioner of Indian Affairs, 1933-45), post-New Deal era of the 1950s and 1960s. Among the long-envisioned essential tenets of termination was closing tribal rolls, then liquidating and distributing tribal assets by single per capita payments to each tribe's current membership. Of paramount importance was the termination of all federal supervision of Indians and ending protected trust status of all Indian-owned lands.*

Charles F, Wilkinson and **Ernest R, Biggs** catalogued the basic consequences of Termination on the affected U.S. Indian Tribes:

1. There were fundamental changes in land ownership patterns.
2. The trust relationship was ended.
3. State legislative jurisdiction was imposed.
4. State judicial authority was imposed.
5. Exemption from state taxing power was ended.
6. Special federal programs to tribes were discontinued.
7. Special federal programs to individual Indians were discontinued.
8. Tribal sovereignty was effectively ended.

The U.S. federal Termination policy wasn't formally repudiated until July 1970, when **President Richard Nixon** specifically rejected it in his message to Congress. But the U.S. Indian Tribes remain wary of a return to the Termination Policy.

I say "***Termination***" is mirrored the Canadian context and means the ending of First Nations pre-existing sovereign status through imposed **Indian Act** (and related) leg-

Special points of interest:

- **Organizing to Fight the Harper government's version of First Nations Termination Plan**
- **Maintaining Dependency—Canada's Fiscal War on First Nations**
- **A Legal Review of Ottawa's "Interim" Section 35 Policy**

Inside this issue:

Fighting Termination	1
Fiscal War on FN's	8
Treaty Nations Fight C-27	10
ABL & Co-Management	11
Review of Sec. 35 Policy	12
INM & AFN	18
Bellegarde Elected NC	20

So called "Fathers of Confederation" drawing up Canada's first constitution.

"I call the 99 federal negotiation tables "Termination Tables" because the federal negotiation policies and Cabinet mandates are based upon the federal Department of Justice's interpretation of section 35 of Canada's constitution as an "empty box" meaning the federal government unilaterally interprets section 35 and decides what is on the table for negotiations and what is not on the table for negotiations"

'Fighting Back' continued from page 1

islation, policy and federal coercion of First Nations into Comprehensive Land Claims and Self Government Final Agreements that convert First Nations into municipalities, their reserves into fee simple lands and extinguishment of their Inherent, Aboriginal and Treaty Rights!

The federal government's First Nations Termination Plan is being implemented through two tracks: 1) continued use of Canada's **1867 colonial constitutional section 91(24)** to impose legislation and related administrative/fiscal arrangements upon First Nations; and 2) advancement of the federal "***empty box***" interpretation of Canada's "***new***" **1982 constitutional section 35** at 99 Comprehensive Claims and/or Self-Government negotiation tables with over 400 Band Chiefs/Councils and Provincial Territorial Organizations, involving both Non-Treaty and historic Treaty First Nations jurisdiction and territories. The federal legislation and policies are national in scope.

I call the 99 federal negotiation tables "***Termination Tables***" because the federal negotiation policies and Cabinet mandates are based upon the federal **Department of Justice's** interpretation of section 35 of Canada's constitution as an "***empty box***" meaning the federal government unilaterally interprets section 35 and decides what is on the table for negotiations and what is not on the table for negotiations. Take it or leave it!

In other words, the federal approach to asserted section 35 Aboriginal/Treaty rights by a First Nation is based upon denial and extinguishment even though section 35 "***recognizes and affirms***" the "***existing***" Aboriginal and Treaty rights of First Nations.

As a result of section 35 the federal government needs First Nations consent to "***modify***", extinguish or terminate Aboriginal/Treaty rights. The First Nations under the **Indian Act** (and related legislation) are required to sign off on terms and conditions in funding agreements, which are inconsistent with section 35 constitutionally protected Aboriginal/Treaty rights and amount to social engineering and self-termination. Again take it or leave it!

At these 99 Termination Tables the federal government has "***core mandates***" it wants First Nations—as represented by their Chiefs/Councils—to sign off on, they are as follows:

- **Accept the extinguishment (modification) of Aboriginal Title;**
- **Accept the legal release of Crown liability for past violations of Aboriginal Title & Rights;**
- **Accept elimination of Indian Reserves by accepting lands in fee simple;**
- **Accept removing on-reserve tax exemptions;**
- **Respect existing Private Lands/Third Party Interests (and therefore alienation of Aboriginal Title territory without compensation);**
- **Accept (to be assimilated into) existing federal & provincial orders of government;**
- **Accept application of Canadian Charter of Rights & Freedoms over governance & institutions in all matters;**
- **Accept Funding on a formula basis being linked to own source revenue.**

These "***core***" federal negotiation mandates apply to Comprehensive Claims and/or Self-Government tables across Canada in non-Treaty and historic Treaty territories. These federal tenets are also implicit in the recent federal First Nations legislation and the terms and conditions of federal funding.

The overriding federal objective is to achieve First Nation's consent to the federal "***core mandates***" and thus Termination in Final Settlement Agreements. The federal objective has already been achieved with 38 communities who agreed to compromise their Rights and Title! These communities have formed their own organization outside of the AFN struc-

'Fighting Back' continued from page 2

ture. It is called the Land Claims Agreement Coalition and their website can be found here: http://www.landclaimscoalition.ca/

Section 37 – Unfinished Political Negotiations

Since the constitution is the highest law of the Canadian Settler-State, how it is interpreted and applied by the three branches of the Canadian State (Executive, Legislative, Judiciary) is of utmost importance, or should be, to First Nations with either customary and **Indian Act** Chiefs/Councils. Currently, as I've noted above, the Harper government interprets section 35 as an "***empty box***" while using **section 91(24)** to impose legislative and fiscal rules/procedures upon First Nations.

Canada takes advantage of the legal and political uncertainty of section 35 Aboriginal/ Treaty Rights by setting out unilateral policy definitions of Aboriginal/Treaty Rights for use at federal negotiation tables.

The federal approach works because the option of going to court to assert section 35 Aboriginal/Treaty Rights under the Supreme Court of Canada legal tests is unaffordable for most First Nations who are dependent on federal tied funding. This has obviously left the federal option of funded negotiation processes the easier route for Chiefs/Councils as evidenced by the 99 federal-First Nations Termination Tables.

In 1982, there was a provision in Canada's new constitution that in my view is important to remember and resurrect!

> ***Section 37 of the Constitution Act, 1982 obligated the Prime Minister of Canada and the First Ministers of the provinces to convene a constitutional conference within a year of its entry into force. Section 37(2) required the inclusion of an agenda item to deal specifically with "constitutional matters that directly affect [ed] the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada." The Prime Minister was obligated to invite "representatives of [the Aboriginal] peoples to participate in the discussions on that item."***

In 1983, a **Political Accord/Constitutional Amendment** was adopted by the Parties at the **First Ministers' Conference (FMC) table** to hold three more **FMC's on Aboriginal Matters**. As First Nations we never achieved a political agreement with the Canadian Settler-State as represented by the Prime Minister, Premiers and Territorial Leaders about the "***identification and definition***" of the rights that are protected in **section 35** as these **FMC's on Aboriginal Matters** ended in 1987. This failure was followed by the death of the **Meech Lake** and **Charlottetown Accords** respectively in 1990 and 1992.

Section 37 of the **Constitution Act 1982** became "***empty***" or "***spent***" so there would have to be agreement to re-open constitutional talks on **section 35** by seven provinces with 50% of the Canadian population, meaning either Ontario or Quebec would have to agree. Quebec has never formally adopted the **Constitution Act 1982**, even though it applies to Quebec anyway.

Quebec's current Premier, **Philippe Couillard**, has recently mused in media interviews that Quebec might be in favour of reopening the constitution.

In any case, as a consequence of the failure of the **section 37 political process**, starting in 1990, the **Supreme Court of Canada** took over legal interpretation of **section 35** in various key court decisions (**Sparrow**, **Van der Peet**, **Delgamuukw**, **Haida**, **Tsilhqot'in**, **Grassy Narrows**), which has resulted in a **section 35 framework of legal principles and tests** to assess the legal validity of First Nation assertions of Aboriginal Rights, Title and Treaty Rights. The SCC has not ruled on whether the Inherent Right of Self-Government is an Aboriginal Right protected by the constitution.

L to R: Jean Chretien & Pierre Trudeau in their later years. Both negotiated the **Constitution Act 1982**.

"The federal approach works because the option of going to court to assert section 35 Aboriginal/ Treaty Rights under the Supreme Court of Canada legal tests is unaffordable for most First Nations who are dependent on federal tied funding"

Supreme Court of Canada Building in Ottawa.

'Fighting Back' continued from page 3

The most recent SCC decisions affecting section 35 rights are the **Tsilhqot'in** and **Grassy Narrows** cases, respectively interpreting Aboriginal Title and historic Treaties.

As I've noted, the **Supreme Court of Canada** has laid out legal tests for asserting **section 35 Aboriginal/Treaty Rights** that most First Nation People's or their First Nations Government's cannot afford. This is likely why most Chiefs/Councils have opted to negotiate with the federal (and provincial) government at a Termination Table.

Canada's Cooptation of Chiefs/Council into First Nations Termination Plan

The federal executive branch of the Canadian Settler-State, from **Prime Minister Stephen Harper** & his Cabinet Ministers down to the Ottawa bureaucracy at the Privy Council Office and Central Agencies, down to line Ministries like Aboriginal Affairs and its regional offices are all tasked with implementing the federal objective of Terminating Aboriginal/Treaty Rights.

Prime Minister Harper has been using his majority in the **House of Commons** and the **Senate** to force his version of Canada's Termination Plan through legislation upon First Nations. The opposition parties cannot stop it even if they wanted to, which remains to be seen.

"Canada uses Chief/Councils and Band Council Resolutions has the main indication of support for federal (and provincial) initiatives, including mandating First Nation Chiefs' Representative Organizations like AFN"

There isn't any "***stand alone***" First Nations negotiation table or process outside of the federal Termination Plan/Tables! Despite any claims made by a Chief or First Nation Leader otherwise.

Make no mistake! The **Aboriginal/Treaty Rights holders are the First Nation People's** connected to a community-on the ground. Even Canada's Supreme Court of Canada recognizes this fact!

However, while most First Nation organizations started as advocacy organizations they are now funded, co-opted, used and controlled by the federal government, including **Indian Act** Band Councils, Tribal Councils, Provincial Territorial Organizations, Sectoral Organizations and the National Aboriginal Organization, the **Assembly of First Nations** (Chiefs-in-Assembly) to help achieve the federal objective of Terminating First Nations pre-existing sovereignty and collective Aboriginal/Treaty Rights.

This is not to say that here aren't Chiefs/Councils and First Nation Leaders who aren't working to resist and fight the federal Termination Plan, there are! But they are the minority and they are up against a big machine: the federal and provincial governments, corporations and entrenched settler interests on Aboriginal Title and Treaty territories.

The point is, Canadian colonialism has led to the 1) dispossession of First Nations lands/ resources, 2) made First Nations dependent on federal transfer payments/programs & services and 3) First Nations are oppressed by Settler-State courts who issue unaffordable legal tests for proving section 35 Aboriginal/Treaty Rights, as well as, Settler-State sponsored violence through the use of the police and the army if First Nations assert Aboriginal/Treaty Rights beyond what Canada says the limits of First Nation rights are and what they will and will not negotiate with a First Nation! Remember 1990!

Canada uses Chief/Councils and Band Council Resolutions has the main indication of support for federal (and provincial) initiatives, including mandating First Nation Chiefs' Representative Organizations like **AFN**.

Federal monies are used as a carrot or stick, either entice/bribe Chief/Council/First Nation Organization Leader into cooperating with the federal legislative/policy/ administrative initiative or withhold funding and punish a Chief/Council/First Nation Organization Leader who are resisting federal legislative/policy/administrative initiatives.

Hence the 99 federal Termination Tables with over 400 Chiefs participating in the Termination process. These negotiation tables/processes pay Chiefs, First Nation Leaders, lawyers, advisors, and staff to participate in the federal Termination Plan, including the use of federal loans, which have to be paid back upon reaching a Comprehensive Claims

‘Fighting Back’ continued from page 4

(Modern Treaty) settlement.

When it comes time for a First Nation to vote in a referendum to accept or reject a Federal Termination Agreement/Offer the **YES side** has the financial and advisory support of the Crown governments’ who want a **YES vote**, while the **NO side**, or critics are not given funding or advisory support to make their case to the People/Voters. The federal-First Nation voting process is unfair!

Perry Bellegarde after being elected AFN National Chief.

AFN Election & Federal Termination Plan

The recent **AFN election for National Chief**, in my view, is a good indication of how First Nation Chiefs are helping to implement Canada’s Termination Plan. The majority of the Chiefs (or their proxies) are at an existing federal negotiation Table, only a minority of Chiefs are not.

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Both **Perry Bellegarde** and **Ghislain Picard** are long-time members of the **AFN Executive Committee** and have not openly questioned Canada’s First Nations Termination Plan, but seemingly have helped to implement it. Except **Perry Bellegarde** at the 11th hour during the **AFN candidate’s forum** the night before the **AFN election** did mention Canada’s policies are based on “***Termination***”, but **Perry Bellegarde**, as the new **AFN National Chief** will have to take his direction from the **Termination Table Chiefs** and their **AFN Regional Vice-Chiefs**.

Prior to the **AFN election** on December 5, 2014, **Michelle Corfield**, who ran **Atleo’s AFN campaigns**, including his first run in 2009, when he defeated **Bellegarde** after a record eight rounds of voting, told **MacLean’s Magazine** “***B.C. chiefs are looking for someone to stabilize the relationship between the federal government and the AFN***”—apparently many of the B.C. Chiefs decided on **Perry Bellegarde** over **Ghislain Picard**. **Ghislain** said he wouldn’t deal with **Harper** while **Perry** never said that during the AFN election campaign! Remember over 50% of the Comprehensive Claims are in B.C.

Silence is Consent!

Another indication that the **Termination Table Chiefs** across Canada don’t intend to resist or fight Canada’s First Nations Termination Plan—and by extension the newly elected **AFN National Chief**, is the fact that they haven’t publicly commented on the **Harper government’s** response to the June 26, 2014, **Supreme Court of Canada’s Tsilhqot’in decision** on Aboriginal Title. At the time, many Chiefs called the **Tsilhqot’in decision** a “***game changer***”.

In September 2014, the **federal Minister of Aboriginal Affairs, Bernard Valcourt** issued an “***interim***” policy entitled “***Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights***”, which is just s regurgitation of previous **federal section 35 policies** regarding extinguishment of Aboriginal Title and municipalisation of Indian Bands.

The federal government also appointed a **B.C. lawyer Douglas Eyford** to consult on the “***interim***” policy. **Eyford** is expected to report to the results of this consultations early in the New Year. Only the **UBCIC**, the **Algonquin Nation Secretariat** and the **AFNQL** have publicly rejected this regressive repeat of federal policy. Yet the organizations representing the **Termination Table Chiefs**, such as the **B.C. First Nations Summit** and the **Atlantic Region Mi’kmaq and Maliseet Chiefs** have not made any public comment on the Harper government’s “***interim*** **section 35 policy**.

L to R: Bernard Valcourt and Stephen Harper issued “interim” section 35 policy & appointed Douglas Eyford to consult.

For the historic Treaty First Nations the **Supreme Court of Canada** was not generous in interpreting Treaties in the recent **Supreme Court of Canada Grassy Narrows decision**. In fact, the Ontario government has just announced plans to proceed to clear-cut the forests of the Anishinabe in that part of Treaty #3 a key issue in the Grassy Narrows case.

'Fighting Back' continued from page 5

PM-AFN Meeting of Jan. 11, 2013.

Fighting Back: Self-Determination NOT Termination!

I have hope in First Nation People's from both Aboriginal Title Nations and Treaty Nations, both on-reserve and off-reserve, on the land and in the towns and cities. Together a national spiritual and political movement needs to be organized, networked and coordinated!

Such a First Nations movement already began a few years ago in 2008 with the formation of the **Defenders of the Land Network of First Nation communities and Canadian allies** across Canada who challenged the unbridled resource extraction on their territories and who continue to defend their territories today!

The Website is: http://www.defendersoftheland.org/

Then in 2012 the **Idle No More movement and network** began to oppose the **Harper majority government's omnibus Bills C-38 and C-45**, which had provisions reducing the federal protection over waterways and fish habitat and negatively affecting First Nation rights.

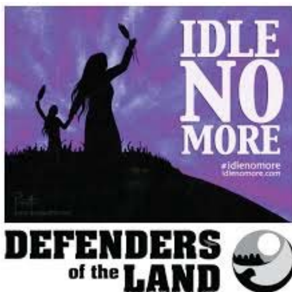
"Join Defenders of the Land and Idle No More in putting forward 4 demands to challenge the current land claims reform process"

On December 19, 2014, **Federal Court Justice Roger Hughes** ruled in a court case brought by the **Mikisew Cree First Nation** that the **Harper government** should have consulted the **Mikisew Cree First Nation** when the Bills were introduced into Parliament. **Justice Hughes** also **issued a Declaration** that from now on the federal government executive branch must consult at early stages of a Bill that may adversely affect the **Mikisew** (and other First Nations). I think this is a victory of sorts for the **Idle No More movement** as well. Although, the Harper government has 30 days from the ruling date to appeal this decision.

The **Idle No More movement** was also spurred on by **Chief Theresa Spence's hunger strike** and demand for a meeting with the **Governor-General** and **Prime Minister Stephen Harper**.

In the end, on January 11, 2013, even though Chief Spence and many other first Nation Chiefs/Leaders refused to attend the **then AFN National Chief Shawn Atleo** led an **AFN delegation** into a meeting with **Prime Minister Harper** where he rejected most of the **AFN demands/requests**, except for the creation of two **Canada-AFN Senior Oversight Committees (SOC's) on 1) Historic Treaties; and 2) Comprehensive Claims**.

By the end of the year, in December 2013, the **AFN Chiefs-in-Assembly** withdrew from the **Canada-AFN Historic Treaty SOC** by resolution—and there was never an **AFN Resolution to renew the mandate for the Comprehensive Claims SOC**, which had been taken over by Termination Table Chiefs' representatives who excluded First Nation Chiefs who are not at a Termination Table. Now Canada is wrongly asserting that the principles in its "***interim***" **Comprehensive Claims Policy came from the Canada-AFN SOC process**.



Since the **Termination Table Chiefs'** continue to dominate the **AFN organization** and the **National Chief's** political agenda, it falls to First Nation People's and their Canadian allies/supporters to help make fundamental changes in Canada not only at the **upcoming federal election** and **Canada's 150th Anniversary in 2017**, of the British establishment of the Canadian Settler-State, but in a longer-term, inter-generational movement.

Take Action Now!

Join Defenders of the Land and Idle No More in putting forward 4 demands to challenge the current land claims reform process:

⇒ Disengagement of negotiating bands from the Termination Tables and forgiveness for all loans taken out to finance the process;

⇒ A fundamental and joint reform of both the Comprehensive Land Claims and Self-Government policies with duly mandated representatives of Indigenous peoples, with the aim of making the policies consistent with both Canadian law on Aboriginal

‘Fighting Back’ continued from page 6

title, Aboriginal rights, treaty rights and inherent Indigenous laws of jurisdiction;

⇒ Federal and provincial governments must provide funding grants to Indigenous peoples for negotiation processes;

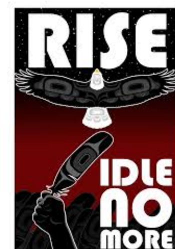
⇒ Absolute rejection of the unilaterally imposed Eyford consultation process.

What you can do to support these demands:

- Educate community members about how the Termination Tables will have intergenerational effects for the loss Indigenous rights. Our children and grandchildren will lose their inherent rights to self-government and access to land.
- Plan community meetings to seek support on stopping these negotiations that are based on extinguishment and denial of our Inherent, Aboriginal and Treaty rights and campaigning to replace these Terminations Tables with Self-Determination Tables that are based on recognition and affirmation of our inherent, Aboriginal and Treaty rights.
- Organize through the **Idle No More (and Defenders of the Land) Turn the Tables Webpage** send your contacts for more information, updates and notices of actions/ events: http://www.idlenomore.ca/turn_the_tables

I’d encourage you to act quickly and join the **Idle No More** and **Defenders of the Land Networks**, **Stephen Harper** has publicly said he wants another mandate in the upcoming federal election because the **Conservatives** want to finish what they started in changing Canada, which includes an accelerated implementation of Canada’s First Nations Termination Plan. If you want to help stop Harper and his Conservatives get involved now!

“I’d encourage you to act quickly and join the Idle No More and Defenders of the Land Networks, Stephen Harper has publicly said he wants another mandate in the upcoming federal election because the Conservatives want to finish what they started in changing Canada, which includes an accelerated implementation of Canada’s First Nations Termination Plan”



L to R: Robert Hladun, legal counsel and Onion Lake Chief Wallace Fox at press conference. (Photo by John Lucas, Edmonton Journal)

Fiscal Brutality and Permanent Austerity: How Canada Controls First Nations

By, Shiri Pasternak, PhD

Onion Lake Cree Nation recently announced that they will be taking legal action against the Government of Canada for imposing discriminatory legislation on Indigenous peoples through the **First Nations Financial Transparency Act**. More Chiefs spoke out against the Act at a press conference held at the **Assembly of First Nations** meeting in Winnipeg this week.

What Canadians should know is that anger over the **First Nations Financial Transparency Act** is not about Chiefs afraid to get their hands caught in a cookie jar. Rather, this piece of legislation is only the tip of the iceberg in a pattern of financial abuse by the federal government.

"Onion Lake Cree Nation recently announced that they will be taking legal action against the Government of Canada for imposing discriminatory legislation on Indigenous peoples through the First Nations Financial Transparency Act"

Core to this abuse are the basic funding agreements between federal and First Nation governments. From the 1990s until today, numerous audits, evaluations, **Royal Commissions**, and **Auditor General of Canada** reports have cited the coercive nature of federal transfer funding to First Nations.

Identifying chronic underfunding as a core concern, evaluations also consistently note that rigidly administered fiscal programs serve to undermine sound, long-term financial planning on reserves.

Despite these widely accepted findings, the poverty created by systemic underfunding continues to be used against First Nations to accuse them of poor financial management.

But it is by no means the extent to how the federal and provincial governments use fiscal policies to control and blackmail First Nations into compliance with government agendas.

Here is an incomplete list of other coercive **Crown-First Nations fiscal relations** that form the crucial backdrop for the current anger:

Blackmail in Contribution Agreements

The 2013/2014 **federal transfer fund agreements** contained language that tied the release of funds to **pre-approval** of all pending federal legislation. These conditions not coincidentally appeared at the height of Indigenous opposition to **omnibus Bills 38** and **45**. Under duress of financial hardship, most bands signed their agreement, despite vehement disapproval of the omnibus legislation.

Third Party Management

Third Party Management (TPM) is the most advanced stage of a federal intervention policy designed to help bands manage funds when they are at risk of deficit. **TPM** is supposed to be imposed when all other interventions have failed. But it has been exercised in many cases as a way to repress political dissent in Aboriginal communities. For example, the imposition of **TPM** on **Attawapiskat First Nation** in 2012 immediately followed **Chief Spence's** declaration of a national emergency on her reserve due to substandard housing. As the Federal Court heard, departmental officials who were monitoring the situation had never raised an issue with band management or financial administration until the community publicized the housing crisis.

Land Claims Loan Bribery

Within the land claims process, loan bribery has been deployed on several occasions to induce bands to endorse unfavourable terms of settlement. For example, over the course of negotiations, the **Lheidli T'enneh First Nation** borrowed $7 million from the government in repayable loans. But in 2007, they voted "***no***" against their **Final Agreement**, dissatisfied with the terms of settlement. Following the "***no***" vote, the **British Columbia Treaty Commission** advised the band council that another vote would secure a stay in repay-

‘Fiscal Brutality’ conclusion from page 8

ment of borrowed monies. The band could not afford monthly payments on the loan within the 5-year period required, so they ultimately capitulated and agreed to hold another vote. There are internal discussions within the band but a date for a new vote hasn't been scheduled.

Pipeline Consent

When fifteen out of sixteen affected First Nation communities agreed to the construction of a natural gas pipeline through their territories in northwest British Columbia (BC), the **BC Ministry of Aboriginal Relations and Reconciliation** presented a document to the withholding **Moricetown Indian Band** linking the continuation of provincial funding for child welfare programs to obtaining consent for the proposed pipeline.

Budget cuts to control political dissent

In 2012, as the Harper government was eyeing approval of pipelines as its best bet on Canadian economic development, his government brought in a range of legislative changes designed to gut the environmental consultative approvals processes. At the same time, Harper slashed funding to Aboriginal organizations across the board, in some cases by up to 80 percent. This hobbled their ability to develop research and policy and advocate for Indigenous rights at a national or broad territorial scale, and "***incentivized***" them to instead become service aggregators for member First Nations.

Opposition by First Nations over the **First Nations Financial Transparency Act** is part of a revolt against the broader fiscal warfare being waged by the federal and provincial governments against First Nations.

If anything, when bands manage to gain some measure of independence from the stranglehold of federal transfer funds, they paradoxically come under further federal attack.

Here we might end by asking why new **Aboriginal Affairs reporting guidelines** include investigating Chief and Council's personal and family incomes or why the **Transparency Act legislation** gives the government unprecedented license to gain access to bands' "***own source revenue***." Contrary to their rhetoric, in the face of Indigenous assertions of economic rights, it seems that governments prefer dependency.

"Opposition by First Nations over the First Nations Financial Transparency Act is part of a revolt against the broader fiscal warfare being waged by the federal and provincial governments against First Nations"

C-27 Compliance Orders: Federal Oppression Strategy Challenged by Indigenous Treaty Nations

November 24, 2014, Treaty No. 6 Territory: Indigenous Nations from **Treaties No. 4, 6 and 7** are actively organizing to resist Canada's forceful implementation of **C-27 legislation (First Nations Financial Transparency and Accountability Act)**. The government of Canada's **C-27 legislation** came into effect July 2014, calling for the public posting of consolidated audits and individuals' income and expenses on a website hosted by **Indian and Northern Affairs Canada (INAC)** in violation of the rights of the Indigenous individuals and the Indigenous Nations.

INAC officials have sent letters to **Indigenous Treaty Nations' governments** threatening to withhold funding for non-essential services on November 26, 2014, further, if the Indigenous Nations do not submit to the requirements of **C-27**, then funding for essential services will cease on December 12, 2014.

In fact, on October 27, 2014, **federal Indian Affairs Minister Valcourt** threatened to cut funding to Indian reserves that resist the imposed legislation. This tactic is designed to force local compliance to an unjust law by denying families access to essential programs and services.

"Not only is C-27 a breach of our historic Treaty Relationship, it is a denial of our international right of self-determination as Indigenous Nations. In no other place in Canada do such oppressive conditions exist under the coercive force of the federal government than Indian reserves"

Not only is **C-27** a breach of our historic Treaty Relationship, it is a denial of our international right of self-determination as Indigenous Nations. In no other place in Canada do such oppressive conditions exist under the coercive force of the federal government than Indian reserves.

The governments' oppression strategy is denounced by Indigenous Treaty Nations who stand on the Treaty relationship made with the Crown of Great Britain (to be upheld by the Crown in Right of Canada), which has allowed settlement upon their lands, 'for as long as the sun shines, the rivers flow, and the grass grows'.

While holding the office as **Grand Chief of Treaty 8, Roland Twinn**, had stated to the **Senate Standing Committee**, "***The approach taken by Bill C-27 simply reinforces the great-white-father-knows-best syndrome rather than releasing the potential of our people. It will cause great resentment rather than build relationships***" (Feb. 12, 2013).

There is wide misrepresentation by the federal government, mainstream media and representatives of the **Canadian Taxpayer's Association** that this legislation will address issues of '***transparency and accountability***' by impugning wrongdoing by Indigenous leadership and Indigenous Nations. Our Indigenous Nations reject such characterizations,

C-27 fails to address the larger systemic issues of chronic federal underfunding and the impact this has on maintaining the poor social and economic conditions of most Indigenous Treaty Nations.

In fact, **Indigenous Treaty Nations' governments** are more accountable with annual audits and the onerous reporting requirements that were already supplied to the Minister each year without the need for **C-27**.

Mandatory disclosure of consolidated audits to the federal government, including information on non-government funds (sometimes referred to as "***own source revenues***") is a concern for some Indigenous Nations that top up government funding with monies from their own economic development initiatives as this is an internal matter for disclosure internally within each Indigenous Nations not the Canadian public.

Chief Bear of the Ochapowace Nation, Treaty No. 4 stated "***Canada is issuing preconditions of surrender, including sanctions. We are prepared to sit and discuss on a government-to-government basis and come to a resolution, but the Federal Government has to demonstrate goodwill, openness and honesty. The relationship with Canada must be based on trust, goodwill and mutual benefit and the only way that will happen is through the recognition and enforcement of our Indigenous Rights, Treaties and a Nation-to-Nation relationship. We will not settle for anything less.***" Indigenous Treaty Nations have begun to organize to resist and reverse C-27.

For media inquiries, contact: Candice Maglione, ph: 780-614-7498, candicem.maglione@gmail.com

Press Release: Algonquins Ready to Act to Implement Co-Management Plan

"We will not be ignored": Algonquins of Barriere Lake endure 8 years of inaction on Quebec-Algonquin co-management plan, ready to act

Kitiganik (Rapid Lake Reserve), Quebec – Eight years ago, in 2006, two former Quebec Liberal Cabinet Ministers put forth joint recommendations to the Quebec Government that laid out a vision we endorsed of resource revenue sharing and co-management on our unceded Algonquin lands.

The "Ciaccia-Lincoln Recommendations" were designed to resolve the conflict generated between our community, the province, and industry concerning the unsustainable resource exploitation of our traditional territory and to deal with outstanding concerns regarding basic infrastructure on our reserve.

These Recommendations are the culmination of a research and negotiation process established by a Trilateral Agreement, signed in 1991, between our band, Quebec, and Canada. The Trilateral Agreement was meant to give us a decisive say over land and resource use on 10,000 square kilometers of our ancestral lands. Canada pulled funding from the groundbreaking resource co-management project and it stalled before the measures we developed to harmonize land use with industry and governments could be successfully implemented. A Bilateral Agreement was signed in 1998 between Barriere Lake and Quebec to move forward with the resource co-management plan and address other urgent infrastructure needs. It also failed to deliver promised results.

The "Ciaccia-Lincoln Recommendations" were developed by two former Quebec Cabinet Ministers and they can restore relations and lead to the implementation of our cutting-edge co-management plans, which are based on hundreds of hours of Algonquin cultural and socio-economic research.

Four weeks ago Barriere Lake Chief Casey Ratt sent a letter to Quebec Premier Phillipe Couillard and Quebec Minister of Aboriginal Affairs Geoffrey Kelly regarding the failures of Quebec to implement the Ciaccia-Lincoln Recommendations, jeopardizing the status of forestry operations within the Trilateral Agreement Territory. We have been met with a stony silence.

"We see these Agreements as the framework for negotiating improvements to the current poor socio-economic conditions within our community, as well as, the future of our Algonquin Peoples. We will not be satisfied until an Agreement to implement the Ciaccia-Lincoln Recommendations is achieved in the interim and our Aboriginal Rights and Title is explicitly recognized by the governments of Canada and Quebec as quickly as possible," said Chief Casey Ratt.

Band Councillor Norman Matchewan states, "We will not be ignored. The Tsilhqot'in decision affirmed our underlying jurisdiction to these lands. We have never backed down from a fight to protect our rights and we are not about to start doing so now."

Contact spokespeople:

Chief Casey Ratt: 819-441-8002

Michel Thusky, Community Elder (French and English Speaking): 819-334-4099 or 819-435-2171

Tony Wawatie, Interim Director-General: 819-355-3662

Norman Matchewan: 819-441-8006

"We see these Agreements as the framework for negotiating improvements to the current poor socio-economic conditions within our community, as well as, the future of our Algonquin Peoples. We will not be satisfied until an Agreement to implement the Ciaccia-Lincoln Recommendations is achieved in the interim and our Aboriginal Rights and Title is explicitly recognized by the governments of Canada and Quebec as quickly as possible," said Chief Casey Ratt"

Legal Review of Canada's Interim Comprehensive Land Claims Policy for Union of B.C. Indian Chiefs

Bruce McIvor, Lawyer , First Peoples' Law, Barristers & Solicitors

By Bruce McIvor

This memorandum provides a legal review of Canada's interim policy Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights (the "Interim Policy") for the Union of B.C. Indian Chiefs ("UBCIC").

Summary

For decades, Indigenous peoples have called on Canada to approach the process of reconciliation between Indigenous peoples and the Crown based on recognition and respect for the prior and continued existence of Indigenous laws and Aboriginal title and rights.

The Supreme Court of Canada's recent decision in **Tsilhqot'in**[1] confirms the need for a foundational shift in comprehensive claims towards negotiation processes based on recognition rather than denial of Aboriginal title. The Interim Policy fails to make this shift. In particular, the Interim Policy:

- disregards the need for high-level discussions between Canada and First Nations leadership to reframe the approach to achieving reconciliation on Aboriginal title and rights claims;
- fails to acknowledge that recognition of Aboriginal title must be the starting point for all negotiations and agreements between Indigenous peoples and the Crown;
- fails to address the need for the Crown to seek and obtain the consent of Indigenous peoples before making decisions that will affect Aboriginal title lands;
- fails to consider and adhere to the underlying principles of Aboriginal title; and
- imposes a unilateral approach which is inconsistent with Canada's fiduciary relationship to Indigenous peoples and its obligations to act in good faith in negotiations concerning Aboriginal title and rights.

"Canada's Interim Policy—imposes a unilateral approach which is inconsistent with Canada's fiduciary relationship to Indigenous peoples and its obligations to act in good faith in negotiations concerning Aboriginal title and rights"

Background to the Interim Policy

The Interim Policy, released by Canada on August 29, 2014, sets out Canada's current approach to settling comprehensive land claims with Indigenous peoples. Once finalized, the Interim Policy will replace the existing version of Canada's Comprehensive Land Claims Policy.

Canada intends the Interim Policy to serve as a starting point for discussions with Indigenous peoples and other interested parties on updating and revising the current comprehensive claims policy ("CCP"). Douglas Eyford, the Ministerial Special Representative, is leading engagement with Indigenous peoples and stakeholders on renewing the existing policy. This engagement is currently underway, and we are aware that a number of First Nations have already, or are planning to, provide comment and input to the Special Representative.

The Interim Policy represents the latest iteration of Canada's approach to comprehensive claims over a number of decades. Key points in the evolution of Canada's approach are as follows:

Frank Calder talking to media in 1973 about Nisga'a Aboriginal Title case.

Calder & the Original Policy

- The first CCP arose in response to the Supreme Court's 1973 Calder decision.[2] Prior to Calder, official federal policy in relation to Aboriginal title and rights was articulated in the Trudeau/ Chretien White Paper policy of 1969, which characterized those rights as historical relics incompatible with Canada's current constitutional, political and cultural values.
- The Calder decision raised the possibility of the existence of Aboriginal title and resulted in a significant shift in Canada's approach to outstanding title claims. It was also the starting point for a four-decade long pattern of judicial "non-decision-

‘Legal Review’ continued from page 12

making” regarding Aboriginal title. While courts developed the doctrine of Aboriginal title, they avoided issuing declarations of title as sought by the Indigenous peoples or otherwise providing remedies premised on the existence of Aboriginal title.[3]

- The original CCP was fraught with limitations. In particular, Canada would consider only a limited number of negotiations at a given time. In addition, the provincial government maintained its position that the issues were purely federal and as such initially refused to participate in negotiations.

“The B.C. Treaty Commission was established in 1992 to facilitate treaty negotiations between Canada, B.C. and First Nations. The expectation at the time was that there would be a 5-6 year timeline for the negotiation and implementation of treaties. However, problems and limitations associated with the CCP mandate have become key obstacles to the timely and successful negotiation of treaties in B.C.”

The Constitution Act, 1982

- The next major event affecting the CCP was the entrenchment of Aboriginal and treaty rights in section 35 of the Constitution Act, 1982. As part of that entrenchment, Canada committed to hold a series of constitutional conferences with First Nations leadership from across the country to discuss and arrive at common understandings about the content and substance of section 35. These conferences failed to provide direction on section 35. As a result, the issue was left to be addressed in the courts or through negotiations.

B.C. Treaty Commission Process

- The B.C. Treaty Commission was established in 1992 to facilitate treaty negotiations between Canada, B.C. and First Nations. The expectation at the time was that there would be a 5-6 year timeline for the negotiation and implementation of treaties. However, problems and limitations associated with the CCP mandate have become key obstacles to the timely and successful negotiation of treaties in B.C.

Recent Events

- 2006-2007: First Nations from across B.C. gathered at Snuneymuxw to issue a Unity Protocol demanding that Canada and B.C. adjust their approaches to negotiations. This was an expression of years of frustration with the Crown’s limited mandates and negotiation approaches, and the lack of progress generally.

- 2008: A tripartite Common Table discussion between First Nations, Canada and B.C. took place in an attempt to move negotiations forward. The process was not productive and did not yield meaningful or transformative results.

- 2010: John Duncan, Federal Minister of Indian Affairs, appointed James Lornie as a Special Representative to investigate the B.C. treaty process and report on how outcomes could be improved. The report was effectively shelved by Minister Duncan.

- 2011: The Inter-American Commission on Human Rights issued a decision in the Hul’qumi’num Treaty Group’s petition which held that there are no effective domestic remedies in Canada for Aboriginal people in relation to claims for Aboriginal title. The decision is a condemnation of both the failure of Canadian courts to provide remedies on outstanding title issues and the existing negotiations processes in Canada and B.C. that in practice required Indigenous peoples to agree to the extinguishment of their title.

- 2013: Prime Minister Stephen Harper met with First Nation leaders on January 11, 2013 in response to ongoing protest in relation to Canada’s failure to honour its commitments to Indigenous peoples. The Prime Minister committed to engage in high-level dialogue with First Nation leadership, including with respect to the replacement of the existing CCP with the advice and input of the AFN-supported Senior Oversight Committee on Comprehensive Claims. The resulting process has been criticized as being heavily driven by Canada and a further perpetuation of the problematic dynamics at the root of the existing CCP.

- 2014: The Supreme Court issued a declaration of Aboriginal title to the Tsilhqot’in

'Legal Review' continued from page 13

"Chief" Stephen Harper in a headdress given to him by the Blood Tribe in Alberta.

Nation. Tslihqot'in marks the need for renewed engagement between the Prime Minister's Office and First Nations leadership to establish a negotiation framework based on recognition rather than extinguishment of Aboriginal title.

- 2014: Canada announced it will develop a renewed CCP and appointed Ministerial Special Representative Douglas Eyford to lead engagement with Indigenous groups and stakeholders. The announcement and the subsequent release of the Interim Policy occurred post-Tsilhqot'in but makes no reference to the decision or the resulting need for fundamental changes to the approach to resolving comprehensive claims.

Overview of the Interim Policy

Overview: Objectives of Negotiations

The Foreword and Section 1 of the Interim Policy set out Canada's objectives and guiding principles when negotiating agreements on comprehensive land claims with Indigenous peoples.

Canada's objectives are to promote certainty with respect to the development of lands and resources and to achieve "fair and equitable agreements and an enduring reconciliation of rights and interests."[4] Canada describes the process of reconciliation between Indigenous peoples and the Crown as promoting a "secure climate for economic and resource development" which benefits all Canadians and which "balances Aboriginal rights with broader societal interests."[5]

"Canada's reduction of Indigenous ownership of lands to those covered by treaty is inconsistent with the broad, territorial nature of Aboriginal title as affirmed in Tsilhqot'in"

The Interim Policy's guiding principles are based on the Guiding Principles Respecting the Recognition and Reconciliation of Section 35 Rights developed by the Crown and First Nations through the Senior Oversight Committee. The principles constitute high-level statements on the current approach to comprehensive claims which were prepared prior to Tsilhqot'in.

The principles are not legally inaccurate, and indicate some shift in language from previous statements and approaches of Canada. However, the principles fail to refer to the recognition of Aboriginal title as a prerequisite to reconciliation, the recognition of Indigenous laws, protocols and jurisdiction outside of treaty settlement lands, the requirement that the Crown seek the consent of Indigenous peoples before undertaking activities that would affect Aboriginal rights, or the possibility of compensation for past infringements of title and rights. More generally, given that the principles were developed prior to Tsilhqot'in, they would need to be reviewed and revised in light of Tsilhqot'in if they were to form an appropriate basis and starting point for a new CCP.

Scope of Negotiations: Lands & Resources Treaty Negotiations

Section 2 outlines the issues that Canada will consider when negotiating comprehensive agreements on lands and resources. Some of the key issues of concern are:

PM Harper with NC Atleo.

- Canada seeks to negotiate modern treaties with Indigenous peoples in order to achieve "certainty" over lands and resources so that economic development can take place.[6] There is no reference to Indigenous peoples' objectives in entering into negotiations with the Crown with respect to lands and resources.
- The Interim Policy focuses on using treaties to achieve certainty with respect to "treaty settlement lands."[7] Canada's reduction of Indigenous ownership of lands to those covered by treaty is inconsistent with the broad, territorial nature of Aboriginal title as affirmed in Tsilhqot'in.
- The Interim Policy acknowledges the possibility of resource revenue-sharing but places non-negotiable limits on such arrangements. For example, Canada will not enter into revenue-sharing arrangements that provide resource ownership rights and will not establish joint management boards for the management of subsurface and subsea resources.[8]
- The Interim Policy states that Canada may enter into negotiations with Indigenous

'Legal Review' continued from page 14

peoples on the issue of self-government but will only consider self-government within a prescribed list of categories.[9] According to the Interim Policy, Indigenous peoples' inherent right to self-government may only be recognized within the context of Canada's existing federal structure.[10]

- Compensation for existing and past infringements of Aboriginal title and rights is not included as one of the matters which may be negotiated as part of the comprehensive land claims process.

Treaty Negotiation Processes & Procedures

Section 3 outlines processes for negotiating treaties within and outside of B.C. As with the rest of the Interim Policy, Section 3 focuses heavily on achieving agreements through Canada's prescribed process of treaty negotiations rather than through other types of agreements premised on the recognition of Aboriginal title.

Critique of the Interim Policy

Legal principles related to the recognition of Aboriginal title and rights have evolved considerably since Canada's CCP was last updated. Importantly, for the first time the Supreme Court in Tsilhqot'in affirmed the existence of Aboriginal title and laid out the requirements for the Crown when negotiating with Indigenous peoples in respect of lands and resources.

The Interim Policy fails to adhere to the principles necessary for achieving reconciliation between Indigenous peoples and the Crown as described by the Supreme Court and the UNDRIP on the following bases.

Presumption of Title

The Supreme Court in Tsilhqot'in rejected the Crown's "dots on a map" approach and confirmed that Aboriginal title applies to the regular use of land on a territorial basis for hunting, fishing and otherwise exploiting resources.[11] As such, all negotiations between Indigenous peoples and the Crown should be based on the presumption of Aboriginal title.[12]

Courts have further recognized that the Crown's assertion of sovereignty in B.C exists on a de facto basis.[13] As a result, it can be argued that rather than requiring that Indigenous peoples establish proof of Aboriginal title, there should instead be a reverse onus on the Crown to prove that lands are not subject to Aboriginal title.[14]

The Interim Policy disregards the principle that all lands should be presumed to be subject to Aboriginal title.

Consent

Tsilhqot'in and the UNDRIP confirm the importance of Indigenous consent when the Crown undertakes activities that could infringe Aboriginal title and rights both before and after a declaration of title.[15]

The Interim Policy fails to recognize the need to move to a consent-based model of decision-making on issues affecting Aboriginal title and rights.

Right to Self-Determination

The UNDRIP affirms Indigenous peoples' right to self-determination, including the right to self-government and to the lands, territories and resources which Indigenous peoples have traditionally owned, occupied or otherwise used or acquired.[16] Recognition of Aboriginal title is fundamental to the exercise of these rights.

The Interim Policy is inconsistent with the principle that the recognition of title is a prerequisite to the realization of Indigenous peoples' right to self-determination.

Indigenous Decision-Making Authority

Indigenous societies and their legal systems pre-existed and survived the assertion of Crown sovereignty. The Supreme Court has acknowledged the prior and continued existence of Indigenous decision-making authority and has implied that such decision-making authority is a part of Aboriginal title.[17] The B.C. Supreme Court has further affirmed that Indigenous self-government is a protected right pursuant to section 35(1) of the Constitution Act, 1982 which exists outside of the constitutional division of powers.[18]

Contrary to Canadian law, the Interim Policy recognizes the ongoing existence of Indigenous decision-making authority only on a limited basis within the existing federal structure.

Good Faith Negotiations

'Legal Review' continued from page 15

The Supreme Court in Tsilhqot'in emphasized the importance of good faith negotiations for agreements between Indigenous peoples and the Crown. The Crown has both a moral and legal duty to negotiate in good faith to resolve land claims.[19] Similarly, all negotiations must reflect the Crown's fiduciary relationship with First Nations.[20]

The Interim Policy's unilateral approach to the negotiation of treaties and other agreements with the Crown does not demonstrate good faith on the part of the Crown and is not consistent with the Crown's fiduciary relationship with Indigenous peoples.

Inherent Limit on Treaty Negotiations

Tsilhqoti'in affirmed that Aboriginal title is a collective title to be held for the benefit of present and future generations.[21] It can only be alienated to the Crown and cannot be encumbered so as to deprive future generations of the use and enjoyment of the land.[22] Similarly, government infringement of Aboriginal title cannot be justified if it would substantially deprive future generations of the benefit of their Aboriginal title lands.[23]

The Interim Policy fails to acknowledge this underlying principle of Aboriginal title that calls into question the Crown's current approach to certainty.

Compensation for Past and Ongoing Infringements

The inherent limit on the use and infringement of Aboriginal title brings into question the Crown's policy of seeking certainty without considering compensation for past and ongoing infringements. The Supreme Court confirmed in Tsilhqot'in that the Crown may be liable in damages for infringements of Aboriginal title.[24]

The Interim Policy prescribes a set of categories which Canada will consider for negotiation but is silent on the issue of compensation for past and ongoing infringements. A principled approach to the settlement of comprehensive claims would allow space for the possible negotiation of compensation for past and ongoing infringements of Aboriginal title.

Agreements

The Supreme Court emphasized that reconciliation between Indigenous peoples and the Crown may be realized through agreements which recognize the elements of Aboriginal title.[25] Such agreements need not be restricted to treaties.

The Interim Policy makes reference to the possibility of agreements that are interim in nature and agreements that could be negotiated outside the treaty process. However, the Interim Policy is still focused on a treaty negotiation process which is inconsistent with the principles of Aboriginal title and which does not take into account the perspectives and objectives of Indigenous participants.

Key Principles for a Revised Joint Comprehensive Land Claims Policy

The Interim Policy is inconsistent with key principles for achieving reconciliation between Indigenous peoples and the Crown under Canadian law.

We recommend that the following principles be considered as a basis for a renewed framework for advancing a process of reconciliation based on recognition and respect for Aboriginal title and rights consistent with the current legal landscape:

1. The policy should affirm that recognition of Aboriginal title is essential to the process of reconciliation between Indigenous peoples and the Crown. Negotiation processes and agreements must be based on recognition, not denial.

2. Indigenous laws, protocols and jurisdiction should be incorporated into the policy, negotiation processes and resulting agreements.

3. The policy should affirm the recognition of Indigenous decision-making authority as a critical component of Aboriginal title.

4. The policy's guiding principles should include the four principles established by First Nation leaders on September 11, 2014 as reflected in UBCIC Resolution 2014-29:

a. acknowledgement that relationships must be based on the recognition and implementation of the existence of Indigenous peoples' inherent title and rights and pre-confederation, historic and modern treaties throughout B.C.;

b. acknowledgement that Indigenous systems of governance and laws are essential to the regulation of lands and resources throughout B.C.;

c. acknowledgement of the mutual responsibility for government systems to shift to relationships, negotiations and

'Legal Review' conclusion from page 16

agreements based on recognition; and

d. acknowledgement of the need to move to consent-based decision-making and title-based fiscal relations, including revenue-sharing, in relationships, negotiations and agreement.

5. The policy should affirm and be consistent with Indigenous peoples' right to self-determination as setout in the UNDRIP.

6. The policy should be consistent with and adhere to the underlying principles of Aboriginal title as affirmed in Tsilhqot'in, including the principle that government infringement of Aboriginal title cannot be justified if it would substantially deprive future generations of the benefit of their Aboriginal title lands.

7. The policy should expressly include the option of negotiating compensation for past and ongoing infringements of Aboriginal title and rights as part of achieving reconciliation between Indigenous peoples and the Crown.

8. Consistent with Tsilhqot'in and the UNDRIP, the policy should recognize that the Crown must seek the consent of Indigenous groups before making decisions that will affect lands subject to Aboriginal title.

9. The policy should avoid the Crown's imposition of unilateral definitions, processes and non-negotiable positions.

10. The policy should be the joint result of an iterative process between Indigenous peoples and the Crown, and must accordingly recognize and incorporate the views and priorities of Indigenous participants.

11. The policy should be clear that there will be no pre-determined limits on negotiations and any resulting agreements, including with respect to the exercise of Aboriginal rights, the scope of possible economic benefits from resource development, or the exercise of Indigenous self-government.

Conclusion Thank you for the opportunity to assist you with this most important of issues. We would be pleased to discuss with you further the current Interim Policy and our suggested principles for revising the approach to comprehensive claims and to assist UBCIC in working to achieve a framework for the recognition and affirmation of Aboriginal title and rights of Indigenous peoples. **[Reprinted courtesy of UBCIC]**

Endnotes

1. Tsilhqot'in Nation v. British Columbia, 2014 SCC 44 [Tsilhqot'in]
2. Calder et al. v. Attorney-General of British Columbia, [1973] SCR 313, 1973 CanLII 4 (SCC [Calder]
3. For example, Delgamuukw v. British Columbia, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC); Tsilhqot'in Nation v. British Columbia, 2007 BCSC 1700
4. Interim Policy, pg. 6, 10
5. Interim Policy, p. 6
6. Interim Policy, p. 11
7. Interim Policy, p. 13
8. 8 Interim Policy, p. 14
9. 9 Interim Policy, p. 17
10. 10 Interim Policy, p. 8
11. Tsilhqot'in at para. 42
12. Tsilhqot'in at para. 42, 69
13. Haida Nation v. British Columbia (Minister of Forests), [2004] 3 SCR 511, 2004 SCC 73 at para. 32; Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), [2004] 3 SCR 550, 2004 SCC 74 at para. 42
14. See for example McNeil, Kent. "The Onus of Proof of Aboriginal Title." Osgoode Hall Law Journal 37.4 (1999): 775-803
15. Tsilhqot'in at para. 97; UNDRIP Article 32.1
16. UNDRIP Articles 4 and 26.1; see also UBCIC Resolution 2011-12
17. 17 See for example Delgamuukw v. British Columbia, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC) at para. 115; Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33 at para. 129, 165
18. Campbell et al v. AG BC/AG Cda & Nisga'a Nation et al, 2000 BCSC 112
19. Tsilhqot'in at para. 17, 18, 89, 91
20. Tsilhqot'in at para. 80
21. Tsilhqot'in at para. 74
22. Tsilhqot'in at para. 74
23. Tsilhqot'in at para. 86
24. Tsilhqot'in at para. 89
25. Tsilhqot'in at para 89, 90

PRESS RELEASE: Chiefs should stand with their people against Harper's plans to terminate Indigenous rights and identity

As Indian Act chiefs gather in Winnipeg this week to select the Assembly of First Nations' next national Chief, Idle No More marks its 2nd anniversary

Two years ago, Idle No More burst onto Canada's political scene as a celebration of Indigenous spirit and an expression of mass anger at the Harper government's attacks on Indigenous and Treaty rights, its dismantlement of environmental protections and consultations, and its indifference to the plight of murdered and missing Indigenous women.

Although First Nations chiefs live under threat of Ottawa's fiscal bullying and retributive funding cuts that target their already underfunded and impoverished communities when they dissent, many chiefs found courage in the power of the movement and have joined hands with Idle No More. Others, however, were assuaged by Harper's promises of more money and sham talks that went nowhere and excluded grassroots Indigenous voices.

This Assembly of First Nations election takes place in the wake of the Supreme Court's historic *Tsilqhot'in* decision recognizing Aboriginal title and control of resources on traditional territories where title has not been ceded. In response to that decision, the federal government has hastily proposed the first major overhaul of the comprehensive land claims policy since the 1980s, under the auspices of Ottawa's designated pipeline fixer, Douglas Eyford. The objective of the government's "new" policy is to bury the gains of the *Tsilhqot'in* decision and double down on the failed existing policy that has produced only a handful of self-termination agreements in 20 years and left hundreds of bands deep in debt for legal costs---all because the government will not budge on extinguishment of Aboriginal title, which is in violation of Indigenous laws and unacceptable to the vast majority of First Nations.

"Only through movements like Idle No More, bringing together grassroots Indians living on reserves, urbanized Indigenous People, sympathetic chiefs, councillors, and traditional leaders, and our non-Native friends can we find the power to challenge Canada's termination plan and protect our rights and identity for future generations"

"While Stephen Harper's government continues to bulldoze Indigenous lands and rights in its obsession with making Canada a resource colony to the world, the AFN has not even put the historic *Tsilhqot'in* decision or the government's major new comprehensive claims policy on its agenda," said Sam McKay, Defenders of the Land spokesperson. "Many chiefs are sitting at termination tables negotiating the extinguishment of their title and rights, and the AFN leadership does not seem to have any strategy to protect our Peoples' rights or use the opportunity *Tsilqhot'in* has given us."

"The only major policy initiative the AFN is pushing at this assembly is the government's rehashed First Nations education legislation that will subordinate First Nations' schooling to Ottawa's dictates and further alienate our young people from their cultures," said Janice Makokis, of Idle No More.

"Our communities must take their future into their own hands," said Idle No More organizer Sylvia McAdam. "Only through movements like Idle No More, bringing together grassroots Indians living on reserves, urbanized Indigenous People, sympathetic chiefs, councillors, and traditional leaders, and our non-Native friends can we find the power to challenge Canada's termination plan and protect our rights and identity for future generations. Idle No More and Defenders of the Land call on the assembly and all three candidates for national chief to join our 'Turn the Tables' campaign to confront the Harper government's renewed efforts to terminate Aboriginal title and rights and assimilate Indigenous Peoples in Canada."

Links:

Idle No More's Turn the Tables infographic: http://www.idlenomore.ca/turn_the_tables_infographic

Idle No More's Turn the Tables campaign: http://www.idlenomore.ca/turn_the_tables

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Sylvia McAdam, Idle No More Cell: 306.281.8158

Sam McKay, Defenders of the Land Cell: 807.629.7266

CBC News: Idle No More activists decry Assembly of First Nations agenda

Sam McKay, who works with the group **Defenders of the Land**, said the **AFN** has not listened to the grass roots members of the aboriginal community. (CBC)

By CBC News-Dec 10, 2014 10:12 AM ET

Chiefs from the Assembly of First Nations vote in Winnipeg today on a new leader, but a First Nations activist from Kitchenuhmaykoosib Inninuwug says it makes no difference who takes over as national chief.

"I've watched all three candidates and I haven't really seen honest effort on their part to address the issues that are of Idle No More's concerns and Defenders of the Land's struggles," said Sam McKay, a spokesperson with the group Defenders of the Land.

Defenders of the Land and Idle No More are calling on the candidates for AFN chief to confront what they call the Canadian government's renewed efforts to terminate Aboriginal title and assimilate Indigenous Peoples.

"They grossly failed in listening to the grass roots people at all levels in all regions," McKay said of the previous leadership.

"And also they've kind of put our Aboriginal and treaty and inherent rights by the wayside in place of the almighty dollar."

McKay said the AFN has focused too much on failed First Nations education legislation.

Janice Makokis of Idle No More agreed.

"The only major policy initiative the AFN is pushing at this assembly is the government's rehashed First Nations education legislation that will subordinate First Nations' schooling to Ottawa's dictates and further alienate our young people from their culture," she said.

The groups issued a press release decrying the AFN's agenda "while Stephen Harper's government continues to bulldoze Indigenous lands and rights in its obsession with making Canada a resource colony to the world."

The activists note the AFN leadership vote is taking place on the second anniversary of Idle No More, a movement advocates say is "necessary to bring together Indigenous people and their allies to "find the power to challenge Canada's termination plan and protect our rights and identity for future generations."

Voting for the national chief starts at 9 a.m. CST Wednesday.

Results of the first ballot should be available by about 1 p.m.

The winning candidate needs the support of 60 per cent of the registered voters.

[Reprinted courtesy of CBC News]

"They grossly failed in listening to the grass roots people at all levels in all regions," McKay said of the previous leadership"

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

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

Feedback is welcome. Let us know what you think of the Bulletin—Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

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Perry Bellegarde Named New AFN National Chief

By CBC News

It only took one round of voting for Bellegarde to win, after getting more than 60 per cent of the 464 ballots cast during the event in Winnipeg.

"It's done now, let's roll up our sleeves and get some work done," Bellegarde told the crowd.

And he had messages for both the chiefs who elected him and other Canadians.

"To the people across the great land, I say to you, that the values of fairness and tolerance which Canada exports to the world, is a lie when it comes to our people," he continued.

"To Canada, we say, for far too long we have been dispossessed of our homelands and the wealth of our rightful inheritance."

Bellegarde thanked his opponents and ended his speech saying, "Canada is Indian land. This is my truth and this is the truth of our peoples."

The AFN's top job has been vacant since the abrupt resignation in May of Shawn Atleo amid controversy over his support of the federal government's proposed overhaul of aboriginal education.

Bellegarde, chief of the Federation of Saskatchewan Indian Nations and former regional vice-chief for the AFN, ran against Atleo in the 2009 AFN leadership election.

That year, it was a 23-hour voting contest that ended on the eighth ballot, after six successive ballots in which Bellegarde and Atleo were virtually tied.

This time around, Bellegarde faced competition from Leon Jourdaine, chief of the Lac La Croix First Nation in northwestern Ontario, and Ghislain Picard, regional chief for Quebec and Labrador, who has been interim national chief since Atleo's resignation.

The results were:

Bellegarde — 291.Picard — 136.Jourdain — 35.

Bellegarde will have an extra six months added to his three-year term as the organization restructures amid questions about its relevance.

Many have argued, during the lead-up to Wednesday's vote, that the organization should wean itself off federal funding, while others have argued it doesn't reflect the views and concerns of the grassroots. **[Reprinted courtesy of CBC News]**