

Maritime Aboriginal Peoples Council

*The Maritime Region Aboriginal Leaders
Intergovernmental Council of Aboriginal Peoples
Continuing to Reside on Traditional Ancestral Homelands*

MAWI' A Q N U T M A ' T M K

Let us talk together.

MAWI' A K A N U T M A ' T I M K

TEXT REPORT

March 6-7-8, 2009

Truro

Nova Scotia

MARITIME ABORIGINAL PEOPLES COUNCIL

*The Maritime Region Aboriginal Leaders Intergovernmental Council
Of Aboriginal Peoples Continuing to Reside on Traditional Homelands*

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FORWARD:

This Text Report of the Regional Session, is produced in a narrative form, in an attempt to best capture the passion, and conviction with which the delegates (list appended), facilitator, presenters, and elected leaders and guests shared their: views, ideas, concerns, interests, and opinions about the matter on the *“Duty on Governments to Consult with the Aboriginal Peoples of Canada.”*

The Regional Session was guided by an agenda, (appended) and the funding agency guide of numerous questions (guide appended) which were sought from the participants. However, in keeping with the wish of the participants that there should be a talking exchange between each other *“let us talk together”* about this subject, the Facilitator attempted to accommodate both requirements while maintaining a free flow in the discussions.

The result, proved useful to achieve answers. Rather than produce a final *“Report”* in agenda point format, we decided to produce a *“Text Report”* which is more free flow to capture the questions, answers and shared thoughts expressed throughout the Regional Session.

The *“Text Report”* is not too long, and I urge the reader to read it through several times, if necessary. I would also ask the reader to take note of the wealth of ideas and solutions shared with the Government of Canada, and the answers to the questions posed by the Government.

As the Regional Session Facilitator, I believe that when the views, issues, concerns, interests, needs, ideas, and solutions; which have been shared, are adopted or seriously factored by the Minister and Interlocutor to form the core of a *“Consultation Policy”*, then we will have started on a point of departure from the decades of discord, legal challenges, disputes and mistrust which continue to fester and grow in Canada.

We must end the instability and uncertainty. We must end *“unscrupulous behavior”* by some developers in harnessing energy, exploiting biological resources, the *carte blanche* extraction of genetic resources and traditional knowledge. We must end the *“cavalier frontier attitude”* of development which does not respect or consider the traditional territories and current uses of lands and resources by the Aboriginal Peoples continuing on their Traditional Ancestral Homelands. We must end the *“trail of broken promises”*, and the *“litany of policy mistakes”*, *“regulatory harm, acts of birth right denial”*, actions disinheriting descendents and heirs from Rights. We must end the *“isolation, segregation and estrangement”*, of more than half of the population of the Aboriginal Peoples of Canada.

We can together develop a consultation policy that is Canadian, and does reflect the twenty-first century. Once before, in our history as nations of the seventy-three nations of Aboriginal Peoples in Canada; occupying our traditional lands, lakes, rivers and sea coasts, we shared with your forefathers, hope, peace and our knowledge. We formed relationships for friendship, for trade of our natural wealth and innovations for your goods and technology. We shared lands and resources for you to make a home for

your families, and, we mutually made promises to respect your Crown governance, and you, our leadership and egalitarian social order.

As we develop a *Canada Aboriginal Peoples Consultation Policy* in 2009, we should remind ourselves of what inclusiveness meant in 1982, and what was achieved for all the Aboriginal Peoples of Canada, and the Governments of Canada.

Let us now, take another step forward for all the Aboriginal Peoples and all Canadians - let us promote and respect the sacred and solemn promises of the Crown for Treaty and Aboriginal Rights. Let us develop a “*Canada Aboriginal Peoples Consultation Policy*” which both brightens the fiduciary duty and the honour of the Crown. Let us also raise the conscience of the Governments of Canada. Do not simply consider the “*paper work*” or “*citizens’ demands*” when governing, bring forward a “*conscience*” and be conscious of the value of reconciliation which a consultation policy nurtures for all the Aboriginal Peoples of Canada and the Federation of Canada - the Promise that is Canada.

In 1982, Canadians and Government, in an open, widely televised, transparent process, resolved that the Aboriginal Peoples of Canada are a part of the Federation of the Peoples of Canada.

In 2009, Canadians, Governments and Aboriginal Peoples can resolve to witness an end to the abuses, infringements, and disrespect for Aboriginal Peoples and their lands and resources. Let us end the cavalier exploitation of biological and genetic resources without Aboriginal Peoples consent. Let us end the denial of history, the denial of Aboriginal culture, technologies, traditional knowledge, arts, medicines, identity, and more which belong to the nations of Aboriginal Peoples in Canada. Let us start to reconcile the differences through *Consultation*.

This Regional Session “*Text Report*”, is our first contribution to help Canada take a step in the right direction. We hope it will be a point of departure on a new path; a path to practice respect and reconciliation with a “*conscience*”, that reflects the true conscience of Canadians, and is true to CANADA - KA – NA – DA.

Respectfully submitted

Roger J. Hunka
Director of Intergovernmental Affairs

TEXT REPORT:

The Maritime Aboriginal Peoples Council, (MAPC) as a Maritime Region Aboriginal Leaders Intergovernmental Council of the Aboriginal Peoples continuing to reside on Traditional Ancestral Homelands throughout the Maritime Region of Canada, was approached in late December of 2008, by the designated Office of the Federal Interlocutor for Métis and Non Status Indians. That office is also represented by the Minister of Indian Affairs and Northern Development. Funds had been set aside to engage the Off-Reserve Mi'Kmaq/Maliseet/Passamaquoddy Aboriginal Peoples, on the “*Duty to Consult*.”

The three Aboriginal Peoples Representative Organizations (APRO): The Native Council of Nova Scotia, The Native Council of Prince Edward Island, and the New Brunswick Aboriginal Peoples Council, each providing “*Community Representative Advocacy*” and managing “*Community Enabling Programs & Works*,” with stellar results throughout their almost four decades history, were also invited to specifically produce a work plan to undertake engagement on the duty to consult with their particular traditional ancestral homelands Aboriginal Community Members situated within the jurisdictional boundaries of the three “*Councils*.”

On the invitation of the Office of Federal Interlocutor, and at the request of the MAPC governing Chiefs, the Maritime Aboriginal Peoples Council, prepared and submitted a work plan, with budget. The work plan proposed to build on the earlier meetings and correspondences between MAPC and the Federal Government on the matter of “*consultation*.” MAPC would convene a gathering of seventy-five key informants; twenty-five from each “*Council*”, to share at a Regional Session: the local views, issues, concerns, interests, suggestions, opinions and comments which may be useful to introduce and incorporate into a “*Duty to Consult Policy*.”

The MAWI'AQNUTMA'TMK – “*Let us talk together*” - MAWI'AKANUTMA'TIMK Regional Session was held over two and a half days, (Friday March 6, Saturday March 7 and Sunday March 8, 2009) at the Holiday Inn, in Truro, Nova Scotia. The Regional Session had an agenda to guide the participants to talk together about several key policy issues which the Government wanted some input on. The issues were framed under six categories: General Issues, Role and Responsibilities, Capacity, Policy Triggers, and Accommodation.

The deliverables would be a “*Text Report*” of what the participants talked about, which would include opinions, comments, and recommendations of what would be necessary to include in a “*Consultation Policy*” that had to be inclusive of all the Aboriginal Peoples of Canada.

Also, with the “*Text Report*”, there would be produced and available on request, a “*Summary DVD*” of the session.

Another objective of the Regional Session, was to raise awareness about the similarities or differences between the different provincial participants, and to engage conversation on these questions which

would provide continuing guidance to the Government of Canada in developing a “*Canada Aboriginal Peoples Consultation Policy*.”

Most participants had some familiarity with the different Court cases, and jurisprudence about Treaty and Aboriginal Rights. Some knew about the Duty on the Crown to act in an honourable way, and some knew that the Crown has a fiduciary responsibility. The three Native Councils each, have had extensive legal challenges, and the Native Council of Nova Scotia was a party in the Supreme Court of Canada Simon Appeal, with a decision in 1985. The New Brunswick Aboriginal Peoples Council similarly had several court challenges and victories.

Raising awareness about the need and value to work towards reconciliation through an inclusive consultation policy was a constant session topic. No longer is it “*just*” or “*right*” to isolate, segregate or estrange the “*Métis, Non Status Indian, or Traditional Ancestral Homelands Aboriginal Person*” from involvement and development of national policies.

MAWI’AQNUTMA’TIMK “*Let us talk together*” MAWI’AKANUTMA’TIMK provided participants the opportunity to share and hear real life experiences, which gave rise to seek answers to a wide range of questions, and provided a forum to share answers and opinions worthy to consider, assess and include in developing the focus, approach and language of a “*Canada Aboriginal Peoples Consultation (CAPC) Policy*.”

On Friday evening, almost one hundred participants and guests co-mingled for several hours with each other, many as extended family, friends and interested Community Members. There was shared in many little talks; held throughout many little areas within the reception hall, much about what consultation means and what had to be said and will be shared with others from the Region.

The Facilitator and his staff which organized the Regional Session, ensured that each participant received a binder of information.

The binder contained a fair amount of information. Briefly, there were some excerpts revealing the history of treaty-making and the land claims processes in Canada. Of worthy note is the following quote by Mr. Lloyd Barber:

“...Canada still has an opportunity to make lasting agreements with Aboriginal Peoples based on the recognition and affirmation of their Aboriginal Rights and with respect for their unique and enduring place in Canadian Society.”

In 1975 Mr. Lloyd Barber said:

“...I would urge the Government and Native People to strive for an agreement which is flexible enough to permit the necessary positive evolution. I don’t think anyone can draw out a detailed master plan for the future, and the settlement

terms should provide the greatest possible latitude for change. Rigidities may only lead to a new set of problems.

In conclusion, I would suggest to you that negotiations on land claims provide an unprecedented opportunity to get at some of the important, deeply rooted problems and differences between Indians and non-Indians.”

An excerpt was read from “*Our Land the Maritimes*” a research work, which positively advances the assertion:

“that the Government of Canada initiate negotiations with all the Indian People in the Maritime Provinces to settle their just claims in order to alleviate and enhance their quality of life committing itself to positive action for them all.”

Excerpts from the “*Koqaja’Taqtinen*” Volumes I & II, November 2001, were worthy to note, particularly what Elder, Keptin Noel Knockwood, said, which so vividly captures, in today’s terms, the life and hurt of the majority of the Aboriginal Peoples in Canada.

“Since the beginning to time, humans have dominated and colonized others, and always at great cost. When the Europeans came to our country, during colonization, our people suffered gross and wide-spread rights violations. Recent history shows this situation has not changed.”

An excerpt was read from “*The Canadian Indian*”, E. Palmer Patterson II, 1972, which put the session into a context as far as where the “*Indian Stands Today*”, which was also well understood by the participants and best characterized to be as follows:

“Another way of thinking about the history of Indians in Canada is to see them as a people with a distinct past of their own; to see that the coming of the whites does not change the Indian’s continuity with his own past, that his story must be told in terms of his own experience with the white man, placing him at the centre of the narrative, regardless of the fact that he has ceased to occupy the centre of Canadian affairs....The Indian is the centre, no matter how many people displace him or how deeply he is driven into the remote areas of the land, or to what extent he is forced to conform to the invaders in order to survive. The story still centers on him and his surviving identity.”

Many other excerpts from documents such as the “*Universal Declaration of Human Rights*”, “*The Constitution Act of Canada, 1982*”, “*UN ILO Convention 107 – The Convention Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries*”, “*UN ILO Convention 169 – The Convention Concerning Indigenous and Tribal Peoples in Independent Countries*”, The “*Canadian Biodiversity Strategy*”, “*Agenda 21*” the “*Declaration on the*

Rights of Indigenous Peoples”, New York, September 12, 2007. Only four countries voted against the Declaration, Canada is one, and two others have since rescinded their vote against the Declaration.

The Facilitator moved towards the end of the binder with a series of articles. The final question, what if there is no consultation or no effort to reconcile. What has happened, and could have been avoided with a consultation policy. Rather than make his own comments on the matter, the Facilitator pointed to the sample of news articles about conflict in Canada between Aboriginal Peoples throughout Canada and the Government of Canada.

Each incident can be traced back to a “*failure to consult, or a failure to uphold the honour and promises of the Crown.*” The Courts have admonished Canada numerous times on situations which raise conflict, particularly when a process of reconciliation by consultation or negotiation could have prevented loss of property and life.

We must stop perpetuating the legacy of *conflict, uncertainty* and *sharp dealings* with the Aboriginal Peoples of Canada.

The binder also contained a sample of documents produced on the subject of consultation by the Government of Canada, preparatory to the “*engagements on consultation*” with Canadians. Also included and briefly reviewed was a selection of some “*consultation guides*” already produced in Canada.

Four key presenters, each expert and very knowledgeable in the field of “*relationships with the Aboriginal Peoples of the Maritimes*” were invited to the MAWI’ AQNUTMA’ TMK “*Let us talk together*” MAWI’ AKANUTMA’ TIMK Regional Session. Each was introduced to the participants, to give presentations, and remain throughout the session to allow for an ongoing talk with lively question and answers - revealing issues, concerns, and solutions.

Combining the experiences which many participants carried with them into the session from their provincial consultation sessions, bringing forward the discussions and informal exchanges which occurred during the Friday evening gatherings, hearing the Facilitator’s presentation and his summary review of the Binder Documents, receiving the thoughtful and soul provoking presentations made by Bruce D. Clarke, Barrister and Solicitor, Kevin Christmas, Historian, Writer and Researcher, Wallace Nevin, Historian and Researcher, and Gary Gould, Community Leader, Researcher, Author and Lecturer, and hearing the elders, participants, leaders and guests openly share their views, issues, interests, concerns, experiences and needs, there clearly emerged answers and solutions to include as key elements in a Federal Policy on Consultation.

Throughout this narrative report, the reader will find answers, solutions, recommendations and some key observations made at the session, which must be included in formulating a “*Canada Aboriginal Peoples Consultation Policy*”. These are not presented in any particular order, nor do they represent an exhaustive list. They do, however, provide a starting point from which the government may begin to draft a Consultation Policy - at least a framework.

The views expressed and reported are also considered as the vital elements or the essential building blocks on which the foundation for an inclusive “*Canada Aboriginal Peoples Consultation*” policy must be built.

The “*Canada Aboriginal Peoples Consultation*” policy must begin to respond to several pressing and fundamental issues which the Aboriginal Peoples of Canada, the Governments of Canada, the Courts of Canada, and Canadians need to have resolved.

A “*Canada Aboriginal Peoples Consultation*” policy A CAPC Policy should take into account the guidance provided by the evolving jurisprudence and that as foreseen by the Supreme Court of Canada in Haida Nation. The broad general principles of the Crown’s duty to consult and where necessary, to accommodate Aboriginal interests are to be applied to a concrete set of circumstances.

A CAPC Policy, must take into account that Governments and their Agencies and Tribunals who license private or public interests for commercial advantage, profit and gain, may fail both their obligations to Aboriginal Peoples and Canadians. Licenses and approvals issued without providing an opportunity for Consultation with Aboriginal Peoples, represent a significant risk to Resources Developers, and to those who prospect on what they call the *frontier*. Those whose commercial interests seek to exploit, use and access either “*genetic resources*” “*biodiversity resources*”, “*mineral*”, “*water*”, “*Aboriginal technologies*”, “*traditional knowledge*” and all that is asserted by Aboriginal Peoples as theirs by Rights and their Continuum; including that of known past and progressing massive scale commercial activities with assumed infringement for commercial gain, without prior informed consent or without consultation with the Aboriginal Peoples concerned, are, all subject to significant risk and indisputable uncertainty.

A CAPC Policy must take into account the adequacy of the duty on the Crown to begin consultation which may be triggered by the; first trigger, “*timely knowledge*”.

Timely knowledge is the earliest possible moment in time, when a plan or development is first proposed or made known to a Government. It may be at any Government office where the proposed plan is shared with an official, or it may be when an application is filed for processing, or it may be when there is an official review of the application or request for a permit or license, or it may be in a public forum where a proponent is seeking formal approval. Where ever the Crown has first knowledge of: a works, an activity, a project or development, the requirement of the duty on the Crown to consult, must be understood and called into action. The notice for consultation must be immediately given to the Aboriginal Peoples and the proponent.

This notice for consultation must begin at the earliest moment in time. The honour of the Crown is not saved tarnish from *sharp dealings* with the lapse of time or by the failure of a Public or Civil Servant or an Official to “*sound the bell*” about the duty on the Crown to consult. The passage of more time, or more processing within the system, without any consultation by the Crown with the Aboriginal Peoples effected, or impacted, or concerned does not lighten the burden on the Crown to have consultation with the Aboriginal Peoples Asserting a Right, Impact, Effect, or Interest.

The second trigger in the adequacy of the duty on the Crown to factor in consultation is: “*constructive knowledge*”. Consultation is triggered when the Crown has knowledge, real or constructive of the potential existence of an Aboriginal Right or Title that might be adversely effected or impacted by the conduct contemplated by the Crown. Even when the asserted claim is dubious, the duty on the Crown to consult is still triggered.

“If one should have known a fact they are deemed to have knowledge of that fact”.

Constructive Knowledge is a very important concept to always keep in mind, in the relationship between Aboriginal Peoples and the Crown.

Of many more triggers, a third trigger is the “*tradition of honour*”. That is another aspect of consultation that is often pushed aside or overlooked to favour discussion alone, on the legal duty to consult. Chief Justice Beverly McLaughlin described the duty to consult as “*a fair process*”.

There are, many Canadians who disagree with only a “*legal characterization on the Honour of the Crown to consult*”, and favour the more traditional higher standard, succinctly described as:

“The duty to consult is directly linked to the Honour of the Crown which displays a higher standard than, a fair process”.

In our effort to repatriate our Constitution in 1982, Canadians sought some Institution within our Federation to become a check on Parliament. We turned to a model which the Americans adopted, the Supreme Court – under the rule of law. While Canadians continue to search for a “Federation of Peoples Balance”, in the interim, somehow, our society is becoming Americanized by looking solely to the machinery of Government and the judgments of Courts to provide the balance. Canadians seem to have lost the great British tradition of “*honour*”. As stated by several delegates, Canada as well, seems to have also lost its “*conscience for the peoples of the Federation of Canada*”.

Regardless of the time which may be required to determine the level of the asserted right or title or what ever are the concrete set of circumstances, the Crown’s approach must be “*early, timely and uphold the highest tradition of honour*”, and without predetermined opinion. The Crown must always act as the fiduciary for all the Aboriginal Peoples of Canada regardless where they may reside, or how or what they may assert as their rights.

Each and all the Aboriginal Peoples of Canada are deserving of an early, timely, fair, honest and transparent process which upholds the “Conscience” that is Canada and the “Honour” of the Crown. The Federation of the Peoples of Canada each desire a better country – the Promise that is Canada.

A CAPC Policy must take into account, that members of a Native Council are no less in merit, worth, capacity or dignity or in asserting their claim as heirs to treaties, than members of a Band Council. The

matter of a Registrars' *LIST* does not confer an automatic privilege on a Band Council Member to be a treaty heir or beneficiary.

Native Councils and Band Councils must be treated fairly when governments learn about their assertion of Treaty or Aboriginal Rights, title or use of lands and resources as heirs and descendants of the Mi'kmaq, Maliseet or Passamaquoddy Aboriginal Peoples of Canada continuing today. We know who we are by each of us knowing our history and treaties. We know our kin and kind. We know our families. We know and share our language, culture, traditions, identity, and that much more which make us a People of our nation. We associate with each other and accept each other as Mi'kmaq, Maliseet or Passamaquoddy, Aboriginal Peoples continuing on our traditional ancestral homelands. A policy cannot ignore reality, to favor or perpetuate an age old policy designed to "*get rid of the Indian and the Indian question.*"

A CAPC Policy must be an inclusive policy for all Aboriginal Peoples, and it must factor all the "*Government created Indian manifestations*", all designed to banish the several tribes, groups and nations of "*Indigenous Peoples in Canada*". The policy must consider the realities of the Inuit Peoples of the North, many now with a recognized government on Nunavut, taking in hundreds of thousands of square miles. The Métis Peoples living throughout Canada in many regions of Canada. The Traditional Ancestral Homelands Aboriginal Peoples on the East Coast and West Coast of Canada represented by their Hereditary Councils, Native Councils, or Grand Councils as in the East. And our brothers and sisters put on the *LIST*. In the east confined to Indian Act controlled and created Reserves and, our many Treaty Brothers and Sisters in the West as Treaty Indians on Treaty Reserves.

And we must not forget the hundreds of thousands of young and old, who move away from Traditional Homelands, or from Band Council Reserve Communities, and choose to live in rural or urban settings to earn a living or acquire further education. As heirs and beneficiaries they should be considered in a consultation policy.

A CAPC Policy must take into account that the Aboriginal Peoples of Canada do not understand how Canada could veto the Declaration on the Rights of the Indigenous Peoples, and particularly cite Articles 19 and 31 as a reason for the veto, when those two articles go to the very heart of consultation.

How can we trust Canada, and why should we trust Canada to develop a "*Canada Aboriginal Peoples Consultation Policy*", when Canada openly, without any guilt or conscience, refuses to support the "*Declaration on the Rights of Indigenous Peoples.*"

Article 19 reads:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Article 31 reads:

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*
2. *In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.*

The four expert presentations focused the session delegates to consider other aspects on the issue of consultation and accommodation. These issues were raised in the presentations by all the presenters. Two of the presentations are prepared in text, and are appended in their entirety to this “*Text Report.*”

Bruce D. Clarke, discussed where the Case Law has gone over these past twenty-five years on the subject of “*honour of the Crown*” and “*Consultation and Accommodation*” and the need for “*Reconciliation.*”

The presentation highlighted to the delegates a process which Courts go through to determine, or what they have thus far determined, to provide some “*triggers*” for consultation. The Courts in some cases have also determined that there could be levels and degrees of “*asserted rights*”; and with that, there should be some corresponding sliding scale to “*how much consultation is required.*”

During the Presentation, six key questions were raised for the delegates to seriously consider and, hopefully throughout the next two days, the delegates will be able to provide answers and guidance to those who will draft or make suggestions for a “*Consultation Policy.*”

- ▶ Who are Rights Holders?
- ▶ Who should negotiate those Asserted Rights?
- ▶ What are the Asserted Rights?
- ▶ What kind or level of accommodation do the Aboriginal Peoples impacted expect?
- ▶ What evidence or proof do the Aboriginal Peoples have about the asserted Rights?
- ▶ Where are the Asserted Rights?

Those types of questions may be common to most processes which require consultation by the Crown. However, they are not exhaustive nor exclusive to the many forms of rights which the Aboriginal Peoples have by their continuum. For example, Aboriginal language rights can involve both the

individual and a representative Council, or the traditional Governing Council, or all three to be consulted.

Those six questions are important to understand and discuss, or have answers for, before a process begins. It is vitally important, if not imperative, that the Aboriginal Peoples asserting the right, and either requesting or demanding consultation, design the process and be in control of the process by understanding and having answers to these basic questions.

During the presentation, delegates were invited to ask questions and make comments. Several delegates expressed frustration with the governments.

“As soon as something is started, the people change, either because of an election or people move on.”

“We spend a lot of time going over the same thing over and over again, without making any headway.”

Mr. Clarke offered an opinion.

“It looks like Canada is trying to create a process that will deal with government changes and shifts.”

There is also the subject of due diligence, which applies to the Provincial Governments as well as the Federal Government.

“It appears more and more, that a standard for consultation needs to be developed”.

“What happens if the government refuses to consult? What do we do? Where do we go?”

It was suggested from the presenters, that we have to document all the requests and the denials. We have to do it right, and have it ready for a Court.

One delegate, said:

“I have been at this for almost fifty years, and still nothing. All we do is get battered more and more. Daily, we keep loosing all that we have dear to us, our lands, our waters, our animals, our plants, our berries. We are losing it all.”

The Facilitator then invited Mr. Kevin Christmas, to present his paper *“Treaty Consultation - who is Responsible”* (appended).

Kevin read the first few paragraphs of his presentation and asked these questions for the participants to reflect on.

- ▶ Who has the authority to change the treaty?
- ▶ Who can commit the L'nu Nation?
- ▶ Who can say I am treaty?
- ▶ Who can self-declare their authenticity?
- ▶ Who can remove themselves from treaty?
- ▶ Who can say their authority is entirely dependent on treaty and nothing else?
- ▶ Who can prove any of this in court or anywhere without condemnation?
- ▶ Who has provisional authority?
- ▶ Who must be satisfied above everyone else?

Y O U ! ! !

Mr. Christmas clearly focused, that each and every delegate is the holder, the keeper and the beneficiary of Treaty.

“Each, that means YOU!!!”

“No one else. No make believes by governments” “You, and only You”

That also generally answered one of the earlier presenters question about who are *“rights holders.”* It is YOU. The L'nu in this room gathered for this workshop. You.

Mr. Christmas then took some time to share a real life reality happening in our midst today. It is about the calculated failure and cowardly contempt unleashed against a group of Mi'Kmaq in Nova Scotia. He was speaking about the *“L'nu of Pictou Landing - Boat Harbour.”*

Boat Harbour was a most pristine and picturesque harbour, long written about in history and known throughout, and an area occupied by the Mi'Kmaq for countless centuries.

The Community of Boat Harbour, and the waters and life in the waters of Boat Harbour were purposely selected to receive special treatment. The toxic Pulp and Paper Effluent of a pulp and paper manufacturer several miles away, would be moved by an engineered pipe through the mountains and purposely discharge into Boat Harbour. The toxic industrial pulp and paper processing effluent containing all manner of toxins including Mercury would be discharged under a permit granted by the Government of Nova Scotia and the Government of Canada.

The discharges continued from 1963 onwards. At no time, then, not even today, had anyone from any government, ever undertaken any open public consultation with the community to talk about the environmental destruction to the waters and lands of Boat Harbour.

To this day, there has not been any consultation with the Community about the ingestion of toxins by the community, which have the result of establishing tumors on children and suppressed lesions. There are un-natural deaths, chronic illness, diseases and the majority in the community have dysfunctional immune systems, for some an immune system of less than 40%.

This we have had to find out for ourselves and do ourselves. Not once has any government come out and said, let us consult with you about the *“pipe and pollution”*, nor even today, *“what can or do we have to do to correct the situation.”*

The Boat Harbour settlement of the late 1980s was done completely in secrecy with an outgoing Indian Affairs Manager. And to this day, many do not know what was agreed to.

In 1993, a new agreement was reached between the Government and the Pulp and Paper Owner. Instead of reducing the discharge, they have agreed to allow four times as much dumping of toxic pulp and paper effluent discharges to go directly into Boat Harbour. People used to fish, not anymore. And all this without consultation.

It is very clear that there is a requirement on the Government of Nova Scotia to consult, and the Government of Canada to consult, since the effects are on reserve lands and on Federal Waters.

This is one case where the people have been clearly ignored; and there has been a gross failure on the part of both Governments. And there continues to be a failure in favour of the developer, and toxins continue to be dumped. Dumping toxins at the cost of environmental degradation and to the cost of Mi’kmaq health, and loss of life by early un-natural death. That is an atrocity that is as real today as it was when it first started in the early 1960s. All without consultation.

“There isn’t a fish left in the Harbour that is safe to eat - where is the consultation?”

Pictou landing - Boat Harbour may be an extreme example, but it none the less is only one example of the thousands - there are thousands of examples across Canada, where the Government has failed to acknowledge or show any respect or any consideration for the Aboriginal Peoples of this country.

This event in Boat Harbour is happening even post-1982. The pillage and plunder of natural resources, with manufacturing processes, which continue to discharge toxic effluents into the environment, disregard the environment and harm the health and life of Aboriginal Peoples, is not acceptable. It continues at a rampant speed, destroying and killing all that lies in the path of development and money. Everything that can be taken will be taken from frontier lands - or from any lands and waters promised to the several nations and tribes of peoples of the nations of Aboriginal Peoples of what is now Canada.

The disregard and the failure of the Governments to uphold Treaty Rights, Aboriginal Rights and Royal Proclamations and even Modern Day Treaties and Land Claims Settlements, even after 1982, is nothing less than a conscious act of arrogant superiority.

Let us look at some practical realities, if you are going to get involved in consultation. Prepare yourself, because the governments don't think or care about you.

You should ask yourself these questions, and keep them forefront in all your deliberations or discussions or in any and all consultations which you may have with any level of government.

- ▶ Who has the authority to change a treaty?
- ▶ Who can agree that a treaty relationship is not sacred?
- ▶ Who can remove themselves from a Treaty?
- ▶ Who can prove any of this in a court or anywhere without condemnation?
- ▶ Who has provisional authority?
- ▶ Who must be satisfied above everyone else?
- ▶ Who can say, I am Treaty?

Y O U ! ! !

You have to believe and understand that *“you hold all the power”*. If consultation would occur on a matter of Treaty or Right, you would soon see whether you are involved or not. Those that claim to do so under the Indian Act, or however they do, *“presume to have the power”*. They are wrong, and they know it, and the Indian Act tells them they are wrong, but they still presume.

You, in this room are the power - *“YOU L'NU AS HEIRS AND DESCENDANTS”*

We together have the authority. We have always had the authority, and we will have the authority forever. That is how the treaties were crafted by our forefathers for their heirs, and their heirs and their heirs forever and forever. That means *“YOU TODAY!”*

We read about the present day Indian Act chiefs in Nova Scotia engaged in some process about some certainty. And they hold a process without you, or without anybody's involvement except for themselves and their Indian Act Federal Government and Provincial Government. They are engaging in negotiation on what has already been confirmed and protected as sacred, strong, existing, and protected in the Canadian Constitution - *OUR TREATIES*.

I hear that they have seven pages of description for who is a beneficiary and who is not. All of this is done in great secrecy for their benefit alone, and for their benefit today, without a second thought nor a glimpse into the next moment in time or to even think about future generations yet unborn.

Treaty is unalterable. We cannot change our Treaties, nor can we remove ourselves from them. It takes Community. It takes Community togetherness. It takes a Community dream, sacrifice and due consideration, kindness, empathy, ethics, patience, understanding and good hearty plans.

YOU, WE are in charge. We have to be committed, open-minded, honourable in our dealings, and do what is always appropriate. We need to have clear minds, hold a good talk, do this in peace, hold our place in friendship, do good research, have a focus, keep the vision and hold truth by ourselves and for ourselves.

“You! - we are in charge of the process and the outcomes.”

The Facilitator thanked Kevin for his eye-opening examples, and to be mindful that the Government has not disclosed any interests to us. They still work with their creations, the Indian Act Chiefs under their Indian Act, with one sole purpose, to get rid of treaties. The government wants to buy its way out of Sections 25 and 35, by negotiating with the Indian Act Chiefs. We have heard more than once in public *“the train goes by only once, so get on board, this may be your last chance.”*

Where is the honour? Where is the duty? Where is the respect for Treaty and Aboriginal Rights? Where is the vision of our Governments today for Canada and the Federation of all the Peoples of Canada?

Wallace Nevin was introduced and invited to make his presentation.

Wallace Nevin,

“I have one solution towards a moderate livelihood for heirs and their descendants forever, which I will share.”

“We just have to look back to Burnt Church to see what a lack of consultation can do.”

“In the early 90s there were a few Aboriginal People seeking accountability and transparency in Indian Government and Indian Band affairs at the local levels. These people calling for transparency and accountability became “black listed.”

During a process of consultation we have to begin to consider and think about our “children”, our “youth” and our “elders.”

We cannot and do not make it within the existing economic model that is out there. We do not have the skills and capacity for the most part, and then we are left out, or considered last if at all.

When they talk about accommodation, is an economic development scheme enough, or do we need more? I suggest that we need to look at more. We need to have accommodation that means developments on our lands with results and direct benefits to our families, the children, youth and elders.

We need to have some guaranteed pensions for the elders, and guaranteed family incomes for families and their children. We also need access and support for good education at all levels. We need to look at

accommodation where we can have provided from the use of our lands and resources, a guaranteed pension to our elders, so that they do not do without, at a time when they need help the most.

I have been proposing for several years, here and in the States, that fundamental to any compensation or accommodation scheme, there is first the need to ensure that every family, youth and elder receives guaranteed financial support in the way of a guaranteed pension or family allowance.

This has been long over due, and our lands and resources continue to be used and depleted without any compensation what so ever, and without any consultation.

Everyone in this room, should know that you as an Aboriginal Person, do not have to have status to have Treaty or Aboriginal Rights or Benefits. They are yours because you are an heir - a direct beneficiary and heir forever of a Treaty.

Several participants posed some questions, and provided some comments on the presentation.

One delegate asked this question.

“How will the Mi’Kmaq across the Maritimes get together as one people, and end this divide of on-reserve and off-reserve, status and non-status. This appears to be a government ploy, into which we have fallen and can’t get out of.”

Another delegate raised the issue.

“We must remember that settlements can last only so long. Once the money is gone, so is everything else, and there is nothing. We should see that from the Marshall experience. Let us not forget that Governments today, do not have a forever deal with Indian People. Our people are forced to settle for two or three years, and then later when it is all gone, and the community is poor again. And it starts all over.”

“After forty years, we still have not come together as one nation of people or one community.”

“We have tried and we have tried, and we blame Indian Affairs, and the Indian Act, but some of the blame rests with us. We need to demand our rights and demand that they be respected.”

A view was expressed, that once again, we in the Maritimes are isolating ourselves and dividing ourselves.

“Let us always remember, we cannot change the Treaties.”

“The modern day compensation arrangements are just that, arrangements, and they do not last forever. We have a responsibility to our future generations; we have a responsibility to be one nation.”

A common question echoed by several delegates.

“How do we negotiate, when the Government does not want to talk to us or talk to the off-reserve people? How do we get them to the table?”

The answer resounded:

“We need to effect the policy, and policy changes at the Federal level.”

“We need to drive the process.”

There are over one point four million Aboriginal Peoples throughout Canada. There are only about six hundred thousand persons put on the Government *LIST*. There are over 613 Indian Act bands, and a larger number of reserves, and some landless bands, with registered or Status Indians put on the *LIST*. Almost half live away from their reserves, in urban and larger rural areas. And then there are hundreds of thousands who do not live on a reserve, but make their homes in every part of this vast land, on either Traditional Ancestral Homelands, or Treaty Lands set aside for their use forever and forever.

There are also the Métis Aboriginal Peoples of Canada who do not have a recognized land base, other than that asserted in historic settlements either in Quebec, Ontario, Manitoba, Saskatchewan and Alberta. And there are the Inuit Peoples who have settlements and villages all over a vast north, which just recently was proclaimed to be an Inuit territory of Canada, to be governed by the Inuit Peoples of Canada.

And then there are hundreds of thousands of not registered, not listed Aboriginal Peoples who have clear ancestral connection, and who do not wish to be put on the *LIST*, or fail to be included on the *LIST* because of the various “*Indian Act Registrar Clauses*” which keep changing for registration, depending on the level of jurisprudence, or international pressure on Canada to end the “*Apartheid System*” in Canada.

You cannot lose direction or heart. Changes will happen and they have. We only have to look back at the last thirty years. We do have protection against altering our Treaties in Section 25 of the Constitution, as well, we have recognized Treaty and Aboriginal Rights, as the Aboriginal Peoples of Canada.

The Supreme Court of Canada, has ruled that our pre-confederation Treaties exist and have to be honoured by the Crown. Just because Governments refuse to acknowledge “*Treaties*” and “*Rights*”, doesn’t mean that they do not exist or are not real.

Everyone needs to have a clear message and everyone needs to speak the same language when it comes to being a part of the Federation of the Peoples of Canada - a Federation of Peoples, which includes the Aboriginal Peoples throughout Canada, with our Treaty and Aboriginal Rights promises by the Crown and our forefathers. In 1982, the Canadian Constitution was repatriated, and included without qualification, the Treaty Rights and Aboriginal Rights of the Aboriginal Peoples of Canada.

“We need to pass on the message and be unified. We must have a clear vision of our future, and we must develop and be part of a consultation and accommodation process which we control.”

An elder delegate spoke:

“We have a conscience as a People; the government does not have a conscience and does not have compassion. If we stick together we will overcome the government policy of exclusion.”

Some again echoed the need to be united, design the process, and be in control of the process.

“Governments will continue to work to divide and conquer us. They should remove the description of an Indian.”

There was a fair amount of delegate interexchange, some raising doubt and disillusion with the practices of Government. The history of Government treatment, and lack of respect for off-reserve Aboriginal Peoples, and the constant incessant status and non-status divide promoted by the government, does not leave much room for hope or belief that the Government of Canada honestly or truly wants to consult, or develop a policy on consultation that will be inclusive of the off-reserve or Traditional Ancestral Homelands peoples, particularly us members of our Native Councils in the Maritimes.

The Facilitator introduced Gary Gould who shared a very thoughtful paper focused on the agenda item of: *“Accommodation options for compensation on a comprehensive land claim in the Maritimes.”* (appended).

Gary Gould.

“I felt a renewed spirit when I walked into the room.”

“I see faces like that of Ellen” and others, and I know that the fight is not over.”

“I started on this journey when I was twenty-one years old and I’m still at it.”

“My mother became non-status, yet she always reminded all of us in the family, “don’t let your Indian Act brother or sister tell you that you are not Indians, or that you are less than them, because, you are not - you are the same.”

“It is your birth right to identify with your ancestry and nation.”

Gary, expressed support for the concepts proposed by Wallace Nevin, that we must not forget our youth, families in need, and help our “elders.”

“We should do that always - never forget to help our elders.”

As for us, the “forgotten people” we have to ensure that governments both “consult with us” and “accommodate our rights and interests.”

Our communities must be fully engaged through our organizations in any and all consultation and accommodation processes to be established.

Gary as the co-author and researcher of “*Our Lands the Maritimes*”; is very familiar with the use of “*qualified language of Governments*”, and he cautioned the Leaders and Participants at this session about the objective for the consultation process on consultation as published and promoted by the Government.

“to assist federal departments and agencies in fulfilling Canada’s legal duty to consult and where appropriate, accommodate in relation to established and potential Aboriginal and Treaty Rights.”

The words “*where appropriate*” are deliberate nuisance words which will be used against Aboriginal People particularly the off-reserve Mi’kmaq and Maliseet Peoples in the Maritimes to prevent us from being fully engaged in the consultation process.

“I caution our leaders to be very cautious about the language and intent of the Federal Government, as I believe the government will make every effort to continue to ignore the legitimate claims and rights of the off-reserve Aboriginal Peoples of the Maritimes, and our organizations, to be involved in consultation and accommodation.”

There is a crying need for the Governments to establish or create sustainable approaches and partnerships in relation to consultation. No real sustainable partnership can occur unless all the partners are invited to the table. A national consultation policy must be inclusive of all the Aboriginal Peoples, not just that of the Indian Act creation.

Governments must open the doors to consultation for both on and off-reserve groups to ensure transparency and legitimacy.

In the long term, there must be predictability, certainty and transparency on when to consult and how to accommodate Aboriginal Peoples.

The “*when*” is easy. Anytime our homelands are used for development, or used or effected by the interests of other citizens; (that being private and public) for personal or capital wealth creation, our communities and our organizations must be consulted.

The “*how*”, requires the governments to express vision, and ensure the involvement of the legitimate heirs, which are the off-reserve Aboriginal Peoples continuing on their traditional ancestral homelands in the Maritimes.

“*Can*” the government of Canada promote the reconciliation between Aboriginal Peoples and our Aboriginal and Treaty Rights with that of other societal interests? It will take leaders who are visionary.

There continues on going discrimination. Even after 1985, discrimination is now faced by the children and grandchildren of 6 (2) Indians.

We should all remember that prior to the passage of Bill C-31, (An act to amend the Indian Act), the public was well aware of Section 12 1b, the infamous discriminatory provisions of the Indian Act which stripped Indian women of their status and birth right upon marriage to a non-Indian male. Today, that is all forgotten. Many people in the non aboriginal world believe that Canada no longer discriminates on the basis of sex. There is a lot of education and political profiling to be done on that issue.

We developed a concept for accommodation during our research and work to produce “*Our Land the Maritimes*”. It was, and remains our opinion, even if governments fully accepted the existence of Aboriginal Title in the Maritimes, the fact remains that most of the land in the Maritimes is either Crown lands which for the most part are leased out to timber companies or they are lands held by private land owners. This reality necessitates the need to find an alternative way to:

1. Recognize Aboriginal interests in lands other than simply transferring lands to Aboriginal ownership and,
2. Ways to finance Aboriginal Institutions of governance.

For over thirty years we have called for the settlement of Aboriginal Title using the Comprehensive Land Claims model, however there is little left to transfer back to the original Aboriginal owners.

We proposed two concepts to deal with this.

1. An Aboriginal Real Estate Tax,
2. An Aboriginal Claims Royalty.

Another obstacle preventing resolution is the fact, that resources companies and private land owners argue against acknowledging resources or land title to belong to the Aboriginal Peoples for fear of lands and resources being taken away. This resistance precludes any movement on the subject. The other issue of extinguishment of rights and lands, is very divisive among Aboriginal Peoples. Many of our

people hold to the belief that we do not have the right to extinguish rights of the Mi'Kmaq and Maliseet people yet unborn.

In an attempt to resolve the two dilemmas, I have proposed that an “*Aboriginal Real Estate Tax*” be applied to every property assessment. As an example using the New Brunswick 2008-2009 Municipal Tax Assessments, a 1% tax would mean an annual contribution of 23 million dollars to the “Aboriginal Real Estate Tax Fund”, which I propose should be established.

These funds could be used to support organizations and services for the Aboriginal Peoples in New Brunswick.

Another concept is to apply an “*Aboriginal Claims Royalty*” against the value of resources gathered or extracted from the Homelands of our People. This would take the form of a percentage of the net annual value of resources extracted.

There are concepts or options which have been developed after years of debate and discussion amongst my fellow Aboriginal and non-Aboriginal brothers and sisters. They represent a real option to resolve the conflict that exists between Aboriginal and Non-Aboriginal society.

For those interested in finding a resolution and a means to reconcile Aboriginal and Treaty Rights with other societal interests, these two concepts represent a real option.

The Facilitator invited the delegates to make comments, respond or ask questions.

A presenter offered some other information for the delegates to consider in their understanding of consultation, and accommodation, or why the Rights and Title are sacred and rest with YOU!

“Freedom for Settlement is given to you to settle.”

In other words, you can use that which you need for settlement, but you can not take it away. The principle of “*eminent domain*” was explained to the session participants. It is as if you checked into a hotel. You can use the room and do whatever is legal and safe in that hotel room, for as long as you want the room and pay for the room, but, at the end of your stay, you do not own the hotel.

The Crown promised to rent space from us, for settlement, and would only purchase lands following a very public process which would be fair and open for all to witness. Those were the Proclamations and Pronouncements issued by the Crown to there settlers on our homelands.

Today we heard and have the question “*who has the rights, and who has title?*”

“*Who owns the land?*” Do Indian Act Chiefs and the Federal Government own land? How and why?

A session delegate interjected with a question.

“We have heard about consultation and accommodation. Is there something that we have to do in this Region to get the Federal Government and particularly DFO, to consult with us?”

A presenter offered an answer:

“The courts are looking more to an individual to prove that he or she is a “rights holder”. Membership alone in an organization may not by itself be the basis for the assumption that everyone who is a member of an organization is a “rights holder, or beneficiary.”

Another question.

“How do we deal with people from different regions and different tribes coming to our homelands, and wanting to exercise treaty rights or aboriginal rights?”

An observation shared from the floor.

“Shouldn’t rights be there for everyone?”

A delegate asked this question.

“It seems as if the government always has something in place for it to decide who is a right holder or who is not. It does not come to us to discuss this with the people - us. We know who we are and where everyone comes from. We know our history, our culture and traditions. We know who accepts us.”

An observation from a panel member.

“It does not appear that the Government has already defined or made a definition on who is or who is not a “rights holder”. The Courts have started to provide some tests to that question.”

A delegate had to share this view with the delegates and panel.

“I can’t believe that the government is still telling us who we are and who we are not, and now telling us to prove who we are.”

An observation by a delegate on the exchange about “who” and “what are rights” and “what is there to accommodate?”

“I think the benefits box is empty. We are going around promising this full box, when we don’t have a full box anymore. It is being emptied and is empty.”

A delegate responded to that observation.

“I don’t want the money, it took me seventy one years to be accepted, and I am now accepted by the Community for who I am. I am a Mi’kmaq, with Indian and French, and I have learned to speak English. I won’t be around at 140, so why am I not accepted by the Government for who I am.”

A presenter raised the subject on acceptance. It is a well known fact that the Government of New Brunswick, will turn back a Mi’kmaq from Maine who comes here to hunt or exercise his or her treaty right. The enforcement group just takes all the gear and equipment and turns the person back to the border.

New Brunswick takes the position that you are only allowed to hunt and fish from the province where you live. New Brunswick does not recognize the scope and depth of Maritime Pre-Confederation Treaties, let alone title to the lands and resources.

The Facilitator summed up the discussions in an effort to move to the next questions. It appears that if provinces accept Treaty Right or Aboriginal Rights, they do it silently, quietly and do not make any statements about that. It is pretty well like that in every Maritime Province, and unfortunately New Brunswick seems to spend a lot of time and money to continue a campaign to hinder, harass, obstruct deny the friendship, test peace and well being, and continually expend every effort to make the Aboriginal Peoples continuing in present day New Brunswick, regardless if you are Mi’Kmaq, Maliseet or Passamaquoddy, on or off reserve, vulnerable and treated as lesser in worth, merit, capacity than an other in society who is not Aboriginal.

That may be for two reasons. One, the Government knows that it is only a “tenant government” and does not want to press the issue, and the other, “today, it just doesn’t care and wants to be rid of the Indian question at all costs, by hindering and harassing.” The bigger the pain maybe the “Indians won’t push the issues anymore.”

Which brings us to a very big question, often raised, and answered, that the Crown is vested in both the Federal Government and the Provincial Governments. How do you get the provinces to follow a Federal Consultation Policy, if at all, and how should the crown determine who the affected Aboriginal Rights Holders are for purposes of consultation.

Several delegates suggested and one clearly said.

“The answer is obvious and simple”. By our birth. By our holding onto to our treaty as heirs and direct descendants and beneficiaries. By our identify.” By the continuum of Mi’Kmaq, Maliseet & Passamaquoddy Aboriginal Peoples in the Maritimes. By our remaining on our Traditional Ancestral Homelands. By our not being displaced from our homelands. By our not being disinherited from our

birth right identity. By our not being dispossessed of our rightful access to the resources on our homelands.”

A delegate offered this recommendation.

“We must be one and in good faith we must all be included in consultation. All the Mi’kmaq People of the Maritimes own the lands and resources, we never gave up anything deeper than the depth of a plough shear.”

From another delegate, this recommendation was offered as to who.

“I know that treaties were written in plain language and I know that I am an heir regardless of what the Indian Act says. As long as you can link back to the Treaty you should be determined to be a Rights Holder.”

A workshop delegate from Nova Scotia made the recommendation that.

“We need to be very clear and make the process simple. Government is always going to be demanding proof, and as long as we have members who are from other tribes or non-Mi’kmaq, then we will be questioned. We need to adopt them as Mi’kmaq persons. In fact, many have lived here for most of their lives, and in some cases all their lives, fifty or more years. They are Mi’kmaq now by living here with us for so long.”

The resounding question or doubt about the government’s sincerity about this topic was raised again. and put to the floor.

“This government has come to ask our opinion about a policy on consultation and accommodation. Do they have to listen?”

“What is the requirement after we have had these sessions? What measures of accountability are there if the Government does not want to provide us with any statement about consultation, or include us in a policy?”

“Who said that they have to listen?”

A guest from Ottawa, was welcomed by the table, and invited to the table to provide a response if he felt comfortable and had some views on the questions.

He generally responded:

“The government looks at a Court decision in a specific case as jurisprudence, or on how it should act or be expected to act. That does not mean in our

Parliamentary System of Government with the Crown as our Head, that a government has to do what jurisprudence may suggest is an appropriate way to do things.”

Does a government have to listen to you?

“No, however it does want to know what your views or ideas are.”

We have generally accepted that Aboriginal Peoples do not have a veto or cannot demand that Government consult. However, if they don't consult after you have asked several times with good reasons for consulting, you can take the government to Court, and the Court will determine, that the government should have consulted based on the case presented. That still is only jurisprudence, and a government is only guided by that decision. A government does not have to follow a Court decision.

Can Aboriginal People hold up a consultation process?

“No. When the government becomes involved in a consultation process the parties should proceed in good faith.”

A delegate offered a recommendation from the floor.

“It seems as though there has to be some guidelines clearly established for both levels of Government and the Aboriginal Peoples to follow, to ensure that there is consultation and accommodation.”

An observation made by a delegate.

“It appears to me, when I learned about this land, the Treaties, the Aboriginal Rights, how they were formed and how they are protected, and what they mean. How these relationships formed the basis for peaceful co-existence between the settlers and the Aboriginal People inhabiting these homelands for thousands of years before the arrival of the settler, and what we have now.”

“When I ask others, well educated friends and associates what do they know about the history of this region, the treaties, the relationships and so on, there is a complete void.”

“We are not informed about Treaty Rights. The history. Why is it that we are not taught this in school, or at university? How can we uphold Treaties, when we speak our side, and the other side doesn't know anything about us or our Treaties and our situation on our homelands over which they live and work.”

This delegate was making a recommendation.

“It appears to me that we need to start with some serious education for the “Maritimers” to learn and know the real history and meaning of treaties and Treaty and Aboriginal Rights. Education is also required at the government level, and within our schools. The general public has to learn about this history and this situation. The process for consultation needs to consider the importance of education on the subject.”

Another delegate wished to provide his views on the human and other costs of not consulting.

“I was a warrior in my earlier days, and I think we have to mention the fallen Indians in the battles which were noted at the beginning. We must also be careful about direct action. Look what it has done in other areas, and how it has affected those involved.”

“We must also remember. The Creator owns the land and all on them. We are but caretakers of the land, and that for a short time.”

The session thus far was generally summed up on the topics of “*who are the rights holders*”, on “*how to determine who the Aboriginal Rights Holders*”, and “*who should the Crown be consulting with?*”

The rights holders are the members of the Native Councils in the region, Councils formed almost forty years ago to press the issues of Treaty, Treaty Rights, Land Claims, and Comprehensive Land Claim Settlement. We know who we are, we have relations, we have a common history, we are accepted, we say we are either Mi’Kmaq, Maliseet or Passamaquoddy. So why should the government even question us. The Court has ruled that having status does not make you a beneficiary. We have rights as direct descendants, and as heirs to Treaties.

The how, is easy. That which we assert as traditional ancestral homelands Mi’Kmaq, or Maliseet or Passamaquoddy Aboriginal Peoples continuing on our traditional ancestral homelands. There are only three organized groups left after almost two hundred years of assault on us - The Grand Council, Native Council Groups and Band Council Groups. We want to reconstitute our nation and Grand Council. The Royal Commission on Aboriginal Affairs recommended that as one of the first recommendations. But to this date, ten years after the Report, the Governments of Canada have done absolutely nothing to help realize this recommendation.

In many regards, the old Indian Act agenda and policy of “*disinheriting identity, dispossession of lands and resources, denial and the subjugation of the Aboriginal Nations and Aboriginal Peoples of this Country still continues*”. Despite a Constitutional recognition, and the countless dicta and jurisprudence of the Courts calling for accommodation and reconciliation, the genesis of 18th Century Indian Act thinking, still continues to shape government actions and policies.

Who should the Crown consult with? The overwhelming view and recommendation, with all the Mi'Kmaq including the Mi'Kmaq of the Native Councils in an inclusive process, that is open, transparent, legitimate and honest.

We also heard about the need to respect who the Aboriginal Peoples are throughout this country, and who they are with their history, identity, lands, traditions, customs, and treaty relationships with the newcomers.

Government Politicians, bureaucrats, Ministers, and lawyers, have to learn and know how this country came together. How the map was formed to reveal the state geography of Canada and why. Canada's map geography is shaped by hundreds of treaties, their adhesions and the several Proclamations. The promises and undertakings in the Treaties are real and enforceable in international law. Canada has many *pre-confederation treaties* in the east and one in the west. We have *numbered treaties* in Canada. We have *land claims treaties*, and we have *modern day treaties*. We have self government Acts of Parliament confirming an Aboriginal nation of Peoples to have certain rights and powers. In Canada we have several *Proclamations* and one specifically noted in the *Constitution Act of Canada 1982*. We have the promise in 1982 to respect the Treaty and Aboriginal Rights of the Aboriginal Peoples of Canada.

Governments and bureaucrats have to start doing their homework and understanding the history of this Country. The International world is watching Canada very closely, and over the past ten years, Canada has been exhibiting some very cavalier attitudes towards the Aboriginal Peoples in Canada.

The Aboriginal Peoples themselves are the best to determine who they are. Governments must accept the visible reality. There are Aboriginal Peoples living everywhere. Many continuing on their Traditional Ancestral Homelands as in the Maritimes, some living on Indian Act administered and created reserves, many living in urban areas throughout Canada, some living in the North, and those who had post contact settlements living in those areas.

Whenever there is a development or project to exploit or extract or use the lands or Genetic or Biological resources of the Aboriginal Peoples, (and in the East that is throughout every square inch of Nova Scotia, New Brunswick and Prince Edward Island), with a potential infringement on a Treaty or Aboriginal Right, the Aboriginal Peoples concerned must be advised immediately. The Aboriginal Peoples themselves through their Councils, will raise the matter with the Government and assert the transgression and infringement, and the government should respect that claim and assertion and begin a process of consultation to accommodate, or compensate.

The rationale for consultation and accommodation and compensation, is to achieve "*Reconciliation*", that is a fundamental basis for a policy. To bring about harmony and peace. To reconcile the relationships as promised in treaties and the Constitution Act of Canada 1982.

It is the Aboriginal Peoples choice, and not the government's choice. The Government can't simply look at the Indian Act Band Councils, over which they control funds and powers, and cavalierly exclude

the Native Councils. The Native Council who have legitimate heirs, and continue on Traditional Ancestral Homelands. We live on the lands and resources most to be impacted and effected by developments, or uses, or extraction or exploitation, of all form of our resources.

Band Councils, in almost all cases, do not have any jurisdiction outside the boundaries of the reserve. And they are not, and do not have the authority from the People to change Treaties.

It also appears from the discussions, and comments, that the delegates unanimously concluded as a recommendation to consider the following.

The Governments should be consulting with the known Aboriginal Organizations in the Maritimes who have the history, like the Maritime Aboriginal Peoples Council, MAPC, The New Brunswick Aboriginal Peoples Council, NBAPC, the Native Council of Prince Edward Island, NCPEI, and the Native Council of Nova Scotia, NCNS. These organizations are best placed to deal with consultation, and have been around a long time, almost forty years. The Native Councils are formed from the communities upwards, and they know their communities of traditional ancestral homelands Peoples, often referred to as the off-reserve Aboriginal Peoples of the Maritimes.

The session adjourned for the day, to re-convene Sunday March 8, 2009.

The Sunday session, opened with a prayer. A special prayer was also held for the family and relatives of a young eleven year old girl who had committed suicide. An Elder expressed poignantly a sentiment felt by many

"I am empty of tears by all this sadness around me."

The Facilitator then proceeded to recap the elements discussed yesterday. In summary we know who we are, we assert and know each other to be the Aboriginal People who continue on our homelands outside Indian Act Reserves. We are not less in worth, merit or capacity. We have been involved in Treaty and Aboriginal Rights issues and Aboriginal Title issues, since the early 70's, in fact besides fighting the discriminatory sections of the Indian Act 12 l b, we were also asserting the claims for recognition of Title and Treaty Rights.

We know in fact that the majority of Aboriginal Peoples in Canada do not live on reserves. We have the Inuit with their settlements and villages. We have many Métis living throughout Canada, near their historic settlement. We have so many status Indians who do not live on their reserves who are moving to cities, town and villages. And of course we have the large number of descendants, beneficiaries and heirs of treaties, continuing on traditional ancestral homelands as in the Maritimes and in the West, and many just labeled "*off-reserve Indians, or non-status Indians*", living everywhere in Canada.

So it is clear, a reserve residence definitely is not a criteria for the Government to choose in determining who to engage in consultation. It must be inclusive of all Aboriginal Peoples.

A session delegate asked.

“Do treaties for specific aboriginal nations extend beyond traditional territories - for example are their treaties between Canada and the United States which recognize treaties extending into the other countries?”

Another delegate asked.

“What else is their besides water, land, minerals and resources within treaty rights?”

From the panel table. Rights can be and have been asserted on many subjects, such as air, water, forests, minerals, wind. What about Wind Mills - Wind Power? How do we deal with those matters?

The table: There are rights which in the modern world fall into the category of intellectual properties, but have their own approach to protection: designs, writings, utensils, technologies, sports, use of genetic resources, biological resources, plants, animals, fishes and birds with accompanying Traditional Knowledge or Indigenous Knowledge. Rights to language, and so on. All these are included, many to be recognized and respected by Governments.

A delegate suggested. On the questions of who are or who should be talked to.

“I say it is those that are my heirs. Son, daughter, direct heirs, their heirs forever and forever.”

A delegate expanded his views on treaties by stating.

“Treaties are between nations. The King and Aboriginal Nations, and they are forever. They have no boundaries. When we think about treaties, we have to look at all the treaties with the whole Mi’Kmaq nation. We have a large territory.”

I am not from Nova Scotia, I am from Mi’Kmaq Territory. We have a government, the Grand Council. There are a lot of Treaties, so don’t think local only.

A delegate asked.

“What else does the government need for proof? And why? Community acceptance should be enough. When we talk about accommodation, are we talking just about money?”

“What happens when the land is gone? We can’t take back rivers that are polluted. Every Mi’kmaq has a right, and should have a right to have a place to call home. We need a human right to a home housing.”

That is accommodation, including what two of the presenters had suggested as options.

“The government keeps forgetting the reality of people. It is too busy playing with paper and has forgotten the important things - people. We have to become assertive and give this country a “conscience “ which it has lost. Each of us must assert that.”

That is a novel view, Canada may have lost its conscience about who it is governing. It is people and their daily lives. It must be more than a paper exercise to hide away from the problems and concerns, and issues which require solving. As was suggested in an earlier presentation and by comments from Delegates, we need leaders in Government who have a vision, who are visionary and see this great country of Canada, a Federation of the Peoples of Canada as a great Federation, and know where it wants to go and how to take it there.

Business alone will not lead this Country, it is people, it is the people who will. In fact, we don't need anymore greed and selfishness. We need to reinstate a *“conscience into the Government of Canada for People.”*

A delegate made this recommendation.

“We must assert our responsibility as a Nation of People.”

It became clear from the discussions, and what was being said from the floor, as one delegate put it succinctly.

“We need a process that is grounded in reality, honesty and knowledge of our people. Every day we are living on our homelands of Mi'Kma'ki. The right to an identity is a fundamental right, and no one can take that away, nor should the government take that away from us”.

A panel member summarized the discussions so far as pointing to an obvious.

“There appears to be a serious disconnect from reality and truth in this exercise to look for a consultation process or policy. “White folks” don't know the history of Aboriginal Peoples. Court files are not always accessible, nor do they tell the whole story. We don't have a central agency which ensures that the government has the information that it requires about various issues.”

“Maybe, we need a central department to provide a summary of our history, to tell them about our treaties and the effects of something on us and our future. This information must be readily available to the government. We have to make sure that the government doesn't come back with an excuse that it didn't know.”

The Facilitator, asked the workshop delegates to turn their attention to some principles under which consultation should proceed.

A panel member noted. That is an interesting question, how should we prepare ourselves if we had a consultation process.

May I suggest that we need to prepare for consultation, thinking of it this way.

“There are three stages to a consultation process which we must prepare for.”

1. The first stage is for us to gather all the information possible. Go out and collect everything possible about some thing that is going on, and which will be the subject of consultation. Get it all. Get every bit of information that you can find, from where ever you can find it. But find it all. Collect it all.
2. The second stage is to go out and find, and hire or get or identify all the people who know the subject and can review the information and provide good thorough review and advice.

You need the best experts you can find and get on the subject. Have them review all the information gathered, and then some. Have them give you their best advice on the information, and explain the advice and why they have that advice. You have to also understand that advice and what it will mean.

3. The thirds stage is what I call, *Addressing the provisions*. How will this project or what effects or impacts will this project or use of resources or lands, or what have you, have on the daily life of the people - the Community? Look at all the issues from the perspective of: *“today”*, *“tomorrow”* and into the *“future”* ten, twenty years way into the future. Look closely and carefully, and involve the community, ask the elders and all other - everyone should think about the impacts or effects of this project short term and long term. Use Seven generations if you have to.

Then after that, organize your “Consultation Team” and start your consultation. Hear and see all that they have to file, and ask for more, and then demand answers to the questions which you have. Then put forward your first positions.

And look out for the “lawyers’ weasel words.”

A delegate observed:

“We have been involved it seems like forever on consultation. They are always talking but they are never listening.”

Another delegate asked about the time for consultation.

“How much do we put up with and for how long? If they don’t look at the information, then there is a massive disconnect between us and what is going to happen. There seems to be such a disconnect between Aboriginal Peoples and non-Aboriginal Peoples in how we see things, and how we value things. We need to assert ourselves more.”

One delegate noted:

“I can’t negotiate for myself. I don’t have the skills. I need someone to do that for me. At the same time I want to be informed. I want to know what is going on, and how the negotiations are going on. I need to know.”

The Facilitator interjected to recap, that there have been some good questions and suggestions or recommendation made about “*capacity*” and “*peoples expectations or principles to incorporate.*”

I heard that we need to have or collect or amass a wealth of information about what is going to happen or is proposed on our land. We need to be able to understand it from experts as well as hear their advice and understand how they arrived at that advice and why they are making it. We need to look with people from the Community at both the short term and long term impacts or effects.

We also need to be assertive about what we have to say and share. We need to ensure that the process is open and transparent, and that it is open for everyone to follow and see what is happening. We need to define or identify our “*Consultation Team*”, and have any number of positions ready to share. We need to demand answers to questions, so that we can further assess the project or activity and better understand it’s effects and impacts on our community.

A delegate raised a previously discussed topic, and wanted to clearly state for the record.

“I know one thing, I don’t need anyone to tell me who I am, or what my rights are. I have a history which I know, I know people and they know me, I know what it is to be a Mi’Kmaq because I have been one all my life. I know the suffering from living and watching and just knowing things that have happened. I know the Residential Schools, and the Indian Acts, and all that has come before. I know our people and I associate with our people.”

“That is what we are doing in this room. Why else would we get together to talk together, if not to talk about what is important to us.”

“I have traveled to many places, throughout Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Maine, and Boston and other places. I know places by

their Mi'Kmaq name, as well as the families. I know who your fathers and mothers and grandparents are."

"We need to get together as one nation. We need to get that through our heads. That is important, not to be divided by the government. They are breaking us into bits and pieces and then picking us apart as bits and pieces."

"We got technically advanced in our living, and we forgot the roots of our being, our humanity."

"We ignored our Nation, and our nationhood, on our Traditional Homelands."

"We barely assert anything these days."

"What about all the minerals, the lumber, the fish, the things that gave us livelihoods, we are forgetting them and not asserting them as rights."

"We have had fights on the water and in the woods, we have not asserted ourselves responsibly. We need to assert ourselves again."

A delegate suggested in a comment;

"We have ourselves become endangered species."

A delegate recounted her efforts at collecting and documenting information.

"Many years ago, we saw what was happening, and I tried to get people to gather information and put it all down in computers. To gather data about everything, about all that is our business. We knew what was happening to our lands, waters, the birds, the fish, the animals, the plants, and the air. We have not asserted ourselves about these things, and we must!"

"We have been here for over ten thousand years, we know more about this land than anyone, yet when we speak to governments, they think we know nothing."

"When people ask me what proof do I have that I am M'Kmaq, I say, the proof is in my living as a Mi'Kmaq."

"When they say what do you see as your rights, I say my rights are all around me, everything that I see is my rights."

"For years I picked berries for the elders, today, I go out and look for some berries to bring to the elders, and they are gone. Nothing. All gone."

The Facilitator thanked the delegate for sharing some obvious and fundamental truths. No matter how we try, because of the superior attitude of governments and the constant acts of continued subjugation; often done unconsciously, that subjugation over time makes us look or feel less in worth, merit and capacity. We have become an object not a people or nations of people to the Governments. Because of these same over and over policies, treatments and practices of ignoring and treating Aboriginal Peoples as objects, not people, they don't listen to us, and sadly to our peril and that of the environment and all that is life, they veil themselves from the destruction of life, including the destruction of our ways, our knowledge, our history, our values and all that which is in us carried from our ancestors from time before memory.

Does anyone have comments on some principles or does anyone want to talk or share a bit more about accommodation?

A delegate spoke, and summed it up this way.

"There is very little left of our lands. They may give them back to us covered in concrete, and rivers that will be polluted. Accommodation to me is for every human to have a place to live, something to eat - everyone has a human right to live somewhere, and have food. This is planet earth, it is for everyone, and everyone should be allowed to have a meal and a place to live."

"I am not asking for millions, that is what accommodation is to me."

What would you want in a process if you were to design a process for consultation?

A delegate noted.

"We have been talking about this for years, that we have to look ahead and make sure there is something left for our children and their children and their children's children."

We worry about food, shelter, and clothes, that is reality. Governments have removed themselves from the people, and don't want to see what people need. Each of us is trying to do the best we can, but governments forget the people, they are too busy with paperwork.

"Canada has no conscience."

"We have to take the responsibility and give Canada back a conscience."

"We have to get off our butts and assert ourselves responsibly."

The Facilitator, recapped. So far, for the past day and a half, we have reaffirmed that self identification is who we are, our history, our community connection, our ancestral connection, our practices and the

subjugation which we have lived through and survived to maintain our continuum as a People. That is what and who we are as Aboriginal Peoples - we are, in the Maritimes, citizens of our original Aboriginal Nations of People, either Mi'Kmaq, Maliseet or Passamaquoddy.

The delegates continued to put forward views, comments and concepts to seriously consider on the subject.

"A consultation process must be grounded in reality and look at every day life."

"We must prepare ourselves for consultation, and take the three steps of collecting and gathering information, finding the experts - the people to interpret the information, and we must look at the short term and long term effects or impacts on our communities."

"We must have a process that is about people and not politics. The results are for people and not for political leaders. We are talking about Mi'Kma'ki our homelands."

"We have a right to identify and the right to a nationality."

A commentary from the table:

"Two decades ago, a bit longer, the three Councils got together and produced a lot of good research which we published in "Our land the Maritimes". We did our homework, and to this day the Government has not been able to discount that research."

"We have MAPC, it is our regional organization, and we can and should use it. Our knowledge and our reality is falling on deaf ears. We are not seen as being a people in the eyes of the Government who have created a replacement for the real Aboriginal Peoples - the Indians."

"We are constantly fighting for recognition in the Courts and with the Governments, and when we win, they still ignore us, or put in more policies to divide us and fragment us."

"We used to hear the chiefs say, be careful of those non-status Indians. We have never been accepted by the Status Indians living on Indian Act Reserves."

"We are talking but, no one is listening. How do we get recognized? The Royal Commission on Aboriginal Affairs, made a very important finding and recommendation to solve "The Indian Question". Reconstitute the original Aboriginal Nations of the Aboriginal Peoples of Canada."

A delegate made a recommendation.

“The consultation process should be wide open and with all the Mi’Kmaq on and off reserve. Everyone has to be involved. It can’t be with just one group. We should educate ourselves about that, and we should become political about consultation.”

“We need a strategy on reconstituting our Mi’Kmaq nation. The government is not going to do it for us. We have to do it on our own terms and the way we know.”

The Facilitator. I agree with the views and points being made. The government has spent billions of dollars over the last one hundred plus years, working to get rid of you. They continue to deny reality. Many Canadians do not know the true story or the sad racist history, nor the present day efforts to keep People divided and the numbers on their “LIST” down. For governments it is all about numbers. Keep the “LIST” numbers small.

The international forum is now a very good way to advance our situation in Canada. After September 13, 2007, Canada is not viewed as such a great country when it comes to its indigenous Peoples.

At the United Nations General Assembly, during the vote for the Declaration on the Rights of Indigenous Peoples, Canada clearly said we had consultation. Yet, today we are still consulting on how to consult.

Surprising for Canada, but Canada made a big mistake at the United Nations when they spoke against specific articles in the Declaration, one specific to consultation. Many countries are going to get their kicks in on Canada because of that.

A delegate suggested.

“They are exercising crimes against humanity.”

The Facilitator, from the conversation, and comments, it appears that we are moving on. We can’t just rely on lawyers and judges. The lawyers have had their cases, the Courts have ruled time and time in many cases against the Government of Canada’s discriminatory practices, or failure to consult or it’s cavalier attitude towards Aboriginal Peoples, and what does Canada do - it tweaks a policy or regulation a little this way or that way, or sometimes does nothing at all.

We never see any effort to work towards change. We have to make this a “political issue.”

Let us not forget that in the fifties and sixties and early seventies, the Aboriginal Peoples of Canada called for change. In Canada in the late seventies and early eighties, we did have a Prime Minister and ten First Ministers with vision, and they agreed to have included in the Constitution Act of Canada 1982,

section 25 and 35. That happened in 1982. It can happen again if there is a political will. And the will must be there on both sides.

A delegate, suggested.

“Maybe we should do something radical. We haven’t protested on anything for a long time. I haven’t been on a walk for a long time.”

A delegate went on to bring forward an earlier suggestion.

“Didn’t we hear someone say that we need to educate people. We need to educate people to see what is happening - to learn about us.”

A further comment with a recommendation:

“Yes, we heard that, and we need to get people’s attention through education and a strategy.”

The facilitator, asked the session delegates to turn their minds to share with the delegates some key principles which they have heard or consider necessary to recommend for a consultation policy.

We have heard quite often that it should be *“an open and transparent process.”* A real open public process.

We had that once when we were talking about the repatriation of the Constitution and the inclusion of a Charter of Rights and other sections which included sections which are now Section 25 and 35. All Canadians had a chance see, learn and follow the process.

A delegate commented:

“What gives Canada the right to not allow us to have our rights as Aboriginal Peoples of Canada? Why do they keep avoiding Aboriginal Rights?”

The Facilitator: I think, there are many reasons, one was stated yesterday. Today, Canada lacks leaders with vision. We do not have the calibre of leaders which we had a few decades ago. Leaders with a vision for Canada, beyond their term, or from one election to another.

Also, there are many who ascribe to get elected who do not fully understand or know how to govern a Federation. I would say that we have in many *“Legislatures”* across Canada, as well as in the *“Parliament”* of Canada, a good many elected Members who don’t have a *“clue”* about what is the Federation of Canada and what it is to have a Federation of Peoples, and more so, do not know *“why”* the form of Federation Governance was adopted for Canada to be the Federation of Canada.

Without that knowledge about a Federation, and without any vision for a country as vast and diverse as Canada, and as many said today and yesterday, without a conscience, how can you expect to have good governance over a vast geography, which is defined by a whole range of “*Treaties*”, “*Adhesions*” and “*Proclamations*”, with diverse peoples. How do you have a country move ahead with all the peoples who make up the Federation of the peoples of Canada, without knowledge or a vision.

With the time quickly moving on, can we get some recaps from the local meetings which each Provincial and Territorial Organization, our Native Councils, held on this subject of consultation, during their local sessions in each province.

A delegate one last word as a recommendation.

“Canada needs to get on board. We need to advocate that Canada adopt the Declaration on the Rights of the Indigenous Peoples, and recognize that we have over a million Aboriginal People living throughout their Traditional Ancestral Homelands throughout every place which we all call Canada.”

A New Brunswick delegate who co-ordinated and attended all the New Brunswick sessions generally recapped some principles shared at their community meetings.

New Brunswick will be submitting a final report, which will be more exhaustive on findings.

Generally we found that:

“The consultation process should have accountability guidelines.”

“There should be an appeal process built in.”

“The language should be clear and concise. Words such as should or possibly should be removed, and replaced with will and ensure.”

“There has to be involvement from the grass roots.”

“There has to be good communications.”

“The consultation policy has to go further and needs to say how to consult.”

“All the Aboriginal Peoples should be included in all the processes.”

“There needs to be capacity developed for consultation.”

“We need to have people trained.”

“We need to ensure that the provinces are going to also consult with us.”

“There are three phases to consultation. The early stage where we consult with our members. The second stage is the accommodation stage. The third stage is when we send our response to the government and wait for their response.”

The Facilitator recognized a delegate from Prince Edward Island who would share some of their findings. Again, the Native Council of Prince Edward Island will be submitting a separate report about their sessions, with a complete list of findings and recommendations. In this over view for the NCPEI, the Chief also added some findings.

“The who, are the traditional ancestral homeland Mi’Kmaq Aboriginal Peoples continuing to live on Prince Edward Island.”

“Governments have to understand the Aboriginal Peoples world view and what we value.”

“The process has to be inclusive, involve elders, youth, local members, executive and have the necessary expertise of experienced people.”

“The process can’t be so rigid and black and white that there is no room to be flexible to meet different circumstance in different areas.”

“The process has to be culturally relevant.”

“The process must be timely, and a time set for feed back, and responses.”

“The process needs time lines so that it doesn’t drag on.”

“The process should be monitored.”

“The process needs to reflect the needs, interests, concerns, issues and aspirations of the community as raised by their Council.”

“The process will require funds for capacity development.”

“The process has to have the right people at hand to consult with.”

“There must be a transparent process with achievable expectations.”

“There must be a report card on its progress.”

“It must be fair, truthful and recognize the off-reserve people.”

“A process must be inclusive of on and off reserve.”

“There has to be on going contact people readily identified and in place at both the Council and Government level.”

The Facilitator recognized the Chief from the Native Council of Nova Scotia who again indicated that the Council will be submitting a comprehensive report on the sessions which they held throughout Nova Scotia, which will contain many views and recommendations. She indicated that she would like to share a few key recommendations.

“There needs to be a central regional full time permanent Secretariate established for consultation and it could be housed within MAPC.”

“Each Native Council should have full time contact people within their organizations to feed in information about developments, and have their involvement depending where the project or consultation was coming from.”

“All the boards and local of each Council should be informed about a process.”

“All the information should be available to those who want it.”

“There should be early information about what is happening.”

Several delegates added to the recaps with the following recommendations to consider:

“There should be a web site dedicated to consultation.”

“Each Council that is undertaking consultation should have a web site and it should have “up to date information on the progress of consultation.”

“Consultation must be open and transparent, and not done in secrecy as is happening right now in Nova Scotia with some other process.”

“MAPC would be a good place to have a regional full time Consultation Secretariate.”

The Facilitator noting the time, summed up the session. Generally there was a lot of good discussion, and excellent sharing of views on who we are, and why we should be included.

There were many key elements raised which should be included and discussed in framing or developing a “Canada Aboriginal Peoples Consultation Policy.” The government should seriously consider and note:

“The three Native Councils of the Maritimes have a long history of almost forty years of representation and advocacy.”

“The three Native Councils are organized by Mi’Kmaq, Maliseet & Passamaquoddy Aboriginal Peoples from local pockets comprised of Aboriginal Community members.”

“Each community member has a common history, a community which knows who everyone is, practices, customs, community acceptance, and is a direct descendant and heir to a number of pre-confederation Treaties.”

“Many members of the Councils have suffered the same subjugation and discrimination over which they have survived and form the continuum of an Aboriginal Nation of Peoples on their Traditional Ancestral Homelands.”

“The delegates raised the matter: “the right to a nationality should not be questioned by the Government.” We are Mi’Kmaq, born that way and we will die that way.”

“Engagement must be available and with all the Aboriginal Peoples of Canada.”

“Engagement for the purposes of consultation does not mean only those who have “Status” or live on an “Indian Act Reserve.”

There are over one point four million Aboriginal Peoples in Canada where some live either in settlements and villages, in the north - the Inuit, or where some live within post contact settlements throughout many provinces - the Métis, or where some as non status or status Indians continue to live in hamlets, villages, towns and cities identifying as one of the Aboriginal Peoples of Canada. And we also have Aboriginal Peoples who are heirs of Treaties or heirs and direct descendents of treaties who continue to live on their Traditional Ancestral Homelands - Mi’Kmaq the Maliseet and Passamaquoddy of the Maritimes. A policy cannot ignore this reality about the diverseness of the Aboriginal Peoples of Canada who have Treaty and Aboriginal Rights, we must be consulted.

“The Councils must be advised as early as possible about a development or any interest to use or exploit lands or resources on our Traditional Ancestral Homelands.”

“The Councils themselves once informed, will raise or assert claims and rights.”

“Once a claim or right is asserted, the Crown has to respond in an open, fair, and transparent manner. It cannot assume or presume or favour different treatment to one group over another.”

“The crown can always assert its views once it has entered into a consultation process”

“All consultations should be subject to judicial review and interpretation in the event of a conflict over views or on an assertion.”

“The crown does not have the prerogative to choose or favour one group over another if it is serious about having legitimate engagement towards reconciliation.”

“Consultation is one path to reconcile differences.”

A good local example of consultation is to look at the work which the Native Council of Nova Scotia has effected as well as the Native Council of Prince Edward Island on projects. Also, the work and role of the Maritime Aboriginal Peoples Council, in its formation of different specialized secretariates to deal with substantive regional issues.

“MAPC may be an appropriate central body for the three councils to draw on initial expertise, or co-ordination.”

“The consultation process would have to be guided by some fundamental principles.”

“The consultation process must be guided by a true transparency.”

“All peoples involved or concerned should have a chance to see what is going on and how it is going.”

“The process must be truthful.”

“The process Consultation Team must remember that the efforts and results of consultation is towards reconciliation to benefit people, not paper or politicians.”

“The process has to have a conscience, and give Canada a conscience.”

“The results must benefit the people, both in the short term and long term.”

“There needs to be flexibility built into a policy where the process has guidelines, and also room to move to meet the real different circumstances of peoples and communities and projects.”

“There is a need to provide financial and training support to support the development of consultation capacity at the Council level.”

“There are three key stages which Aboriginal Peoples must prepare for with their own consultation expertise.”

1. *Collect all form of information.*
2. *Find and hire and gather all form of expertise to interpret and explain the information.*
3. *Always think about the impacts, both short term and long term and think into the future.”*

“There needs to be long term and adequate funding necessary to ensure that a ‘Consultation Secretariate’ at the Regional and at the Local levels have the expertise, can collect data, and do work on the ground.”

“Keep in mind that there are many consultations on going with a group at any one time. The process can go on for a couple of months or last a couple of years.”

“There needs to be well trained and well staffed, and well paid professionals working within the Aboriginal Secretariates involved in consultation.”

“The process must be promoted and supported at the community level.”

“There really isn’t any difference as to the level of initial approach by a government to a project.”

“Any project that has an effect or will impact a community or infringe or have the effect of violating Section 25 or 35, is a project or development which requires a serious consultation approach.”

“Whether it be a simple culvert or a multi million dollar dam or nuclear power plant, the information has to be collected, the information assessed, the community consulted and the impact measured for the short term and the long term. What changes is the degree of time that the file will remain in the system. Small project may go through in a few months while major project or impacts will take a years or several years to assess, complete and reach reconciliation or arrive at mutually acceptable accommodation.”

Some key policy triggers identified were:

“Whenever there is a project or activity which will effect or have impact on Aboriginal Peoples rights, or uses of lands, or genetic or biodiversity resources,

or effect current or traditional uses of lands or resources, or have an infringement on any form of rights existing by Treaty, Aboriginal or otherwise, the government has a fiduciary duty and responsibility to honour the Crown and to advise the Aboriginal Peoples in the region or area, about the activity, regardless if they live on an Indian Act Reserves or continue on their Traditional Ancestral Homelands off-reserve”.

“The advisory must be inclusive to include all the Aboriginal Peoples to ensure an inclusive consultation process that is legitimate”.

The Facilitator, in closing noted, generally the MAWI’AQNUTMA’TMK – “*Let us talk together*” – MAWI’AKANUTMA’TIMK did generate good discussions, shared presentations, views, issues, concerns, suggestions and expressed the hope that Canada can have a conscience to think about the Peoples of the Federation of Canada - peoples which include the Aboriginal Peoples of Canada living and continuing throughout every region of this vast country – CANADA - KA – NA – DA.

WELALIOQ

Notes

APPENDICES TO THE REPORT:

- Appendix 1 - Delegates
- Appendix 2 - Agenda
- Appendix 3: Key Policy Issues and questions
- Appendix 4: Treaty Consultation a Presentation –
By Kevin Christmas
- Appendix 5: Presentation
By Gary Gould



APPENDIX 1 – DELEGATES





Session Elders

KOCKWOOD	Noel	Lake Echo, Nova Scotia
SORBEY	Katherine	Listuguj, Quebec

Facilitator

HUNKA	Roger	Princeport, Nova Scotia
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Chiefs and Presidents

CONRAD	Grace	Truro, Nova Scotia
GALLANT	Jamie	Charlottetown, Prince Edward Island
LAVALLEE	Betty Ann	Fredericton, New Brunswick

Presenters/Facilitators

CHRISTMAS	Kevin	Dartmouth, Nova Scotia
CLARKE	Bruce. D.	Halifax, Nova Scotia
GOULD	Gary	Fredericton, New Brunswick
NEVIN	Wallace	Burnt Church, New Brunswick

Guests

ALLEN	Jackie	Truro, Nova Scotia
BELLIVEAU	Kimberley	Oxford, Nova Scotia
DAHL	Greg	Ottawa, Ontario
DAURIE	Ben	Yarmouth, Nova Scotia
MACPHEE	Alastair	Ottawa, Ontario
NORN	Frank	Bathurst, New Brunswick
RYAN	Trudy	Ottawa, Ontario
SMITH	Dwight	Yarmouth, Nova Scotia

Nova Scotia Participants

ARSENAULT	Kirk	Halifax, Nova Scotia
BARCLAY	Wendy	Shelburne, Nova Scotia
DAURIE	Jennifer	Halifax, Nova Scotia
DECOURSEY	Anna	Yarmouth, Nova Scotia
DICKS	Belinda	Windsor, Nova Scotia
DOREY	Henry	Waterville, Nova Scotia
DREW	Bill	Bridgewater, Nova Scotia
FINIGAN	Wanda	Digby, Nova Scotia
FRANCIS	Bev	Upper Kennetcook, Nova Scotia
HEMPSEY	John	Aylesford, Nova Scotia
HERNEY	Sulian	Sydney, Nova Scotia

HYSLOP	Twin	Lake Fletcher, Nova Scotia
JEWERS	Gerald	Dartmouth, Nova Scotia
JOHNS	Shari	Greenwood, Nova Scotia
LANGLEY	Diane	Shelburne, Nova Scotia
LINKLATER	Victoria	Yarmouth, Nova Scotia
LUCAS	Audrey	Truro, Nova Scotia
MACLEOD	Yvonne	Queens County, Nova Scotia
MARTIN	Tim	Valley, Nova Scotia
PARNELL	James	Queens County, Nova Scotia
ROBINSON	Ellen	Shubenacadie, Nova Scotia
ROBINSON	Joanne	Shubenacadie, Nova Scotia
SMITH	Debbie	Yarmouth, Nova Scotia
STEVENS	Jeffrey	Lunenburg County, Nova Scotia
ST. DOR	Liza	Annapolis Royal, Nova Scotia
SWEENEY	Hillary	Yarmouth, Nova Scotia
VERGE	Walter	Windsor, Nova Scotia
WHYNOT	Nancy	Upper Lehave, Nova Scotia

New Brunswick Participants

ARGUETA	Elsy	Saint John, New Brunswick
BERNARD	Jack	Geary, New Brunswick
BERNARD	Rhoda	Geary, New Brunswick
BOLGER	Stephanie	Durham Bridge, New Brunswick
DOUCETTE DIT GUEGANE	Priscilla	Shediac, New Brunswick
HAMILTON	Pat	Point La Nim, New Brunswick
HARQUAIL	Buddy	Charlo, New Brunswick
HARQUAIL	Bonnie	Charlo, New Brunswick
HARQUAIL	Bruce	Edmunston, New Brunswick
HARQUAIL	Arthur	Edmunston, New Brunswick
LAVIGNE	Gerald	Nepesiquit Fall, New Brunswick
LAVIGNE	Daniel	Bathurst, New Brunswick
LAXTON	Ricky	Campbellton, New Brunswick
MASON	Glenn	Saint John, New Brunswick
MCKINELY	Kim	Fredericton, New Brunswick
MSCLUSLAY	Alyssa	Clover Valley, New Brunswick
MWENGA	Promise	Hanwell, New Brunswick
RUSSELL	Bruce	Bathurst, New Brunswick
RUSSELL	Madeline	Bathurst, New Brunswick
SPARKES	Shannon	Bathurst, New Brunswick
VANDIJK	Viola	Derby, New Brunswick
VANDIJK	Tony	Derby, New Brunswick
VIENNEAU	Grace	Bathurst, New Brunswick
VIENNEAU	Claude	Bathurst, New Brunswick
WETTELAND	Wendy	Noonan, New Brunswick
WYSOTE	Nathalie	Killarney, New Brunswick

Prince Edward Island Participants

BRIDGES	Marjorie	Miscouche, Prince Edward Island
CHEVERIE	Nick	Charlottetown, Prince Edward Island
CLEMENS	Joseph	Burton, Prince Edward Island
CRANE	Jordan	Bristol, Prince Edward Island
CRANE	Georgina	Morrell River, Prince Edward Island
DARBY	Marie	Cornwall, Prince Edward Island
DAWSON	Cindy	Kensington, Prince Edward Island
GALLANT	Kim	Kensington, Prince Edward Island
GALLANT	Mike	Kensington, Prince Edward Island
GALLANT	Joyce	Charlottetown, Prince Edward Island
GALLANT	Janet	Charlottetown, Prince Edward Island
GOOGOO	Brandy	Charlottetown, Prince Edward Island
GOOGOO	Cory	Charlottetown, Prince Edward Island
JESSO	Gerald	Montague, Prince Edward Island
JESSO	Jody	Montague, Prince Edward Island
KNOCKWOOD	Dawne	Charlottetown, Prince Edward Island
KNOCKWOOD	Danial	Charlottetown, Prince Edward Island
KNOCKWOOD	Sandra	Charlottetown, Prince Edward Island
LARKIN	Kayla	Charlottetown, Prince Edward Island
MACLEAN	Greg	Charlottetown, Prince Edward Island
PANCHUK	Dana	Charlottetown, Prince Edward Island
PARDY	Dwayne	Summerside, Prince Edward Island
PARDY	Caroline	Summerside, Prince Edward Island
RICHARDS	Nora	Tyne Valley, Prince Edward Island
ROSS-MACAUSLAND	Sharon	Borden-Carleton, Prince Edward Island
THOMAS	Lenny	Summerside, Prince Edward Island
THOMAS	Randy	Charlottetown, Prince Edward Island

Session Reporters

HARE	Theresa	Noel, Nova Scotia
LABILLOIS-SLOCUM	Carol	Nashwaak Village, New Brunswick
TREMORE	Jayne	Bristol, Prince Edward Island

Flip Chart Notations

MACINTYRE	Amanda	Charlottetown, Prince Edward Island
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ALLEN	Aaron	Aaron Allen Web & Media Design, Truro, Nova Scotia
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APPENDIX 2 - AGENDA



Maritime Aboriginal Peoples Council

*The Maritime Region Aboriginal Leaders Intergovernmental Council
of Aboriginal Peoples Continuing to Reside on Traditional Ancestral Homelands*

172 Truro Heights Rd, Truro Heights, N.S., B6L 1X1 Tel: 902-895-2982 Fax: 902-895-3844

MAWI' AQNUTMA' TMK

Let us talk together.

MAWI' AKANUTMA' TIMK

Holiday Inn, 437 Prince St, Truro, Nova Scotia, Tel: 902-895-1651

Proposed Agenda

Friday Evening March 6, 2009

6:00 pm – 10:00 pm (Spruce Room)



MEET AND GREET FOR PARTICIPANTS – snacks provided



PRESENTERS MEETING – going over a few points

Saturday March 7, 2009

8:30 am (Ball Room)



INTRODUCTION TO THE MAWI' AKANUTMA' TIMK

8:45 am (Ball Room)



SETTING THE STAGE TO EXAMINE KEY POLICY ISSUES

- **PRESENTATION:** “Of the said tribe for themselves and their said tribe, their heirs and the heirs of their heirs forever.”
(*Roger Hunka, Director of MAPC*)
- **PRESENTATION:** “The Supreme Court of Canada begins to define the essential elements of consultation towards reconciliation.”
(*Bruce D. Clarke, Barrister and Solicitor, Hayman McAdam and Parrish*)
- **PRESENTATION:** “Scoping out a Consultation Process between a Government in Canada and an Aboriginal Peoples in Canada”
(*Kevin Christmas, Community Developer, Historian, Writer, and Elders Delegate at Large*)

10:30 am – 10:45 am MORNING BREAK

10:45 am (Ball Room)



SETTING THE STAGE TO EXAMINE KEY POLICY ISSUES (continued)

- **PRESENTATION:** “Scoping out accommodation - One solution towards a moderate livelihood for heirs and their descendents forever.” (*Wallace Nevin, Treaty Rights Researcher, Historian, Writer and Indigenous Peoples Rights Activist*)
- **PRESENTATION:** “An accommodation option for compensation of a Comprehensive Land Claim in the Maritimes.”
(*Gary Gould, Social Housing Expert, Community Leader, Historian, Writer and Guest Lecturer*)

12:30 pm – 1:44 pm LUNCH ON YOUR OWN

1:45 pm (Ball Room)



DELEGATE VIEWS ON THE FEDERAL VIEW OF KEY POLICY ISSUES

1. General
2. Roles and Responsibilities
3. Capacity

3:00 pm – 3:15 pm AFTERNOON BREAK

4. Policy Triggers

5. Accommodation

Sunday Morning March 8, 2009

9:00 am (Ball Room)



OVERVIEW OF SATURDAY PRESENTATIONS AND DISCUSSIONS

9:30 am (Ball Room)



KEY RECOMMENDATIONS TO INCLUDE IN A FEDERAL POLICY:

1. Consultation engagement with the Traditional Ancestral Homeland Community
2. Expected Roles and Responsibilities of the Crown at a Consultation Table.
3. Developing and supporting the Aboriginal Consultation team.
4. Determining capacity of the Consultation team.
5. Assessing competency of the Consultation team.
6. Setting out basic ground rules for a Transparent Consultation Table.
7. Identifying the many aspects of accommodation between Aboriginal Peoples and the Crown and Resource Developers.
8. What resource companies need to know about the different Treaty Regions throughout Canada.
9. How an Aboriginal friendly Crown Consultation Policy can promote Impact Benefit Agreements?
10. What happens when the Consultation Table fails?
11. What happens when Accommodation cannot be reached?
12. How is Restitution made for an abrogated or derogated Treaty or Aboriginal Right?
13. Can you call a Process that is not inclusive of all Beneficiaries and Rights Holders a Consultation Process?

APPENDIX 3 – KEY POLICY ISSUES AND QUESTIONS



KEY POLICY ISSUES

Engagement with First Nations, Métis, and Inuit Groups with regards to Consultation and Accommodation

GENERAL

- How should the Crown determine who the affected Aboriginal community rights holders might be for the purpose of consultation?
- What would the Aboriginal groups recommend to the Crown, in relation to a particular situation, when they need to determine with whom to consult to ensure a meaningful and comprehensive consultation process?
- What are some of the best local, regional, national consultation practices/processes which would result (or have resulted) in Canada and the Aboriginal groups working together to achieve meaningful consultation?

ROLES AND RESPONSIBILITIES

- What would be the roles of the respective parties in a consultation process?
- Are the roles determined on a case-by-case basis?

CAPACITY

- What is capacity? What forms can it take and for what purpose?
- What elements are required in a federal policy to ensure meaningful consultation with the Aboriginal groups that will lead to informed-decision making?
- What would be the role of government (federal and provincial), industry, Aboriginal groups?
- Do large or small projects warrant inclusion within the same policy?
- Should a policy provide for capacity on a project basis, more long-term capacity or combine elements of both to address different situations?

POLICY TRIGGERS

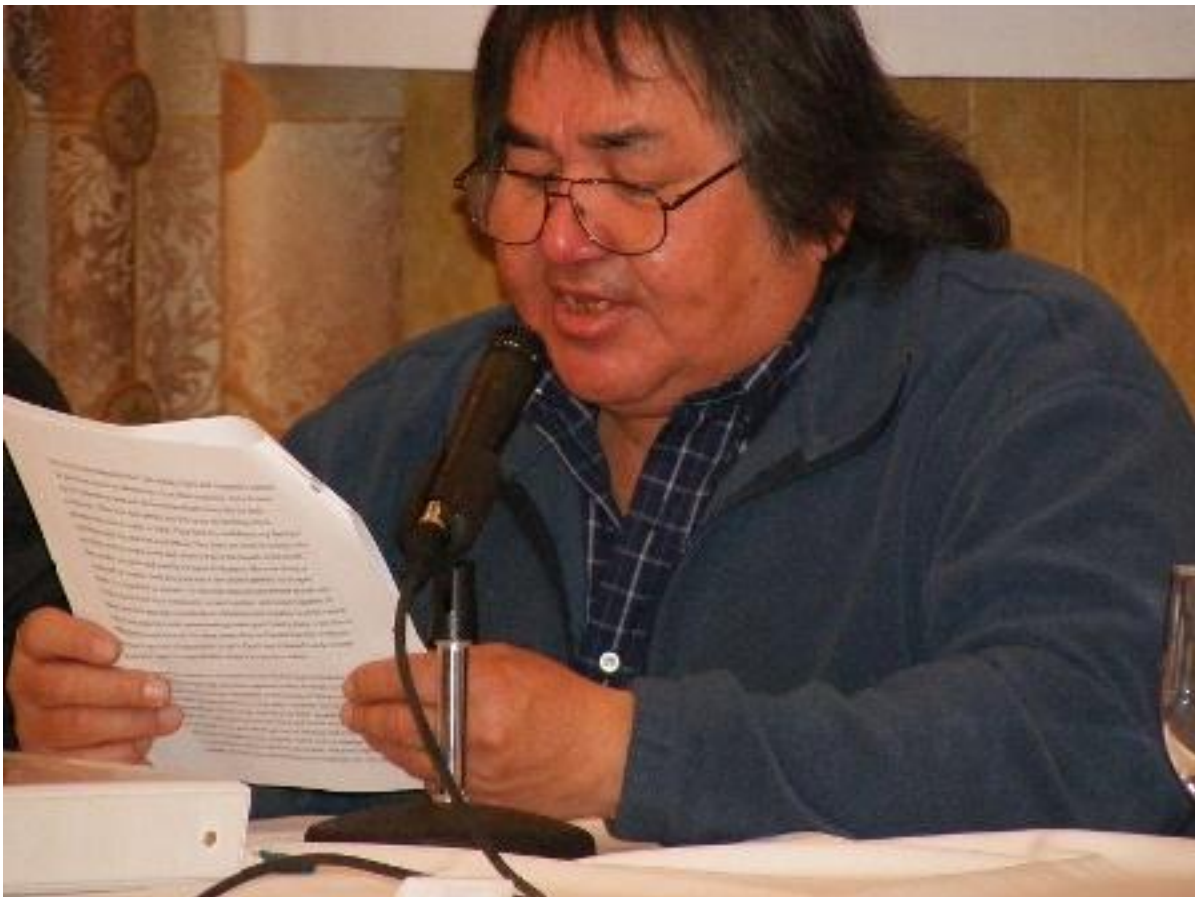
- How should the Crown manage instances where there may not be a legal duty to consult but it makes sense to do so for other policy or good governance purposes?
- Should the Crown consider pre-emptive or preventative forms of consultation, to take advantage of the greater degree of flexibility at the early stages of some projects?
- Is there a need to develop a tool or more stringent set of guidelines to assist departments and agencies in consistently and accurately addressing how their business interacts with the legal duty? If so, what could this tool look like?
- At what point is there sufficient information or knowledge for the policy on the legal duty to consult to become accessible? Should there be a set of criteria developed?
- How much flexibility can the Crown demonstrate when assessing the strength of claim for the purpose of the policy?

- Where there may be more than one instance of a “trigger”, at what stage will the policy require the Crown to consult? Is each permit, licence, etc. considered a trigger and requires a separate consultation process for any given project?
- Should the generic tools be developed to determine more easily whether there is a duty and the extent of the consultation?
- Should there be a stringent process to determine “how to consult” once the policy has been triggered? Or perhaps more flexibility?

ACCOMMODATION

- What is accommodation? What outcomes do the parties foresee?
- What form should accommodation take in particular circumstances?
- Who is responsible for fulfilling the requirement to accommodate in particular circumstances?
- What are some examples of accommodation?
- Discuss this concept:
 - “Whatever the accommodation, if it is intended to satisfy the legal duty to consult, and accommodate, consideration should focus on the impact on the right, not the value of resource development or final result of the project.”
- What is the impact of Impact Benefit Agreements?
- Should industry proponents be expected to provide mitigation measures as a “cost of doing business?”
- How should/could the Crown take IBAs or other agreed to measures into consideration in its assessment of accommodation? Can IBAs assist the Crown in meeting the legal duty to accommodate?
- How can the federal government work with the provincial and territorial government(s) to fulfill the requirement to accommodate?
- Is it a goal to provide complimentary measures?
- What are some risks associated with accommodation?
- When do the parties know accommodation is adequate?
- How does this relate to other departmental issues – treaty implementation?
- How do accommodation options developed under a legal duty policy compare to the possible outcomes of other Federal policies which provide benefits and opportunities?
- Are there other considerations?

APPENDIX 4 – TREATY CONSULTATION A PRESENTATION BY KEVIN CHRISTMAS



Treaty Consultation

Who is responsible?

Gwe, good day; I'm very happy to be here to talk about treaty. I was asked a while back to examine this question; who is responsible for consultation on treaty? It seems obvious but it really isn't. It's obvious to say the elected leaders, or the negotiators, or the directors, or the government, or the representatives, or the Grand Chief, or the technicians. And the next, not so obvious question is; who are they? Who has the authority to change the treaty? Who can commit the L'nu Nation? Who can agree that the treaty relationship is not sacred, a law above? Who can say, I am treaty? Who can self-declare their authenticity? Who can remove themselves from treaty? Who can say their authority is entirely dependent on treaty and nothing else? Who can prove any of this in court or anywhere without condemnation? Who has provisional authority? Who must be satisfied about everyone else?

You! That's who! Thank you...that was a very short presentation....And next time I'll tell you why?!....Okay, I got some time to kill so I'll try and explain what I mean. But first let me explain to all those who hear about this presentation; you are interested because your stuck. You are unable to take your concepts outside because of the hostility in the jungle. You believe you are right and free but you are not. You think and believe that you are doing something that will not be rejected all together? But trust that the beneficiary of treaty will provide ample instruction for the trust for which they are beneficiary. No consultation has occurred. If it had, you would see, you do not possess necessary beneficiary consent regardless of your beliefs.

Now where was I? Oh yes, that is not, why, **you** are the power, its because the people who presume the power are wrong. This is what I mean, If Walmart decide to consult the community about shopping, and after reviewing everything decided since their employees represent the average underemployed, the need only talk with staff. The input would have nothing to do with shopping but of working and being happy. Could you say, that the community is not simply Walmart staff? Could you not say that the President of Walmart represents the whole community on shopping? If you did, every person would be offended by the presumption and pretense of Walmart in serving their own selfish greed. We know what a community looks like and we know that every community has every type of representative and service provider. And few identify with one another and in the interest of a healthy community subjugate themselves to their competition for fairness. Say to the competition, lets share. Certainly if I shop at Walmart, I don't have to worry about anything but the cheapest price on average. Don't shop at Walmart, and they continue with there exploitation until they have maximized profits to a breaking point. Just because someone on behalf of someone, decides to do something else for someone else, doesn't mean they're right. It just means they all enjoy exploitation for profit. This is called 'short-term self-interest' and you can usually smell it before you see it. Let me tell you something else about smell, you cannot clean the outhouse without getting the smell on you, too. If you are determined to make your way by treaty understand that the most vile attacks will come for L'nu. Understand too, that the elected leadership will command you to bow down before them and pray for them to grant you mercy. They think they're such good friends with Creator that they have authority to command this. They're not and are no better than you in treaty.

This is false expectation and something called vain glory. It powers selfish greed. Never bow down to any man or institution created by man. It cheapens your holiness and makes relationships not as sacred as they are intended in the treaty. ‘As between the Indians for themselves.’ are the most powerful words in treaty. It says that we together have the same authority we have always had, and will have, forever. They can’t say that about the Indian Act which terminates more L’nu than the competing federal policy of assimilation and genocide. The federal Aboriginal policy is a starvation program. It is designed for deprivation and oppression to accomplish suppression of treaty. It’s a prison camp. So don’t make the mistake of believing that the guardhouse is filled with people who wish to make you as whole as a true human can be. It is not. You are stuck with them and they hate you. But don’t worry they hate me, too.

I don’t like talking to non-L’nu about treaty and don’t expect I will anytime soon. Neither my friends nor my acquaintances wish to address needs outside treaty with non-L’nu. They say their private business is not settler business and is private. They read non-L’nu as none L’nu. The Chiefs of NS have seven pages of descriptions and rules about “treaty beneficiary”. This without having asked once if it was okay to hoist declarations to justify the beneficiary resources they confiscate or apprehend from you, for you, and without you. We have never met with Bruce Wildsmith, and will never allow a non-l’nu to frame our discussion for us as beneficiaries. Anyone who says they can on our behalf, prove it! Give us one piece of history that suggests this “negotiator” has our consent to do anything on our behalf respecting treaty. It is fraudulent to make false representation without proof. If they consulted they would know they do not have our consent. Nothing in

the treaty gives authority to any government to change the treaty, including our own. The government pays to “modernize” treaty, and creates the impossible enigma. There is no great mystery here. We have a bunch of self-serving local government leaders attempting to confiscate what is rightfully yours for nothing but selfish greed. They grant themselves all authority and power, and hire none l’nu to serve their greed and embellish the record. They hide the amount they pay themselves through government. They refuse to disclose all payments. How much was paid to the chiefs?, and, how much of it is unauthorized? The answer, all of it! So, ask yourself how do they manage to get paid for attending meetings with honoraria that is not authorized by the Financial Administration Act? How can they make so much money while the grassroots live on starvation budgets of less than six dollars per day for everything? This is eighty percent of our poor people. You try and live on this much and you will be unable to...selfish greed is killing us and bringing disgrace to our treaty protections and entitlements.

You can work on treaty without bothering with them in any way; in fact, I would recommend you stay away from them altogether. They are dead wrong on many things they say and are willing to make concessions without consent. Very dangerous conditions for treaty access. Its bullying by default and deception. They don’t know what we mean and we will never tell them anything that will assuage their ignorance. Because non-L’nu are not part of the exclusive “free liberty” as between the Indians for themselves.... They can stay in dreamland forever and never have to meet and agree with a real L’nu because of the Indian Act Chiefs and the Assembly of First Nations. So long as they mistreat us and lie to us and misrepresent us why shouldn’t we have the right to complain to the taxpayer who is paying for nothing and is

promised everything. Their faith is stronger than our reality. They can make a noodle talk so don't think they can't get dead Indians to be counted.

Our people deserve better. After all they have the best, and are far and away, more able than ever before to use the rights and entitlements in treaty to provide for a moderate livelihood beginning with dignity. They are going to be so pissed at me, it'll make their blood pressure go sky high. Righteous indignation will be their way. Who does he think he is talking down to the Chiefs and saying they don't represent anything but greedy selfishness?

Exactly! That is exactly my point. Prove you have our consent and that you have a full comprehensive consultation effort already accomplished and the positions you hold are base upon it. Don't come here with made up stuff that is not true. The government must be told they have failed with ten years of effort. Stop wasting our resources and hope on the Chiefs brand of politics. It is not from us, the beneficiary, and they need you to stop asking questions to complete their theft of enticements and benefits as local governments with no standing in treaty.

They have had lots of opportunity and many good people tried to help, but those people were sidelined by non-L'nu interests and preferences. They see themselves as power and money brokers but they're broke and dependent. They want us to believe they have a strategy that will makes sense: if they did they would make sure they told us before they adopted it. So they have no strategy and no way to get it without the beneficiary who will not cooperate with their greedy selfishness and exclusive access. There are many sincere treaty implementers who are busily developing the right way and have secured many ideas and opinions which are private and internal for l'nu only. Why would they believe we are incompetent to do this without them?

They lie, cheat, steal, appropriate unlawfully, line their pockets, never tell anyone what they do and hide the facts; and, still worse they want our trust. They keep all discussion behind closed doors and threaten and intimidate anyone not agreeing with their ideas on stupid wasteful decisions. They are crazy with power and think they are above the law. They are not however, they are bound by treaty like Canada and the Provinces. They are answerable for their excess and waste to the taxpayer. They consider the beneficiary as themselves and not anyone else. This is their most fundamental flaw, that they as Indian Act authorities are the exclusive beneficiary of treaty. This is absolutely against treaty, it removes completely and consideration for the preferences, customs and traditions of the treaty descendent beneficiary.

Now to get back to my talk on who is responsible for consultation on treaty. What did I say? Oh yes, You! I mean at least you. Our treaty(s) are one set of entitlements locked into a relationship for which all matters are final in form and content and considered as concluded in full. It was done for you. It was intended to cover each and every descendent of treaty. It was concluded and accomplished once, as only such matters may in the shared history of a sovereign peoples. You are the 'heir descendent' and you don't have to be a chief to use your treaty. No one can take this from you or remove you from treaty. The first duty is to make sure that every one understand fully that the treaty is unalterable, full and complete. IT has everything we need as a sovereign peoples and makes provision for our livelihood regardless of conditions or consequences. We cannot change our treaty nor remove ourselves from it. The pretext of the Made in NS Process established a firm ethic. The egregious Cornwallis Proclamation of genocide must be ended. In ten years as a precondition it has never been served. Yet, it remains as policy

and should be audited by the Auditor General. Who has collected money for our continued genocide? Why is this genocide law? What is the ‘honoraria’? Is this a fundamental betrayal? What honor exists if both parties agree to the worse condition? How is the sacred treaty relationship reflected in this unholy arrangement? Where is the unimpeded beneficiary voice? What is the consensus which paralysis treaty? Who said they could do this to us? The Minister of Indian Affairs is who. The Minister has told them all that they are the only boss in town and they can do whatever they wish and he will not interfere nor will the police. So they are free to what they wish to us, without our say. This is a betrayal. They say ‘but we are the representatives’ sure, but not on treaty! The beneficiary of treaty may instruct the trust. When have the trust south the lawful instructions of the beneficiary respecting the disposition of their rights and entitlement including all freedoms in treaty? When was the last time they called you? Have you ever been consulted on treaty by any chief or representative negotiator? Why is Canada and Nova Scotia right and you wrong? Because the chiefs said so, that’s why and how much have they been paid to say this? To paralyze treaty, to freeze the law? It is subjugation of treaty by default of law. What are YOU going to do about it? We should all turn our back on this disgraceful conduct of our sovereign rights as a people.

Show us the money! Where is the expenditure profile detailing every dime to every person associated with ‘governance’ in Mi’kmakik. Prove to us that you are not being paid for Cornwallis genocide when you said everything depended upon it being served. Give back every dime of the ‘shut-up’ money. Demonstrate that this whole enterprise has been true to purpose. Let us, the beneficiary, see the outcomes your promise and the progress you have

made. Let us judge whether or not you did your job as defenders of a perpetual trust. Let us see it all and then instruct as provided in treaty law. This is the same demand by government sponsors. Who have you consulted and about what? What was said and what is being done? Report on treaty and be honest with your culpable capacity in defining beneficiary needs for them without their consultation and consent. Refrain from stating that you can change the treaty, or that you and your friends and supporters own it all. You do not! We say the same thing. In politics, politicians sometimes do the right thing even for the wrong reasons. They are not agreeing with us because they care, its because they don't care. Go figure.

My point of course is that, all paths lead to your door as beneficiary. They need a plan that involves you. They need to agree to hear you. They need your confidence and your goodwill. They need to stop insulting you. They need to get right with their own people on treaty. Then need to prove they have only your best interests at heart. Then need to have you examine everything they say and do. They need your approval. If they all showed up tomorrow, they would need your permission to enter the assembly of beneficiaries in treaty.

They will never admit this. The whole society of treaty negotiators and interpreters and public servants have never heard what the beneficiary is saying to one another in-treaty. How can they judge what is being said or interpret our meaning without even seeing us, let alone hearing us? These discussions they have are settler based. The obligations for settler society are everything they have been given and entrusted to uphold. No question that the freedom of settlement granted by treaty provides all necessary authority.

We do not have issue with settler freedoms. They promised to pay for everything they use. The ‘freedoms’ however, do not include the freedom to choose our representatives for us. Be very clear, we did not consent to the Chiefs who draw authority from statute, to become our guardians in treaty. They have never sought it and presume it because the settler government has the nerve to pay for it, even in the face of the Cornwallis genocide as the primary agenda. Starvation conditions for the beneficiary and royal treatment for the collaborators. This is egregious. It is violation of the most extreme variety. Take a hard look at who precisely took money from the Marshall Fishing Arrangements. Who got the most money? If the government agreed to spend 986M, almost a billion, on 35 thousand beneficiaries, you would think you would see it somewhere. Where is it?

Sometimes the wolves are the best predators because our guard is down. We thought they had our best interests at heart. We believed that we would have a chance to make a living but at the end of the day we got the worst results and mounting debt. Even with the money all gone, they are still forcing the beneficiaries to cover their debts by stealing from welfare and service costs and losses. One billion dollars floated away, forever, and so did much hope.

Now they say, trust us. We can get money. Next time you can have some. We promise to make the way easier for you. Don’t believe them, they will apprehend it again and waste it entirely as they have proven they would. Our guard must be up! We must say no! You cannot do this without our consent. You cannot pilfer our benefits for your own benefit and deny rightful beneficiaries their full consideration. Even the Prime Minister can’t apprehend limitless benefit for himself and friends without legal recourse.

Now do not misunderstand what I am saying. I fully and completely support my chief and council in Membertou. I trust them implicitly. They do have my best interests at heart and do the extraordinary every day for their community. They love their people and will never do anything which exposes their own to injury or harm. They have my confidence, my family(s) confidence and my relatives confidences. Yes, there are some in council who we differ with on some points and others we give the benefit of the doubt. But usually we agree and usually we agree to disagree. But everything is examined in context. And everyone has a fair chance greeted by an open mind. It is beautiful to witness. To see hope realized and dreams played out. It takes hard work by a community to stay together, and dream together. It takes sacrifice and due consideration. Kindness and empathy must be valued ethics and patience with understanding create good hearty plans. I see this in Membertou and love it! No other reservation in Canada has this, I believe. So don't say this is impossible, it isn't. Don't say it doesn't work, it does. And don't say it's unprofitable when it is, in every sense.

When there is money in the bank we choose the community managers. When we are bankrupt the exact opposite is true. Overall our first nations debt load is horrendous. Hundreds of thousands of dollars are spent daily to keep bands afloat by service to the debt. 'Monies' do not exist to pay debts in government. There is no 'cancel your debt' program. You are stuck with it if you have one and have to service it and it will increase by twenty percent on average. You will never get out of the hole and every 'free' dollar is devoted to keeping away wolves. If the wolves manage to get elected, then we are at the mercy and they are a pack, and have alpha males and are hungry all the time and consider you breakfast. Its' our dances with wolves.

My friend Wallace Nevin I see is scheduled to speak as well. Listen to him, he is very knowledgeable about treaty and very clear about what is being done in wolf country. He is such an expert on treaty that we seem to all converge at his door of interpretation and truth. His research is usually complete and his work selfless. He is a true l'nu in every sense, and a good hunter. That's the first rule of hunting, go hunt. The second rule is, don't forget your gun and bullet. The third rule, go outside. If you can do all these correctly you have the means to eat for you and the community.

The same with treaty. If you can take the treaty to mean a livelihood, it is up to you to realize it. To take it outside for a goal and believe that you will succeed. We measure our progress by our freedom and our achievements. We share the benefit of the exercise and work heartily for the next one. We know it'll involve commitment, research, focus, vision and truth. We know every time we do it, that it is different and more precise the more experience we gather together. This is treaty. Serving one another selflessly in excellence. In-community means as between us, and in-treaty means, all things considered. So when we say our future is in-community in-treaty we mean by ourselves for ourselves. There are four enemies of treaty: money; intrigue; false compassion; and ego. Some people on earth will do anything for money. Some people are vulnerable to secret information or knowledge that no one else knows or has. These love intrigue and gossip and mean-spiritedness. Others are weak for false compassion. This is when someone puts his hands on your shoulder and says, 'if only the others were like you'. Some people live for that. And lastly, ego. The 'I am boss' syndrome. Anyone who suggests we support them based on any of these, don't do it!

See this is why the treaty is over and done with in terms of negotiations. There are no further negotiations required, and the existing treaty relationships stands, and no one can change that fact. We don't have to worry about these fools who think they, above everything else, have authority no one can give them. This is foolish pride. We do not need more fools. We need leadership and patience like in Membertou. They are willing to examine everything and anything that works for their achievements. They have an open mind and a good way and the peoples' trust. If I went to them and asked them to restrain 'un-treaty-like' behavior they would. But I don't need to. Do you see why? Because they already do the right thing and have been, and, will continue to do the right thing in treaty. It can be done folks.

Not all bands seek this and not all chiefs do this. In fact we have many who do nothing at all about anything. They are the most unkind chiefs surrounding themselves with advisors who embarrass the devil and pass around grief like something to achieve. Who can say these represent treaty virtue? Who can say they deserve unlimited benefit? Who will argue it is worthwhile? Not me that's for damn sure. I've seen too much intentional pain being inflicted by a chief and staff to warrant criminal abuse charges. They hide behind the Indian Act and are quick to get concordances with corresponding hatred at Indian Affairs. Complain and the chief will get the complaint and freedom to execute judgement from Indian Affairs. So be very careful for your family. These heartless people will hurt you and your family for complaining about them. I've seen it almost every day. They even deny pampers to single mothers, and cut her welfare in half. Try and stop them. You can't and won't. They will do as they please! When you leave watch out they will talk lies and condemn you and judge you for trying.

This is true. It is verifiable. It is happening every day and everyone knows this is the way it is. Don't blame government, Membertou is faced with the same conditions and are prosperous. Don't blame administration's costs because you are top heavy in commitments to friends. Don't cry about the deficit when you keep adding to it. Don't say its because we don't have treaty because we do. Don't say its because you are too busy meeting peoples needs because you are not. We are in worse condition than before the chiefs took over everything for profit and facilitated by AFN and APC. It doesn't take a genius to figure out that if you spend more than you get you will run out of money. It doesn't take an Einstein to figure out that if you are not getting money to service your increasing debt that you should not increase it further. But the genius network hasn't tuned in here.

They see the Made in NS Process as their trump card. Their ticket to money and power. They think they have an ATM parked in Truro, and all they need is government to give them the access code. They are even told there is already 750M on deposit all ready to be spent. They have already parceled out the money and have so far, seven pages of criteria to distinguish who can get some and who can't. This is what they've been doing. Planning to spend money they haven't gotten and they believe belongs to them only and for which they committed already to take without question. Insanity! That is the only appropriate word. Hire a non-l'nu negotiator lawyer and give him full responsibility and control to get the money, and to hell with treaty. Ask yourself, is this honorable? Is this appropriate? Is this why we have treaty? Is this the best that can be done? Is this the way of truth? Is this freedom? Is this Liberty? Is this a moderate livelihood? Is this treaty justice? Is this the beneficiary consent? Is this lawful? Is this fulfillment? Is this our priority?

Think about this and ask the hard questions, don't be afraid. You have every right. These treaty(s) belongs to the beneficiary. No one else owns them. It is you who must take ownership of them. It is you who must raise the standard and stand by the treaty to protect them. You must take them and use them as your own. Believe that they are meant for you to use in this age because we need them now. We are close to annihilation and we have to renew our spirit in treaty and defend who we are and where we've been. This treaty is not just for dead Indians. It is for the sickly, the disabled, the impaired, the troubled, the weak, the single mothers, the poor, the elders, the youth, the forgotten, the RSS survivors, the isolated, the abandoned, the traditionalists, the pipe carriers, and the informal leaders who only want what is good and wholesome. These are all beneficiaries. This is theirs not yours but ours. Together in-community in-treaty.

Over the next couple of days you will fight the good fight, believe the right thing and make known your wisdom. Be patient, we need good talk and good advice. We need clear minds and big hearts. We need you to see that you are treaty, you are peace and friendship and you are in charge of the outcomes.... Thank you.

Kevin Christmas

Treaty Beneficiary Association (TBA)

March 6, 2009.

APPENDIX 5 – PRESENTATION BY GARY GOULD



Presentation
Of
Gary P. Gould
To the
MAWI'AQNUTMA TMK
MAWI'AKANUTMA'TIMK
Symposium
March 7th, 2009

I am honoured by the thoughtful invitation extended to me by the organizers of this weekend's symposium to participate and discuss with you the question of Consultation and Accommodation. Additionally I am pleased to have been given an opportunity to present to you an option on how we as Aboriginal and Non-Aboriginal Maritimers and Canadians can come together to address and resolve the unique character of the Comprehensive Land Claim of the Mikmaq and Maliseet Nations of Nova Scotia, Prince Edward Island and my home province of New Brunswick.

Before advancing my thoughts on the question of Maritime Comprehensive Land Claims let me say how interesting, stimulating and valuable the presentations made earlier today were. I am sure that the knowledge shared by my fellow presenters will greatly assist us all in gaining a better perspective and understanding of not only what Consultation and Accommodation means, but what we as the "Forgotten Aboriginal People of the Maritimes", must do to ensure that not only do governments consult us but that they accommodate our rights and interests by fully engaging our people and our organizations in any and all processes that shall be established to address the long outstanding Aboriginal and Treaty Rights of the Mikmaq and Maliseet people of the Maritimes.

Furthermore allow me time to make comment on the four strategic objectives set out in the federal government's background paper, "An Action Plan on Consultation and Accommodation", and by providing you my thoughts on these four objectives.

OBJECTIVE I

To assist federal departments and agencies in fulfilling Canada's legal duty to consult and where appropriate, accommodate in relationship to established and potential Aboriginal and Treaty Rights.

This objective on first glance appears honourable and sounds to be inclusive of all Aboriginal People. However the words, “where appropriate”, I believe are potential nuisance words similar to “existing”, found in Section 35.1 of the Constitution Act (1982), or the words, “modern manifestations”, found in the Supreme Court of Canada's 1999 Marshall decision, can and will be used against Aboriginal People, particularly off reserve Mikmaq and Maliseet people, to prevent us from being fully engaged in consultation processes that may be established to address and accommodate Aboriginal and/or Treaty Rights; or in any programs or policies that may come about. One needs to look no further than how our people and organizations have fared and have been marginalized over the last quarter century since entrenchment of Section 35 and how governments both Federal and provincial continue to ignore Off Reserve Status and Non-Status Indians even though their own courts have made numerous decisions affirming that Off Reserve Status and Non-Status Indians have Aboriginal and Treaty rights. I would counsel you and our leaders to be extremely cautious of the words, “where appropriate”, as I believe governments will make every effort to continue to ignore the legitimate claims and rights of Off Reserve Aboriginal People and our organizations to be involved in Consultation and Accommodation.

OBJECTIVE II

To create sustainable approaches and partnerships in relation to consultation.

In a perfect world the Mikmaq and Maliseet Nations would be reconstituted as recommended in the final report of the Royal Commission on Aboriginal People (1996). Unfortunately in the world we live in our nations have been divided to the lowest common denominator, Bands. In a perfect world all Mikmaq and Maliseet

people regardless of status or residence would work together under a true Tribal Model of Governance. However the impact of colonial administration and the divide and assimilationist strategies of various Indian Act Regimes have created the reality that even amongst chief organizations partnerships are hard to make let alone maintain. Additionally we must be cognizant that governments often times use our brothers, sisters, uncles, aunts, and cousins who are involved in status organizations and Band Councils and their reluctance to allow us to participate, as excuses to leave us out of Consultation Processes. Also governments use the fact that many of us have had our names added to band lists to say Chiefs and Councils represent our interests, a myth that is far from the truth and one that needs to be constantly challenged.

No real sustainable partnership can occur unless all the partners are invited to the table. This means quite simply that governments must recognize that Chiefs do not represent all Mikmaq and Maliseet people and that any process that does not specifically include the interest of Off Reserve Status and Non-Status Mikmaq and Maliseet people is illegitimate and doomed for failure. Governments must open the doors to consultation for both on and off reserve groups to ensure transparency and legitimacy.

OBJECTIVE III

In the long term to provide more predictability, certainty and transparency on when and how to consult and possibly accommodate Aboriginal groups.

In respect to this objective it is imperative to state once again that unless off reserve people and their organizations are fully engaged in all and any consultation processes and accommodation plans that may result from these consultative forums no predictability; certainty and definitely no transparency can be assured.

On the question of when and how to consult and accommodate aboriginal groups the answer to “when” is easy. Since we have yet to obtain settlement to Comprehensive Land Claims of the Mikmaq and Maliseet Nations “when” means anytime our homelands are to be developed, used or effected by the interests of other citizens of the Maritimes. The “How” is by ensuring the involvement of all the legitimate heirs and natural descendants of the original signatories of our treaties. This means more than just the on reserve part of the Mikmaq and Maliseet Nations. Consultations must be designed to ensure the full equal access and engagement of on reserve and off reserve status and non-status members of the Nations.

OBJECTIVE IV

To promote reconciliation of Aboriginal and Treaty rights with other societal interests.

This objective requires the interests of all members of society being taken into account, something that the courts have instructed governments to consider. This should lead to the recognition and reconciliation of the interests of Off Reserve Status and Non-Status Mikmaq and Maliseet people as being full partners

in any process that aims to reconcile Aboriginal/Treaty rights with other societal interests. Failure to fully engage Off Reserve Aboriginal interests will result in protracted and failed attempts to meet this objective.

The final comments I would like to make on the question of the development of any Consultation and Accommodation policy relates to the need for our organizations to be aware that while government on one hand claim to be seeking a new relationship with Aboriginal People they on the other hand do everything possible to deny off reserve status and non-status members of our Nations full equality. A clear example of this is the Supreme Court of Canada challenge of the federal government to the 2007 British Columbia Supreme Court decision in the Sharon McIvor case, a case that clearly calls into question the ongoing discrimination faced by the children and grandchildren of 6(2) Indians.

We should remember that prior to the passage of Bill C-31 (An Act to amend the Indian Act) in June of 1985, the public was well aware of Section 12.1b, the discriminatory provision of the Indian Act which stripped Indian Women of their status upon marriage to a non-Indian male and which denied registration to their children. While Bill C-31 has allowed for more than 175,000 individuals to be reinstated or registered for the first time, the problems created by over 100 years of discriminatory treatment and marginalization afforded to Non-Status Indian women, their children and their grandchildren continue today long after passage and implementation of Bill C-31. For Off Reserve Bill C-31 Status Indians and Non-status Indians we lost a formidable ally in Sec.12.1:B and the support of the public because they believe Bill C-31 addressed all of the concerns and issues we had. I am constantly reminded of what Premier Richard Hatfield said during the 1984 First Minister's Conference on Aboriginal matters when he stated, "when (Clause 35) was inserted with regard to Aboriginal People...it was clearly my understanding that we were talking about

the Indian people, the Inuit people, the Métis people and ... also the innocent victims of bad Indian policies or a bad Indian Act... the non-status people...I don't think we should take for granted that an amendment of the Indian Act will in fact cause what are now known as non-status Indian people to suddenly disappear..." It is obvious that Mr. Hatfield's involvement with recently appointed Senator Sandra Nicholas-Lovelace and his engagement with the New Brunswick association of Non-Status Indians during the years leading up to Patriation of the Constitution and Bill C- 31 had provided him with the background needed to understand that simple amendments to the Indian Act would not solve the more than 100 years of denial, marginalization and discrimination Non-Status Indian women, their children and their grandchildren faced. I am sure that if Premier Hatfield were alive today he would endorse the calls made by NBAPC for the inclusion Non-Status and off reserve Aboriginal people in all and any processes aimed at addressing the Aboriginal and Treaty Rights of the Aboriginal People of New Brunswick.

Having made my comments and opinion known on the objectives of the Federal plan on Consultation and Accommodation, and having left a message to our leadership to be careful and diligent in dealing with governments, I now would like to turn my focus towards presenting to your a concept that I have long advanced as a means to address and accommodate a comprehensive land claim in my home province of New Brunswick. While this concept was developed during the waning years of research for the book "Our land the Maritimes", in the late 1970's, I believe this concept is as viable today as it was 30 years ago and could easily be adapted to Nova Scotia and Prince Edward Island.

As you know the acceptance and settlement of Aboriginal Title in the Maritimes has been hampered by the concept, "Superseded by Law", a concept that governments held for decades as rational for not recognizing the existing

Aboriginal Title Claim of the Mikmaq and Maliseet Nations. Over the last three decades this concept has been found to be suspect and lacking any legal basis and since the mid 1990s, in large part due to successful court cases, the Federal and to a lesser degree the Maritime Provinces have been willing to look at finding means to address Aboriginal and Treaty Right matters, one being Aboriginal title.

It is my opinion that even if governments fully excepted the existence of Aboriginal Title the fact remains that most of the land in the Maritimes is either Crown Lands that for the most part are leased

out to timber companies or are lands held by private land owners. This reality necessitates the need to find an alternative way to:

- 1) Recognize Aboriginal interests in lands other than simply transferring lands to aboriginal ownership and;
- 2) Ways to finance aboriginal institutions of governance.

For more than 30 years aboriginal groups in the Maritimes have called for a settlement of Aboriginal Title using the Comprehensive Land Claims model. However in regards to the fact that little land remains available to be transferred back to the original Aboriginal owners I have offered up two concepts that I feel would enable us to reconcile Aboriginal Title with other societal interests. These two concepts have been called:

- 1) An Aboriginal Real Estate Tax, and;
- 2) An Aboriginal Claims Royalty

Aboriginal Real Estate Tax

As mentioned earlier much of New Brunswick's Crown Land is leased to timber companies or is land held by private land owners. As a result arguments over land ownership or the fear of land being taken away from timber companies

and private land owners had persistently enabled governments from entering into serious discussion let alone negotiation based upon recognition of the existence of Aboriginal Title. Additionally the extinguishment of Aboriginal Title is very divisive one amongst Aboriginal People, with many of our people holding to the belief that we do not have the right to extinguish the rights of Mikmaq and Maliseet people yet unborn.

In an attempt to resolve these two dilemmas I have long held out the concept of an Aboriginal Real Estate Tax as one element of any Comprehensive Claims Settlement Package. It is my feeling that an Aboriginal Real Estate Tax provides a solution to these two opposing views and closes the gap between the view that Aboriginal Title should not or cannot be extinguished and the requirement of governments and other interests in society to be assured good, clear title to lands.

Under an Aboriginal Real Estate Tax an amount would annually be added to the assessed valuable of property. Using the 2008-2009 N.B. Municipal Tax assessments as an example, a 1% Aboriginal Real Estate Tax would mean an annual contribution of 23 million dollars to the Aboriginal Real Estate Tax Fund, that I propose would be established.

Should an annual tax levy against Municipal Tax bases be difficult to obtain an alternate approach would be a fee charged against real estate sales. Using 2008 residential Property sales values in New Brunswick as an example, a 1% Aboriginal Title fee levy would amount to an annual amount of 12 million dollars.

Such an approach as an annual tax against municipal tax bases or a levy against real estate sales would bridge the gap between those that hold the position

that we cannot extinguish Aboriginal Title and the need to ensure certainty of land title for non-aboriginal citizens and business interests. Furthermore this concept is no different than approaches used from time to time by governments to raise funds for special needs or to cover expenses such as the New Brunswick Land Transfer Tax which in 2008 raised 3 million dollars for the province. The only difference is that as part of a Comprehensive Land Claim these levy's or taxes would be Constitutionally protected in perpetuity. Aboriginal Claimes Royalty is a resource tax levied against the value of resources gathered or extracted from the Homelands of our people and would take the form of a percentage of the net annual value of resources gathered and extracted from the Homeland of the Mikmaq and Maliseet Nations. While I do not have up to date or exact amount of all royalties paid by resource companies extracting Natural Resources from New Brunswick Crown Lands, the value of Mining Royalties and Timber Royalties amounted to more than 200 million for 2007. The Aboriginal Royalty Claim would be collected by the province and allocated to the Mikmaq and Maliseet First Nations as part of any negotiated settlement of our Aboriginal Title claim.

In conclusion let me say that these two concepts have been developed after years of debate and discussion amongst my fellow Aboriginal and Non-Aboriginal brothers and sisters. I truly feel that they represent a real option to resolve the conflict that exists between Aboriginal and non-aboriginal society and affords to those interested in finding resolution a means to reconcile Aboriginal Treaty Rights with other societal interests.

Notes

Notes

The “Text Report” and “Summary DVD” is based on presentations and discussions that took place at the Maritime Aboriginal Peoples Council “MAWI’AQNUTMA’TMK *“Let us talk together”* – MAWI-AKANUTMA’TIMK, regional session, held in Truro, Nova Scotia, March 6th, 7th & 8th 2009 and from review and discussion of individual sessions held by the Councils.

The Regional Session was organized by the Maritime Aboriginal Peoples Council, under the aegis of the three Aboriginal Peoples Representative Organizations: the Native Council of Nova Scotia, the Native Council of Prince Edward Island, and the New Brunswick Aboriginal Peoples Council, representing the communities of Mi’Kmaq, Maliseet, and Passamaquoddy Aboriginal Peoples continuing on Traditional Ancestral Homelands within the Maritime region of Canada.

Partial funding support for the Regional Session was provided by Indian & Northern Affairs Canada, from the “*Duty to Consult Initiative.*”

Publication of this “*Text Report*” in this printed format, and the available “*Summary DVD*”, does not necessarily imply that the subject has been exhausted as to views, concerns, interests and issues, nor are they the final word on this complex important subject.

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For further information about the Regional Session, or to acquire the:

MAWI’AQNUTMA’TMK - *Text Report*
or
MAWI’AQNUTMA’TMK - *Summary DVD*

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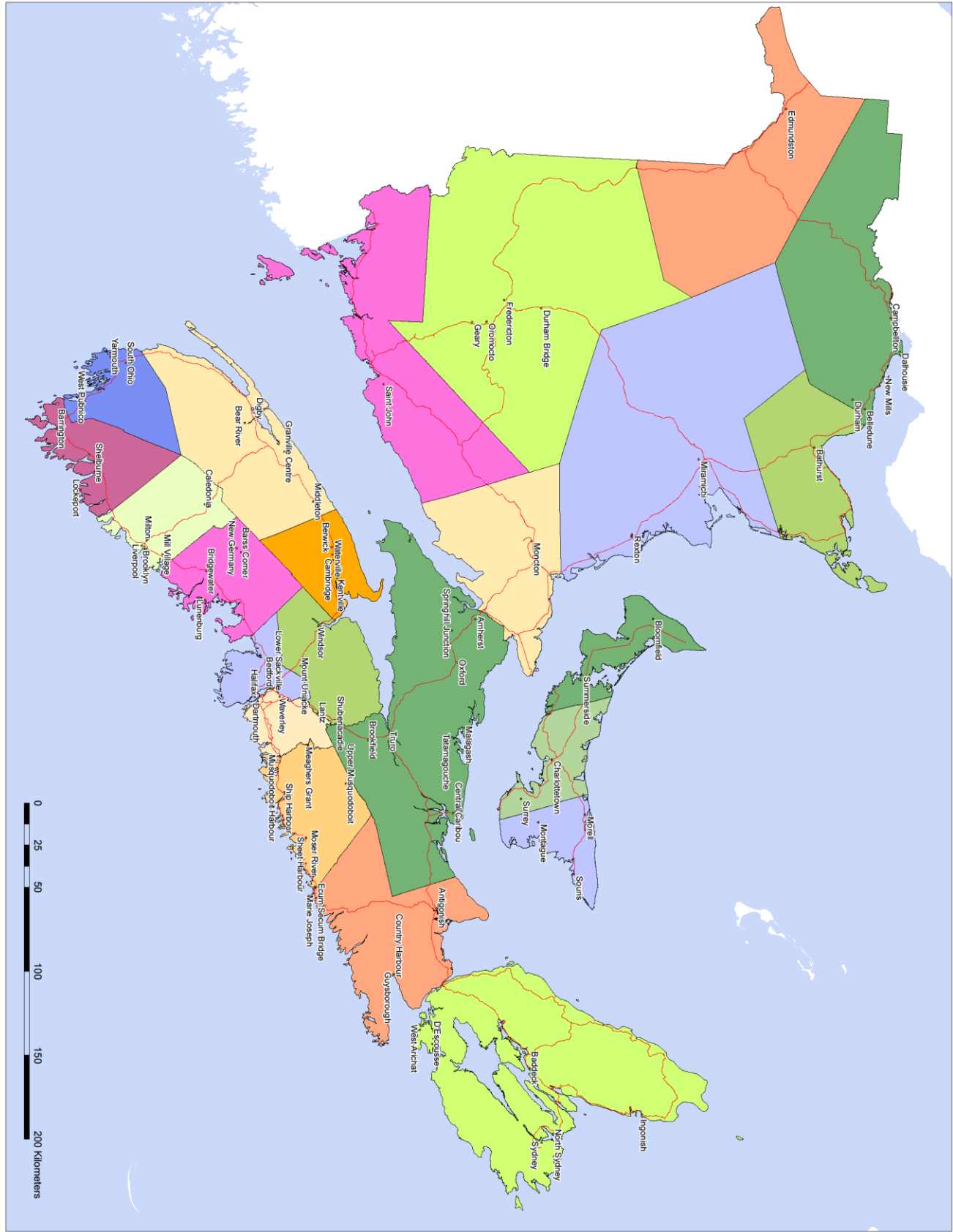
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Aboriginal Ancestry and Identity Population in Atlantic Canada



Legend

Total Aboriginal population of-reserve by zone

Nova Scotia

Off Reserve Aboriginal Ancestry	ZONE	Off Reserve Aboriginal Identity
4,285	1	1,310
1,390	2	495
8,885	3	3,045
3,025	4	1,535
2,040	5	605
3,740	6	1,485
965	7	500
3,940	8	2,840
940	9	430
2,885	10	835
680	11	145
5,945	12	2,035
5,505	13	3,740
44,175	Totals	19,070

New Brunswick

Off Reserve Aboriginal Ancestry	ZONE	Off Reserve Aboriginal Identity
1,725	1	725
3,590	2	1,225
3,645	3	1,980
4,815	4	1,355
6,530	5	1,805
5,660	6	2,280
2,295	7	1,280
28,260	Totals	10,620

Prince Edward Island

Off Reserve Aboriginal Ancestry	ZONE	Off Reserve Aboriginal Identity
965	1	405
1,715	2	650
800	3	270
3,480	Totals	1,325

Source: 2006 Census of Population (based on Ethnic Origin question and Aboriginal identity)

