BUILDING INTERNATIONAL AWARENESS ON ABORIGINAL ISSUES

MARCH 2000

CITIZENS FOR PUBLIC JUSTICE

CANADIAN RACE RELATIONS FOUNDATION
FONDATION CANADIENNE DES RELATIONS RACIALES

Prepared by Ann Pohl for **Citizens for Public Justice**
with support from the **Canadian Race Relations Foundation**

TABLE OF CONTENTS


DEDICATION

This effort is dedicated to leaders and activists such as Chief Pontiac, Tecumseh, Crazy Horse, Louis Riel, Big Bear, Anna Mae Aquash, Mary Two-Axe Early, Jenny Margetts, Leonard Peltier, Jeanette Corbiere Lavell, Milton Born-with-a-Tooth, Sandra Lovelace, Dudley George, Joe David, Elizabeth Penashue, John Corbiere, Mary Pitiwanakwat, Marc Vollant, and Donald Marshall. We also honour the millions of unrecognized victims of the "Indian Wars," which still today claim casualties, such as Pamela George and Leo LaChance. May we live to see justice.

MIIGWETCH! NYA'WEH!
ALL MY RELATIONS

INTRODUCTION

PREFACE AND ACKNOWLEDGEMENTS

This report was commissioned by Citizens for Public Justice (CPJ), a national, non-Aboriginal organization involved in promoting justice in Canadian public affairs for over 35 years.

CPJ has a history of active solidarity on Aboriginal rights:

- intervenor status in the MacKenzie Valley Oil and Pipeline Hearings, 1975
- spearheading a successful Supreme Court challenge on the MacKenzie Valley Oil and Pipeline proposal, which resulted in a ten-year moratorium on that project in order to undertake more thorough assessments of impacts on aboriginal people as well as social and environmental impacts
- intervenor status in the National Energy Board's Norman Wells Pipelines hearings, 1980
- participation in the Old Man River Dam hearings, 1990
- participation in Ontario Hydro's 25 Demand/Supply Plan hearings, 1992
- providing legal and policy support for groups such as the Ingenika Messilinka in British Columbia, the Grassy Narrows Band in Ontario, the Lubicon in Alberta, the Teme Augama Anishnabe in Ontario, the Dene Nation in the Northwest Territories, and the Innu of Labrador in their community responses to land rights and industrial or military developments on their traditional lands
- publishing *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* through House of Anansi Press, and *Wîciwetowin: Walking Together on the Path of Justice,* an adult study guide meant for church groups

We have been ably served in this solidarity work by staff such as John Olthuis and Lorraine Land.

We have seen how courts and the political system across Canada seem unable both to change centuries of systemic racism toward Aboriginal people and, in particular, to build Canadian recognition of land, self-determination, and other rights. In cases where Aboriginal rights have been recognized by the courts, these affirmations have made little substantive difference to public policy on, or public acceptance of, Aboriginal issues. We have been pleased to have the opportunity to explore international opportunities through this project.

Funds from the Canadian Race Relations Foundation's "Initiatives Against Racism" program enabled us to undertake the research for this project. We are grateful for their financial support.

We were pleased to contract with Ann Pohl, of the Coalition for a Public Inquiry into the Death of Dudley George and the Turtle Island Support Group, to prepare this paper. The Coalition has also financially supported the project.

While preparing this document in the Fall of 1999, we received legal and other expert advice from Robin Buyers, Mary Byberg, Mary Eberts, Hilary Mckenzie, Stella Militano, Alex Neve, Paul Lamarre, Chris Reid, Sarah Valair, Low Income Families Together, Pro Bono Legal Students, and many other individuals and groups.

Support and constructive criticism from many Aboriginal rights and solidarity organizations and activists, including Roger Obonsawin, Wii Seeks, Kenneth Deer and members of the Aboriginal Rights Coalition, have given this paper great strength.

We are most grateful for all this help. However, any errors are ours.

A MESSAGE FROM THE RESEARCHER

This discussion paper does not exhaustively examine all international strategies pertinent to the rights of First Peoples across Canada. Its purpose is to initiate public awareness and discussion about these facts: Aboriginal inherent rights — treaty, land and cultural issues — are internationally recognized human rights *and* there are established routes to have these rights recognized.

Some people across Canada, Aboriginal and non-Aboriginal, may find it odd to think of "Aboriginal rights" as "human rights." After all, the one is mostly about land and resources, and the other mainly deals with civil rights to protest. At least, that's what many people think — but they're wrong!

The United Nations, guardian of several international *human rights treaties*, is clear on the subject. The very first paragraph of the UN's two major international accords on *human rights* says "all peoples have the right to self-determination" and, in that context, all peoples have the right to "freely dispose of their natural wealth and resources." From this comes their guaranteed right to "their means of subsistence." (One of these accords deals with civil and political rights, and the other governs economic, cultural, and social rights. See Appendix 1 for the entire wording of this article.)

This paper also presents examples of international strategies used by First Peoples and support groups to assert Aboriginal inherent rights. Some of these have been quite successful. Others that were not successful in the past might be tried again because international awareness of First Peoples' issues has grown tremendously in the past decade. It is important to realize that many of these ideas are not new, but the international political climate is changing, which forces us to toss out some old strategies and come up with new approaches.

We hope that the ideas presented here will build not only awareness, but a greater consensus about how we might collaborate, or support one another, to fight for the land, treaty, economic, cultural, and social rights of First Peoples in an international human rights context. This paper's final pages present ideas about future international strategies, and propose a way to begin networking to build dialogue around these strategies.

A NOTE TO THE READER LET US KNOW WHAT YOU THINK ABOUT THIS PAPER.

Please fax comments about this paper to: Harry Kits at 416-979-2458;

Write: Citizens for Public Justice, #311, 229 College St, Toronto, Ontario, M5T 1R4;

Phone: Ann Pohl at 416-537-3520;
email annpohl@interlog.com ;

OR join the interactive online networking around this paper on the Aboriginal Rights Coalition's web site at home.iSTAR.ca/~arc/ .

ABORIGINAL RIGHTS ARE NOT RESPECTED IN CANADA

THE STRUCTURAL FLAWS

WHY IS CANADA NOT A CONFEDERATION OF MANY FOUNDING PEOPLES?

The reason that Aboriginal rights, and related issues, don't get resolved in Canada is because the entire nation of Canada is built on a crooked foundation. We *should* view ourselves as a confederacy of many founding Peoples, including the at-least 55 distinct First Peoples who are indigenous to this area of Turtle Island[1]. Instead, "Canadian" social and political history is based on the idea that Canada is a nation with two founding Peoples: the French and British newcomers. How did this come about?

TREATIES VIEWED FROM BOTH SIDES

A few hundred years ago, explorers and commercial representatives financed by European monarchies arrived on Turtle Island. While many were honourable in their dealings with First Nations, others used violence, deceit, and theft to take control of the New World and its resources. When international treaties were signed between spokespersons for European governments and First Peoples, the Europeans often regarded these treaties as a way to achieve the surrender of land and resources on a step-by-step, or incremental, basis.

From all accounts, the First Peoples of northern Turtle Island were operating from an entirely different cultural context than the Europeans. The Peoples were originally open to the idea of sharing their land and resources — provided a *favourable* agreement could be made. However, negative circumstances (especially widespread illness due to imported European diseases) usually forced Aboriginal leaders to the negotiating table, so they often had poor bargaining power.

After several hundred years, Aboriginal Peoples find very little favourable outcome from these treaties. In too many cases, the treaties have not been respected and the situation of First Peoples has worsened as result of these betrayals. Yet, still today, these agreements are recognized as international treaties between sovereign nations.

REBUILDING THE CANADIAN FOUNDATION

A just society cannot be built on a crooked foundation.

It is a daunting task for Canada to go back and rebuild its foundation (that is, its political structures) in order to meaningfully address First Peoples' treaty, land, social, economic, and cultural rights. First of all, there is the size of the problem: the long-standing grievances of First Peoples relate to vast amounts of Canada, including virtually all Crown land and resources. Secondly, the complexity of the issues is overwhelming: surrender and sovereignty, treaty violation matters, payment of compensatory settlements, competing claims, and so on.

Yes, to reconcile all these differences will be costly — and it's not just because of the financial costs of making settlements. Underlying the countless unresolved issues is a structural flaw in the bureaucracy of the Government of Canada; therefore, a new way of settling outstanding claims and disputes is needed. This will require a major reorganization of federal ministries and departmental mandates. (See Appendix 2.)

As long as it can be avoided, Canada will not make this huge effort. Yet, First Peoples, and those who work in solidarity with them, know that these changes are unavoidable. From time to time even Canadian politicians

1. Turtle Island is the name many First Peoples call the land we live on (the "Americas"). This name comes from the Creation story of the Algonkian and Iroquian Peoples.

seem to realize that they can't forever postpone justice. The Royal Commission on Aboriginal Peoples was one moment when Canadian politicians woke for a brief while, and appeared to be interested in rebuilding those flawed relationships.

EXPERT PROPOSALS AND WARNING SIGNS ARE BEING IGNORED

RCAP PROPOSED MASSIVE CHANGES TO AVERT THE LOOMING CRISIS

The Royal Commission on Aboriginal Peoples (RCAP) was formed in 1991 to address Aboriginal, Canadian, and international outrage about events that occurred some months earlier in the Mohawk community of Kanehsatake, part of the town of Oka, Quebec.

During the summer of 1990, an armed confrontation between the Mohawks, the Quebec police, and neighbouring communities occurred at Oka. From the Mohawk side, the spark was the Town of Oka's plan to double the size of its golf course. Oka's plans required the demolition of a forested area called The Pines — land of great spiritual significance to the Mohawks. As barricades were raised at Kanehsatake (and in her sister community of Kahnawake), one police officer was killed. (To this day, it is disputed whether police or Mohawk gunfire killed him.) Tensions mounted until finally the Canadian Armed Forces replaced the Sûreté du Quebec.

The international human rights community became alarmed at what they saw. Images from Oka, as this protest became known, were broadcast around the world. Oka lasted 78 days before the 41 people inside the Kanehsatake barricades decided to leave the barricades and endure the courts to continue their fight for justice. Canadians breathed a huge sigh of relief.

It was Canada's failure to address the long-standing land and treaty rights grievances of the Mohawks that led to this bitter confrontation at Oka. Therefore, in order to restore its reputation with the international community, Canada had *to be seen to be doing something.* A Parliamentary investigation into Oka recommended that Ottawa establish the Royal Commission on Aboriginal Peoples (RCAP). The RCAP's 1991 mandate was very broad, mandating authority to:

> "…investigate the evolution of the relationship among Aboriginal Peoples (Indian, Inuit and Métis), the Canadian government and Canadian society as a whole… [and] propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront Aboriginal Peoples today. The Commission should examine all issues which it deems to be relevant to any or all of the Aboriginal Peoples in Canada…"[2]

After five years of research and almost $60 million, spent in part crisscrossing the continent three times to hear from First Peoples in their communities, the five-volume, 2,200,000-word report was released in 1996. The final *Report of the Royal Commission on Aboriginal Peoples* concluded that, under the existing structure, First Peoples have no hope of a just settlement of their long-standing land, treaty, and other related grievances with Canada. The RCAP report proposes essential structural changes to address land, treaty, and resource rights issues in the context of *both* the First Peoples' internationally recognized right to self-determination *and* the institutional bias of Canada against this right. Furthermore, as the RCAP Report makes clear, these recommendations for structural reorganization are not new. In one form or another, proposals for massive changes in the Canadian bureaucracies dealing with First Peoples' land and treaty rights have been floating in the political ether for decades. (See some references in Appendix B.)

OTTAWA SHELVED THE FUNDAMENTAL RESTRUCTURING PROPOSALS IN RCAP

By the time the RCAP report was released,

2. Final *Report of the Royal Commission on Aboriginal Peoples*, Volume 1, page 2.

memories of Oka had faded. Aboriginal Peoples' rights were once again not a popular cause in Canada. It surprised few Aboriginal persons that, on the very day the report was released, the federal government announced it would not implement RCAP's major recommendations, including the restructuring portions.

The shelving of the vast majority of the RCAP report illustrates that Ottawa is not prepared to contemplate the massive reorganization required to address what this paper calls "Canada's crooked foundation." It also reveals the shortsightedness of Canadian politicians who think that these structural changes are unnecessary. They do not realize that a crooked foundation will eventually bring down the whole structure.

OTTAWA ATTEMPTED TO COVER UP ITS SHELVING OF THE RCAP

The cover-up, or disinformation, campaign about the RCAP began immediately. Within one year after the RCAP report's release, the Government of Canada reported to the United Nations Human Rights Committee (UNHRC) that the link between Oka and the RCAP was as follows:

"A Parliamentary Committee investigated the Oka situation and issued a report. Its recommendations for a Royal Commission on Aboriginal Peoples, *for measures to resolve internal governance issues, and for community healing* have been implemented… [emphasis added]"[3]

This declaration is both carefully worded and deceptive. In essence, Canada told the UNHRC that the mandate of the RCAP was to deal with "internal governance" and "community healing." In truth, these were only just a small portion of the 1991 mandate given to the RCAP, as noted in the quote.

For more than two years now, Canada has energetically pursued a public information campaign regarding the adequacy of their response to the RCAP. They have entitled their response *Gathering Strength*. As signalled by the government's comments to the UNHRC, *Gathering Strength* deals only with "internal governance" and "community healing."

Most of the Aboriginal policy actions undertaken by the federal government since the release of the RCAP report have dealt with the social problems affecting Aboriginal communities. Funding has been directed towards fixing problems of visible disparity, such as housing, water and sewage systems and other measures. To many people, the federal response to RCAP appears to be an exercise in representing on-going, existing policy as grand, new initiatives. Furthermore and most importantly, while the Aboriginal social needs that are addressed through these programs are immediate and profound, the government's response does not deal with fundamental change — change which gets at the *cause* of the social problems.

The RCAP makes it abundantly clear that simply tinkering with existing programs won't work. Social disparities and internal governance issues cannot be resolved without addressing the foundation of the political relationship between Aboriginal peoples and non-Aboriginal Canadians. RCAP makes underlying restructuring proposals for handling Aboriginal-Canadian relations, and these recommendations legitimately arose from its full 1991 mandate. The longer we wait to do the hard work to change the foundation of the relationship, warns the RCAP report, the faster the social problems will continue to grow, and the harder they will be to deal with in coming years.

INCREASING CONFLICT BETWEEN FIRST PEOPLES AND CANADIAN NEIGHBOURS

Canadians cannot continue to ignore or deny the human rights issues of First Peoples. One need only reflect on the following list, all of which occurred during the past decade, to understand the gravity of the current situa-

3. *Canada's Fourth Report on the International Covenant on Civil and Political Rights* (prepared for the regular review of Canada's compliance); Para. 298 (Federal Section)

tion:

- Oka / Kanehsatake (referred to above)
- Gustafsen Lake — Alarming reports have surfaced about the methods, such as land mines and psychological operations to smear reputations, used by officials dealing with Aboriginal persons engaging in a traditional Sundance Ceremony, who seemingly "trespassed" on a non-Aboriginal-owned ranch in British Columbia where virtually all Aboriginal land is unceded.[4]
- The terrible events of Ipperwash Park in September 1995, where the provincial police killed a First Nations citizen, severely beat another, and arrested dozens more during a non-violent protest in a closed park concerning land and treaty rights disputes (which have been unresolved for more than half a century).
- The massive citizen uprisings — including leadership from politicians associated with at least three different parties represented in Parliament — against the settlements of the Nisga'a treaty in B.C. and against the Agreement-in-Principle to settle the 200-year-old land claim with the Ontario-based Caldwell First Nation.
- The racist and violent elements in the non-Native response to the exercise of fishing rights by the Chippewas of Nawash on the Bruce Peninsula in Ontario and the recent Supreme Court decision recognizing Mi'kmaq fishing rights.

THE "STOP WHINING" SENTIMENT ACROSS CANADA GROWS LOUDER

There are those who simply believe that Aboriginal Peoples should quit complaining. Their position might best be summed up as: "It's time to grow up and quit whining. Like it or not, the Europeans arrived here more than 500 years ago and they have taken over. So find a way to adapt, and make the best of it."

The individuals who take this sort of position might be motivated by political or commercial interests. Some among them might even be persons of goodwill who are entrepreneurial in nature and genuinely feel that this course of action would be "best" for First Peoples. That is, First Peoples can and should "pull themselves up by their bootstraps" and make a better life for themselves and their families in the mainstream Canadian culture.

Organizations espousing these views have sprung up during the past decade in areas such as British Columbia and southwestern Ontario where Aboriginal treaty rights have become major public policy issues. These groups tend to frame their opposition to Aboriginal rights as part of their overall support for everyone having the same rights, but these same groups are seldom seen to be active in favour of human rights generally — their activities are normally limited to opposing First Peoples' claims. Increasingly, these groups are finding support at various levels of government and from outspoken elected officials — an alliance which is rolling back the progress made in First Peoples-Canadian relationships during recent times.

Many Canadians do not realize the serious global, national, and personal implications of Canada and Canadians shirking their internationally recognized responsibilities to First Peoples. The social costs are continuing to rise as biases, which were waning just a few years ago, become re-entrenched.

4. See "Don't Bury the Tragedy at Gustafsen" by Anthony J. Hall; Vancouver Sun, Jan 21, 2000, pg A19. For more details about concerns arising from Gustafsen Lake, view the SISIS website (See Appendix 3 reference)

THE PRICE OF NOT RESOLVING ABORIGINAL ISSUES

THE GLOBAL PRICE

In international circles, Canada is regarded as a world leader in the promotion of human rights. Canadian leaders and ambassadors have consistently pressed for protection of high standards on the human rights issues of marginalized and vulnerable populations.

At the same time, there is growing international awareness that Canada is failing to address long-standing human rights issues within its own territory. These issues, which relate to the rights of marginalized and vulnerable First Peoples, are of significant concern to major international non-governmental and inter-governmental organizations, such as Amnesty International and United Nations human rights agencies.

By not following its own standards at home, Canada weakens its voice of conscience — its global moral authority — on human rights issues. This damage lowers the bar — already precarious — that separates acceptable from unacceptable in the human rights arena. Some nations even take refuge in Canada's shortcomings, saying the continued poor treatment of First Peoples across Canada invalidates Canadian moral authority to speak about human rights abuses internationally. These nations, who may stand accused of widespread and horrendous human rights abuses, will consciously refuse to take heed when Canada criticizes their actions.

The 1998 APEC meeting provides an example. Prime Minister Jean Chretien spoke at a public social event about international human rights concerns vis-à-vis Malaysia, which at that time included child labour exploitation and the violations of rights of opposition politicians. Reporter John Stackhouse captured Malaysian Prime Minister Mahathir Mohammad shrugging off this criticism with the following remarks: "I'm concerned with human rights worldwide, including Canada... I'm concerned with the red Indians. I don't see them at APEC." [5]

There is a global price for the Canadian government's continual postponement of justice for First Peoples. It is the lowering of human rights standards to which other nations can be expected to adhere. Thus, the failure of Canada to meaningfully address the systemic and structural causes of Aboriginal rights issues is of great concern to all human rights activists in Canada and abroad.

THE NATIONAL PRICE

Those who shrug off First Peoples' concerns are not thinking about Canada's need for stable relationships among all Peoples — a long-term stability that can only come when we genuinely evolve into a federation of *all* Peoples who live here. As long as First Peoples' issues remain unresolved, Canada will be a nation in constant fear of disintegration.

Much public and political concern has focused on the consequences to Canada if Quebec decides to secede. The threat of Quebec secession may pale in comparison to the consequences of continuing failure to resolve Aboriginal rights and related issues. While the Quebeçois are made cautious by the fear of what they may lose through secession, many First Peoples feel they have nothing at all to lose by fighting for their rights through whatever means available.

From the child on the Indian Reserve and the youth in the urban Native ghetto, to the Band Council Chief, the social worker, the resource development corporation executive, the Aboriginal solidarity activist, and the federal Cabinet Minister — we all know we're sitting on a powder keg of unresolved rights and relationships. It's time to act.

5. The Globe and Mail, November 16, 1998.

THE PERSONAL PRICE

Canada's stability and security as a federated nation and its leadership role regarding international human rights must be kept in mind. Yet, there is an even broader purpose calling all persons to support First Peoples. Instead of the growing backlash, now perceptibly at a "flash" point in many parts of Canada, *we need forward movement to protect broader human rights standards within Canada*, as well as to resolve the underlying human rights issues (for example, treaty violations, unsettled land rights disputes, and so on).

It is also important that to recognize the growing reality: North American authorities are less and less inclined to respect the political and civil rights of individuals and groups — especially youth, Aboriginal persons, persons of colour, environmentalists and activists who take issue with the corporate agenda behind globalization. Police stereotyping and targeting of specific populations is an issue which is gaining increasing attention — but merits even more, as the gap between the poor and the rich grows across North America. The manner in which protestors were handled at the 1998 APEC meeting in Vancouver, and the recent images from the WTO meeting close to us in Seattle, Washington, also give cause for concern. As well, recent legislation in jurisdictions such as Ontario targets the behaviour of specific populations as criminal, denies the right to "freedom of association," and so on. These public policy trends give reason for alarm.

The best way to strengthen human rights is to *insist* that these rights be respected by asserting and using them. In this way, the rights of persons, including all those who campaign for social and economic justice, equity, human rights, and other social change, will be secured for another day and another use. The rights and protections for one group of people within our society have an impact on the rights of all other particular groups: religious communities, refugees, women, poor people, children, ethnic and cultural minorities, and other vulnerable populations. If the rights of the most marginal populations are forfeited, other groups occupy the bottom rung and inherit the status of "most vulnerable."

Working to ensure the rights of each of these particular populations helps to ensure rights and justice for all. Everyone concerned with human rights for any reason will be acting in her or his own interest by affirming support for First Peoples' land, treaty, economic, social, and cultural rights — as defined in the United Nations Covenants to which Canada is a signatory.

THE BARRIERS TO EFFECTIVE RESOLUTION OF ABORIGINAL RIGHTS ISSUES IN CANADA

SYSTEMIC BIAS

Systemic repression, or institutionalized bias, has been a constant feature of the Canadian-Aboriginal relationship. (If some of the following facts surprise you, bear in mind that many people say that South Africa's apartheid system used Canada's Aboriginal policies as a model.)

Prior to 1951, *Ottawa had to give its consent to any court action taken by First Peoples* to seek justice on a land or related Aboriginal rights dispute. To date, the Canadian Human Rights Commission (CHRC) is still restricted from considering matters related to bias arising from the Indian Act. Also, prior to the mid-1900s, persons of Aboriginal heritage who became lawyers could not retain their legal "Status" as "Indians." These systemic biases have foreclosed many legal options for First Peoples seeking their Aboriginal inherent rights.

To this day, only Aboriginal communities which are recognized under Canada's Indian Act are eligible for funding for basic community programs and services such as health, education, housing, and infrastructure such as water, electricity and sewage. In addition, as discussed below, only registered "status" bands are eligible for funding for the costs associated with court challenges. "Non-status" Aboriginal communities are completely ignored by all levels of government in Canada and many are terribly impoverished.

Furthermore, in a perverse Catch-22, only communities which are comprised entirely of status Indians are eligible to apply for registered band status under a longstanding policy of the Department of Indian Affairs. Since virtually all non-status First Nation communities are comprised entirely or largely of non-status Indians, they can never even apply to be registered as Indian Act bands. Even for those few communities which are eligible to apply, the process is long and onerous. [6] These are the sorts of policies which some activists call *cultural genocide.*

The federal policy of refusing to recognize new bands has not softened in the past 100 years. In fact, with the exception of a brief period in 1985 (when David Crombie was Minister of Indian Affairs), the policy has actually hardened over the years. Some Aboriginal communities have been trying since the 1920s to be recognized as "status" bands.

While the Indian Act was amended in 1985 to allow some individuals who had lost status through marriage or enfranchisement to re-apply, it is important to note that the amendments (known as Bill C-31) did not remove all the discriminatory status provisions of the Indian Act. First of all, the new rules apply only to individuals - unrecognized communities are still prohibited from becoming recognized as "bands" and receiving basic services. Further, tens of thousands of Indians remain "non-status", with no hope of ever being registered or being allowed to live on a reserve. The new rules are still highly arbitrary and have nothing to do with Indian ancestry or culture - a full-blooded Indian whose parents were non-status is still not eligible for registration.[7]

THE COURTS CAN'T DO IT

Recent events demonstrate that the Canadian

6. For more details: Contact the Department of Indian & Northern Affairs for their "Guidelines for Registration of New Bands".
7. See: "Indian Status and Band Membership Issues, Library of Parliament, (1996); see also: RCAP, Vol. 1, pg. 303-307.

court system is unable to change centuries of entrenched racism toward Aboriginal Peoples.

From *Fairgreaves* to *Delgamuukw* to the *Marshall Decision* (to name just a few), court decisions have affirmed Aboriginal land and treaty rights. Yet, these rulings have made little substantive difference to public policy, and a supportive judiciary has not been at all effective at changing public attitudes. Racist attitudes may even be hardening across Canada, due to contradictory — or, at best, half-hearted — efforts on the part of responsible Canadian officials in the face of these positive court decisions!

A therefore understandable skepticism on the part of First Peoples about the merits of the court process is compounded by a lack of resources, and sometimes even recourse. (Many Aboriginal persons refer to Canada's courts as the "Just Us" system.)

Recognized communities of Status Indians can often borrow funds from the government, as a loan against their final settlement, to fight for their land and treaty rights. However, for the "forgotten" Peoples — the hundreds of thousands of indigenous persons and Métis denied federal "Status" — such funds are not available. There is some provision for financing cases related to Canada's Charter of Rights, but the Court Challenges program doesn't fund *any* Section 35 challenges[8] and cannot deal with matters related to the right to self-determination (which is not included in the Charter of Rights). Since the courts have consistently held that Aboriginal and treaty rights claims must be proven through lengthy trials, with expensive and very detailed expert testimony, improverished "non-status" communities, with no source of funding for court challenges, are effectively prevented from asserting claims through the courts. Not surprisingly, virtually no such claims have been litigated.

Aside from efficacy and access, other difficult issues arise for First Peoples considering strategies which require lengthy and expensive court battles in Canada's adversarial legal system. Most Aboriginal societies in Canada are based upon a strong cultural ethic of building harmony and consensus by avoiding conflict. Thus, they often find that court challenges, which require an aggressive, adversarial stance, diminish a vital part of their culture. Even if they can afford the costs of litigation, some First Peoples may avoid it because they feel that their community's cultural and mental health is of foremost importance.

FEDERAL-PROVINCIAL/ TERRITORIAL BUCK-PASSING

The jurisdictional seesaw between Ottawa and the provinces and territories accounts for a high percentage of unresolved land, treaty, and other human rights disputes of First Peoples. On one hand, the federal government has the constitutional mandate to be responsible for "Indians and lands reserved for Indians." On the other, the provinces and territories have responsibility for natural resources, the environment, education, provincial police forces, and so on, and *no* mandate for Aboriginal rights.

Canadians are familiar with this phenomenon, which is commonly known as "federal-provincial wrangling." First Peoples often refer to this as "buck-passing": Ottawa tries to avoid its human rights and treaty-based responsibilities by saying that the particular case being discussed is under provincial jurisdiction when the matter under discussion relates to, for example, resources or land use regulations.

Similar problems arise when Ottawa decides to devolve or off-load responsibility for programs serving, for example, the majority of Aboriginal persons (who live off-Reserve) to lower levels of government. When it comes to picking up the tab for these social programs, the provinces usually fight to force Ottawa to pay the costs. The lower levels of government argue that, while these programs *do* fall under their jurisdiction, the clientele *do not* because of the federal responsibility for

8. Section 35 of the 1982 Constitution Act recognizes and affirms existing Aboriginal inherent and treaty rights.

"Indians." Meanwhile, Aboriginal Peoples encounter severe limitations on the very programs that are required to rebuild their communities.

This vicious circle of denying political responsibility based on jurisdictional divisions affects a broad range of social justice campaigns, but the buck-passing is even more disturbing in the Aboriginal context. The jurisdictional divisions (lines drawn in policy on a piece of paper) were imposed by a colonial-style government on the Peoples who were indigenous to this land, and they have an impact on virtually all First Peoples' issues. To mention just a few examples, buck-passing is a major factor in the Lubicon/Daishowa issue, the various Innu Nation land and resource rights disputes, "Lands for Life/Living Legacy" opposition by the Nishnawbe-Aski Nation, the demands for recognition of the many Mi'kmaq communities in Newfoundland, and the many calls for a public inquiry into the death of Dudley George at Ipperwash Park.

In the end, Ottawa has political (constitutional), ethical and legal (treaty promises), and international (human rights accords to which Canada is signatory) obligations to ensure that these matters are addressed. Ottawa also has sufficient means at hand to require that the provinces and territories cooperate.

BIAS BY BUREAUCRATIC GUIDELINE

Countless other issues simply can't be acted on by First Peoples because there is no available recourse without complicated legal construction and endless resources. In these cases, the prejudicial effect arises from a government policy or guideline, rather than legislation.

Examples of this kind of prejudice to Aboriginal rights relate to hunting, fishing, and taxation matters. This situation is also most common with the hundreds of thousands of Aboriginal persons across Canada who have been legally, and unethically, disenfranchised from their Aboriginal "Status." Because these matters are often governed solely by bureaucratic rules and regulations (not legislation), recourse through the courts may not even be possible — until and unless charges are laid by the government, forcing the Aboriginal persons to assert their rights through a defence against the relevant government's charges.

The limited resources and mandates of the Human Rights Commissions can also obstruct remedy to some matters.

GETTING "EXHAUSTED" FROM THE LACK OF "INTERNAL REMEDY"

The pursuit of resolution of any Aboriginal rights issues is time-consuming and expensive. It is often demoralizing and demanding of enormous personal sacrifice. As mentioned above, the very nature of the process (Eurocentrically adversarial and individualistic) can cause community-wide cultural disruption. If that isn't enough, while First Peoples are usually working with limited resources, governments have vastly greater resources to defend their denial of the legitimacy of Aboriginal rights.

If the griever perseveres to the end and comes up empty-handed, then she or he can proceed to take the issue to the United Nations Human Rights Committee (UNHRC) or another international body, which are the ports of last resort on human rights issues. However, it is not easy to take a case to the UNHRC or another international court because the international justice system can *only* consider matters that have been taken to *every* possible court and to every other possibility for redress within the member country's system.

To be clear, a person with a human rights grievance must prove that *all possible avenues within Canada* (that is, "*internal*" or *domestic* remedies) *for resolving the matter have been attempted and have failed before the case can proceed to the UNHRC* or any other international body. This is called "exhausting internal remedies."

(The essential problem identified in this paper 'is that Canadian policies, legislation, and procedures — and the bureaucracy that runs this webbed system — deny First Peoples the right to “effective remedy”, a right guaranteed by Article 2 of the International Covenant on Civil and Political Rights or ICCPR. [See Appendix 1 and Appendix 3.] Because the deck is so stacked against the individual(s) working to defend their human rights, sometimes grievers get exhausted and feel obliged to give up. In other cases, as noted above, courts may pass favourable judgements, but the decisions ultimately affect neither public policy nor public attitudes in any meaningful way. Concluding sections of this paper directly address the denial of “effective remedy.”)

There are many advantages in turning to bodies such as the UNHRC. Essentially a peer pressure strategy, the UNHRC is effective through “shaming” the nation(s) who are found to be in violation of human rights. This “shaming” by the international community of a nation’s peers *can* bring about improvement. In Canada’s case, this strategy has been effective in the past for two reasons:

1) Canada has agreed to comply fully with the international human rights treaties.
2) Canada has established an international identity, of which it is very proud, as a champion of human rights.

TURNING TO THE INTERNATIONAL COMMUNITY FOR HELP

WHY TURN TO THE INTERNATIONAL HUMAN RIGHTS COMMUNITY?

APPEALS TO THE INTERNATIONAL COMMUNITY TO PUSH CANADA INTO ACTION

For decades, First Peoples' leaders and activists have used international strategies to gain wider recognition of their continuing human rights problems in Canada. Among other factors, international pressure seems to have made an impact on how the Canadian judiciary views these matters. As noted above, since the international outrage about Oka, several important court decisions have recognized Aboriginal inherent and treaty rights. Yet, it is clear that jurisprudential success has not brought about adequate policy or social change. Aboriginal rights activists are again turning to the international community for support.

Canada is proud of its standing in the international community. Its politicians and the Canadians who elect them enjoy their image as world leaders in the field of human rights and humanitarianism in general. When the attention of international non-governmental organizations and the United Nations is brought to the long-standing and profound grievances of First Peoples within Canada, Ottawa squirms. Canada's delegations to these international bodies lose their sheen and finesse. Sometimes they even move into action on some of these issues. It may not be a sure win, but the international arena looks good in comparison to:

- torturously slow court appeals;
- entrapment in federal-provincial or federal-territorial wrangling;
- bad-faith negotiation due to systemic and institutional bias; and
- even abuse of state power such as that which has been central to the Ipperwash affair from the beginning.

HOW CAN INTERNATIONAL SUPPORT AND PRESSURE HELP?

International strategies provide valuable support to First Peoples and their supporters in at least three ways:

- They provide opportunities to share analysis/strategies with Indigenous Peoples from around the world.
- They highlight these issues among international non-governmental organizations and other potential allies, including partners across Canada.
- They force governments across Canada to focus on addressing these matters.

INTERNATIONAL STRATEGIES HAVE BEEN EXPLORED IN THE PAST

A quick survey of the past century demonstrates a range of international strategies that have been tried:

- In the 1920s, the Haudenosaunee took grievances directly to the League of Nations and gained considerable support for the idea that that the Haudenosaunee be recognized as a nation entitled to the right of self-government. Britain ultimately rescued Canada on that occasion, blocking the growing positive sentiment by charging that the League was interfering in the British Empire's "internal affairs."[9]
- Throughout this century, traditional leadership — for example from the Treaty Six Confederacy — and the Mi'kmaq People have pursued a variety of international strategies, including approaching the World Court.
- Numerous First Nations and their advo-

9. Olive Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992), pages 356-357; also discussed in *Basic Call to Consciousness*, a 1978 *Akewasane Notes* publication, pages 18-33.

cates have attempted to get redress through the Privy Council in London, and even through direct appeal to the British monarchy.

These are just a few out of many, and they are all worth exploring because some efforts made in the past might be more successful if re-tried today, given the heightened international awareness about the human rights abuses endured by First Peoples across Canada.

STRATEGIES FOR INTERNATIONAL INVOLVEMENT

INDIGENOUS PEOPLE TO INDIGENOUS PEOPLE STRATEGIES

First Peoples across Canada have engaged in many indigenous-to-indigenous strategies, including international summits on common political concerns and on cross-border environmental matters, as well as through more formal networks such as the World Council of Indigenous People. Here are a few examples of some particular initiatives:

- The Gitxsan People initiated a predominantly economic and cultural alliance with various First Peoples to the south in the mid-1990s. This sort of initiative — where Peoples meet Peoples, setting their own agenda and establishing action plans — has an obvious, immediate attraction. However, it offers limited success in the short-term because most indigenous Peoples have limited resources. The repressive political and social reality experienced by many Peoples commonly thwarts attempts to strengthen local economies and other priorities.
- In 1999, the Assembly of First Nations (AFN) embarked on a very public bridge-building project with its U.S. counterpart, the National Congress of American Indians. The AFN National Chief referred to this as setting "in motion a process of reunification" across both sides of a border that is completely artificial to First Peoples, and the "best way to give international focus to our issues."
- Representatives of First Peoples from across Canada have established their credentials within United Nations forums. Committed indigenous participants from this part of Turtle Island can be found at meetings of the UN Working Group on Indigenous Peoples (WGIP) and the Intercessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples.

  Various Nations and Confederacies have invested considerable resources in working with these Working Groups in order to bring to successful completion the wording of the Declaration of Indigenous Peoples' Rights. One of their principal criticisms of the entire international human rights framework — which indigenous delegates strive to address through the Draft Declaration10 — is that it advocates individual rather than collective rights. This emphasis contradicts what this paper earlier identified as the "strong [Aboriginal] cultural ethic of building harmony and consensus", and belies the purported universality of existing human rights codes, with their decidedly Eurocentric orientation.

  Not surprisingly, Canada remains opposed to the adoption of this Draft Declaration. One of the thorny issues tackled by the Draft Declaration is the matter of defining 'membership' of a nation or group of First Peoples. The question of who is a member of a given First Nation arises in all treaty and land rights settlements negotiated by First Peoples with Canada, because the members of that community are required to vote on the agreement. Ottawa's use of The Indian Act and related colonial-based

10. This issue is also a prime motivation behind the significant priority currently being given, by indigenous persons from this hemisphere, to reform of Organization of American States' human rights treaties. As Canada is not a signatory to the OAS human rights treaties – for other reasons – this paper doesn't address the topic beyond this comment.

systems for determining membership issues is in direct violation of the rights provided for in the Draft Declaration. These rights include the right to self-identify oneself as indigenous and to be recognized as such. This is just one illustration of the importance, value, and controversial nature, of the Draft Declaration.

Still, most indigenous participants in the WGIP and the Intercessional Working Group on the Draft Declaration describe their experience as very positive. (One participant described this process as "a giant negotiating table." On one side are "the governments of the world, for whom the UN is in many ways a private club," he says, and on the other are "First Peoples from around the world, who support one another.") A committed and sizeable core of Aboriginal rights activists from across Canada believe that this sort of arena is ultimately the most effective place to put personal energy.

- The first sitting of the First Nations International Court of Justice (a project initiated by the Chiefs of Ontario to implement "First Nations jurisdiction" in sovereign law) was held in Ottawa in April 1996. While the first sitting focussed on the Court's mandate, this entire initiative responded to the fact that "internal remedies" in Canada seldom provide any meaningful redress because of systemic bias, inequitable resources during the dispute process, jurisdictional wrangling, and even occasional abuses of power.

  If resources could be raised to fund a second sitting of the Court, perhaps it could look into one of these areas in more depth (e.g. denial of effective remedy or into specific tragic cases, such as that of Ipperwash, the Lubicon, the Innu and/or Peltier.
- The International Indian Treaty Council (IITC) is a non-governmental economic and social council of the United Nations. The IITC monitors indigenous rights in the western hemisphere, and challenges governments world wide on human rights violations. They are particularly active in the USA, where they hold public events such as the annual Un-Thanksgiving Day Sunrise Ceremony on Alcatraz Island. (For further information, try these links: http://treatycouncil.org/treatyinfopage.html or www.lisn.net/unchr55.htm .)

INTERNATIONAL SOLIDARITY: NON-ABORIGINAL SUPPORT TO FIRST PEOPLES

Evidence shows that First Peoples can effectively collaborate, domestically and internationally, with non-Natives who are primarily concerned with human rights and/or the environment. Yet, for every victory in the alliance between non-Aboriginal supporters and First Peoples, there are many efforts that did not succeed — such as the campaign by the Innu People against low-level military flight tests by NATO. Still, some of the outstanding examples are success stories:

- Recognition of the Aboriginal rights of the Lubicon Cree People has been the focus of an organized network of non-Aboriginal supporters across Canada, the U.S., and abroad. These supporters have been particularly helpful in fending off plans by the pulp-and-paper giant Daishowa to log the forests of the Lubicon traditional territory before the land rights issue is settled. Currently the Lubicon negotiators and their supporters find themselves caught in the jurisdictional wrangle that marks so many unresolved disputes as well as ongoing legal harassment, but the land is still protected by the fact that their non-Aboriginal support remains very high. Canada and Alberta cannot afford to ignore this reality, which is further strengthened by support from the international human rights community.
- After a detrimental treaty settlement in the early 1970s, the Cree of Quebec successfully fought against Hydro Quebec's plan to use additional water resources on their territory for generating electrical power.

> They were strongly supported in this effort by environmentalists and others in the U.S.— the intended market. A call for solidarity on a new boycott to protect First Nations land from environmental degradation by hydro development has just been made. The Cree People of northern Manitoba region face a similar set of circumstances to that experienced by the Cree in Quebec, and they are recycling their successful strategy.[11]

There are numerous other examples of international solidarity networks, one of the largest and most dynamic being the thus-far unsuccessful international campaign for the release of Leonard Peltier. Although Peltier is in an U.S. jail, this network was partially cultivated by the Canadian section of the Leonard Peltier Defence Committee. Canadian interest in Peltier's case arises from the fact that Canada extradited Peltier to the US on the basis of false affadavits. Many people argue that Canada is therefore complicit with Peltier's unjust life imprisonment.

One of the possible strategies to consider is whether it would be advantageous to begin a broad networking between the various solidarity movements both inside Canada and internationally. The central issue to contemplate is whether such a move unduly weakens the individual campaigns on which these organizations are currently focused. Certainly, First Peoples facing new crises and dealing with emerging issues (for example, the Manitoba-based fight against hydro development, the racism experienced by the Caldwell First Nation, and so on) would be strengthened by a networked and more unified solidarity movement. However, are those who have put time and energy into building up these supports willing to take the risk to share their solidarity energy?

SUPPORT BY NGOS AND HUMAN RIGHTS GROUPS: WHERE DO THEY FIT IN?

International non-governmental human rights groups have been supportive on key issues. One example of this is Amnesty International's 1996 statement that there must be a "full and impartial inquiry" into the death of Aboriginal rights protestor Dudley George at Ipperwash Park, Ontario, in September 1995. A more recent case in point is the report just published by the small British organization, Tribal Survival International, which speaks to the very high rate of suicide among youth in Innu communities and specifically points to the continued social and cultural repression of these Peoples as a causal factor.

Many domestic human rights groups and activists across Canada seem to focus primarily on international activism, that is they appear to concern themselves primarily with the violations and abuses of human rights that are occurring in other countries around the world. Some feel unable to deal with matters internal to Canada due to mandate or funding limitations. Some may lack appreciation of the *need* to attend to the human rights issues of First Peoples across the land, due to lack of education and awareness. The notable exception on the Canadian landscape is the International Centre for Human Rights and Democratic Development, which has recently been highly supportive of Aboriginal rights issues — across Canada but viewed from an international human rights perspective.

Other Canadian non-governmental organizations which have led the way in this area include the National Association of Japanese-Canadians, the Quaker Aboriginal Affairs Committee, the Mennonite Central Committee, the Canadian Labour Congress, the Sierra Legal Defence Fund, the Aboriginal Rights Coalition, Citizens for Public Justice and the Canadian Race Relations Foundation.

"OFFICIAL" OR UN NON-ABORIGINAL

11. The Globe and Mail; Toronto; January 12, 2000, pg A3: "Cree group urges Boycott of Manitoba Hydro", by Martin Mittelstaedt. For more information on the boycott, contact: stewartship@visi.com or wjb@mennonitecc.ca

SUPPORT FOR ABORIGINAL RIGHTS

Canada has signed several international human rights treaties, the two most important being the UN International Covenant on Civil and Political Rights (ICCPR) and the UN International Covenant on Economic, Social, and Cultural Rights (ICESCR). There are basically two routes for accessing the UN human rights structures:

1) Participate in the required, regular reviews of Canada's compliance on either of these human rights covenants, a process open to both Aboriginal Peoples and non-Aboriginal supporters.
2) Apply directly to the UNHRC, under its Optional Protocol provisions for the Covenant on Civil and Political Rights, to compel Canada to resolve human rights violations directly experienced by the individual(s) who bring(s) the appeal.

REVIEWS ON COMPLIANCE WITH HUMAN RIGHTS COVENANTS

Each covenant or international human rights treaty has its own monitoring body. The most powerful is the UNHRC, which monitors compliance on the ICCPR. The UN Committee on Economic, Social, and Cultural Rights monitors the international covenant concerned with those rights. These UN committees require all countries who sign on to these human rights agreements to submit regular (usually every five years) reports on how human rights matters are progressing within their nation.

Participating in compliance reviews has proven to be an excellent media strategy, and therefore can be very effective for raising awareness among potential allies and putting pressure on the country under discussion. Through this mechanism, representatives of the Cree of Quebec, the Innu, the mixed Aboriginal and non-Aboriginal Coalition for a Public Inquiry into Ipperwash and various anti-poverty groups (such as Low Income Families Together) have achieved public education and political pressure objectives on various Aboriginal human rights issues.

For example, during their March 1999 review of Canada's overall compliance with the ICCPR at which all the above-mentioned groups played a part, the UNHRC experts repeatedly criticized Canada on its handling of First Peoples' issues. The committee commented that if Canada improved its compliance with key covenant articles, this would begin to seriously address the ongoing violations of Aboriginal Peoples' rights. The UNHRC is comprised of international human rights experts appointed by the UN General Assembly. From among its 18 members, the experts from Australia, Finland, Germany, France, Poland, Tunisia, Colombia, Chile, Mauritius, Italy, Israel, Lebanon, the United Kingdom, Japan, and Argentina rose to question Canada's record on Aboriginal Peoples' rights. First Peoples across Canada have a lot of support at the United Nations.

In a compliance review, success by human rights activists is measured in the following manner. At the end of the review of Canada's official report and its oral presentation on compliance issues, the relevant UN human rights body issues a statement of concern about the human rights matters that have come to their attention. Such statements appear in the committee's "Concluding Observations," which summarize the experts' opinions on the overall human rights situation within the country being discussed, including improvements and shortcomings.

However, the overall impact of a successful compliance review process is limited by the fact that Canada has no internal monitoring mechanism to ensure that the criticisms made by UN committees are followed up between these reviews. In November 1999, Canadian Senator Lois Wilson initiated a consultation with human rights groups to identify how this monitoring gap could be addressed. (Further information on Senator Wilson's initiatives can be found on her website: www.sen.parl.gc.ca/lwilson .)

OPTIONAL PROTOCOL RE: THE UNHRC'S COVENANT ON CIVIL AND POLITICAL RIGHTS

The Optional Protocol approach is a much more targeted strategy. It only applies to violations of rights guaranteed by the ICCPR as monitored by the UNHRC. Under this mechanism, the Human Rights Committee considers complaints against Canada for violation of human rights, determines if the rights of the complainant(s) were violated, and then issues a judgement. Canada has signed on to this Protocol and has agreed to be bound by the decisions of the UNHRC regarding appeals brought to the Committee in this way. This means that Canada is *obliged to resolve the human rights violations identified by the UNHRC* — to ensure that these problems do not continue.

(This is called an *Optional* Protocol because most of the world's nations would not be willing to sign it, and have not done so. They wouldn't want to agree to correct their human rights policies according to instructions from the UNHRC. It is a sign of Canada's *bona fide role as an international advocate for respect of human rights* that this government has signed the Protocol. It also, perhaps ironically, means that the UNHRC deals with a very high proportion of complaints from individuals concerned about human rights *in* Canada.)

Given that Canada has signed the Protocol and agrees to be bound by the committee's decisions, it is important to note two preconditions to the Optional Protocol approach:

1. Complaints can only be brought to the UNHRC *by individuals who are directly affected by the human rights violation.*
2. The person(s) bringing the complaint *must demonstrate that internal remedies have been exhausted.*

It must also be noted that the UNHRC will not allow the Optional Protocol to be used to address the Article 1 right to self-determination. The experts on the committee have decided that self-determination is a collective, not an individual, right — and under the Protocol, the committee's concern is with individuals whose rights have been directly affected. (This ruling is in keeping with the observed bias of existing human rights codes in favour of an individualist European interpretation of rights.) However, regardless of this limitation, Optional Protocol applications can still be very effective, because resolution of an individual complaint often necessitates changes in policy or law which affect more people.

The effectiveness of complaints under the Optional Protocol was demonstrated by the Sandra Lovelace case, where the UNHRC relied on Article 27 (rights of minorities). The 1985 Lovelace Optional Protocol complaint against Canada resulted in a UNHRC direction to change the Indian Act so that "Status Indian" women who marry or have married "non-Status" men will not lose their status. Canada ultimately responded with Bill C-31. In fact, Canada's legislative response to the UNHRC was profound because not only was re-enfranchisement as Aboriginal citizens granted to some persons whose status was lost by their maternal ancestors marrying non-status men, but other discriminatory provisions in the Indian Act were also addressed.

In her book *Canada's First Nations*, Olive Dickason asserts that "Bill C-31 sounded the death knell of the official policy of assimilation."[12] This is an overly optimistic assessment, especially regarding off-Reserve Peoples, Métis, and other non-Status Aboriginal persons. Yet, there is a kernel of truth in Dickason's summation: the UNHRC's strong, generous support for the Optional Protocol application by Sandra Lovelace, an Aboriginal woman from the Maritimes, certainly crimped Ottawa's style.

Incidentally, the UNHRC is still taking up the Lovelace matter with Canada because the Bill C-31 solution defaults to a violation of the rights of Aboriginal persons in subsequent generations. This is another advantage of UNHRC support — once they get involved, they don't quit.

12. *Canada's First Nations*; Dickason, page 33.

AN INTERESTING FRAMEWORK TO CONSIDER: DENIAL OF THE RIGHT TO EFFECTIVE REMEDY

THE RIGHTS GUARANTEED IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ICCPR contains four articles which, taken together, get to the root of almost all obstacles to resolving Aboriginal land, treaty, social, economic, and cultural rights grievances. Articles 1, 2, 6, 27, and 50 (see Appendix 1 for text of the articles) guarantee the following:

- the right to self-determination of all Peoples, which includes economic, territorial, and resource rights
- the right to effective remedy
- the right to life (which has a very broad interpretation, speaking to quality of life and life expectancy, as well as matters such as capital punishment and extrajudicial executions)
- the linguistic, religious, and cultural rights of minorities
- the right to have the guarantees provided by the covenant upheld across Canada, in spite of inter-governmental wrangling over jurisdiction and responsibility

Together, these Articles support an immediate, effective, and positive resolution of countless outstanding land, treaty, and other human rights grievances of First Peoples and Nations across Canada.

THERE IS NO "EFFECTIVE REMEDY" IN CANADA FOR FIRST PEOPLES

THE RIGHT TO "EFFECTIVE REMEDY" HAS NOT BEEN SECURED FOR FIRST PEOPLES ACROSS CANADA.

A decade ago, the UN Committee on Human Rights had occasion to consider the matter of effective remedy in a complaint against Canada, brought by Lubicon Cree Chief Bernard Ominayak under the Optional Protocol of the ICCPR.[13] The Committee reviewed the extent of the delays that the Lubicon People had already experienced in resolution of their land rights issues. They also considered the failure of responsible governments to take protective action to ensure that the Lubicon-claimed territory and resources would not be violated while negotiations and court cases were ongoing. The UNHRC rejected arguments from Canadian authorities that 'internal remedies' had not been exhausted. The experts expressed concerns that even if a favourable final judgment were eventually rendered by the Canadian courts, it would be ineffectual because of the damage that had taken place.

On the substantive claim of Lubicon Chief Bernard Omniyak, which rested in large part on the collective rights enshrined in Article 1 of the ICCPR, the Committee was unable to provide assistance (based on the rationale discussed above).

However, the UNHRC did express grave doubts about the Canadian political and judicial systems' abilities to render "effective remedy" regarding this sort of protracted Aboriginal land and resource rights issue. (Doubtless the NAN — among hundreds of other First Peoples — with their concerns about Ontario's "Living Legacy" policies to use contested Crown land for economic purposes such as mining and lumbering, have reached the same conclusions.)

In important ways, the Ominiyak decision lays the groundwork, within the UNHRC's own jurisprudence, for one of the central themes of this paper — "effective remedy" is not possible in Canada in regards to Aboriginal rights issues. Furthermore, per-

13. Bernard Ominayak, UN Doc. CCPR/C/30/D/167/1984.

sons seeking to resolve these matters are very likely to become personally 'exhausted' through trying to achieve effective remedy.

THE CANADIAN ROUTES FOR ABORIGINAL RIGHTS RESOLUTION ARE AN ENDLESS MAZE.

Aboriginal persons who seek their collective Article 1 and individual Article 27 rights cannot find resolution in Canada for a number of interwoven and complex reasons. Included among these factors is that the federal government is in a conflict of interest due to having one agency (Indian Affairs) responsible for both the Crown's interests and the Aboriginal Peoples interests (that is, fiduciary responsibility). (For a more detailed analysis, see Appendix 2.)

Obviously, the first responsibility of Indian Affairs has to be to *not compromise* their primary "client" — the Government of Canada. So, the government, with incremental approval or tolerance by the Department of Indian Affairs over the years, has thrown up a number of roadblocks to the just resolution of Aboriginal human rights issues.

The following factors relate to Canada's institutionalized denial of First Peoples' human rights and "effective remedy":

- Canada hides behind jurisdictional divisions (in violation of Article 50). This is evident with the Lubicon, the Ipperwash affair, the non-implementation of the *Fairgreaves* decision, and so on. This provincial or territorial-federal buck-passing is based on the *constitutional* division of powers: land and resources are provincial, and "Indians" federal. The federal government's buck-passing strategy is also evident in recent trends to devolve all social programs to provinces and territories, which affects the most vulnerable or "forgotten" non-Status and Métis Peoples.
- Aboriginal persons have a much higher rate of suicide, tuberculosis, and other diseases, and a much lower life expectancy than non-Aboriginal ethnic groups across Canada. To the extent that these differences derive from governmental neglect or discriminatory policies, their right to life (Article 6) has been violated. Efforts by Aboriginal community leaders to address these issues, in a fundamental way, through exercising Article 1 rights are usually deflected and sometimes opposed by government. In a vicious circle, poor health and poverty further reinforce the marginalization of these persons and their issues.
- The demands for "extinguishment" of Aboriginal rights by government negotiators dealing with treaty and land issues is a violation of Article 1 — no matter how polite the phrasing.
- Complaints dealing with bias under the Indian Act cannot be brought to the Canadian Human Rights Commission. The mandate of the Commission specifically prohibits this. There are also extensive problems with the lengthy waiting time for hearings on those matters which are within their mandate, by this and provincially-based Commissions.
- There are numerous instances where courts have made decisions favourable to First Peoples and these decisions are not implemented (*Delgamuukw*, *Fairgreaves*, and so on). In some cases, the non-implementation has forced yet more court proceedings on the First Peoples.
- Many of the human rights violations experienced by First Peoples across Canada arise from policy statements or decrees, including fishing and/or hunting regulations, the lack of an inquiry into Ipperwash, taxation policies that violate treaty-based tax immunity, and so on. Because these violations arise from policies rather than legislation, they can't be challenged in the courts without taking a convoluted, and often judicially unacceptable, approach.
- *Canada's human rights policy is limited to its own Charter of Rights, which doesn't match the ICCPR*, a factor especially pertinent to Articles 1 and 50 (which are not enshrined in the Charter). Canadian courts have fre-

quently held that they cannot compel governments to comply with the Charter or the Covenant. Thus, from a public awareness perspective, successful Charter challenges can point out that rights are not being addressed, but they are not much of a source of relief.

- On the matter of appeals of Section 35 of the Constitution, which recognizes and affirms existing Aboriginal and treaty rights, the Canadian courts have established a *very* structured[14] and expensive process for these appeals, requiring extensive expert witness and historic research. For non-Status communities, the barriers created by these requirements are virtually insurmountable. There is no legal aid, and no available funding for expert witness costs, so these Peoples are limited to Charter Challenges (under the equality rights provision), which — as noted above — offer a much more limited potential benefit than a Section 35 complaint.

  For communities of Status persons, a Section 35 appeal is usually financed through a loan from the federal government — a debt that amounts to a mortgage or "lien" on the final settlement and must be paid when the agreement is official. The bills and debt pile up as the years go along while Ottawa fights to limit the settlement. The net result is quite detrimental to the People seeking the settlement.

14. Please see the *Final Report of the Royal Commission on Aboriginal Peoples*, Volume 2, page 536, "Criteria for acceptance of claims," for more details on this matter. These "criteria" arise from a 1979 Federal Court decision ("Baker Lake"), emphasizing the Aboriginal perception that the Canadian courts do not deliver justice to First Peoples.

WHERE CAN WE GO FROM HERE?

CONSIDERING THE "OPTIONAL PROTOCOL" ROUTE

BRINGING A COMPLAINT RELATED TO DENIAL OF "EFFECTIVE REMEDY"

From a broad discussion of the ideas set out in this paper, a representative group of persons might emerge who wish to move ahead with the strategy of an international 'class action.' Suppose a group of Aboriginal individuals, who have been *directly affected* by the failure of Canada to uphold the ICCPR, *did* launch a class-action, or *joinder*, style Optional Protocol complaint to the UNHRC?

The basis of the complaint against Canada would be that Article 2 rights do not exist for First Peoples, or — in UN language — the Article 2 right to "effective remedy" has not been secured in Canada as regards Aboriginal Peoples' human rights. This primary complaint might be supported with specific references to all the other ICCPR rights violated because of the lack of "effective remedy" (see Appendix 1 for text of some of the pertinent articles); for example, the rights to:

- life as individuals (Article 6)
- live in communities where they can successfully maintain their cultures, languages, and/or religions (Article 27)
- live in communities that benefit from the natural wealth and resources provisions integral to the right to self-determination (Article 1)

At least some of this group of individuals would share a common frustration with federal-provincial buck-passing and wrangling (an underlying violation of Article 50). This buck-passing, coupled with institutional and/or systemic bias, forms much of the basis of the complaint that there is no guarantee of "effective remedy" (Article 2) for Aboriginal persons within Canada.

WHAT REMEDY COULD THE COMPLAINANTS SEEK?

The UNHRC could be asked to resolve the overarching Article 2 violation. Complainants would seek an order that Canada address the bureaucratic barriers to resolution of Aboriginal Rights issues. If the UNHRC finds that the "effective remedy" guarantee of the ICCPR *is* violated by Canada's existing governmental structure, then *Canada would be told to change the system* — to implement the radical restructuring envisioned, for example, by the RCAP.

Concretely, for example, the UNHRC could be asked to recommend restructured mandates for the federal bureaucracy dealing with First Peoples, to remove the barriers arising from INAC's conflicting mandates. The UNHRC might see fit to advocate:

- a fiduciary/ombudsman function, which speaks for First Peoples' interests; and
- a second institutional voice, to represent the "Crown's" interests.

While the UNHRC has not previously dealt with "effective remedy" in this way, legal advisors assert this is a reasonable extension of current UN understanding on "remedy", and that relevant international precedents exist.

NETWORKING WITH EACH OTHER

Readers who are interested in the possible benefit of an Optional Protocol application to the UNHRC can use this paper as a springboard.

But this report also identifies a wide cross-section of other potential strategies and approaches for *Building International Awareness on Aboriginal Issues*, from networking Aboriginal international and issue-oriented solidarity activists and groups, to the possibility of a Second Sitting of the First Nations

International Court of Justice, and much more.

Members of the Aboriginal Rights Coalition (ARC) and other Aboriginal Rights organizations and activists who were involved in pulling this paper together are already looking into some of these areas — engaging in some collaborative research. These groups extend an open invitation to others who may wish to work with them, and ARC is taking steps to help us all build this constructive dialogue. **ARC will be posting this paper on its website, and sponsoring an electronic guest book or other networking opportunity for those readers who wish to interchange ideas on the internet (see Page 2).**

Developing our trust and respect for one another, and having broad discussion on ideas such as the ones in this paper, are just the first steps. The real measure of success will come from working together and, through unity, achieving our goals. When we stand together we are stronger. This recalls, to the author, the Haudenosaunee story told by her friend and brother, Seneca Traditional Teacher Asayenes (Dan Smoke), of the Kildeer Clan.

THE FIVE ARROWS

The Peacemaker spent many years, in fact decades, separately teaching the various Haudenosaunee Peoples about the principles of peace, power and righteousness which make up *The Great Law*. After he had gained the support of the other four Nations, the Mohawk, the Oneida, the Cayuga and the Seneca, the last Nation he went to was the Onondaga. Their respected and powerful leader Tododä'ho was not impressed at first. It took the Peacemaker longer to convince Tododä'ho and the Onondaga People of the benefits of this new idea, *The Great Law*, than it had with any of the other Nations. Finally, after many years, the Onondaga saw the beauty and benefit of living this way, and The Peacemaker made them the Firekeepers for the Confederacy Council. As the first group of Chiefs sat in Council to initiate this Confederacy, The Peacemaker demonstrated for them the power of their new unified commitment to one another. He took one arrow and, snapping it, showed how easily it could be broken on its own. Then he took two, and showed how this made them more resistant to pressure. Finally, he took five arrows, representing each of the five Peoples who were coming together in the Haudenosaunee Confederacy. He passed around these five arrows together, which could not be broken. In this way, The Peacemaker taught that being unified gives strength, and that unity comes from putting our minds together in a good way — helping us to become of one mind, to develop a unanimous consensus. Unity may take a long time to develop, but from unity comes strength.

APPENDIX 1

SELECTED ARTICLES FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the Covenant, including those who have responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without jurisdiction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each state party to the present Covenant undertakes:
   a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 6:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 27:

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 50:

The provision of the present Covenant shall extend to all parts of federal states without any limitations or exceptions.

APPENDIX 2

CRITIQUING CANADA'S ABORIGINAL POLICY

CANADA MEASURES ITSELF BY ITS OWN — NOT INTERNATIONALLY ACCEPTED — HUMAN RIGHTS STANDARDS.

Article 1 of the United Nations' International Covenant on Civil and Political Rights (ICCPR) addresses self-determination. It specifically states that all Peoples have the right to "freely determine their political status and freely pursue their economic, social, and cultural development." The current legislation governing "Indians" in Canada prevents Aboriginal Peoples in Canada from exercising their Article 1 right by placing them under the authority of the Government of Canada. To avoid the ethical and political issues arising from this policy, Canada measures its human rights performance according to its own Charter of Rights, rather than using the international standards of measurement provided in the UN's ICCPR. The Charter says nothing about self-determination — and in international forums Canada says as little as possible on the topic.

THE INDIAN ACT VIOLATES ARTICLE 1 OF THE ICCPR.

A federal department, Indian and Northern Affairs Canada (INAC), is responsible for administering the Indian Act. In clear violation of Article 1, the Indian Act presumptuously defines who is and who is not an Indian, according to the Government of Canada. INAC administers the Indian Act through Band Councils and other structures such as the Assembly of First Nations, Tribal Councils, and so on — all of which exercise a limited range of delegated powers under federal supervision. The effect of these policies has been a steady erosion of Indian self-government powers and the right to self-determination since the adoption of the Indian Act in 1876.

INAC EXERCISES UNDUE INFLUENCE THROUGH POLICIES CREATING ABORIGINAL DEPENDENCE, AND CONTROL OF THE FLOW OF MONEY. FUNDING IS ALSO USED TO CONTROL ABORIGINAL SECTORS, BY OMISSION.

INAC exercises undue influence over Aboriginal Peoples because it holds the purse-strings. On one hand, INAC provides the funds essential to the survival of Band Councils and related structures. On the other hand, INAC negotiates with these bodies regarding the establishment of self-government structures or on other matters. Thus, INAC is both the adversary in these negotiations and the funder of its adversaries.

This abuse of power is compounded by the fact that INAC controls the flow of money on which many Status communities and individuals have developed a dependence. This dependence, of course, originates from Canada's Aboriginal policies. As mentioned above, these policies violate First Peoples' fundamental rights to self-determination, including the right to "freely determine their political status and freely pursue their economic, social, and cultural development… [and] freely dispose of their natural wealth and resources… [and to in no case] be deprived of its own means of subsistence."

Through this two-way dialogue, INAC also omits to recognize the countless "forgotten" non-Status Peoples — many of whom have been isolated from their culture, language, religion, or community due to the effect of the Indian Act and related polices over the past 200 years.

INAC HAS AN INHERENT CONFLICT OF INTEREST BECAUSE IT HAS TWO OPPOSING MANDATES.

In addition to its undue influence on specific groups of First Peoples, and its official negligence of others, INAC's dual mandate creates an inherent conflict of interest for the Ministry.

There is no doubt that the conflict of interest within INAC results in manipulation of

the organizations representing the First Peoples in Aboriginal rights negotiations. INAC represents the Government of Canada in its negotiations and dealings with First Peoples, and — simultaneously — functions in a guardian capacity toward First Peoples. The former mandate arises clearly from INAC's role as a federal government ministry, whereby INAC *must* regard federal policy goals as paramount in importance. The latter mandate derives from the Royal Proclamation of 1763, when the Crown wanted to ensure a strong military alliance with First Peoples on the border of Upper Canada during the emerging war of separation with the colonies to the south. The Royal Proclamation established Canada's fiduciary relationship to Aboriginal people, a central component of Aboriginal policy since that time.

OTTAWA IS IN BREACH OF ITS SELF-ACKNOWLEDGED "FIDUCIARY" RESPONSIBILITIES.

For obvious reasons, Canada consistently upholds its responsibility to pursue its own federal policy goals concerning First Nations and Aboriginal Peoples (surrender, extinguishment, limitations on treaty and inherent rights, and so on). At the same time, INAC is routinely in breach of its fiduciary responsibility toward First Peoples because of the Ministry's dual mandate and its consequently convoluted administrative processes.

A STRUCTURAL RE-ALIGNMENT IS REQUIRED.

At least four major government commissions and studies — the Royal Commission on Aboriginal Peoples (RCAP), the Penner Report, the Oeberle Report, and the Coolican Report — have concluded that a fundamental overhaul of Canada's policy on Aboriginal Peoples is required. In spite of the many recommendations from these reports that call for a restructuring of federal involvement, Canada shows no intention of making significant alterations to the current structure or system. Consequently, the fundamentally flawed policies remain in place, longstanding grievances go unaddressed because the existing system provides little effective means to address most outstanding issues, and the legitimate desire of Aboriginal Peoples for progress toward self-determination has been thwarted.

To give one current example of this legacy, the land and treaty rights issues of the Stoney Point People, which prompted Dudley George to be in Ipperwash Park on the night of his death, continue to be unresolved. The long-term remedies proposed in the above-mentioned reports would, most likely, have dealt with the frustrations of the Stoney Point People. Their issues could have been resolved as satisfactorily as possible, and Dudley George's death may have been averted.

THE FINAL REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES CALLS FOR ABORIGINAL-FEDERAL RESTRUCTURING BASED ON THE FOUR PILLARS OF A RENEWED RELATIONSHIP: MUTUAL RECOGNITION, MUTUAL RESPECT, SHARING, AND MUTUAL RESPONSIBILITY.

The RCAP and other reports emphasize the need to have a structural separation between

- the entity within the federal government that represents Canada's interests in dealings with First Peoples, and
- another officially recognized but independent body, which would have the primary duty to represent the interests of the First Peoples.

Canada's reluctance to implement key recommendations of the RCAP, Penner, and other reports relating to self-governance indicates a lack of willingness to change the policy of assimilation and dominance to one of co-operation and co-existence.

These are the kinds of underlying restructuring proposals for handling Aboriginal-Canadian relations which RCAP makes and which legitimately arose from its full 1991 mandate.

The RCAP makes it abundantly clear that simply tinkering with existing programs won't work, and that the social disparities and internal governance issues cannot be resolved without addressing the foundation of the political relationship between Aboriginal peoples and non-Aboriginal Canadians. Policies of assimilation and extinguishment of aboriginal rights are understood in the international human rights community as directly violating Article 1 of the ICCPR.

Canada's response to the RCAP (ie. *Gathering Strength* and other polices over the past four years) avoids addressing these fundamental issues.

As stated in the text of this paper (above), the RCAP report warns that the longer Canada procrastinates on dealing with the crooked foundation of this relationship, the faster the social problems will continue to grow, and the harder the task will become. In addition, as First Peoples and Canadians wait for Canada to do the hard work that MUST be done, other costs also accrue. Canada's social fabric and its international reputation are paying the international and domestic prices of not addressing the human rights of Aboriginal Peoples on this part of Turtle Island.

APPENDIX 3

GLOSSARY & REFERENCES

DEFINITIONS

Aboriginal: original to the land. **Aboriginal** Peoples are the groups or nations of People who were originally living in Canada before the European explorers began to arrive about 500 years ago.

Band Council: the system of indigenous government developed and promoted by the **Indian Act**.

Eurocentric: the assumption, often put into practice in policies, programs and education, that European cultural norms are the most appropriate or best.

extinguishment: the government practice of requiring indigenous persons to give up or surrender Aboriginal rights when negotiating on land and/or treaty matters.

fiduciary: a trustee-style responsibility to ensure the well-being of a guardian. Arising from the Royal Proclamation of 1763 and other sources, Canada has a **fiduciary** responsibility for Aboriginal Peoples within its borders.

First Peoples or First Nations: terms used to describe the **Aboriginal** societies that existed before the Europeans arrived and settled on the land. Some **Aboriginal** Peoples do not see themselves as **First Nations** (for example, the Inuit). Also, the word "nation" in English does not fit well with **Aboriginal** social structures. **First Peoples** is, therefore, a more inclusive term for communities of Aboriginal persons.

Indian: a term invented by European explorers and used by governments in the Americas to describe **Aboriginal** persons. This word originated with Christopher Columbus. He may have used this word to describe the Peoples he encountered here because he wanted to convince his royal financiers that he had reached his intended destination of India.

(The) Indian Act: federal legislation that defines Canada's relationship to **First Peoples**. The **Indian Act** (1876) and related legislation were designed to assimilate **First Peoples** into the dominant Canadian society, eliminating these distinct cultures. The **Act** defines who is considered to have legal **Status** as an **Indian**; the rights of recognized **Status Indians** living in Canada; and the federal government's responsibility for **Status Indians**.

indigenous peoples: very similar to **Aboriginal**; the groups or nations of People who originally lived in places all over the world. **Aboriginal** Peoples in Canada are some of the world's indigenous peoples.

inherent rights: the rights of **Aboriginal** persons arising from their status as the original inhabitants of the land as affirmed by the Constitution Act, 1982 (Sec. 35).

Inuit: a circumpolar **Aboriginal** People who live in Alaska, Greenland, Siberia and Canada. The **Inuit** have lived in the Arctic north of **Turtle Island** for thousands of years.

Métis: a distinct and independent People whose early ancestors are of both **Aboriginal** (for example, **First Nations, Inuit**) and European heritage. The **Métis** are among the "forgotten" Peoples as they have no official "**Status**" in Ottawa's legislation.

Native Peoples: a common way of describing **Aboriginal** Peoples, meaning that these are the People who come from this area. However, **Native** can also be used for someone or thing that has been in that area a long time even if it does not originally come from there. Therefore, **Aboriginal** more accurately describes the relationship of the People original to Turtle Island.

newcomers: a polite term used by **Aboriginal** persons to describe the people who began settling on Turtle Island after Columbus arrived in 1492. Most of these people arrived from Europe.

non-Status Indians: hundreds of thousands of **Aboriginal** persons across Canada excluded from the official government tally of Status Indians, because of the **Indian Act** and related policies. A large and diverse group, **non-Status** persons are not considered eligible for **treaty** and other **Aboriginal** rights benefits.

off-Reserve (Aboriginals): Aboriginal persons who live off of the **Reserves** established for **Status Indian** residence under the **Indian Act.** These persons may be **non-Status** or **Métis,** or they may be **Status Indians** or **Inuit** who have moved away from their home communities.

Reserve: territory set aside, by Treaty with Canada, for use by **Status Indians**.

Status Indian: a person defined as an **"Indian"** under the **Indian Act.**

treaty rights: the rights arising from the guarantees of economic assistance, resources, territorial integrity, social programs, codes of behaviour, and other matters set in international nation-to-nation, or People-to-People, agreements.

Tribal Council: a collectivity of Band Councils who join together to develop or deliver policies and social programs more effectively.

UNITED NATIONS AND INTERNATIONAL HUMAN RIGHTS TERMS

Compliance Review: the regular or periodic review of a **signatory state's** adherence to the rights guaranteed in (specifically) the **ICCPR** or the **ICESCR.**

Concluding Observations: the conclusions reached by the **UN** human rights experts after a review of a nation's compliance in regards to the **ICCPR** or **ICESCR.** These can be found on the UN Human Rights Commission's web site at www.unhchr.ch or try Canada's site at www.pch.gc.ca/ddp-hrd/english/Covenant.htm

exhausting internal remedies: pursuing all **internal remedies** and coming up empty-handed.

ICCPR or International Covenant on Civil and Political Rights: the broadest international human rights treaty that addresses such human rights as equity, discrimination, freedom of association and public assembly, and so on, as well as the self-determination of all peoples and the right to effective remedy.

ICESCR or International Covenant on Economic, Social and Cultural Rights: the broadest international human rights treaty concerned with the human rights of collectivities of peoples for a standard of living that respects the dignity and common needs of all human beings.

Intercessional Working Group on the Draft Declaration of the Rights of Indigenous Peoples: the United Nations working group that is debating the proposed text of this Declaration, which arises from the Article 1 right (in both the **ICCPR** and the **ICECSR**) of all peoples to self-determination.

internal remedies: all available routes (through the courts, human rights tribunals, ombudsmen, and so on) to resolve a human rights issue inside the country where the violation has occurred.

international human rights treaties: international human rights accords, including those arising from the UN, European Court, Organization of American States, and so on.

nation states: members of the United Nations who are defined by national boundaries and have established state governments.

Optional Protocol: an addendum to the **ICCPR** that signatory states have the option to sign, which commits the signatory to abide by rulings from the **UNHRC** in regards to cases on human rights matters which the **UNHRC** considers under this **Protocol**. Canada has signed the **Optional Protocol** and therefore is bound to act on the **UNHRC's** decisions pertaining to cases that come from Canada.

signatory or member states: governments that have signed onto an accord or other

international document in the **UN** context.

UN or United Nations: the assembly of the world's governments that attempts to promote peace, security and human rights, preceded by the League of Nations. The **UN** has headquarters in New York City and Geneva.

UNCESCR or United Nations Committee on Economic, Social and Cultural Rights: the **UN** body charged with responsibility for monitoring compliance with the **ICESCR.** This committee is part of the **UN Human Rights Commission**.

UNHRC or United Nations Human Rights Committee: the committee of the UN that has responsibility for monitoring compliance with the **ICCPR** and hearing **Optional Protocol** complaints in relation to **ICCPR** violations. The **UNHRC** should not be confused with the UN Human Rights Commission — the committee is part of the commission and plays a far more interventionist role. (Their website is www.unhchr.ch)

Working Group on Indigenous Populations (WGIP): meets annually in July in Geneva, and is comprised of representatives of the world's indigenous peoples. This is an open gathering and is a place for political strategizing as well as global networking. The **WGIP** is closely connected to the **Draft Declaration of the Rights of Indigenous Peoples.** (The internet address for the WGIP secretary Julian Burger is: jburger.hchr@unog.ch)

NAMES, REFERENCES & CITATIONS

APEC: an intergovernmental commercial trade organization dedicated to **A**sia-**P**acific **E**conomic **C**ooperation. At their 1997 meeting in Vancouver, the human rights of protestors were violated.

Assembly of First Nations (AFN): the highest body of the First Nations governments (for example, Band Councils) established under the **Indian Act.** The **AFN** National Chief is frequently called upon by the Canadian government and others to speak for not just **Status Indians** living on reserves, but more generally **Aboriginal** persons across Canada, causing controversy. (Their website is www.afn.ca)

Caldwell First Nation: a First People, originally from the south, who settled in southwestern Ontario after reaching an agreement 200 years ago with the British Crown to be loyal to the British in return for a secure land base. The Caldwell are still landless today, although a controversial settlement has been drafted. (Their website is www.geocities.com/Athens/Rhodes/6024 The site of the primary group opposing them is www.blenhein.webgate.net/~ckcn)

Canadian Human Rights Commission: the institution charged with responsibility to ensure that human rights are upheld across Canada. Its mandate is governed by the Canadian Charter of Rights, which is far narrower than **UN** human rights agreements, and it is specifically restricted from dealing with bias arising from the **Indian Act**.

Cree of Quebec: the **First People** who are Aboriginal to large portions of central Canada's near north. The **Cree of Quebec** have implemented outstanding international strategies of various kinds. (Their website is www.gcc.ca)

Dudley George: the **Aboriginal** protestor who was fatally shot by police in 1995 during a non-violent land rights protest over a matter that had been unresolved for seventy years. The Coalition for a Public Inquiry into Ipperwash is organized to get a full, fair, and impartial public investigation into the human rights violations that happened that night. (Their website is www.web.net/~inquiry)

Delgamuukw: a 1998 Supreme Court decision recognizing the legal legitimacy of **Aboriginal** land title that has been passed on by traditional methods (such as songs, stories, and so on) distinct from the European system of registering title. (For web info: www.usask.ca/nativelaw/

Delgamuukw.html)

Fairgreaves Decision/Chippewas of Nawash: a 1993 court decision that recognizes the treaty rights of the Nawash and Saugeen Peoples to use the fishing resource for commercial purposes. (Their website is www.bmts.com/~dibaudjimoh)

First Nations International Court of Justice: an initiative of the Chiefs of Ontario to establish **First Peoples**' right to administer their own justice. For more information about this project, contact past-Ontario Regional Chief Gordon Peters of the Toronto-based Centre for Indigenous Sovereignty at gordon@cfis.ca.

***Gathering Strength*:** the federal government's limited policy and apology response to the broad and encompassing **Final Report of the RCAP**. It is available on the INAC website at www.inac.gc.ca/strength/index.html

Gitsxan: the west coast First People who were central to the **Delgamuukw** decision. The Gitsxan have also undertaken interesting international strategies. (To contact them by web, try arc@istar.ca)

Gustafsen Lake: the name given to a land rights dispute between Aboriginal rights activists and landowners and police in central British Columbia in 1995. Aboriginal persons involved in the dispute have been imprisoned. Many serious questions have arisen regarding the nature of the official response to the plans to hold a traditional Sundance Ceremony on this land, a practice that had taken place previously. B.C and Canada have both refused to hold a public inquiry into the controversial events. (For website information: www.kafka.uvic.ca/~vipirg/SISIS)

INAC or Indian and Northern Affairs Canada: the federal department charged with responsibility for the **Indian Act**. They are therefore concerned almost entirely with only **Status Indians**. For more information, see the website at www.inac.gc.ca .

Innu Nation: a **First People** who reside in Labrador and eastern Quebec. The **Innu** are best known internationally and across Canada for their prolonged fight against low-level military test flights by NATO nations on their territory; and more recently the proposed Voisey's Bay nickle mine. However, they are a very vulnerable People who lack even the limited treaty protections secured by most eastern Peoples and have a myriad of other issues relating to unresolved land rights, resource rights, and so on. They are well-known and respected for their commitment to non-violent resistance tactics and have established international solidarity support. (Their website is: www.innu.ca)

Ipperwash: the name of both the Armed Forces base and the Provincial Park in south-western Ontario on Lake Huron, which are central to the land rights protest in which **Dudley George** was killed.

"Lands for Life/Living Legacy"/Nishnawbe-Aski Nation (NAN): the **NAN** has been involved in a long process to establish their claim to vast portions of Crown land in Northern Ontario, and this effort has been made all the more difficult and important by the recent Ontario government policy to encourage economic use of this territory by corporations through the misnamed **"Lands for Life"** or **"Living Legacy."** Ontario's goal is precisely the same as the **NAN's** — to build its economy. (For website information on this issue: www.chiefs-of-ontario.org/NAN)

Leonard Peltier Defense Committee (LPDC): in jail since 1975 for the murders of two FBI agents on Pine Ridge Reservation in the United States, **Leonard Peltier** today has an extensive international solidarity network. One of the organizers of this network has been the Canadian LPDC. (For web info: www.freepeltier.org (US group) or lpdcsfd@web.net (in Canada))

"Lovelace" case/Bill C31: the **Optional Protocol** case of Sharon Lovelace, which resulted in **Bill C31** and changed the **Indian Act.** (See page 18 above for details.)

Lubicon: a Cree First People in northern

Alberta whose claim to territory and resources has been an international issue for more than a decade — partly due to the continuing desire by the multinational pulp-and-paper manufacturer, Diashowa, to clear-cut Lubicon territory and the solidarity boycott of Diashowa products that resulted in a lawsuit against the solidarity group, Friends of the Lubicon. Appeals still continue on this matter, threatening the right of political activists to use a boycott strategy. (Their website is http://www.tao.ca/~fol)

Marshall Decision/Mi'kmaq fishing rights: the September 1999 Supreme Court of Canada decision, on an appeal case brought to that level by **Donald Marshall** established the treaty right of Mi'kmaq persons to fish in order to achieve a moderate livelihood. Assertion of that right provoked a racist and violent response from non-Aboriginal persons both in the Maritime region and across Canada. (Their website is www.mikmaq.net)

Nisga'a: the west coast First People who have carried on a very high-profile and lengthy campaign for a controversial treaty that guarantees territory, self-government, and more. Many non-Aboriginal persons object to the **Nisga'a** treaty, because they feel it "gives" away too much to a small special interest group. Many Aboriginal persons feel that the Nisga'a have given up too much. After a century of political lobbying, most Nisga'a just want a settlement. (Their website is www.ntc.bc.ca)

Oka/Kanehsatake: the Canadian and Mohawk names for the community where a very high-profile land rights controversy took place in 1991.

Penner Report: *Indian Self-Government in Canada*: Report of the Special Committee, House of Commons, Canada, 1983.

RCAP Report: *Final Report of the Royal Commission on Aboriginal Peoples,* Canada, 1996. Available on the web at www.libraxus.com (go to 'online resources'). Also available at your local library and on CD Rom from Canada Communications Group, Ottawa.

Turtle Island: the name given by **First Peoples** to the land now known as the Americas. **Turtle Island** comes from an Aboriginal creation story.

WTO: the **W**orld **T**rade **O**rganization. At their 1999 meeting in Seattle, Washington, the human rights of protestors were violated.

Citizens for Public Justice (CPJ) is a national, non-Aboriginal organization involved in promoting justice in Canadian public affairs for over 35 years.

For more than 25 years CPJ has worked to promote and protect Aboriginal rights. Our work has included: helping to win a ten-year moratorium on the proposed Mackenzie Valley Oil and Pipeline proposal; participation in the Norman Wells and Old Man River Dam hearings; providing legal and policy support for among others, the Grassy Narrows Band in Ontario, the Lubicon in Alberta, the Dene Nation in the Northwest Territories, and the Innu of Labrador.

Ann Pohl is a committed social justice activist who serves in a voluntary capacity as a spokesperson for the Coalition for A Public Inquiry into Ipperwash, and is also the founder of the Turtle Island Support Group. She works as a social policy researcher, writer and organizational consultant through Four Directions Communications.

Citizens for Public Justice
#311, 229 College Street
Toronto, ON M5T 1R4

Tel. 416-979-2443
Fax. 416-979-2458

www.cpj.ca