

Aboriginal Title Alert !

This special insert is about Aboriginal title and rights, and the actions which the Assembly of First Nations is taking to advance those rights.

Aboriginal title is a collective right. Its up to you, along with your families, your communities, and your nation, to implement Aboriginal title.

We hope you find this information useful, and invite all First Nation citizens to get involved in exercising your rights to lands & resources.

Aboriginal Title and the Delgamuukw Decision.

Aboriginal title is a direct grant from the Creator to the First Nations people. It includes ownership of traditional lands and resources, and the responsibility to manage them for the needs of future generations.

But in many parts of Canada, the federal government and the provinces have refused to recognize Aboriginal title, and instead they have been taking away lands and resources without First Nation consent or treaties. This is a form of economic racism, and it is one of the root causes of the continuing poverty among First Nation communities.

First Nation poverty and underdevelopment are directly linked to economic deprivation: other governments have given traditional lands and resources away to third parties at First Nations' expense, because these governments do not recognize that Aboriginal title is a real legal interest in the land.

Most recently, in the *Delgamuukw* decision, the Supreme Court has acknowledged what our elders said all along: that Aboriginal title is a legal property right which other governments must respect and accommodate.

The problem is that, so far, the federal and provincial governments have turned a deaf ear to the Court: they still refuse to treat Aboriginal title as a real legal interest. Until Canada adopts a policy which recognizes and affirms Aboriginal title, First Nations and their citizens will continue to live in poverty while the benefits of their lands and resources are directed to others.

The Assembly of First Nations has been directed by the Chiefs of Canada to aggressively seek fundamental changes to the Comprehensive Claims policy, and implementation of First Nations' Aboriginal title.

A Special Committee has been struck to pursue this agenda: the *Delgamuukw* Implementation Strategic Committee (DISC). This insert is the first report on our activities. Another report will be tabled at the Annual Assembly by the National Chief and Chief Arthur Manuel.



National Chief Phil Fontaine, Chief Arthur Manuel, and legal advisor David Nahwegahbow at a meeting with federal officials, Ottawa, May 9, 2000.

Note to readers: This Insert is sponsored by the Delgamuukw Implementation Strategic Committee (DISC).

A United Stand

Frustration with the federal government's Comprehensive Claims Policy crosses organizational lines, and it is beginning to forge a new unity of purpose among First Nation leaders. On January 28, 2000, in Vancouver, the First Nations Summit, the Union of British Columbia Indian Chiefs, the Interior Alliance, and the Assembly of First Nations released a consensus statement, which was a united call to have the Comprehensive Claims Policy replaced with a policy and process that affirms and recognizes Aboriginal title. The text of the statement reads:

The Assembly of First Nations, including the Union of B.C. Indian Chiefs, the Interior Alliance and the First Nations Summit, hereby join together publicly to affirm the Aboriginal title and rights of all First Nations in British Columbia and Canada. Canada's Comprehensive Claims Policy is predicated on the denial of our rights and title. We categorically reject this policy and Canada's implementation of this policy. We call upon Canada to assert the honour of the Crown and to adopt a new policy of recognition, affirmation and implementation of Aboriginal title.

Chief Stewart Phillip, President, UBCIC
Chief Arthur Manuel, Spokesperson, Interior Alliance
Grand Chief Edward John, First Nations Summit
Herb George, BC Regional Vice Chief, Assembly of First Nations
Phil Fontaine, National Chief, Assembly of First Nations



Summary of the *Delgamuukw* Ruling

Aboriginal title is an Aboriginal interest in land which encompasses the traditional territory of a First Nation. Aboriginal title continues to exist where no land surrender treaty (or modern day land claims agreement) exists. The right is based upon the ancient occupation and use of the land by Aboriginal peoples. Prior to the Supreme Court of Canada decision in *Delgamuukw*, we were uncertain what Canadian courts would require for proof of Aboriginal title, and what rights were encompassed within Aboriginal title.

Delgamuukw was a decision of the Supreme Court of Canada in December 1997. It was a landmark case and gave much definition to the scope, content and nature of Aboriginal title.

In summary, *Delgamuukw* says:

1. Aboriginal title is a land right or property right. This is important because property rights are given more respect than individual rights in Canadian law.
2. Aboriginal title is a collective right.
3. Where it exists, Aboriginal title gives rise to a fiduciary (trust) obligation on the part of the Crown, especially the federal Crown, whose s.91(24) responsibilities now cover Aboriginal title lands off reserve.
4. Aboriginal title is a right to exclusive occupation.
5. Aboriginal title has an important economic component, which entitles the possessor of it to economic benefits.
6. Aboriginal title is a broad encompassing right which is not limited to traditional activities, but includes an interest in all resources and entitles its holder to a broad range of resource activities.
7. The only limitation on Aboriginal title is that it cannot be used in a manner inconsistent with the Aboriginal connection with the land (ie., you can't put a parking lot in a sacred area). If an Aboriginal title holder wishes to do something that destroys the connection with the land, then title must be extinguished, by surrender.

Contrary to the federal government's *Comprehensive Claims Policy*, extinguishment and/or surrender is not a blanket requirement - it is only required in limited circumstances.

8. Prior to 1982, Aboriginal title could not be extinguished by the province. It could only be extinguished by the federal government, through legislation, and only if it expressed a clear and plain intention to do so.

9. After 1982, neither the province nor Canada can extinguish Aboriginal title without First Nation consent, because of the constitutional protection in section 35 of the *Constitution Act, 1982*.

10. However, post-1982 Aboriginal title may be infringed by the Crown. In order to do so, the Crown must do two things. First, it must establish that the infringement was pursuant to a valid legislative objective. Second, it must justify the infringement in light of its fiduciary obligation. This generally means that it must consult - the degree of consultation depends on the circumstances. In some cases, it might be simple consultation; in other cases, consent might be required. Generally, the Aboriginal title holder should be involved in the decision-making process. The Court also said that compensation for the infringement will usually be required.

11. The Supreme Court of Canada said that Aboriginal title, where it exists, will have to be reconciled with Crown title. It urged negotiations to achieve this reconciliation.

Although Aboriginal title finds its source in the original grant from the Creator to the First Nations, and not in Canadian law, and although the *Delgamuukw* decision is not a perfect one, this judgement gives First Nations a major boost in their struggle to have our Aboriginal title and rights recognized and implemented.



Members of the Timiskaming First Nation blockade Obawjeewong to protect a sacred burial site, 1998.



Regional Chief Ghislain Picard, National Chief Phil Fontaine, Chief Art Manuel, legal advisor David Nahwegahbow, at meeting with federal officials, May 2000.

"Native Claims" and Federal Policy

After the "historic" treaty making period ended in the early 1930's, the government of Canada simply refused to address Aboriginal title, claiming that it was only a theory. In 1973, with the Supreme Court's ruling in *Calder*, the government of Canada was forced to accept that Aboriginal title had to be dealt with. It introduced a "Native Claims policy", which did not recognize Aboriginal title, but, just the same, required its extinguishment. Since then, the policy has gone through some changes - it is now known as the "Comprehensive Claims Policy" - but it is still based on the denial of Aboriginal title, while also requiring that any rights which "may exist" be extinguished in return for limited rights that come from federal legislation, and not from the connection with the land.

The Comprehensive Claims Policy (CCP) is based on economic racism: it denies that First Nations have a real property interest in their lands and resources, and avoids any discussion of compensation for past infringements on Aboriginal title. Instead, the policy is intended to protect and advance the rights of third parties, at the expense of the First Nations themselves.

Over the past twenty years, the Courts have begun to address the racism that has been at the heart of much of Canada's treatment of First Nations. A string of important cases - *Sparrow*, *Sioui*, *Simon*, *Van der Peet*, *Delgamuukw*, and *Marshall* - have moved the goal posts for First Nations, confirming that Aboriginal and treaty rights are real, and that they must be accommodated.

Unfortunately, the government of Canada has, up to this point, refused to change its policies to keep up with the Courts. These policies remain founded on the denial and dispossession which continue to cause the First Nations so much pain and suffering.

CCP Invalidated

Liberal commitment to fundamental change of the CCP, 1993.

In October 1993, Jean Chretien, leader of the federal Liberals, announced their Aboriginal Election Platform, which admitted that claims policies had not kept pace with the law. Jean Chretien committed that "A Liberal government, in consultation with Aboriginal peoples, would undertake a major overhaul of the federal claims policy on a national basis." He also committed that "A Liberal government will create, in cooperation with Aboriginal peoples, an independent Claims Commission for both specific and comprehensive claims. Its mandate will be jointly developed with Aboriginal peoples."

The infamous *Red Book*, which formalized the federal Liberal's election commitments, also placed an emphasis on fundamental reform of claims policy: "The current process of resolving comprehensive and specific claims is simply not working. A Liberal government will implement major changes to the current approach". The *Red Book* further promised to do away with the government's conflict of interest by creating one independent claims body for "the resolution of all claims". (Continued on next page)

Following these federal Liberal commitments, the basis of the Comprehensive Claims policy has also been further invalidated by a number of expert bodies:

Royal Commission on Aboriginal Peoples, 1996.

In its 1996 final report, the Royal Commission on Aboriginal Peoples recommended a fundamental change in federal policy and process related to Aboriginal title, including the recognition - not extinguishment - of Aboriginal title and rights. The Commission also recommended a major redistribution of lands and resources to correct the imbalance that has led to First Nation poverty and underdevelopment.

Supreme Court of Canada, *Delgamuukw*, 1997.

In December 1997, the Supreme Court of Canada undermined the very basis of the CCP when it ruled in *Delgamuukw*. The Court recognized that Aboriginal title is a real property right, and found that extinguishment was only required in very limited circumstances.

United Nations Human Rights Committee, 1999.

In April 1999, the United Nations Human Rights Committee targeted Canada's policies on Aboriginal title, and its reluctance to implement RCAP's recommendations. The Human Rights Committee also recommended that Canada's extinguishment policy be "abandoned", because it was "incompatible" with United Nations human rights covenants. (See box on last page)

Canada Still Refuses to Review Policy

After having made clear commitments before the federal election of 1994, one would have expected that RCAP's recommendations and the Supreme Court's decision in *Delgamuukw* would have given the federal Liberals added confidence to proceed with fundamental reform of the CCP. Instead, and for unknown reasons, they went into reverse.

For the past two years, the government of Canada has refused to review, let alone change, the CCP. Instead, federal officials have been working feverishly to prop up existing processes, while pressing for further concessions from First Nations (such as elimination of reserve status and removal of tax immunity).

First Nations Demand Change

Delgamuukw Implementation process.

First Nations - whether they are at the negotiating table or not - are united in calling for fundamental policy changes which, at minimum, reflect international human rights principles and the standards set by the Supreme Court of Canada. The unjustified removal of resources from traditional territories continues to contribute to First Nation underdevelopment, and existing policies and processes cannot provide a just remedy.

The First Nations say that Canada's refusal to change the Comprehensive Claims policy to conform to the law is unacceptable, and they have adopted a strategy to support the exercise of Aboriginal rights and title, and to get changes to the Comprehensive Claims Policy.

In July 1999, at the AFN's Annual General Assembly, the Chiefs adopted Resolution 5/99, which laid out a strategy for implementing *Delgamuukw*.

The resolution pointed to the fact that attempts at working with the federal government to cooperatively change the CCP in light of *Delgamuukw* had been resisted, and set out a process to "bring about a more immediate and effective implementation" of the decision. A Special Committee was established to oversee the development of a detailed strategy. The Committee was directed to:

Review the 1986 federal Comprehensive Claims policy with a view to developing an alternative approach which is based on recognition of Aboriginal title consistent with the Delgamuukw decision.



Federal officials Lorne Brownsey (left), Greg Gauld, and Daniel Ricard have no mandate to review the CCP. They reject suggestions that the policy is illegal and racist, and assert instead that the CCP is "flexible enough" to address First Nation concerns. It appears that resistance to a policy review is coming from the highest levels of the federal government. Canada had until the end of May to respond to the AFN's request for fundamental reform of the CCP, or else it will face a combination of direct action, litigation and an international campaign.

The Committee was also directed to engage the government of Canada in a cooperative process of policy review through a panel of experts.

The resolution concluded by saying that if the government of Canada refused to work cooperatively to change the policy, that a court action be launched by the Assembly "to strike down the policy and replace it with a policy and process consistent with the principles and standards laid out by the Supreme Court of Canada in *Delgamuukw*".

Although Canada was advised of this resolution, and requested to work together to change the CCP, it refused.

Vancouver, January.

In January 2000, a meeting of the Special Committee was held in Vancouver to work out a response to the federal government's refusal. Leaders from across Canada attended this meeting, and agreed that whether they were in the CCP or outside of it, they were all faced with Canada's refusal to deal directly with the implications of Aboriginal title, or change the CCP.

All agreed that a series of actions would be needed before the federal government was prepared to seriously consider a review and revision of the CCP.

Two important things happened at this meeting. The first was the development of a consensus statement, rejecting the Comprehensive Claims Policy and process. (See box on first page of insert)

The other important event was the development of a six-point strategy aimed at obtaining real changes to the CCP.

The strategy has three objectives:

> Get the federal government to recognize and implement Aboriginal title

> Creation of a new policy that recognizes and affirms Aboriginal title

> Encourage First Nation people to exercise the rights flowing from their Aboriginal title and obtain benefits from their land and resources. (See box on last page of this insert for the strategy.)

The consensus statement and the six-point strategy were discussed and ratified in April at the AFN Confederacy meeting. Resolution 7/00 mandated the *Delgamuukw* Implementation Strategic Committee (DISC) to proceed with development and implementation of the strategy. This committee is chaired by National Chief Phil Fontaine, and co-chaired by Chief Arthur Manuel and Regional Chief for Quebec Ghislain Picard.

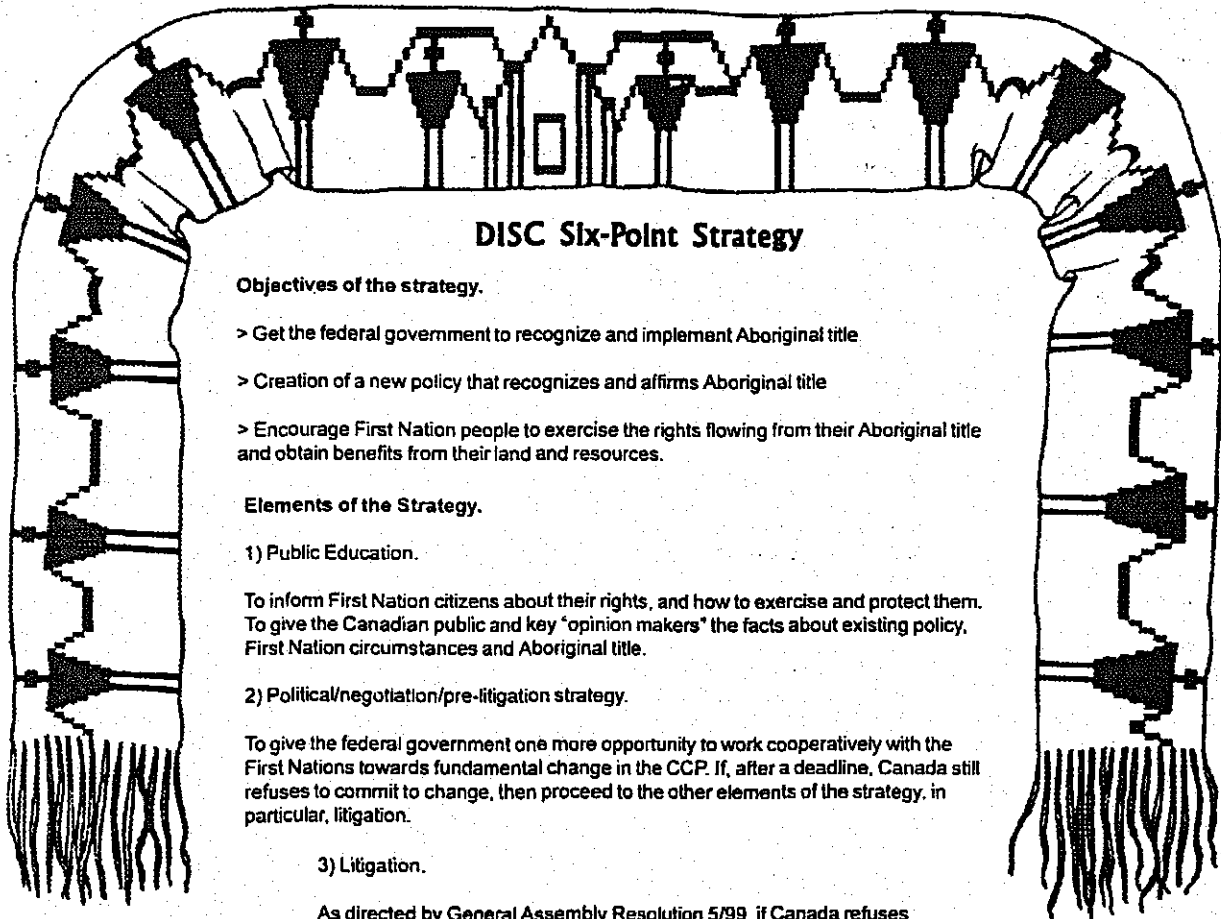
Meeting with Canada, May.

DISC had its first meeting in Ottawa, on May 6-7, followed by a session with senior federal officials on May 9. Representatives from Indian Affairs, the Privy Council Office, and the Department of Justice were present. At that meeting, federal officials once again repeated that there was no Cabinet mandate to review the CCP, and instead tried to defend it.

Consistent with the six-point strategy, DISC tabled a proposal with the federal officials to jointly review the CCP by way of a panel of experts, to be followed by major changes to the basis of the policy. Greg Gauld, Director General for Comprehensive and Major Claims, would only agree to take the proposal back for consultations with his bosses. He committed to have a reply for the Assembly by the end of May.

If the federal government does not agree to work jointly on a new Aboriginal title policy, then the AFN is committed to ratcheting up the pressure by proceeding with the other five elements of the six-point strategy.

We will be looking to all First Nations and their members to assist us in this effort to force Canada to do the honourable thing and recognize Aboriginal title!



DISC Six-Point Strategy

Objectives of the strategy.

- > Get the federal government to recognize and implement Aboriginal title
- > Creation of a new policy that recognizes and affirms Aboriginal title
- > Encourage First Nation people to exercise the rights flowing from their Aboriginal title and obtain benefits from their land and resources.

Elements of the Strategy.

1) Public Education.

To inform First Nation citizens about their rights, and how to exercise and protect them. To give the Canadian public and key "opinion makers" the facts about existing policy, First Nation circumstances and Aboriginal title.

2) Political/negotiation/pre-litigation strategy.

To give the federal government one more opportunity to work cooperatively with the First Nations towards fundamental change in the CCP. If, after a deadline, Canada still refuses to commit to change, then proceed to the other elements of the strategy, in particular, litigation.

3) Litigation.

As directed by General Assembly Resolution 5/99, if Canada refuses to commit to fundamental reform of the CCP, the AFN will proceed with legal action to have the policy struck down.

4) Policy Development.

Begin working on First Nation approaches to an Aboriginal title policy which is consistent with the standards and principles laid out by the Supreme Court of Canada in *Delgamuukw*.

5) Direct Action/Exercise of Aboriginal rights.

Assist First Nations in exercising their rights on the ground, and encouraging them to obtain the economic benefits of their traditional lands and resources.

6) International Campaign.

Work internationally, with human rights institutions (such as the United Nations) non-governmental organizations, and economic institutions (such as the WTO, the World Bank, bond rating agencies), to publicize Canada's record on Aboriginal title and highlight the economic consequences of the status quo. Non-recognition of Aboriginal title is a hidden subsidy for resource developers.

What the United Nations Says

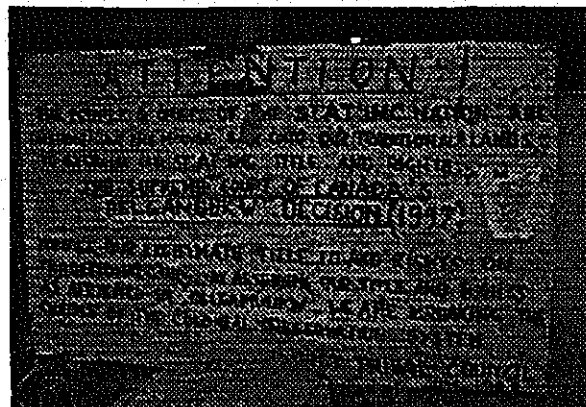
Committee on Economic, Social and Cultural Rights.

In December 1998, the United Nations' Economic and Social Council's Committee on Economic, Social and Cultural Rights released its conclusions on Canada's human rights performance. Canada's policies on Aboriginal title were listed as a "principal subject of concern."

Here is what they said:

The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by RCAP, and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion, or giving up of Aboriginal rights and title should on no account be pursued by the State Party [Canada]. The Committee is greatly concerned that the recommendations of RCAP have not yet been implemented, in spite of the urgency of the situation.

Inset: Notice erected by the St'at'imc Nation, B.C. Interior



UN Human Rights Committee.

In April 1999, the Human Rights Committee of the United Nations High Commissioner for Human Rights released its concluding observations on Canada's observance of UN Human Rights Covenants. Canada's policies came under particular attack. Here is part of what they said:

...the Committee is particularly concerned that the State party [Canada] has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples. With reference to the conclusion by RCAP that without a greater share of lands and resources, institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination, requires ... that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence ... The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with Article 1 of the Covenant.

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Annual General Assembly
July 20 - 23, 1999
Vancouver, British Columbia

Resolution No. 5/99

Moved by:

Chief Carol McBride
Timiskaming First Nation

Seconded by:

Chief Stewart Phillip
Penticton Indian Band

Carried

For 160
Opposed 30
Abstentions 10

Certified copy of a
Resolution made the 22nd
day of July 1999 at
Vancouver, British
Columbia


Phil Fontaine
National Chief

SUBJECT: Motion to Implement the *Delgamuukw* Decision.

WHEREAS the *Delgamuukw* case, decided in 1997, by the Supreme Court of Canada was a landmark case in the law of Aboriginal title, which clarified the law and carried with it major policy implications; and

WHEREAS the Assembly of First Nations, through Confederacy Resolutions No. 2/98 and 3/98, and General Assembly Resolution No. 34/98, adopted a work-plan and principles related to the implementation of *Delgamuukw*; and

WHEREAS the AFN/DIAND National *Delgamuukw* Review was a good faith attempt by AFN to try and work with DIAND to implement the *Delgamuukw* decision in the context of partnership between First Nations and the Federal Crown; and

WHEREAS the Government of Canada refuses to change the Comprehensive Claims policy to recognize Aboriginal title in conformity with the *Delgamuukw* case, and is using the *Delgamuukw* National Review process as a smokescreen for the continued refusal to recognize Aboriginal title; and

WHEREAS because of Canada's refusal, the AFN/DIAND National *Delgamuukw* Review has been unable to bring about any positive changes to the federal Comprehensive Claims policy but it has been useful in research and education at the community level; and

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Annual General Assembly
July 20 – 23, 1999
Vancouver, British Columbia

Resolution No. 5 /99

WHEREAS the Government of Canada continues to use the AFN/DIAND National *Delgamuukw* Review as an excuse for not changing its Comprehensive Claims policy, despite clear statements by the AFN leadership that the Review was not intended to delay implementation of the *Delgamuukw* decision; and

WHEREAS in light of the foregoing, the AFN/DIAND National *Delgamuukw* Review has become prejudicial for those First Nations who assert Aboriginal title and who want the *Delgamuukw* decision implemented; and

WHEREAS it has now been almost 2 years since the Supreme Court of Canada rendered the *Delgamuukw* decision, and the Assembly of First Nations has reached the end of its patience;

THEREFORE BE IT RESOLVED that the name of the *Delgamuukw* National Review be changed to the *Delgamuukw* National Research and Education Initiative; and

BE IT FURTHER RESOLVED that in addition to the *Delgamuukw* National Research and Education Initiative, a new process be instituted to bring about a more immediate and effective implementation of the *Delgamuukw* decision consistent with the principles of AFN Confederacy Resolutions Nos. 2/98 and 3/98 and General Assembly Resolution No. 34/98; and

BE IT FURTHER RESOLVED that the new process be as follows:

- that the process shall be called the *Delgamuukw* Implementation Process;



Phil Fontaine
National Chief

Annual General Assembly
July 20 - 23, 1999
Vancouver, British Columbia

Resolution No. 5/99

- that the process be managed and directed by a Special Committee Co-Chaired by the National Chief or his designate, Ghislain Picard, and Chief Arthur Manuel with representation from those First Nations with Aboriginal title who have not submitted a claim, First Nations whose claim has been rejected, First Nations who are not negotiating under the 1986 federal Comprehensive Claims Policy, or First Nations who are negotiating under the 1986 federal Comprehensive Claims Policy, but have publicly rejected the 1986 federal Comprehensive Claims Policy and commit to its replacement with an alternate approach which is based on recognition of Aboriginal title consistent with the *Delgamuukw* decision;
- that the process review the 1986 federal Comprehensive Claims policy with a view to developing an alternative approach which is based on recognition of Aboriginal title consistent with the *Delgamuukw* decision.

BE IT FURTHER RESOLVED that Canada be urged to agree to this process, resource it at the national level, and participate jointly through the establishment of a panel of experts to review the 1986 federal Comprehensive Claims Policy and make recommendations on an alternative based on *Delgamuukw*, to be convened no later than September 1st, 1999, and to report to Canada and the Assembly no later than October 30th, 1999; and

BE IT FURTHER RESOLVED that the federal government establish a *Delgamuukw* "test case" fund; and

BE IT FINALLY RESOLVED that if Canada refuses to cooperate in this process, that a court action be launched by the Assembly to strike down the policy and replace it with a policy and process consistent with the principles and standards laid out by the Supreme Court of Canada in *Delgamuukw*.


Phil Fontaine
National Chief



Carried
AM

21st Annual General Assembly
July 11-13, 2000-Ottawa, Ontario

RESOLUTION NO. 4/2000

DRAFT

SUBJECT: *Delgamuukw* Implementation Process

MOVED BY: Chief Garry John, Secon Lake S'tat'ime Nation, British Columbia

SECONDED BY: Chief Carol McBride, Timiskaming First Nation, Quebec

CARRIED

WHEREAS by Resolution 5/99, the First Nations-in-Assembly made the following decisions:

- To establish the *Delgamuukw* Implementation Process in order to review the Comprehensive Claims Policy, with a view to develop an alternative approach based on recognition of Aboriginal title.
- To urge Canada to participate in this process through the joint establishment of a Panel of Experts to review the Comprehensive Claims Policy, and to report to the Assembly by no later than October 30th, 1999.
- That if Canada refuses to cooperate in this process, the Assembly shall launch a court action to strike down the policy and replace it with a policy and process consistent with the principles and standards laid out by the Supreme Court of Canada in *Delgamuukw*.

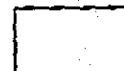
WHEREAS the AFN Confederacy subsequently adopted Resolution 7/00, following-up on Resolution 5/99, by adopting and affirming the AFN Consensus Statement of January 28, 2000, approving the "Draft Strategy Framework on the Recognition and Affirmation of Aboriginal title", by making the following decisions:

- Mandate the *Delgamuukw* Implementation Strategic Committee (DISC), established in Resolution 5/99, to elaborate the strategy framework into a full strategy document and action-plan;
- Mandate the *Delgamuukw* Implementation Strategic Committee (DISC) to develop (a) a budget to finish drafting the strategy, and (b) a budget to implement the strategy;
- Direct the National Chief and the Executive Committee to identify funds within the AFN or elsewhere to resource the *Delgamuukw* Implementation Strategic Committee (DISC), and more particularly to fund the above budgets;

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21st Annual General Assembly
July 11-13, 2000-Ottawa, Ontario

RESOLUTION NO. 4/2000

DRAFT

- Mandate the Executive Committee and the *Delgamuukw* Implementation Strategic Committee (DISC) to jointly oversee the implementation of the strategy;
- Require a progress report by the National Chief and *Delgamuukw* Implementation Strategic Committee (DISC) Co-Chair, Chief Arthur Manuel, to the AFN Annual Assembly.

WHEREAS the federal government has, so far, refused to changes its policies and practises to conform to the new legal standards regarding Aboriginal title, set by the Court in *Delgamuukw*; and

WHEREAS correspondence has been exchanged with the Prime Minister and the Minister of Indian Affairs, and a series of meetings has taken place with senior officials from Indian Affairs, Justice and the Privy Council Office, in order to obtain their commitment to a process of review and revision of the Comprehensive Claims Policy; and

WHEREAS to date, the Government of Canada rejected the AFN proposal for a national review of its comprehensive claims Policy by way of a letter from Minister Nault, dated July 4th, 2000; and

WHEREAS in accordance with Resolutions 5/99, and 7/00, the *Delgamuukw* Implementation Strategic Committee (DISC) has met and developed a strategic work-plan as described in Report of the Co-chairs;

THEREFORE BE IT RESOLVED that in support of the National *Delgamuukw* Implementation Process, the First Nations-in-Assembly hereby accepts and adopts the *Delgamuukw* Implementation Strategic Committee (DISC) Report of the Co-Chairs.

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21st Annual General Assembly
July 11-13, 2000-Ottawa, Ontario

RESOLUTION NO. 4/2000

DRAFT

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July 11, 2000

The Right Honourable Jean Chrétien, P.C., M.P.
Prime Minister of Canada
Langevin Block, House of Commons
Ottawa, Ontario

Dear Prime Minister:

Re: Comprehensive Claims Policy Review

Thank you for your letter of June 7, 2000, wherein you advised that you were referring my letter of May 5, 2000, to Minister Nault for a response.

I received a response from your Minister by letter dated July 4, 2000, which also responded to a proposal I tabled with his officials on May 9, 2000. The proposal was an invitation from the Assembly of First Nations to the federal government to jointly undertake a major overhaul of the comprehensive claims policy in light of recent developments in the case law, particularly, the *Delgamuukw* decision of the Supreme Court of Canada, which was handed down in December 1997.

Regrettably, Minister Nault responded that he was "not willing to contemplate a major review of the comprehensive claims policy at the national level at this time." I have no recourse but to appeal to you, as leader of the government of Canada, to reconsider this decision.

I realize your reluctance to involve yourself in matters which are within the purview of your Ministers. But the major overhaul contemplated by our proposal is beyond the mandate of the Department of Indian Affairs and justifies your direct involvement. Moreover, I know you have maintained, throughout your career, an abiding interest in Indian Affairs, which placed you at the forefront of all major changes in Indian policy in recent times.

This interest manifested itself in the Aboriginal Platform document you personally endorsed and released as Leader of the Liberal Party in 1993, which contained a commitment "to undertake a major overhaul of the federal claims policy on a national basis". You had the insight in that document to realize that the claims policy was "out of step with the legal and political evolution of Aboriginal and treaty rights" and that it had not been substantially changed, except in 1980, since it was originally introduced in 1973.

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Head Office/Siège Social

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The introduction of the first land claims policy in 1973 was a significant moment in the history of Indian policy. You were Minister of Indian Affairs at the time and as you will recall, the then Prime Minister, Pierre Elliot Trudeau, got directly involved in the policy debate. In fact, Mr. Trudeau had publicly declared his refusal to recognize Aboriginal rights. However, when the *Calder* case was decided by the Supreme Court of Canada, he had the integrity and humility to admit that he was wrong and the policy was changed under his leadership and yours.

The next significant moment in the history of Indian policy was in 1982 when s. 35 was added to the Constitution of Canada. You were the Minister of Justice at the time and played an important role in enshrining the following words into the Constitution:

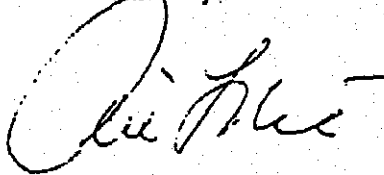
The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.

The Supreme Court of Canada attached a great deal of meaning to the words "recognized and affirmed" in the *Sparrow* case which was decided in 1990. Yet, the comprehensive claims policy has not been changed to bring it in line with s. 35 and the numerous cases which have interpreted it since 1982, the most recent of which is *Delgamuukw*.

I believe we are at a significant juncture in the history of Canada. A major policy change is in order - it will require leadership and a sense of justice to initiate and carry it out. The Assembly of First Nations is willing to work with you and your government to meet this challenge.

I hope you will give this matter timely consideration and I look forward to meeting with you to discuss your favourable response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Phil Fontaine', written in a cursive style.

Phil Fontaine
National Chief

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
Indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

JUL - 4 2000

Mr. Phil Fontaine
Assembly of First Nations
1 Nicholas Street, Suite 1002
OTTAWA ON V7P 3J3

Original on File

Dear Mr. Fontaine:

I am writing in response to the proposal you tabled with my officials on May 9, 2000, calling for the establishment of a panel of experts to review the comprehensive claims policy. It is also to follow-up on your May 5, 2000, letter to which the Prime Minister replied on June 7, indicating that I will be responding on his behalf and also to your letter of June 26, 2000.

The Supreme Court of Canada in the *Delgamuukw* decision shed more light on Aboriginal title and lent its support to negotiations as the way to resolve issues of Aboriginal title. While the Government of Canada is not in a position to recognize, implicitly or explicitly, site specific Aboriginal title a priori, I believe our policy of seeking negotiated resolutions of outstanding issues of Aboriginal title is consistent with the *Delgamuukw* decision and the law generally.

After having reviewed your proposal thoroughly, I maintain my view that the comprehensive claims policy is sufficiently flexible to accommodate the concerns of First Nations. As I mentioned on several occasions, I am not willing to contemplate a major review of the comprehensive claims policy at the national level at this time. My view is that the negotiation process, at each of our tables across the country, where the unique circumstances of each claim can be taken into account, is the best way to resolve outstanding issues of Aboriginal rights and title. Furthermore, since most settlements have to involve provinces and territories, we find that most real change can often only occur at the tables where provincial or territorial governments participate. I remain convinced that the individual negotiation tables as well as the regional processes which are in place across the country, such as the one we have with the British Columbia Summit, the proposed made-in-Atlantic process with the Mi'kmaq of Nova Scotia, the scoping-out exercise I proposed to the Algonquins of Quebec and the approach being developed with the Innu - Montagnais of Mamuitun, bear the best chances to find mutually agreeable approaches to meet the needs and interests of all parties.

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Canada

I am always looking forward to creative approaches to issues raised by the various Aboriginal groups. I am convinced that, with the good will of all, innovative solutions can be found to resolve issues in a mutually satisfactory manner.

I look forward to our continuing dialogue on matters affecting First Nations.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Robert D. Nault". The signature is fluid and cursive, with the first name "Robert" and last name "Nault" clearly distinguishable.

Robert D. Nault, P.C., M.P.