

JOINT WORKING GROUP

**December 8-9, 1992
Ottawa, Ontario**

Present

First Nations

**Chief Manny Jules (Co-chair)
Chief Dan Bellegarde
Chief Dennis Whitebird
Maurice J. Kistabish
Rick Hachette
Ralph Abramson
Steve Didzena
Rolland Pangowish
Don Jones
Wayne Haimila
Chris Printup**

Government of Canada

**John Graham (Co-chair)
Rem Westland
Laurie Klee
Brian Gottheil**

Consultant

Bonita Thompson

1. Opening prayer

Rolland Pangowish gave the opening prayer.

2. Minutes

Brian Gottheil noted that there would be more to report at our January meeting vis-a-vis the NCC - Federal government working group dealing with specific claims.

We agreed on the following future meeting dates and places:

January 26-27th	-	Winnipeg
February 24-25th	-	Ottawa
March 24-25th	-	Winnipeg
April 28-29th	-	Winnipeg
May 19-20th	-	Winnipeg
June 9-10th	-	Winnipeg

The First Nation representatives will travel on Monday morning with the idea of meeting, when possible, in camera on Monday afternoon and all day Tuesday. The meetings of the Joint Working Group would end late in the afternoon of the second day. This scheduling also gives the JWG the option of adding the Friday as a working day.

Ralph will try to arrange a meeting of the Joint Working Group with representative of the Research Directors of TARRs on the morning of February 24th. The June dates will need to be reviewed when the dates of the AFN Annual Assembly are set.

The co-chairs reported on the meeting with the Indian Specific Claims Commission. There was agreement that the two co-chairs would meet with the Commission in February. Such a meeting could also include the Royal Commission vis-a-vis their interest in specific claims. Rolland will ensure that Bonita gets information available on the Specific Claims Commission, i.e. their organization, staff, etc.

Manny will follow up with the BC Minister and Deputy Minister vis-a-vis a possible meeting with the co-chairs in Winnipeg in January. John will continue his efforts to arrange a meeting with Ontario officials. Don Jones will be involved in such a meeting.

Rolland reported on reactions he has received on the principles and objectives statements. Specifically there were some concerns expressed about the lack of a sufficiently strong reference to treaties and to an "independent claims process". The group restated its intention to rework the principles statement following detailed discussions of the elements of the policy.

Rolland and Brian will meet with Bonita, prior to her departure, to finalize the details of her contract for the remainder of 92/93.

The group agreed to adopt the minutes.

3. **Economic Statement:**

John stated that cuts in O&M budgets for 92/93 and 93/94 should not affect the Joint Working Group. He also noted that there will be no cuts in grants and contributions for 92/93.

With regards to cuts in grants and contributions for 93/94, there are no details yet available on how such cuts will affect First Nations. Rem expressed confidence that such cuts, if applied to the Specific Claims program, would not have a major impact on his Branch's operations.

4. **Joint Working Group's 93/94 Budget**

Rem stated that a Treasury Board submission will be required to gain approval for the AFN's 93/94 budget for the Joint Working Group. Such funding would be sourced from within DIAND but nonetheless will receive careful scrutiny from central agencies.

There was agreement that federal officials will discuss the 93/94 budget with their "seniors". AFN officials will simultaneously work out a proposed budget amount based on specified set of activities for the 3 month period (April-June 1993). Rolland will then meet with Bill Kilfoyle prior to our January meeting with the goal of reaching consensus on a 93/94 budget amount at our January meeting. Federal officials will then consult First Nation representatives on the timing and contents of a funding submission.

5. **Questions For Consideration**

The group discussed and modified the list of issues and questions which Bonita had put together. (Bonita had developed a first draft of this document at our last meeting.) The revised draft is attached to these minutes. In dealing with specific issues in subsequent meetings, each party will attempt to answer the questions relating to the issue as a way of attempting to reach a consensus on the elements of a new policy.

6. **Addition to the Principles Statement**

First Nation representatives provided the Federal representatives with a draft statement on a treaty principle, which they propose to add to our current draft. Federal representatives undertook to study this draft and will be ready to discuss it at our January meeting.

7. **Coopers Lybrand Evaluation Study**

Mary Ann Lamb of Coopers Lybrand made a presentation to the JWG on the first phase of the evaluation. The Group made some comments on the proposed orientation for Phase II. With regards to DIAND files, there was agreement that DIAND would permit the consultants to review file material, subject to ATIP and the Privacy Act, under the following conditions:

- the consultants would get First Nation permission through a BCR;
- the consultants would review the files on DIAND premises and would not copy any files.

The group approved the list of 15 communities; First Nation representatives agreed to provide proposed alternatives to the technical working group (Rolland Pangowish, Chris Printup, Bill Kilfoyle and Daniel Caron). First Nation representatives will also contact the 15 First Nations on the list to ascertain their interest to participate in the study prior to contact by the consultants.

We tentatively agreed on having a status report from the consultants at our March meeting in Winnipeg. Bonita and Mary Ann Lamb will touch base throughout Phase II.

8. Draft Sections for the New Policy

A small group was assigned to produce a draft on the following subjects:

- authority (ratification);
- changes to the policy;
- evaluation of the policy;
- disclosure of information;
- third party interests.

There was agreement that these drafts would be reviewed by the full JWG at our January meeting.

9. Preparation for the January meeting

The small group will meet on January 15th in Ottawa to prepare material for the January meeting of the JWG. Rolland and Bill Kilfoyle will arrange a meeting time and place.

SPECIFIC CLAIMS DISCUSSION OUTLINE

I Making a Claim

A. How Will a Potential Claim be Researched?

1. Funding

- (a) What will be the sources of the funding?
- (b) How should the amount of required annual funding be determined?
- (c) How should the funding be allocated among competing interests?
- (d) Who should administer the funding?
- (e) What restrictions, if any, should be attached to the use of the funds?
- (f) How can the users of the funds be held accountable and to whom should they be accountable?

2. Information and Documents

- (a) How accessible are relevant information and documents?
- (b) How much disclosure or sharing of information should there be between the Government and First Nations?

3. Research Effectiveness

- (a) How can funding be used most effectively?
- (b) How can the process of information collection and research be made more time and cost effective?
- (c) How can the quality of research be measured and monitored?

B. To What Kind of Claim Will This Policy Apply?

- 1. What is a Claim under the proposed policy?
- 2. What Claims are included and excluded from this definition?

B. Process Options

1. What are the unique characteristics of a Claim under this Policy which may affect process choices?
2. What litigious and non-litigious options are available? How do they work?
3. What are the advantages and disadvantages of their use?
4. Should the options be enclosed in a closed or open system? Should they be available in addition to litigation or in place of litigation?
5. Should either or both of the parties have option choices?
6. Should one party be able to require the other to participate?
7. Should an independent body be able to require participation by either or both of the parties?
8. What options are the most suitable or least suitable in the context of Claims under this Policy?
9. If settlement is not possible, how will the Claim be finally determined?
10. What legislative and policy changes may be required to permit full participation in the preferred options?

C. Critical Process Issues

1. Who has authority to settle a Claim on behalf of the Government and a First Nation?
2. What process is required to ensure necessary authority?
3. What are the incentives to participate in the processes? How can they be improved or added?
4. What are the obstacles or disincentives to participate in the processes? How can they be removed or weakened?

5. To what extent are the processes to be considered confidential or privileged?
6. How can the process be kept moving along reasonably and efficiently?
7. What criteria can be used to determine if a process or person is impartial or independent?
8. What factors would increase the credibility of the process? (e.g. no conflict; good faith; consistency.) How can these factors be built into the process?
9. What would permit the process to be flexible or creative?
10. How does a process become timely?
11. What is a reasonable time period for resolving currently outstanding Claims?
12. What priorities should be established for dealing with outstanding Claims?
13. How will the processes be funded?
14. What practical limitations, if any, will inhibit the implementation of the Policy and processes? (e.g. lack of funding; lack of skilled human resources)
15. To what extent will political intervention be permitted or tolerated in the process?
16. Given the possibility of resort to acts of power to assert claims against the Government or to inhibit the assertion of claims against the Government, to what extent should the process contain a mechanism to manage this expression of power?

D. Role of Neutrals

1. What functions should neutrals play?

Neutral assistance; proactive intervenor; process monitor; process manager; adjudicator; policy reviewer.

2. What administrative structures, if any, is required to perform these functions?

3. What powers do the neutrals need to perform their functions? What will be the source of their authority?
4. How will the costs of the neutrals be paid?
5. How should neutrals be appointed?
6. At what point in the process should neutrals be utilized?

E. What Human Resources Are Required?

1. What skills are required by the representatives of the parties, the neutrals and any administrative staff to carry out the processes in the manner set out in the Policy?
2. Is there an adequate number of persons with these skills available?
3. How qualified should these persons be?
4. If there is a lack of skilled personnel, how may they be given the necessary training?

F. Protocol for Processes

1. What protocol should govern these processes?
2. When and how should the protocol be established?
3. What is the authority for the protocol?

III Settlement Issues

A. Remedies/Compensation

1. What range of solutions are available for settling claims?
2. What restrictions or qualifications, if any, will there be on those solutions?

B. Preparation of Agreement

1. What criteria should the parties use to test the feasibility of the agreement? (e.g. realistic; authority; timing; certainty; expediency.)

2. What steps will be taken for interim protection of the substance of the terms of the agreement?
3. How can independent legal advice be assured?
4. What releases, if any, will be required?

C. Ratification

1. How will ratification of the settlement agreement be effected and demonstrated by both parties?
2. What protection can each party be required to give to ensure that the agreement has been properly authorized?

D. Implementation of Agreement

1. What administrative steps will ensure that the terms of the agreement will be complied with?
2. What process has been established to monitor compliance with the terms of the agreement?
3. What happens if one of the parties breaches the agreement?

IV Evaluation of the Policy

- A. What steps can be taken to monitor the effectiveness of the Policy?
- B. What criteria can be used to monitor the effectiveness of the Policy?
- C. What mechanism should be built into the Policy to provide for periodic review?

V Changes to the Policy

- A. How will First Nations be involved in the development of proposed changes to the Policy?
- B. How can the Policy be changed?

VI Acceptability of the Policy

- A. What are the critical elements of a Policy which must be met before the Policy will be acceptable to the First Nations and the Federal Government?