UNION OF ONTARIO INDIANS

Chiefs of Ontario Special Assembly
Ipperwash Inquiry – Examining the Relationship

Forest, ON
March 8-9, 2006

The information contained in this document was originally presented to Part II of the Ipperwash Inquiry by the Union of Ontario Indians in the following documents:

- *Anishinabek Perspectives on Resolving Rights Based Issues and land Claims in Ontario* – Dwayne Nashkawa (August 2005)
- *Anishinabek First Nations Relations with Police and Enforcement Agencies* – Dwayne Nashkawa (August 2005)

Background:

The Union of Ontario Indians (UOI) is a political advocacy organization representing 43 Anishinabek First Nations surrounding the northern shores of the Great Lakes. There are seven tribes that make up the Anishinabek Nation. These are the Ojibway, Chippewa, Odawa, Pottawatomi, Mississauga, Algonquins and Delawares. These nations share common languages, customs, beliefs and histories.

The UOI is governed by a Grand Council that meets two to three times per year to decide on matters of "national" importance to the Anishinabek. These decisions are made by resolution. A Board of Directors oversees the corporate business of the Anishinabek Nation through the Union of Ontario Indians, a non-profit corporate secretariat.

The UOI is the oldest First Nation political organization in Ontario. Its roots date back to the Grand General Indian Council of Ontario in the early 1800's and prior to that, the Three Fires Confederacy of the Ojibway, Odawa and Pottawatomi Nations. The Three Fires Confederacy is generally believed to have been confederated since the 15th century.

Anishinabek Nation:

The Anishinabek Nation has always been a self-determining, self-directing nation of people that share a common worldview, similar languages, culture, history and rights. The vision of the Chiefs that signed the treaties during the 19th and early 20th centuries remains true and consistent today. The Anishinabek relationship to the land remains a vital and necessary link to the identity of Anishinabe people.

The treaties recorded and defined that relationship and ensured that Anishinabe people would always be able to maintain their way of life and closeness to the land. They also ensured that the Anishinabek would have a say in the way their lands, resources and communities were governed. First Nation leadership continues to strive to articulate the vision of the Chiefs that entered into those treaties and ensure that the rights that were guaranteed under those arrangements were protected and respected. Access to land and resources continues to be a central issue for First Nations that are struggling to build healthy communities and strong economies.

However, it has been a difficult and often frustrating process for the Chiefs and Councils that govern First Nations. There is a lack of education within the general public that requires extra efforts be made to ensure that the broader society understands the rights, goals and aspirations of First Nations today. There are a number of initiatives being led by First Nations and their respective advocacy organizations that are designed to break down barriers and improve communications between First Nations and the people of Ontario and Canada.

There is also a perception that exists within many First Nations that the media feeds ignorance and bias in their manner of reporting and editorializing about First Nation issues. That being said, efforts are underway to improve the balance in reporting and ensure that articles and information about First Nations reflect the real issues First Nations and their people are facing.

Beyond the general public and media, many First Nation leaders also have serious concerns about government policies relating to Aboriginal people, or lack thereof. During the 1990's, there were a number of initiatives undertaken by the Ontario government with third party user groups while First Nations rights and interests were effectively ignored. The Statement of Political Relationship between the Ontario Government and First Nations was also shelved. Other government initiatives during the mid to late 1990's confirmed that First Nation rights and interests were not on the agenda of the Ontario government.

Interest groups, most notably the Ontario Federation of Anglers and Hunters, took on a much greater policy role, particularly within the mandate of the Ontario Ministry of Natural Resources (MNR) during this time. This was extremely frustrating for First Nation leaders and the Anishinabe people who were striving to achieve a greater role in the management of the lands and resources that surrounded their communities and that their people had always depended on. Similarly, the forest industry and management of forest planning is also a long standing concern of First Nations, particularly in northern Ontario.

The result was greater mistrust and cynicism toward the MNR by Anishinabek harvesters and some First Nation leaders as they witnessed vast quantities of resources being extracted from their traditional areas, their treaty lands being reduced and little or no benefit accruing to their communities. In most circumstances, First Nations were inadequately consulted prior to these resource management decisions being made.

However, there are some new processes that may move these issues forward. The Anishinabek Nation has been active in the creation of roundtables and institutions that promote dialogue including the Anishinabek Ontario Fisheries Resource Centre and the Anishinabek Ontario Resource Management Council. Building on the moderate success of these processes and institutions provides hope for the future.

Yet many outstanding obligations remain and progress is slow. There is a long list of land claims that remain to be settled, a number of resource management issues to be consulted and agreed upon and many problems left to solve. The courts have been too expensive and ambiguous to be used as a means to resolve problems. A new tripartite process is required but this will require political will, human and financial resources and time to properly implement. However, the issues at stake have to be addressed in a manner that brings results and holds all parties accountable.

Consultation with First Nations, particularly in the area of resource management continues to be a frustrating process for all parties involved. The expectations of First Nations are very high while resources to properly consult First Nations are limited. This has resulted in missed opportunities for every party involved in natural resource management processes, from First Nations to government to industry to the general public. However, there are models that can be reviewed and used to strengthen and improve consultation with First Nations, many of which have been proposed by First Nations leaders.

The next steps are many of the same steps that have been taken already. Continue to promote dialogue, improve communications, strengthen policy development processes and ensure that there is follow up. The stakes are high and the course of action will be difficult, but the benefits will far outweigh the costs of doing nothing.

Anishinabek Declaration:

> "When Mr. Robinson came to the Indians to make a Treaty for their lands, they were not willing to give up their lands and would not sign a Treaty. He then told them they need not be afraid to give up their rights because Government would never do anything to make them suffer, he said you know yourselves where you have the best lands and there is where you have your Reserves for yourselves

> and your children and their children ever after. He also said if at any time you have grievance you can go to the Governor and he will see that you get all your rights or whatever you may ask".
>
> *-- Chief Dokis of Lake Nipissing – late 1870's – having attended the negotiation of the Robinson-Huron Treaty, stated his understanding of it*[1]*.*

Chief Dokis' words are echoed today in the efforts of Anishinabek Chiefs and Councils to work with the governments of Canada and Ontario to ensure that the treaties and the rights affirmed therein are protected and exercised fully. These rights are not limited to hunting and fishing, but all manner of harvesting, language, culture, self-determination and the Anishinabek people's relationship to their traditional territorial lands. Inherent aboriginal rights and the treaties remain the foundation for discussion with other levels of government.

In November 1980, during the repatriation of Canada's Constitution, a nation of people reintroduced themselves to the people of Canada. The "Declaration of the Anishinabek" was a definitive statement to the Government of Canada and the provinces which outlined the Anishinabek Nation's place within Canada and its continuous existence as a nation. This was an important event in the political history of the Anishinabek Nation and its corporate secretariat, the Union of Ontario Indians (UOI).

For the first time, the Anishinabek people had formally defined themselves to other levels of government as a people. Not as a group on "Indian bands" or reserves, but as a larger political entity that shared a number of common attributes. The Ojibway, Ottawa, Pottawotomi, Delaware and Algonquin nations that surrounded the northern shores of the Great Lakes had articulated who they were, their shared history and culture and, most importantly, how they saw themselves working on a government to government level with Canada and

[1] Robinson-Huron Treaty Rights: 1850 and today (Nipissing First Nation: UOI, 1994) 2.

Ontario. This declaration also outlined how the Anishinabek related to the land, an integral part of this worldview.

The most integral piece of this declaration is entitled “On our Existence and Rights Today”. It states:

> We are Nations.
>
> We have always been Nations
>
> We have voluntarily entered into a relationship of friendship and protection with the Crown, which we have for two centuries referred to as the Covenant Chain. In placing ourselves under the Crown’s protection, we gave up none of our internal sovereignty.
>
> We have never concluded any Treaty with the Dominion of Canada, nor have we ever expressly agreed to accept the Dominion of Canada in place of Great Britain as the party responsible under the British obligation to protect us.
>
> We retain the right to choose our own forms of Government.
>
> We retain the right to determine who our citizens are.
>
> We retain the right to control our lands, water and resources.
>
> We retain our rights to those lands which we have not surrendered.
>
> We retain the use of our languages and to practice our religions and to maintain and defend all aspects of our culture.
>
> We retain those rights which we have in Treaties with other Nations, until such time as those Treaties are ended.
>
> We retain the right to choose our own future, as peoples.
>
> The only process known to international law whereby an independent people may yield their sovereignty is either by defeat in war or by voluntary abandonment of it formally evidenced. Our Nations have never yielded our sovereignty by any formal

abandonment of it. We have never been conquered in war by any power on earth of which there is a record or tradition[2].

The UOI forms the corporate arm of the Anishinabek Nation. Incorporated in 1949, its roots are in the Grand General Indian Council of Ontario, which was initiated in the early 1800's. Prior to that, the Ojibway, Ottawa (Odawa) and Pottawotomi peoples formed the Council of the Three Fires or Three Fires Confederacy. The Confederacy's roots date back to the time of earliest European contact.

Treaties are Living Agreements:

First Nations interpret and articulate their rights in their own way. Decisions on how rights will be exercised within First Nation traditional territories are matters that are considered by the Chief and Council and the community as a whole. Each First Nation maintains the authority to determine where personal and individual rights end and where communal rights begin. An example might be how much fish is appropriate for one's personal use.

In the end, it is up to each First Nation to determine the most appropriate management of resources within its traditional territory. The traditions and culture of the community guide and govern how resources are used while allowing rights to evolve over time to remain in a contemporary form. Consultation within the community and perhaps with neighbouring First Nations that share traditional territories on issues is an important element in this process.

Chief Shingwaukonse (Little Pine) of Garden River led treaty negotiations for his people during the discussions that eventually led to the signing of the Robinson-Huron treaty. His vision was the same vision that First Nation leaders continue to promote today. Shingwaukonse believed that the natural resources that the Creator had placed upon the land, like the fish and wildlife, were gifts that had been bestowed to ensure that the Anishinabek would be able to continue to exist

[2] UOI, *Declaration of the Anishinabek,* Toronto, November 1980. 10.

as a self sufficient nation. He had foreseen that fish, fur and wildlife would not be able to sustain his people forever, primarily due to the exploitation of fish and wildlife and their habitat that he had witnessed by large companies.

In her book The Legacy of Shingwaukonse, Janet Chute uses Shingwaukonse's own words to describe his vision for the future.

> "The Great Spirit in his beneficence, foreseeing that this time would arrive when the subsistence which the forests and lakes afforded would fail, placed these mines in our lands, so that the coming generations of His Red Children might find thereby the means of subsistence. Assist us, then, to reap that benefit intended for us… Enable us to do this, and our hearts will be great within, for we will feel that we are again a nation"[3].

This view has not changed in the years since the treaty was signed. The Anishinabek, particularly in the Robinson-Huron and Robinson-Superior treaty areas, maintain this position and believe that the treaties signed in 1850 affirmed that right. Today, many First Nations see access to resources, particularly in the area of forestry, mining, and hydro development, as a key element of long term economic sustainability for their communities. Recognition of this position and meaningful dialogue with Canada and Ontario about access to resources remains frustratingly elusive.

Despite some commonly held views that the treaties are ancient documents and should be interpreted narrowly, the Anishinabek people believe that the honour of the Crown demands that the Anishinabek perspectives on access to resource and settlement of land claims be given thoughtful and careful consideration and liberal and just interpretation by the Crown.

---

[3] Shingwaukonse was quoted in the Montreal Gazette 7 July 1849.
Work cited: Janet Chute, The Legacy of Shingwaukonse: A Century of Native Leadership (Toronto: University of Toronto Press Incorporated 1998) 123.

The Robinson-Huron Chiefs articulated their concerns clearly in 1994 stating that a number of issues arising from the Treaty remain outstanding. These issues include the treaty's territorial boundaries, the reserve boundaries, sharing of resource revenues and ownership of the Islands in the Great Lakes. These issues remain contentious today[4].

The Struggle to Recognize Aboriginal and Treaty Rights:

Many Anishinabek people feel that Aboriginal and treaty rights are misunderstood by the general public and that there is a need for much improved public education on treaties and other issues facing First Nations. This has been stated time and again for years, by First Nation leaders, government officials, the courts, the Royal Commission on Aboriginal Peoples among many other sources. Yet First Nations leaders are constantly compelled to reiterate and defend the exercise of rights.

This lack of understanding has occasionally manifested itself in some very ugly ways. In August 1995, a mob of sports anglers, angry about native netting in Owen Sound Bay, confronted a member of the Chippewas of Nawash and her children who were selling fish with her children in an Owen Sound farmers' market[5]. While these confrontations are rare, they still occur. The issue of fishing in the Owen Sound Bay is still very contentious.

The UOI and First Nations have long emphasized the need for education about the treaties and history of local First Nations in school boards, the media and government. Too often, students only learn about general history of Native people in Canada, with little or no local context. While this may not prevent the kinds of incidents that occurred in Owen Sound, it may better prepare people who see about these stories in the media to understand the issue. An overriding concern is that with little knowledge about the First Nations in one's surrounding

[4] UOI. Robinson-Huron Treaty Rights: 1850 and Today (Nipissing First Nation: UOI, 1994) 5.
[5] John Wright, "Fish fight: Angry area anglers storm market fish stand," Sun Times (Owen Sound) 8 Aug. 1995: 1.

area, there is a tendency to presume that if there are financial, environmental or other problems occurring in a First Nation somewhere, that reflects the reality in all First Nations.

Over the past few years, the UOI has increased its efforts to raise awareness of issues facing aboriginal people through the development of what is known in northeastern Ontario as the "Niijii[6] Circle." Initiated in the fall of 2001, the purpose of the Niijii Circle is

"to build relationships that create respect and understanding among all peoples in the Anishinabek Nation territory"[7].

Some of the projects undertaken by the Niijii circle include participation in an anti-racism project in 2004 entitled "Debwewin[8]", which surveyed three cities in northeastern Ontario, a weekly page is published in the North Bay Nugget, and cross cultural training for media, the Ontario Ministry of Natural Resources (MNR) and the Canadian Armed Forces.

[6] "Niijii" is the Ojibway word for "friend".
[7] UOI, "Anishinabek Launches 'NIIJII Circle' with information session on treaties", October 29, 2001. http://www.anishinabek.ca/uoi/comm102901.htm. (2 April 2005).
[8] "Debwewin" is the Ojibway word for "truth".

UNION OF ONTARIO INDIANS

Chiefs of Ontario Special Assembly
Ipperwash Inquiry – The Anishinabek Nation Rights Based Agenda

Forest, ON
March 8-9, 2006

> ***"You always told us to remain here, and take care of our lands; it made our hearts glad to hear that was your wish."***
> **-- Tecumseh**

What is the "Rights-based agenda", and why do First Nation Governments want to pursue it so vigorously?

The four pillars of the Rights-based agenda are:

1. The inherent right to govern ourselves and survive as nations in our own way;
2. Recognition by other sovereign nations that we are nations;
3. Recognition of our rights within Canada's Constitution
4. The on-going definition of rights by the Supreme Court.

1. Inherent rights

An understanding of a rights-based agenda begins by understanding the foundation of all rights and responsibilities. The rights that First Nation people enjoy are derived in several ways; first and foremost they are rights and responsibilities provided to us by the Creator. While our creation stories may vary slightly from Nation to Nation across Turtle Island, the principles are universal. The Creator gave instructions to ensure survival and prosperity for descendants of the original beings. These instructions gave roles and responsibilities to the clans, as well as providing guidance on how to relate to the rest of creation.

As Nations evolved we also developed government structures and processes that worked for us. The rules of government and the rights of our peoples were essential for the continued existence of our Nations. Our structures and laws were not backward, but sophisticated enough, for example, that the framers of the United States Constitution used the Great Law of the Haudenosaunee (Iroquois) as a guide to developing their first governance model.

Our nations were strong and, in order to maintain peace, European nations entered into treaties with us. Neither these treaties nor any subsequent legislation took away our rights to form governments or to continue to govern ourselves as Nations. This is one of our rights that is inalienable, it is inherent -- it can never be taken away, and it cannot be legislated to alter it in any way. It can be thought of as the foundation of our rights-based agenda.

A rights-based agenda means that the Anishinabek Nation demands justice as a right, not simply as a response to our material needs, to meet Canadian standards of living, on charitable grounds, or simply as “the right thing to do” when our standard of living is embarrassing to Canada’s federal government.

It is based on Canada’s obligation under treaties and their common law, to respect the rights of Aboriginal individuals and Nations.

In administering project-based funding, promising better health care, or establishing social service-type programs for First Nations, Canada is entrenching a non-rights-based approach to Aboriginal issues. It creates an environment based on charity and goodwill to help First Nations meet Canadian standards of living. This approach lacks the dignity, legitimacy and respect that is inherent in a rights-based approach to the same issues. Charity usually only helps recipients survive on a day-to-day basis, not support their aspirations to lay ambitious plans for a prosperous future. It fosters a relationship that is paternalistic and lacks mutual respect.

A rights-based approach recognizes the non-tangible quality of dignity, and creates a foundation of legitimacy and respect. This foundation includes recognition that Aboriginal peoples deserve the same opportunities as Canadians to enjoy a basic quality of life, and living standards that will not change at the whim of different governments or court rulings.

The rights-based approach need not be more costly, in fact history has repeatedly proven that respecting human rights is far more likely to result in long-term harmony and prosperity than colonialism.

A legal obligation begins with a moral obligation. The “rule of law” means that laws apply to all citizens and their governments. But, without respect for their treaty or aboriginal rights, the Canadian rule of law is meaningless for First Nations peoples. Most Canadians do not grasp the fundamental injustice of this situation, which results in strained relations and localized disputes between First Nations and other groups over hunting, fishing and land rights.

2. Recognition by other Nations

The second pillar of the rights-based approach to First Nations issues entails recognition that we are nations by other sovereign nations, which became a reality with the issuing of the Royal Proclamation of 1763.

In this landmark document, King George III proclaimed: “And whereas it is just and reasonable, and essential to our Interest, and Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our

Protection, should not be molested or disturbed in the Possession of such parts of Our Dominions and Territories as, not having been ceded or to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.”

The rule of law as established by the British Crown in 1763 was that we were Nations and were to be treated as such, a decree that formed the basis of subsequent common law to which all subsequent treaties adhered. This includes the Robinson-Huron and Robinson-Superior treaties, as well as all treaties created after the Royal Proclamation and Canada’s 1867 Confederation.

In 1764 the Treaty of Niagara was drafted and presented to 24 Nations at Niagara Falls. An estimated 2,000 First Nation people were present to hear Sir William Johnson read the aloud the treaty, which has often been described as a “New Covenant” between Britain and the Indian Nations of North America. A number of promises were made by the British Crown to ensure peaceful co-existence, one of these being an annual gift-giving ceremony which was carried out for over 100 years.

The treaty also signified mutual respect and sharing between the Crown and Indian Nations. This obligation was considered a key element of the treaty, and ensured the allegiance of the Indian Nations to the British cause in the War of 1812. The belief by leaders like Tecumseh that they had a moral obligation to be allied with their treaty partner ensured a British victory, and the future independence of the Canadian nation.

This code of honour has continued to the present day. First Nation citizens volunteered to defend Canada in the global conflicts of the 20th Century in higher proportional numbers than any other identifiable group, and even the smallest communities can point with pride to plaques or monuments listing the names of their veterans of foreign wars. Warriors like Frances Pegahmagabow from Wasauksing First Nation are among the most-decorated soldiers to ever defend Canadian freedoms.

Unfortunately, that sense of honour implicit in the treaties was not reciprocated. Subsequent British colonial and Canadian federal governments did not continue to recognize the inherent rights and nationhood of their First Nation allies, and the original links of mutual respect and sharing began to tarnish. Waves of immigrants settled in Canada, and, as the power of the British Crown grew, their reliance on their First Nation allies diminished. The effects of disease decimated many First Nation populations across Canada, and the respect shown to the First Nations by the British Crown turned into an attitude of colonialism and a policy of assimilation.

First Nations peoples contend that our covenant with the Crown in Canada still exists, and that we still continue to honour the concept of mutual respect and sharing in a Nation-to-Nation relationship.

3. The Canadian Constitution

Repatriated in 1982, the Canadian Constitution is a modern-day pillar of the rights-based agenda. Section 35 states that:

> (1) The existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed.
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
> (4) Notwithstanding any other provisions of this Act, the aboriginal and treaty rights referred to in the subsection (1) are guaranteed equally to male and female persons.

These provisions are normally considered in context with Section 91(24) of the *British North America Act*, which stipulates that Canada's federal government assumes fiduciary responsibility of the Crown with respect to treaties and dealings with Aboriginal people. Any changes to Section 91(24) can only be considered during a constitutional conference convened by the Prime Minister, attended by the First Ministers of each Province, and participated in by the Aboriginal peoples of Canada.

While First Nations have our opinions about the treaty and aboriginal rights we feel are protected by Section 35, the meaning of the phrase "existing rights" creates uncertainties that frequently force us to seek non-political interpretation of rights that we regard as fundamental as human rights are to others living in Canada.

4. Court Definition of Rights

The last pillar of the First Nations rights-based agenda is like the fourth leg on a table that is, at the same time, both its strongest and weakest support.

Despite Canada's constitutional obligations to protect the interests of First Nations, its unwillingness to recognize our inherent rights often forces us to turn to the courts to support our views. Many of the cases – such as Sparrow -- deal with our traditional rights to hunt, fish, and harvest – while others like Delgamuukw and Haida/Taku deal with our claims to traditional territories by virtue of the fact that "we were here first".

Some of these landmark cases go all the way to the Supreme Court of Canada – the highest court in the land – resulting in decisions that support the First Nations position that being here first gives us certain rights that other governments cannot unilaterally take away, and that treaties agreed upon two centuries ago still carry the weight of the "rule of law."

Regardless of the outcome of these court cases – the cost of which can run into millions of dollars that would be better spent by Canada helping us educate our children, care for our sick, and build our economies -- First Nations are not comfortable with a scenario that requires us to submit inherent rights to interpretation by another nation's courts. Even Supreme Court justices have urged Canada to "negotiate, not litigate" their concerns about aboriginal and treaty rights.

Every time there is a Supreme Court decision or a self-government agreement is signed, the rights-based agenda can change, shifting to another place in time to a more definitive concept of what it is and what it is not.

So we see situations like the Marshall decision in which our right to fish for commercial purposes -- set down in a 1750 treaty with the British-- is upheld by the courts, only to see a subsequent "clarification" that holds that right to be subject to modern fisheries management.

What is the First Nations rights-based agenda?

It is much more than a political strategy.

Its strength lies in the collective awareness of our histories, our cultures, and our belief systems.

It represents the promises we made to respect, support, and share with others and the promises they made to us in return.

Its principal goal is to ensure our collective right to enjoy the same opportunities as other people who live in Canada.

And its success depends to a great extent on our ability to have the same courage and compassion exhibited by such ancestors as Tecumseh, in hopes that our allies will repay us in kind.