VOLUME 2, ISSUE 6 JULY 31, 2004

FIRST NATIONS STRATEGIC BULLETIN

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Paul Martin Accelerates His Aboriginal "Melting Plot" Agenda: *Indians, Inuit and Mètis Share the Same Minister*

Andy Scott, new Minister of Indian Affairs and Northern Development and Federal Interlocutor for Mètis and Non-Status Indians, addresses the 25th AFN Annual General Assembly. (Photo by R. Diabo)

By Russell Diabo

Paul Martin's unveiling of his post-election Cabinet is the latest indication that the Liberal government shares the goal of accelerating the assimilation of First Nations along with the "new" Conservative Party of Canada.

By naming **Andy Scott**, from Fredericton, New Brunswick, as the **Minister of Indian Affairs and Northern Development**, and **Federal Interlocutor for Mètis and Non-Status Indians**. The Prime Minister has created the unprecedented position of federal "Aboriginal Affairs" Minister, in every way except in name.

This is a potentially dangerous precedent for First Nations. By combining the responsibilities of the Minister, the Martin government is blurring the distinctions between "Aboriginal Peoples".

The Mètis are seeking "equal status" to First Nations "within [Andy Scott's] new Ministry", according to **Clem Chartier**, **President**, **Mètis National Council**.

A federal document from the Communications Branch of the Department of Indian Affairs entitled "**Words First: An Evolving Terminology Relating to Aboriginal Peoples in Canada**" describes the Mètis as follows:

The word "Métis" is French for "mixed blood." The Canadian Constitution recognizes Métis people as one of the three Aboriginal peoples.

Historically, the term "Métis" applied to the children of French fur traders and Cree women in the Prairies, and of English and Scottish traders and Dene women in the North. Today, the term is used broadly to describe people with mixed First Nations and European ancestry who identify themselves as Métis, distinct from Indian people, Inuit, or non-Aboriginal people. (Many Canadians have mixed Aboriginal and non-Aboriginal ancestry, but not all identify themselves as Métis.) Note that Métis organizations in Canada have differing criteria about who qualifies as a Métis person.

The same DIA document goes on to state that the federal Department of Indian Affairs "is not involved with Mètis issues. These are dealt with by the federal Interlocutor's office in PCO".

However, with Andy Scott's appointment, we know this DIA document is now out of date as far as the federal structure goes. Andy Scott's appointment explains in part, the Prime Minister's December 12, 2003, announcements regarding federal appointments and re-structuring to add "Aboriginal" Advisors and Committees in PMO, Cabinet, and PCO.

Andy Scott's dual mandate also fits with the federal use of the term "Aboriginal-Canadians" included in the February

Special points of interest:

- **Martin's Aboriginal 'Melting Plot'**
- **Inuit Court Case Could Impact First Nations & Metis**
- **AFN 25th Annual Assembly a Charade**
- **Oil & Gas on Peigan Reserve**
- **International Indigenous Elders Summit-2004**

Inside this issue:

'Melting Plot' continued from page 1

Clem Chartier, President, Mètis National Council, calling for end to discrimination at Premier's Health Conference, July 29, 2004. (Photo by MNC)

"Since 1876 the **Indian Act** was the federal law that defined who an "Indian" was, and "half-breeds", or Mètis (mixed-bloods) as the French called them, were not included in the definition of "Indians"."

2004, Throne Speech.

The federal Aboriginal "Melting Plot", as I call it, really started when Canada began to legislatively define who was an "Indian" and who wasn't, in both pre-Confederation and post-Confederation legislation.

Section 91.24

Historically, Canada's constitution was the **1867 British North America Act**, which divided federal and provincial powers into various "subject matters".

The federal government is constitutionally responsible for "**Indians and lands reserved for the Indians**" (**sec. 91.24 Constitution Act 1867**). The Inuit ("Eskimos") were included as "Indians" through a Supreme Court of Canada decision in 1939, but the Mètis were not included within the meaning of section **91.24 of the BNA Act**.

Since 1876 the **Indian Act** was the federal law that defined who an "Indian" was, and "half-breeds", or Mètis (mixed-bloods) as the French called them, were not included in the definition of "Indians".

Section 35

The patriation of Canada's constitution in 1982, introduced the term "Aboriginal" into Canada's political-legal vocabulary. It was part of a negotiated text in section 35 of the **Constitution Act 1982**, and as an umbrella term it was intended to be defined to include Indians, Inuit and Mètis—without regard to their differences—as the "Aboriginal Peoples" with "aboriginal and treaty rights", which were "recognized and affirmed" by Canada's constitution.

The constitutional talks of the 1980's between Canada's First Ministers' and representatives of the four National Aboriginal Organizations (AFN, ITC, MNC, NCC) were supposed to identify and define the meaning of section 35 of the constitution, but these talks ended in failure in 1987, which left it to the Crown governments to either develop policies on "Aboriginal Peoples" and their "aboriginal and treaty rights", or the courts would interpret and define the "new" terms introduced with a new constitution.

The federal position has consistently been that the Mètis are a provincial responsibility, although some federal programs are specifically directed to Mètis, such as employment training.

"Powley Case" & Mètis Rights

What has changed the federal position is the results of the **R. v. Powley** court case.

The **Mètis National Council** summarizes the **Powley** case as follows:

WHAT THE SUPREME COURT SAID

On September 19, 2003, the Supreme Court of Canada, in a unanimous judgment, said that the Powleys, as members of the Sault Ste Marie Métis community, can exercise a Métis right to hunt that is protected by s. 35.

In a unanimous decision, the Supreme Court of Canada confirmed the existence of Métis communities in Canada and the constitutional protection of their existing Aboriginal rights. The Court said that the Métis were included as one of the "aboriginal peoples of Canada" in s. 35 to recognize them, to value distinctive Métis cultures, and to enhance their survival.

Specifically, the Court set out the test for establishing Métis harvesting rights protected by s. 35 of the Constitution Act, 1982. The Court applied this test to the Sault Ste Marie Métis community and to the Powleys and found that the Powleys were exercising the Sault Ste. Marie Métis community's constitutionally protected right to hunt. However, this does not mean that the case is limited in its application only to the Sault Ste Marie Métis community. The test will apply to Métis communities across the Métis Nation Homeland.

The Court also spoke about the urgent need to develop more systematic methods to identify Métis rights-holders. In answer to government claims about Métis identification problems, the Court said that this issue was not an insurmountable problem and that the difficulties must not be exaggerated in order to defeat Métis claims.

'Melting Plot' continued from page 2

WHO ARE THE METIS IN SECTION 35?

This question of who are the Métis was discussed at length before the Court. Many of the lawyers for governments who intervened argued that there were no Métis "peoples" and that there were only individuals with mixed Indian and European heritage. The Supreme Court did not agree with these arguments.

The Court did not set out a comprehensive definition of who are the Métis people. Instead, the Court set out who the "Métis" are for the purposes of s. 35. The Court said that the term "Métis" in s. 35 refers to distinctive Métis collectives who, in addition to their mixed ancestry, developed their own customs, way of life, and group identity–separate from their Indian, Inuit or European forebears.

ESTABLISHING A METIS RIGHT—THE POWLEY TEST

The Supreme Court said that the appropriate way to define Métis rights in s. 35 is to modify the test used to define the Aboriginal rights of Indians (the Van der Peet test). This Métis test will now be called the Powley test. The test is set out in ten parts:

<u>Characterization of the right</u> - For a harvesting right, the term "characterization" refers to the ultimate use of the harvest. Is it for food, exchange or commercial purposes? The Court said that the Métis right to hunt is not limited to moose just because that is what the Powleys were hunting. Métis don't have to separately prove a right to hunt every species of wildlife or fish they depend on. The right to hunt is not species-specific. It is a general right to hunt for food in the traditional hunting grounds of the Métis community.

<u>Identification of the historic rights bearing community</u> - A historic Métis community was a group of Métis with a distinctive collective identity, who lived together in the same geographic area and shared a common way of life. The historic Métis community must be shown to have existed as an identifiable Métis community prior to the time when Europeans effectively established political and legal control in a particular area.

<u>Identification of the contemporary rights bearing community</u> - Métis community identification requires two things. First, the community must self-identify as a Métis community. Second, there must be proof that the contemporary Métis community is a continuation of the historic Métis community.

<u>Verification of membership in the contemporary Métis community</u> - There must be an "objectively verifiable process" to identify members of the community. This means a process that is based on reasonable principles and historical fact that can be documented. The Court did not set out a comprehensive definition of Métis for all purposes. However, it set out three components to guide the identification of Métis rights-holders: self-identification, ancestral connection to the historic Métis community, and community acceptance. Difficulty in determining membership in the Métis community does not mean that Métis people do not have rights.

Identification of the relevant time - In order to identify whether a practice was "integral" to the historic Aboriginal community, the Court looks for a relevant time. Ideally, this is a time when the practice can be identified and before it is forever changed by European influence. For Indians, the Court looks to a "pre-contact" time. The Court modified this test for Métis in recognition of the fact that Métis arose as an Aboriginal people after contact with Europeans. The Court called the appropriate time test for Métis the "post contact but pre-control" test and said that the focus should be on the period after a particular Métis community arose and before it came under the effective control and influence of European laws and customs.

<u>Was the practice integral to the claimant's distinctive culture</u> - The Court asks whether the practice - subsistence hunting - is an important aspect of Métis life and a defining feature of their special relationship to the land. The Court specifically

Steve Powley, Mètis hunter who won the SCC **Powley** case establishing Mètis hunting rights. (Photo MNC)

"three components to guide the identification of Métis rights-holders: self-identification, ancestral connection to the historic Métis community, and community acceptance. Difficulty in determining membership in the Métis community does not mean that Métis people do not have rights."

'Melting Plot' continued from page 3

L to R: Mètis Lawyers, Clem Chartier, Jean Teillet and Jason Madden, after filing submissions before the SCC in **R v. Powley**, March 2003. (Photo by MNC)

"The doctrine of extinguishment applies equally to Métis and First Nation claims. Extinguishment means that the Crown has eliminated the Aboriginal right. Before 1982, this could be done by the constitution, legislation or by agreement with the Aboriginal people."

noted that the availability of a particular species over time is not relevant. So even though the case may be about moose hunting, as it was with the Powleys, the issue is really about the right to hunt generally. The Court found that, for the historic Sault Ste Marie Métis community, hunting for food was an important and defining feature of their special relationship with the land.

Continuity between the historic practice and the contemporary right - There must be some evidence to support the claim that the contemporary practice is in continuity with the historic practice. Aboriginal practices can evolve and develop over time. The Court found that the Sault Ste Marie Métis community had shown sufficient evidence to prove that hunting for food continues to be an integral practice.

Extinguishment - The doctrine of extinguishment applies equally to Métis and First Nation claims. Extinguishment means that the Crown has eliminated the Aboriginal right. Before 1982, this could be done by the constitution, legislation or by agreement with the Aboriginal people. In the case of the Sault Ste Marie Métis community, there was no evidence of extinguishment by any of these means. The Robinson Huron Treaty did not extinguish the Aboriginal rights of the Métis because they were, as a collective, explicitly excluded from the treaty. A Métis individual, who is ancestrally connected to the historic Métis community, can claim Métis identity or rights even if he or she had ancestors who took treaty benefits in the past.

Infringement - No rights are absolute and this is as true for Métis rights as for any other rights. This means that Métis rights can be limited (infringed) for various reasons. If the infringement is found to have happened, then the government may be able to justify (excuse) its action. The Court said here that the total failure to recognize any Métis right to hunt for food or any special access rights to natural resources was an infringement of the Métis right to hunt.

Justification - Conservation, health and safety are all reasons that government can use to justify infringing an Aboriginal right. But they have to prove that there is a real threat. Here there was no evidence that the moose population was under threat. Even if it was, the Court said that the Métis would still be entitled to a priority allocation to satisfy their subsistence needs in accordance with the criteria set out by the Supreme Court in R. v. Sparrow. Ontario's blanket denial of any Métis right to hunt for food could not be justified.

As we can see from the foregoing summary of the **Powley** case and the **Powley** "test" to prove Mètis rights, there are clearly implications for hunting rights and resource allocations for the Mètis, which the Crown governments must accommodate, but the Mètis National Council appears to be intent on pushing the SCC **Powley** decision beyond harvesting rights to rights to federal programs and services "equal" to First Nations.

Following a meeting with the Premiers on health issues, in a press release dated July 28, 2004, released by Clem Chartier, President of the Mètis National Council, he confirmed their interpretation of the SCC **Powley** decision by stating as follows:

There is an expectation that the status quo denial of the unique needs of the Metis must be finally addressed in light of the recent landmark Supreme Court of Canada victory in Powley case, which recognized and affirmed that the Métis people have Aboriginal rights, equal in stature to that of First Nations and Inuit people. President Chartier added,"The old arguments for excluding the Métis Nation can no longer be defended. Further, the federal government must live up to its recent Speech from the Throne commitment to work with us in order to find a proper place for the Metis people within its policies. I am calling upon the Premiers to work collaboratively with the Metis Nation to ensure the federal government lives up to its obligations and commitments to the Metis Nation in any new Health Accord.

In addition, to health, the **Mètis National Council (MNC)** is seeking federal programs and services in the areas of education (including post-secondary), housing,

'Melting Plot' continued from page 4

economic development, justice and self-government, and as shown above the MNC will be using their interpretation of the SCC **Powley** decision to bolster their position for accessing more federal programs and services for the Mètis.

Andy Scott & AFN

On July 22, 2004, two days after being sworn in as a Cabinet Minister, Andy Scott traveled to AFN's Annual General Meeting in Charlottetown, PEI, and addressed about 100 Chiefs and Proxies who remained at the meeting. Andy Scott said, in part;

I wanted to share with you my initial thoughts in the task before us and my approach to the responsibilities that have been entrusted to me as Minister. . . First I am honored to have been called by the Prime Minister to serve in Cabinet as Minister entrusted with this important portfolio, one that speaks to both the history and the future of Canada. Prime Minister Martin has a deep commitment to aboriginal issues and he has made these issues front and center of the government's agenda. I would like to say from the onset that I do have responsibilities both as Minister for Indian Affairs and Northern Development and as Federal Interlocutor for Metis and Non-Status Indians. I realize that the three aboriginal groups recognized by our constitution each have their own unique backgrounds, cultures, traditions and place within the fabric of Canada.

There are of course issues of common concern, but this bringing together of responsibilities at the ministerial level does in no way dilute the relationship between the Government of Canada and First Nations people. As demonstrated by the Canadian-Aboriginal Peoples Roundtable in April, we saw how the government is capable of dealing with and responding to the fundamental issues faced by all aboriginal people in Canada while at the same time recognizing the unique circumstances of First Nations, Inuit and Metis.

The Prime Minister has said that Canadians expect this government to do better. Your [National] Chief has challenged us to do better. It must take the necessary steps to improve Canada's prosperity and all people's standards of living. The summons could not be more clear. This is a government focused on results and my commitment, and I was challenged to offer this commitment, and my commitment before you is to work in good faith with you and other partners on a shared goal of realizing positive and lasting change in the lives of First Nations people across Canada.

I'm new to the portfolio but I'm no stranger to the commitments the government of Canada and the AFN have made to each other to advance the concerns of First Nations. I know that under the leadership of the Prime Minister, there have been significant advances in the relationship with First Nations people and I'm here to say that though we are in a new Parliament and with a minority government, we will continue to build our relationship with First Nations people based on inclusion and cooperation.

I say to you that my priority is to work with you and partners such as the provinces and territories, aboriginal organizations, the private sector, the voluntary sector and others to close the lingering and unacceptable, intolerable gap in living conditions between First Nations and other Canadians. I regard this as a matter of the highest national importance, a defining challenge of our times. We have come to realize that building the kind of future that we want requires the active participation of partners including other levels of government, aboriginal organizations, the private sector and all those who have a stake in a better future for First Nations, and under the leadership of the Prime Minister, the government has made a strengthened relationship with First Nations, the foundation for greater cooperation in areas of shared concern.

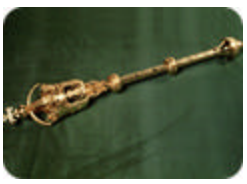
The government's new relationship with First Nations is founded on the belief that the answers to the long-standing issues facing First Nations are not housed exclusively in one department or minister's office or in provincial or territorial capitals. Our new relationship means that we will work together to find shared solutions, whether they come from Ottawa or

"As demonstrated by the Canadian-Aboriginal Peoples Roundtable in April, we saw how the government is capable of dealing with and responding to the fundamental issues faced by all aboriginal people in Canada while at the same time recognizing the unique circumstances of First Nations, Inuit and Metis."

L to R: Phil Fontaine, Clem Chartier, Josee Kusugak. (Photo courtesy of ITK-S. Hendrie)

'Melting Plot' conclusion from page 5

"Through the "Aboriginal" Roundtable follow-up, there is also a lot of latitude for the federal government to play First Nations, Inuit and Mètis demands off each other, and there are federal officials with experience in doing this who are advising the Martin Cabinet."



from any First Nation community in Canada. The point is we will develop these solutions wherever they may originate, working together in partnership to turn them into real and lasting results.

We know that there are First Nations successes across Canada. We need to tap into those ideas and make them part of a wider dialogue that respects and encourages broad participation of First Nations in the affairs that affect their lives. This spirit was evident at the Roundtable in which — an event which brought First Nations expertise in a variety of sectors together with governments and aboriginal leadership in a shared venture to realize a common vision.

The Roundtable of April 19th was a watershed event, one which I was pleased to attend and though we have a new Ministry in a minority government, the issues brought forward at the Roundtable press us on with undiminished urgency. The Roundtable launched a new approach for strengthened relationships and marked an era of change. A clear and unmistakable message emerged from the gathering. We would not let whatever differences we have stand in the way of progress on fundamental issues facing First Nations. The stakes are too high to let another generation wait for results. All the participants agreed that the status quo can no longer be endured and that we need a concentrated effort by all in building a better future for First Nations people.

Your organization is fundamental to the success we desire. We have an ambitious agenda ahead, based on the premise that First Nations should have more control over your lives and communities. We also know there is much more that we can do and we must do together to make a real difference in the lives of First Nations people. There is much work ahead. The challenges are considerable, but so is our determination to succeed.

I'm a new Minister in a new job, but you have my commitment that I will work with you as a partner in good faith. I have absolute respect for the vital role that the AFN plays in the lives of First Nations people, indeed in the life of Canada. I'm pleased and honored to be with you in your 25th Annual General Assembly and with your permission, [National] Chief, I would like to sit in the audience after lunch to listen at least for a while to part of the deliberations.

Generations that will follow us will look on this time in Canada and this leadership for how we responded to the new spirit of cooperation that was there for all to see at the Roundtable. I say with the deepest sincerity and conviction: we will not let them down.

As we can see, Andy Scott's speech was written to provide assurances to the Chiefs and AFN that the First Nations relationship with Canada will not be "diluted". Yet, Andy Scott referred repeatedly to the Canada-Aboriginal Roundtable of April 19, 2004.

Canada-AFN "Joint Agenda"

It should be recalled that what came out of the Roundtable was a document entitled "Building a Joint Agenda", which sets out a bilateral structure and process between the Minister of Indian Affairs (and now Mètis Interlocutor) and the National Chief of the Assembly of First Nations to follow-up on the Roundtable issues of Health, Education, Housing and Economic Development.

There is strong evidence the federal government intends to use AFN as a negotiation/consultation body for input into revising national "Indian" programs and funding allocations, while ignoring and denying Inherent, Aboriginal and Treaty Rights, except through existing federal self-government and land claims policies.

Through the "Aboriginal" Roundtable follow-up, there is also a lot of latitude for the federal government to play First Nations, Inuit and Mètis demands off each other, and there are federal officials with experience in doing this who are advising the Martin Cabinet.

In a minority government there are often a lot of trade-offs, First Nations should beware that they aren't one of the negotiation items being traded-off in Parliament, particularly as the Mètis now claim "equal" status to First Nations.

Background: Andy Scott

Fredericton

First elected to the House of Commons in 1993, Andy Scott has served as Chair of the Standing Committee on Justice and Human Rights and as a member of the Standing Committee on Government Operations and Estimates. Mr. Scott served as Solicitor General of Canada from June 1997 to November 1998. In 2003, he became Minister of State (Infrastructure).

In 1996, he headed the federal Task Force on Disability Issues. Between 1981 and 1993, Mr. Scott served as the executive director of the New Brunswick Liberal Party, senior policy advisor to Premier Frank McKenna, and assistant deputy minister for intergovernmental affairs in the Government of New Brunswick.

He has been a member of the Fredericton Community Literacy Community, a member of the board of the Canadian Rehabilitation Council for the Disabled and co-chair of the Theatre New Brunswick Fundraising Campaign.

Mr. Scott graduated from the University of New Brunswick with a bachelor of arts degree. He and his wife, Denise Cameron, have two sons.

Andy Scott, Minister of Indian Affairs and Northern Development and Federal Interlocutor for the Mètis and Non-Status Indians. (Photo PMO)

Background: Ethel Blondin-Andrew

Western Artic

First elected to the House of Commons in 1988, Ethel Blondin-Andrew was re-elected in 1993, 1997, 2000 and 2004. Most recently, she served as Minister of State (Children and Youth). Previously, she served as Secretary of State (Training and Youth) and Secretary of State (Children and Youth).

Prior to her election to public office, Ms. Blondin-Andrew was an Aboriginal language and curriculum specialist, a college instructor and a national manager of indigenous development programs. Ms. Blondin-Andrew graduated from the University of Alberta and has received an honorary degree from Trent University in recognition of her contribution to Canada's Aboriginal communities.

A Treaty Dene from the Dene Nation, Ms. Blondin-Andrew is married to Leon Andrew and has three children.

Ethel Blondin-Andrew, Minister of State for Northern Development. (Photo PMO)

Background: Susan Barnes

London West

Sue Barnes was first elected to the House of Commons in 1993 and was re-elected in 1997, 2000 and 2004. In 2003, she was named Parliamentary Secretary to the Minister of Justice and Attorney General of Canada with special emphasis on Judicial Transparency and Aboriginal Justice. She served as Chair of the Standing Committee on Finance and has also been Chair of the Federal Branch of the Commonwealth Parliamentary Association. She has also served as Chair of the Standing Committee on Aboriginal Affairs and Northern Development and was a member of the Standing Committee on Industry, Science and Technology. She was Parliamentary Secretary to the Minister of National Revenue.

Susan Barnes, Parliamentary Secretary for Indian Affairs and Northern Development and Federal Interlocutor for Mètis and Non-Status Indians. (Photo PMO)

Experts Say Inuit Lawsuit Could Cost Ottawa, Revolutionize Aboriginal Law

David C. Ward (Kiviaq)
Alderman
1968 – 1974
Officially changed to
Inuit name Kiviaq in 2001.

"The lawsuit, filed July 16 in Federal Court, uses the Charter of Rights to argue that Inuit should have the same status as Indians, who have access to a lengthy list of benefits, including money for post-secondary education. "

BOB WEBER

EDMONTON (CP) - He has fought battles in the boxing ring, on the football field, in city council chambers, in courtrooms and against cancer. But Kiviaq's latest fight may have the most far-reaching consequences.

The Edmonton Inuk, formerly known as David Ward, filed a lawsuit last week alleging Ottawa discriminates against his people. Legal experts suggest his efforts to win new federal benefits for Canada's 50,000 Inuit deserve serious consideration.

They also say the action could rewrite the relationship between non-status Indians, the Metis, the provinces and the federal government.

"If he were successful, it would be quite a revolution," says Peter Russell, a retired University of Toronto political science professor, who specializes in aboriginal law.

Kiviaq, who won another court fight to change his name from Ward to the one his parents gave him, is suing Ottawa for providing greater education, health and housing benefits to status Indians than it does to the Inuit.

The lawsuit, filed July 16 in Federal Court, uses the Charter of Rights to argue that Inuit should have the same status as Indians, who have access to a lengthy list of benefits, including money for post-secondary education.

"The defendant's failure to treat the Inuit equally to Indians and other aboriginal persons in respect of the benefits outlined above is a denial of their right . . . and constitutes discrimination on the basis of race," the statement of claim says.

Kiviaq has a point, says Russell.

"That, to me, is a very strong argument. I can't see a reason in the world why an Inuit person shouldn't have the same access to that (education) program as another aboriginal person."

Kent McNeil of Osgoode Hall Law School agrees, although he suggests Ottawa is likely to argue it has transferred its responsibilities to the Inuit by signing agreements with land claim organizations representing Canada's four main Inuit groups.

"The federal government has tried to restrict its responsibility as much as possible," he says.

But such organizations as the government of Nunavut have argued for years that land claims don't allow Ottawa to simply offload its aboriginal duties.

"We're covering a large portion of Inuit health care even though that's not the case elsewhere for aboriginal people in Canada," says Nunavut Premier Paul Okalik, who is also a constitutional lawyer.

"The federal government has offloaded those costs to us without the resources."

Kiviaq's lawsuit could give Nunavut's negotiations a big boost, Okalik says.

"I appreciate (Kiviaq's) efforts in this area."

As well, there are as many as 1,000 Inuit living outside treaty areas who get no benefits at all.

If Kiviaq succeeds in getting the federal government to accept some responsibility for them, other aboriginal groups are likely to follow.

"The Metis could make the same type of argument," McNeil says.

So could non-status Indians, says Russell.

"The federal government has always tried to offload its non-status Indians to the provinces. If court adopted (Kiviaq's) arguments, they would be playing into the provinces' hands.

"It's a minefield and it's very full of fiscal consequences - not to mention political ones."

But to Kiviaq, what matters is that the next generation of ambitious young Inuit don't have to go through what he did.

"All I'm asking is to pay for our education so we can cope with your culture," he said when he filed the lawsuit.

Kiviaq was raised by his mother and white stepfather in Edmonton after being born in

‘Inuit Lawsuit’ conclusion from page

Chesterfield Inlet, Nunavut, in 1936.

A self-described underdog and outsider, he turned to sports.

He won provincial boxing and Golden Gloves championships and won 102 of 108 fights as a prizefighter. In 1955, he played halfback with Edmonton's Canadian Football League team - the only Inuk ever to be an Eskimo.

He served on Edmonton's city council in the late 1960s and made a failed run for the mayor's chair in 1976.

After a few years running an open-line radio show, Kiviaq entered law school. In 1983, he became the first Inuk to be called to the Canadian bar - an achievement reached with no federal or provincial help.

A claim for $150,000 to reimburse him for education expenses forms part of his current lawsuit.

He retired from his practice last year after he was diagnosed with cancer.

For 20 years, he says, he has been battling the federal government for what he calls equal rights with other aboriginals. The current action, he says, is his last resort.

"I've been writing back and forth with the government and getting nowhere," he says. "I finally said, 'Screw it, I'm going to sue.'"

[Source: © Canadian Press]

Inuit: A Description by DIAND

Inuit are the Aboriginal people of Arctic Canada. Inuit live primarily in Nunavut, the Northwest Territories and northern parts of Labrador and Quebec. They have traditionally lived above the treeline in the area bordered by the Mackenzie Delta in the west, the Labrador coast in the east, the southern point of Hudson Bay in the south, and the High Arctic islands in the north.

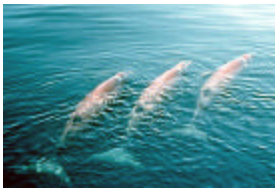
Inuit are not covered by the *Indian Act. However, in 1939 the Supreme Court interpreted the federal* government's power to make laws affecting "Indians, and Lands reserved for the Indians" as extending to Inuit.

The word "Inuit" means "the people" in Inuktitut, the Inuit language, and is the term by which Inuit refer to themselves. Avoid using the term "Inuit people" as the use of "people" is redundant. The term "Eskimo," applied to Inuit by European explorers, is no longer used in Canada. Inuit are the Aboriginal people of Arctic Canada. Inuit live primarily in Nunavut, the Northwest Territories and northern parts of Labrador and Quebec. They have traditionally lived above the treeline in the area bordered by the Mackenzie Delta in the west, the Labrador coast in the east, the southern point of Hudson Bay in the south, and the High Arctic islands in the north.

[Source: “Words First: Am Evolving Terminology Relating to Aboriginal Peoples in Canada, Communications Branch, INAC, Oct. 2002]

Jose Kusugak, President of Inuit Tapiriit Kanatami. (Photo by ITK)

“Inuit are not covered by the *Indian Act. However, in 1939 the Supreme Court interpreted the federal* government's power to make laws affecting "Indians, and Lands reserved for the Indians" as extending to Inuit.”



25th AFN Annual General Assembly a Charade: *Is the Assembly of First Nations Dead?*

National Chief Phil Fontaine introducing Andy Scott, Minister of Indian Affairs, Northern Development and Mètis Interlocutor, as well as, Ethel Blondin-Andrew, Minister of State for Northern Development, July 22, 2004 at the AFN-AGA in Charlottetown, PEI. (Photo by R. Diabo)

"The quorum was lost on the afternoon of the second day and didn't recover on the third day of the Assembly. Consequently, the Chiefs-in-Assembly could not do business through motions or resolutions on important national issues."

Manny Jules, Spokesperson, First Nations Fiscal Institutions, monitoring proceedings of AFN-AGA, but the proposed "Fiscal Institutions Bill" wasn't on the agenda in Charlottetown, PEI. (Photo by R. Diabo)

By Russell Diabo

First of all, I would have to say that in my view, this meeting ended in discord and failure, although National Chief Fontaine proclaimed in his concluding remarks that the Assembly was "successful".

For First Nations Chiefs and Proxies who came to do business like discuss issues and pass resolutions it was not successful.

During this Assembly there were about **240 voting delegates registered** by the second day. The quorum was lost on the afternoon of the second day and didn't recover on the third day of the Assembly. Consequently, the Chiefs-in-Assembly could not do business through motions or resolutions on important national issues.

The Assembly's Agenda was adopted at the start of each day, but the contentious issues were put off until later in the Assembly. Two of the contentious issues were the **AFN 2004-2005 Budget** (this item was added to the agenda from the floor) and the "**Building a Joint Agenda**" (Canada-Aboriginal Roundtable follow-up process) between AFN and the Government of Canada.

Day One was spent mainly on procedural issues and reports, such as, the National Chief's opening remarks, AFN Audit and Reports, which were already available in the kits, there were presentations by Youth, Women's and Elders representatives, a Child Welfare presentation, and the National Chief's presentation on Post-Election Strategy. There was a quorum on day one.

Day Two, the morning was spent on items from the first day, such as a report by the National Chief on the federal government's mishandling of the Residential Schools claims and issues. The Recognition and Implementation of First Nations Governments was discussed and a resolution adopted for a First Nations process.

On the afternoon of day two, the Assembly was essentially turned into a Hearing of the **AFN Renewal Commission**. Various First Nation representatives made short presentations to the Commission. The quorum in the Assembly was lost by this time.

During the end of presentations to the AFN Renewal Commission session, delegates from Ontario spoke to the need to add an Ontario representative on the Commission because the Ontario region was not adequately consulted on the establishment of the Renewal Commission.

A motion was made to add an Ontario representative to the Commission. A delegate from the First Nations Summit then asked if there was quorum, a count was made and there was no quorum. Delegates from the Manitoba and Quebec also asked for additional representatives to be added on the Renewal Commission. The matter was then referred to the AFN National Chief and the Executive who held an in-camera meeting and ruled that there would be no changes to the composition of the AFN Renewal Commission.

Day Three began with the Co-Chairs of the Assembly ordering a count and then made a determination that there wasn't a quorum and the Assembly couldn't pass motions or resolutions, but could hear reports and have general discussion as long as there was consensus.

For two hours, delegates from the floor of the Assembly spoke to the process for follow-up on the **61 proposed AFN Resolutions**. Most delegates indicated that they

'Is AFN Dead?' continued from page 10

wanted the resolutions put to an Assembly to be held as soon as possible in the fall of 2004. Delegates from the First Nations Summit and a couple of delegates from other regions wanted the resolutions put to the AFN Executive Committee for follow-up. After extensive discussion and debate the Assembly Co-Chairs ruled that the consensus was to have the 61 draft Resolutions put to a follow-up Assembly to be held in the fall.

The National Chief in consultation with several Vice-Chiefs at the head-table overturned the decision of the Co-Chairs and said that the "convention" was to have the resolutions put to the AFN Executive Committee for follow-up. Several Chiefs responded at the microphones that they weren't in agreement with this and would be writing letters to that effect to the National Chief and/or the AFN Executive Committee.

At this point the Co-Chairs of the Assembly called on the National Chief to present the AFN Pre-Budget Submission for 2005-06. It was obvious that this agenda item was timed to coincide with the arrival to the Assembly of Andy Scott, the new Minister of Indian Affairs, Northern Development and Metis Interlocutor, who entered the Assembly and sat in the audience with Minister of State for Northern Development, Ethel Blondin.

Following the National Chief's presentation, Minister Scott was asked to come to the front of the Assembly to make some remarks. Minister Scott's speech was full of platitudes and he gave the following assurance:

I would like to say from the onset that I do have responsibilities both as Minister for Indian Affairs and Northern Development and as Federal Interlocutor for Metis and Non-Status Indians. I realize that the three aboriginal groups recognized by our constitution each have their own unique backgrounds, cultures, traditions and place within the fabric of Canada.

Minister Scott didn't make any commitments other than to work "in good faith" with First Nations, and to recognize the "**vital role that the AFN plays in the lives of First Nations peoples**". Andy Scott pointed out that he was Minister for only two days and that he was there to listen.

After the Minister's remarks the Assembly broke for lunch, while Ministers Scott and Blondin-Andrew met privately with the AFN Executive Committee during lunch.

Prior to adjourning for lunch, the National Chief told the delegates that Minister Scott would return to the Assembly for questions. However, after lunch the Assembly heard reports on languages and the Aboriginal Healing Foundation, while the Ministers sat in the audience taking business cards from various Chiefs who approached them. The Ministers left around 3:00 P.M. as the reports went on.

The Assembly then went to concluding remarks from the National Chief who thanked those that didn't complain about the format of the meeting or the agenda. The National Chief said that everyone should be happy about the results of the meeting. It was successful!

However, I can say that I heard quite a few of the 100 or so, remaining delegates to the Annual Assembly giving other opinions. I heard from a number of delegates, expressions of dissatisfaction with the fact that this was the second Annual Assembly in the last two years where quorum was lost and the business of deliberating on the critical national issues facing First Nations and giving direction in the form of resolutions to the AFN National Chief and AFN Executive Committee, wasn't possible without a quorum.

There was also the disappointment that hundreds of thousands of dollars had been spent to hold the Assembly as well as, the costs involved in delegates and observers traveling to and staying in the vicinity of the Assembly.

There is also the matter of First Nation community Chiefs, or their Proxies, holding the AFN National Chief and the AFN Executive Committee accountable for their actions with the Crown governments, such as the Canada-Aboriginal Roundtable follow-up process. In addition there is the matter of the Chiefs, or their Proxies, having an opportunity to review AFN's proposed annual budget for AFN staffing, operations and activities, including the sources, terms and conditions of the funding.

25th AFN-AGA, July 20-22, 2004, Charlottetown, PEI. (Photo by R. Diabo)

"The Assembly then went to concluding remarks from the National Chief who thanked those that didn't complain about the format of the meeting or the agenda. The National Chief said that everyone should be happy about the results of the meeting. It was successful!"

25th AFN-AGA, July 20-22, 2004, Charlottetown, PEI. (Photo by R. Diabo)

'Is AFN Dead?' continued from page 11

Phil Fontaine, AFN National Chief, addressing federal Ministers Scott & Blondin-Andrew at AFN-AGA in Charlottetown, PEI. (Photo by R. Diabo)

"The AFN Executive Committee, including National Chief Phil Fontaine, are probably among the least accountable and transparent First Nation politicians in Canada."

Logo of Canada-Aboriginal Roundtable, held in Ottawa, April 19, 2004.

Whether it is by accident or design, the loss of quorum at Annual AFN Assemblies calls into question the credibility of the AFN National Chief and the AFN Executive Committee because their mandate on current issues is not reflective of the views and positions of First Nations community Chiefs, as the AFN Charter was intended to do.

When Matthew Coon Come was AFN National Chief, representatives from the First Nations Summit, among others, were critical of the resolutions passed by the small numbers attending AFN Confederacy or Special Assembly meetings. Yet these former critics of AFN are now silent on the small turnouts at AFN Annual Assemblies now that their candidate is in as AFN National Chief.

Martin and Fontaine

The AFN Executive Committee, including National Chief Phil Fontaine, are probably among the least accountable and transparent First Nation politicians in Canada.

Apparently, the Government of Canada has no problem with secrecy when they want to use AFN as a national consultative/ negotiation body, and partner, such as the Martin Liberal government is now doing with the post-Roundtable "Building a Joint Agenda" process, which is designed to ignore Inherent, Aboriginal and Treaty rights except at existing negotiation tables under current federal self-government and land claims polices.

Since Phil Fontaine was elected last year as AFN National Chief, he has been acting on his 10 point "Getting Results" Electoral Platform as if he was a leader of a federal political party.

It is no secret that Phil Fontaine is a close collaborator with the Liberal Party of Canada, he may or may not be a member of the Party, but he was a former Regional Director for the Department of Indian Affairs and Northern Development. After Fontaine lost his re-election bid for AFN National Chief in July 2000, the then Prime Minister, Jean Chrètien, appointed Phil Fontaine as Co-Chair of the federal **Indian Claims Commission (ICC)**, which provided Fontaine with the money and opportunity to travel across Canada, until he resigned from the ICC to run once again for the position of AFN National Chief last year.

During this last federal election campaign, Phil Fontaine broke with the convention of National Chiefs before him. Phil Fontaine called on First Nations people to vote in the federal election. Although Fontaine never publicly declared his Party preference, he appeared to be campaigning for the Liberals in this last federal election, allowing the Liberal Party of Canada to use his quotes as a public endorsement to support the Liberal Prime Minister during the election campaign period.

In any case, the Liberal government has close ties with Phil Fontaine, and the April 28, 2004 Draft "Building a Joint Agenda" document appears to contemplate a structure and process for Canada-AFN collaboration on national programs, policies and funding allocations, through joint Canada-AFN Treasury Board Submissions, Communications and Policy Development.

Canada is already engaged in its annual budgetary and legislative processes in preparation for the fall session of Parliament in a minority government situation.

Phil Fontaine told the delegates to the 25th AFN-AGA that he hopes to "raise the profile" of First Nations issues by implementing his Post-Election "Getting Results" Strategy, which consists of:

- Having a "full seat at the table" during the First Ministers' Meeting on Health in September 2004.
- Presenting AFN's 2005-06 Pre-Budget Submission to the House of Common's Finance Committee.
- Participating in Post-Roundtable follow-up process (Joint Agenda on Health, Education, Housing, & Economic Development).
- Negotiations with federal departments on AFN's 2005-06 Budget.
- Joint Canada-AFN Annual Report Card to Parliament.
- Work with Opposition Parties (NDP and Bloc) in Parliament to try and get Motions, Opposition Days and Committees focused on First Nations issues.

'Is AFN Dead?' continued from page 12

There is no question about Phil Fontaine's cozy relationship with the Liberals in this post-election scenario, but given the outcome of this last Assembly, there are questions about the credibility of his mandate, and lack of accountability and transparency to the community Chiefs.

What credibility will Phil Fontaine have with Opposition Parliamentarians in this minority government situation, when it is widely known among the Conservatives, NDP and Bloc Quebecois, that Phil Fontaine is aligned with, and well funded by, the Liberals.

It is also widely known among Parliamentarians and First Nations alike, that when Phil Fontaine came in, he and his Executive Committee fired key AFN staff who had much experience with the federal government's policies, structure and Parliamentary Relations. The AFN staff were likely fired because they were involved in supporting the efforts of First Nations to oppose the Liberal's infamous "Suite of Legislation".

Phil Fontaine continues to publicly admit he personally supports the Liberal's "First Nations Fiscal and Statistical Management Act", although he concedes that as AFN National Chief, the AFN cannot support the proposed legislation.

Moreover, it is also widely known that Phil Fontaine is soft on the federal Liberal's existing policies that violate and deny First Nations' Inherent, Aboriginal and Treaty Rights, which is why Fontaine continues to keep the "rights agenda" separate from the Liberal's "quality of life" agenda. This agenda is set out in the last Throne Speech, Federal Budget, Canada-Aboriginal Roundtable, and the Canada-AFN "Building a Joint Agenda" process.

The Martin government also needs Phil Fontaine and AFN in order to implement the central top-down approach of the "Aboriginal" component of the Liberal's social policy, which is probably why Phil Fontaine was sent a letter from the **Canada Revenue Agency**, concurrent with the 25th AFN-AGA, that announced a moratorium until 2006, on the taxation of First Nations Post-Secondary funding.

It is interesting to note that this effectively removes a policy irritant for both Phil Fontaine and Paul Martin over the next two years. In any case, it is only a delay, but it is another sign where the Martin government is heading on Aboriginal and Treaty Rights.

Martin and Fontaine may have "dodged the bullet" on taxing post-secondary education funding, but the arguments about Treaty Rights and fiduciary obligations of First Nations to federal programs and services will no doubt be coming forward on the health, education and housing issues.

As for economic development, the matters of training and employment of First Nations members will bump up against the Aboriginal Title and Treaty Rights to access and ownership of lands and resources "off-reserve".

End of the Trail for AFN?

During this last AFN Annual Assembly in Charlottetown, PEI, the AFN National Chief, and his Executive Committee of Regional Vice-Chiefs, made two executive decisions which may have sealed the fate of this dysfunctional "National Aboriginal Organization":

⇒ Fontaine and his Vice-Chiefs refused to change the composition of the "AFN Renewal Commission", despite the request from First Nation community Chiefs from various regions; and

⇒ Fontaine and his Vice-Chiefs refused to hold a Special Assembly to allow First Nation community Chiefs, or their Proxies, to deliberate on the 61 draft resolutions, which weren't dealt with at the 25th AFN-AGA in Charlottetown, because of loss of quorum.

These decisions will likely come back to haunt Fontaine and his Vice-Chiefs, as well as, threaten the future of the AFN.

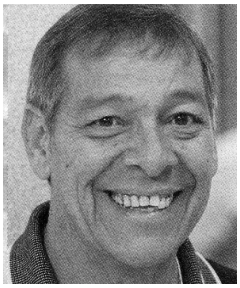
The lack of accommodation only serves to promote discord and a further erosion of trust by many community Chiefs from different regions in the AFN National Chief, the AFN Executive Committee and of course the AFN Renewal Commission.

The call by some community Chiefs for regular, perhaps quarterly, Special Assemblies, is a valid request.

"There is no question about Phil Fontaine's cozy relationship with the Liberals in this post-election scenario, but given the outcome of this last Assembly, there are questions about the credibility of his mandate, and lack of accountability and transparency to the community Chiefs."

L to R: AFN National Chief Phil Fontaine and Prime Minister Paul Martin at Press Conference during Canada-Aboriginal Roundtable, April 19, 2004 in Ottawa. (Photo by R. Diabo)

'Is AFN Dead?' continued from page 13



Len Tomah, AFN Regional Vice-Chief, New Brunswick/PEI. (Photo AFN)

"there are no policies, formal standards or corporate by-laws to ensure that fair standards are met with respect to the Vice-Chief's selection. The AFN relies on each region to utilize a selection process that is appropriate to its own Region. This type of acceptance of the unique nature of each Region only works if there are minimum standards of fairness, transparency and accountability that are mandatory across the country."

The AFN Executive Committee cannot be trusted to negotiate with the federal government on national policies, programs and funding formulas that impact on First Nations households, families and communities, without being required to properly report back, obtain mandates and/or ratify any agreements from community Chiefs-in-Assembly.

The AFN Charter provides the following regarding the election of AFN Regional Vice-Chiefs:

The AFN Regional Chiefs shall be elected by the Chiefs in their regions according to the following formula:, one each from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Labrador, Nova Scotia and Newfoundland, New Brunswick, and Prince Edward Island, Northwest Territories, Yukon Territory.

The AFN Regional Chiefs shall be elected for a three year term and shall be eligible for re-election. The term of office may be terminated before the expiry date if the Chiefs of that Region so decide at a meeting called for that purpose.

As can be seen the Regional Chiefs are selected along provincial/territorial lines, not by Treaty Areas or First Nation territorial Boundaries.

A good example of the lack of accountability and transparency on the part of the AFN Regional Vice-Chiefs, comes from the Mi'kmaq Confederacy of PEI, who stated the following in a presentation to the AFN Renewal Commission in Charlottetown:

In preparing this submission we also made inquiries to AFN staff on any existing (internal) policies and procedures that relate to the conduct and activities of the AFN Vice-Chiefs. We were told that there were no policies or formal standards of practice for the Regional Vice-Chiefs. . . Over the years, the role of the Vice-Chiefs has become perhaps even more significant than even the Charter envisioned. As an organization, the AFN relies on the Regional Chiefs to ensure that information is communicated to the First Nations in that region and to coordinate consultations on various issues. However, the AFN does not have standards, policies or monitoring practices to ensure information dissemination or consultations are adequate or consistent from region to region. The Regional Chiefs are relied on, without question, as representing the interests of the particular region but with no related accountability mechanisms to ensure that the job is being done. . . At present, the NB/PEI Regional Chief is selected by a show of hands at a Union of New Brunswick Indians Board Meeting. Of the 17 Bands in New Brunswick and PEI, 5 First Nations are not affiliated with the UNBI, including the PEI Bands. These 5 First Nations, therefore, have no voice in the selection of the AFN NB/PEI Regional Chief. The selection process for the AFN NB/PEI Regional Chief is as follows: the issue of the AFN Vice-Chief mandate is placed on the UNBI agenda. No formal notice of an election is provided to the NB/PEI Bands. The Vice-Chief's name is put forward at the UNBI meeting in question and there is a call for a show of hands to renew the mandate. There is no call for nominations, no opportunity for others to put their name forward for consideration, no secret ballot. Again, there are no policies, formal standards or corporate by-laws to ensure that fair standards are met with respect to the Vice-Chief's selection. The AFN relies on each region to utilize a selection process that is appropriate to its own Region. This type of acceptance of the unique nature of each Region only works if there are minimum standards of fairness, transparency and accountability that are mandatory across the country.

The Mi'kmaq Confederacy of PEI gives us a good illustration of why there needs to be oversight of the AFN Executive Committee by the Chiefs-in-Assembly.

In their submission, the Mi'kmaq Confederacy of PEI also pointed out one of the fatal flaws of the AFN Renewal Commission's mandate, in section 3, which states:

d) Provide recommendations to the AFN Executive on specific issues that can be implemented without changes to the governing instruments of the AFN and NIB.

The Mi'kmaq Confederacy of PEI, was critical of this flaw and told the AFN Renewal Commission, as follows:

We suggest that section 3 in context with

'Is AFN Dead?' conclusion from page 14

the concerns surrounding our Regional Vice-Chief places us and this Commission in a Catch-22 situation. This Catch-22 situation exists because the key and fundamental issue of the accountability of the Vice-Chiefs is left directly in the hands of the very same people (the AFN Executive) for action. As a result, the Renewal process, with respect to this issue, is not arms length, independent or objective.

It is not just in the New Bruswick/PEI Region where this is a problem, other regions also experience similar problems with a lack of accountability and transparency on the part of the AFN Regional Vice-Chief, particularly if a First Nation (Band) is independent from a Provincial/Territorial Organization (PTO), yet participates in AFN Confederacy and Assembly meetings.

According to the 2004-05 financial information provided from AFN, they are spending about $1,700,000 on the AFN Executive Committee. That is almost all of the AFN "Core Budget", which is $2,070,000.

As someone asked during the AFN Annual Assembly last year "where is the value for money"?

In fact, during the 25th AFN-AGA, some Chiefs asked for information and a discussion on AFN's 2004-05 budget, but this was another item that was "Philibustered"and never was brought up for discussion during the Annual Assembly.

The Martin government is also maintaining the national "Fiscal Institutions" and the "First Nations Governance Centre", set up by former Minister of Indian Affairs, Robert Nault. These matters were never brought up for discussion at the AFN-AGA, even though Manny Jules, the Spokesperson for the "Fiscal Institutions" was present.

Herb "Satsan" George was supposed to give a report on the goings-on with the "First Nations Governance Centre", but he asked to be taken off the AFA-AGA agenda, and he was nowhere in sight. Satsan is another one not known for his accountability or transparency.

The Martin Liberal government is proceeding with a number of significant initiatives, which will impact on First Nations, including policy and program reform, legislation and budgetary processes.

The Martin government will be consulting and negotiating mostly with the AFN National Chief and his Executive Committee on these matters because the Martin government is using a centralized top down approach to manage and control First Nations utilizing all of the "National Aboriginal Organizations", particularly AFN, ITK and MNC.

Parliament is scheduled to begin on October 4, 2004, the Throne Speech on October 5, 2004.

If your Chief and Council does not know what the AFN National Chief and his Executive Committee are up to in their discussions with the federal government on health, education, housing, economic development, or other issues, chances are your rights are going to be negatively impacted.

The Martin government is talking about "self-reliance" for Aboriginal-Canadians that includes First Nations. What Ottawa means when they use that term is that there will be federal programs capped, cut or off-loaded, including trying to change the tax status of First Nations, as they look for money to cover the costs of health care, education or infrastructure for cities.

Maybe its time for a new approach to First Nations' national politics and a new organization as well. One that remembers First Nations have Inherent, Aboriginal and Treaty Rights. One that is not a branch office of the Department of Indian Affairs.

I doubt the Martin Liberals will fund such an organization, but that is the point. The AFN is based upon the **Indian Act** system, which was designed to keep First Nations "on-reserve" while the Crown governments authorize the theft of First Nations' lands and resources despite recent legal victories recognizing First Nations property rights over "off-reserve" lands and resources..

There has been essentially a Liberal "takeover" of the AFN and even some regional organizations. If there is ever to be an alternative to the AFN, now is the time to network and create it, before it is the "end of the trail" for all First Nations.

Feb. 2, 2004, Prime Minister Paul Martin chats with Governor General Adrienne Clarkson, in the Senate before she delivers the Throne Speech. (Photo by Patrick Doyle-PMO)

"There has been essentially a Liberal "takeover" of the AFN and even some regional organizations. If there is ever to be an alternative to the AFN, now is the time to network and create it, before it is the "end of the trail" for all First Nations."

OPINION: Indian Oil and Gas Matters on the Peigan Reserve, Alberta

Alberta Oil-well. (Photo courtesy of Statistics Canada)

"the Minister and IOGC are helping resource companies to commit **bio-prospecting** and **bio-piracy** of **Peigan Traditional Knowledge**."

Unidentified Peigan Woman, Circa 1924-25. (Photo courtesy of Univ. of Saskatchewan Libraries, Special Collections, Morton Photographs)

By Celeste Strikes With A Gun

Since there is no infrastructure for the exploration and development of oil and gas on the Peigan Indian Reserve, the **Minister of Indian Affairs and Northern Development**, and **Indian Oil and Gas Canada (IOGC)** can help resource companies to exploit Peigan resources.

While some Indian bands surrendered natural resources by a referendum, the Minister is relying on an old band council resolution.

In early 2002, **Strater Crowfoot**, then **Executive Director and CEO of IOGC**, boasted he had the sole authority to sign Indian Oil and Gas Permits in Canada in his capacity as CEO for IOGC. Strater Crowfoot agreed to show me the Peigan Permit, but I was shown certified copies of only three pages that provided information on the parties to the permit, the parties' signatures, and the signatures of members of the Peigan Indian Band Council who approved the permit. This lack of transparency is not justified.

Strater Crowfoot refused to verify the Peigan royalty rate is 5% net production. Instead, he has called it a "Gross Overriding Royalty Rate" to rebut my contention that the royalty is too low. Since such a royalty arrangement is made between resource companies who decide to work together, I am led to conclude that either Strater Crowfoot does not know anything about the resource industry, or Strater Crowfoot tried to oppress me with technical jargon.

When a trust company sought to have a royalty registered in a land titles office, the resource industry reviewed their royalty clauses. As for IOGC, Strater Crowfoot had a fiduciary duty to ensure that Peigans' had a fair royalty rate that was an interest in land to ensure exemption from taxation and seizure.

A paper was prepared for IOGC to deal with concerns about maintaining the fiduciary relationship. It relied on a decision in **Guerin** that found the fiduciary relationship based on agency, rather than trust, because Crown liability could operate on a sliding scale. As more information is disclosed, Crown liability lessens.

Information is disclosed, but the ability to understand or comprehend information must be questioned. Last fall, the **Indian Resource Council (IRC)** lobbied against **Bill C-48: An Act to Amend the Income Tax Act (natural resources)**. Since this bill affects resource companies, IRC advocated for the resource industry rather than our interests.

Since Peigan natural resources were never disposed, Strater Crowfoot should not have approved applications for exploration on **Peigan Indian Reserve Lands** in his capacity as a Regional Authority under the **Canadian Environmental Assessment Act**.

Since the resource company contended that they would respect sacred sites, the resource company contracted an archaeologist to get Peigan Traditional Knowledge. Since the Minister and IOGC claim they do not possess this data, the Minister and IOGC are helping resource companies to commit **bio-prospecting** and **bio-piracy** of **Peigan Traditional Knowledge**. There is also a Federal Court Order allowing the Minister and Strater Crowfoot to keep this data from Peigan band members.

Last year, it was suggested that the **Alberta Energy Utilities Board** had the jurisdiction to deal an application for a proposed test well on the **Peigan Indian Reserve** and that IOGC only had the jurisdiction for surface matters.

Canada is a developed country who plays an integral part in international matters, such as the **U.N. Convention on Biodiversity**. We must understand how Canada is implementing its international legal obligations and begin correcting the outrageous nonsense.

[Source: © Celeste Strikes With A Gun]

OPINION: Is the Liberal Government Good for First Nations?

By Cliff Atleo Jr.

Every few years we stop and ask ourselves the same questions. What will this rich, white neo-colonizer be able to do for us? Should we attend fund raisers and attempt to establish good ties and alliances? How else can I pimp and degrade myself and my culture to try and win his favour? I cannot think of one good, fundamental act that a federal or provincial politician has done for Indigenous people in this country. What I can think of is people in power who said they were our friends, who said they were genuinely concerned about our well-being, time after time, deny us our inherent rights. Think of Oka, Burnt Church, Sun Peaks, Gustafson Lake, Cheam, Restiguuj...heck you don't even have to think about such vivid examples..think of your home communities and the everyday lives of your fellow citizens.

The only thing left, centre-left or small "L" liberal politicians do is pacify our leaders with rhetoric, short-minded programs and high paying jobs. Think of the example of residential schools. Do they deal with the matter in a just and honourable way? No. Do they get down on their knees and beg us forgiveness? No. Do the courts pay damages equivalent to what white people get when they are abused? No. They give us $300 million dollars for a 5 year program so that we can "heal." Don't get me wrong, I think there are a lot of good-hearted Indian people trying to help each other and surviviors that are doing what they can to get better, but the government just expects to throw a little money at the problem and call everything even. It is as if once we are "healed" and "healthy" we will behave like good little Indians and not cause any more fuss.

Firstly, I think we need to develop strength amongst ourselves by living, speaking and acting in accordance with our traditional principles. I know that our practices evolve and some downright change or disappear, but we all have powerful principles that do not change; that can be applied in any context and time. Only by embracing our roots can we truly repair the damage and move forward. This change happens one warrior at a time. Next, the family, then the house, the clan, the village, the nation until we are strong enough to defy any outsider and live our lives as we were born to do.

Secondly, I agree that we can benefit from developing meaningful, open, respectful relationships with non-Indigenous people. I do not agree that these relationships will be forged with their politicians within their political system. That system; everything it is and stands for is based on fundamental lies and deception and no matter how big or good the house looks, the foundation is still rotten. We need to establish alliances with non-Indigenous people who are willing to accept "Indian laws in Indian lands" and are willing to accept the jurisdiction of our chiefs knowing that we will embrace and take care of them and work with them, if they recognize and respect our place, our laws and jurisdiction. There are people out there who are willing to make that step and it is there that we must start.

Paul Martin is like the man before him and the woman before him and the man before her and so on. I will not hold my breath or exert any effort to win his favour. I believe that my time is best spent working amongst our own, engaging in debate and forging our own alliances. I realize that this will take some time but there is none better than right now to continue or start the fight.

kleco and cuu.

[Source: www.Taiaiake.com © Cliff Atleo Jr. 2004]

Prime Minister Paul Martin joins in with drum group in Huntsville, Ontario, on National Aboriginal Day, June 21, 2004. (Photo courtesy of Liberal Party of Canada)

Logo of the Liberal Party of Canada

The Mohawk Warrior Flag has become a modern symbol of First Nations sovereignty and resistance to Crown assertions of sovereignty.

> "The only thing left, centre-left or small "L" liberal politicians do is pacify our leaders with rhetoric, short-minded programs and high paying jobs."

Prime Minister Paul Martin shaking AFN National Chief Phil Fontaine's hand at the start of the Canada-Aboriginal Roundtable, April 19, 2004, Ottawa. (Photo by R. Diabo)

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

First Nations Strategic Policy Counsel
Ottawa, Ontario

Phone: (613) 296-0331
Email: rdiabo@sympatico.ca

The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals. This publication is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it. Feedback is welcome. Let us know what you think of the Bulletin.

Russell Diabo, Editor and Publisher, First Nations Strategic Bulletin.

WEBSITE TIP - CHECK OUT THIS SITE FOR MORE INFO:

WWW.NATIONBASE.CA

International Indigenous Elders Summit—2004

*C*ommunity members from Six Nations have worked with Elders and grassroots organizations which resulted in the initiative to have the historic Unity Ride and Run travel to Six Nations from British Columbia. Through these grassroots movements our community members have realized that people world wide respect the political and spiritual philosophy of the Peacemaker, the Great Law, and the Tree of Peace philosophy. They are looking for unity, guidance, and models of governance that will improve their quality of life. In many cases, government programs have not been successful in improving poor health, youth suicide, and epidemic family violence amongst Aboriginal communities. The social trauma our families face due to policies of colonialism is extensive. The Unity Ride and Run, as well as the Elders Summit, is an attempt to restore respect to what our ancestors have left us. We acknowledge the need to listen to our Elders and act on their advice. Therefore, we begin this commitment with the Unity Ride and Run and the International Indigenous Elders Summit (2004).

*T*he leaders of the Unity Ride and Run have suggested that a gathering take place to welcome the many nations who will travel here on foot and by horse. The concept of an International Elders summit was then born and the women from Six Nations have lobbied hard to secure support from Elders, national Native organizations, community members, diverse political organizations and Confederacies, as well as Elders Councils from as far away as New Mexico.

*T*hrough these efforts we present to you the official announcement of the Unity Ride and Run and the International Indigenous Elders Summit 2004. It is our purpose to bring together community leaders, health organizations, educators, academics, youth and women's groups to hear Elders presentations about what we must do to build Nations, to heal as collectives, and to achieve a higher quality life. The Summit will take place in Hamilton and the Six Nations of the Grand River Territory in August 2004.

*W*e will conduct all business in a traditional manner following ancestral protocol. We are calling upon Aboriginal communities across Canada to participate in this project. We need communities to identify youth and families that may want to participate in the journey of the Unit Ride and Run which will officially open the Elders Summit at Six Nations of the Grand River in 2004. We also need communities to begin identifying their Elders representatives (one female and one male), to fund-raise for their Elders to represent their Nations, and to develop an agenda which will lead to finding solutions to the issues which Aboriginal people contend with on a daily basis. Donations, contributions and participation for the Unity Ride & Run and the International Indigenous Elders Summit are encouraged and greatly appreciated!

Please contact:
Elders Summit Coordinator at 519 445 4714 (local) or 1-866-862-7466 (toll free)

or by email to elderssummit@hotmail.com
or by fax to (519) 445 4476
or website at www.elderssummit2004.ca

Indigenous Studies, Chester New Hall 228 (905) 525-9140 ext. 27426/27605