



SUFA: BENEFIT OR BETRAYAL?

**The Federal Transfer of Aboriginal Housing
In the Context of the Social Union
Framework Agreement**

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BENEFIT OR BETRAYAL?

The Federal Transfer of Aboriginal Housing in the Context of the Social Union Framework Agreement

Scope:

In February 1996, the federal government announced it would transfer responsibility for the social housing programs and the accompanying financial resources to provincial and territorial governments. Included in the transfer were all off-reserve Aboriginal housing programs. Starting almost immediately, federal officials entered into closed bilateral discussions with their provincial and territorial counterparts. Transfer negotiations continued throughout the period 1996-2001. During that period, federal officials steadfastly refused to consult with the Aboriginal community or to allow Aboriginal organizations any opportunity for participation in the future administration of their housing programs.

This paper examines the federal government's commitment to SUFA principles, when it shut out any participation by Aboriginal people in the housing transfer. This is of fundamental concern to Aboriginal people, especially when the federal government had signed on through SUFA to "*Treat all Canadians with fairness and equity*", and to ensure "*appropriate opportunities for Canadians to have meaningful input into social policies and programs.*" The federal government refused to apply the SUFA *Principles* despite the fact that the majority of the off-reserve housing was transferred following the February 3, 1999 SUFA signing.

The paper summarizes the more significant requests from Aboriginal organizations and political leaders to consult; including the resolution passed by the Confederacy of Nations in 1997; requests from David Chartrand, President of the Manitoba Metis Federation; the demand from the National Aboriginal Housing Association/Association nationale de l'habitation d'autochone (NAHA-ANHA), supported by the Native Alliance of Quebec and the Congress of Aboriginal Peoples, to halt the transfer and immediately begin consultation; etc.

With respect to the federal refusal to consult, the paper examines in addition to the context of the mechanisms set out in SUFA, the principles of consultation and participation articulated in the Charlottetown Accord, and the report of the Royal Commission on Aboriginal Peoples. It also contrasts the refusal to consult on the housing transfer, with HRDC's inclusive and consultative approach to the labour market training bilateral agreements, and the development of the Aboriginal Human Resources Development Strategy. Regarding the federal position that Aboriginal people should consult with provinces, the paper examines what happened in Ontario following federal transfer.

Explicit in the federal decision to transfer the off-reserve programs, was the position that responsibility for off-reserve Status, Metis, and Inuit peoples rests with the provinces and not the federal government. The paper challenges this in the context of inherent rights and the law. The paper also challenges the federal position that the transfer has no, or very little, impact on day-to-day administration.

NAHA-ANHA is a member-based organization and represents off-reserve housing providers in all provinces and territories. Created in 1994, NAHA-ANHA's mission is to represent the needs of housing providers with both national Aboriginal political organizations and government funding agencies. In addition, NAHA is a centre for best practice and housing management expertise.

NAHA-ANHA is presenting this paper as part of the three-year public consultation review.

Introduction:

“In the Interests of Streamlined Administration & Efficiency”

The urban Aboriginal population accounts for almost fifty percent of Canada’s Aboriginal population.¹ They are widely scattered across Canada’s urban centres. Aboriginal people migrating into towns and cities, often escaping deplorable conditions on Reserves face many obstacles. Many lack the skills and incomes demanded by Canada’s complex and changing urban society. Accessing appropriate and affordable housing is one of their greatest challenges.

In the early 1970s, Aboriginal organizations patched together the first urban and off-reserve native housing projects. Since then, the slow, but steady progression of community initiatives, led to a modest portfolio of approximately 19,000 units² nationally by the mid-nineties, when the federal government ceased funding new housing. While the numbers never matched the demand, urban Aboriginal housing providers became the landlord of choice for urban Aboriginals struggling with housing affordability and discrimination. Providers not only offered safe and affordable housing, they offered a cultural sensitivity and understanding of the Aboriginal experience missing in other forms of assisted housing.

In February 1996, as part of the Federal Budget, the government announced that it would transfer responsibility for the accompanying agreements between the federal government and Aboriginal groups, along with the financial resources for these programs to provincial and territorial governments. Starting almost immediately, federal officials entered into bilateral discussions with provinces and territories.

By the time most Aboriginal housing providers and leaders understood the implications of the transfer, the *Social Housing Transfer Agreement*³ had been drafted and discussions were well under way with provinces and territories. Requests from Aboriginal organizations and Aboriginal political leaders to halt the transfer and consult with them on the future of their programs, fell on deaf ears. There was no response from federal officials to the resolution⁴ passed by the Confederacy of Nations meeting in Quebec City in 1997, which called upon Ottawa to “*cease and desist in its efforts to transfer urban native/First Nations social housing, and associated resources, to the provinces; and the Minister of CMHC be asked to direct his officials to negotiate and subsequently transfer the administration (and associated resources) of urban native/First Nations social housing programs to urban native/First Nations housing delivery groups.*” The Resolution summed up the anxiety over the transfer felt by Aboriginal organizations.

The National Chiefs were not the only Aboriginal body to call for consultation. David Chartrand, President of the Manitoba Metis Federation, writing⁵ to the then minister responsible for the transfer, Alfonso Gagliano, stated “*the MMF, as representative of all*

¹ According to the Aboriginal Population Survey (APS), 320,000 or 45% of the population lives in towns and cities. The urban Aboriginal population is made up of 46% Status Indian, 24% non-Status, 28% Metis, and 2% Inuit. By the year 2016, it is estimated that the population will climb to 455,000.

² Includes both Urban Native and Rural and Native portfolios.

³ See: Appendix A: *Highlights of The Social Housing Transfer Agreement between Canada Mortgage and Housing Corporation (CMHC) and Ontario Ministry of Municipal Affairs and Housing*. No reference to the Agreements which regulate the transfer of approximately \$1.9 billion dollars can be located on the federal government’s web pages.

⁴ See Appendix B: Resolution, Confederacy of Nations, 1997.

⁵ Letter from David Chartrand, President, Manitoba Metis Federation Inc., dated September 10, 1998, to the Honourable Alfonso Gagliano, P.C., M.P., Minister of Public Works and Government Services.

Metis people in Manitoba has never been consulted with respect to any of these negotiations, much less been invited to participate at any level. This is completely at odds with the Federal government's commitment to partnership...the Federal government has no legal right to transfer its housing responsibilities for aboriginal peoples to the Provincial government."

Our Association, representing most urban native housing groups impacted by the transfer, vociferously opposed the transfer. With support from the Native Alliance of Quebec and the Congress of Aboriginal Peoples, NAHA-ANHA asked the federal government "to halt the Transfer and to immediately begin negotiations with Aboriginal housing institutions for the administration of Aboriginal housing."⁶

In May, 1999, Wigwamin Inc., a large Ontario Aboriginal housing provider, along with NDP housing critic, Bev Desjarlais, delivered a petition bearing 2,000 signatures demanding that the federal government fulfil its duty to Natives who need housing and criticized the federal government's transfer of urban Aboriginal housing to the provinces.⁷

Other requests for consultation and participation were made by organizations such as the Native Home Providers in Ontario; the Congress of Aboriginal Peoples and scores of individual housing providers. In Winnipeg, Caroline Bruyere, a Status Indian and tenant of Aiyawin Corporation⁸; and Aiyawin Corporation filed a Statement of Claim in March 1999, against the Crown in the Federal Court of Canada.⁹ In the Claim, the Plaintiffs allege that the Crown's actions in entering into a Social Housing Transfer Agreement with the Province of Manitoba, has breached its obligations and fiduciary responsibility to Aboriginal peoples.

The federal Minister and his officials repeatedly assured Aboriginal stakeholders that transfer was being undertaken "in the interests of streamlined administration and efficiency"; and project operating agreements were binding contracts, and could not be changed without mutual consent. The transfer, however, was not a mere 'administrative realignment' or creation of an 'agency relationship' with provinces and territories for administering federal programs and policies. The transfer made sweeping changes¹⁰ to the long term funding arrangements and resulted in giving provinces and territories wide discretionary powers with respect to the benefits and operating practices of Aboriginal housing. Public reassurances by federal officials were meant to obfuscate the reality behind the changes.

Shallow Promises?

"A New Partnership Based on Trust, Mutual Respect and Participation in the Decision-Making Process"

⁶ *Halt the Transfer! Aboriginal Control of Off-Reserve Housing*; National Aboriginal Housing Association; May, 1998; p. 1.

⁷ Globe and Mail, May 28, 1999; Section A7.

⁸ Aiyawin Corporation is an urban native housing provider funded under the National Housing Act and part of the federal off-reserve portfolio being transferred to the province of Manitoba.

⁹ Statement of Claim T-423-99, Federal Court of Canada Trial Division.

¹⁰ See pp.12-14, for a full discussion of the impact of the authorities and responsibilities transferred to provinces.

As the concern with the housing transfer escalated in 1997, it became obvious that Ottawa had erected a wall between the bureaucracy and the Aboriginal community with respect to the transfer. The mood was almost hostile. Anecdotal information indicates that federal housing officials threatened to “pull out” of bilateral discussions when some provinces, sympathetic to the issues for consultation with Aboriginal people, suggested inviting them to the table.

Negotiations between Ottawa and individual provinces were conducted in secret. The element of secrecy and animosity towards consultation illustrates a serious disconnect between the stated principles of a government which had been elected on promises of a new relationship with Aboriginal people based on “*trust, mutual respect, and participation in the decision-making process*”¹¹ and the actions of its officials.

The principles of *consultation and participation by Aboriginal peoples* were much more fundamentally articulated by the government, than just in the promises of an election campaign. They were articulated forcefully prior to, and during the social housing transfer, in documents such as the *Social Union Framework Agreement*, the *Royal Commission Report on Aboriginal Peoples*, and the *Charlottetown Accord*.

The Social Union Framework Agreement

After the failed federal referendum on the *Charlottetown Accord*, interest to create a new framework for federal-provincial relationship in which to regulate social policy was still alive. The provinces took the lead by creating the Provincial/Territorial Council on Social Policy Renewal in 1995 and in reaching a consensus, which included Quebec, made public at the 1998 Premiers’ Conference in Saskatoon (the Saskatoon Consensus).

The full details of this consensus were elaborated in the *Victoria Proposal* released in January 1999. During this period the federal government also laid out some of its key positions, in a two-part document, *Working Together for Canadians*, released in July 1998 and January 1999. In closed-door negotiations, with an offer by the Prime Minister to boost healthcare funding, a final Social Union Framework Agreement (SUFA) was reached in early February 1999.¹²

SUFA promised collaboration, accountability and transparency; and made explicit joint commitments about engaging citizens in the governing process. Inherent in this was the desire by Ottawa to build stronger and more direct relationships with citizens — relationships that bypass provincial governments.

A commitment under SUFA to public participation in policy making is first made in the opening section on principles, encourages governments to follow the principle of ensuring “appropriate opportunities for Canadians to have meaningful input into social policies and programs.” In addition, there was agreement under SUFA to provide actual mechanisms, not mere opportunities.

¹¹ Liberal Party of Canada 1993 Red Book, Promise # 162, p.98.

¹² See: Appendix C: *Highlights of the Social Union Framework Agreement*.

SUFA, however, failed off-reserve Aboriginal people when it came to the housing transfer. While the transfer process had been initiated in 1996, the federal government had negotiated transfer agreements for less than ten percent of off-reserve housing by the time SUFA was enacted in early 1999. The federal government had ample opportunity to adhere to the SUFA principle to “*Treat all Canadians with fairness and equity*”, and to ensure “*appropriate opportunities for Canadians to have meaningful input into social policies and programs.*” Sadly, they did not.

Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples (RCAP), established in August 1991, was tasked with investigating the evolution of the relationship among Aboriginal peoples (Indian, Inuit and Métis), the Canadian government and Canadian society as a whole. It was mandated to propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront aboriginal peoples. The Commissioners were asked to examine all issues, which they deemed to be relevant to any or all of the Aboriginal peoples of Canada. The RCAP final report tabled in the House of Commons, November 1996, only a few short months after the housing transferred had been announced! The Report represented extensive consultations with Aboriginal and non-Aboriginal peoples on various subjects and contains 440 recommendations.

Underlying all of the RCAP recommendations, were the principles of federal fiduciary responsibility, self-determination and self-governance. As the Commissioners observed, the fiduciary obligation on the part of the Crown to act in the interests of Aboriginal peoples is now being recognized and implemented by the courts. It requires governments to acknowledge Aboriginal people as people who matter, not only in history but in real life today, and who have rights at common law and in the constitution, that it is the federal government’s duty to protect. They also observed that they believed the fiduciary responsibility extended regardless of where Aboriginal people lived: on or off reserve. The Commissioners also recognized that there was a relationship between fiduciary duty and the principle of participation:

“The concept of fiduciary duty and the principle of participation are intimately connected. Whenever governments intend to exercise their constitutional powers to legislate or make policies that may affect Aboriginal peoples in a material way, particularly in an adverse way, they would be wise to engage first in a process of consultation. The constraints imposed by the common law and the constitution on the exercise of arbitrary governmental power would seem to require no less.”

“Commissioners believe that the door to Aboriginal group participation in Canada has been opened by recognition of an inherent right of self-government in the common law of Aboriginal rights and in the treaties. This right of peoples to be self-governing affords a solid legal foundation on which governments in Canada can enter into agreements with Aboriginal peoples to establish appropriate working relationships. There is no further need, if indeed there ever was a need, for unilateral government action. The treaty is still Aboriginal peoples’ preferred model.”

Since housing and related facilities are so closely intertwined with the rest of life, the quality and appearance of housing are important indicators of a culture as a whole¹³.

¹³ Under the terms of the Social Housing Transfer Agreement, See Appendix A: “Responsibilities/Standards.”

The Housing section of RCAP emphasized the need to consult on and support Aboriginal control and self-governance. Stressing the importance of housing in raising families, solving social, economic and political problems, the Commissioners noted that:

“Aboriginal people see housing improvements as means of simultaneously increasing control over their own lives, developing increased capacity to manage complex programs and businesses, providing meaningful jobs, sustaining Aboriginal lifestyles, cultures, and generally better health, and strengthening Aboriginal communities.”

“Housing is among the core areas of self-government jurisdiction for Aboriginal governments”.

Specifically addressing off-reserve Aboriginal housing, the Commissioners observed “tenants also saw the preservation and reinforcement of cultural identity as a very important need being met within these communities. While meeting basic housing needs,” Aboriginal housing providers have “allowed other needs such as employment, education and cultural retention to be addressed. In effect, the communities became more identifiable and could be contacted more readily to participate in various social, cultural and recreational activities. In addition, these housing corporations have had, for the most part, a positive impact on relations between Aboriginal and non-Aboriginal people.”

However, as the final RCAP report was being tabled in Parliament in November 1996, federal housing officials were already in the process of drafting the *Social Housing Transfer Agreement*, which included no future protection of the Aboriginal ‘content’ of the off-reserve programs. They were also engaged in the first round of in camera bilateral discussions with provinces and territories. The transfer once again demonstrated that language and actions, when it comes to the federal government’s treatment of Aboriginal people, are so often disconnected.

The Charlottetown Accord

The *Accord* offers both an explanation as to why the federal government decided to transfer its social housing programs, and a paradox in that the exclusion of Aboriginal people from the transfer process contradicted everything the *Accord* stood for!

During the negotiations leading up to the signing of the *Accord* in August 1992¹⁴, housing, along with other policy sectors such as culture, recreation, mining, forestry, labour market and training, were deemed to be areas of **exclusive** provincial jurisdiction and expendable by the federal government to bring about federal-provincial harmony in a period of rising Quebec nationalism and constitutional discord. However, the *Accord* did not seek to limit federal involvement, but rather, to create a financial compensation formula where provinces chose not to participate in cost-shared programs in these so-called exclusive jurisdictions; as long as the province carries on a program or initiative that is compatible with the national objectives.

Under the housing provision (3.3) it states:

Exclusive provincial jurisdiction over housing should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements.

¹⁴ See Appendix D: *Highlights, Charlottetown Accord*.

Although federal unilateral involvement in housing policy and programs predated the entry of provincial activity in the 1970s, the notion that housing was an *exclusive* provincial authority had never been given much credence when it came to either federal housing activity, or federal-provincial relations prior to Charlottetown. Undoubtedly, the federal government saw, in the midst of “program review” in the mid-nineties, an opportunity in the failed Accord document to use the latent agreement and rid itself of its transitional social housing responsibilities¹⁵.

The paradox arises when one notes that the *Accord* made it clear changes in 3.3 ***should not alter the federal fiduciary responsibility for Aboriginal people.*** The concerns of Aboriginal peoples were to be dealt with through the mechanisms set out in the *Aboriginal Peoples' Protection Mechanism* of the *Accord* which stated that “*There should be a general non-derogation clause to ensure that division of powers amendments will not affect the rights of the Aboriginal peoples and the jurisdictions and powers of governments of Aboriginal peoples.*”

The Accord made it clear that there was a fundamental commitment to negotiate with Aboriginal peoples around these new proposed federal-provincial arrangements:

“There should be a constitutional commitment by the federal and provincial governments and the Indian, Inuit and Metis peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of government. The negotiations would focus on the implementations of the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements.”

The landmark Accord went much further than simply articulating the fiduciary responsibility of the federal government. It proposed enshrining Aboriginal peoples inherent right of self-government, so as to (among other things) safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and, so as to determine and control their developments as peoples according to their own values and priorities and ensure the integrity of their societies. Housing, and the ability to determine the quality and characteristics of their physical communities, are critical components in safeguarding Aboriginal peoples’ culture and institutions.

What can Aboriginal people conclude by examining the transfer in the context of the *Accord*? The federal government remained committed to acting upon the *exclusive jurisdiction* provisions of the Accord, but did not feel compelled to uphold the *Aboriginal Peoples' Protection Mechanism*.

¹⁵ Arguments of ‘overlap and duplication’ and streamlined administration don’t hold up under scrutiny. The transfer has led to a ‘hodge-podge’ of administrative practices across the county. Streamlined administration is not one of the objectives of the *Transfer* agreement.

No Impact?

“Respect all the Terms and Conditions of Existing Agreements”

NAHA maintained that the *Social Housing Transfer Agreement* provided no protection for guaranteeing the cultural integrity of the urban or off-reserve programs, and (like co-operative housing advocates) that many of the benefits of the programs will be eliminated under provincial and territorial control. They pointed to the lack of protection contained in the Transfer Agreement Principles¹⁶:

Federal funds are to be used solely for housing purposes;

Federal funds are to be used solely for residential accommodation and related shelter services for programs included in the agreement;

Federal government will establish income limits which will be used to determine household eligibility for targeted federal assistance;

Federal funding currently directed to low income households will continue to be used for this purpose, and if freed up, must be directed to households with incomes below the federally-established limits;

Federal funding currently targeted to moderate income households can continue to be used for this purpose; and

Provinces can use federal savings through cost reduction and efficient administration to serve additional households in need of housing.

Ottawa argued that they were simply transferring the administration of existing contracts, and implying that the change in administration would be transparent and would not impact on how Aboriginal housing providers operated. In fact, the standard written response from Minister Gagliano stated: “*The new social housing agreement obliges provinces and territories to respect all the terms and conditions of existing agreements between CMHC and third party groups. The project operating agreement is a legally binding contract which can only be changed with the mutual consent of the group and the province.*” The message implied that that transfer would have very little impact on the day to day operation of Aboriginal housing. However, that is not the case.

¹⁶ See Appendix A, Ibid.

Although Ottawa maintains that provinces and territories do not have the right to abrogate¹⁷ or change the terms of the project operating agreements, Ottawa did transfer its discretionary authorities¹⁸:

Maintain and apply federal principles and agreed program key elements;

Responsible for setting standards of housing affordability, adequacy and suitability;

Modify program key elements or add other programs of its own design to the portfolio of eligible programs, provided they comply with the Principles and have the prior concurrence of the federal government; and

Manage and administer the portfolio of programs, subject to the requirements of the agreement.

In the coded language of the federal bureaucracy, *program key elements* referred to statutory and regulatory requirements under the *National Housing Act* (NHA). It excluded *operating practices* or those program features never spelled out in the original legislation or program regulations, and were therefore deemed to be *discretionary*, such as:

The right to change the rent-to-income scale which determines the amount of rent Aboriginal tenants pay for accommodation;

Approval of annual project operating budgets, including the right to limit or disallow certain day-to-day project expenditures, including staffing, administration, tenant counselling, including culturally sensitive activities, etc.;

The potential to set terms and condition for tenant selection;

Terms and conditions for mortgage renewal; and

Long term capital building replacements and repairs.

Provinces are also given the authority to set standards of housing affordability, and modify key elements with the concurrence of Ottawa. It is clear that these undefined discretionary authorities actually set the tone and character of how the Urban Native Housing Program functions, and the level of benefit derived by Aboriginal clients. Particularly disturbing is the lack of any requirement for provinces to protect the cultural sensitivity of the Aboriginal programs. In effect, NAHA maintains that provinces could require Aboriginal housing providers to accept non-Aboriginal tenants, and abolish all Aboriginal operating differences in the program. Was it obfuscation then, when federal officials assured Aboriginal people that they had nothing to worry about?

¹⁷ The issue of abrogating or changing the terms of an operating agreement apparently does not apply to the transferred Rural and Native Housing Program. In Nova Scotia, the Province, in January 2002, advised the Native Council of Nova Scotia and the Kiknu Housing Corporation, that it was cancelling the federal Property Management Agreement signed with Kiknu for administration of the program in Nova Scotia. Administration will be turned over to non-Aboriginal regional housing authorities.

¹⁸ See Appendix A Ibid: "Authorities and Responsibilities".

There is another serious *threat* to the future of the Aboriginal housing programs arising from the transfer. In the transfer of the associated operating subsidies attached to the program, Ottawa negotiated a “cap” on expenditures¹⁹, **or in the coded language of the transfer agreement, “the agreed level of annual funding”**. In effect, Ottawa transferred its long-term financial exposure to provinces and territories. The carrot for the provinces was the new authority to: “*use federal savings through cost reduction and efficient administration to serve additional households in need of housing*”. Of course, in order to realise ‘savings’, provinces must find operating ‘efficiencies’. They now have the authority to raise the rent Aboriginal tenants will pay by increasing the rent-to-income ratio; disallowing certain expenditures, such as Aboriginal tenant counsellors, etc. In addition, provinces and territories received a one-time cash payment without any obligation to set aside funds to off set future program expenditures.

While Ottawa administered the program, Aboriginal organizations and clients enjoyed the same benefits and access across the country. The funding formula in place assured providers that federal subsidies would increase, or decrease, as project expenditures increased/decreased.

As a result of the transfer, financial benefits and access to Aboriginal housing programs may differ widely. There is heightened risk that individual Aboriginal housing projects facing future non-discretionary operating expense increases, or more seriously, escalating mortgage interest rates, may find cash strapped provinces and territories (and in Ontario, municipalities) unable, or unwilling to provide increased operating subsidies. This may result in default with the corresponding units being lost to the Aboriginal community. Already, some provinces have moved to cut operating budgets, and to increase the rent-to-income ratio for Aboriginal tenants.

As we have observed, the transfer was far more than an effort to “*streamline existing administrative arrangements, encourage more efficient use of taxpayers’ dollars, and provide provinces and territories with flexibility to meet their housing needs*”²⁰. **Through the transfer, Ottawa achieved its ambition to give provinces exclusive jurisdiction** in the area of off-reserve Aboriginal housing. And it achieved this without ever once sitting down to discuss the transfer with Aboriginal people!

¹⁹ Under the Urban Native Housing Program, operating subsidies are based on (1) a 2% write-down of the prevailing mortgage interest rates, and (2) the operating shortfall, after applying mortgage interest rate subsidy and rental revenue based on 25% rent-to-income. Prior to transfer, federal operating subsidies for the Program fluctuated significantly over the previous fifteen years, as they responded to changes in mortgage interest rates, changes in fixed property management costs, and changing tenant incomes. At the time of the transfer, Ottawa was benefiting from a period of historically low interest rates. A change of a few percentage points in mortgage interest rates, combined with escalating capital repair costs because of the age of the Urban Native portfolio, will require larger subsidies. Under the transfer formula, Ottawa has passed these future increased costs on to provinces and territories.

²⁰ Minister Gagliano’s standard written response to correspondents regarding the transfer of off-reserve Aboriginal housing.

Inherent Rights?

“Provinces and Territories Have Primary Responsibility”

Canada is signatory to many international covenants and conventions²¹, **which recognize Aboriginal peoples’ right to:**

Self-determination;

Be consulted and participate in decisions that affect their rights and well-being;

Freely determine their own political status and pursue their own economic, social and cultural development; and

An adequate standard of living for one’s self and one’s family, including adequate food, clothing and housing.

The *Universal Declaration of Indigenous Rights*, states:

Indigenous peoples have the right to special state measures within available resources for immediate, effective and continuing improvement of their economic and social conditions, with their free and informed consent, that reflect their own priorities (Article 22); and

Indigenous peoples have the right to determine, plan and implement, as far as possible through their own institutions, all health, housing and other economic and social programmes affecting them (Article 23).

In Canada, the Constitution recognizes and affirms existing Aboriginal and Treaty Rights (Section 35). These rights are not created by the Constitution but are a recognition of pre-existing rights based on prior use and occupancy of the land.²²

Canadian courts have stated that negotiations must always be in accordance with the honour and good faith of the Crown and the Crown has a special fiduciary or trust-like relationship with Aboriginal peoples. In the Delgamuukw case, Justice LaForest expanded on how the courts would look at a claim for Aboriginal Rights. He said in paragraph 194:

*The court will focus on the occupation and use of the land as part of the aboriginal society’s traditional way of life. In pragmatic terms, this means looking at the manner in which the society used the land to live, **namely to establish villages, to work, to get to work, to hunt, to travel to hunting grounds, to***

²¹ Some of the international covenants and conventions are: The United Nations’ Charter; the International Covenant on Economic, Social and Cultural Rights; the Universal Declaration of Human Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Covenant on Civil and Political Rights; and the Universal Declaration on Indigenous Rights.

²² *Halt the Transfer! Aboriginal Control of Off-Reserve Housing*, National Aboriginal Housing Association; May 1998; p.9.

*fish, to get to fishing pools, to conduct religious rites, etc. these uses, although limited to the aboriginal society's traditional way of life, **may be exercised in a contemporary manner***" (Emphasis added)²³

If Aboriginal rights include activities related to establishing villages in a contemporary manner, it is "hard to imagine that the fundamental need for housing" would not be considered a 'protected' right and the Crown would have "an obligation to consult and likely obtain informed consent before these rights could be infringed or transferred" to provincial or territories governments. Furthermore, the Section 15 of the Charter of Rights and Freedoms guarantees that everyone has the right to be free from discrimination on the basis of race, ethnic origin, etc. Case law has determined that it is unnecessary that a policy be intended to discriminate, only that it does in effect, discriminate by operation or impacting disproportionately on a protected group. The transfer of the off-reserve housing discriminates against some Aboriginal peoples by maintaining on-reserve housing but transferring Aboriginal housing off-reserve.²⁴

The extent of this 'discrimination' is realised, when we remind ourselves that of the 65%²⁵ of Aboriginal peoples living off-reserve in 1999, and served by off-reserve housing, 76% were either status Indians under the Indian Act, or Metis and Inuit.

Aboriginal organizations and housing providers believe strongly that the federal government abrogated its fiduciary obligations to Aboriginal people, when it transferred off-reserve housing, without consultation or participation by Aboriginal people. As we saw above, the transfer was not as transparent as federal officials maintained. Benefits and privileges enjoyed by a protected group are threatened by the transfer.

Minister Gagliano, when he refused to sit down to discuss the transfer with Aboriginal people: "provinces and territories have primary responsibility for Metis and off-reserve Aboriginal people."²⁶ **Despite the decisions of the courts, and the fact that no province or territory has ever agreed that they have jurisdiction over off-reserve, Metis and Inuit peoples, the Minister and his officials stood firm, even when it was prepared to treat non-Aboriginal housing providers differently.**

Minister Gagliano announced in late 1999 that he would "exempt" co-operative housing from the transfer! This came after a well-organized campaign by co-operative housing organizations, which maintained that the authorities and responsibilities being transferred seriously threatened the future of their housing programs. Enjoying much larger numbers than off-reserve housing providers, and an organizational capability to mount a vigorous and spirited campaign, they not only succeeded in exempting co-operative from the transfer, they succeeded in getting the federal government to formally enter in to consultations on the future administration of the co-operative housing programs! Ironically, Minister Gagliano, in announcing the change in policy, referred to the

²³ Ibid, p. 10

²⁴ Ibid, pp. 10-11

²⁵ Includes Inuit, Metis, and non-Status Indians, and Status Indians not resident on reserves.

²⁶ Minister Gagliano's standard written response to correspondents regarding the transfer of off-reserve Aboriginal housing.

“*unique*” character of co-operative housing. At the same time, he and his officials continued to refuse to discuss the transfer with Canada’s Aboriginal people!

The Good & the Bad!

Two Post-SUFA Examples at Consultation

Labour Market Training Initiative

Under the Charlottetown Accord, *labour market development and training*, like *housing* was identified as a matter of “exclusive provincial jurisdiction ...and should be accomplished through justifiable intergovernmental agreements designed to meet the circumstances of each province”²⁷. Following the failure of Charlottetown, the federal government pursued, as they did with housing, bilateral agreements to accomplish a shift of labour market training to provinces.

As part of this initiative, HRDC entered into negotiations with off and on-reserve Aboriginal stakeholders, which resulted in a series of Regional Bilateral Agreements (RBA) that transferred responsibility for the design and delivery of labour market programs directly to Aboriginal organizations.

"The fundamental focus of the five-year \$1.6 billion Strategy we launch today is to enable Aboriginal groups to deliver a wider spectrum of human resource programming that will enable Aboriginal people to prepare for, obtain and maintain meaningful employment," said Minister Pettigrew.

Unlike the three-year RBAs, which will be replaced by new agreements, this is a five-year Strategy that integrates all Aboriginal programming, including labour market programs, youth programs, programs for Aboriginal people living in urban areas, programs for persons with disabilities and child care. The Strategy enhances capacity building and gives all Aboriginal people access to programs and services, regardless of status or residence.

In addition, an Aboriginal Human Resource Development Council has been created with the federal and provincial governments, representatives of national Aboriginal organizations and the private sector. The prime objective of the Council is to encourage private-sector investment in Aboriginal human resource development.

The Social Housing Post-Transfer Consultation: The Ontario Example

Throughout the federal transfer period, federal officials, as well as the federal Minister, on the issue of consultation, advised concerned stakeholders that they **must consult** with provinces and territories, and further advised that there were no impediments in the *Social Housing Transfer Agreement* to prevent provinces and territories from entering into third-party arrangements with the Aboriginal community. However, what federal officials did not point out was that there were no incentives either to encourage provinces and territories to either consult or devolve responsibility for the program to the community.

What occurred in Ontario serves as a good example of the federal obfuscation on the issue of provincial consultation post transfer. Ontario had announced that once the federal transfer was complete, it would further download responsibility to municipalities. Not only had the federal government abrogated its responsibility for the Urban Native

²⁷ See Appendix , III Roles and Responsibilities, Clause 28, Labour Market Development and Training.

Housing Program, it further permitted the province to transfer day-to-day responsibility for Aboriginal housing groups to local governments: The worst fear of the Aboriginal community! However, in August 2000, the province, in a letter²⁸ to Aboriginal housing providers announced a series of consultations on the “development of an administrative model” for their housing programs.

The then Ontario Minister of Municipal Affairs and Housing, Tony Clement, also stated²⁹ “*My Ministry understands that the UNP is characteristically different from many other social housing programs, with very specific needs and interests. The consultation process...were initiated because of an understanding of those differences*” (Emphases added). Throughout the provincial ‘consultation’ process, Aboriginal organizations in Ontario, including the provincial umbrella group, Native Home Providers in Ontario (NHPO), urged the province to do what the federal government had refused, devolve administration of the program to the Aboriginal community. NHPO undertook, at its own expense, the preparation of a management plan and submitted it to Ontario Ministry officials. The NHPO Management Plan³⁰ demonstrated a high level of program management knowledge and capacity required to entertain an alternate service delivery models for the future administration of the program. However, late in January, 2001, Minister Clement³¹ stated that “*the provincial government has determined that, subject to legislative approval, it (the Urban Native Housing Program) will be transferred along with other similar social housing programs to municipalities as part of its process of realigning local services*” (Emphases added). In less than four months, Aboriginal housing had gone from being “*characteristically different*” to being “*similar*” to non-Aboriginal housing.

Whatever the Ontario motives were in going through the consultation process, one thing was clear: There was no incentive for the province to seriously consider transferring the program to the Aboriginal community. Federal subsidy transfers under the Agreement with the province were fixed, or in the coded language of federal/provincial bureaucrats: *replaces cost-sharing with a predetermined funding schedule*³². By further downloading responsibility to municipalities, Ontario not only capped any exposure for future additional program costs, but like the federal government, eliminated provincial administration costs. There were no financial incentives in the Transfer Agreement for either Aboriginal capacity building, or one-off administrative costs arising with a third-party administrative arrangement.

CONCLUSION

The federal government’s steadfast refusal to consult with the Aboriginal community on the transfer of federal Aboriginal housing programs to provinces and territories between 1996-2002, questions the integrity of the government’s commitment to the SUFA principles. Under the SUFA agreement, ratified in early 1999, the federal government

²⁸ Letter from Scott Harcourt, Director, Ministry of Municipal Affairs and Housing, dated August 1, 2000, to all Stakeholder.

²⁹ Letter from the Honourable Tony Clement, Ministry of Municipal Affairs and Housing, province of Ontario; dated September 26, 2000, to James Lanigan, President of Gignul Non-Profit Housing Corporation.

³⁰ See Appendix F: NHPO Management Plan

³¹ Letter from the Honourable Tony Clement, Ministry of Municipal Affairs and Housing, dated January 29, 2001, to Charles W. Hill, President, Native Home Providers in Ontario.

³² See Appendix A; “Overview”; Highlights of the Social Housing Transfer Agreement between Canada Mortgage and Housing Corporation (CMHC) and the Ontario Ministry of Municipal Affairs and Housing (MMAH).

committed, along with provinces and territories, to “*Treat all Canadians with fairness and equity*”, and to ensure “*appropriate opportunities for Canadians to have meaningful input into social policies and programs.*”

The federal social housing transfer was first announced in 1996. Under the arrangement, the government would transfer responsibility for the federal social housing portfolio and the financial resources to provincial and territorial governments. The portfolio was comprised of project operating agreements between the federal government and several thousand private and municipal non-profit housing agencies; co-operative housing groups, and off-reserve Aboriginal housing providers. Although the transfer initiative commenced prior to SUFA ratification, the bulk of the Aboriginal programs were still with the federal government in 1999.

Almost immediately after the transfer was announced, Aboriginal leaders and housing organizations called for consultation. To date, transfer agreements have still not been concluded with British Columbia (which represents approximately 30 per cent of the off-reserve Aboriginal portfolio), Alberta and Quebec. However, federal officials continue to refuse to consult with the Aboriginal community impacted by the transfer, or to allow them to participate in the bilateral negotiations with provinces and territories.

The federal *Social Housing Transfer Agreement* provides a wide range of powers and responsibilities to provinces. There is no requirement under the *Agreement* to protect the Aboriginal nature of the programs. The transfer has the potential to dramatically alter the future of the programs, and to diminish benefits Aboriginal tenants enjoyed. Almost immediately, off-reserve Aboriginal housing providers are treated differently, as provinces and territories implement their own regimes. In Ontario, Aboriginal housing was further downloaded by the province to municipalities, with funding support tied to the municipal property tax base.

Shutting the Aboriginal community out of the transfer process was not only a violation of the SUFA principles, it also contradicted federal principles articulated so fervently in the Charlottetown Accord (1992) and the Royal Commission Report on Aboriginal Peoples (1991-1996). It also flies in the face of Canada’s international treaty obligations, where it has signed on to recognize and promote the principles of Aboriginal self-determination and participation. There is also a growing body of case law (for instance the Delgamuukw case) that supports the position of many Aboriginal organizations that the federal government has a fiduciary responsibility when it comes to off-reserve Aboriginal housing. They contend that the federal transfer abrogates this responsibility.

SUFA failed off-reserve Aboriginals by not ensuring they were consulted in the transfer. The Aboriginal community sees it as another betrayal. Another example of the federal government’s failure to walk the talk!

APPENDIX A

HIGHLIGHTS SOCIAL HOUSING TRANSFER AGREEMENT

Release: November 17, 1999

Highlights Of The Social Housing Agreement between Canada Mortgage and Housing Corporation (CMHC) and Ontario Ministry of Municipal Affairs and Housing (MMAH)

OVERVIEW

There are some 239,000 housing units in Ontario which receive ongoing funding from the Government of Canada. Of these, over 200,000 are covered by this agreement.

The new Canada-Ontario Social Housing Agreement:

- Replaces all existing social housing agreements between the federal government and the provincial government with a single agreement;

- Replaces cost-sharing with a predetermined funding schedule;

- Transfers the administration of a number of programs from CMHC to Ontario; and,

- Transfers the administration of provincial rent supplement units in federal housing cooperatives from Ontario to CMHC.

Under the new agreement, Ontario will receive social housing funding directly from the Government of Canada every year for the remaining term of the commitments for the units in the portfolio. During the first year under the new agreement, Ontario will receive some \$525 million.

Ongoing federal financial support provides stability and predictability in the provision and administration of social housing in Ontario in future years. These commitments, which were made over a period of some 34 years, will expire gradually in the first third of the next century.

NEW DIRECTIONS

1. Transfer of Programs

CMHC will transfer responsibilities for the management and administration of the portfolio of projects funded under the non-profit, Urban Native, Rural and Native and Limited Dividend Entrepreneur programs to MMAH. Previously these programs were administered by CMHC. MMAH will assume all of the rights and

responsibilities which CMHC had under project agreements with housing sponsors and groups. CMHC will retain administrative responsibility for over 20,000 unilaterally-funded federal housing co-operative units, and fund and administer approximately 3,400 units in receipt of rent supplement assistance in these co-operatives.

2. Principles

The Canada-Ontario Social Housing Agreement stipulates the use of ongoing Government of Canada funding based on the following principles:

Federal funds are to be used solely for housing purposes;

Federal funds are to be used solely for residential accommodation and related shelter services for programs included in the agreement;

CMHC will establish income limits which will be used to determine household eligibility for targeted federal assistance;

Federal funding currently directed to low income households will continue to be used for this purpose, and if freed up, must be directed to households with incomes below the CMHC-established limits;

Federal funding currently targeted to moderate income households can continue to be used for this purpose;

Ontario can use federal savings through cost reduction and efficient administration to serve additional households in need of housing.

IMPLEMENTATION

1. MMAH 's Authorities and Responsibilities

MMAH will maintain and apply federal principles and agreed program key elements.

MMAH will be responsible for setting standards of housing affordability, adequacy and suitability.

MMAH can modify program key elements or add other programs of its own design to the portfolio of eligible programs, provided they comply with the Principles and have the prior concurrence of CMHC.

MMAH is entitled to manage and administer the portfolio of programs, subject to the requirements of the agreement. It may contribute its own funding to housing or these programs in addition to federal funding.

2. CMHC's Authorities and Responsibilities

CMHC will report to the Parliament of Canada annually on the new agreement.

In order to ensure federal funding targeted to serve households in need is used for this purpose, CMHC will be establishing housing income limits for applicants. These income limits will reflect the minimum, which a household requires to afford appropriate accommodation without spending more than 30 per cent of its income for shelter.

The federal government, through CMHC, will provide the agreed level of annual funding as set out in the agreement.

The federal government, through CMHC, will ensure that the requirements of the accountability framework are being followed.

3. Third Parties

MMAH agrees to assume CMHC's rights and obligations under agreements with third parties relevant to programs in the portfolio, e.g. private non-profit housing groups which previously reported to CMHC. Existing project operating agreements with these third parties will continue to be legally binding and can only be changed by the mutual agreement of the parties concerned.

4. Federal Funding

The new agreements contain schedules setting out the total amount of federal funding which will be provided each year, commencing October 1, 1999 and continuing until the term of the last commitment is reached.

The amount of federal funding available annually for each commitment will not change for any reason during the life of the commitment.

5. Accountability

The new agreement sets out the purpose, scope and standards for independent audits which must be conducted annually on the portfolio of social housing programs which MMAH is managing and administering under the agreement. These audits will need to verify that federal funding and related expenditures were in accordance with the financial terms and conditions of the agreement and in compliance with its principles and other provisions.

MMAH will provide CMHC with an annual report on the expenditures under each program in the portfolio receiving federal funding. These reports will focus on the amount and type of funding provided, the number of households

assisted and the average incomes of those receiving targeted assistance.

The agreement also sets out a requirement for cyclical program evaluations to determine if programs continue to be consistent with provincial priorities, are effective in meeting their objectives within budget and without unwanted outcomes, and are the most appropriate and efficient means of achieving their objectives.

- CMHC has the right to hold back federal funding should agreed reporting requirements not be met by MMAH. Federal funding not expended in accordance with the principles, or MMAH's authorities and responsibilities, as set out in the agreement must also be refunded to CMHC.

Ontario's Social Housing Portfolio And Management Responsibilities Under the Agreement

The key portfolio management and administration functions MMAH will be assuming include:

- MMAH will assume all responsibility for planning and budgeting federal funding for social housing in Ontario.

- MMAH can make modifications to the design of programs in their social housing portfolio with CMHC concurrence.

- Should federal funding be freed up through economies and efficiencies achieved in the operation of the existing social portfolio in Ontario, MMAH can allocate these funds to new programs of its own design, subject to meeting federal principles and the prior concurrence of CMHC.

- MMAH will administer project operating agreements with third parties and arrange the transfer of approved subsidies to project sponsors and clients. The agreement facilitates municipal administration of all programs.

PRESS RELEASE ANNOUNCING TRANSFER IN ONTARIO

Release: November 17, 1999

CANADA AND ONTARIO SIGN SOCIAL HOUSING AGREEMENT

OTTAWA - The Honourable Alfonso Gagliano, Minister responsible for Canada Mortgage and Housing Corporation (CMHC) and the Honourable Tony Clement, Minister of Municipal Affairs and Housing for Ontario, signed an agreement

today to transfer the administration of social housing resources from the Government of Canada to the Government of Ontario.

"This agreement with Ontario follows up our long standing commitment to work in close partnership with the provinces and territories in social housing," said Minister Gagliano. "The Government of Canada will honour its long-term financial commitment to existing social housing."

Minister Clement said, "The new social housing agreement is a good deal for Ontario. It will give us more flexibility to address the housing needs of Ontarians. The new agreement will allow the province to work with its municipal partners and other stakeholders to deliver services more effectively to the benefit of both tenants and taxpayers alike."

This agreement will consolidate the administration of over 200,000 units and over \$525 million in federal housing subsidies during the first full year of the agreement.

New agreements to transfer federal social housing administration have thus far been signed with five other provinces and the three territories. Discussions with the remaining jurisdictions are continuing.

APPENDIX B

RESOLUTION PASSED BY CONFEDERACY OF FIRST NATIONS CALLING UPON OTTAWA TO HALT THE TRANSFER OF THE URBAN NATIVE HOUSING PROGRAMS

SUBJECT: Transfer of Social Housing From CMHC to the Provinces

WHEREAS the Crown on Behalf of Canada entered into treaty with FN in this country; and

WHEREAS Treaties are based on a nation-to-nation relationship; and

WHEREAS Provinces in and of themselves do not constitute nations; and

WHEREAS the fiduciary obligations and nation-to-nation relationship treaties are based on and are confirmed through Canadian legislation and the Constitution; and

WHEREAS CMHC, a Crown corporation of Canada, is currently negotiating, and in some cases, has concluded agreements with the provinces to transfer the administration of its Social Housing programs, along with resources to support this administration, to the provinces; and

WHEREAS almost half the "status Indians", i.e., First Nations citizens, now live in urban areas; and,

WHEREAS individuals retain their citizenship and treaty rights in First Nations regardless of their place of residence; and

WHEREAS Provinces may, and will likely, transfer in turn the administration of Social Housing over to municipalities; and

WHEREAS cultural and physical differences between "Indians" and non-Indians may, and will likely, inhibit or preclude access by First Nations citizens to safe, decent housing in urban areas; and

WHEREAS transfer to the provinces of "Urban Native" housing programs operated by First Nations citizens runs counter to increased control by First Nations over their own affairs; and

WHEREAS CMHC officials have indicated that First Nations must negotiate with the provinces if their (First Nations) social housing programs in urban areas are to be excluded from transfer to provincial jurisdiction; and

WHEREAS such negotiation and transfer violates the nation-to-nation relationship between the respective First Nations and Canada; and

WHEREAS the RCAP report recommends that the government of Canada clarify with treaty nations a modern understanding of existing treaty terms regarding housing; and

WHEREAS the RCAP report recommends that First Nations governments assume jurisdiction over housing at the earliest opportunity, enact clear laws regarding housing tenure, and pursue authority to adjust other programs; and

WHEREAS "Urban Natives" and First Nations have the ability to administer their respective programs;

THEREFORE BE IT RESOLVED THAT CMHC be requested to cease and desist in its efforts to transfer urban native/First Nations social housing, and associated resources, to the provinces; and

BE IT FURTHER RESOLVED THAT the Minister of CMHC be asked to direct his officials to negotiate and subsequently transfer the administration (and associated

resources) of Urban Native/First Nations social housing programs to urban native/First Nations housing delivery groups.

Resolution No.14/97

Moved by:

Chief Bill Traverse

Jackhead First Nation

Seconded by:

Chief Ignace Gull

Attawapiskat First Nation

Carried

Certified copy of a resolution made on November 4, 1997 at Quebec City, Quebec

Phil Fontaine National Chief

Confederacy of First Nations, November 3-4, 1997

APPENDIX C

THE SOCIAL UNION FRAMEWORK AGREEMENT

The following agreement is based upon a mutual respect between orders of government and a willingness to work more closely together to meet the needs of Canadians.

1. Principles

Canada's social union should reflect and give expression to the fundamental values of Canadians - equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another.

Within their respective constitutional jurisdictions and powers, governments commit to the following principles:

All Canadians are equal

Treat all Canadians with fairness and equity

Promote equality of opportunity for all Canadians

Respect the equality, rights and dignity of all Canadian women and men and their diverse needs

Meeting the needs of Canadians

Ensure access for all Canadians, wherever they live or move in Canada, to essential social programs and services of reasonably comparable quality

Provide appropriate assistance to those in need

Respect the principles of medicare: comprehensiveness, universality, portability, public administration and accessibility

Promote the full and active participation of all Canadians in Canada's social and economic life

Work in partnership with individuals, families, communities, voluntary organizations, business and labour, and ensure appropriate opportunities for Canadians to have meaningful input into social policies and programs

Sustaining social programs and services

Ensure adequate, affordable, stable and sustainable funding for social programs

Aboriginal peoples of Canada

For greater certainty, nothing in this agreement abrogates or derogates from any

Aboriginal, treaty or other rights of Aboriginal peoples including self-government

2. Mobility within Canada

All governments believe that the freedom of movement of Canadians to pursue opportunities anywhere in Canada is an essential element of Canadian citizenship.

Governments will ensure that no new barriers to mobility are created in new social policy initiatives.

Governments will eliminate, within three years, any residency- based policies or practices which constrain access to post- secondary education, training, health and social services and social

assistance unless they can be demonstrated to be reasonable and consistent with the principles of the Social Union Framework.

Accordingly, sector Ministers will submit annual reports to the Ministerial Council identifying residency-based barriers to access and providing action plans to eliminate them.

Governments are also committed to ensure, by July 1, 2001, full compliance with the mobility provisions of the Agreement on Internal Trade by all entities subject to those provisions, including the requirements for mutual recognition of occupational qualifications and for eliminating residency requirements for access to employment opportunities.

3. Informing Canadians - Public Accountability and Transparency

Canada's Social Union can be strengthened by enhancing each government's transparency and accountability to its constituents. Each government therefore agrees to:

Achieving and Measuring Results

Monitor and measure outcomes of its social programs and report regularly to its constituents on the performance of these programs

Share information and best practices to support the development of outcome measures, and work with other governments to develop, over time, comparable indicators to measure progress on agreed objectives

Publicly recognize and explain the respective roles and contributions of governments

Use funds transferred from another order of government for the purposes agreed and pass on increases to its residents

Use third parties, as appropriate, to assist in assessing progress on social priorities

Involvement of Canadians

Ensure effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes

Ensuring fair and transparent practices

Make eligibility criteria and service commitments for social programs publicly available

Have in place appropriate mechanisms for citizens to appeal unfair administrative practices and bring complaints about access and service

Report publicly on citizen's appeals and complaints, ensuring that confidentiality requirements are met

4. Working in partnership for Canadians

Joint Planning and Collaboration

The Ministerial Council has demonstrated the benefits of joint planning and mutual help through which governments share knowledge and learn from each other.

Governments therefore agree to

Undertake joint planning to share information on social trends, problems and priorities and to work together to identify priorities for collaborative action

Collaborate on implementation of joint priorities when this would result in more effective and efficient service to Canadians, including as appropriate joint development of objectives and principles, clarification of roles and responsibilities, and flexible implementation to respect diverse needs and circumstances, complement existing measures and avoid duplication

Reciprocal Notice and Consultation

The actions of one government or order of government often have significant effects on other governments. In a manner consistent with the principles of our system of parliamentary government and the budget-making process, governments therefore agree to:

Give one another advance notice prior to implementation of a major change in a social policy or program which will likely substantially affect another government

Offer to consult prior to implementing new social policies and programs that are likely to substantially affect other governments or the social union more generally. Governments participating in these consultations will have the opportunity to identify potential duplication and to propose alternative approaches to achieve flexible and effective implementation

Equitable Treatment

For any new Canada-wide social initiatives, arrangements made with one province/territory will be made available to all provinces/territories in a manner consistent with their diverse circumstances.

Aboriginal Peoples

Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs.

5. The federal spending power - Improving social programs for Canadians

Social transfers to provinces and territories

The use of the federal spending power under the Constitution has been essential to the development of Canada's social union. An important use of the spending power by the Government of Canada has been to transfer money to the provincial and territorial governments. These transfers support the delivery of social programs and services by provinces and territories in order to promote equality of opportunity and mobility for all Canadians and to pursue Canada-wide objectives.

Conditional social transfers have enabled governments to introduce new and innovative social programs, such as Medicare, and to ensure that they are available to all Canadians. When the federal government uses such conditional transfers, whether cost-shared or block-funded, it should proceed in a cooperative manner that is respectful of the provincial and territorial governments and their priorities.

Funding predictability

The Government of Canada will consult with provincial and territorial governments at least one year prior to renewal or significant funding changes in existing social transfers to provinces/territories, unless otherwise agreed, and will build due notice provisions into any new social transfers to provincial/territorial governments.

New Canada-wide initiatives supported by transfers to Provinces and Territories

With respect to any new Canada-wide initiatives in health care, post-secondary education, social assistance and social services that are funded through intergovernmental transfers, whether block-funded or cost-shared, the Government of Canada will:

Work collaboratively with all provincial and territorial governments to identify Canada-wide priorities and objectives

Not introduce such new initiatives without the agreement of a majority of provincial governments

Each provincial and territorial government will determine the detailed program design and mix best suited to its own needs and circumstances to meet the agreed objectives.

A provincial/territorial government which, because of its existing programming, does not require the total transfer to fulfill the agreed objectives would be able to reinvest any funds not required for those objectives in the same or a related priority area.

The Government of Canada and the provincial/territorial governments will agree on an accountability framework for such new social initiatives and investments.

All provincial and territorial governments that meet or commit to meet the agreed Canada-wide objectives and agree to respect the accountability framework will receive their share of available funding.

Direct federal spending

Another use of the federal spending power is making transfers to individuals and to organizations in order to promote equality of opportunity, mobility, and other Canada-wide objectives.

When the federal government introduces new Canada-wide initiatives funded through direct transfers to individuals or organizations for health care, post-secondary education, social assistance and social services, it will, prior to implementation, give at least three months' notice and offer to consult. Governments participating in these consultations will have the opportunity to identify potential duplication and to propose alternative approaches to achieve flexible and effective implementation.

6. Dispute Avoidance and Resolution

Governments are committed to working collaboratively to avoid and resolve intergovernmental disputes. Respecting existing legislative provisions, mechanisms to avoid and resolve disputes should:

- Be simple, timely, efficient, effective and transparent

- Allow maximum flexibility for governments to resolve disputes in a non-adversarial way

- Ensure that sectors design processes appropriate to their needs

- Provide for appropriate use of third parties for expert assistance and advice while ensuring democratic accountability by elected officials

Dispute avoidance and resolution will apply to commitments on mobility, intergovernmental transfers, interpretation of the Canada Health Act principles, and, as appropriate, on any new joint initiative.

Sector Ministers should be guided by the following process, as appropriate:

Dispute avoidance

- Governments are committed to working together and avoiding disputes through information-sharing, joint planning, collaboration, advance notice and early consultation, and flexibility in implementation

Sector negotiations

- Sector negotiations to resolve disputes will be based on joint fact-finding

- A written joint fact-finding report will be submitted to governments involved, who will have the opportunity to comment on the report before its completion

- Governments involved may seek assistance of a third party for fact-finding, advice, or mediation

- At the request of either party in a dispute, fact-finding or mediation reports will be made public

Review provisions

- Any government can require a review of a decision or action one year after it enters into effect or when changing circumstances justify

Each government involved in a dispute may consult and seek advice from third parties, including interested or knowledgeable persons or groups, at all stages of the process.

Governments will report publicly on an annual basis on the nature of intergovernmental disputes and their resolution.

Role of the Ministerial Council

The Ministerial Council will support sector Ministers by collecting information on effective ways of implementing the agreement and avoiding disputes and receiving reports from jurisdictions on progress on commitments under the Social Union Framework Agreement.

7. Review of the Social Union Framework Agreement

By the end of the third year of the Framework Agreement, governments will jointly undertake a full review of the Agreement and its implementation and make appropriate adjustments to the Framework as required. This review will ensure significant opportunities for input and feed-back from Canadians and all interested parties, including social policy experts, private sector and voluntary organizations.

APPENDIX D

HIGHLIGHTS, THE CHARLOTTETOWN ACCORD

Charlottetown August 28, 1992

I: UNITY AND DIVERSITY

A: PEOPLE AND COMMUNITIES

1. Canada Clause

A new clause should be included as Section 2 of the Constitution Act, 1867 that would express fundamental Canadian values. The Canada Clause would guide the courts in their future interpretation of the entire Constitution, including the Canadian Charter of Rights and Freedoms.

The Constitution Act, 1867 is amended by adding hereto, immediately after section 1 thereof, the following section:

"2. (1) The Constitution of Canada, including the Canadian Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the following characteristics:

- (a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;
 - (b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of the three orders of government in Canada;
 - (c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;
 - (d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;
 - (e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;
 - (f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;
-

(g) Canadians are committed to the equality of female and male persons; and

(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.

(2) The role of the legislature and government of Quebec to preserve and promote the distinct society of Quebec is affirmed.

(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language and, for greater certainty, nothing in this section derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada."

2. Aboriginal Peoples and the Canadian Charter of Rights and Freedoms

The Charter provision dealing with Aboriginal peoples (section 25, the non-derogation clause) should be strengthened to ensure that nothing in the Charter abrogates or derogates from Aboriginal, treaty or other rights of Aboriginal peoples, and in particular any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions.

3. Linguistic Communities in New Brunswick

A separate constitutional amendment requiring only the consent of Parliament and the legislature of New Brunswick should be added to the Canadian Charter of Rights and Freedoms. The amendment would entrench the equality of status of the English and French linguistic communities in New Brunswick, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of these communities. The amendment would also affirm the role of the legislature and government of New Brunswick to preserve and promote this equality of status.

B: CANADA'S SOCIAL AND ECONOMIC UNION

4. The Social and Economic Union

A new provision should be added to the constitution describing the commitment of the governments, Parliament and the legislatures within the federation to the principle of the preservation and development of Canada's social and economic union. The new provision, entitled the Social and Economic Union, should be drafted to set out a series of policy objectives underlying the social and the economic union, respectively. The provision should not be justiciable.

. providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered and accessible;

. providing adequate social services and benefits to ensure that all individuals

resident in Canada have reasonable access to housing, food and other basic necessities;

. providing high quality primary and secondary education to all individuals resident in Canada and ensuring reasonable access to post secondary education;

. protecting the rights of workers to organize and bargain collectively; and,

. protecting, preserving and sustaining the integrity of the environment for present and future generations.

The policy objectives set out in the provision on the economic union should include, but not be limited to:

. working together to strengthen the Canadian economic union;

. the free movement of persons, goods, services and capital;

. the goal of full employment;

. ensuring that all Canadians have a reasonable standard of living; and

. ensuring sustainable and equitable development.

A mechanism for monitoring the Social and Economic Union should be determined by a First Ministers' Conference.

A clause should be added to the Constitution stating that the Social and Economic Union does not abrogate or derogate from the Canadian Charter of Rights and Freedoms.

5. Economic Disparities, Equalization and Regional Development

Section 36 of the Constitution Act, 1982 currently commits Parliament and the Government of Canada and the governments and legislatures of the provinces to promote equal opportunities and economic development throughout the country and to provide reasonably comparable levels of public services to all Canadians. Subsection 36(2) currently commits the Canadian government to the principle of equalization payments. This section should be amended to read as follows:

Parliament and the Government of Canada are committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Subsection 36(1) should be expanded to include the territories.

Subsection 36(1) should be amended to add a commitment to ensure the reasonably comparable economic infrastructures of a national nature in each province and territory.

The Constitution should commit the federal government to meaningful

consultation with the provinces before introducing legislation relating to equalization payments.

A new Subsection 36(3) should be added to entrench the commitment of governments to the promotion of regional economic development to reduce economic disparities.

Regional development is also discussed in item 36 of this document.

6. The Common Market

Section 121 of the Constitution Act, 1867 would remain unchanged.

Detailed principals and commitments related to the Canadian Common Market are included in the political accord of August 28, 1992. First Ministers will decide on the best approach to implement these principles and commitments at a First Minister's Conference on the Economy. First Ministers would have the authority to create an independent dispute resolution agency and decide on it's role, mandate and composition. (*)

II: INSTITUTIONS

A: THE SENATE

9. Aboriginal Peoples' Representation in the Senate

Aboriginal representation in the Senate should be guaranteed in the Constitution. Aboriginal Senate seats should be additional to provincial and territorial seats, rather than drawn from any province or territory's allocation of Senate seats.

Aboriginal Senators should have the same role and powers as other Senators, plus a possible double majority power in relation to certain matters materially affecting Aboriginal people. These issues and other details relating to Aboriginal representation in the Senate (numbers, distribution, method of selection) will be discussed further by governments and the representatives of the Aboriginal peoples in the early autumn of 1992. (*)

B. THE SUPREME COURT

17. Entrenchment in the Constitution

The Supreme Court should be entrenched in the Constitution as the general court of appeal for Canada.

20. Aboriginal Peoples' Role

The structure of the Supreme Court should not be modified in this round of

constitutional discussions. The role of Aboriginal peoples in relation to the Supreme Court should be recorded in a political accord and should not be on the agenda of a future First Ministers' Conference on Aboriginal issues. (*)

Provincial and territorial governments should develop a reasonable process for consulting representatives of the Aboriginal peoples of Canada in the preparation of lists of candidates to fill vacancies on the Supreme Court. (*)

Aboriginal groups should retain the right to make representations to the federal government respecting candidates to fill vacancies on the Supreme Court. (*)

The federal government should examine, in consultation with Aboriginal groups, the proposal that an Aboriginal Council of Elders be entitled to make submissions to the Supreme Court when the court considers Aboriginal issues. (*)

C. HOUSE OF COMMONS

22. Aboriginal Peoples' Representation

The issue of Aboriginal representation in the House of Commons should be pursued by Parliament, in consultation with representatives of the Aboriginal peoples of Canada, after it has received the final report of the House of Commons Committee studying the recommendations of the Royal Commission on Electoral Reform and Party Financing. (*)

D: FIRST MINISTERS' CONFERENCES

23. Entrenchment

A provision should be added to the Constitution requiring the Prime Minister to convene a First Ministers' Conference at least once a year. The agendas for these conferences should not be specified in the Constitution.

The leaders of the territorial governments should be invited to participate in any First Ministers' Conference convened pursuant to this constitutional provision. Representatives of the Aboriginal peoples of Canada should be invited to participate in discussions on any item on the agenda of a First Ministers' Conference that directly affects the Aboriginal peoples. This should be embodied in a political accord. (*)

III: ROLES AND RESPONSIBILITIES

25. Federal Spending Power

A provision should be added to the Constitution stipulating that the Government of Canada must provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the federal government in an area of exclusive provincial jurisdiction, if that province carries on a program or initiative that is compatible with the national objectives.

A framework should be developed to guide the use of the federal spending power in all areas of exclusive provincial jurisdiction. Once developed, the framework could become a multilateral agreement that would receive constitutional protection using the mechanism described in Item 26 of this report. The framework should ensure that when the federal spending power is used in areas of exclusive provincial jurisdiction, it should:

- (a) contribute to the pursuit of national objectives;
- (b) reduce overlap and duplication;
- (c) not distort and should respect provincial priorities; and
- (d) ensure equality of treatment of the provinces, while recognizing their different needs and circumstances.

The Constitution should commit First Ministers to establishing such a framework at a future conference of First Ministers. Once it is established, First Ministers would assume a role in annually reviewing progress in meeting the objectives set out in the framework.

A provision should be added (as Section 106A(3)) that would ensure that nothing in the section that limits the federal spending power affects the commitments of Parliament and the Government of Canada that are set out in Section 36 of the Constitution Act, 1982.

26. Protection of Intergovernmental Agreements

The Constitution should be amended to provide a mechanism to ensure that designated agreements between governments are protected from unilateral change. This would occur when Parliament and the legislatures(s) enact laws approving the agreement.

Each application of the mechanism would cease to have an effect after a maximum of five years but could be renewed by a vote of Parliament and the legislatures(s) readopting similar legislation. Governments of Aboriginal peoples should have access to this mechanism. The provision should be available to protect both bilateral and multilateral agreements among federal, provincial and territorial governments, and the governments of Aboriginal peoples. A government negotiating an agreement should be accorded equality of treatment in relation to any government, which has already concluded an agreement, taking into account different needs and circumstances.

It is the intention of governments to apply this mechanism to future agreements related to the Canada Assistance Plan. (*)

27. Immigration

A new provision should be added to the constitution committing the Government

of Canada to negotiate agreements with the provinces relating to immigration.

The Constitution should oblige the federal government to negotiate and conclude within a reasonable time an immigration agreement at the request of any province. A government negotiating an agreement should be accorded equality of treatment in relation to any government, which has already concluded an agreement, taking into account different needs and circumstances.

28. Labour Market and Training

Exclusive federal jurisdiction for unemployment insurance, as set out in Section 91(2A) of the Constitution Act, 1867 should not be altered. The federal government should retain exclusive jurisdiction for income support and its related services delivered through the Unemployment Insurance System. Federal spending on job creation programs should be protected through a constitutional provision or a political accord. (*)

Labour market development and training should be identified in Section 92 of the Constitution as a matter of exclusive provincial jurisdiction. Provincial legislatures should have the authority to constrain federal spending that is directly related to labour market development and training. This should be accomplished through justifiable intergovernmental agreements designed to meet the circumstances of each province.

At the request of a province, the federal government would be obligated to withdraw from any and all training activities, except Unemployment Insurance. The federal government should be required to negotiate and conclude agreements to provide reasonable compensation to provinces requesting that the federal government withdraw.

The Government of Canada and the government of the province that requested the federal government to withdraw should conclude agreements within a reasonable time.

Provinces negotiating agreements should be accorded equality of treatment with respect to terms and conditions of agreements in relation to any other province that has already concluded an agreement, taking into account the different needs and circumstances of the provinces.

The federal, provincial, and territorial governments should commit themselves in a political accord to enter into administrative arrangements to improve efficiency and client service and insure federal coordination of federal Unemployment Insurance employment functions. (*)

As a safeguard, the federal government should be required to negotiate and conclude an agreement within a reasonable time, at the request of any province not requesting the federal government to withdraw, to maintain its labour market development and training programs and activities in that province. A similar safeguard should be available to the territories.

There should be a constitutional provision for an ongoing federal role in the

establishment of national policy objectives for the national aspects of labour market development. National labour market policy objectives would be established through a process, which could be set out in the Constitution including the obligation for presentation to Parliament for debate. Factors to be considered in the establishment of national policy objectives could include items such as national economic conditions, national labour market requirements, international labour market trends and changes in international economic conditions. In establishing national policy objectives, the federal government would take into account the different needs and circumstances of the provinces; and there would be a provision, in the constitution or in a political accord, committing the federal, provincial and territorial governments to support the development of common occupational standards, in consultation with employer and employee groups. (*)

Provinces that negotiated agreements to constrain the federal spending power should be obliged to ensure that their labour market development programs are compatible with the national policy objectives, in the context of different needs and circumstances.

Considerations of service to the public in both official languages should be included in a political accord and be discussed as part of the negotiation of bilateral agreements. (*)

The concerns of Aboriginal peoples in this field will be dealt with through the mechanisms set out in item 40 below.

29. Culture

Provinces should have exclusive jurisdiction over cultural matters within the provinces. This should be recognized through an explicit constitutional amendment that also recognizes the continuing responsibility of the federal government in Canadian cultural matters. The federal government should retain responsibility for national cultural institutions. The Government of Canada commits to negotiate cultural agreements with provinces in recognition of their lead responsibility for cultural matters within the province and to ensure that the federal government and the province work in harmony. These changes should not alter the federal fiduciary responsibility for Aboriginal people. The non-derogation provisions for Aboriginal peoples set out in item 40 of this document will apply to culture.

30. Forestry

Exclusive provincial jurisdiction over forestry should be recognized and clarified through an explicit constitutional amendment.

Provincial legislatures should have the authority to constrain federal spending that is directly related to forestry.

This should be accomplished through justifiable intergovernmental agreements, designed to meet the specific circumstances of each province. The mechanism used would be the one set out in item 26 of this document, including a provision

for equality of treatment with respect to terms and conditions. Considerations of service to the public in both official languages should be considered as part of such agreements. (*)

Such an agreement would set the terms for federal withdrawal, including the level and form of financial resources to be transferred. In addition, a political accord could specify the form the compensation would take (i.e. cash transfers, tax points, or others)(*). Alternatively, such an agreement could require the federal government to maintain its spending in that province. A similar safeguard should be available to the territories. The federal government should be obliged to negotiate and conclude such an agreement within a reasonable time.

These changes and the ones set out in items 31, 32, 33, 34 and 35 should not alter the federal fiduciary responsibility for Aboriginal people. The provisions set out in item 40 would apply.

31. Mining

Exclusive provincial jurisdiction over mining should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry. (*)

32. Tourism

Exclusive provincial jurisdiction over tourism should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry. (*)

33. Housing

Exclusive provincial jurisdiction over housing should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry. (*)

34. Recreation

Exclusive provincial jurisdiction over recreation should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry. (*)

35. Municipal and Urban Affairs

Exclusive provincial jurisdiction over municipal and urban affairs should be recognized and clarified through an explicit constitutional amendment and the

negotiation of federal-provincial agreements. This should be done in the same manner as set out above with respect to forestry. (*)

36. Regional Development

In addition to the commitment to regional development to be added to Section 36 of the Constitution Act, 1982 (described in item 5 of this document), a provision should be added to the Constitution that would oblige the federal government to negotiate an agreement at the request of any province with respect to regional development. Such agreements could be protected under the provision set out in item 26 ("Protection of Inter-government Agreements"). Regional development should not become a separate head of power in the constitution.

37. Telecommunications

The federal government should be committed to negotiate agreements with the provincial agreements to coordinate and harmonize the procedures of their respective regulatory agencies in this field. Such agreements could be protected under the provision set out in item 26 ("Protection of Intergovernment Agreements").

40. Aboriginal Peoples' Protection Mechanism

There should be a general non-derogation clause to ensure that division of powers amendments will not affect the rights of the Aboriginal peoples and the jurisdictions and powers of governments of Aboriginal peoples.

IV: FIRST PEOPLES

Note: References to the territories will be added to the legal text with respect to this section, except where clearly inappropriate. Nothing in the amendments would extend the powers of the territorial legislatures.

A. THE INHERENT RIGHT OF SELF-GOVERNMENT

41. The Inherent Right of Self-Government

The Constitution should be amended to recognize that the Aboriginal peoples of Canada have the inherent right of self-government within Canada. This right should be placed in a new section of the Constitution Act, 1982, section 35.1(1).

The recognition of the inherent right of self-government should be interpreted in light of the recognition of Aboriginal governments as one of three orders of government in Canada.

A contextual statement should be inserted in the Constitution, as follows:

The exercise of the right of self-government includes authority of the duly constituted legislative bodies of the Aboriginal peoples, each within its own jurisdiction:

(a) to safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and,

(b) to develop, maintain and strengthen their relationship with their lands, waters and environment

so as to determine and control their developments as peoples according to their own values and priorities and ensure the integrity of their societies.

Before making any final determination of an issue arising from the inherent right of self-government, a court or tribunal should take into account the contextual statement referred to above, should enquire into the efforts that have been made to resolve the issue through negotiations and should be empowered to order the parties to take such steps as are appropriate in the circumstances to effect a negotiated resolution.

42. Delayed Justifiability

The inherent right of self-government should be entrenched in the Constitution. However, its justifiability should be delayed for a five-year period through constitutional language and a political accord. (*)

Delaying the justifiability of the right should be coupled with a constitutional provision, which would shield Aboriginal rights.

Delaying the justifiability of the right will not make the right contingent and will not affect existing Aboriginal and treaty rights.

The issue of special courts or tribunals should be on the agenda of the First Ministers' Conference on Aboriginal Constitutional matters referred to in item 53. (*)

43. Charter Issues

The Canadian Charter of Rights and Freedoms should apply immediately to governments of Aboriginal peoples.

A technical change should be made to the English text of Sections 3, 4 and 5 of the Canadian Charter of Rights and Freedoms to ensure that it corresponds to the French text.

The legislative bodies of Aboriginal peoples should have access to section 33 of the Constitution Act, 1982 (the notwithstanding clause) under conditions that are appropriate to the circumstances of Aboriginal peoples and their legislative bodies.

44. Land

The specific constitutional provision on the inherent right and the specific constitutional provision on the commitment to negotiate should not create new

Aboriginal rights to land or derogate from existing aboriginal or treaty rights to land, except as provided for in self-government agreements.

B: METHOD OF EXERCISE OF THE RIGHT

45. Commitment to Negotiate

There should be a constitutional commitment by the federal and provincial governments and the Indian, Inuit and Metis peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of government. The negotiations would focus on the implementations of the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements.

46. The Process of Negotiation

Political Accord on Negotiation and Implementation

. A political accord should be developed to guide the process of self-government negotiations. (*)

Equity of Access

. All Aboriginal peoples of Canada should have equitable access to the process of negotiations.

Trigger for Negotiations

. Self-government negotiations should be initiated by the representatives of Aboriginal peoples when they are prepared to do so.

Provision for Non-Ethnic Governments

. Self-government negotiations should take into consideration the different circumstances of the various Aboriginal peoples.

Provision for Agreements

. Self-government agreements should be set out in future treaties, including land claims agreements or amendments to existing treaties, including land claims agreements. In addition, self-government agreements could be set out in other agreements which may contain a declaration that the rights of Aboriginal peoples are treaty rights, within the meaning of Section 35(1) of the Constitution Act, 1982.

Ratification of Agreements

. There should be an approval process for governments and Aboriginal peoples for self-government agreements, involving Parliament, the legislative assemblies of the relevant provinces and/or territories and the legislative bodies of the Aboriginal peoples. This principle should be expressed in the ratification

procedures set out in the specific self-government agreements.

Non-Derogation Clause

. There should be an explicit statement in the Constitution that the commitment to negotiate does not make the right of self-government contingent on negotiations or in any way affect the justifiability of the right of self-government.

Dispute Resolution Mechanism

. To assist the negotiation process, a dispute resolution mechanism involving mediation and arbitration should be established. Details of this mechanism should be set out in a political accord. (*)

47. Legal Transition and Consistency of Laws

A constitutional provision should ensure that federal and provincial laws will continue to apply until they are displaced by laws passed by governments of Aboriginal peoples pursuant to their authority.

A constitutional provision should ensure that a law passed by a government of Aboriginal peoples, or an assertion of its authority based on the inherent right provision may not be inconsistent with those laws, which are essential to the preservation of peace, order and good government in Canada. However, this provision would not extend the legislative authority of Parliament or of the legislatures of the provinces.

48. Treaties

With respect to treaties with Aboriginal peoples, the Constitution should be amended as follows:

. treaty rights should be interpreted in a just, broad and liberal manner taking into account the spirit and intent of the treaties and the context in which specific treaties were negotiated;

. the Government of Canada should be committed to establishing and participating in good faith in a joint process to clarify or implement treaty rights, or to rectify terms of treaties when agreed to by the parties. The governments of the provinces should also be committed, to the extent that they have jurisdiction, to participation in the above treaty process when invited by the government of Canada and the Aboriginal peoples concerned or when specified in a treaty;

. participants in this process should have regard, among other things and where appropriate, to the spirit and intent of the treaties as understood by Aboriginal peoples. It should be confirmed that all Aboriginal peoples that possess treaty rights should have equitable access to this treaty process;

. it should be provided that these treaty amendments shall not extend the authority of any government or legislature, or affect the rights of Aboriginal peoples not

party to the treaty concerned.

C. ISSUES RELATED TO THE EXERCISE OF THE RIGHT

49. Equity of Access to Section 35 Rights

The Constitution should provide that all of the Aboriginal peoples of Canada have access to those Aboriginal and treaty rights recognized and affirmed in Section 35 of the Constitution Act, 1982 that pertain to them.

50. Financing

Matters relating to the financing of governments of Aboriginal peoples should be dealt with in a political accord. The accord would commit the governments of Aboriginal peoples to:

- . promoting equal opportunities for the well-being of all Aboriginal peoples;
- . furthering economic, social and cultural development and employment opportunities to reduce disparities in opportunities among Aboriginal peoples and between Aboriginal peoples and other Canadians; and
- . providing essential public services at levels reasonably comparable to those available to other Canadians in the vicinity.

It would also commit federal and provincial governments to the principle of providing the governments of Aboriginal peoples with fiscal or other resources, such as land, to assist those governments to govern their own affairs and to meet the commitments listed above, taking into account the levels of services provided to other Canadians in the vicinity and the fiscal capacity of governments of Aboriginal peoples to raise revenues from their own sources.

The issues of financing and its possible inclusion in the Constitution should be in the agenda of the first Ministers' Conference on Aboriginal Constitutional Matters referred to in item 53. (*)

51. Affirmative Action Programs

The Constitution should include a provision, which authorizes governments of Aboriginal peoples to undertake affirmative action programs for social and economically disadvantaged individuals or groups and programs for the advancement of Aboriginal languages and cultures.

52. Gender Equality

Section 35(4) of the Constitution Act, 1982, which guarantees existing Aboriginal and treaty rights equally to male and female persons should be retained. The issue of gender equality should be on the agenda of the first Ministers' Conference on Aboriginal Constitutional Matters referred to under item 53. (*)

53. Future Aboriginal Constitutional Process

The Constitution should be amended to provide for four future First Ministers' Conferences on Aboriginal Constitutional Matters beginning no later than 1996, and following every two years thereafter. These conferences would be in addition to any other First Ministers' Conferences required by the Constitution. The agendas of these conferences would include items identified in this report and items requested by Aboriginal peoples.

54. Section 91(24)

For greater certainty, a new provision should be added to the Constitution Act, 1867 to ensure that Section 91(24) applies to Aboriginal peoples.

The new provision would not result in a reduction of existing expenditures by governments on Indians and Inuit or alter the fiduciary and treaty obligations of the federal government for Aboriginal peoples. This would be reflected in a political accord. (*)

55. Metis in Alberta/Section 91(24)

The Constitution should be amended to safeguard the legislative authority of the government of Alberta for the Metis and Metis settlement lands. There was agreement to a proposed amendment to the Alberta Act that would constitutionally protect the status of the land held in fee simple by the Metis Settlements General Council under letters patent from Alberta.

56. Metis Nation Accord (*)

The federal government, the provinces of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and Metis National Council have agreed to enter into a legally binding, justifiable and enforceable accord on Metis Nation issues. Technical drafting of the accord is being completed. The Accord sets out the obligations of the federal and provincial governments and the Metis Nation.

The Accord commits governments to negotiate: self-government agreements; lands and resources; the transfer of the portion of Aboriginal programs and services available to Metis; and cost sharing arrangements relating to Metis institutions, programs and services.

Provinces and the federal government agree not to reduce existing expenditures on Metis and other Aboriginal people as a result of the Accord or as a result of an amendment to Section 91(24). The Accord defines the Metis for the purpose of the Metis Nation Accord and commits governments to enumerate and register the Metis Nation.

V: AMENDING FORMULA

60. Aboriginal Consent

There should be Aboriginal consent to future constitutional amendments that directly refer to the Aboriginal peoples. Discussions are continuing on the mechanism by which this consent would be expressed with a view to agreeing on a mechanism prior to the introduction in Parliament of formal resolutions amending the Constitution.

VI: OTHER ISSUES

Aboriginal participation in intergovernmental agreements respecting the division of powers

APPENDIX E

NAHA-ANHA BOARD OF DIRECTORS

| | | |
|--|------------------------------------|-----------------------|
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APPENDIX F
NHPO MANAGEMENT PLAN
