CANADA

STUDY TOUR REPORT
30 July – 3 August 2007

BY

DELEGATES FROM

• THE DEPARTMENT OF AGRICULTURE LAND AFFAIRS
• THE COMMISSION ON RESTITUTION OF LAND RIGHTS

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i) Acknowledgement.

This study tour would not have been possible without the financial support and program coordination by the Canadian Government. Their Embassy in South Africa and the Canadian International Development Agency (CIDA) played a significant role in understanding the purpose of the trip and ensuring that the visits would be an enriching experience.

In particular the following people must be thanked:

- The Minister of Agriculture and Land Affairs in South Africa who gave her support for this study tour despite pressing national priorities.
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- Indian and Northern Affairs in Saskatchewan for ensuring a comprehensive engagement with various Provincial role-players and engagements with First Nations, in particular Ms. Shalapata.
- The White Cap First Nation who welcomed us on short notice.
- The Muskeg Lake Cree Nation who shared their experiences, with specific reference to Mr L Lafond.
- The institution as well as communities visited for the valuable inputs in making it a success.

ii) Executive summary

Colonialism all over the world left a path of destruction and First Nations of the World are in a continuous struggle with the powers that be to reclaim what is rightfully theirs and to build a sustainable future.

In some countries there is a clear commitment from Political leaders to make right the wrongs of the past, a clear vision that the path of destruction must be rebuilt in a manner that is fair, equitable and just. The government of the day needs to portray this vision in its programs and operational systems by addressing the land question and supporting the rebuilding of a nation, First Nations have to participate in these processes to guide, advise and lead, partners need to assist in the shortcomings of government.

For the past sixty years Parliament has been addressing the land question in Canada with amending legislation, reports and discussions and the impression is created that the vision and commitment to deal with land rights are still to be achieved. The governance structures and systems are of such a nature that it is time-consuming, a waste of resources, it creates untouchable land and conflict in its interest to settle the land rights. The average time to settle a claim is approximately 13 years. The process whereby one department has the authority to validate, accept or reject claims as well as accept or reject a claim based on an independent inquiry after they rejected it in the first instance, raises a serious concern in Administrative Law. Although there is a renewed attempt with regard to the specific claims process to engage First Nations in streamlining the processes and establishing a tribunal
there is a serious concern if Canada will “walk the talk” before the talk is forgotten and if they walk, will it be the path that will address all the land claim challenges.

In the development of a country it was evident that Canada has a richness of resources to support and develop their country and its citizens. The expertise and resources committed to rural areas, modeling, the understanding of the rural context, the programs in place, the information systems that exist for participation by First Nations and other country folk in the development of the country left some food for thought.

It was clear from the engagements with government officials at a National and Provincial level that there are commitment and dedication in resolving the land crisis and to develop a just, equitable and fair society.

It was clear from First Nations that they are frustrated with the process of resolving the land claims. In the engagement with Muskeg Lake Cree Nation it was evident that it is possible to rebuild the past and create a future with the support of government, communities and partners after the land has been returned.

As a partner in the world of creating a just, fair and equitable society the Commission on Restitution of Land Rights: South Africa, would like to play its role in sharing the knowledge, experience and progress in the achievements made by returning the land to its rightful owners. The Commission on Restitution of Land Rights: South Africa, undertakes to create an International Forum for countries that deal with the return of land to First Nations of the world to learn from each other’s experiences in order to enhance processes in the creation of a just, fair and equitable society.

Overall the experience was enriching and some of the lessons learned were:

► **Settlement support**
  - Implementation Plans accompany all Comprehensive Land Claim Agreements
  - An implementation lens approach review settlement agreements to ensure all parties are clear on the implementation actions, time-frames, responsibility, costing and how the implementation must happen.
  - Implementation Committees including all role-players are established to ensure implementation will happen
  - Utility agreements to ensure infrastructure within a settlement agreement with the relevant authority can enhance the process of implementation and ensure implementation. This needs to be looked at in Restitution processes as well as in the idea of the establishment of agri-villages.

► **Governance**
  - Information dissemination and support: Networks, web sites, reports, bulletins are available to rural communities for support and these are accessible by rural communities. Included are tools that can be used by rural communities that provide data for planning.
  - A specific budget is allocated for rural areas.
  - There is a strong research element for rural areas that informs policy
  - When the agricultural GDP contribution is calculated it includes processing contributions
  - There are various projects focusing on rural areas with some focusing on the youth and their needs. Government also gives equity funding support for the youth.
Various departments work in the rural areas and sometimes share officials.

There is a broad range of International experience and assistance that can assist developing countries.

All levels of government participated in the claim settlement agreement and that ensured the progress made in Saskatchewan.

Capacity building during the settlement process enabled communities to acquire the necessary resources and skills to engage fruitfully in the process.

Provincial government ensures that various provincial departments honor their commitments in terms of the settlement agreement.

South Africa have made progress in the settling of claims and are able to share experiences to enhance the settlement of land claims in Canada.

**Community**

- First Nations have the capacity to organize, build capacity within the First Nations and have the capability and responsibility to negotiate with third parties.
- Additional economic opportunities created by the compensation after shortfall placed First Nations in a position whereby they could develop economic opportunities.
- The community benefits as a whole from the settlement. The leadership will create a vision that will include short, medium and long term projects. The community will have to approve the plan.
- A community member can benefit from these various projects but it is not for free, conditions are set to benefit from the various projects.
- Leadership, knowledge and skills are important in achieving community progress and well-being.
- Specialists are consulted by communities if they want to engage in specific projects to ensure return on investment and the viability of such a project.

1. **BACKGROUND AND PURPOSE OF THE STUDY TOUR**

The Commission on Restitution of Land Rights decided to embark on this study tour in order to learn from the experiences of countries that are implementing a restitution program. This would help us to improve our performance as well as ensure sustainable settlement of claims. The South African Minister supported this initiative and thus approved the study tour. The Canadian Government supported this study tour and financed it through the Canadian International Development Agency (CIDA). The Canadian International Development Agency played a critical role in compiling the program and all logistical arrangements (Attachment 1).

The purpose of the study tour was to look at the legal framework, institutional arrangements in processing the land claims as well as post settlement support given to restitution beneficiaries (Attachment 2).

The purpose amongst others was:
To share experiences on development processes with regard to a variety of projects for example agricultural activities and commercial enterprises.

To learn how communities are brought to a level where they are able to secure and manage the land in a sustainable manner.

To share experiences and review applicable legislative frameworks in facilitating land development with specific reference to legal entities and various landholding mechanisms including land use management strategies.

The role of government, non-governmental organizations, parastatals and the private sector in supporting land reform.

To learn from the existing community capacity building strategies to enhance their ability to manage their newly acquired land.

2. STUDY TOUR REPORT

2.1 Background and purpose provided as per engagements with various institutions – Mr T Gwanya, Chief Land Claims Commissioner, South Africa
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In South Africa there are three legs of Land Reform: Tenure reform, Redistribution and Restitution.

The Commission on Restitution was established in 1994, when the new government took over. The Land Claims Court was also established to deal with the 6 million people that were dispossessed of their land rights. Land Redistribution deals with skewed land ownership in South Africa where 87% of the land are owned by the white minority (20%) of the population and 13% of the land owned by the poor black majority (80%) of the population. Tenure reform is a program to improve the tenure security of all South Africans.

In South Africa 79000 claims were lodged. 80% of these claims were urban and 20% rural. The Group Areas Act separated Black -, Indians - and Coloured people. The urban claims were much easier to resolve, it was mostly financial compensation. The rural community claims are difficult claims. The rural claims are very large claims, one community can consist of 3000 households, the extent of land can vary in size from 500 to 30000 hectares-those are the difficult claims. We have settled almost 93% of the claims and are now left with approximately 7% (5000) rural community claims. In settling the claims Government ensures that the award is just and equitable, if a community lost a thousand hectares, an attempt is made in the award to return the original land of a thousand hectares.

In South Africa we have a hybrid between the judicial approach and executive approach. Before the Act was amended in 1999 all claims were to be resolved in the land claims court. The land claims Court is separate form other courts, it is a restorative justice court. After the amendments in 1999, the Minister had the power to resolve the claim. Only 41 claims were settled by March 1999. Between March 1999 and March 2000, 3921 claims were settled based on negotiated settlements and the powers of the Minister. If a settlement cannot be negotiated a claim will be referred to the Land Claims Court.
There has been a Political willingness to settle the claims, the budget has been increased from R500 million to R1,1 billion and currently at R3.3 billion. There is willingness from government to increase the budget should we find there is need to do so.

The first purpose of the study tour is to learn from the Canadian process of restitution on how they achieve land claim settlements.

The second aim is to gain insight into the settlement support after the claim has been finalised. If a claim has been settled what type of support must be provided to ensure sustainability? What type of support do First Nations receive in Canada to ensure that they take charge of their land?

- What support does the government give?
- What support comes from the private sector?
- How does the government galvanise the support?
- How do they ensure that First Nations participate in decision making and macro-economic policy making?
- How is the relationship between the First Nations and government managed?
- In commercialization agriculture, what economic programs are in place to ensure participation and trade in the global market?
- What type of capacity building programs are in place?
- What types of institutional arrangements are there in order for people to receive the land, manage the land and benefit from the land?
- How does the leadership of these organisations work in ensuring that communities work together and that community member’s benefit?

In South Africa people were deskilled systematically in agriculture from the 1960’s and this is captured in the economic history. The GDP contribution from agriculture was 25% and from 1970 dropped to 4.5%. This can be ascribed to the fact that from 1960 the government used aggressive and deliberate actions to remove people from very productive land to poor land, the so-called Homelands. Before 1960 the government took away the title, turned people into labour tenants but people remained on the land and had valuable farming practices, a lot of goats and cattle and produced their own food. The result from these interventions is that there are one to two generations of people that are deskilled in the agricultural practices, people are no longer used to produce their own food, the youth are not used to farm life and their interest in the agriculture has diminished.

Although through the Restitution process people receive high value land with going concerns, some who are exporting to world markets, the challenge remains to ensure that the change of ownership does not result in the collapse of the business and ultimately threatening food security.

In terms of the institutional arrangements we have Community Property Institutions (CPA) and Trusts that receives the title to land but we have found that not all people benefit from the resources they receive. In some instances the projects are hijacked by a few community members and they receive the benefits from the production activities.

One of the programs we have in South Africa is the Comprehensive Agricultural Support Program (CASP). This program has six legs and deals with input supply, information and knowledge management, capacity building, marketing, infrastructure, on and off-farm support.

Apart from the agricultural challenges, as a result of people being forcefully removed to Homelands, hundred of kilometers away and the Restitution process whereby people
receive their land back, communities want to return to their land. There are challenges to re-settle people back on the land. Challenges of settlement planning, bulk infrastructure development, housing, education, marketing, business development. The Department of Land Affairs and Agriculture realized that they cannot do it alone. There are legal instruments aimed to ensure that other government departments participate in delivering of support like the Inter-Governmental Relations Framework Act.

We have received support from the Belgium government for creating a strategy for settlement support. Canada is assisting us with a pilot project through the University of Pretoria to ensure co-operation from various stakeholders in the settlement support program.

2.2 DAY 1

2.2.1 INDIAN AND NORTHERN AFFAIRS CANADA (INAC)

Web site: [http://www.ainc-inac.gc.ca/ps/clm/index_e.html](http://www.ainc-inac.gc.ca/ps/clm/index_e.html)
Contact: Jonathan Breaker advisor:
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The Government of Canada has been committed to settling Aboriginal land claims since 1973. The federal government negotiates two types of land claims: comprehensive land claims, based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means and specific land claims arising from alleged non-fulfillment of Indian treaties and other lawful obligations or from the alleged improper administration of lands and other assets under the Indian Act (Attachment 3).

1. **Policy and Strategic Direction**: Daniel Watson, Senior Assistant Deputy Minister (Attachment 4)
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1.1 **Status of particular groupings**

The significance of status means a lot under the Indian act but not necessarily a lot under other processes that are rights based.

In the first version of the Indian Act in 1876, it was relatively easy to determine who the Indians were, because there were only a small number of Europeans. The small group of Europeans knew who they were and by definition everybody else were Indian except a small group known as the Métis who had European fathers and Indian mothers.

It was relatively simple at some stage to determine status, you were an Indian if you were on the Indian register. The manner in which the census was taken by the Indian agent or commissioner complicated matters. In some instances the commissioner arrived at a village and some people were not available for the census and then they would not be registered. If, for example they met these people from that particular village it could have happened that they registered them under another band or tribe name. It also happened that the commissioner might have met a grouping from two different bands but registered them as one grouping although they were from different groupings.

The population ratio in Canada in 1876 in terms of aboriginal people depended where you were in the area that would become Canada. In Prince Edward Island, New Brunswick and in Quebec there were more people from European descend that were staying there for the
past 150 years. There were no European people living to the West of what it is today Toronto and Ottawa. The map shows historical treaties that were mostly signed after 1876.

1.2 Support
There are various perspectives regarding the support that government can provide. Some First Nations say that there is not a lot of good they can learn from the government of Canada because of the school of thought that the residential school system that was created by the Canadian government led to much harm in their communities.

Support becomes a difficult issue when you have 300-400 people in the community, taking into account the capacity in the community to deal with basic issues such as a water treatment plant, school systems, having professional medical support, engineers to look at the safety of roads and structures. In Saskatchewan there are communities of 300-400 members and the question of lack of capacity is an issue, it is not only a governmental issue but also social issue.

Canada also follows the worldwide trend where more than 50% of the human population lives in cities. “As Canadians we live in cities, we like the things that come in cities (even if we complain about crime and traffic). Saskatchewan is the only place in Canada where you will find more that 50% of the population live in rural areas. In cities there is accessibility to services like health care, water treatment and the list goes on. We do not have a model to deliver on services in terms of quality and quantity in a very small environment like we are doing in an urban context”.

One of the debates and sometimes it is a shadow debate is to compare a small community with a large community or urban setting. The rest of people have access to universities but how do I get these services in my community of 400 people. There are no models to make this happen. It is arguable that it is not realistic to make those things happen in a small setting.

When a First Nation is willing to work with the Federal Government they usually request how the government can assist them in providing them with guidance and resources (many cases financial).

1.3 Changes on political, constitutional and legal dimensions
Very different relationships with the first nations emerged in the past 30-40 years on political, constitutional and legal dimensions. For example in 1951 (56 year ago) the Indian Act made it illegal for the First Nations to employ lawyers to lodge a land claim.

1.4 The structure of government, political power and representation of the First Nations.
The First Nation is in order of 3% of the entire population. In 308 areas about 20 areas have an aboriginal majority. In the tracking of voting results they determined that people tend to vote the same as their neighbors so you would not find aboriginal people voting the same across the country for particular group.

1.5 Structuring of ownership/title:
All land can be traced back to the crown under normal circumstances. It depends on the community where the agreement is reached. Sometimes it is small communities that have for instance 350 members whilst in other cases, like in the Niske agreement, there are four individual first nations that cover a large area but because they negotiated together, land that was put out for the group of four for communal land ownership.

In the Niskefan agreement all land will first be held collectively but then the Niske, subject to the terms of the agreement, will decide which individuals and under which circumstances
those individuals would /could have some right in the land, for instance to build a house there and get it recognised by law so that someone could not come and take it away but at the same time do it in such a way to recognise the underlying collective principle of ownership of the land. One of the biggest challenges is the direct rejection by First Nations of the Western notion of individual land ownership.

2. Specific claims process and the renewal process: Vivien, legal advisor

- The **Specific Claims Branch** manages the Specific Claims and Treaty Land Entitlement policies to resolve Canada's lawful obligations through alternative disputes resolution mechanisms rather than litigation. The objective of the Specific Claims Program is to address past grievances related to the administration of Indian lands and other assets, as well as the fulfilment of treaties, in a manner that strengthens partnerships, aids community healing, builds capacity and provides First Nations with needed lands and resources. For further information please see: [http://www.ainc-inac.gc.ca/ps/clm/index_e.html](http://www.ainc-inac.gc.ca/ps/clm/index_e.html)

**2.1 Introduction**

The Specific claims process fits around the framework already established within the Indian Act, so there are support policies for instance on infrastructure and economic development. It is only a wish unlike in South Africa, to compel other government departments to participate with Indian Northern Affairs. In Canada different departments are not always doing what they are supposed to do.

**2.2 Specific claims**

There is currently no legislation in place for these kinds of claims but work proceeds within a cabinet policy that existed since the early 80’s. It started in the 70’s as a commitment from the government to address and resolve outstanding lawful claims.

Specific claims are derived from government’s lawful obligation in terms of historic treaties that were signed between the Crown, Inuit's and First Nations. Canada acknowledges that some of these treaties were not fulfilled or that there has been a breach.
2.3 Specific claim process since early ‘80’s
When a First Nation makes a claim that Canada has breached an obligation or agreement of the Indian Act or historical treaty or any other agreement they submit their claim to Canada.

Canada then follows the following steps:
Step 1: Determine whether a claim is eligible. Does it meet the parameters of the policy and to evaluate and assess the evidence/facts that are presented by the First Nation. Assessment is also done to ensure that the historical evidence is complete. Sometimes the historical facts can refer back to the 19th century. In the verification of facts the specific claims branch makes sure it is complete, makes sure it relates to other historic information and adds additional information. The purpose being to provide the most pertinent facts to the Department of Justice in order to access and determine whether there is a breach of a lawful obligation. Once all the pertinent facts are together it is transferred to the Department of Justice.

Step 2: Transfer the claim to the Department of Justice for a legal opinion in terms of the overall facts. The opinion will indicate if there was a breach or non fulfillment of the claim.

Step 3: The Minister of Northern and Indian Affairs, based on the legal opinion, then makes a decision whether to negotiate the claim or to reject the claim.

If the claim is accepted for negotiations, the negotiations will start by various teams from both sides (government and claimants) by following protocol. The compensation and type of compensation will be determined. If agreement is reached it will represent the final agreement of the claim that was lodged.

If the claim is rejected there are some avenues for the First Nation. Government can ask whether they want to submit any other evidence to be supportive to their claim, if they cannot, they can apply to the Indian Claims Commission to have an inquiry conducted into the rejection of their claim. The enquiry looks at all the facts and makes recommendations to the Minister of Indian and Northern Affairs. If the first nations do not want to go the inquiry route they have the option to go to the civil courts or if they are not in favour of the recommendations by the inquiry they can go the civil courts. The Civil court route is a lengthy process and it can take up to 20 years to be submitted in the Supreme Court of Canada.

2.4 Support to the First Nations
The First Nations get financial support for research to gather evidence for facts, financial support in the assessment phase to present their case and if it goes for negotiations they also get financial assistance for negotiations. There are guidelines to assist first nations financially to do research on evidence and for legal support.

3. DEPARTMENT OF JUSTICE

When Justice receives the record from the specific claims branch consisting of all historic information, evidence that has been collected by the first nation along with their claim and what is called the confirming research that is done by the department, then a lawyer is assigned to write a legal opinion.

The lawyer will look at all the current legal principles coming from Case Law and the current status on law for instance on breaches of violation of the Indian Act. This policy relies on law
and is based on legal principle. If the law evolves, so do the principles that they apply to these historic claims. The lawyer will also review the complete historic record.

The Lawyer writes a fairly lengthy opinion which at the end states that in view of current law on basis of facts that have been provided find that there is a lawful obligation on the part of Canada to this First Nation or that there is no lawful obligation.

The opinion will be returned to the specific claims directorate and the minister will ultimately make a decision on whether or not to accept the claim.

The review is quite comprehensive, both from a factual viewpoint and also from the legal perspective, relying on decisions by the Supreme Court of Canada. Although legal principles do arise from lower courts, it is preferred to rely on the Supreme Court, which is the final court in the country, to give opinion.

This process can take a number of months and in some cases a number of years. The reason for taking so long is that aboriginal law is constantly evolving and has changed radically in the past ten years. The Supreme Court made some decisions that have changed the view of what gives rise to a lawful obligation.

3.1 Decision to reject or accept a claim
In 1991 the Indian Claims Commission was temporarily established to assist the First Nation in a concern they had that Canada takes a decision on the acceptance or rejection of the claim based on the legal opinion. The perception was that it was a conflict of interests if the minister makes a decision on that legal opinion.

The Indian Commission will go to the First Nation to conduct an inquiry. In the recent announcement (12 June 2007), of the renewal process there are plans for the creation of an independent tribunal to render binding decision of a claim. The renewal process is also based on the perception of the conflict of interest by the minister to accept or reject a claim based on a legal opinion from the same department. It is not clear at this stage what the process will be if the decision of the individual tribunal needs to be reviewed.

There was a Specific Claims Resolution Act but it was not proclaimed due to a disagreement with the government and First Nations thus it was never implemented. The standard committee on aboriginal affairs prepared a report and in this process it was also an opportunity for First Nations to express their concern regarding the process and current process. When the report came there were very important findings but Canada is attempting in discussion with the First Nations to address these in making new legislation.

3.2 Type of claims
Treaty claims: Historic treaties provided some land to the First Nations, but the First Nation submitted a claim based on the extent of the land received, they are claiming that the calculation of the extent of land received was wrong.

Agricultural Treaty (treaty 8): This treaty was signed in 1899 (Northern Alberta), each band got cows, seedlings, agricultural instruments in return for ceding title to land and they did not receive these benefits.

Surrender claim: These claims arise out of the Indian Act. In terms of the treaty they received 30000 acres and the treaty was fulfilled. After the signing of the treaty there were pressure of settlement and people moved west to farm and settle. In some cases First Nations agreed to surrender part of their reserve to the crown. The crown then sold the land to farmers and used the money for the benefit of the First Nation. There are however very technical requirements in the Indian Act which guide the process of surrender. If you are taking a surrender you have to have a meeting with the majority of the community and they need to vote in
favour of the surrender. There has to be an affidavit by the chief or headman that states that it is legitimate transaction. If the Crown did not meet those technical requirements of the Indian Act, then that surrender is considered as invalid.

The claims are based on a breach of agreement in terms of the treaty. At this stage it is not conceivable that a person will claim that the treaty was not equitable because the specific claims process is based on a breach of a treaty or agreement or act. Most First Nation people hold treaties as sacred documents they do not necessarily attack the treaty but they want the benefits deriving from the treaty. There is no case forward yet to set aside a treaty or invalidate treaty and it is highly unlikely that this will happen.

There are some cases in litigation currently where there are some allegations that a particular treaty was entered into on a fraudulent basis. It is alleged that the Crown knew there was oil or other valuable resources and they came and tricked the First Nation in signing the treaty. At this stage there are no successful cases that went through court regarding such a claim.

3.4 Compensation and development
The policy states that financial compensation is given for loss or damages, land is not taken from a third party.

The First Nations receive their compensation and can decide if they want to acquire land or go into other various economic activities. There are examples of First Nations opening shopping malls, buying an airline, doing their own capacity building programs, investing in social programs. The compensation allows for a range of economic activities that can take place that will be under the control of the First Nations. It is also possible that an agricultural treaty was breached but the communities are not interested in agriculture anymore and to give back for instance the agricultural implements will not be a benefit to them, they would rather engage in other activities. All these issues are addressed in the negotiations process.

The value of the claim or the compensation criteria is determined by appraisals and studies done by various specialists (lawyers, valuers, economists) from the various parties within the compensation guideline.

The government does not support any economic activity through this process, the First Nation is seen as an autonomous actor that can use the funds as they see fit, they set up their own trusts or systems and they access other Government programs for on reserve development. There are other government programs where First Nation reserves receive nationally on an annual basis $8 Billion, this relates to capital assistance, information assistance, support to their governance and economic development.

First Nations will also decide who will live on the land and there are examples like Westbank outside Colona where they engage in economic activity to provide housing for non First Nations people as an economic activity.

4. NEW CLAIMS ACTION PLAN
- In June 2007 the Canadian Government announced Canada’s Specific Claims Action Plan which proposes four key initiatives: the creation of a tribunal to intervene when claims negotiations fail; dedicated funding for settlements; improved flexibility in the handling of large claims and; a refocus on the existing Indian Specific Claims Commission to concentrate on dispute resolution.

There are two types of critique since the inception of the specific land claims process. The delays and backlog of the claims and the access to a tribunal that would revisit the decision made.
On 12 June 2007 the new action plan was announced to try and address the critique (Attachment 5). The first step is that discussions are underway with the Assembly of First Nations for developing legislation for an independent tribunal. This tribunal would have independent jurisdiction over claims that are rejected, independent decision would be taken with binding decisions on parties and it would also have jurisdiction when negotiations are not fruitful.

In the action plan there is also a recommendation that the policy be maintained that Canada is committed to resolve the claims.

It suggests some changes to amend the system, modernize it in order to process claims more rapidly and to provide for a mechanism to process claims in the most efficient and fair manner. There is currently a backlog of 800 claims that are in the system. These claims are past grievances, in historical evidence and assessment phase. The action plan talks about a 6 months period, after submission, to inform a First Nation if the claim is rejected or accepted for negotiations. There is talk of grouping claims to make it faster, the average time for a claim to be settled at this stage is 13 years.

The action plan is proposing to convert the current Indian Claims Commission to provide alternative dispute resolution mechanism as opposed to the current inquiry process.

A task team was created to assess all the issues and the task team was announced on 25 July 2007. There is a commitment to ensure consensus in deriving at the new legislation.

An amount of $250 million per year will be set aside for the settlement of claims. These funds will be managed in a transparent manner. The new tribunal will only deal with financial compensation.

**4.1 Trust and co-operation**

Trust is a serious issue between Canada and the First nations. Trust is a constant issue and there is a need to engage in confidence building mechanisms, it is an issue that the Federal government will have to address.

The Provincial government does not have much of a role under the Constitution but land is under jurisdiction of the Province. If the First Nation wishes to obtain Crown land in a Province, the Provinces need to be part of negotiations. In some cases there are pre-confederation claims like in the Province of Anteria and Quebec it is then important to try and engage the Province in the process. Although a Province cannot be forced to be part of the process they are part of the solution.

The relationships with Provinces vary, at a political level there are poor relationships between Federal and Provincial governments. In terms of government officials there is a good relationship between the various spheres of government.

**4.2 Ownership and title**

The land ownership pattern changed over years. Most probably the Provincial government owns most of the land. A person can buy land but there are some restrictions in some areas like Prince Edward Island where foreigners bought land and developed the land and in effect the prices escalated and local people did not have the means to purchase these properties.

The underlying title to First Nation Reserves lies with the Federal Crown. The land is held as a collective by the First Nation. First Nation individuals do not own land, they cannot sell land or make decisions these are made collectively. The reserves were set aside for the benefit of the First Nations as a group and the Federal Crown is holding that for the First Nations. If the
First Nation decides that they would like to sell land, they have to surrender in terms of the Indian Act to the Federal Crown, they are no allowed to sell it directly to a willing buyer.

Canadian law has evolved over years to accommodate aboriginal title, and this is quite different to treaties and the First Nation is part of treaties. They surrendered under their aboriginal title to treaties and they received certain privileges for instance a reserve that was set aside. In areas with no treaties like British Columbia certain groups claim that they have title and there are certain tests that they need to show according to the Supreme Court principles for establishing aboriginal title. This is in the comprehensive claim process. One big challenge to resolve is the overlapping claims where the same piece of land is under claim by different groups.

5. COMPREHENSIVE CLAIM PROCESS: Perry Billingsley (Attachment 6)

5.1 Background
In terms of justice, the Métis and Inuit communities have certain individual rights. There is certainty in terms of the rights for aboriginal people but the Courts have not yet indicated the type of rights or the scope of these rights. For example: Are there aboriginal rights for intellectual property or drawings? The vision of these rights is negotiated and the parties then come to an agreement.

The Comprehensive land claims policy supports the treaty process as a Constitutional process. In the 1982 amendments to the Charter of Rights and Freedoms were made and in Section 35 of the Constitution Act of 1982 aboriginal and treaty rights were recognised and affirmed.

Section 35 of the Constitution protects historic treaties and modern treaties, thus comprehensive claims are special claims that are constitutionally protected aiming to reconcile the prior presence of Aboriginal peoples with the sovereignty of the Crown.

Comprehensive land claims are based on continuing aboriginal rights and title, referring to historical rights not based on treaties. It is difficult to determine these rights and the meaning of these rights. In negotiations, Canada, a particular Province and aboriginal claimants (Inuit and or First Nation) are involved. The agreements reached are formal undertakings that provide certainty and clarity to ownership and management of land and resources.

5.2 Criteria for acceptance
The criteria for the acceptance of claims, with the exception of British Columbia (British Columbia Commission is the vehicle for accepting those claims): (i) Communities establish themselves as an organized society, the courts have given the criteria
(ii) Traditional use and occupation of a territory. The ability to exclude others and control a territory.
(iii) Continued use and occupancy
(iv) Rights and title not dealt with by treaty
(v) Title not previously eliminated

5.3 Negotiation Topics
(i) Existing and future interest in the land including exclusive control over some part of the land
(ii) Renewable and non-renewable resources including the sharing of benefits
(iii) Fisheries and wildlife including harvesting
(iv) Structures and authorities of government
(v) Relationship of laws, being a Federal State relationships of laws and relationships with First Nations
(vi) Fiscal relations with First Nations and their increased powers in terms of finances.

5.4 Comprehensive Claims Policy Results since 1973
40% of the claims with respect to Aboriginal land rights are resolved. These claims were swiftly resolved due to the fact that it is situated predominantly in Northern Canada where there are low population densities, not a high interest of third parties and where the Federal government has the ownership of some of the land.

There are 20 final agreements covering 90 communities with approximately 70000 members. Aboriginal ownership over 600000 square km of land. First Nation and Inuit control of $2.4 billion in capital transfers. Aboriginal access to variety of economic benefits: royalties, impact and benefit agreements, employment, contracting. Protections for traditional Aboriginal economy and harvesting rights for example fisheries. Also associated self-government rights and political rights.

5.6 Self government
In terms of the Self government policy a study was done whereby the United Nations development index was used to determine how communities with self government agreements are doing compared to those without self government agreements. Although there were selection biased concerns it was agreed that communities with self government agreements do better than communities under the Indian Act in terms of participation in the broader economy but not significant better in terms of income. Self government is part of success but leadership plays an important part in self government.

5.7 Lessons Learned in Negotiations
Treaty negotiation takes on average 15 years to negotiate a final agreement and 10 years for the initial implementation period. There is no one size fits all model of treaty agreement, it varies significantly in different provinces and territories. It is impossible to take one agreement and change names

5.8 Outstanding claims
Outstanding claims cover approximately 20% of Canada (within 7 provinces and 3 territories). Over 270 communities with approximately 200000 members have comprehensive claims. Most claims are south of the 60th parallel in areas with sizable, long-term non-Aboriginal populations, and with complex political and economic environments for settlement

Territories are areas where there is not enough local economy for these political groupings to participate in the Federation in terms of certain fiscal implementation. The Federal government is essentially responsible for what happens there. There is no revenue although there are lots of natural resources like diamond mines and oil.
In terms of the complexities the Court has indicated to negotiate, but the courts are also seen as a viable way for settlement. In many instances results has been changed by the negotiating power that First Nations bring to the table.

5.9 Comprehensive Land Claims in British Columbia
Most First Nations in British Columbia have not signed or adhered to treaties. In terms of the 1991 release of the tripartite British Columbia Claims Task Force Report, the British Columbia Treaty Commission was established. This is an independent, neutral body responsible for facilitating treaty negotiations among Canada, British Columbia and Aboriginal Groups in British Columbia. Since the establishment of the British Columbia Treaty Commission negotiations took place but no claims have been settled.

5.10 Implementation of Comprehensive Claims Settlements
Implementation Plans accompany all Comprehensive Land Claim Agreements. The first two agreements that were settled in 70's did not have implementation plans and since then implementation disputes arose. The implementation disputes is very expensive for Canada, the last one was settled at a cost of $1.4 billion.

Implementation Plans identify obligations contained in the Final Agreement and specify how, when, and by whom they will be put into effect. 22 Implementation Plans (Comprehensive Claim and/or Self-Government) were signed since 1986. These plans usually cover a fixed period (for example 10 years) and then they are renewed for another fixed period. Multi-party Implementation Committees oversee the putting into effect of Implementation Plans.

6. IMPLEMENTATION OF COMPREHENSIVE CLAIMS ENTITLEMENT - Fred
(Attachment 7)

6.1 Introduction
In terms of the history one can say that for the past 200 years Canada has been in a post settlement support mode. Indian and Northern Affairs Canada is in some sense almost a post settlement institution because the government of Canada as represented by the department of Indian Affairs is responsible in many ways for co-ordination, support and social services in terms of signed treaties and other undertakings.

There are about 110 different programs directed at aboriginal people living on reserves or living in the North. In terms of resolving comprehensive claims, where no treaties were signed, which sometimes includes vast tracks of land, billions of dollars in capital transfers, resource royalties or rights to the management of land resources, there are linkages with the South African post settlement support process.

6.2 Implementation
Implementation is the ability to put certain activities in place. In order to ensure clarity in the agreement the following need to be clear:
(i) What the obligations are;
(ii) Whose obligations are they;
(iii) When do they put it in place;
(iv) How they put it in place;
(v) How much does it cost to implement

6.3 Implementation process

Step 1: Implementation lens:
When an agreement is being negotiated an attempt is made to look through an implementation lens to the agreement to determine if people will understand the implementation, will they know for example exactly what each party will do, what each party is responsible for, who must implement the plan, by when, and what it will cost. Also if this is agreed upon in the agreement?

A recent issue raised by lawyers in terms of the implementation plan is that aspirational wording is used for example that the agreement will lead them to economic self sufficiency and if that is the agreement it can be interpreted that it obligates Canada to ensure that they reach economic self sufficiency even if it was not the intention.

Step 2: Implementation Committees
After the agreement, implementation committees are set up. These committees consist of representatives of all parties, Provincial and Federal government and the First Nation.

Implementation plans can be extensive documents, sometimes up to 800 pages but if there is detail and a clear understanding it is very helpful. Problems arise when wording of agreement is vague or misunderstanding in interpretation of the wording about implementation. One example for instance is James Bay where no implementation plan existed and parties had disagreement in terms of the implementation and litigation started just after the agreement was signed.

Examples of modern treaties and implementation plans are available on the website.

7. Summary of the progress of the claims

The following tables present the progress of claims in Canada. These statistics indicate the claims that have been lodged and the progress thereof. In future more claims can be lodged and the number of claims will then increase.

7.1 Specific Claims (as of March 31, 2007)

<table>
<thead>
<tr>
<th>Province / Territory</th>
<th>Under Review</th>
<th>Negotiations</th>
<th>Concluded</th>
<th>At the ISCC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>29</td>
<td>12</td>
<td>67</td>
<td>4</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>British Columbia</td>
<td>303</td>
<td>40</td>
<td>145</td>
<td>10</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>10</td>
<td>2</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>Manitoba</td>
<td>24</td>
<td>16</td>
<td>47</td>
<td>3</td>
</tr>
<tr>
<td>Ontario</td>
<td>132</td>
<td>24</td>
<td>71</td>
<td>1</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>12</td>
<td>6</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Quebec</td>
<td>71</td>
<td>6</td>
<td>37</td>
<td>1</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>41</td>
<td>16</td>
<td>70</td>
<td>14</td>
</tr>
<tr>
<td>Yukon</td>
<td>7</td>
<td>0</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>633</td>
<td>123</td>
<td>489</td>
<td>34</td>
</tr>
</tbody>
</table>

* Out of the 489 claims concluded, 282 were negotiated and 207 concluded in terms an administrative remedy or file closure.
### 7.2 Comprehensive claims in Canada and British Columbia

<table>
<thead>
<tr>
<th>Location of Claims</th>
<th>Number of claims</th>
<th>Resolved</th>
<th>Outstanding</th>
<th>Claims in negotiations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada (since 1973)</td>
<td>Not known</td>
<td>20, involving 90 communities</td>
<td>Cover 20% of Canada, involve 270 communities</td>
<td>Not known</td>
</tr>
<tr>
<td>British Columbia (since 1995)</td>
<td>57</td>
<td>1 outside BC process</td>
<td>57</td>
<td>9 (early negotiations) 39 (agreement in principle)</td>
</tr>
</tbody>
</table>

#### 2.2.2 MEETING THE ASSEMBLY OF FIRST NATIONS (AFN)

Web site: [http://www.afn.ca](http://www.afn.ca)

Contact: Tonio Sadik, Strategic Policy, Planning and Law:
e-mail address: tsadik@afn.ca

Met with: R Jock-Chief Executive Officer, G Doxtator-Senior Aid to Chief of Staff, R Jones- consultant

- The Assembly of First Nations (AFN) is the national organization representing First Nations citizens in Canada. There are over 630 First Nations communities in Canada. The AFN Secretariat, is designed to present the views of the various First Nations through their leaders in areas such as: aboriginal and treaty rights, economic development, education, languages and literacy, health, housing, social development, justice, taxation, land claims and the environment.

#### 1. Background

In Canada, most land are settled and occupied as a result of the establishment of treaty relationships between the First Nations and the Crown. Large areas of land are subjected to a treaty. First Nations understood treaties as the establishment of peace and sharing of land and resources. But that is not how the treaties were written because the treaties were written by the English. First Nations gave up land in favour of taking small portions of land called reserves. That is how most of the land was occupied and settled.

At the same time in 1867 when Canada became a dominium they passed the Constitution and the British Parliament called the British North America Act. The Constitutional provision says the Federal government has jurisdiction and power over Indians and land reserved for Indians. This is where the Indian Act originated from. Since then the relationship has been a colonial relationship. That has been the way the Federal government including the Department of Indian and Northern Affairs relates to First Nation people, power over Indians and that is how they exercise it.

In 1969, there was a Government White Paper that proposed to eliminate any special status of Indians and land reserved for Indians. In other words to terminate the notion of Indians, to terminate the notion of land reserved for Indians so that everyone is a Canadian and everybody is occupying Canadian land. As a result of this White Paper the Assembly of First Nations was formed. In its earliest form it was called the National Indian brotherhood to resist this policy. People came together to fight the policy and they were successful. At the same time the Supreme Court of Canada recognised that Indians had legitimate lawful interests in land, called aboriginal rights and aboriginal title and that the plan by government contradicted this by not giving back the rights.

Federal government then developed the specific claims policies and comprehensive claims policies
2. **Specific Land claims**

Specific land claims from the First Nation arose due to, bad administration, bad management, expropriations, fraud, land sales, displacement on the part of government. The rights of aboriginal people to safeguard and protect are disregarded. There are specific obligations on the Federal Crown to deal with land but because they departed it gave rise to specific claims. The policy describing this has been around since the 1970’s and delivered minimal results.

There are between 800 to 1300 specific claims across the country but the government has not yet been able to resolve these claims.

3. **Settlement of land Claims**

First Nations share the opinion that it is always the best to settle land claims by way of negotiations and as a last measure mediation, arbitration and adjudication. First Nations found that in mediation, arbitration and adjudication rules and procedures are often prohibitive to traditions. First Nations support commissions or tribunals but before these processes they want to try and resolve issues with the government or third parties.

First Nations expect fairness in the land claims policies but fairness is not to be found in these policies. The First Nations were disempowered by laws and policies in the past. The current policy processes are the same, government made the policies, the rules and the procedures without consultation and First Nations have to follow these. Government has all the power in terms of the validity or non-validity of claims and also the kind of remedies that can follow from this.

The type of rules that government makes about specific and other claims is often that return of land is not the solution or part of the solution and this is extremely problematic for the First Nations. First Nations would rather take their land back than accepting financial compensation. Another companion rule to this is not to displace third party holders. Third party holders keep the land and the resource development rights to the exclusion of returning the land or mineral resource interests that rightfully belong to First Nation people.

4. **Senate committee report**

Documentation and the Canadian Senate Committee report (9 December 2006) has motivated and triggered work that the Assembly of First Nations is currently doing with government.

Senate committee report indicated that there is no progress on the resolutions of claims because all the powers are in the hands of government, the policy issues, rules, processes, decisions on the acceptance or rejection, decisions on if there will be a settlement and the content of the settlement. First Nations find it difficult to negotiate against this power.

The report indicated that Canada has tried the negotiation approach under these policies for the last 30 years and was unable to resolve the claims. People are getting frustrated and angry, so your choice is to revise these policies and procedures and come up with new plan to deal with specific claims or you will deal with the confrontation of people using their own means to reclaim the land.

In a response to the report, the Federal Government with the Assembly of First Nations announced on 12 June 2007 that Government acknowledges that these processes are not working and they will introduce an independent tribunal to resolve the claims. Government also realised that not only did their policies and processes not work but if they continue with a unilateral approach they will experience the same problems.
Government undertook to work with the Assembly of First Nations in developing the tribunal, new legislation and reviewing the processes and implementation. The idea behind this is contained in the Senate Report “involve clientele to whom it will be directed at”.

The principle of negotiations first hasn’t been displaced, parties are still expected to try and negotiate first. But in instances where parties have been in negotiations for 10 to 15 years it will be advantageous to refer it to a tribunal. Long negotiations cost a lot of money. The First Nations borrow money from government to negotiate and the First Nation is expected to pay this loan back with the settlement. It is a costly exercise to hire specialists, researchers and lawyers and at the end there might not be much left of the settlement.

5. **Government support for negotiations**

There are two stages to the government support. In preparation of the claim, government will provide money for research and other professional services. If a claim is accepted for negotiations then government provides a loan to First Nations for negotiations and this need to be paid back. In some instances First Nations were successful in negotiating that they do not need to pay it back. The loan creates another problem and that is when a First Nation enters into negotiations they have accrued a debt and are unable to discontinue with negotiations because they need the settlement to pay back the loan.

6. **Third party interest**

The majority of the land is Crown land. The issue with land claims is not only the ownership but also leases and other types of tenure or agreements that exist over crown land. Some leases like forestry are in perpetuity, they never expire provided that the lessee keeps his obligations in terms of the contract. This arrangement will continue to exist and restoration is not possible. Land is not part of the equations, it seems it is too complicated to undo years of history.

Aboriginal title is constitutional. There is no land in aboriginal title. It remains crown land

7. **Comprehensive claims**

Comprehensive claims are claims where no treaty relationship exists between First Nations and Crown land. The view is that people on the Crown land are now unlawfully occupying the lands. These claims are the ones in negotiations for 100 and millions of Dollars. Negotiations around self-government, intergovernmental relations are the modern day treaties.

In 1982 the Constitution included another provision that recognised indigenous rights. Section 35, recognises treaty and aboriginal rights and changed the system from a Parliamentary supremacy system to Constitutional supremacy system.

Basically the Courts have been telling government that the days of making policies, laws and regulations about Indians without consulting, without getting the consent of the Indians on legislation are over. Government has been slow to respect those decisions. Only in the last two to three years were there some transformation and movement away from unilateral policy making

The principle aspiration that the parties hopefully understand today is reconciliation. Reconciling the law of indigenous and non indigenous people is still in the process of evolution. “We are far from being happy or satisfied around the circumstances in which we exist because that is why this organisation exists”. This organisation came together to unite the people to resist and fight government plans and policy. The organisation represents over 600 communities all over the country. The aim to have a united position on government law making and government policy, but also to be a partner in development of policy, procedures, programs and services that are directed at First Nations people.
8. **Challenging of Treaties**

In order to understand the First Nations perspective on treaties one has to appreciate that it is not only the treaty document that sets out the understanding. Maybe the treaty document does not set out the understanding but that the oral traditions that people have tell the history. The understanding of First Nations to the treaty was not the surrender of land. As far as First Nations are concerned the treaty misrepresented the understanding that was arrived at that time. In order to arrive at a proper understanding of the treaties both perspectives need to be taken into account.

In the last 10 years the courts had begun to express the need for two perspectives to be reflected in interpreting the meaning of the treaty. Before that, the Crown and Federal Governments relied on the courts to rule in their favor. People were not willing to go to the courts, it was risky and you would have been faced with an opinion that you would not like because the court relied on a written treaty document versus a verbal account.

In these days it seems that First Nations are more willing to go to court for an interpretation of the most fundamental parts. People are being more aggressive in asserting that the treaty was an understanding of a shared benefit of land versus surrender and that all rights went to government and that Indian people were left with welfare and other programs from government. First Nations however, are still reluctant to be aggressive on testing the meaning of the treaty and this will remain so until courts or tribunals are fair and impartial.

First Nations have been successful in courts proving that aboriginal and treaty rights exist, that those are constitutional rights and that the Federal Government must be consistent in all its actions in terms of these rights.

9. **Implementation**

Since 1976 communities have negotiated land claims settlements and in these agreements it provided much more than land. It provided for local government, various departments to participate in community development and capacity building. People have experience of what can be contained in these agreements and are much more aware of implementation and transition than in the past.

The problem again goes to the issue of how the government is organised. The Department responsible for implementation is the Department of Northern and Indian Affairs, the same Department that has the responsibility of managing the old relationship based on a colonial relationship. The view is that they will try and manage the new relationship in the same manner. What the reports have been saying is that government has to organise around a new relationship principle of equality. The Auditor General also said that the implementation of land claim settlements of First Nations are inefficient and indicated there needs to be institutional change.

10. **Challenges**

- Canada has not been decolonized, it is a colonized country but we are trying to be post-colonial.
- There are immigrants from all over and almost all are in political institutions.
- Approximately 10% of the local population is employed by government.
- First Nations do not have much voting power, only persuasion.
- Get no implementation from government because we cannot force them to do it.
- Engaged with international forums, the United Nations Human Rights Committee gave two positive responses one on land rights. The Federal government and Provincial government ignore the response.
The trick of Canada is when the treaty was made with the Imperial Crown by the British North America Act, it transferred powers from the Imperial Crown to the Provincial crown but the people are stuck in the Federal Crown. The Federal Crown has technically no land except the territories and Indian reserves. The Federal government cannot deal with, the Provincial governments owns the land. First Nations are caught between these structural challenges as well the various courts. The Provincial courts are old and entrenched while the Federal courts are quite new.

In Constitutional rights we were successful but in litigation we are not past the right of subsistence. A claim will get a treaty right to hunt but only for subsistence and not commercially.

Resources for litigation are limited. The Minister of Indian Affairs can give permission to provide money for litigation but it is in exceptional cases. Litigation runs up to millions of Dollars due to the power of appeal and this is only for subsistence rights. There were only two positive decisions for commercial rights thus far.

Specific claims are kept in-house by government in order to cover the mess from the past. There is an attempt to force it out to Federal courts, but these courts are saying that they do not have enough personnel to handle this.

There are now 30-40 judges that handle Constitutional rights and before 1982 any legislation could have taken precedence over a treaty.

The major problem comes back to poverty and lack of ability to litigate in fair and impartial forms.

Internationally the struggle to approve the United Nations Declaration on the Rights of Indigenous people. Opponents to this declaration are the Government of Canada and Russia, 31 countries voted in favour, 12 or 13 countries were absent. The African Union proposed a delay in the adoption of the declaration in November 2006. This resulted in a serious danger that the declaration could be re-opened for more negotiations after 20 years of negotiations on the declaration. If the declaration is adopted it will be applied globally to all First People of the world in addressing decolonialization issues and recognising, rights, land, resources of the various cultures and political institutions. The tools to move away from poverty.

11. **Assembly of First Nations relationship to the Inuit and Métis**

The Inuit, Northern Indigenous people recently entered into land claims settlement and completed the process. The Inuit population has been more ready to adopt public government models where they are satisfied with establishing public governments in their territories. The Inuit form the majority of the population in those areas and are not concerned that the possibility exists for them to become the minority in the future and that these government structures might turn against them.

The Inuit act in a modern context in terms of how they are organising themselves. They are very rich in culture, language and traditions and they try to maintain that in the land claims and public government processes. It is a mix of modern principles with traditions and customs. The courts have recognised the Inuit as Indians for purposes of the Constitution even though they are not Indian.

The Métis are mixed blood people, the modern constitution recognise them but the Canadian government still takes the position to say prove to us that you have rights.

The Assembly of First Nations, the Métis and Inuit work together to advance aboriginal issues in the Country. The reaction by government to the unity is to create division and this is very effective.
2.2.3 CHALLENGES, FURTHER ACTIONS AND LESSONS LEARNED

CHALLENGES
1. Currently it seems that claims are lodged and sent to government and if government does not support it, it is sent to the Indian Claim Commission, the Commission will do its investigation and if they do not support the claim then it can go to court. It seems it is a zigzag approach and it gives government all the power and time to research the claim to oppose the claim.
2. Challenging the validity of treaties is not helping to resolve the real land issue
3. Changes in the policy and the systems are taking too long. The development and set up of a tribunal can take years.

FURTHER ACTIONS
1. Documents to be provided by Indian and Northern Affairs Canada - Jonathan Breaker.
   (i) The guidelines for First Nations to access financial support from the Indian and Northern Affairs Canada in preparing for negotiations (specialists, research, legal support).
   (ii) Report by the Standard Committee on Aboriginal Affairs
   (iii) Compensation guideline.
   (iv) Example of an Implementation plan in terms of a Comprehensive Claim Settlement
2. Insights into the example given in terms of a Comprehensive claim settlement, Commissioner Mhangwani
3. Establishment of an International Forum of countries to discuss and share land claims challenges

LESSONS LEARNED
1. Implementation plans accompany all comprehensive land claim agreements
2. Implementation lens
3. Implementation Committees

2.3 DAY 2

2.3.1. MEETING AGRICULTURE AND AGRI-FOOD CANADA (AAFC), RURAL SECRETARIAT AND CO-OPERATIVE SECRETARIAT

Web site: www.rural.gc.ca
Contact: Christine Burton:
e-mail address: cris@agr.gc.ca
The Rural Secretariat is a focal point for the Government of Canada to work in partnership with Canadians in rural and remote areas to build strong, dynamic communities. The Secretariat provides leadership and coordination for the Canadian Rural Partnership; facilitates liaison and creation of partnerships around rural issues and priorities; and promotes dialogue between rural stakeholders and the federal government.

1. The Rural Secretariat-In support of sustainable and viable rural communities- Christine Burton -Director, Rural Policy and Strategic Development (Attachment 8)

The challenges around rural development are not restricted solely to those communities that are post settlement communities but also to other communities that have been there for a while. The challenges are shared. Some programs will be different but the approach will be similar with these communities.

A Critical issue that we look at is sustainability over the long term. Often one finds in rural development across the world that people do things in a quick fix perspective, giving money to a challenge is a short term perspective, to strip resources from land if the community is in trouble, is a short term perspective. One needs to look at longer term sustainability in terms of people and the natural resources to ensure that it lasts for generations. The development must also be viable without additional support than the normal support, thus economical viability and self sustaining.

The secretariat does not specifically deal with land ownership or aboriginal or land settlement communities. The secretariat looks at communities in need and it is communities in remote, rural areas. They have not been involved in ownership of the land issues unless it has been identified within the communities.

Land tenure is different in different parts of country. In the South it is mainly privately owned land and in the North it is more Crown land and communally owned land.

1.2 Challenges
There are universal challenges, even if rural communities are different so many of the challenges are the same. The solutions will be different because they will reflect the different situations within a community but challenges are often very similar. The AAFC is as challenged as all the countries that work with rural development but have found some successes.

Rural communities are a part of Canada. Approximately 20 % of Canada’s population is rural (6 million citizens). If one looks at a map you will find that approximately an hour North of the US border is where the bulk of Canada’s population is and that is primarily in larger cities.

The rural population is far more diffused and scattered around the landscape and are geographically sparse. The unemployment rates have declined in rural areas in recent years and this can be partly ascribed to the younger people having moved to the cities and a lower population that you are trying to hire. Another factor that contributes to the lower unemployment rate is that some of the people are returning due to economic development of
the primary resources in the rural areas. These opportunities arise due to the current boom in the energy sector, the oil, gas and alternative energies. There are currently very high needs for labour, both in construction, the capital investment side and also in managing these facilities. There are shortages of a skilled labour force in the rural areas. Although rural communities are very numerate, literate communities and have the capacity to learn and transfer skills they might not have the specific skills required for a specific trade.

Across Canada 60% of the new small businesses are started in the rural areas and it is seen that women participate in these activities and are a large part of this process. Women tend to start small enterprises and they tend to have a slightly higher rate of success because they do start small.

There are rural opportunities and the OACD report said that Canada had underutilized resources related to infrastructure (water and waste water underutilized), natural resources sectors (tourism, new opportunities in the increasing demand world wide for products from natural resources, petroleum based products and bio-based products). If rural communities get support are economically healthy and have a range of services and businesses it helps to support the transition and competitiveness of the primary sectors.

Farming is seen in a business perspective not subsistence perspective, most of the farm products are sold internationally. As a Nation we try and develop the processing of our farm products. Farmers see themselves as part of a chain and that they are the first step in production whether it gets sold internationally or domestically. Typically farmers will keep some produce. A lot of produce are specialized, if they produce grain they produce grain and not grain and beef. Often they are large but specialized.

First Nation tends to be less involved in farming than they used to be. Canada had a strong aboriginal agricultural base, but they did so well that laws were brought in to make it more difficult for them to farm. As a consequence of that Aboriginal people had to return to the reserves and practice a hunter-gatherer type of existence living of the land rather than an agriculturalist model.

In the last 10-20 years the AAFC tried to involve more aboriginal people in agriculture. This is within the vision of the land claims process, that if the aboriginal people are going to be one of the largest land owners in the country agriculture and other developments visions must grow with the “new” land owners. Currently the agricultural activities in the First Nations people relate the domestication of wild animals for instance elk. These animals will be domesticated, some will be kept for local use but the rest will be sold. They will follow the traditional European model used by Canadians of produce, transform and sell as opposed to consume.

50 % of rural communities are resource based. Approximately 21% of GDP (the percentage includes processing) and 50% of exports are from the agriculture, forestry, mining, fishery, and energy sectors.

1.3 Common challenges exist within these 5 sectors and some of these are:
(i) Structural changes: In Agriculture younger people are leaving, and the other sectors like fishing and forestry are saying the same. The fact that young people are leaving means that fewer people will be able to go to school because there is a likelihood of reducing the number of schools. One might think that climatic change is affecting agriculture but forestry is saying that the United Nations has stopped trade in soft wood lumber thus climate change is also affecting forestry.
(ii) Sector based approaches: the sector based approaches do not address community needs. Responses are always towards the producer and do not include the community. It needs to support the wellbeing of the sector while supporting the wellbeing of the
community. For example, in terms of mad cow disease the response was to help the farmer but no response in terms of the grocer down the road that will not be able to sell meat, the car salesman that would not be able to conclude sales due to his dependence on income from the farmers. A response is needed to assist the producer but also those dependant on the sector.

(iii) Lagging health status: one of best ways of good health is to have a job and then you have finance to access health services
(iv) Specific job skills shortage: specific job skills to be able to change a community to move on to other industries. For example a person might have the knowledge to fish but not necessarily knowledge to other fish related industries.

1.4 Rural Secretariat structure
The Rural Secretariat is part of the Federal Government and supports the Minister of Agriculture although their activities are not solely related to agriculture.

The Rural Secretariat provides leadership and co-ordination across the government. With a staff component of 100 for a country of 30 million people they are not able to provide personal attention. They say “people have needs regardless of where they live and these needs span across government departments (health education, labour, business development etc) and departments are encouraged to look at the needs of rural areas and include those rural areas in their specific programmes”.

The Rural Secretariat co-ordinates collaboration and information amongst the Federal-, Provincial- and Territorial governments responsible for rural affairs.

The partners of the Rural Secretariat are Provinces and Territories, rural teams and networks. The network consists of 32 Federal Departments and various agencies that are coming together on a regular basis to look at various issues through a rural lens. There are also partners outside government.

1.5 Four Key areas of activities
i) Research and Analysis: All good policies are based on good research. Rural development is a new developmental field and only for the past 20 years have quantitative data been collected and currently moving that down to analytical.
ii) Rural Lens and Policy: Looking at policy, opportunities and issues with a rural perspective, understanding how things are different in a rural context
iii) Communications, outreach and citizen engagement: How to work with partners to involve them and providing them with information
iv) Programs: The actual specific programs and services

2. Research and analysis unit- Chris Nicholls, Analyst

2.1 Three different areas of work
2.1.1 Data and Information on rural Canada: Provides a basis for Socio-economic studies and policy development. Create partnerships for example with statistics Canada where they developed a Rural and Small Town Canada Analysis Bulletins and Rural profiles for each province and one national rural profile.

2.1.2 Working with others/stakeholders: National Rural Research Network consists of academics, rural practitioners across the country that does rural and community development research. Network brought together all stakeholders in workshops so that they can share experience, form partnerships. Also work with other government departments, statistics Canada, Heritage Canada to develop data and knowledge
2.1.3 Develop tools for community development: They have developed the following:

- Community Decision-Making Toolkit, a resource to assist rural communities to make sound choices for the future. It consists of case studies and an example asset mapping;
- Community Information Database (CID), this is a free website with demographic-, economic-, and social data at community level. It has all the rural communities in Canada and provides 300 pieces of information on each and every community. It can compare a community’s performance with another community. It is able to make projections on how the community will perform if for instance their education level is changed. It identifies trends at the local and regional level. Users include policy workers, community groups and organisations, businesses and researchers. Partnerships can also be developed through this website. Web site: www.cid-bdc.ca

These tools are not aimed to be prescriptive but rather to encourage communities to decide what tool will be appropriate in their community. It also aims to help and encourage leaders to involve communities. There are officials that work professionally on these toolkits and they also provide examples of real communities in these toolkits. Approximately every two months a new addition to the toolkit is added.

These activities are primarily funded by Government.

3. Rural Lens and Policy

This unit analyzes the impacts of Federal government programs, policies and services on rural communities and influence programs

Example 1: An issue that was influenced was that government wanted their services available online and wanted to put in broadband and satellite for this purpose. The unit indicated to government that it will not be able to call it a success if it is only done for urban people. The consequence to this was $105 million to rural and northern communities to implement broadband and $155 million for a national satellite initiative.

Example 2: In the government’s program on infrastructure, it was indicated to government that smaller rural communities that have very basic needs do not have the tax base to do these types of developments. The Municipal Rural Infrastructure Fund was created to incorporate smaller communities and $1 billion over 5 years was provided for.

4. Communication, outreach, and citizen engagement - Colette Mandeville, Manager, Rural Dialogue & Youth

In the head office there are 5 officials that work regional co-coordinators in dialogue. As a small team it is impossible to work with all communities. There are 6 rural teams responsible for various regions and they work on the ground in the regions. The rural teams are the key to success, they communicate with stakeholders, citizens, government, senior policy advisors, regional advisors and they provide on ground intelligence. Although staff is funded
through our salary base there are also officials in rural areas that are co-shared with another department. A person might be working for the rural secretariat half of the time and the other half of the time the person works for their home department that could for instance be health. They provide knowledge from their department and feed it into this department and vice versa. This expands the knowledge base for outreach and citizen engagement.

4.1 Activities
Rural dialogues are held and the issues raised in these dialogues are fed into the policies and the various units as well as Federal departments in order for them to be aware of the concerns of rural people. The rural secretariat does not implement Federal programs and services they are there to influence. Over the last 10 years approximately 200 dialogues were held across Canada.

There is also a National Rural Youth Network which engages youth between the ages of 18 and 29 years, the network is there for the youth to represent their communities and raise challenges. Currently the effectiveness of the youth network is being revised. There are factors that prohibit them from participating in the network like work, school and the travelling distance to these events.

The units present the Young leaders and rural Canada awards. Rural youth gets nominated on the basis of their contribution and excellence in the following three categories, leadership, innovation and partnership. The Minister through an official ceremony hands over these awards.

Additional tools to engage are regional newsletters to inform rural citizens on events, programs, toolkits and exhibits. Also the Canadian rural information system with research information and on these websites there are various reports which include the rural dialogue reports. Web sites are www.rural.gc.ca and www.rural-canada.ca.

4.2 Youth engagement in agriculture
The average Canadian farmer is white, male and older than 50 years. In the farming sector we would like to see more women, new immigrants and younger people. In all resource based industries youth are leaving their communities.

The secretariat is taking a community perspective rather than industry or sector perspective. The reason for the community perspective is that it was found that the reason why young people are not interested in farming is that they are not interested in staying in their community. They are not interested in staying because there are “missing” things in the community like community centers and clubs. Government then tries to provide them with resources to make their community more interesting to them and in effect then to stay longer in the community. Once they start a family they are more inclined to stay in the community because they appreciate the other things in the community that they did not appreciate in youth.

Youth are interested and engage at various levels. There is a club for children in their early teens. The young farmer's forum is a network across the country of farmers up to the age of 40 years and they are business focused and engage on issues like how to keep a farm viable and economic sustainability. There are specific government programs that make special provision for younger farmers on terms of lending provisions (better rates). One of the major challenges for a young or new farmer is the capital cost and these programs are assisting.
4.3 Lessons Learned in engaging Rural Canadians in dialogue

- WHO to invite: It is important to invite citizens who can put aside their immediate self interest and work for the common good.
- WHEN to involve citizens: If it is harvesting time it is not appropriate to hold these events
- WHAT to use: It is important to use planning and evaluation tools that focus on future and outcomes, rather than on the process or the past.

5. Rural Programs—Pat More

5.1 Context and history
Rural secretariat is 10 years old and it was established to co-ordinate activities of the rest of Federal government in that rural and aboriginal people are part of their programs.

(i) The first program was planned to run for approximately 4 years. Four years is a period of time to inject funding, implement and get results. These were called pilot projects. Communities provided ideas on projects and applied for resources. A jury selected projects based on uniqueness and the impact it will have for the community to move towards their vision. The aim of the project was to take the learning’s from these projects and spread them. The budget was $12 million for 4 years. The aim was not reached but in another kind of way it addressed emerging urgent questions from communities and it came to light that the rural communities are frustrated and due to the irritants were unable to see a bigger picture.

(ii) The Rural development initiative program was developed with the idea that rural communities need to look at the broader perspectives and get strategic with their thinking. Funding was given specifically to do asset identification, to get to know your community, vision development and planning. This program was short but from here the aim was that the community picks one of the projects in terms of their goals and then the government will fund it. There were political changes and this program was halted to focus on a models program.

5.2 Models program
The Minister initiated the models program with the aim that after 4 years one would be able to say that here are approaches that work in rural communities and the reasons why it worked. The reasons why it doesn’t work and why not were added. The unit selected a variety of projects that were already happening, like projects with youth issues, aboriginal issues, economic issues and natural resource disasters. The communities were then approached to create a partnership in working with them to evaluate what they are doing, the goal of the project, to understand why it is working or why it is not working. The budget for this project is $14 million over 5 years. This money goes directly to communities and they can use it for administration costs, salaries to hire people to do work, purchasing of small items. In terms of the purchasing of large capital items it needs to be discussed to determine if it is allowable and who the owner will be at the end of the project. Capital assets like land or buildings will not be approved. Input costs like seeds fertilizers, certain equipment and supplies can be bought.

These models were not created on a theoretical basis with a university it was created and developed by the communities. The pillars of the models are based on the selection of the models which are based on the policy. The policy and rural dialogues indicated areas of migration, sustainable livelihoods, youth and access to services. In terms of the criteria the community also had to demonstrate community support in the pursuit of the project. Another cornerstone to the projects was to create partnerships within these projects. Volunteering or actual financial assistance had to be contributed to the projects to the amount of at least
50% to what the secretariat is committing. There were exceptions to this requirement to some communities for instance the remote Northern communities.

5.2.1 Example
The elders of a community decided that in order to move forward they need to understand their history. They decided to map out their history. It started in the last century where the Canadian Mounties came and took away part of their livelihood. Their dogs were taken and that influenced the whole community. They were unable to hunt and the hierarchy within family units was nullified. Little children had to look after the dogs, middle aged children had to look after the younger children and the youth and emerging adults had to look after the family while the parents were taking care of hunting and preparing food and clothing. The conclusion was that the one segment that was taken out of their lifestyle totally destroyed the fabric on how they operated. By understanding the history the community was able to address the issues and move forward to form a vision and plan to achieve the vision.

5.3 Network Initiative Project
The network initiative provides small amount of funding for communities to host learning events or to create partnerships in the form of a workshop or seminar. Funding is provided to pay for speakers and or transportation for participants.

6. The Co-operative secretariat- Donna Seymore (Attachment 9)

6.1 Overview
Co-operatives started in the 1913. Co-operatives have a tendency to emerge in difficult times and to disappear in prosperous times. Currently co-operatives are emerging again due to difficult times.

This secretariat gives support to communities who want to create co-operatives. Co-operatives have a long track record in providing needed services to Canadians especially in areas where conventional businesses might not be so interested. An example is in the finance sector, the big banks might not have an interest in a branch in a rural area but a credit union co-operative then steps in and delivers the service. Similarly in consumer goods the major grocery stores do not have an interest of opening a store but a co-operative can be developed to deliver this service.

6.2 Challenges that co-operatives face
(i) There is a lack of visibility and awareness in that people are not aware they can use the co-operative approach in developing enterprises. Co-operatives need to be promoted.
(ii) There is limited information and a lack of dedicated resources for co-operative development.
(iii) There is limited access to capital intensive business, banks and financial institutions because these institutions do not always understand the one member one vote form of business.
6.3 Success
Co-ops have been very powerful in addressing the needs in aboriginal communities. Access to health and home care has been improved by the formation of co-operatives in terms of health and home care but also in terms of the promotion of care). In other areas co-operatives have played enhancing role in for example integrating immigrants into Canadian communities and encouraging community solutions to environmental challenges, where the co-operatives were at the forefront of developing wind energy systems.

6.4 Role government plays
Government supports co-operatives by offering a policy that is responsive to co-operatives’ needs. Government can also provide information and expertise regarding co-operatives as a business and as an organizational alternative that meets their needs.

The unit works across government to ensure that co-operatives are considered in the development and implementation of policies and programs. The unit has a co-ordination function within government for interaction with the cooperative sector.

Some of their activities are research and data collection. The governance structure, membership, ongoing training for the board, capitalization for co-operatives are some of the indicators used for the research. The Millennium Development Growth indicators to indicate economic growth are not used as indicators. The unit acts as a centre of knowledge and expertise on co-operatives and provides advisory services. The unit produces research and resource materials.

The unit’s program is the Co-operative Development Initiative which is a 5 year program with a budget of $15 million. It is a Federal program which aims at improving the co-operative sector’s capacity to support co-operative development in Canada (capacity building) and to demonstrate the co-operative capacity to contribute to Federal strategic priorities.

This project resulted in assistance to over 800 community projects, broad based partnerships and formal working relations between Anglophone and Francophone provincial co-operative associations, creation of Co-op Developers Networks and the documentation of innovative community projects in all the priority sectors with an emphasis on agriculture and rural.

This is the final year of the Co-operative Development Initiative and the analysis and results is underway for sharing and learning and there is a strong support to renew this program. Details and further information can be found on the following web site www.Co-opzone.ca .

7. International Capacity Building Division - Gordana Delic-Radovic, Deputy Director, International Capacity Building (Attachment 10)
Contact: Gordana Delic-Radovic, e-mail: deliricradovicg@agr.gc.ca
7.1 Background
The key agricultural sectors in Canada are dairy, oilseed, horticulture, livestock and red meat, organics, poultry and eggs, pulses and special crops.

The Agricultural Policy Framework was developed in 2003 and is composed of five elements: Business risk management, Food Safety and Food Quality, Science and Innovation, Environment, Renewal and International (markets and trade). The Agricultural Policy Framework forms the foundation of agriculture in Canada and is now in the final year. Currently there are negotiations with Provinces and Territories for the new framework. It will be an extension of the current framework building on its profitability.

The International work done by this department is guided by strategy and includes humanitarian assistance, technical assistance and capacity building projects and cooperation arrangements. There are ongoing projects internationally and the Department has a long history of delivering international assistance. The Department has recently identified five priority countries: South-Africa, Egypt, Algeria, Vietnam Ukraine and China.

7.2 Canadian capabilities that can be of assistance are:
1) Trade related technical assistance provide training on technical standards, trade barriers etc.
2) Business and risk management and renewal. It is one of their main focuses currently. There have been a number of trainings in Vietnam and Egypt and are currently preparing to deliver training to South Africa. The training modules are compiled by using Canadian expertise but it is customized for the country where the training will be delivered. The training is based on training for trainers. Usually government officials and extension workers receive the training in order for them to train the farmers. The training provides participants with the knowledge but also the material and knowledge to train the farmer.
3) Food safety and quality. A training module was developed in this area that can provide training for government workers and people dealing with food in processing plants. Again it is based on training for trainers.
4) Science and Innovation: Canada has expertise in seed storage, gene bank management, crop varieties, molecular genetics bio-diesel and other scientific areas.
5) Sustainable agriculture where the focus is that the environment must always be in our mind when we practice agriculture. A training model is currently being developed in Costa Rica and will be piloted in October in Costa Rica. This model can be shared after the piloting.
6) Production Techniques and Technology in the following areas:
   a. Irrigation: This is one of Canada expertise areas and of which Canada is very proud. This can be shared with many countries in the Third World.
   b. Dry land farming: Currently training modules are being developed to minimize wind and water erosion, preserve the sustainable productivity of soils. The training is based on Canadian and other countries experiences. If there is a need to train in a specific country the modules will be customized for country and again it is training for trainers.
   c. Animal Husbandry: Canada has expertise in this field that has been expanded by working with the private sector.
   d. Crop management: Currently there is a large project in China that is funded by CIDA. It is a 10 year project and it is now in its seventh year. It consists of different projects in various regions for different crops.
   e. Farm equipment.

There are currently 4 training models being delivered or customized, the Business Risk-, Food Safety -, Agri-Environment - and Extension training module. The implementation form of these models varies from country to country. In most of the European countries there are
technical assistance agreements. Usually a generic guideline is developed upfront and the expert who goes to the specific country applies the training. In Vietnam there were two different training sessions based on the different conditions in the different locations in Vietnam. In the North the training was adapted for small farms and in the South the training was adapted to commercial farms. The training was delivered to extension officers and managers. Countries that request assistance suggest the model of delivery.

A program on marketing for small farmers in Cuba was done. It consisted of a series of workshops. It allowed farmers to implement training lessons and report back. Based on this training a module is also being developed on how farmers can market the products.

The unit is currently busy with dry land farming, marketing for small farmers, crop insurance and other risk management programs as well as drought monitoring and water resource management projects.

7.3 Current projects in South Africa
1. Farm risk management training in conjunction with Land Bank (Sizwe Mohammed). The training model has been customized for the South African environment. The idea is to invite Government Department representatives from all the Provinces and to provide the training. The South African Development Bank will provide the training venue. The project details (participants, invitations and dates) have not been finalized.

The Farm risk management training takes a farmer through the basics, understanding profitability, understanding generic business plans, understanding why we need to work the land and product knowledge. It goes further by identifying the risks of farming, natural risks, market risks, cultural risks and then after this has been identified it teaches on how to mitigate the risks.

2. Technical assistance on trade in conjunction with the National Department of Agriculture. A workshop will be held covering themes like governance, decision making processes, analysis, trade concern, trade marketing, trade distortions, technical standards, inspection in food industry, grain and oil seed assistance etc.

3. Assistance to the University of Pretoria on the Sustainable Implementation of Restitution Projects. Currently working towards a training model for this project.

2.3.2 Courtesy call to the SA High Commissioner, his Excellency Dr. Abraham Sokhaya Nkomo

The purpose of the study tour was discussed and lessons learned thus far.
2.3.3 CHALLENGES, FURTHER ACTIONS AND LESSONS LEARNED

CHALLENGES
To include the Millennium Development Growth Indicators to indicate economic growth in the research on co-operatives.

FURTHER ACTIONS
1. Possible technical exchange as per proposal to CIDA. Possibilities discussed that they were a possible mentorship program, training in best practices based on models tested in other developing countries and what can work in the South Africa conditions. Risk management training. A proposal will be developed and submitted by the Commission on Restitution of Land Rights to CIDA.
2. Mr Masemola to engage Land Bank on the Risk management training and the agreement. To determine the input that will be necessary in order for the relevant departments to engage with this project and for the relevant people to benefit from the training.
3. Pat More will provide information on e-mail regarding a First nation group in Manitoba, called the Sconan First Nation. They have received some awards for the work that they did in the area of building a stronger community through education and through assisting communities in overcoming the difficulties that they had that resulted in alcoholism, depression and suicide.

LESSONS LEARNED
- When the agricultural GDP contribution are calculated include processing contributions not only primary contribution
- Information dissemination: Networks, web sites, reports, bulletins
- Accessibility of rural people to information
- Budget allocation for rural areas
- Various projects in rural areas
- Tool development for rural communities
- Research capability
- Research to inform policy
- Various departments participating in the rural areas and also dedicating officials to work with the rural secretariat on rural areas. Departments share officials
- International experience and assistance
- Currently there are various departments or state organs in South Africa that is doing their own thing, it is not co-ordinated and the challenge is to achieve one program.

2.4 DAY 3

2.4.1. TRUTH AND RECONCILIATION COMMISSION: INDIAN RESIDENTIAL SCHOOLS (Attachment 11)
Web site: www.residentialschoolsettlement.ca
Contact: Bob Watts e-mail address: wattsb@irsr-rqpi.gc.ca
Seetal k Sunga : e-mail address: sungas@irsr-rqpi.gc.ca

1. Overview
Indian residential schools were a feature of Canada for almost 150 years, the last school closed in 1966. There is no typical residential school experience. In most cases children were removed from their homes, sometimes forcibly, taken 100 to 1000 miles away from their homes to be educated in schools that were run in a co-operative manner between the
Government and churches. Children were not allowed to speak their own language, or practice their own spiritual traditions, often they were not even allowed to have contact with family members who were at the same school. Some children only went home after several years and some returned home only after 10 years, if they returned to their home at all. In many instances children were abused physically, sexually and psychologically.

The Government of Canada had a policy and regulations that institutionalised residential schools and allowed abuses to take place and this happened over a 150 year period. There were approximately 131 schools.

There were a number of court cases in Canada that sought remedies for the experience of residential schools. Over last few years this number accumulated to about 50 000 individual actions and 20 class actions.

The challenge was to determine the best way of dealing with this given the aging population of survivors. There are approximately 80 000 survivors, with an average age of 59 and survivors are dying at the rate of 3 to 4 persons per day.

It seemed like a good idea to pull the claims together into one settlement. All the parties to the class actions and the lawyers representing individual claims and government and the churches came together to try and reach a negotiated settlement. Last November they agreed upon a settlement.

2. **Features of the settlement agreement**

2.1 Common experience payment: This recognises that harm was done to everyone who attended residential schools and it was determined that everybody should be compensated. The fact that children were removed from their family, not being able to practice their culture, speak their own language and denied love and affection from parents, family and community are the underlying elements of the common experience payment. The payment will be to everybody who went to residential schools who was alive in May 2005. These people will receive $10000 plus $3000 for each year in school. It is not necessary in terms of this payment to prove evidence that sexual or physical abuse occurred.

2.2 Individual Assessment process: People who were abused can make claims for compensation for that abuse (sexual-, psychological or physical abuse). The perpetrators could have been the staff of the school, other students, people that may have been at the school or people who were at the school from time to time. There is a process to deal with these claims. This is an independent adjudicated process and in the settlement agreement it identifies the financial compensation for different abuses. The settlement agreement also takes into account not only the act of being abused but also the legacy or trauma associated with the abuse. It also takes into account the fact that gender did play a role in the type of the abuses and the effect of abuse. This is a arbitration process and not a grueling court experience. In the arbitration process people can tell the story in a safe environment, people are allowed to bring their support to the hearing and this support might take the form of spiritual, family or legal support. The process makes provision for support after the hearing. Often older people re-experience some of the trauma and break down, perhaps not at the hearing but a week or three after the hearing.

2.3 Truth and Reconciliation Commission. Aboriginal people across the country are involved in establishing this Commission. An effort is made to involve survivors in the design of the Commission. The settlement agreement indicates what this Commission must do but not how to do it. It is an opportunity to work with survivors in designing the process and program that will reflect the different cultures in the country. The Commission will be established for a 5 years period. The nomination process for the appointment of Commissioners has begun. Three Commissioners will be appointed. A selection panel, consisting of representative of
the settlement agreement (churches, government, survivors and aboriginal organisations) will make recommendations on the appointment of the Commissioners. The final appointment will be done by the Order in Council thus the Prime minister’s office will be involved. Over 5 years, 7 national events will be hosted as well as hearings across the country. The three Commissioners will be assisted as per the settlement agreement by regional advisors and survivors committees that will be able to host some of these events and assist Commissioners and the secretariat with the workload.

2.3.1 Reconciliation is on various levels:

a) Inside the individual: Survivors walk with self blame and shame thinking that they did something wrong and that is why they were chosen to suffer the abuses.

b) Within families: Sometime people never went home and often they were outcasts because they didn’t speak the same language or had the same religion. People had a tough time to integrate into the families and sometimes because of abuses they suffered they turned to drugs, alcohol or other forms of abuse and ended up living on the streets, prisons or mental health institutions.

c) Need to look at what is reconciliation from a family point of view and a community view.

d) Between communities: Most abuses were done by non aboriginal people against aboriginal people. The hatred between native and non-native communities is very evident in daily life. Nation building cannot be built on a foundation of hatred.

e) Other reconciliation that has to happen is between communities, individuals and churches and between government and the aboriginal people of Canada. There is a lot of spiritual disconnection because of children being abused by people who where representatives of God.

2.3.2 A comparison with various Truth and Reconciliation Commissions around the world indicated that this Commission covers the largest geographical area than any other Truth and Reconciliation Commission thus far.

2.3.3 It is difficult to predict the type of recommendations that will be made by the Commission. They will not make financial recommendations in terms of issues that have been compensated for. They might make recommendations to things that are more systemic as to the legislative treatment of aboriginal people, things about the educational system more generally in Canada.

2.3.4 The Commission will report to all the parties as well as to Parliament. The Commission is mindful that reports must be available and accessible.

2.3.5 One of the principles of testifying is that it is a voluntary process open to anyone affected by the residential school process. The churches have voluntarily agreed to produce their documents and that their officials will take part in the process. A place will be created to welcome testimonies by people who where abused and people who weren't abused. Some people are saying residential schools were better than their homes because they were suffering abuse from their parents who were abused at residential schools.

2.4 Commemoration: Areas will be explored to commemorate the residential school experience and legacy it left. These areas will be from community gardens to a national monument in Ottawa. The legacy of intergeneration abuse of children growing up being abused and then passing this abuse on to their children will be memorialised.

2.5 A Permanent archive, research and resource centre will be developed in order for residential schools to have in place history. Residential schools were not known in Canada. In the past 5 years more information came to light as well as the lasting impact of these schools.
2.6 Aboriginal Healing Foundation: In the last 10 years the Aboriginal Healing Foundation dedicated work to being the Centre of excellence in providing grants to assist with healing of people gone through residential school experience. The healing might be in a traditional form or in terms of psychological care or residential in nature. Through the settlement agreement they will continue to receive grants from government to be able to distribute grants.

3. **History of the schools**

Missionaries were quite involved in establishing schools when they did missionary work prior to the residential schools. Government became involved under the Indian act that all children shall receive education. Government instituted this by using the schools administered by churches. 70% of these schools were administered by the Roman Catholic Church and the remaining by the African United and Presbyterian churches.

3.1 **Purpose of these schools**

Dunkeld Cambell Scott, a famous superintendent of Indian affairs was the architect of various Indian policy and some are still in existence today. He stated that the purpose was: “to kill the Indian within the child”. Other reasons were to educate folks that were considered to be pagans; the idea of removing children from bad influence; economic purpose to break the relationship with land, family and community.

Some schools had the purpose to remove the nomadic lifestyle of people by placing boys in an agricultural setting to be encouraged to learn farming skills. The education received was not white-collar skills but more on general farm skills with the aim to use people in the future as farm workers. Girls were taught to do the things around the home like sowing and cleaning homes. Education was substandard compared to non aboriginal communities. There are some success stories (doctors or lawyers) but it is not a typical experience.

4. **Challenges in terms of the Agreement**

Aboriginal people had a disadvantage as to what Canadian law speak to for example harms, harm is perceived as a hand being cut off, the loss of language and culture are not perceived as harm in case law thus there were no compensation for this included in the agreement.

5. **Human Rights violation**

Some people really want to pursue this as a human rights violation but people also want a certain kind of remedy and the government only responds to litigation and that is what happened here. 12000 Individual made cases against the government and that is why there is a settlement agreement.

6. **Liability, responsibility and blame**

In British Columbia and Saskatchewan the courts pronounced on joint and severable liability but there is also a apportionment for financial purposes. Government needs to be responsible for 70% and the churches for 30%. Government is paying 100% and government has entered into side agreements with some churches in terms of the contribution by these churches for the settlement.

The Non-Catholic churches have been part of the process and also worked on reconciliation processes prior to the settlement agreement. The Catholic entities are organised differently, there are 53 entities involved and their positions need to be co-ordinated in terms of what they will contribute to the settlement agreement.

There is no statute of limitation on things like murder, rape or other things that people are criminally liable for in Canada. The settlement agreement exempts institutions from civil action but not individuals. There are many individuals who are being pursued by criminal justice system and some individuals have been convicted.
7. **Claims, compensation and estates**

The family, children or estate can make a claim for a residential school survivor (if that person passed on after May 2005) in terms of common experience payment. Claims for sexual or physical abuse requires the person abused to make the claim if however a statement or narrative is on record then the estate can pursue the matter because it is already in litigation.

Aboriginal people do not have a strong tradition to write wills. In cases where there are no will, Indian and Northern Affairs need to deal with the estate. Currently this Department has a backlog in terms of dealing with estates.

An amount of $1.9 billion in terms of the reparation package for the common experience (not including individual assessment or other elements) are expected to flow to communities in a three to four month period and government are very conscious to the fact that that this money need to have a positive effect and not a negative effect.

8. **Challenges to the settlement agreement**

There are approximately 25000 to 79000 direct survivors of residential schools. If 5000 of the survivors pull out of this agreement the agreement will no longer be valid. The families of these survivors are included in the agreement and for a family to preserve their right to sue in future they need to opt out of the agreement. If families opt out of the agreement it will not affect the validity of the agreement.

2.4.2. **INDIAN CLAIMS COMMISSION**

website: [www.indianclaims.ca](http://www.indianclaims.ca)

Met: Renée Dupuis, Chief Commissioner and Johan Edmond, Commission Legal Counsel

- The Commission’s mandate is to support claims inquiries at the request of a First Nation and to provide mediation services for the specific claims.
1. Background
The Chief Commissioner and a group of commissioners work part-time within undefined terms. They were appointed by Cabinet at leisure and is a Federal Commission of Enquiry.

Canada is a Federation with two distinct legislative jurisdictions. Constitutionally Indians and land reserved for Indians fall within the Federal jurisdiction.

The Commission deal with claims by communities not individuals. 633 Bands can lodge claims to government, not to the Commission. The Commission acts as a review body that is constituted as a Commission of Inquiry under the Federal Inquiries Act. It was created in 1991 in the aftermath of a very difficult crisis. The crisis was based on a specific claim in the Quebec Province and it is called the Oaka crises. The subject of the crises was a specific claim that was rejected by the Federal Government and at stake a piece of land to extend a golf course.

The claim process is in the hands of Indian and Northern Affairs, who receive claims, analyse and ultimately validate or reject claims as valid or not legally valid. The policy was published in 1982 but had its roots in 1969 with a Parliamentary declaration of the Minister of Indian Affairs.

There are two types of claims comprehensive claims and specific claims. Before 1973 there was no concept recognised as Indian title or aboriginal title then there was court case and a decision that reversed a very old British decision of 1885. A century later Canada is saying that there is a concept in Canadian law that aboriginal title derives from the use and occupancy of provincial land. This gave rise to comprehensive claims.

The Commission deals with specific claims where there is a non respect to the historical treaty. In the late 19th century a First Nation or band met with officials from government who wanted to clear the title to the land, in exchange of the ceding of the title they signed a treaty whereby they granted a group of Indians a parcel of land, the reserves as we know it, some rights to fishing, hunting, agricultural equipment, medical and some cases educational equipment.

If a treaty were not respected then government will negotiate the settlement. Government will also negotiate and also when there is any outstanding legal obligations arising from a violation from the Indian Act. The Indian Act deals with all aspects of Indian or First nation people, this includes individual or community issues, political issues, administrative issues, tribal council issues and land dispossession issues. If for instance a road is constructed without respecting the position of the Indian Act, the First Nation can lodge a claim. Parties to this claim will be the Province because roads are provincially regulated and the Federal government who approved the road without respecting the Indian Act on Land dispossession and the First Nation.

If Government validates the claim they will negotiate settlement and in most cases it will be monetary compensation and in exceptional cases land. Because of land being constitutionally owned by provinces since 1867, Federal government is not in a position to give back land if Province disagrees.

If the Government rejects the claim the First Nation can come to the Indian Claims Commission. Under the Inquiries Act, the Commission has powers of investigation and has established an inquiry process. In addition to this the Commission has the authority to mediate at any stage of a claims process.

Under the inquiry process the Commission makes a report to government and the First Nation which mainly states if the Commission feels there is an outstanding legal obligation or
no outstanding legal obligation. The Commission makes recommendations and the Government can still decide to accept or reject the claim.

The Commission only receives a small number of the claims. 5 Commissioners sit in panels of three on the inquiries processes and decide whether there is a lawful obligation by Canada or not. It is a neutral impartial body and the process is open to the parties (Canada and First Nation or Band).

The Commission uses the Annual Report tabled to parliament through the Indian Affairs minister to influence policy.

2. Inquiry process
Claims are submitted to the Department of Northern and Indian Affairs. After a period of time the claim is accepted or rejected. If the claim is rejected the First Nation has the opportunity, if they wish to bring the claim to the Commission for a complete new hearing (not appeal or review).

The Commission goes out to the communities, holds community meetings with the elders to get oral evidence. This is called a community session. The Commissioners and staff prepare for these engagements. Staff will visit the communities before the community sessions and prepare the elders to give evidence.

At the Community session evidence can be in a native language a translator will assist and proceedings will be transcribed. At most sessions the First Nations will have legal representation and the Commission will have legal council. The Commission tries to be as sensitive as possible to cultural matters keeping in mind their impartiality. The questions are put forward by the council for the Commission to the elders. The Commission usually undertakes a site visit after the community session to view the land.

Since 1850 to 1930 the knowledge of treaties has been lost. Gathering oral evidence creates a way of maintaining the history of the community. At the community session people tell their story and often children attend these sessions and learn their history. This often gives back a sense of belonging to community members and assist communities to re-evaluate their values and priorities.

While the transcripts are being prepared the legal council makes written submission to the panel with reference and cross reference to other documentation. The research unit research the documentation. All this is made available to the parties. First Nations legal council also makes submissions based on all the evidence collected. Then Canada has an opportunity to respond to that with their written submissions. After Canada’s submission a short reply submission is received from the First Nation. After the submissions there is a hearing where the various lawyers will make their oral submissions to the panel. Thereafter the inquiry is effectively concluded. The legal and research units write a report and forward it to the First Nation and the Minister of Indian Affairs. The report will include the recommendation made.

Recommendations that are made is based on the evidence. It does not make recommendations towards the settlement agreement. If the First Nation wants to disagree with the criteria used for compensation the Commission can make a new investigation or mediate.

3. Mediation process
Another unit in the Commission is the mediation unit. They are unrelated to the inquiries process but can be included in the inquiries process at the invitation of both parties to try and move a claim along. More often than not they are involved in claims accepted by the
2.4.3  CHALLENGES, FURTHER ACTIONS AND LESSONS LEARNED

CHALLENGES
1. The process contradicts the Administrative Law in that there is no separation of power in the claim process. It is the same authority that receives the claims, validates the claims and makes judgment over the claims. It is the same Department that makes another judgment of the claim after the Commission has made recommendations. It is a conflict of interest.
2. The discussions around the land claims process for the past 60 years continue.

FURTHER ACTIONS
- International Forum to share experiences in land restitution

LESSONS LEARNED
- Various levels of reconciliation
- Documenting history for the nation and for specific communities

2.5  DAY 4

2.5.1. Meeting with Indian and Northern Affairs Canada (INAC) Regional Office: Saskatchewan

website: www.ainc-inac.gc.ca/sk
Contact: Evelyn Shalapata
e-mail address: shalapatae@inac-ainc.gc.ca

- INAC Regional office invited all the parties that were part and parcel of the settlement agreement: Office of the Treaty Commissioner, Federation of Saskatchewan Indian Nations, Government of Saskatchewan

1.  Background- Evelyn Shalapata
Saskatchewan has different agricultural economies, for instance in Regina it is cattle. The region is experiencing a boom in the gas and oil industry. Due to the boom in the industries the region is experiencing economic developments in the construction area like the building of houses. First Nations have benefited from the oil and gas boom economy through the treaty land entitlement by choosing property in the building economy for first nations.

INAC Regional Office manages land for Indian Reserves. Under the Indian Act land gets managed and judiciary obligations which include the registering of land, leases, permits, registering status or membership of First Nations and deal with births to deaths of First Nations. Reserves are land set aside for use and benefit for the First Nation, they do not own the land, the crown owns the land. All aspects of first nation people are being dealt with. In addition to dealing with the Indian reserves we have obligations arising from historic treaties and claims in terms of treaties. The claims work in terms of bands not individual claims only communal claims.
There are a lot of programs in Canada to assist First Nations but First Nations also do a lot of activities on their own to determine how they deal with land development and economic development.

In Saskatchewan the First Nations came together and negotiated one claim although there are individual agreements with the various First Nations their claim was negotiated jointly.

The progress in Saskatchewan can be seen since the first Commissioner (Cliff Wright) prioritised the land entitlement under treaties. The current Commissioner was the former minister of Indian Affairs and continued the progress made.

2.5.2 Office of the treaty Commission: Treaty Commissioner, Mr. Bill McKnight

In 1989 the settled treaty was implemented. For years (+/-30) the need existed to settle outstanding claims. There had been several attempts to settle these claims and it became harder as land were populated and as land went to private ownership. This treaty settlement was a tripartite effort between Canada, the Federation of Saskatchewan Indian Nations and the Province of Saskatchewan.

They are in the fortunate position to work together, there are 70 plus claims and the effort is ongoing to resolve the claims. The claims have not been concluded but it is a start to rectify the historic wrongs and is a priority for Canada and the Federation of Saskatchewan Indian Nations. The implementation of the agreement in Saskatchewan was done under leadership of Cliff Wright who was the Mayor of the city, prior to his appointment as Commissioner. He had a commitment to justice and a commitment to betterment for all in Saskatchewan.

Saskatchewan, Canada and the Federation of Saskatchewan Indian Nations had made great steps in the progress of Treaty Land entitlement.

1. Process of the claim and implementation: Peggy Martin Mquire & Howard McMaster -Office of the Treaty Commissioner
2. **Background**
Saskatchewan is treaty six territory and the treaty was signed in 1876. In the early 1970’s the Federation of Saskatchewan First Nations did research and came up in 1976, a 100 years later, with a position regarding land called treaty land and entitlement. This is a position regarding land that is owed to them, according to them for the past 100 years as a result of the treaty.

The position gets traced back to the treaty in 1870 and the treaty indicated is 1 square mile per family of 5. The First Nations position in 1976 was that the treaty indicated 128 acres for every person. Thirty First Nation leaders indicated that there was a shortfall of about 1 million acres. This position was turned down by both levels of government. This calculation method was called the current population formula.

The Province came forth with their position and they indicated that they will only honor 65000 of acres. This was a slap in the face to the first nations. Some First nations wanted to go to court but the elders said that they must not take their rights to court and they reconsidered and decided not to proceed with court case but instead to negotiate.

An independent office, not tied to Federal government where the elders can assist in the research was established. The provincial government felt that the Federal government had restricted policies as far as paying debt of over 100 years. The feeling was that oral testimonies must play a role in terms of the First Nations understanding of the treaties and also their family relationships.

3. **The formula**
The government maintained a paylist based on the treaty agreement where 5 Dollars were paid to members each year. Each year this list was used to pay the members of that particular First Nation. The second purpose of this paylist was to keep track of the number in each specific First Nation. These records or paylists existed since 1874 onwards. On these payment days it happened that certain people were absent on that particular day so the Indian agents who were responsible for paying the $5, only paid 3 people instead of 5. The members were absent because they, for instance, went hunting. It was evident that some acres were not given.

The office of the treaty Commissioner then reviewed the paylists of the 33 First Nations from 1874-1955. They also took into consideration the Alberta and Manitoba paylists because some of these members were legitimate members of the 33 First Nations originally before they married into another First Nation. This was the historical part of their formula. Here the elders were very valuable in indicating who were the relatives and what the paylist consisted of. Then they applied the formula and derived at what the debt was.

The second part of formula is called the current population. This part of the formula was basically used to partly accommodate the Federation of Saskatchewan Indian Nations because in their proposal of 1976 they took the current population. The Treaty Commissioner took historic and current population. The other reason to include the current population was that the Chiefs said that they had this outstanding debt for over 100 years, that they have lost the use of that land since 1876, they couldn’t use it for economic development in terms of farming revenue they could have received.

The office of the Treaty Commissioner then requested economist from the University to figure out what the loss of use of the acres would amount to in Dollars. They did a current value of what it would amount to and derived at a figure. The money that the First Nations received in terms of the loss of economy was called equity payment. A Combination of current and historical research made up the formula for this entitlement.
The First Nation said 1 million acres, the Province said 65000 acres and the office of the Treaty Commissioner indicated 1.6 million acres. It was an Independent office and it was difficult for Federal government or the Provincial government to say no.

1.6 Million acres plus shortfall is based on the total population at the time when reserves were surveyed. Surveyors used the most recent paylist to survey the land but in fact the paylist did not reflect the total population. What was determined was how many people were entitled to land by the time the land was surveyed. The amount of land received were compared by the amount of land they would have received if all the members were counted at the time and that was the shortfall.

4. **Research**
The office had less than three years to complete the research. They had various meetings with the individual bands. They were independent and only relied on the Federal government for the paylists in their archives. The research was done and then the researcher went back to the First Nation in order for them to ratify the population. The success of the research could be ascribed to the fact that the officials spoke the language and spoke to elders who gave oral testimony and kept the officials on the straight and narrow path. Consultants were at some stage driving up the numbers without a legitimate basis.

5. **Negotiations**
All the parties had their own negotiators; the Federation of Saskatchewan Indian Nations, the Federal government and the Province. On the First Nations side you had 29 chiefs negotiating. Potentially 29 positions but they had one thing in common and that is that they knew government owed them the land over 100 years. The agreement was signed in 1992.

Money was advanced for the First Nations to assist them to prepare and negotiate. In this settlement it was not deducted from the award.

The Commissioner made recommendations that in terms of the implementation of the agreement, Indian Affairs had to expand their staff. A separate unit for treaty land was recommended and implemented by Indian Affairs. The Commissioner’s role is important as it is seen as an independent voice, not tied to the Federal government, Provincial Government and not necessarily to the First Nations.

6. **Implementation**
After the agreement was signed each First Nation was given so many Million Dollars, and so many acres based on the formula. To ensure that the Federal government is tied to the treaty right, it was legislated. The agreement legislation passed on the federal side, legislation passed on Provincial side and established what is known as the shortfall.

The First Nations said that the Federal and Provincial government will not be involved in implementation other than approval process. They indicated that they will choose the land they desire for economic development or other development.

The money that the First nations received were paid into a trust accounts and each band will decide the type of land acquisition they would go into. The framework agreements said that each band will use their best efforts to obtain shortfall within the first 12 years of the agreement and most first nations have done this.

7. **Purchasing of land**
The purchasing of land was based on a willing seller willing buyer principle.
When the public heard that the First Nations had money to purchase land the prices escalated and the First Nations had to wrestle with that. It will depend on the First Nation when and what they will buy. Most First Nations met their shortfall.

In terms of the National resource transfer agreement, whereby the Federal government gave control to Provinces over crown land, the Provincial government must make their best effort to release this land for First Nations if they select it. It is a legal obligation and a Constitutional requirement. The purchase price of the provincial land was also agreed upon.

Note: The First Nations were not consulted on the transfer agreement and felt that their land was stolen.

Each First Nation had a different threshold and different approval mechanism to acquire land. In most cases before they acquire particular land, they have to vote (in some cases majority 51% and others 60%) and in effect get the members to agree.

The majority of land that was purchased to make up the shortfall was land without mineral interests. Land with mineral interest was usually obtained thereafter. After shortfall, land was purchased after advice from economists, a proposal put forward to their members that will indicate the benefits and then the agreement or disagreement by the members to purchase the land.

**2.5.3 Federation of Saskatchewan Indian Nations (FSIN)**

Web site: [www.fsin.com](http://www.fsin.com)
Contact: Roxanne Baldwin  
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1. **Specific claims: Roxanne Baldwin** (Attachment 12)

1.1 **Overview-amendments to the Specific Land claims process**

Specific claims in Canada are still in a transition phase. In 1982 a document titled “outstanding business” was produced, outlining further developments that needed to be done in terms of the Specific claims policy. Those developments that need to happen still exist today.

A Joint taskforce comprised of members from First Nations, the Department of Indian Affairs and the Department of Justice released a series of recommendations to improve the Specific Claims system which included a draft bill to be legislated. In 2003 a Specific Claims resolution Act was promulgated but it did not follow any of the recommendations from a 1998 report. This Act would have allowed binding decisions on the validity of claims and compensation amounts valued up to $10 million. The First Nations rejected the legislation
because the drafters and legislators ignored recommendations from previous consultations with the First Nations and the legislation was never implemented.

There are successes with the current specific claims policy because new case law can be brought into the claims. For example in one claim, a surrender in 1907, was rejected in 1980 but new case law emerged and the claim was submitted again. This brings hope to First Nations whose claims were rejected but it is also repetition.

1.2 Activities
The Federation of Saskatchewan Indian Nations represents 74 First Nations, the majority of the First Nations.

One of the major activities of the Federation of Saskatchewan Indian Nations is research on the treaties. The treaties were signed in the late 1800 early 1900. The provisions in these treaties get reviewed and the FSIN determine if these provisions were met. The second activity is to determine the violations under the Indian Act. This is all the on reserve business, governance issues, how land was sold. The Indian Act is one of the Acts that is directly aimed at specific race, the Indians.

It is important to be prepared at negotiations and lawyers and consultants are hired to determine the facts, they also employ new graduates to assist in the process.

The First nations were nomadic by nature and one of the challenges exists where there are overlapping traditional areas. Traditional knowledge specialists are then consulted to assist.

1.3 The process in Saskatchewan
The Saskatchewan First Nations submit claims to Canada. Before they submit the claims the Federation of Saskatchewan Indian Nations assist with historical research and write legal opinions. The claim then gets submitted to the specific claims branch and at the end of their process the claim can be accepted or rejected for negotiations. If the claims get rejected the claim can be submitted to the Indian Claims Commission. The Indian Claims Commission cannot make binding decisions.

If the Indian Claims Commission rejects the claim, the only recourse is judgment. The legal route is very expensive and in some cases the cost did go up to $ 2 million.

1.4 Procedural criticism of the specific claims process
There is a huge backlog of approximately 1100 files from across the country. The average process time is 13 years for one claim. It is speculated that it will take approximately 150 years to resolve the current specific claim files backlog and this does not include any new claims. Currently there are approximately 20 new claims lodged per year. On the government side and band side they are under funded and understaffed. For example one can wait for a legal opinion from the Department of Justice for over 11 years.

Currently the Department of Justice has 53 files for legal opinion in Saskatchewan and 6 lawyers to do these opinions. In Colombia where most of the claims are it takes approximately 11 years to give an opinion and they do not have the resources to employ more lawyers. It takes time to do a legal opinion, the historical documents represents 100 years of history. There is also a turnaround of lawyers.

1.5 New developments
In 2006 a senate report was released called “Negotiation or Confrontation: It's Canada’s Choice” and it described the issues within Canada of settling the claims. The Senate report said:

(1) Increase funds for settlement
(2) Establish an independent body within two years
(3) Improve the existing process through additional resources &
(4) Adopt new guiding principles

On 12 June 2007, the minister announced as impetus from the senate report, changes on the specific claims policy and major reform. The reform included:

(1) Impartiality and fairness: An Independent Claims Tribunal asked for since 1947.
(2) Greater transparency: Dedicated funding for settlement of claims
(3) Faster processing: Improving internal Government procedures
(4) Better access to Mediation: Refocusing the work of the current Indian Claims Commission

Currently under the theoretical new claims policy there will be 3 scenarios where a first nation can file a claim with the tribunal after the research has been done:

(1) When a claim is not accepted for negotiation by Canada;
(2) In cases where all parties agree that a claim has already been accepted and should be referred for a binding decision.
(3) After three years of unsuccessful negotiations the claim can be lodged with the Tribunal to make findings.

The limitations in the preliminary discussions are that the Tribunal will not address claims valued at $150 million or more, land or resources, punitive damages, cultural or spiritual losses or non-financial compensation. It is felt that the cultural losses are dealt with within the current residential schools process.

The internal system changes suggested that a response must be given to the First Nation within a 6 months period which would be a great improvement of current policy. Small value claims will also undergo an expedited legal review to quickly determine whether they will be accepted for negotiation and this is also an improvement on the current process. It is also suggested that the Department of Justice must not do a in-depth legal opinion but rather make a executive summary.

1.6 Beneficiation
The resources acquired need to benefit the total population of the specific First Nation. This can take the form of training, housing, employment. There are limited economic opportunities on the reserves. Currently the reserves only serves a limited few as an example in one First Nation there are a waiting list of 200 people for housing. There is an average of 8 people per household and social problems exist. Once the shortfall of treaty land has been achieved then the First Nation can engage in other economic activities like mining that can lead to the benefit of the members of the First Nation.

2. Treaty Land Entitlement Process-Laurie Warn (Attachment 13)

2.1 Negotiations commence December, 1990
There are 11 number treaties in Western Saskatchewan. The number treaties were signed in 1871. In treaties 4, 6 and 10 land was awarded and the shortfall, if any, needs to be determined.

In the mid 1970’s the First Nations, Canada and Saskatchewan agreed on the process to settle these claims, it came to be called the Saskatchewan formula. The agreement to settle these claims fell through due to a lack of unoccupied crown land.

The negotiations commenced in December 1990. In order to negotiate the framework the Federation of Saskatchewan Indian Nations established the assembly of entitlement chiefs,
consisting of 26 chiefs that had treaty land entitlement claims and they were the negotiating team. There were concurrent bi-lateral negotiations between Saskatchewan and Canada, between the First Nations and Canada. At all times the negotiations process was open to the party not in direct negotiations to observe. The reasons for the bi-laterals was that the first Nations said that they do not have a treaty with Saskatchewan but the Saskatchewan province had a legal obligation under the Natural Resources Transfer Agreement. During these negotiations there was a ban on the media.

During the negotiations phase the Federation of Saskatchewan Indian Nations went to the First Nations and explained the process.

2.2 Issues in negotiations
(a) How to arrive at the settlement package, the formula. Parties agree in principle to use the Office of the Treaty Commissioners recommendations.
(b) The cost was shared between the Federal government and the Saskatchewan Provincial government. It was agreed that the Federal government will pay 70% and Saskatchewan 30%.
(c) The tax loss compensation, when land is transferred to First Nations they do not pay taxes to the municipal authority and the Province and Federal government had to compensate for this.

Negotiations in Band specific agreements included:
(1) Reserve creation issues, task forces to ensure implementation of all processes to convert land, reserve status e.g. minerals, water, roads, third party interests and reserve creation process.

2.3 The agreement
The agreement was signed in December 1992. 26 Bands received $446 million over 12 years to acquire 1.2 million acres. The First nations had to acquire at least shortfall within the 12 year process and approximately 22 or 23 bands did acquire this. The shortfall acres had to include minerals in land that they choose. Bands had to buy land in terms of the "willing seller/buyer basis". Bands had to establish Trusts with the money they received and trust agreement were signed with the settlement agreement.

Two sections in the agreement refer to a 15 year time limit on reserve creation. In December of this year it will be the 15th year. The Federation of Saskatchewan Indian Nations is attempting to get the chiefs together to negotiate these time limitations, due to the fact that reserve creation is a slow process and it can take up to 7 years for land in the treaty land entitlement process to get reserve status. It takes longer than in the specific claims process.

2.4 Implementation of the Framework Agreement
Each Treaty Land Entitlement First Nation had to:
(1) Negotiate a Band Specific Agreement
(2) Secure agreement from their members in accepting the agreement, at least 50% + 1 of all members would have to vote "Yes" to the agreement. Some members were across Canada and bands had to visit various Provinces to get agreement.
(3) Establish a Board of Trustees who administer funds and purchase land, expenditure and royalty issues

2.5 Educational Projects
The Federation of Saskatchewan Indian Nations launched two educational projects to assist with agreement. Treaty Land Entitlement orientation sessions to improve First Nations capacity to manage the implementation phase by planning, getting legal advise, management of land and team building. The second project was to capacitate rural, urban municipalities and ordinary citizens in terms of the Treaty Land entitlement process and to
improve working relations with the First Nations by addressing misconceptions they had about First Nations and reserve creation.

2.6 Reserve Creation
Reserve creation is a complex, time-consuming process. Some of the challenges that bands faced were that third parties were given priority, for instance where leases existed with third parties or where there were issues of minerals. It was the band's responsibilities to deal with these.

Under legislation an Environmental Impact Assessment is valid for 2 years and in many instances the reserve approval process takes longer than two years and Assessment was not valid anymore and had to be done again.

First nations had to continue paying taxes on the land while awaiting the reserve creation process, money they could have used for other economic developments.

With regard to urban reserve creation, the Band and urban municipality had to negotiate various agreements:
(1) A service agreement (water, sewer, etc.) to deliver services
(2) By-law compatibility (zoning, etc.)
(3) Dispute resolution mechanisms
(4) Tax-loss compensation in framework agreement (first nations call it service agreement) which is a lump sum.

The Federal Auditor General criticized the reserve creation process in the last report in 2005. The time it takes to do reserve creation, the environmental stalemating and the non-assistance for First Nations in 3rd party interest. Since then the validity of the Environmental Impact Assessment was prolonged to 5 years. A national database was also set up to track the processing time, there are agreed upon workplans and First Nations can get assistance in 3rd party negotiations.

3. Government Overview- Bill and Evelyn, Indian and Northern Affairs Canada
Expanding reserve Land Base: (Attachment 14)

The First Nations said that government had 100 years of not being able to deal with their needs efficiently and that they need to remove government and have control over their own destiny. The First Nations then undertook to deal with all the third party interests on the land, the selection of land and the negotiations with willing sellers, these activities were contained in the settlement agreement. The First Nations have to provide government with an initiating package which include copies of existing titles, original grants, and various other documents in order for government to determine if there is clear title and what the First Nations really ought to do with any interest that might come into play. Each First Nation was given $100000 as per the settlement agreement that will assist with acquisition costs, negotiations and 3rd party interests.
When the Government receives the documentation from the First Nations they process it. Under framework agreement once they receive the package they have 14 days to hand it over to the province and move their responsibilities to all divisions to look at all issues and advise the First nations.

Unlike other Framework agreements the one in Saskatchewan had within it a standard public utility agreement (power, telephone etc). In the implementation process this saved a lot of time because it was not necessary to negotiate this every time, it was an automatic process.

There are three phases in the implementation process, Pre-Arc, Arc and Post Arc:
In the Pre-Arc phase it is to get the selection initiated by getting the documents in order for reserve creation and to get in principle approval. In the Post Arc phase all the documentation get finalised to meet all conditions for the final approval, surveying of land, prepare orders and councils. The final approval is through the governor General in Council or with some reserves the Minister of Indian and Northern Affairs Canada.

3.1 Challenges that prolong the implementation process
The negotiations between the First Nations and the third parties take time, usually it is farmers that lease the land and the First Nations have to negotiate the surrender of lease. In many cases the farmers overvalue the value of the lease and the amount needs to be negotiated. There is currently lucrative work for surveyors in the oil and gas sector and they are not always easily available to survey the land.

In the framework agreement under the Trust agreements it was government's responsibility to pay the money into the Trust accounts, the government is not involved in managing the funds and currently the government is not in a position to determine the financial ability of each band to continue with the reserve creation process and this is one of the downsides for government as it is not able to determine the resources necessary to address the task at hand.

3.2 Principles in the Framework Agreement
The Framework agreement that had been negotiated, didn't affect treaty rights, didn't create treaty obligations, nothing was created for a band that was not a member thereof, didn't affect band membership, did not affect existing program. It addressed the settlement of the land debt. Most beneficiaries of treaty land settlement already have existing reserves where they receive ongoing funding and the agreement did not change that.

When a band reach shortfall it is a success because the whole concept was to satisfy the treaty. There were upper limits to the processes and therefore a framework agreement was put in place to provide some comfort to Canada and the Province that the bands would be able to reach shortfall. There was an upper limit on money they could spend for purchasing land. There was a best effort position that each band undertook to commit to reach shortfall within the first 12 years of the agreement. After shortfall the money that they have available can then be used for economic development purposes and this includes the urban reserve aspect of it.

The settlement agreement is to some extent restrictive in the acquiring of land to reach shortfall, usually it is within the Province but thereafter the band can establish a company and can purchase land anywhere but under the framework agreement they cannot have it for reserve status. There is one agreement where the First Nation wanted to purchase land for reserve creation in another Province. It was approved in the agreement upon condition that approval is given from that Province. The band has not been able to get that approval from the Province.
Canada will not expropriate land for reserve creation, Parliament had a choice to amend the expropriation Act but they did not amend the expropriation Act.

3.3 **Partners and progress** (Attachment 15)
The Province, Canada and the First Nations have to work together to make a success of the process. All the parties are intertwined and dependant on one another in the process.

In Saskatchewan 52 claims are settled, 29 of these claims are Treaty Land Entitlement claims although it states that it is settled it is not yet implemented. 14 claims are closed, 10 claims rejected where no lawful obligations was found. 14 Claims are with the Indian Commission for further investigation. 45 Specific claims are under review or with the Department of Justice.

Approximately 712000 Acres were turned into reserve status since 1992. Saskatchewan had moved more land than the whole of Canada together and the reason is that the entitlement bands came together and that Government and the First nations work together. Most of the bands have reached shortfall.

3.4 **Resource allocation**
There is approximately $6.1 Billion that is received by Indian and Northern Affairs Canada for First Nations, non status Indians and Métis. This amount is part of the $ 9.2 billion that is shared by other departments that also have mandates to support these nations.

The national budget increased but the increase might be due to the population growth, there are more aboriginal children than non aboriginal children. There are more schools and teachers in First Nation Communities and an increase in social system requirements.

In terms of the Provincial budget there are over $700 million that goes to First Nations not in terms of on reserve support but First Nations have an opportunity to access funds through the Province.

The Colona Accord that was signed by the previous government would have been very beneficial to the First Nations. The new government prioritised accountability, transparency, individual rights to be integrated within the First Nations and aboriginal people.

2.5.4 **Province of Saskatchewan**- Provincial officials Susan Pran, Director of Treaty Land Entitlement Province of Saskatchewan. Jessica Grey-Eyes and Lucille.

Web site: [www.gov.sk.ca](http://www.gov.sk.ca)
1. **Overview**
The Province does not fund any on reserve cost, like infrastructure. The responsibility of reserve issues belong to the Federal government, for instance defense and security on reserves is a Federal government responsibility and they will pay for this service based on an agreement with a local provider. The province does not fund the social or educational element. The justice system however is Provincial, there are no separate courts.

The Province’s mandate is to assist First Nations and Métis people to lead lives equal to all people of Saskatchewan. The Province is engaged in developing self government agreements in partnership with the Federal government, the province does treaty land entitlements and manages the gaming industry. The province has an economic development program for new companies that fall under certain areas of development that includes grants. In terms of the First Nations and treaty the province is the window into the Federal Government. All departments liaise with the province in terms of First Nation issues and the province monitor the departments on these issues.

2. **The Province and the Treaty Land Entitlement process**
The Province had to ensure that all Departments had a designated person to work on the treaty land entitlement process and that the departments comply with the agreement. The Province had 13 departments where every single land selection from the First Nation had to go through. Indian and Northern Affairs would provide their comments to the province. When a dispute arises the Province participates in bringing parties together in resolving issues on the selection of the 711000 Acres transferred. Almost 400000 Acres of the land selected were Provincial Crown land and that meant that the band had to negotiate agreements with a large number of 3rd party interests. Third party interests were also identified, for instance the Department of Environment identify land with leases on trappers and permits. There were issues of 6 month permits on land to be negotiated, highways issues and resource issues. The Province released land with undisposed minerals to the Bands at no extra cost. Over 680000 Acres of undisposed minerals were transferred to bands and they can develop these resources.

The tax loss compensation was a big element in the negotiations and a success. The Saskatchewan Province and Canada agreed to pay to municipalities, who will loose their taxes due to the new reserve status of the land, an amount in order for them to continue doing their business and also to maintain roads outside the reserves.

Canada also relies on the Province in terms of the utility agreements, the orders and councils and to transfer these when the land is approved for reserve status. Examples of these utility agreements are available on the web site.

The Government evaluates themselves on an annual basis in terms of policy making, planning cycles and even on assistance to the First Nations to enable them to move out of the welfare system and get employment.

3. **Support to First Nations**
Data and information are given to First Nations on how to best use their lands. Government looks at land development. Government looks at the Indian Act to see how it can be changed to enable First Nations to move ahead. Government can set an enabling framework but communities have to do it for themselves. In many successful communities it can be seen that it is the communities who do it for themselves that succeed. Currently in the Saskatchewan region government is aiming to fund a comprehensive process for planning in these communities. The community will hire a champion to bring their community together to try and plan what they want to do in the future for the benefit of the community. This intervention might lead to further funding on the identified developments. Government also
assists in management issues for instance what type of revenue they can collect, what type of leadership they have, do their constitution address all the issues etc.

Currently there are various types of communities from poor First Nation communities that cannot do anything to very sophisticated First Nation communities with international businesses like the North Le Ranch Band. The North Le Ranch Band started off with a little wild rice business and turned it into a multi-million dollar business with many employees in an area where there is nothing. They did it themselves, they might have received money from government in terms of economic development project proposals. It is government that must provide an enabling environment but people must do it themselves. Canada is enabling First Nations, their politicians are looking for votes and their priorities might be different than government.

2.5.5 Visit to the White Cap First Nation.

The White Cap First Nation is a small community (200-300) people who had a piece of undeveloped land. One advantage they had was that the land was situated near a urban centre, Saskatoon. They developed that piece of land into a renowned golf course, they built a casino and are planning a hotel and they are not a band within the treaty land entitlement process. They are providing work opportunities for their members and are currently prioritising the provision of housing on the reserve.

2.5.6 CHALLENGES, FURTHER ACTIONS AND LESSONS LEARNED

CHALLENGES
1. Long process, non delivery.
2. Comment: 1st world how is it possible not to have resources to enlarge capacity- maybe priorities not resources.
3. Old Acts, Indian Act to be reviewed-racial nature
   Slow progress of the Department of Justice
4. Many years in negotiation, discussing the process but little progress in implementing new approaches

FURTHER ACTIONS
Provide Saskatchewan Framework agreement, Indian and Northern Affairs Canada, Jonathan Breaker

LESSONS LEARNED
- Utility agreements to ensure infrastructure within a settlement agreement with the relevant authority can enhance the process of implementation and ensure implementation. This needs to be looked at in Restitution processes as well as in the idea of the establishment of agri-villages.
- All levels of government participated in agreement and that ensured the progress made in Saskatchewan.
- Capacity building during process enabled communities to acquire the necessary resources
- Research and the collection of oral evidence from elders in Land claims must be appreciated more in the South African process and recognized as 1st class.
- Capacity within First Nations to organize, capacitate their nation as well as having the capability to negotiate with third parties.
- Additional economic opportunities created by the compensation after shortfall placed First Nations in a position whereby they could develop economic opportunities, the reward was not only the land (locked up in the land)
- Provincial government ensuring that various provincial departments honor their commitments in terms of the agreement and participate in agreement and bring First Nation issues to them.

2.6 DAY 5

2.6.1 Meeting with Muskeg Lake Cree Nation official - Mr.
Lester Lafond (Attachment 16)
e-mail address: lester@lafond.com

- A local First Nations community who are currently in the process of negotiating several land claims.

1. Background
This is one of the forerunners in treaty Land entitlement that was to the benefit to First Nations. This is Treaty 6 Muskeg Lake territory. They have an agreement with government which outline the basic rights received when the treaty was signed in 1876, outlining the land quantum, fulfillment, healthcare support and some economic support.
Some First Nations ended up in geographical areas with limited economic opportunities. This First Nation ensured economic opportunities. First Nations who received land claims can move geographically to prime land.

The success of this land claim was based on an internal resolution by the First Nation that solutions come from within. In order to achieve this there needs to be strong governance, strong administration and a strong plan. It was also agreed upon that external support can be requested but in order for it to be a success it must be driven from within the community.

Seeking good leadership within communities is sometimes difficult. Contributory factors to their success was that their members come from a military background (women and men) from the 20th century, they traveled, they interacted with other cultures and when they came back as leaders they could analyse, access opportunities and had a broad vision.

Before the land claim in 1960, the leaders realised that the only resource they had was the youth and the primary objective by the First Nation’s council was to educate the youth, broaden their skills and find employment.

In 1983 their land claim was announced and they received their land entitlement. Their objective was to expand the land base and for membership to find employment in these different sectors.

2. The Plan
Management realised that agriculture does not provide stability in the economic base. In the 1980’s the bank interest was 21% and commodity prices fell. The plan from the leadership perspective was to diversify the economy when making land selection and look at management and employment opportunities in these land selections to be able to create economic opportunities that can move into other sectors. They looked at the types of land to acquire and looked at an industrial park opportunity, lake development (fishing and shoreline for cottages), forestry, land to broaden the agricultural land base, oil and gas. The community made those selections. Their settlement is 48 000 acres. The two primary selections were the 35 acres of the industrial park and a pristine lake. It only took 4 years to get the particular industrial park selection. The lake selection took 20 years but they received the title to land and water. They had bought into two sectors, the industrial-urban centre and tourism (cottage) development.

In 1987 after the selections were made, the Chief and Council and 60 administrative staff made a 20 year plan. The focus of the plan was that if government is unable to assist them anymore, what they will do. They did a review in 2007 and have another 20 year plan until 2027.

In 2006 they explored the current oil and gas focus and they made selections in the South West and are proceeding to negotiate to acquire the land.

3. Income
First Nations manage and control the land in territories. It is communal ownership but individually allocated. For example a trucking company will have a lease for 49 years. The Industrial park has given them apart from the land, the building, leases and taxation. Back in 2001 the Provincial government allowed them to retain a portion of the consumer tax on gasoline. The gas station that operates for the First Nation gathers revenue for the First Nation. They have an anomaly of features that other First Nations don’t have in terms of urban reserves due to the fact that they settled their settlement before 1992. When an agreement is signed for property tax services it is 40 c per $1 and the 60 c goes for the school boards. When they signed their agreement with Saskatoon the city bypassed this and the schools boards do not receive the 60 c but this First Nation receives the 60c. They have
thus two sources of revenue in terms of taxes on this property. They are planning to move forward as a government to expand their revenue base.

4. **Communication**
They have 1675 members. About 600 live and work in Saskatoon, North of the city there are approximately 400 members, about 30%-40% live in the province Alberta, 5% live all over Canada and some members in the rest of the world. The leaders of their community visit central locations in the regions where most of their people live and meet them face to face twice a year. Currently the unemployment rate in the community is 10%. They are getting close to seeing the national average.

They connect with the members via newsletters and when there are opportunities to vote for leadership. Their registry is up to date. It is a significant cost to them to maintain communication but it is required by the community.

There is a high support for the continuation of the goal of education, specifically University and Technical as well as the goals of more economic success, more adding value.

5. **Opportunities**
Five years ago they realised that the Industrial park only assists them to lease land, develop land and collect rent. They wanted to expand to another sector that would enable them to develop secondary and tertiary type of opportunities. They did this by engaging in the health sector, developed a primary health and welfare centre. They included a centre of excellence for diabetes which is an epidemic in First Nation communities.

This created a unique partnership. The Provincial government manages health care and this First Nation community provides the primary care. The facilities are provided by this First Nation, the Federal Health Department and the Saskatoon Health services. This service will benefit approximately 20000 people.

The strategy of the urban reserve development was based on the trend of First Nations already moving to the urban areas. The infrastructure services existed and they linked the transportation services. A large consumer base existed and it gave them a revenue base in terms of land tax and consumer tax.

Their participation levels in economy are still not significantly reflected.

6. **Implementation**
In terms of the City negotiations they opted for an urban reserve and understood the zoning of the land. They wanted a tax relationship although they did not have the ability then. They dealt with various leaders (community, city) and told them that they are going to be successful. The Industrial park was a dead end street but they indicated that they are going to develop businesses, create employment and commit resources to extend the road to create the activity on the land.

It was important to manage the relationship with the city and they took a government to government approach in trying to understand tax and services. They highlighted the areas of communalities with the city. It probably took 8-10 years for the general public to realise that this was First Nation land and administered by First Nations. The transition was seamless and it had a ripple effect. Their neighbors improved their property while the infrastructure was developing. The First Nations created a positive impact in the environment. They have a protocol agreement with the city that the various leaders meet on an annual basis.

In terms of the service level agreement they are the developers of their land. They approve all services and pay for services. For instance, they approved the protocol agreement with
the National police that the city police will provide services although it is a responsibility area for the Federal police.

About 400 people work in the Industrial Park and therefore the realignment of bus services was necessary. They paid 25% of the cost of the road adjustment to make the Industrial Park more accessible. It was a new thing for a First Nation to offer assistance to a city government to improve infrastructure. The return on this investment made it viable for them. The traffic count currently is 11000 vehicles per day, the gas station and retailers pick up on this. The value of the land was increased due to the road infrastructure. In the beginning the 35 Acres of land was valued at $750000 and now it is approximately $6 million. There are about 40 businesses currently on the land that is individually or tribally owned. There are various types of businesses from doctors to a trucking company.

They perceive their responsibility as a First Nation on an economic and social level. They are involved in a variety of non-profit organisations, associations and assist in giving advice mostly on business enterprises. One of Chamber of Commerce awards is sponsored by them.

They do not only invest in their land but also on other land. They own one third of the White Cap Nations golf course and is a 1/7 owner of the building of the casino on the White Cap First Nation land.

7. Future plans
20 years ago they were not perceived as a government but as a group of people that got some land. They structured themselves and act now like a government. They provide services, have their own revenue and two taxation instruments. They have economic success

Their immediate plans are storage facilities, wellness centre, office building, health, retail, and lake development.

8. Stability versus instability
This community is quite decisive in the road they want to take and supported the 20 year plan of the leaders. This gives them political stability. In other First Nation communities leaderships change without any rational reason. Sometimes change is good but sometimes not. If a community is unstable in terms of its structures government is concerned, banks are concerned and very uncertain to support any development. In their case they had 3 Chiefs in the last 25 years and the community is quite stable. Stability enhances the progress of development. If there are new leaders they need to figure out what the previous leaders were trying to do and this disrupts the development process.

9. Agriculture
20% of their agricultural land is farmed by this First Nations and 80% of land is leased out (65 year leases) to non First Nations. Agriculture is primary or production. Their strategy now is primary production, cattle and buffalo.

They initiated a youth program for youth between the ages of 12 and 18. The program is to assist youth in getting into agriculture but only into beef production. The philosophy behind beef production is the change in agriculture and the capital required. For grain production it is almost impossible to start a new enterprise unless it is succession with some existing capital in place or assets. It is almost impossible to get a grain farmer in place, it is a multi million Dollar investment and it is difficult to rationalise that only one family will benefit. Cattle require less capital and more opportunity of succession. Access to grazing land, a history of being around cattle and capital requirements are achievable over time. There are also different methods of acquiring cattle without dealing with cash like partnerships and trading
grazing. The environmental initiatives about greening in Canada are good for this community because a lot of the land owned by this community is grassland. Through partnerships like ducks unlimited they look at multi-level revenue income.

10. Decision making in the community
This community is not homogeneous, they have 1675 members. Continuous interfacing with the community and the manner and process how you interface ensure that the community takes decisions with limited conflict. The community needs prior knowledge of what will happen over the short term and long term. A plan indicating the envisaged developments over a short period (3-5 years) and longer period (8-12 years) ensures that there are no surprises. At that specific time when the community receives the details of the plan and all agreed that it was accepted the first time round, the conflict is less. For example when they started their health project the community was aware of the project but the leaders ran into major issues with government. When the community heard the detail they supported the leaders and encourage them to continue with the project. It took them three years to finalise the health project but the community supported them.

11. Beneficiation
They do not do cash payout. Three areas were prioritised; the youth, seniors and infrastructure development which include communication. An economic development program for their community was established whereby they support individual entrepreneurship. Entrepreneurs find a business idea and the community provides support to research the idea. The youth gets support in agriculture and sporting activities. The families of youth that needs financial assistance to ensure that their children participate in sport will get the assistance from the community, the community will pay for equipment and other related costs. Criteria to obtain the funding are volunteering time for community activities. It is a give and take relationship not a hand out relationship. Part of their philosophy is participation in education and sport will create a stronger individual. Senior members of the community benefit from the health facility. A bus was also bought for the seniors in order for them to travel around Canada, to socialize and experience new things. Another initiative that is being research now is the possibility of assisting community members to buy houses that are not on the reserve. There are examples where First Nations did not plan effectively for beneficiation and community members received payment. This did not contribute to positive developments, for instance a 18 year old would receive $30000 and that lead to a drug abuse scenario in that community.

12. Government assistance
Government had equity programs for First Nations. This included assistance for tribal councils and individuals. With that assistance they were able to start some of the development on the land, the building of the tribal offices and the gas station. They are able to do more investment now without government equity. Government equity was calculated at 35 % or up to $500000 for project based costs. Currently there are discussions to bring these programs back. There is another program by government for the youth which is only up to $75000 equity per project.

13 Governance structure
The Chief in Council makes decisions regarding the running costs to manage the land. A property management company which report to the Chief in Council, manages all parts of the land, rent and tax collection. Currently they are reviewing the management structure. They have a have a Business Trust Board which handles the trust revenues, the business revenues. They also have a Chief in Council Board which is made up of all the directors. There is also another Board that manages their trust funds Due to some legal issues that are transpiring in Canada they will most probably have to set up an Enterprise Board or Management Board for these
corporations. The body council board will have to be taken away from the business boards because of liability concerns. They safeguarded their model by determining every three years if the Board has governed properly and managed the business properly.

2.6.2 Wanuskewin Heritage Park

- Wanuskewin's mission is to operate, on a sustainable basis, a world recognized Heritage Park under the leadership of First Nations people. Wanuskewin is governed by a partnership model between Aboriginal and non-Aboriginal peoples and various government entities.

  Web site: www.wanuskewin.com

1. Protected areas

In Provincial Parks and large Canadian Parks First Nations feel that they have not been consulted enough or included in the decisions in which they feel is there traditional territory. There are court cases on lack of consultation in terms of activities within the Parks and surrounding areas. In areas where co-management agreements exist it seems that co-management means different things to different people and that creates complexities.

2. Wanuskewin Heritage Park

The study tour was concluded by visiting the park. At the Park a short film was shown indicating the importance of the Park. The museum was visited. A performance of Traditional dancing was given. The delegation had the opportunity to build a Tepee and learned more about the meaning of all the components of a Tepee.

2.6.3 CHALLENGES, FURTHER ACTIONS AND LESSONS LEARNED

FURTHER ACTIONS

1. Indian and Northern Affairs Canada -Jonathan Breaker to provide:
   1.1 Information on comprehensive claims there is a section that deals with protected areas. Example Inuit lands in Northern Quebec.
1.2 English River First Nation agreement regarding co-management.

**CHALLENGES**
- Legal structures for management

**LESSONS LEARNED**
- Community beneficiation not for free but conditions are set
- Knowledge, skills important in achieving results
- Long term vision with plans that are shared with community members
- Leadership and stability
- Government support in equity funding
- Economic diversity and knowing the economics of various sectors create a solid basis for further development

**3. ADMINISTRATIVE AND LOGISTICAL ARRANGEMENTS**

We would again like to thank the Embassy in South Africa, Canadian International Development Agency (CIDA) who played a significant role in understanding the purpose of the trip and making all the arrangements for delegates to have an enriching experience.

- Although there were short time-frames, CIDA managed to assist and guide the delegation to submit the correct documentation to be able to participate in the study tour.
- The officials of CIDA also traveled to OR Tambo International Airport on request of the delegation, to ensure that the delegation receives travelers cheques and Canadian Dollars. It is not a normal function for the Forex branch at the airport to keep Canadian Dollars or issue travelers cheques and CIDA had to pre-arrange these transactions.
- Flight Bookings: Two of the delegates had temporary passport documents and were unable to fly via Heathrow to Canada. Alternative arrangements had to be made to fly via Paris to be in Canada on the day of departure. In Ottawa the delegation was phoned by the travel agent to offer assistance for the return flight.
- All the engagements were arranged from CIDA in South-Africa and a clear program with additional information was provided to the delegation before departure.